

SUBMISSION TO THE FINANCE AND EXPENDITURE SELECT COMMITTEE ON THE CREDIT CONTRACTS LEGISLATION AMENDMENT BILL

To the Finance and Expenditure Select Committee
Select Committee Office
Parliament Buildings
Wellington 6011

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We wish to make an oral submission to the Committee.

EXECUTIVE SUMMARY

Christians Against Poverty NZ (CAP) supports the majority of the proposed amendments to the Credit Contracts Amendment Bill. However, we believe that these changes will not go far enough to protect families from predatory lending practices.

This submission provides a set of practical recommendations to strengthen the legislation. These recommendations are put forward on the basis of over 10 years' experience, working at the coal face with some of New Zealand's most vulnerable people.

CAP notes and applauds the high-level efforts of the NZ Government and public sector to improve mental wellbeing and to lift people and children out of poverty. Getting the Credit Contracts Amendment Bill right is a necessary and critical step towards achieving these high-level outcomes.

Undeniably, predatory lending is a driver of intergenerational debt and poverty. At CAP, we also know that predatory lending is a determinant of mental wellbeing. To illustrate:

- CAP provides debt counselling to hundreds of clients every year who have been victims of predatory lending.
- **7 out of 10 CAP clients say their mental health suffered as a result of their debt** before coming to CAP.
- **1 out of 4 CAP clients have contemplated or attempted taking their lives** because of debt
- **8 out of 10 CAP clients said that they could not buy adequate clothes or shoes for their children** because of debt.

CAP is passionate about working with local communities to lift people out of poverty and its causes. However, this will remain an uphill battle if New Zealand's system continues to prop-up unethical lending behaviour.

For that reason, CAP recommends the following measures:

1. **NZ needs a limit on interest rates** in addition to a 100% maximum cap on the total cost of credit.
2. CAP wants **affordability assessments to be thorough and realistic**. Vulnerable families are often given loans with little consideration for true household expenses
3. **More effective enforcement** needs to be in place.
4. **Strict liability offences should be created** for certain oppressive behaviours such as failing to carry out adequate affordability and suitability assessments.
5. There should be a legal requirement for lenders to refer a matter to a third-party external disputes resolution scheme if a borrower defaults within one month of taking out a loan.
6. There should be a legal requirement to refer a borrower to a financial mentor before a loan is taken out if the borrower falls into the category of a "vulnerable borrower"
7. We support a **total ban on mobile traders**
8. **Stronger regulation of debt collection**

To support these recommendations this submission draws evidence from local and international research, in addition to stories from our base of clients who are struggling with unmanageable debt.

Based on experience, we emphatically believe that a 100% limit on total repayments will be insufficient to protect vulnerable consumers on its own. In the absence of a limit on interest rates, unethical lenders have an opportunity to make quick profits by pushing borrowers to their repayment limits in the fastest possible way. The proposed legislation would still enable lenders to continue to jack-up interest rates to 200%, 300%, 500% or more. This loophole in the legislation will push vulnerable borrowers further to the brink.

The counterargument that an interest rate cap could result access-to-credit crisis are unfounded. Experience in the United Kingdom plainly shows that viable short-term lending options continue to be available in countries where both a “cost of credit” cap and an interest rate cap exists. Following the rollout of both measures, the UK’s Financial Conduct Authority found that¹:

- 85% of people who applied for high-cost short-term credit and were declined chose not to take out an alternative credit product.
- Of this 85%, 60% did not borrow at all, while the remaining 25% who borrowed went mainly to friends or family, rather than using other high-cost credit products.

These are all positive outcomes, meaning that vulnerable consumers were not sucked further into spirals of debt.

Moreover, the weeding out of insidious lending allows room for growth of safe-lending options such as Nga Tangata and Good Shepherd micro-financing. These cases provide evidence that access to credit under affordable and fair circumstances is possible and should be encouraged.

The information and stories contained in this submission are sadly not isolated cases. These examples are representative of the spectrum of vulnerable people who engage our services. It is our sincere hope these voices are heard and understood.

We look forward to working with you to make constructive changes to the proposed legislation. The decisions you make today will have a tangible impact on the cycle of poverty and the wellbeing of vulnerable consumers in Aotearoa. Whichever decisions are made, they will echo for generations to come.

*He hōnore, he korōria ki te Atua
He maungārongo ki te whenua
He whakaaro pai ki ngā tāngata katoa
Hangā e te Atua he ngākau hou
Ki roto, ki tēnā, ki tēnā o mātou
Whakatōngia to wairua tapu
Hei awhina, hei tohutohu i a mātou
Hei ako hoki i ngā mahi mō tēnei rā
Amine.*

¹ Financial Conduct Authority (2017). High-cost credit - Feedback Statement FS17/2.

Introduction to Christians Against Poverty

CAP has been operating in New Zealand for over 10 years. CAP NZ is modelled on the successful CAP UK debt counselling service, which has been in operation in the United Kingdom for over two decades. CAP's free debt counselling service has now helped thousands of New Zealanders to grow in financial capability. CAP builds sustainable and liveable budgets; negotiates directly with creditors to ensure that that debt repayments are affordable and fair; and supports clients long-term as they repay debt.

CAP works with its clients, on average, for two years (always free-of-charge) until they have repaid debts in full. CAP's Debt Help service is available in 48 locations across Aotearoa, from Kaitia to Dunedin.

On average, clients come to CAP with **over \$28,000 of debt**. **The vast majority of those clients present with debts specifically related to consumer credit** such as car loans, truck shops, personal loans, credit cards and payday loans. Over 70% of CAP clients rely on a benefit as the household's main source of income. Amongst CAP clients in paid employment, many still struggle to make ends meet and to provide for families because they receive the minimum wage.

CAP visits approximately 100 households each month. As a result, CAP constantly comes face-to-face with the crushing despair and misery created by debt. **Over half of CAP clients could not provide three meals a day for their children. Anxiety and depression caused by debt caused 65% of clients to isolate themselves.** As previously mentioned, before coming to CAP, 1 in 4 clients had contemplated or attempted taking their lives.

"I was very stressed, depressed - I was afraid of being judged, embarrassed, agitated. My children [were] feeling and suffering with me, which caused separation with my husband of twenty plus years of marriage." - CAP Client

In the past ten years CAP has **helped thousands of clients to pay off over \$37 million of debts and bills**. In addition, we've **enabled the write-off of over \$30 million of debt** as result of negotiation with creditors and insolvency procedures.

The fruits of this work mean that over 1,400 people have become debt-free. Moreover, these numbers have positively transformed the homes of over 1,700 children.

These families can now look forward to brighter futures, where income can be used to save and meet living expenses, rather than being absorbed by interest payments on unmanageable debt. As one client recently told us:

"I feel like I can breathe! I don't have anything unexpected that I know is coming up, all my bills/debts are covered. Me and my children can eat properly and I am no longer anxious our power will be cut off every other week." - CAP Client

Thank you for taking the time to read through our submission. CAP is grateful for the opportunity to share the lessons that have been learned as we walk alongside thousands of families who have been burdened by the weight of unmanageable debt.

RECOMMENDATIONS

The Credit Contracts Amendment Bill, as it is currently drafted, **will not adequately prevent “significant harm to vulnerable consumers from problem debt”**, as is stated in the general policy statement.

Lowering the cost of borrowing

Limit on the cost of borrowing

We support the 100% cap on the cost of borrowing, under clause 22 of the Bill, or section 45A of the proposed new legislation, “Costs of borrowing must not exceed loan advance”.

The repayment cap is a good step to stopping debt spirals from high-cost short-term loans. This idea has been successfully adopted in Australia and the United Kingdom, but it has always been accompanied by other measures. Refer below.

An Interest Rate Cap will protect vulnerable borrowers

Without a limit on interest rates, unethical lenders have an opportunity to make quick profits by pushing borrowers to their repayment limits in the fastest possible way. The proposed legislation would still enable lenders to continue to jack-up interest rates to 300%, 500% or more. This loophole in the legislation will push vulnerable borrowers further to the brink. Consequently, CAP believes that a limit on interest rates is also required. This additional measure will be essential to prevent vulnerable people from being chained to exorbitantly high repayments.

CAP’s first-hand experience shows that high-cost short-term loans are often advertised to vulnerable people. The power of this advertising means that these loans are commonly perceived by clients as the “only option” for families who are struggling to make ends meet. This experience is shared by many other debt counsellors in New Zealand (as demonstrated by BERL² in their 2019 report “*The harm from high cost lending*”). When families are facing a crisis and don’t have enough money, they often make quick decisions such as taking out a high-cost short-term loan to immediately resolve the issue they face.

This was the situation for Claudia, a CAP client who is a mum and a caregiver for dementia patients (Claudia’s name has been changed to protect her privacy). After seeing an ad online for a short-term loan, Claudia thought it would be a good idea to borrow \$450 to pay off other debts. The lender failed to look into her financial situation to see whether the loan was

² Green, S., Robertson, N., Nana, G. (2019). *The harm from high cost lending*. BERL.

affordable. Worse still, she did not understand the implications of a high interest rate, and the lender did not take time to explain this to her.

*Facing an interest rate of **365% per annum**, plus an expectation that the loan would be fully repaid within 56 days, **Claudia was simply unable to keep up with the repayments.***

Escalating debt meant that she couldn't afford to buy decent food for her family, let alone take part in family events or provide birthday celebrations for her child...

"Quite often we'd live on bread. [We] couldn't afford to buy veges and meat, we went for months without meat."

*The interest charges on Claudia's small \$450 loan cost her over **\$31 per week**. Late payment immediately compounded the debt escalating the situation and making it nearly impossible to escape from. As a result of interest charges and default fees, **after 56 days the loan was almost double the starting amount! Claudia describes the situation as:***

"...stress. Constant stress. You gotta get the money, it doesn't matter how much you pay off or how much you talk to them."

The research review conducted by the Ministry of Social Development³ found that exposure to crises creates stress that can impair people's economic and financial decision-making. The literature:

"...described people in crisis as being in 'low bandwidth' mode, meaning their focus is solely on getting by – not on learning, developing and planning. The human brain seems incapable of that kind of future-focussed thinking (like budgeting and financial planning) when immediate needs are under threat."

People in desperation, like Claudia, often don't pay attention to the fine print and fail to compare market alternatives and may not be able to appropriately consider the complex future implications of interest rates of 200%, 300%, 500% or higher. Exorbitant interest rates in the hundreds are exploiting vulnerable people who feel the need for an immediate "fix" and who are not in a position to make an informed choice.

At CAP, we encounter many instances where short-term high-cost loans are amplifying the financial distress of borrowers. Interest on short-term high-cost loans means essentials like food, power and medicine become increasingly out-of-reach. The BERL report rightly points out:

"[A borrower's] ability to engage, participate and contribute to community and economic productivity can only be severely curtailed in such instances."

Accompanying psychological stress can lead to long-term harm to families, whānau and communities. This finding leads BERL to conclude that an interest rate cap must be in place to protect vulnerable borrowers.

³ Ministry of Social Development, Thinkplace (2017). *The Voices of People in Hard-to-Reach Communities: Responsive tailoring of Building Financial Capability services to ensure cultural and social inclusion*. Sourced from <https://www.msd.govt.nz/documents/what-we-can-do/providers/building-financial-capability/cultural-and-social-inclusion/the-voices-of-people-in-hard-to-reach-communities.pdf>

We ask that the Committee refer to the conclusions of the UK's Financial Conduct Authority on the effect that their equivalent "cost of credit" cap and an interest rate cap had on the market⁴. It was found that:

- **85% of people who applied for high-cost short-term credit and were declined chose not to take out an alternative credit product**
- Of this 85%, 60% did not borrow at all. The remaining 25% who borrowed went mainly to friends or family, rather than using other high-cost credit products.

Specifically, the FCA noted that:

"We have found improved outcomes for consumers since setting the cap. Consumers pay less, repay on time more often and are less likely to need help with [high-cost short term credit] products from debt charities. Debt charities have also indicated that consumers are presenting themselves earlier and with lower debts, suggesting that underlying problems are being addressed sooner." [1.15]

"We found no evidence that consumers who have not been able to get HCSTC products since the cap have generally had negative consequences as a result. The majority (63%) of consumers turned down for HCSTC products since the cap was introduced believe that they are better off as a result. We have not seen a significant 'waterbed effect' with consumers increasing their use of other high cost credit products after failing to get a HCSTC loan. We also found no evidence that consumers who have been turned down for HCSTC are more likely to have subsequently used illegal money lenders." [1.17]

"The market has got much smaller since 2014 and we expect further changes. However, many firms have been able to continue operating under the cap. There has been a slight increase in the number and value of HCSTC loans issued since its low point in 2015 and we see some evidence of stronger competition within the market." [1.18]

"We do not consider that the price cap is currently too tight. This is because firms are continuing to operate under the cap, and consumers who are declined for HCSTC do not generally appear to be harmed as a result. Additionally, HCSTC consumers have had improved outcomes which indicate that our interventions, including the price cap, have been of benefit." [1.19]

CAP NZ acknowledges potential concerns about access to credit but the UK experience suggests that these fears are not borne out in reality. Viable short-term lending options continue to be available in countries where an interest rate cap exists. With this in mind, we do not believe that prohibiting unnecessarily high interest rates will remove short-term lending options from the market.

In contrast, we are heartened by the current growth of safe-lending options such as Ngā Tangata and Good Shepherd micro-financing. These cases provide evidence that access to credit under affordable and fair circumstances is possible and should be encouraged.

⁴ Financial Conduct Authority (2017). *High-cost credit - Feedback Statement FS17/2*.

CAP argues that the inclusion of an interest rate cap (in addition to a limit on total repayments) is a must for a Government that wants to prevent predatory lending. Failure to do so would contradict other public sector efforts to attenuate mental health woes and enhance the wellbeing of NZ's most vulnerable.

Ultimately, this improvement to the Credit Contracts Amendment Bill would mean low income families would spend less on interest payments, with more money going towards essentials such as food and housing.

Loans under 50% per annum

High-cost short-term loans are not the only causes of overwhelming debt. CAP frequently works with clients who are experiencing snowballing debt from loans that have interest rates of under 50% per annum. Motor vehicle loans, truck shop purchases and personal loans are similarly responsible for crushing spirals of debt. These loans are dangerous to vulnerable families because of their long-term nature (taken over many months), and high values (often for many thousands of dollars).

CAP has witnessed dozens of cases where loans have ballooned beyond double the original loan balances. In these situations, loans that may once have been affordable become untenable and impossible to repay.

CAP clients Tane and Samantha had a personal loan from a well-known finance company to take a trip overseas. The loan was secured against a raft of household items that were used by the family. Tane's full-time work and Sam's part-time hours meant that the loan was initially affordable. Unfortunately, Tane had to give up his work as a plasterer because of severe irritation to his eyes.

No longer able to afford their loan repayments, the couple soon fell behind as they struggled to keep up with household bills and expenses. The lender threatened repossession and added 'default letter' fees. Yet the lender declined the surrender of any goods and the unpaid balance continued to accrue default interest and fees. Tane and Samantha felt that there was nothing they could do but continue to pay where they could. By the time they came to CAP for help, the debt balance was over double the original balance.

The amendments to the CCCFA as currently proposed will not limit the devastating impact of the default fees and interest on motor vehicle loans, truck shop purchases and personal loans. **We strongly urge the committee to expand the scope of the proposed cap on the total cost of borrowing to other expensive loans/loans above 30% p.a. at least.**

Ensuring loans are affordable

Affordability Assessment

Vulnerable families are often given loans with little consideration for true household expenses. This generates a cycle of poverty where families are unable to save for future needs and are lured into further loans to keep up with normal household bills. We refer to the suggestions of ASIC in Australia in their consultation paper 309⁵ to support our position.

CAP supports a strengthening of the current principle that lenders must make reasonable inquiries of a borrower to ensure that the payments will not cause substantial hardship. We support the change that lenders will need to verify information provided by borrowers.

Every day CAP works with cases where affordability assessments have grossly underestimated the living expenses.

When Keileigh needed a loan for a second-hand car, she was asked about her weekly expenses. The lender's affordability assessment included \$50 for petrol each week (to travel each day to her full-time work), but no allowance was made for maintenance, repairs, WOF, registration or even the mandatory insurance she was expected to keep. Ironically, Keileigh needed a loan for a new car because she couldn't afford the maintenance on her old vehicle.

CAP also sees a multitude of examples where lenders have made no effort to verify claims, despite at times holding the necessary information to notice discrepancies between a borrower's claimed expenses and what is actually recorded in their bank statement held on file. In one example, a borrower's statements from other current loans showed multiple default fees. Yet still there was no effort by the lender to check with the creditors to ensure the loans were up-to-date.

Our findings are consistent with those experienced in Australia, which is currently undertaking significant changes to affordability assessment. An excerpt from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Interim Report⁶ in Australia commented:

"The evidence showed that, more often than not, each of ANZ, CBA, NAB and Westpac took some steps to verify the income of an applicant for a home loan. But the evidence also showed that much more often than not none of them took any step to verify the applicant's outgoings."

It is for this reason that CAP would be supportive of language similar to that used in Australia's Regulatory Guide, RG209⁷, when updated in 2014 to introduce the word "particular" in reference to consumers (now referred to as "particular consumer"). This would clarify that inquiry and verification obligations apply to the particular consumer, rather than consumers in general, ie. that the responsible lending assessment should be focussed on each individual consumer.

⁵ Australian Securities & Investments Commission (2019). Consultation Paper 309.

⁶ Hayne, K. (2018). *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*. Interim Report Volume 1, pg. 25.

⁷ Australian Securities and Investment Commission (2014). *RG209 Credit licensing: Responsible Lending Conduct*.

Affordability assessments in New Zealand should equally be focussed on the specific “particular” consumer making the application.

In addition, we believe that the use of benchmarking to establish estimated expenses is inadequate to reasonably assess a borrower’s outgoings. We agree with the proposal C3 of Consultation Paper CP309⁸ currently out for feedback by ASIC which clarifies the role that benchmarking can play. In relation to a particular consumer’s income and expenses, the paper states:

“Benchmarks can be useful as a tool to test the plausibility of consumer-provided information, but do not give a positive confirmation”.

Neglecting a household’s actual outgoings and a reliance on ‘internal’ benchmarks or income/expense average ratios is all too common in New Zealand. CAP would advocate for the adoption of an “if not, why not?” approach; ie. if a lender decides not to obtain or refer to forms of verifying information that are readily available, they should be able to explain why it was not reasonable to obtain or refer to them.

Affordability assessments should also be required when mobile trader accounts are established.

The product provided by a mobile trader is a “consumer credit contract” under the Bill and as part of this, the mobile trader should be obliged to assess whether the borrower can afford repayments.

Record Keeping

We support the proposed changes that would require records to be kept about inquiries and those records to be made available to the Commerce Commission, the borrower, the guarantor, or the relevant dispute resolution scheme, on request. Borrowers commonly find it difficult to obtain information about their loan and the assessments made. This makes it more challenging to identify whether there has been a case of irresponsible lending.

In Australia’s Responsible Lending Conduct, lenders must (if requested) provide the consumer a copy (free-of-charge) of the assessment that rules that the credit contract or consumer lease is ‘not unsuitable’ for the consumer⁹. Currently in New Zealand, many lenders don’t provide information about how their assessments are calculated. This makes it very hard to argue that the loan is unaffordable. New Zealand consumers should be entitled to request the income and outgoings calculated in the loan assessment to determine a loan as affordable.

⁸ ASIC (2019). Consultation Paper 309. *Update to RG 209: Credit licensing: Responsible Lending Conduct*. Section 50.

⁹ Australian Securities and Investment Commission (2014). *RG209 Credit licensing: Responsible Lending Conduct*. RG 209.138.

Limiting the % of income that can be spent on high cost loans

To safeguard vulnerable consumers on Government benefits we recommend an additional measure to ensure that **no more than 10% of a beneficiary's income can go towards paying high-cost loans**. Our rationale is that vulnerable consumers should not be able to spend their income on high-cost loan repayments when this is required for essential spending. This is important because users of high-cost loans are typically low-income earners, poor families and single-parents¹⁰.

Australia operates a similar prohibition for borrowers that are on benefits. In Australia, the maximum the borrower can commit to is 20% of income on high-cost loans. Although the Australian limit is 20% of income, there are efforts being made to reduce this to 10% of net income. This should be the law in New Zealand as well.

More Effective Enforcement

We support all the changes to the Bill regarding enforcement. There needs to be stronger incentives for lenders to follow the law.

Penalties and Damages

We support pecuniary penalties and statutory damages to assist with compensation for irresponsible lending. These are helpful additions that will make the Commerce Commission better equipped to take enforcement action against lenders.

We also strongly support clause 25 of the Bill which allows for statutory damages (equal to the sum of interest charges, credit fees, and default fees) that have become payable under the agreement in instances where there is a breach of the responsible lending principles, i.e. where the lender has failed to make reasonable inquiries before entering into an agreement.

In addition, strict liability offences should be created for certain oppressive behaviours such as failing to carry out adequate affordability and suitability assessments and offering extensions of credit in breach of the law.

Disputes Resolution Schemes

When CAP advocates on behalf of its clients, we sometimes refer cases to dispute resolution schemes. This is good for individual outcomes. However, more effective enforcement measures need to be in place for the Commerce Commission to be able to resolve disputes efficiently.

¹⁰ Banks, M., Marston, G., Karger, H., and Russell, R. (2012). *Caught Short. Exploring the role of small, short-term loans in the lives of Australians*. University of Queensland.

Currently, the Commerce Commission can take many months to conduct an investigation and may wait until they have received several complaints to assess the breadth of the problem. This process is not good for individual outcomes.

We suggest that there should be a legal requirement for lenders to refer a matter to a third-party external disputes resolution scheme if a borrower defaults within one month of taking out the loan. The early default suggests that the loan may not have been affordable for the borrower in the first place. The scheme can then investigate and if it appears to be a systemic problem, it could refer the matter to the Commerce Commission for more investigation. This would be a way of alerting the Commission to lenders who are failing to comply with responsible lending principles.

We also suggest that there should be a legal requirement to refer a borrower to a financial mentor before a loan is taken out if the borrower falls into the category of vulnerable borrower. This requirement could be triggered if the potential borrower:

- were in receipt of a benefit, or
- had defaulted on a high cost loan in the previous 12 months, or
- had taken out three or more high cost loans in the last 12 months.

In these instances, the mentor could work with the borrower to make sure they are aware of all their options and their rights.

Stronger Regulation of Debt Collection

CAP supports the disclosure requirement in the Bill. It is good because it sets out the rights and obligations of the debtor at the start of the debt collection process.

While we understand that debt collection law may be outside the scope of the current bill (granted that it applies more widely than to high-cost lending alone), we would encourage the Select Committee to recommend changes to debt collection law as a matter of urgency. We note that New Zealand is significantly behind comparable countries in this area. Stronger law to control debt collection practices is required to protect vulnerable New Zealanders.

In talking to CAP clients about their experiences of being in debt, we regularly hear examples of bullying and harassment when debts are overdue. Some members of the community receive automated phone calls from debt-collectors multiple times every day. This causes untold stress and anxiety for these families. We've also heard of examples where debt collectors arrive at properties wearing uniforms (similar to law or court officials) in an effort to misrepresent their authority.

Debt collectors need to be regulated to prevent predatory collection practises. The law should cover contact, privacy and harassment issues. Harassment and high costs of collection are causing significant emotional and financial harm to vulnerable borrowers. It is sickening to observe the negative impact on borrowers' mental health caused by frequent and oppressive contact by debt collection companies.

In Australia, the United Kingdom and the United States, extensive rules govern the way in which debt collectors can carry out their operations. We are aware that many active debt collectors in New Zealand operate under the Australian regime and would not be disadvantaged by facing similar law in New Zealand.

Truck shops and mobile traders

Banning mobile traders

We support a total ban on mobile traders. Clause 6 of the Bill has defined the term “mobile trader”, which means that a ban on lenders who meet this definition is possible. Mobile traders deliberately target vulnerable communities and this causes substantial harm.

Including mobile traders under the credit contracts law

If our proposal to ban mobile traders is not accepted, then we support the provision that would cover credit arrangements used by mobile traders under the Act as consumer credit contracts. Mobile traders often operate layby arrangements that are not currently considered credit contracts. This law change ensures that mobile traders will need to comply with the same laws as other lenders offering credit contracts.

“Do not knock” stickers

If mobile traders are not banned, we support “Do not knock” stickers becoming legally enforceable. If a person has a “Do not knock” sticker it signals that they have taken proactive steps to not purchase from mobile traders. “Do not knock” stickers are commonly ignored by mobile traders at the moment.

Breaching this request should have legal consequences. We understand that this proposal is being considered in the review of the Fair Trading Act. Because it was announced as part of the proposals to reform consumer credit law we ask the committee to follow up on this proposal with officials.

Reasonable Fees

We support the strengthening of the current rules around “reasonable fees”. We support the requirements that creditors should (1) keep records about how fees are calculated and (2), make these records available to the Commerce Commission or the relevant dispute resolution scheme.

CAP regularly observes outrageous fees when loans are topped-up. Before coming to CAP, one client had been in to top-up their existing loan by \$400 and was charged over \$600 in administration fees and new insurance premiums.

The prohibition against “unreasonable” fees is an inadequate measure as we have seen instances of this law being breached. Therefore, we support measures to make it easier to enforce the current rules around unreasonable fees.

Fit and Proper Person's test

We support the Fit and Proper Persons test for creditors, mobile traders, and their controlling owners, directors and senior managers. It is beneficial for mobile traders to be included within this test because mobile traders often close when enforcement action is taken against them and reopen under new names. These “phoenix companies” cause the same harm in the community. This measure will make enforcement against these types of lenders easier.

Advertising

Advertising for high-cost short-term loans should be banned. These products are extremely harmful and are currently advertised as desirable products. Advertising is often targeted at vulnerable communities through TV, radio, local newspapers and the internet. Advertising for high-cost short-term loans should be regulated like other harmful products such as tobacco, pokies and alcohol sponsorship, where the social harm of the product is recognised.

Tragically, one in four people who come to CAP for help say that they had contemplated or attempted suicide because of the stress and depression caused by their debt. Assuming that this proportion is similar to other budgeting agencies, this suggests that psychosocial costs of high-cost short-term loans must be horrendously high. With this in mind, the promotion of high-cost short-term loan products should be banned.

We wish to confirm our support for:

- The amendment that disclosure must be in the language that a loan was advertised in.
- The strengthening of the advertising standards for all loans.

Changes to Disclosure

We do not support the changes to Sections 32 and 35 of the Act if the changes are to be applicable to Initial Disclosure as prescribed in Section 17 of the Act nor to Variation Disclosure as prescribed by Section 22 of the Act.

Having a location where it can be ‘accessed’ cannot guarantee that the accessible document is the same disclosure initially provided at the time the loan was taken out or varied. The importance of these disclosure documents is paramount to integrity of the loan between the parties. Both parties should be able to refer to a copy that they had been given or sent by post or email.

Other Issues

After Pay / Post-Pay schemes

CAP would support After Pay and equivalent Post-Pay schemes being included in the scope of the Bill. This would enable them to be regulated in the same way as other credit-related loans. This is important because we know that these products are very accessible, and it is easy to build up debt very quickly. We support the call-in power that is proposed to be included in regulations to enable the government to bring these products into the scope of the Credit Contracts and Consumer Finance Act. We also recommend that the Commerce Commission or government undertake an investigation into the use of these products to assess the harm they are causing, especially now that they have become a recognised feature of retail shopping.

Working constructively with Financial Mentors and Budgeting Services

CAP advocates for an obligation to be placed on financial services providers to ensure that they co-operate with financial mentors and budgeting services in defined ways. This would enable more effective advocacy on behalf of the borrower. CAP has experienced lenders who have deliberately obstructed the flow of information to us as we act on a client's behalf; making it difficult to exercise the client's legal rights to access their personal information, arrange hardship deferments and/or to make complaints. This has forced CAP to take complaints to Disputes Resolution Schemes in order to seek directives/instructions (to lenders) to provide us with information that our clients should be readily entitled to in the first place.

Financial Mentors are often the voice for vulnerable people. Defined co-operation would lead to fairer and more effective outcomes for redress and hardship changes.

Direct Debit Payment Authorities

We recommend a ban on the use of direct debit payment authorities by high cost lenders. There is no reason why the debt to the lender should be automatically deducted from the borrower's income. As a minimum standard, there should be a ban on using direct debit authorities in the case of beneficiaries.

These borrowers have very little income to cover daily expenses. It is inappropriate for the lenders to use their powerful bargaining position to insist on taking priority to the beneficiary's income. When direct debits fail, additional bank charges are incurred which cause even more hardship for the borrower.

CONCLUSION

We're certain you'll agree that **unethical lending practices and highly unaffordable lending conditions have no place in Aotearoa**. We have a vision for New Zealand that is filled with freedom, health, strong families and hopes for the future.

CAP would like to thank you for the time you have taken to review our submission. The Amendment Bill is a fantastic opportunity to increase the protection for consumers from predatory lending practices.

As an experienced national provider of debt counselling, we strongly believe that an interest rate limit (in addition to a limit on total repayments) will improve the Credit Contracts Legislation Amendment Bill in its aim to protect the interests of vulnerable consumers from problem debt. We also advocate for:

- Affordability assessments that are thorough and realistic.
- More effective enforcement.
- Stronger regulation of debt collection practices.

Finally, to safeguard vulnerable consumers, we urge the Select Committee to expand the scope of the proposed cap on the total cost of borrowing to other expensive loans/loans above 30% per annum.

We look forward to an opportunity to speak with you in an oral submission to discuss the proposals outlined above.

Kia tau ki a tātou katoa

Te atawhai o tō tātou Ariki, a Ihu Karaiti

Me te aroha o te Atua

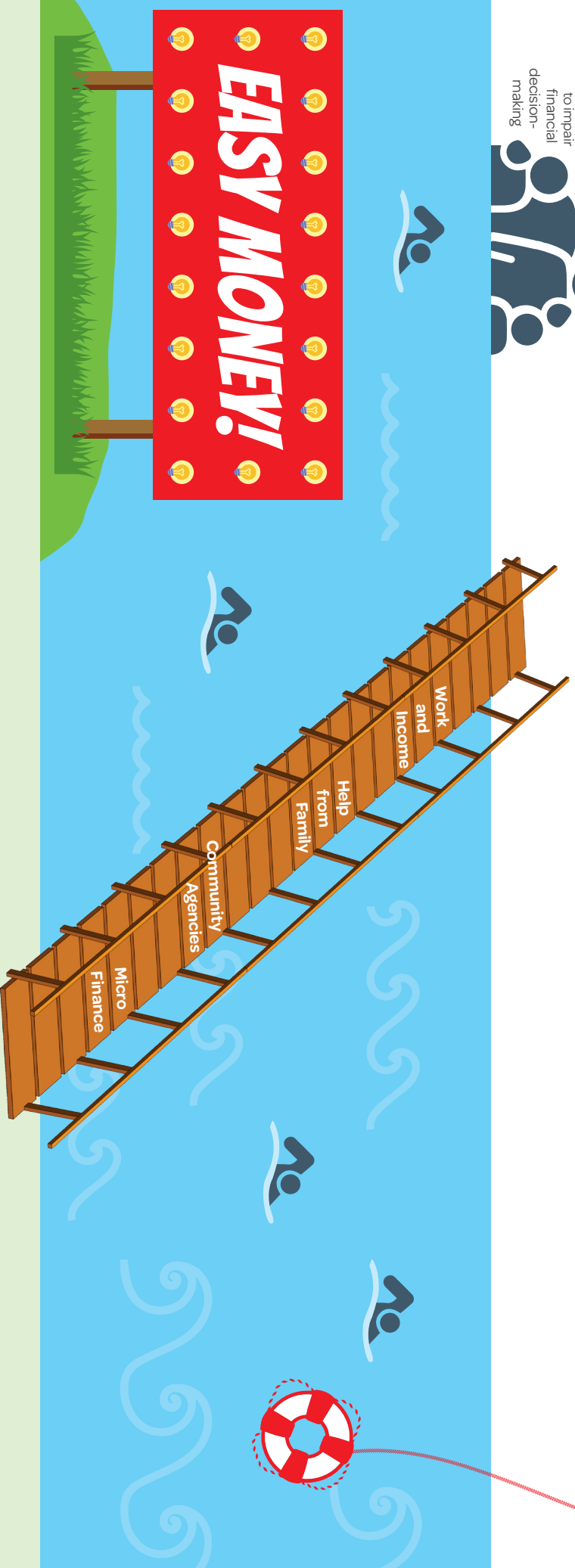
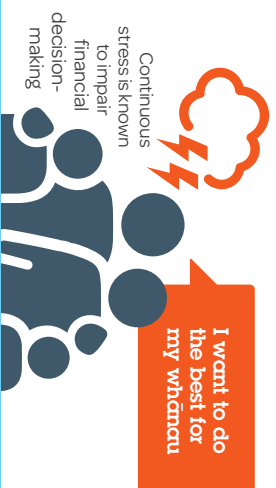
Me te whiwhingatahitanga

Ki te wairua tapu

Ake ake ake, Amine.

A fair lending system cares for vulnerable consumers

But the longer people spend in the river, the greater the poverty and the larger the rescue operation



Christians Against Poverty lifts New Zealanders out of debt, poverty and its causes.



Free debt counselling in 48 locations from Whangarei to Dunedin

Negotiates with creditors to help write off debt

Works with **over 150 churches** to deliver **holistic support** including money education

Services to:

- **support** the unemployed into work
- **build life skills** and financial capability, helping people to thrive on a low income
- help people overcome **life-controlling habits**

1,254 households

have become debt-free positively transforming the lives of 4,125 people, including children.

Family Essentials



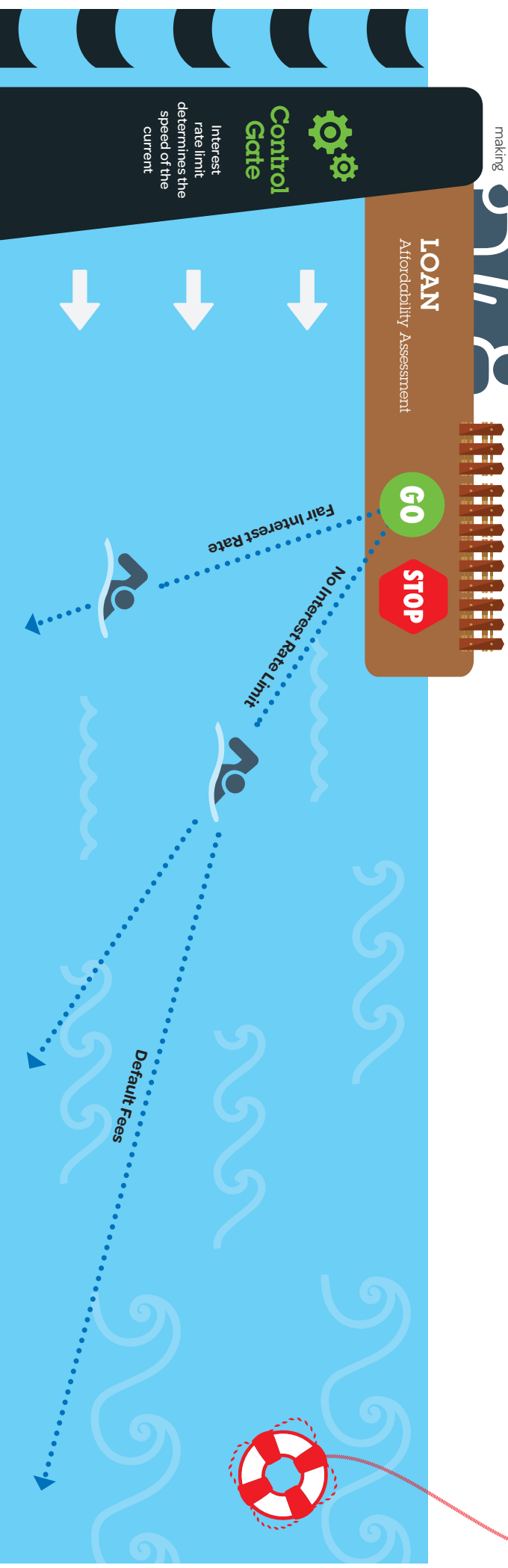
Lending is not fair when it increases people's suffering

christians
against
poverty

CAP
capnz.org

I want to do the best for my whānau

Continuous stress is known to impair financial decision-making



Family Essentials



HEALTH



FOOD



VEHICLE



BILLS



FUNERAL



CLOTHING



HOME REPAIRS

To protect vulnerable New Zealanders we recommend the following solutions:

1 Ensure lenders conduct fair and comprehensive affordability assessments, where lenders verify household incomes and expenses.

2 Set a fair limit on interest rates (in addition to a limit on total repayments) to ensure that vulnerable consumers do not get swept away in the current.

3 Regulate advertising of high-cost lending in line with harmful products like gambling, alcohol and tobacco.

Together we can prevent families being swept away.