Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation

Name	Russell Birse, Executive Chairman
Organisation	Rapid Loans NZ Ltd

Introduction

The following is a response to the particular topics raised in the Discussion Paper associated with the Review of Consumer Credit Regulation.

Please note that we have occasionally preceded the answers to the provided questions with introductory comment, in an effort to cover the content of the Discussion Paper and Additional Information Paper that was not the subject of relevant questions, or to establish the circumstances surrounding our responses.

We trust that the Minister and the Review Secretariat will find this comprehensive approach useful.

Philosophical and broader policy considerations must be addressed first

Before the specific issues can be addressed, it is the company's view that the Minister has important philosophical questions to address. They are:

1. To what extent is the Government going to attempt social engineering, with the reforms that may be adopted?

2. To what extent are the reforms to the Credit Contracts and Consumer Finance Act 2003 (CCCFA) regime going to be an attempt to countermand circumstances created by Government pension and economic policies?

   When considering this question, the Minister could consider the stakeholder concern noted in Paragraph 16 of the Discussion Paper - "*that there are insufficient alternatives to taking on high-cost credit for people who need loans for essentials*".

3. How much recognition is to be given to the borrower's personal responsibility?

4. How the Commerce Commission be provided with the necessary resources to be the Government agency that supervises a new regime?

5. If a new CCCF Act regime is introduced that the lenders find to be economically unsustainable, what capacity does the not-for-profit (NFP) sector have to replace the commercial lender and does the Government's Treasurer have the substantial budget in mind that would be needed to fund the NFP sector in their attempted takeover?

6. On the basis that there is a takeover by the NFP sector, what real experience has that sector got in matters of large scale and large volume lending, credit assessment and the management of bad debt and loan write-offs?

7. If the policy goal and/or impact of the CCCFA reforms is to effectively abolish commercial non-bank and non-mainstream lending, and the NFP sector is either not funded, or is assessed as being incapable of providing a replacement for the commercial sector, what plans has the Government got to support the massive increase in demand created for assistance from the charities?

8. Associated with the above concerns, has the Minister investigated the capacity of the criminal gangs to move in if the changes to the CCCF Act regime force the majority of targeted current ("high cost") commercial lenders to exit the market sector? How

effective has the Commerce Commission been in regulating criminal gang lending to date?

9. Where does increasing regulation over lenders stop, and consumer education in money management begin?

We trust these questions will be addressed before the Minister rushes in with populist "reforms" that create favourable and totally uninformed media coverage for a few days, but then open the doors to social dislocation, credit exclusion, failure on the part of the NFP sector lenders, significant calls by the charities for Government funding, a major increase in criminal gang lending and a lot of unhappy people who used to borrow successfully from the former commercial lenders.

A comment on "What's not working"

Paragraph 15 lists 5 areas where it is alleged the current CCCF Act regime is not working, which deserve some comment from a lender's perspective. We present our comment by way of questions.

1. "*The high cost of some consumer credit*"

   Comment: High cost in comparison to other non-bank lenders, or high cost in comparison to entirely different loan products offered by the banks?

2. "*Unmanageable levels of debt*"

   Comment: for ordinary borrowers - or for the minority who walk away from their financial responsibilities, or are so negligent with their money management that they incur continuing indebtedness and default fees?

   Please note, in this comment we do not include those people who make a genuine attempt to repay, but who then suffer genuine changes in their financial circumstances after they have taken out their loan.

3. "*Significant levels of non-compliance*"

   Comment: Should this be considered a Commerce Commission policing matter, or an excuse for further regulation or regulation change?

4. "*Continued predatory behaviour by mobile traders*"

   The company does not employ this kind of marketing activity. Therefore this is not an area known to the company and we cannot comment.

   This should be an area for targeted reform - not overall regulatory change that impacts on the other 'innocent' credit sectors.

5. "*Unreasonable fees*"

   Comment: The current CCCF Act regime and recent court cases provide sufficient opportunity for the Commerce Commission to police this area, particularly if "unconscionable" is appropriately defined as meaning fees that are not referrable to actual costs.

   Further, are we dealing with an area that requires an increase in policing by the Commerce Commission, rather than an area requiring more regulation?

Responses to discussion document questions

Our responses to the questions and issues presented in the Discussion Paper follow.

Issue 1: Regarding the excessive cost of some consumer credit agreements

In light of paragraph 22, the Minister has to ask - why are there no mainstream lenders offering loans of equivalent amount and terms?

Paragraph 19 presents a chart offering a comparison on percentage terms. As the only opportunity for comparison, this is unsound because:

1. the actual gross dollar income from the various loans should also be considered, remembering that a compliant "high cost lender" faces similar advertising, assessment and loan processing costs, as does a bank with a home mortgage - yet lends a far smaller amount, for a far shorter term, for far smaller gross income;
2. it is questionable to compare secured loans with unsecured loans - the risk profiles are very different; and
3. annualising the smaller and shorter term loans' interest rate is unsound, because it assumes that the loan runs for a year. This creates an exaggerated percentage, because it implies that the "high cost lender" can immediately re-lend, that there is one set of establishment costs and administration costs when, in fact, there are numerous repeats of such costs and that the opportunity to assess risk is a once off.

Rapid Loans NZ considers that allegations of excessive costs should be considered with an appreciation that there is intense competition within the non-bank lending sector.

The company considers that it has at least 30 competitors in the New Zealand marketplace, with borrowers becoming increasingly better informed as to the competitive offerings available.

Almost all of Rapid Loans' borrowers are informed and experienced borrowers. They have a full understanding of their borrowing decision.

<table>
<tr><td rowspan="2">1</td><td>Do you agree that the problems identified with high-cost lending (even where it is compliant with the CCCFA) are significant? Do you have any information or data that sheds light on their frequency and severity?</td></tr>
<tr><td>When identifying the problems, it is very important to differentiate between those problems that represent an actual or "in spirit" breach of the CCCFA and those that reflect society in general. You cannot attribute society's general attitude of not wanting to save or wait to purchase goods, holidays and services, or to purchase second hand (at a much lower price) as opposed to new, to being failures under the current CCCFA regime.

If you do not differentiate, the Review result could be an attempt at social engineering, or at placing a responsibility on lenders that is really a Government responsibility associated with relatively low social welfare benefits.

Rapid Loans NZ is concerned that there is a tendency for consumer advocates and financial counsellors to emotively present their clients' circumstances, with a continuing implication that such difficulties are all the fault of the lender and extend to many other borrowers. Rapid Loans NZ disputes this and has only ever had a handful of borrowers take their complaint to the company's EDR scheme and total complaints, including those only presented to the company's internal process, have never exceeded 0.015% of total loans lent for the particular year. In other words, the "significance level" of complaints is nowhere near what some stakeholders are implying.

Rapid Loans NZ's current interest rate is 39%. This rate has been set in response to a highly competitive market, with consumers generally very aware of the existence of competitor lenders.</td></tr>
<tr><td rowspan="2">2</td><td>Do you support any of the extensions of Cap Option A? What would be the impact of these extensions on borrowers, lenders and the credit markets? Do you have any information or data that would support an assessment of the impact of these extensions?</td></tr>
<tr><td>As the Minister would be aware Option A, limiting total interest and all fees repayable over the life of the loan including the original loan term, any negotiated extra term and any collection period thereafter, to 100% of the principal, has been adopted in Australia for loans of $2,000 or less.</td></tr>
</table>

This policy has largely been accepted by Australian lenders, because it satisfies the concerns of Australian consumer advocates that there be a limit to the potential debt spiral risk. Most lenders are pleased to recover their principal and some of their fees (and interest in the New Zealand context) when a delinquent debtor repeatedly fails to pay, as opposed to never receiving any payments.

The introduction of a cap on total collections to 200% of the principal would not have a high impact on Rapid Loans NZ.

It is unfortunate that the Discussion Paper did not include a definition of "high cost loans", or attempt a sub-categorisation dependent on size and length of term, within this description. The above comment is provided in the absence of this necessary clarification.

Concerning the "Potential extensions" to Option A -

Paragraph 32 presents:

1. The opportunity to borrow after defaulting on a current loan.

   In such circumstances, Australia has adopted a rebuttable presumption for loans of A$2,000 or less. The second loan is to be considered "unsuitable" and not to be offered unless there are circumstances that rebut the presumption of unsuitability.

   We support this approach, because there are often non-financial reasons why the default may have occurred which support a rebuttal, such as a mistake in the timing of the withdrawal to make the due payment date, which conflicted with the debtor's budgeting, or an employer being late in depositing wages so the direct debit could not be met.

2. Prohibiting more than one loan at a time.

   This is unnecessary if it can be demonstrated that the borrower could afford more than one loan at the time. The adverse consequences of such an unfortunate policy include:

   (a) borrowers simply taking out a bigger loan;

   (b) borrowers taking out the bigger loan when they do not immediately need a portion of what they are forced to borrow - paying more interest in dollar terms and fees ahead of time, when they do not need to be on an inflated loan amount; and

   (c) borrowers obtaining more cash than they need at the time and squandering the excess amount before they actually have the specific requirement for that extra amount.

3. Introducing a cooling-off period between borrowing.

   The consequences of such an unsound policy can include:

   (a) a presumption that borrowers can be without a new loan for the artificial or arbitrary period selected. There are many times when the need is urgent or an emergency;

   (b) borrowers taking our more in the first loan, so that they have funds to tide them over the period between the first and second loan;

   (c) loans taken out in others' names, but actually to be repaid by the first borrower; and

   (d) if this policy is to be applied to another lender - how is that second lender going to be sure that (say) 90 days have elapsed, without a national database of lending, or in circumstances (say) where the borrower deliberately runs 2 bank accounts and only offers the statements of one to each of the lenders?

       Further, how is the current lender going to be sure that the previous lender satisfied the definition of having lent a high cost loan?

At least 95% of Rapid Loans NZ's borrowers have a current or recently paid off loan with another lender and, with the problems associated with obtaining accurate information about these other lender's loans alluded to above, the introduction of such an artificial cooling off period would be a major inconvenience to Rapid Loans NZ. More so, the broader the prescribed definition of a "high cost" loan.

3 Do you agree with our assessment of the costs and benefits of the options for capping interest and fees? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?

Concerning Option A

"Benefits" - The capping of interest and fees to 100% of the principal:

1. will limit the accumulated debt;
2. will not impact on the number of borrowers who hit the 100% ceiling;
3. will have no reduction impact on overall interest and fees paid, but could lead to an increase in interest rates to cover the opportunity lost to recover more than 100% from bad payers, which is available at present; and
4. is unlikely to impact on irresponsible lending, because the irresponsible lender hopes that every borrower will repay their loan and assumes or calculates that the majority of their loans will be successfully repaid - no matter the level of irresponsibility.

"Costs":

We agree with the costs identified.

Concerning Option B

"Benefits" - the capping of fees and interest to a maximum percentage, 200% to 300% (equivalent interest rate), plus $30 total default fees for term of loan.

The company provides the following comments in the context that it could survive with a 200-300% cost cap imposed.

1. The assumption that interest rates make a major contribution to default rates and hardship is questionable. First there is the principal to repay which, for most loans, is the major portion of the total repayments.

   Note, in the examples on page 15 of the Discussion Paper - the best case option provides a $500 principal, with the interest at $159.72, $159.72 and $62.64 for the status quo, Option A and option B calculations. That means the component that is principal for these loans represents 75.79%, 75.79% and 88.87% of the total to be repaid.
2. To assume interest rates are what determine defaults rates is unsound, because defaults rates are frequently influenced by an unplanned or unexpected expenditure, or poor money management prior to the repayment becoming due.
3. To be unable to define "high cost loans" and to present an interest rate cap as between 200% and 300%, indicates that there has not been any economic research or economic modelling carried out as yet. Both must be undertaken, or the Minister will simply be making a critical decision based on a series of guesses.

"Costs" - we would anticipate all as probabilities.

In addition the limit to $30 in aggregate, for all defaults, would be to impose a penalty on lenders, because the expected contact with debtors is an administrative cost and $30 allows cost recovery for approximately one default. That means:

1. an extra regulatory cost on lenders;
2. an encouragement to terminate a loan after one default;

3. an encouragement to seek small debt claim court action quickly;
4. no recognition concerning the difference between continuous or sequential defaults and a default followed by several successful repayments, and then another default; and
5. no cost based discouragement for debtors to avoid more than one default.

Limiting total default fee collections to $30 also does not provide any incentive for the borrower to repay on time.

Rapid Loans currently charges $28 per dishonour, which has been carefully calculated to reflect attributable costs following a dishonour. Notwithstanding the attributable costs, Rapid Loans NZ waives this fee if the borrower repays within 48 hours.

The introduction of this default fee cap would impact heavily on Rapid Loans NZ, with the second default costing the company $26 and each default thereafter costing the company $28.

Concerning Option C

“Benefits” not achieved, because such a low interest rate and fee regime is not regulation - but abolition of the commercial lender. None of the commercial lenders could economically survive.

“Costs” - any “cost” that anticipates a continuation of relevant commercial lending under this regime is nonsense. If this Option is adopted, a massive and costly increase in the demand on charities’ services and/or illegal lending should be anticipated.

4 Do you have any suggestions for the design of options for capping interest and fees? If so, what would be the impact of your proposed design on borrowers, lenders and the credit markets?

If the Minister is motivated to introduce a rigorous capping regime, then the Australian model that commenced in July 2013, established after years of consultation and debate, is a model to consider. This model was also comprehensively considered by the Australian Parliament’s Finance and Economics Committee in 2011. The opportunity for a New Zealand Parliamentary Committee to effectively be involved, with adequate opportunity to take evidence from lenders and forensically question all stakeholders, should not be overlooked by the Minister.

However, the subsequent Australian Small Amount Credit Contract Review Panel’s efforts in 2015/16, in regard to loans under $2,000, should be ignored, as the review was a sham that did not pay any attention to industry economic or operational realities. The Panel, which was handpicked by the Minister of the time and poorly selected, did not show any interest in conducting any professional economic research and ignored any independent research that was provided by stakeholders.

The Australian reforms that commenced in 2013 provide a continuation of commercial lending - while consumers pay less.

5 Which interest rate cap options, if any, would you prefer? Which interest rate options would you not support? Please explain how you made your assessment.

Option B - is the most economically feasible option of the 3 presented in the Discussion Paper, provided the interest rate cap is only set to inhibit the extremely high rates charged by the most expensive lenders at present. The totally unfeasible interest rate cap decisions of the NSW and ACT jurisdictions in Australia, in place between 2006 and 2010 (48% daily reducible on all loans, including small loans), proved to be an effective abolition of small amount lending in those jurisdictions and must be avoided.

However, for Rapid Loans NZ, to present the range of 30% to 50% could be problematic because anything less than 42% would be unviable for the company and we would exit the market.

While Rapid Loans NZ lends amounts of $1,000 to $5,000, Rapid Loans NZ suggests a consideration of the Australian 20% flat permitted establishment fee and 4% permitted monthly fee for loans of $2,000 and less, the 48% plus $400 establishment fee for loans between $2,001 and $5,000 and 48% for loans from $5,001 onward.

Issue 2: Regarding continued irresponsible lending and other non-compliance

The Minister faces the political challenge of not jumping to increase regulatory powers and restrictions on the industry sector, simply in order to appear to be "doing something" to satisfy the populist media, particularly the "shock jocks".

The solution is already recognised in the words of Paragraph 39 -

"*...there appears to be unacceptable rates of non-compliance with a range of CCCFA obligations, particularly the responsible lending obligations...*".

In other words, the current law is not being adequately enforced.

What optimism can there be that further regulation will not face the same level of non-enforcement?

If the problems listed a. to d. in Paragraph 39 exist, it is time for the Commerce Commission to announce that it is targeting these practices and then go out and enforce the current law.

6 If directors have duties to take reasonable steps to ensure that the creditor complies with its' CCCFA obligations, should any duties apply to senior managers?

Senior managers are the employees or agents of the directors. That means their duties and the satisfactory performance of those duties are matters for the directors to determine and for which the directors are responsible.

Little is achieved by making senior managers personally responsible for what their directors encourage or permit, due to negligence/failure to monitor, inattention, or not caring. Responsibility must rest with the company Board, unless the senior managers have clearly operated outside the policies set by the company Board.

7 If there are to be more prescriptive requirements for conducting affordability assessments, what types of lenders or loans should these apply to?

We agree that principal based laws do introduce uncertainty. To reduce this uncertainty, when it comes to assessments of loan applications, good general industry practice could be considered as a foundation for prescriptive regulation.

Rapid Loans NZ already obtains bank statements from every loan applicant and undertakes verification of consumer provided information.

In the company's experience, it is feasible for all lenders to be obliged to:

1. examine 60 days of bank statements (as Rapid Loans NZ does at present);
2. provide evidence on the consumer applicant's file that the bank statements have been forensically examined; and
3. seek verification if there is a conflict in the financial information provided.

Paragraph 72 summarises the actions that responsible lenders who seek to remain solvent already do - to calculate whether or not the borrower will still have a reasonable level of uncommitted income, after all living expenses and the repayments on the loan applied for are deducted from net income.

	It would be very reasonable to mandate the adoption of the model described in Paragraph 72 for all loans. **Concerning Section 9C(7) of the CCCFA** It is the company's view that total reliance on what the intending borrower says is commercially unrealistic. Verification must be undertaken in an attempt to ensure there is no exaggeration or forgetfulness, or deliberate lying, on the part of the applicant borrower. An appropriate level of verification has been achieved In every jurisdiction that has recognised bank statements as an appropriate and dominant verification source. As paragraph 76 recognises, there are costs and access difficulties associated with undertaking "reasonable enquiries" and we recommend that verification beyond the bank statement analysis be at the commercial discretion of the lender.
8	Should there be any change to the requirement that lenders can rely on information provided by the borrower unless the lender has reasonable grounds to believe the information is not reliable? What would be the impact of such a change on borrowers, lenders and the credit markets?
	The principal opportunity to assess the borrower applicant's information is to compare it with that person's bank statements. We agree that relying on the borrower applicant's input (only) as to income and expenses is not adequate, and lenders can only develop an informed opinion as to the adequacy/inadequacy of the borrower applicant's information by reviewing their bank statements. Regulation should prescribe that lenders are required to examine bank statements. The Australian model of at least 90 days of bank statement detail, up to the time of the application for the loan, is a suitable model for consideration. However, this should be expressed as a rebuttable presumption, for example, to allow some flexibility where the applicant borrower does not have a full 90 day statement history for some good reason.
9	Do you consider there should be any changes to the current advertising requirements in the Responsible Lending Code? If so, what would be the impact of those changes on borrowers, lenders and the credit markets?
	Rapid Loans NZ is aware that the mandatory risk warnings imposed in Australia for loans under $2,000 are a waste of time. The company is also not convinced that having a risk statement on a website means anything to a potential borrower. Any consideration of amendment that forces changes to advertising content should take into consideration that risk warnings, and more complex content, will largely be ignored by potential borrowers. Borrowers generally have only two concerns - to get the loan funds and to get them quickly. It is the company's view that, when a person visits a lender's website, they have already made up their mind to borrow if they can. It is then just a matter of which company to approach. The Minister should authorise the conduct of research into how many borrower applicants actually want to read - and actually do read - their loan contracts and credit advertising content. This to assess the borrowers' propensity to read, what such people look for in a credit advertisement, and to assess what they will actually notice or care about. An advertisement full of information - ignored by the potential borrower - does not achieve anything more than increased revenue for the advertising media involved, because the lender has to book more space for print advertising and more time for electronic or broadcast advertising.

Comment on advertising in the Discussion Paper may be little more than wishful thinking:

1. Risk warnings are nonsense. This concept has been in force since 2013 in Australia, with highly prescriptive requirements, including signage on websites and lenders' premises. No one takes any notice of them and they just provide more unnecessary red tape and compliance cost for the lenders, in an environment where the non-lender stakeholders are constantly demanding lower costs for loans.
2. Requirements to declare interest rates and fees mean little unless they are directed at a particular loan size, for a particular term. This is because, after successfully identifying a credit source and knowing that they will obtain the loan, borrowers are focused on the amount of each repayment and, after that, the duration of repayments.
3. A "one size fits all" declaration of interest rates and fees and their dollar amount is unrealistic - a range of typical loans has to be considered to make the content meaningful to all prospective borrowers. This may well be beyond the time or space limits of most advertisements.
4. Enforcement of the current Code provision to declare the relevant interest rate for a class of loans offered by the lender is practical. The requirement to declare the cost of the loan in dollar terms can only work if the lender is advertising a particular loan product, for a particular amount, for a particular term.
5. The real need is to educate borrowers to shop around and ask for information concerning the costs of their particular preferred loan from a number of lenders, before committing themselves to any one lender.
6. Any consideration of applying regulation according to some definition of "high cost" can only be considered when this term is defined.
7. Any consideration of banning advertising for some level of "high cost" lending has to be considered in the context of enforcement effectiveness. When does sponsorship constitute advertising? How do you ban "word of mouth"? Do external signs on a business premises constitute advertising? Does simply presenting your business card - limited to business name and contact details - constitute advertising?

It must be remembered, no amount of tampering with advertising regulation will interfere with demand. As every jurisdiction around the world has discovered when attempting to increase regulation to reduce demand - this does not happen.

The writers of this submission have investigated advertising regulation impact in Europe, the USA and Africa and there is one common theme that emerges - advertising does not create the demand. Advertising simply directs that demand to particular lenders.

Concerning Responsibility Option C: Language used in advertising

The company supports the presentation of credit contracts in the same language as the advertisement that attracted the applicant borrower to contact the lender - as outlined in Paragraphs 80 and 81.

10	Do you agree with our assessment of the costs and benefits of the options to reduce irresponsible lending and other non-compliance? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?

We remind the Minister that any consideration of Paragraph 82 and the following table must be made on the basis that it is not the size of the penalty that is fundamental to deterrence, it is the likelihood of getting caught.

Registration Option A:

The opportunity to empower the Commerce Commission to take deregistration action on the basis that a lender was "likely to cause harm", should not be considered. This introduces the opportunity for highly subjective assessments, Commission witch hunts/bullying and punishment for behaviour that has never occurred.

This is fundamentally against New Zealand/UK legal tradition and is a breach of the UN Charter of Civil and Political Rights.

The only future element that should be recognised, when a lender is assessed as having caused harm, is the consideration as to whether or not the lender has actually taken effective steps to permanently improve practices and thereby prevent future contravention of the credit laws.

The potential amendment to Section 108, discussed in Paragraph 46, must only be introduced in circumstances where the change will be applied to all. The Australian regulator, the Australian Securities and Investment Commission (ASIC), is highly selective and it is generally only the smaller lenders who are targeted.

The 3 "benefits" listed will only come to fruition if the Commerce Commission enforces in a manner that creates a level playing field.

Beware the propensity of repeat offenders to find ghosts to represent them as directors in the new company.

We agree with the "costs" listed and repeat our concern to avoid the Commerce Commission having the power to play fortune teller and guess behaviour that might - or might not - occur in the future.

Registration Option B:

While this option would be the least disruptive to Rapid Loans NZ, as the company's directors and senior managers have all faced this test, nevertheless the opportunity to apply a "fit and proper person" test is again highly subjective and should not be supported for at least two fundamental reasons:

1. again, a person is being penalised following a subjective assessment of "likely" behaviour that has not occurred; and
2. avoidance is simple, with the presentation of ghost fit and proper persons, while the real controllers take on the role of humble employees, or simply remain as shareholders only.

Concerning the identified "benefits":

(a) It will reduce the public or obvious participation of bad individuals, but it will not necessarily exclude them from taking effective participation in the future, behind their ghosts.

(b) It will possibly make some reduction in repeat offenders, but the opportunities to use ghost individuals as directors of the new companies should not be overlooked.

(c) On balance, we agree that the impact may be small.

Concerning the identified "costs" - we agree.

If Option B is to be considered, involving senior management as well as directors, the Australian concept of a "responsible manager" could be considered in order to specify that it is the senior manager responsible for maintaining compliance that is subject to the fit and proper person test.

Registration Option C

A comprehensive licensing system, as described in Paragraphs 49, 50 and 51, would introduce the current Australian model.

After 8 years in existence, there has not been any obvious benefit to consumers, lenders are prohibited from lending under other provisions of the Australian credit

regulatory regime, and the compliance costs associated with obtaining a licence are a serious barrier to entry. There is also the barrier to entry and indirect costs associated with an application assessment period, which is now 6 to 14 months in Australia.

Concerning the “benefits” identified on page 25 - given the Australian experience - this is over optimistic. It is the company’s view that the Australian experience strongly supports a conclusion that this system offers some reduction in irresponsible lending but it is extremely small - not even moderately small.

Concerning the identified “costs” - we agree with those identified and provide the following comment:

1. A comprehensive registration regime creates substantial compliance costs for small and medium lenders.
2. Such an expensive regime for the lenders, with the requirement for substantial professional assistance, is a real deterrent to new small companies entering the market.
3. Such a scheme is also expensive for the Commerce Commission to administer and, if the administration cost is going to be passed on to the lender applicant, provides further disincentive to new companies considering entering the market.

Concerning options for strengthening enforcement and penalties for irresponsible lending

Paragraphs 53 and 54 strongly support our call to have the Commerce Commission actually enforce the current law, before considering a massive increase in regulation and compliance costs, contrary to any attempt to encourage or impose a reduction in borrowing costs.

Concerning Enforcement Option A

Paragraphs 54 to 56 basically describe the current Australian model.

The fundamental failures of the Australian model to date are:

1. very unequal enforcement. With very few exceptions, there appears to generally be one law for large lending companies and another for small lending companies;
2. the issue of the capabilities of ASIC;
3. ASIC's failure to assess the financial ability of lenders to fund major fines and compensation orders, before embarking on a prosecution that leaves the regulator with limited or no legal cost recovery and, despite a generous court order, leaves the borrowers - the people ASIC is empowered to protect - without any compensation;
4. the imposition of penalties and a process that allows the consumer to be left out in the cold, because legal costs and fines consume all the money available from the prosecuted lender;
5. ignorance of the equitable opportunity to provide for the lender to reimburse not all the interest and fees received, but that portion which is judged to be excessive, or in some way not compliant. A rigid system that demands that all fees and interest be refunded, provides the consumer with a free loan and seriously threatens the viability of the lender, even when the lender has reformed in the meantime and is now acting as all stakeholders would like them to act; and
6. the rigidity of the Australian system also fails to differentiate between a relatively small compliance transgression and a major one, leaving the smaller transgression lender to face the expense of a court application to attempt to attain a more equitable outcome. This cost issue is a serious bias in favour of the large lenders.

Enforcement Option A - pecuniary penalties, statutory damages and injunction orders for breaches

Concerning the identified "benefits" on page 25:

1. We emphasise that the range and severity of the penalties are less important than the fear of getting caught.
2. Setting very severe penalties in legislation may be no more than window dressing, when courts are reluctant to impose the maximum penalties.
3. If the penalties adopted are regarded as too severe, as is the case in Australia, neither the courts nor the Commerce Commission will generally attempt to use them to their maximum.
4. If the penalties are too severe you open the door to most unequal imposition of the penalties, where one judge in one case will adopt a hard line, another judge a more lenient approach and, due to this uncertainty, many other potential prosecutions will end with a negotiated settlement for a much lower amount. This has been a very obvious result of the too high penalty regime in Australia.

Concerning the identified "costs":

(a) Dot point one, with the limiting word "may", is very significant. There are many international credit cases where the pecuniary penalty has just been factored in as a possible cost of doing business.

(b) We cannot comment on dot point 2 and what the Commerce Commission may or may not do, but we can comment that penalties in Australia, particularly the "penalty" of awarded legal costs because they are paid first in many circumstances, do not leave any money in the defendant company's bank accounts to pay the Australian borrowers any compensation.

Concerning Enforcement Option B

Arguably, directors are already liable under Corporations Law and common law, in that they have a director's duty to ensure that they, and the company for which they are a director, do not break the law.

To that extent, Paragraph 58 is a misstatement. Directors are already subject to a duty to ensure that their company is legally compliant with the relevant laws.

To add senior management to the list of people who can be found personally liable for non-compliance of the lending company, raises the following issues discouraging such a move:

1. The company directors set the policy and process/procedures parameters and are responsible for approving a performance monitoring system, not senior management.

   To include senior managers is to impose a possible penalty on management that was simply obeying their company's Board in their role as employees.
2. To make the decision on inclusiveness, how far do you go down the management chain?
3. How do you avoid making the management the scapegoats, while the directors avoid penalty?

The senior managers to be included would have to be carefully described.

Concerning Option B - page 25

Concerning both "benefits" and "costs" identified on page 25 - they may be a possibility, but only in addition to the benefits and costs that might be associated with already existing Corporations Law (common law and statute) directors' duties requirements.

Concerning Enforcement Option C: substantial obligation for lenders.

Paragraph 61 describes the current requirements in Australia.

With at least 7 days to provide the assessment report, after the borrower's request, the system works well.

However, the Australian timeline provides that the consumer can request such a report for up to 7 years after the loan has been completed. This places an unwarranted storage impost on lenders, encourages enquiry years after the relevant representative that processed the loan application has left the lender's employment, allows witch hunts by consumer advocates via the EDR schemes or ASIC complaint opportunities, and allows non-performing debtors to virtually blackmail lenders with costs, years after they have stopped paying off their loan.

This can introduce uncertainty as to determining when the loan was completed.

If introduced, requests for loan assessment reports should be realistically limited to 12 months (maximum) after the initially contracted conclusion of the loan term.

If introduced, there should not be any option for a borrower or a financial counsellor to demand more from the consumer's file than this comprehensive report.

This request is prompted by the need to recognise privacy, commercial in confidence notation and not otherwise inhibit the lender's representative's note taking, which can be very important for management supervision, but irrelevant for third parties.

It also avoids "fishing trips" and expectations that the lender should provide information - at the lender's cost - to which the borrower already has access.

There are three further concerns for Rapid Loans NZ:

1. that such a provision must not be retrospective. Lenders need time to prepare their systems and to have their representatives enter appropriate data to assist in completing comprehensive reports;
2. non-lender stakeholders, such as consumer advocates and financial counsellors, have got to be educated as to what the new legislation prescribes as mandatory content in these reports. This is a major problem in Australia, with lenders doing the right thing and offering the mandatory information, while borrower representatives continue to aggressively demand more information and threaten lodging a complaint with an external dispute resolution scheme that will cost the lender, even if the lender is obeying the law; and
3. this also has the effect of encouraging less than honest borrowers to attempt to extort funds from the lender, by using the consumer advocate and EDR scheme process.

Concerning the Option C "benefits" identified on page 25:

1. We agree with dot point one - breach identification will be easier.
2. Dot point 2 may be ambitious, given the opportunity for borrowers to obtain compensation is dependent on numerous other factors discussed elsewhere in this submission. "Some likelihood", rather than "more likely", may be more realistic.
3. Dot point 3 - provided the Commerce Commission undertook significant inspections, there would be substantial reductions in non-compliant lending, not "small" reductions.

Concerning the Option C "costs" identified:

Rapid Loans NZ agrees with these costs.

Concerning Option D: increase industry levy on creditors to help fund advocacy, monitoring and enforcement of CCCFA

Industry regulatory self funding is an option to be considered with the following in mind:

1. No model should be contemplated until the capability of the Commerce Commission is objectively and comprehensively reviewed.

2. Enforcement activity fines should be contributed to the Commerce Commission on the basis that the law breakers should be paying, not the well-behaved compliant lender who spends money on compliance and management to ensure appropriate recognition of all the credit regulations.
3. Any introduction should come with a sunset clause, to ensure review before continuation.
4. Care should be taken to avoid a model that simply assists in creating a consumer advocacy industry, funded by their lender opponents.

The Australian model, where consumer advocates make it a professional imperative to seek media attention, do not undertake any meaningful new research, but simply rely on one-off case studies to support comprehensive regulatory reform - regardless of the merit or truth of their claims - is best avoided if possible. This advocacy approach encourages their clients to lie and use complaints to avoid their credit contract obligations.

The more high profile advocacy organisations have taxpayer funded personnel who spend most of their time writing submissions to government for more funding. This must be avoided.

Concerning the “benefits” and “costs” identified on page 26:

The company agrees. Any proposal to limit interest rates would have to take the costs generated by this proposal into account.

Concerning Option E: require creditors (lenders) and their agents to work with consumer advocates if asked to do so, and in good faith

The development of the consumer advocacy industry has led to a culture of adversity, rather than co-operation. Introduction of this Option requires the provision of “good faith” to apply to both sides.

Paragraph 67 presents an option that already occurs when the advocate demonstrates good faith. Rapid Loans NZ constantly works with consumer representatives in a co-operative and constructive manner.

The Australian model, which encourages consumer advocates and EDR schemes to seek punishment of the lender, and publicity over settlement of the dispute, or inequitable granting of hardship relief to undeserving borrowers - must be avoided.

Concerning the “benefits” identified on page 26 - the company agrees.

Concerning the “costs” associated with this Option E:

1. The compliance costs would not be low - the process would demand preparation and management travel and attendance at meetings.
2. If the participating advocate is still able to report to the Commerce Commission, few compliance advisers would encourage lender participation in this process. The process implies compromise and frank exchange, none of which is likely when all could be reported to a prosecution body.

Concerning Responsibility A - more prescriptive assessment requirements

Regarding identified “benefits” on page 26 - provided bank statements are prescribed for verification, dot points one and two are appropriate. However, the assessment made at dot point three is too conservative - there will be a major impact on irresponsible lending when combined with the requirement to prepare a report, if requested.

Concerning identified “costs”:

It is highly likely that many responsible lenders are already using bank statement analysis to determine affordability and verification.

Rapid Loans NZ will support more prescriptive assessment requirements where the objective is greater certainty and lender guidance.

	However, it would be another thing if the requirements were unrealistic, created unrealistic burdens and/or designed to abolish non-bank lending. **Concerning Responsibility B - interest rate disclosures and warning statements included in advertisements** Concerning the identified benefit on page 26 - it would be more realistic to replace "small" with "minimal". Concerning the identified cost - It will not be a matter of inconsistency, but a matter of cost, to buy bigger print advertising spaces or longer airtime. All lender advertising will face increased and unreasonable costs, given the impact of such provisions will be negligible. Rapid Loans NZ does not consider that such an initiative would impact on the company beyond increasing advertising costs. The company includes interest rates in all its advertising and, as indicated earlier, considers that potential borrowers do not take any notice of warning statements. **Concerning Responsibility C - same language requirement** Concerning "benefits" and "costs" - the company agrees with those identified in the Discussion Paper and, as indicated above, considers that the benefits outweigh the costs. However, Rapid Loans NZ must indicate a disclaimer when expressing this view. Rapid Loans chooses only to advertise in English and present its credit contracts and associated documentation only in English.
11	Do you have any suggestions for the design of options for reducing irresponsible lending and other non-compliance? If so, what would be the impact of your proposed options on borrowers, lenders and the credit markets?
	The regulatory initiatives that Rapid Loans NZ has supported above would add certainty to the CCCFA, contribute to lower costs for borrowers, provide the opportunity for greater discipline on the part of lenders and would probably lead to a handful of lenders exiting the industry sector.
12	Which options for reducing irresponsible lending and other non-compliance would you support? Which would you not support? Please explain how you made your assessment.
	The options Rapid Loans NZ has either supported or rejected in the discussion above have been assessed according to the experience the company has acquired from trading in Australia for 15 years and in New Zealand for 7 years. Fundamental to any objection is the wish to discourage an increased regulatory burden, when the regulation involved has a history of creating minimal borrower benefit - if that - in jurisdictions around the world.

Issue 3: Regarding continued predatory behaviour by mobile traders

This form of marketing has never and never will be adopted by the company.

We have no personnel employed with such experience, therefore any comment would not be an informed comment.

13	Do you agree with our assessment of the costs and benefits of the options for covering additional credit contracts under the CCCFA? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?
	See introductory response above.

14	Do you have any suggestions for the design of options for covering additional credit contracts under the CCCFA? If so, what would be the impact of your proposed options on borrowers, lenders and the credit markets?
	See introductory response above.
15	Which options for changes to cover additional credit contracts would you support? Which would you not support? Please explain how you made your assessment.
	See introductory response above.

Issue 4: Regarding unreasonable fees

16 If prescribed fee caps were introduced, who should they apply to, and what process and criteria should be used to set them?

It is the company's view that, between the current legislation and New Zealand court cases, there are sufficient guidelines for a lender to establish fee levels that are closely relevant to the transaction activity involved.

The issue then becomes whether or not the assessment is only based on reference to the lender's actual relevant costs, or whether the term "reasonable" is also going to continue to be imported into the assessment criteria.

The former is relatively objective, the latter is highly subjective and a poor basis on which to build regulation.

Any consideration of introducing a fee cap must note Paragraph 106, which recognises the challenge - "setting and updating the fee cap".

Application of fee caps

To differentiate between types of lenders and classes of loans when introducing a fee cap is to risk very artificial distortions in the market, without any level playing field for ultimate price calculation and a significant chance that lenders would try to migrate out of a fee cap segment to another segment of the market, just to avoid the price control.

The Minister has to ask a fundamental question - is his Government philosophically in favour of comprehensively setting prices in the New Zealand economy?

The issue as to what processes and criteria should be used presupposes that there is a government agency with enough economic and business skills, including personnel who have actually worked in the private sector and understand how business works, to both manage and contribute to establishing on-going changing, clearly identified processes and criteria, plus a continuing opportunity for informed stakeholder input.

The process requires:

1. continuing monitoring and opportunity for change, to reflect changing New Zealand economic circumstances;
2. econometric modelling to establish direct and indirect impacts on business viability;
3. consideration as to whether or not it will favour economies of scale adverse to the entry and/or continuation of small and medium business in the market place;
4. avoiding distortion in the market place by creating a cost environment favouring either bricks and mortar or internet delivery of loans;
5. avoiding pressure on gross profitability that encourages lender short cuts to minimise a range of costs, in an effort to remain viable in absolute terms, comparable to other non-lending business opportunities; and

6. consideration as to whether or not the process is effective, or too cumbersome to attract continuing informed input from all stakeholders, or whether or not it could degenerate into what has happened in Australia:
   (a) an industry sector weary from having to present major submissions, where the inclusion of any research is ignored;
   (b) a consumer advocate industry, dependent on substantial government handouts to fund their advocacy and specialising in highly subjective assertions of personal middle class preferences - without any extensive or current research; plus
   (c) according to some industry observers, ASIC behaving in the same way as the consumer advocates.

The criteria must include:

(a) professionally researched standards, rather than "nanny state" assertions;

(b) commercial standards - not those of a government subsidised NFP sector entity, which relies on volunteer labour and cross-subsidized office space and facilities, or those of a commercial entity that is using loss leader lending to attract custom for other profitable divisions of the same entity;

(c) recognition of the business returns that can be achieved in other non finance sectors employing the same investment of resources;

(d) recognition as to whether or not the Government actually wants the commercial ("high cost") lenders to continue, or whether the real objective is abolition of the sector;

(e) comprehensive evaluation of the direct and indirect costs of loan delivery across the industry sector; and

the engagement of objective assessors to undertake the decision making by way of a tribunal structure - and not the sham of a temporary panel selected for the political expediency and/or advancement of the Minister responsible at the time, who allows themselves to be dominated by a public servant "secretariat" with a biased agenda and a predetermined outcome in mind.

With the above concerns in mind, Paragraph 106 correctly recognises that setting maximum fees is "a significant challenge".

However, the simplistic statement that follows, "*This could be done through regulation or delegation to the Commerce Commission, and would be subject to statutory criteria*", is not a statement of solution to the challenge and, without the accompanying inclusion of detail addressing all of the above issues and concerns, means nothing.

17	Do you agree with our assessment of the costs and benefits of the options for capping interest and fees? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?

Concerning Option A - lenders to substantiate reasonableness

Comment on the "pros" - both easier detection and therefore easier enforcement - are highly dependent on what the Commerce Commission considers to be "reasonable" at the time. This subjective approach does not bring any certainty.

The explanation in Paragraph 100 is a more appropriate approach - fees for consumers justified on attributable lender costs - which is an objective standard. This explanation is not compatible with the interpretation embraced in the "Pros" and "Cons" table.

Comment of the "Cons" - we agree.

However, given the realistic expectation that most lenders already document their cost and fee settings in response to those costs - why introduce the subjective and highly uncertain standard of “reasonableness” into the assessment?

Concerning Option B

As Paragraph 102 explains, this involves ignoring actual costs, because of the inconvenience that these “vary widely” - but without any research to prove the statement quoted.

Rather, despite the acknowledged variation, this option promotes imposing a one size fits all fee cap on each of the different types of fees and to “prohibit other mandatory fees” - without explaining what these fees are.

Paragraph 103 presents a number of unrealistic criteria for setting the various mandatory fee caps:

1. The size of the loan.

We ask - why should exactly the same set of tasks, such as application assessment, establishing the loan and loan management, that are the same cost regardless of the size of the loan, attract a range of fee amounts based on loan size. The highly probable risk is that the fee for a small loan will not cover costs and the fee for a big loan will, in considerable part, be a contribution to gross profit. The result will be the market distorting and borrowers being encouraged to borrow bigger loans than they first intended or needed.

2. Whether secured or unsecured.

This would effectively be a risk fee. We ask - how often will research be undertaken to provide the essential input into the cap size decision making? How will the decision makers cope with having to set a range of fees in this fee sub-set, because risk is not exponential or absolutely and always equally different, as between secured and unsecured loans?

How will the decision makers cope, given the risk of default varies considerably according to the size and length of term of the loan, what it is borrowed for, what criteria the individual lender uses to screen applicants, the size of the loan and the size of the repayment? In many circumstances, these factors are what determine the comparative risk - not whether the loan is secured or unsecured.

3. Whether secured over personal or real property.

We recognise that actual search and registration costs might be different and that more investigation might be attempted with real property but, after these factors, no other justification for a different fee cap structure presents itself. We would hope that any differentiation beyond what we have identified would be based on facts, and not guesses.

Considering the example in Paragraph 104 - fees for unsecured, non-revolving loans being limited to an establishment fee and a default fee - and the statement in Paragraph 104 that “*all other costs and profits would need to be recovered through interest rates*” - we are left to ask - if some are, why shouldn’t all costs be recovered by fees?

Segregating costs from profits - fees to cover all costs, with interest rates to be the profit - would allow a truly competitive market to emerge with substantial ease of price comparison by the borrowers.

In regard to the application of fee caps, as indicated above, our answer to Paragraph 105 is that all lenders in all finance sectors must face the fee cap regime, or there will be major distortion in the market with lenders moving to one segment to avoid a fee cap in another, the product choice opportunities being decreased and borrowers being forced to compromise in regard to loan products in order to even get a loan as a result.

Comment on the "Pros"

Consumers would not benefit from "improved comparability" - fee caps would set the price without any possible comparison associated with fees between lenders. We note that when fee caps have been introduced in other jurisdictions, the cap becomes the industry norm. That means the introduction of any cap will effectively establish the price consumers will pay.

Enforcement of fees caps would be easy

There may be a "large reduction in non-compliance" in comparison to the current regime, but this may come without any benefit to the consumer, with the difference between current fees and the future cap simply being transferred to the interest rate.

There may be lower fees for borrowers, but will that mean higher interest rates?

However, Rapid Loans does recognise that a fee cap regime would take the ambiguity and complexity out of calculating the different fees. The Australian Medium Amount Credit Contract regime may be a useful model to consider.

Comment on the "Cons"

We agree - the caps will set the price, as they have in all other jurisdictions. As indicated above, there will be a move to higher interest rates to recover the current fee portions foregone under the new regime.

As to the range of fees recognised under the new regime - why should the proposed fee regime eliminate some of the fees being charged now at cost? Why should there be a pick and choose for the existing fees that will be recognised under the new regime? No cost has an objective regulatory value that is different to another cost, and they are all costs of doing business.

Concerning Option C - disclosure of an annual finance rate or comparison rate

The issue is to have all ascertainable fees, those not dependent on the occurrence of some future event at the time of entering into the contract, included in the calculation.

Comment on the "Pros"

We agree that such a scheme makes comparisons easy and lenders are not burdened with having to continually update cost calculations, and procedures for calculation, or deal with the subjective nonsense of what is "reasonable" in all the circumstances.

Comment on the "Cons"

The issue of dealing with revolving credit can be addressed by prescribing a time calculation according to the maximum credit level under the contract.

The transition costs should not be exaggerated. What is required is a realistic commencement date, to allow for the expiration of existing advertising contracts with the existing content/copy that excludes an equivalent interest rate.

If this regime is adopted, we strongly recommend the official use of the term "equivalent interest rate", as it appears to best explain the measure.

18	Do you have any suggestions for the design of options for reducing unreasonable fees? If so, what would be the impact of your proposed options on borrowers, lenders and the credit markets?

We suggest option C, with all fees separately identified and not merged into an interest rate, plus the adoption of an equivalent interest rate.

While it should remain optional for a lender to declare the various fees in an advertisement, an all embracing equivalent interest rate would assist potential borrower comparison.

	However, the new regulatory regime would have to contain the opportunity to include this rate for either a typical (described in the advertisement) loan, or a range of typical loans, where the lender offers a range of loan products. Otherwise it could be the one rate for the specific loan being advertised, or a largely unrepresentative rate where a range of loans are offered by the lender.
19	Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment.
	As discussed above, to avoid subjectivity and arbitrary decision making, regulation should demand full disclosure of fees in contract documents, no restriction on the actual fee types chosen by the lender, no opportunity to hide fees in the interest rate figure, no fee caps, the option to publish fees in advertisements and the adoption of publishing equivalent interest rates in all advertising.
20	Have you seen issues with excessive broker fees, or other unavoidable fees charged by third parties, being added to the loan? If so, are there any specific changes that should be made to the regulation of third-party fees? What would be the impact of these changes on lenders, borrowers and third parties?
	The challenge for the Minister is to recognise that the lender has no control over an unrelated third party. To impose any condition negatively impacting on the lender in such circumstances, is to penalise the wrong entity The series of questions in Number 20 present their own particular difficulties: 1. "...issues with excessive broker fees" - how will the Minister determine what is "excessive", while avoiding the introduction of a highly subjective rule that introduces uncertainty, because it will entirely depend on the Commerce Commission's officer/s assigned to the case? 2. How will the Minister segregate different levels of brokerage service, so that different levels of "excessiveness" are recognised? 3. The series of questions assume all brokerage fees will be added to the amount borrowed - but what about the cases where the client pays the broker directly and does not borrow the brokerage fee, or pays part of that fee and borrows the rest? 4. Is it appropriate to bundle fees that are unavoidable, with fees that the borrower chooses to incur? We maintain that the current situation where the lender insists on the borrower incurring the fee/s, particularly those charged by a related entity, be considered a "credit fee". Where there is no such insistence, the fee should not be considered a credit fee. Any change to that distinction would impose a penalty on the lender, who has nothing to do with the third party service supplier, has no control over what they charge and no control over the consumer choosing to use that third party. This is highly relevant to Rapid Loans NZ, because we attempt to market directly to the public and spend a considerable sum on marketing to do so. Brokers do contact us on behalf of their clients, but only after the borrower, unknown to us at the time, has committed themselves to using that brokerage service under terms and conditions that Rapid Loans NZ has no part in determining. **In general** The impact of the presumed/implied change - an aggregated fee cap that does not recognise both lender and broker costs and the requirement for some level of profit, will seriously impact on our profitability and, in the end, as the lenders are forced to refuse loan applications involving any third party seeking a fee payment from the loan funds, will drive all brokers and other third party service providers out of business.

The Minister could well be imposing an effective prohibition on a business activity (brokerage) and imposing his Government's will over consumer demand.

The other issue is - where payment for the third party service provider is not sought from loan funds advanced - Rapid Loans NZ could never know of these fees nor have any control over their size or the borrower incurring them, and yet be obliged to police some artificial cap by way of how much we charge for our loan funds. In short, we could breach the imposed cap without knowing that this event had occurred.

Rapid Loans NZ considers the easiest way to control broker costs is to let the market determine them, by having all brokers declare their fee as a percentage of the loan they facilitate or, as Rapid Loans NZ does currently, establish a dollar amount for the brokerage services, which is publicised and included as a disbursement in the Rapid Loans NZ credit contract.

Issue 5: Regarding irresponsible debt collection practices

Paragraph 113 appropriately recognises that collection activities can commence with the lender. However, the regulation of debt collectors must be recognised as separate to any regulation of lender in-house debt collection activities.

The lender may contract the debt collector for their services, but generally has no control over how the services are undertaken.

The manifestation of the problems listed in Paragraph 114 would be of concern not only to consumer advocates, but also compliant lenders. Apart from the morality issue, it must be remembered that such practices cannot be supported by lenders in general because, frequently, the debtor owes money on more than one loan. A distortion in recovery success, created by unacceptable practices, will be to the disadvantage of lenders who adopt in-house practices and use debt collectors that do not include such unacceptable behaviour.

We advise the Minister to accept the legitimacy of the examples used in the Discussion Paper of unacceptable behaviour, but not presume that they reflect debt collection behaviour in general. We note that the Discussion Paper refers to this anecdotal evidence, but does not include any substantial research results into the discussion concerning the practices identified.

Rapid Loans NZ has never had a complaint concerning any debt collector it has contracted, either presented for internal dispute resolution, or to an external dispute resolution scheme. Almost all complaints presented involve circumstances where an application for credit has been declined.

21	Is this an accurate picture of the problems for consumers experiencing debt collection? Do you have information that confirms or refutes these issues, or sheds light on how widespread or severe they are?

Knowledge of problems identified in Paragraphs 112, 114, and 115 -

Rapid Loans and their contracted debt collectors have never used such practices. However, we are aware of others that do.

One element of concern we have is the mention of the $30 letter fee and the $15 for the telephone call fee in Paragraph 114 c. as examples of "excessive charges".

Before passing judgement, please consider whether or not these are relatable to in-house collection activity and whether the fees are clearly listed in the credit contract as a possible result following default. Also before passing judgement, make enquiries as to what the average law firm charges for such activity.

The issue as to how widespread the unacceptable practices are needs to be assessed in a very measured way, because debtors will frequently exaggerate their claims if they perceive that, by doing so, they can avoid paying their debts.

	It is not unknown for some consumer advocates and financial counsellors to encourage such exaggeration, or accept such claims without verification. We consider that the debt collection regulation model developed by the Australian Consumer Competition Commission (ACCC) and Australian Securities and Investment Commission (ASIC), is worthy of consideration by the Minister.
22	What information should be provided to borrowers by debt collectors? When and how should this information be provided?
	We cannot see how effective and accurate debt collecting can be undertaken without adoption of Option A, and the disclosure of all the information listed in Paragraph 119.
23	Do you agree with our assessment of the costs and benefits of the options for addressing irresponsible debt collection? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?
	Concerning Option A: - information provided to the debt collector. Rapid Loans NZ has already adopted this Option. Currently, Rapid Loans provides a debt collector with the following information: - Account ID - First name - Last name - Date of birth - Licence number - Mobile number - Home phone - Email - Address - Postcode - Contact name/s - Contact relationship/s - Contact phone - Product description - Original loan amount - Total paid to date - Account balance - Last payment date - 90 days pay account (account history) - Bankruptcy status - Employer - Disbursement date - Total fees/charges to date - Original face value (total contract value to be repaid) - Last payment amount.

24	Do you have any suggestions for the design of options for addressing irresponsible debt collection? In particular, what is an appropriate frequency of contact with debtors before (and then after) a payment arrangement is entered into? Please state the likely impact of your proposed options on borrowers, lenders and the credit market.
	As discussed below - three successful times per week. Success being defined as personal contact with the debtor - not being confused with attempts that lead to automatic diversion to message banks and the like. Contact after a payment arrangement is entered into will obviously depend on whether or not the debtor satisfies the new arrangement. If not, the debtor should fall under the same contact regime as above.
25	Which options for changes to the regulation of debt collection would you support? Which would you not support? Please explain how you made your assessment.
	Concerning Option A - We agree with the assessments concerning "benefits" and "costs" and consider Option A should be adopted. **Concerning Option B** - assigning lender rights to the debt collectors: The activities assigned to the debt collector under Option B are the responsibilities of the lender. The option should simply be presented as an option (hardship) to be offered to the borrower - before the borrower's file is handed over to the debt collector. Before a debt collector is contacted, almost all lenders invite the borrower to apply for hardship consideration. With rare exception, by the time the borrower's file is handed to the debt collector, the borrower has forgone at least two invitations to discuss hardship and/or has skipped, in an effort to avoid any contact from the lender. Further, a borrower's file is handed over to a debt collector with the aim of collecting the full amount owed. It is not the debt collector's role to step into the shoes of the lender and negotiate a lesser amount to be repaid and/or a longer period of repayment. The debt collector would only assume such a role if the lender contracted that role to the debt collector. In the latter case, the debt collector could simply be included in the current legislation along with the credit provider, when the debt collector takes on the role of a credit provider. What is presented as Option B is only valid for debt purchasers. The "costs" identified are absolutely correct. The Option introduces a whole new category of service providers that would have to be monitored like the lenders. The "benefits" listed are nonsense. The concern for debt collectors demanding unaffordable repayments must be considered in the light of the fact that the relevant borrower has had at least two opportunities to negotiate with the lender and ignored both opportunities and the borrower is contracted to repay a certain amount - not a reduced amount. In these circumstances, any offer of a reduced amount to pay is a gift to the borrower, any problem with the new amount offered should be referred to the lender and the debtor should be directed into a hardship application/negotiation with the lender - not the debt collector. To claim an incentive to the lender to avoid offering unaffordable loans, because the loan could be written down at the debt collection stage, is to ignore the fact that lenders do not deliberately lend to people who can't or won't pay the money back.

It also ignores the fact that not meeting repayments can be the result of changing and unexpected (at the time the loan was taken out) adverse circumstances, poor borrower money management and straight out fraud on the part of the borrower.

Claiming that Option B would lead to a moderate reduction in irresponsible debt collection overlooks the fact that the proposal requires co-operation from the borrower to affect a full financial assessment, in circumstances where the borrower has already indicated that they do not want to co-operate.

It is our view that Proposal B would be so problematic for the debt collector that they would concentrate on repossession and court action, and avoid attempts at negotiation.

Concerning Option C - limiting contact with the borrower.

This is the model that operates reasonable successfully in Australia and in some USA states.

We would suggest a limit of 3 times per week.

We acknowledge that contact with other persons is already restricted under the privacy regime in regard to revealing the debt. The opportunity for the debt collector to seek debtor contact details from a third person is very important, because a material proportion of bad debtors are borrowers who have skipped in order to avoid repaying their loans, not because their financial circumstances have changed.

The opportunity for a debtor to appoint a third person as their agent for contact is more problematic. This frequently imposes a significant cost on the lender, who has to explain and verify everything because the third person is unaware of the detail concerning the defaulting borrower and is frequently lied to by that borrower.

Associated with this hurdle is the fact that many third parties - particularly financial counsellors and consumer advocates - are very naive in regard to the absconding borrower's ability to lie and their willingness to defraud.

Contact and negotiation involving such third parties always extends the period of indebtedness. Whenever the term of a loan is extended, particularly after one or more consecutive defaults, the less likely the borrower is to repay the amount outstanding and the more pressure there is on the lender to increase every borrower's interest rate to make up the difference..

The opportunity for absconding borrowers to hide behind third parties will definitely reduce recovery rates and will definitely lead to an increase in fees and/or interest rates by the lenders to maintain their economic viability, if not their profit margins.

Concerning the identified "benefits":

The assertion that there will be "a large reduction in harassment of borrowers" is obviously untested by the writers of the Discussion Paper. The propensity of absconding borrowers looking for a way out of paying their debts, to exaggerate, must not be overlooked.

Rather, the proposals may lead to a reduction in the claims of harassment, because the experienced and repeat absconder will know that debt collectors are limited in the number of contacts they can make and that the debt collectors, knowing they face prosecution if they breach the new contact rules, will record all telephone conversations and seek verification evidence to keep on file in regard to all borrower contact.

It is our view that the proposal will make no impact on alleged "irresponsible debt collection", just reduce the current contact volume of the more ruthless debt collectors.

Concerning "costs" of Option C:

Any regulatory regime component that reduces recovery rates and increases the time and effort involved in recovery - therefore reducing lenders' income - will encourage the imposition of cross-subsidisation by the borrowers who observe their contract conditions.

The challenge for the Minister is not to impose contact restrictions that are too restrictive, or too expensive to observe.

Concerning Option D - regulating debt collectors

Given the current agency role of debt collectors, we welcome any proposal to reduce lender liability and impose responsibility on the debt collector.

However, the Minister must recognise that compliance costs associated with Option D will be passed on to borrowers who are targeted by the debt collectors.

Concerning the “benefits”:

We agree with the benefits identified.

Concerning the “costs”:

Obviously compliance requirements for debt collectors would increase but, given that Option D effectively doubles the compliance costs associated with the defaulting debtor, to assume only a “small increase in overall compliance costs” is unrealistic.

Concerning Option E - debt collection fees to be cost based.

As discussed above, the lenders have no control over the debt collectors’ fees and this must be an issue quarantined to the debt collectors.

In regard to Paragraph 131, we are concerned that Option E includes a proposal to limit debt collectors’ fees to “actual costs”, because:

1. this is a “motherhood” statement without definition as to how “actual cost” will be calculated; and
2. there is an expectation that lenders will pay any other costs, like the fee for service, however calculated.

We remind the Minister that the lender is already substantially out of pocket when a consumer’s file is sent to the debt collector:

(a) money due has not been repaid, frequently including some part of the principal;

(b) there has been opportunity cost loss due to the loan not be repaid on time, so the lender cannot re-lend the money; and

(c) the lender has absorbed all the management and staff time chasing the debt in-house for a period.

It would be untenable if the adoption of Option E was to result in lenders being unable to recover the costs of debt collection, while the perpetrator who has created the cost because they would not fulfil their freely entered into contractual obligations, escapes these costs.

However, the need for clarity in the credit contract as to what it could cost the borrower if they defaulted and the matter gets sent to a debt collector, is recognised. We suggest that the only part of Option E that should be adopted is to encourage lenders to have their credit contracts include indicative cost details for borrowers to note in regard to likely cost amounts for debt collector services. This inclusion also stressing that the amounts are paid directly to the debt collector under the new regulations and are not set by the lender.

Concerning the identified “benefits”:

(a) To allege that “excessive debt collection charges” would be reduced again introduces the challenge as to who decides what is “excessive”.

(b) To attempt to guess the level of reduction in “irresponsible debt collection and consumer harms” - without research - lacks intellectual rigour and substance.

Concerning the identified “costs”:

1. There would not be a universal increase in compliance costs, because many debt collectors have data management systems that will calculate actual costs.

In this circumstance, it would only increase compliance costs where the Commerce Commission chose to disagree with the system methodology.

2. If debt collectors' profit generating fees were directly paid by the borrowers, then failure to collect could be passed on to fellow absconding borrowers (only).

If these debt collector profit fees were charged to the lender - then they certainly would be passed on to all borrowers to maintain viability and profitability, which means the contract abiding borrower would pay a penalty for the defaulting borrowers' actions.

While we have largely presented our views in regard to Questions 23, 24 and 25 in the above analysis of the options, responding to the preceding questions in this section of the Discussion Paper, we note that the Discussion Paper is requesting debt collector feedback for Questions 23, 24 and 25.

Issue 6: Regarding other issues

26	Are you seeing harm from loans to small businesses, retail investors or family trusts as a result of them not being regulated under the CCCFA?
	Rapid Loans NZ does not and is not contemplating offering small business loans, investment loans and loans to family trusts.
27	Do you think small businesses, retail investors or family trusts should have the same or similar protections to consumers under the CCCFA? Please explain why/why not.
	See response to question 26 above.
28	Are there any other issues with the CCCFA or its impact on vulnerable people that are not addressed in this Discussion Paper? If so, what options should MBIE consider to address these issues?

There are 4 other issues concerning the CCCFA that do not appear to have been addressed in the Discussion Paper and which we submit deserve attention, given the review appears to be an omnibus effort.

These are:

1. Legislative clarification of Commerce Commission investigatory powers.

   Given that the Review is an omnibus effort, it is appropriate that consideration be given not only to approved conduct for lenders, but also to approved conduct for the Commerce Commission.

   Currently, the Commission appears to set its own "Competition and Consumer Investigation Guidelines". We consider this to be an inappropriate delegation of Parliamentary responsibility.

   In addition we do not consider a very wide and general power, as in Section 98 of the Commerce Act, is a satisfactory and clear expression of power granted and we do not think that it should be necessary to study several Acts when the CCCFA - as it should - presents as comprehensive.

2. Conflict or confusion between the CCCFA and the Fair Trading, Commerce and Crimes Acts.

   An analysis to identify and amend inconsistencies between the four Acts could be useful.

For example there are issues such as:

(a) the opportunity to wait for a formal notice rather than respond "voluntarily" to a request for information;

(b) misleading the investigator; and

(c) perjury and evidence availability for civil or criminal proceedings -

that appear to be approached in different and conflicting ways in 2 or more of these Acts (see Section 103 Commerce Act, Section 108-9 Crimes Act, Sub-sections 47G(4) and 47J of the Fair Trading Act and Sections 112 and 133(1) of the CCCFA).

3. The practical appropriateness of continuing with a hardship notice regime that requires written communications between the parties at every step.

   It is important to encourage borrowers to contact the lender as soon as possible and requiring this borrower/lender contact to only be in writing, may create a barrier to this desired action.

4. Some consideration of Sections 10(1), 20A and 10(3) of the Financial Advisers Act could be useful.

In order to satisfy the responsible lending provisions of the CCCFA, it may be useful for a lender to have the opportunity to recommend one of that lender's loan products over another, in accordance with suitability for a particular borrower. It is our understanding that this opportunity is not available under the current Financial Advisers Act and that constitutes a conflict with the philosophy behind, and the expectations under, the CCCFA.

Any other comments

We welcome any other comments that you may have.

The one issue that no regulator or champion of increased regulation wants to address is a very fundamental one.

Putting aside the unexpected material adverse change to a genuine borrower's financial situation that occurs during the loan term, without any obvious warning at the time of entering the contract, and which generates a need for hardship consideration by the lender - where does consumer protection and the 'nanny state' mentality end and the borrower's responsibility for their own actions commence?

The talk is repeatedly about the "vulnerable" borrower.

It is important to remember that these people:

1. have the right to vote;
2. have the right to marry and have children;
3. have the legal right to enter into a contract;
4. are old enough to be employed;
5. frequently are employed; and
6. with few exceptions, have life experience and education that provides literacy and a basic understanding of contract law.

In particular, they understand that, if you borrow someone else's money, there is a legal duty to repay the money borrowed.

We also note that there has not been any reports of lenders putting a gun to their head and forcing them to borrow and they all appear to have no problem spending the money they borrowed.

In Conclusion

We invite the Minister to actually talk to lenders, inspect what they do and actually talk to borrowers before introducing radical reform to the current regulatory regime.

No matter how worthy their intentions, consumer advocates and financial counsellors should not be presumed to know everything about which the Minister needs to be aware.

We thank you for your consideration of this submission.

Russell Birse

Executive Chairman

1st August, 2018