

Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation

Name	Rob W M Dowler
Organisation	Not applicable – Personal submission

Responses to discussion document questions

Regarding the excessive cost of some consumer credit agreements

1	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?
	<i>I acknowledge that problems exist, but I am unable to comment on the significance.</i>
2	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?
	<i>I do not support the extension or imposition of what are essentially arbitrary limits.</i>
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?
	<i>One cost that is omitted is the risk that a person blocked from accessing such loans then resorts to some other criminal activity in a desperate attempt to alleviate the perceived financial problem or need that would otherwise be solved via such a loan. I do not have any information or data available to assist with the estimation.</i>
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?
	<i>Yes – My suggestion is, don't do it.</i>
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.
	<i>In answer to both questions, none. My assessment is based on the view that introducing any of the caps proposed will, to a greater or lesser extent, block consumers from accessing such loans with the result that,</i>

while some consumers may benefit, others will then seek alternative solutions that may result in even worse outcomes.

Regarding continued irresponsible lending and other non-compliance

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?
	<i>No submission comment.</i>
7	If there are to be more prescriptive requirements for conducting affordability assessments, what types of lenders or loans should these apply to?
	<i>All commercial lenders. That is, not to loans between family members and/or friends.</i>
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?
	<i>No.</i>
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?
	<i>No submission comment.</i>
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?
	<i>No submission comment.</i>
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?
	<i>Yes, I do have a couple of suggestions.</i> <i>First, introduce a comprehensive licensing regime for commercial lenders. Many of the other entities on the Financial Services Providers Register are subject to licensing requirements, so it seems to be an anomaly to exclude the wider group of commercial lenders. Care should be taken to ensure that any licensing requirement does not capture what might be person to person loans, such as between family and friends, or other loans conducted via licensed peer to peer lending platforms.</i> <i>Secondly, I submit that there is an option available that has not been outlined in the consultation document that would potentially assist with reducing irresponsible lending. The suggested option is as follows:</i>

When a retail borrower defaults on a loan, this circumstance should automatically be referred as a dispute to the Financial Services Dispute Resolution body that the lender is a member of. At no cost to the borrower, the Dispute Resolution body would then undertake an investigation and conduct a reasonableness assessment to determine whether the original lending was at a responsible level.

In the event that the dispute resolution body finds that the lender has been responsible, then the default stands against the borrower, leaving the default contractual options available to the lender.

Any adverse finding against the lender should result in a reduction in the loan to a level that is determined to be reasonable in the circumstances, such reduction being at the cost of the lender. An adverse finding should include the possibility of an outcome where the loan is fully written off at no cost to the borrower, all of the loss being borne by the lender, where it is determined that the lender's failure to comply with responsible lending requirements is clearly egregious.

The impact of introducing such an option would, I believe, lead to a reduction in irresponsible lending. Further, this provides a means whereby case by case assessment is automatically completed and redress, where applicable, is obtained early. The alternative, waiting until the Commerce Commission gets around to identifying a problem at a systemic level in an organisation, and then taking action, simply doesn't assist individual borrowers in a timely manner at all.

If information is required as to the potential workload that this would create for dispute resolution bodies, information on default levels should be able to be readily obtained from current lenders.

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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.

I support the options that I outlined in answer to question 11 above.

I do not support caps of the type envisaged in the discussion document, as I believe such caps are simply set by arbitrary decisions with effects that cannot be determined and where the benefits and costs cannot be measured easily.

My assessment for the option suggested of using dispute resolution bodies to assess responsible lending at the time of default is based on the fact that the costs of the failure to conduct responsible lending then fall on the lender, where the lender has failed to achieve an appropriate outcome. Further, the use of the existing dispute resolution bodies involves parties that have experience in assessing borrower and lender behaviour and in determining to what extent the actions of the two parties have contributed to the resultant problem (in this case, loan default), whether irresponsible lending has resulted, and what an appropriate reduction, if any, in the loan amount should result.

Regarding continued predatory behaviour by mobile traders

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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?

	<i>No submission comment.</i>
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?
	<i>No submission comment.</i>
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.
	<i>No submission comment.</i>

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?
	<i>No submission comment.</i>
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?
	<i>No submission comment.</i>
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?
	<i>Again, consider using the expertise of the existing dispute resolution bodies to assess whether fees imposed are unreasonable on an individual basis, with referral from the dispute resolution body to the Commerce Commission where concern is identified that an unreasonable fee impost may be systemic in relation to a particular lender, or group of lenders.</i>
19	Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment.
	<i>No submission comment.</i>
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?
	<i>No submission comment.</i>

Regarding irresponsible debt collection practices

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?
	<i>No submission comment.</i>
22	What information should be provided to borrowers by debt collectors? When and how should this information be provided?
	<i>No submission comment.</i>
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?
	<i>No submission comment.</i>
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.
	<i>No submission comment.</i>
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.
	<i>No submission comment.</i>

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?
	<i>No submission comment.</i>
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.
	<i>No submission comment.</i>
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?
	<p><i>Almost certainly. The television news on the night of release of the consultation contained borrowers' stories as follows:</i></p> <ul style="list-style-type: none"> <i>A person borrowing to meet the costs of gambling and drug taking</i>

- *A person borrowing to provide funds to support family overseas in Tonga*
- *A 16-year-old borrowing for unstated reasons.*

It is likely that many will leap to judgments as to whether borrowing in these example circumstances is appropriate. Always be careful about judging the utility that the borrower gets from such borrowing, even while acknowledging that each of these examples highlight that there are clearly areas that the CCCFA does not contemplate. It is an open question whether the CCCFA should consider such matters, or whether these examples, and others, indicate much broader social issues that need to be dealt with in other ways, albeit the request for a loan may provide an opportunity for referral elsewhere for alternative support to be considered in respect of such issues.

Any other comments

We welcome any other comments that you may have.

Note that the incidence of irresponsible lending is inherent in the Reserve Bank introducing Loan to Value Ratio restrictions, and in also expressing a desire to have powers to introduce Debt to Income ratios. If all lending was responsible, then the Reserve Bank would not need to introduce or seek such powers.