Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation

Name	Shane Powe, Managing Director
Organisation	Sunshine Loan Centres Pty Ltd

Company Background

Sunshine Loans is seriously considering entering the New Zealand credit market. As in Australia, over the last 21 years, our interest will be to offer small amount credit opportunities that will generally be below NZ$2,000.

We have always participated in Australian Government reviews and believe it is our corporate duty to take the opportunity to provide a consideration of the Discussion Paper concerning the review of the Credit Contracts and Consumer Finance Act 2003.

Without any experience in the New Zealand market to date, we provide answers to the various relevant questions based on our extensive experience with the Australian market. We do this without apology, because it would appear that many of the initiatives being considered have at least some similarity with what has been introduced in Australia since 2010.

Introduction

Prior to a consideration of the specific questions included in the Discussion Paper, Sunshine Loans would like to make a fundamental statement. Unless the primary purpose of the review is to abolish non-bank and non-large institution lending in New Zealand, then it is critically important for any consideration of changes to the CCCFA Act to recognise that:

1. a minority of complaining borrowers should not determine regulation for all;
2. claims of assumed high cost leading to debt entrapment have to be carefully reviewed to establish the contribution made by the borrower's negligence, lack of money management skills, and/or fraudulent intent;
3. despite the chorus of critics from the consumer advocate and financial counsellor sectors, borrowers continue to want to borrow to fund their chosen lifestyle - without force or coercion;
4. the banks and large financial institutions are no longer interested in offering finance to the sector of the population involved;
5. the majority of borrowers have attained educational levels and/or have borrowing experience, so that any overall claim that they are vulnerable because they do not understand their contractual obligations, cannot be justified;
6. the not-for-profit/charity sector does not have the resources to replace all the commercial lenders; and
7. despite the allegations of consumer advocates and financial counsellors, creditors (lenders) do not lend to people who, right from the start, do not have the capacity to repay their loans. This would be business suicide.

It is in Sunshine Loans' best interest not to lend to people who cannot afford to repay the loan and Sunshine Loans will be adopting a robust and comprehensive assessment process for every single loan application in New Zealand. Given the very small margins and the substantial costs associated with running this type of complex, high-tech IT business, there is very little room for error and bad debt.

Responses to discussion document questions

Issue 1: 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?
	The company has yet to enter the New Zealand market, but it might be useful to reflect on the following figures for the company's operations in Australia. As the Minister would be aware, internal dispute resolution (IDR), is where the borrower has complained to the company and the company has resolved the issue. External dispute resolution (EDR) is generally where the borrower has gone straight to the external dispute resolution body, without any prior contact with the company to complain. On rare occasions, the borrower has gone to EDR when the company was not able or willing to provide the outcome the borrower sought at IDR. It is apparent that many of the problems listed in the Discussion Paper could involve anti-creditor stakeholder views. In our experience, these are often based on single borrower samples. Further, the constant reference to "high cost" loans in the Discussion Paper implies excessive profit. If that is the case, why aren't the New Zealand banks and major financial institutions interested in the market sector under review? It is also invalid to attempt an interest rate comparison of widely different loan products. Concerning the frequency of the problems - it is important that the extent of complaints and alleged breaches of CCCFA and Code requirements are not exaggerated. With somewhat similar concerns as to frequency and severity in Australia, it might be useful to note that Sunshine Loans is one of the bigger lenders in Australia providing loans up to A$2,000. With loan volumes in the six figures per annum, the percentage of all loans that were involved in complaints to the company's internal dispute resolution process this year was 0.027%. In the 2016-17 year, the percentage of loans that generated complaints to the company's external dispute resolution scheme made up 0.0115% of the company's total loans.
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?
	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. 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. On the basis of Sunshine Loans' Australian experience, we consider that the introduction of a cap on total collections to 200% of the principal, would not have a high impact on Sunshine Loans.

Concerning the "Potential extensions" to Option A, and on the assumption that the definition of "high cost" loans would include loans of NZ$2,000 and under, Sunshine Loans considers that 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.

   Sunshine Loans supports 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 a policy could 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 out 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?

In Australia, Sunshine Loans only provides loans of $2,000 or less and so all our loans are covered by Australian regulation identical to Option A. We can and do live (financially survive) with such a restriction.

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?

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" -

Sunshine Loans agrees with the costs identified.

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.

   This is demonstrated by 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" - Sunshine Loans would anticipate all as probabilities.

The limit of $30 in total, 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 encouragement for the borrower to repay on time after the first default fee has been charged, if that fee is set at cost recovery.

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. Any "cost" calculation that anticipates a continuation of relevant commercial lending under this regime is inappropriate. If this Option is adopted, a major 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?
	The Australian reforms that commenced in 2013, involving a detailed and graduated capping system, provide a continuation of commercial lending - while consumers pay less. Sunshine Loans has found that, while profits were reduced following the replacement of the Australian interest rate and (some) fees for small loans by a 20% flat permitted establishment fee and a 4% flat permitted monthly fee, it has been possible to survive as a creditor lending these small loans.
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 A is perhaps the only economically feasible option of the 3 presented in the Discussion Paper. However, the lack of detail and/or precision included in the Discussion Paper about this option means that a proper study of the impact of the Option would have to be undertaken before its adoption as part of the CCCFA.

Issue 2: 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?
	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. 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?
	In Sunshine Loans' Australian experience, imprecise or vague Australian credit law has not contributed to the certainty required to ensure clear messages as to compliance expectation. All creditors should face a clearly prescribed assessment regime that involves mandatory attention to bank statements and an acceptance that, when they are applying for a loan, borrowers can be forgetful or negligent and can exaggerate at times, in an effort to obtain the loan they want. It could be very useful to require borrowers to indicate that the information that they have provided has been proved truthful and to the best of their knowledge, with offences and penalties applicable if it is not.

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?

As indicated above, Sunshine Loans agrees 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.

The CCCFA 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, could be considered for adoption in New Zealand.

There is nothing stopping a borrower holding another bank account containing other income or expenses without disclosing this to a lender. The lender can only rely on the consumer's honesty and the information the lender can review on the bank accounts provided.

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?

Sunshine Loans is aware that borrowers ignore the mandatory risk warnings imposed in Australia for loans under $2,000. From its experience in Australia, where it is mandatory, Sunshine Loans also considers that having a risk statement on a website means nothing to a potential borrower.

The introduction of anything that threatens the necessary simplicity of a website must be avoided. Borrowers just do not take any notice - they just want their loan and they want it fast.

The same principal applies to print advertising.

Any requirement to declare an interest rate must have direct relevance to the exact product being offered on the website, or in the advertisement.

All the research undertaken on behalf of the industry representative body that Sunshine Loans supports in Australia, indicates that borrowers are looking for a source of loan funds and the opportunity to be successful with their applications, they are not interested in extensive detail that does not appear to apply to them and they are not interested in having to read very much information.

As mentioned elsewhere in this response, borrowers are interested in:

1. whether or not they can get the loan;
2. how quickly they can get the loan; and
3. only after the first 2 interests are satisfied, how much each periodic repayment will be.

All the research reported to Sunshine Loans indicates that borrowers are interested in very little else.

As a major credit advertiser in Australia, Sunshine Loans considers that its advertising does not create demand, it only attracts potential customers who have already made up their mind to borrow if they can.

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.

The company is currently preparing its credit contracts in languages other than English, to address this issue before commencing business in New Zealand.

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?

Registration Option A:

Sunshine Loans is advised that 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 and punishment for behaviour that may have never occurred.

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

Sunshine Loans agrees with the costs listed and it is hoped that any new laws will avoid the Commerce Commission being given the power to guess behaviour that might - or might not - occur in the future.

Registration Option B:

While this option would be the least disruptive to Sunshine Loans, as the company's directors and senior managers have all successfully 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 representative fit and proper persons, while the real controllers take on the role of employees, or simply remain as shareholders only.

<u>The identified benefits</u>:

(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, Sunshine Loans agrees that the impact may be small.

<u>The identified costs</u> - Sunshine Loans agrees.

Registration Option C

The content of option C appears to describe the Australian model. In Sunshine Loans' opinion, a comprehensive licensing system, as described in Paragraphs 49, 50 and 51, would introduce the current Australian model.

After 8 years in existence in Australia, 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.

It is Sunshine Loans' view that the Australian experience strongly supports a conclusion that this system offers some reduction in irresponsible lending but it is extremely small.

The identified costs - Sunshine Loans agrees with those identified and provides 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.

Options for strengthening enforcement and penalties for irresponsible lending

Paragraphs 53 and 54 strongly support the need to have the Commerce Commission actually enforce the current law, before considering a major change and increase in the provisions in the CCCFA and compliance costs, contrary to any attempt to encourage or impose a reduction in borrowing costs.

Enforcement Option A

Paragraphs 54 to 56 appear to describe the Australian model.

However, when considering this model, it is to be hoped that the review process will include contact with Australian compliance advisers, who will provide substantial information on:

(a) the uneven treatment of lenders in Australia to date;

(b) the failure to always ensure that consumers actually get any or adequate compensation; and

(c) the uneven and arbitrary opportunities to impose administrative penalties or resort to decisions to prosecute -

much of which has occurred due to the poor drafting of the credit legislation, or lack of consideration as to the indirect consequences of including a provision for another purpose.

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

The identified benefits on page 25:

1. Sunshine Loans emphasises 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.

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) Sunshine Loans cannot comment on dot point 2 and what the Commerce Commission may or may not do, but Sunshine Loans 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.

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.

Option B - page 25

Concerning both benefits and cost 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.

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 also 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 Sunshine Loans:

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, EDR scheme and "credit repair" process.

<u>Option C benefits</u> identified on page 25:

1. Sunshine Loans agrees 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.

<u>Option C costs</u> identified:

Sunshine Loans agrees with these costs.

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

<u>The benefits and costs</u> 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.

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.

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.

<u>The benefits</u> identified on page 26 - the company agrees.

<u>The costs</u> 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.

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.

<u>Identified costs</u> -

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

Sunshine Loans 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.

Responsibility B - interest rate disclosures and warning statements included in advertisements

<u>The identified benefit</u> on page 26 - it would be more realistic to replace "small" with "minimal".

<u>The identified cost</u> -

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.

Sunshine Loans does not consider that such an initiative would impact on the company beyond increasing advertising costs. As indicated earlier, the company considers that potential borrowers do not take any notice of warning statements.

Responsibility C - same language requirement

Concerning benefits and costs - the company agrees with those identified in the Discussion Paper and considers that the benefits outweigh the costs and Sunshine

	Loans plans to advertise and have credit contracts and associated documentation in different languages.
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?
	Apart from the comments included above, Sunshine Loans has no further comment to make at this stage.
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.
	Sunshine Loans has summarised its views above.

Issue 3: Regarding continued predatory behaviour by mobile traders

This form of marketing has never and will never be adopted by Sunshine Loans.

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?
	As Sunshine Loans has yet to enter the New Zealand market, we are unable to comment in an informed manner.
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?
	As Sunshine Loans has yet to enter the New Zealand market, we are unable to comment in an informed manner.
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.
	As Sunshine Loans has yet to enter the New Zealand market, we are unable to comment in an informed manner.

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?
	Sunshine loans has been advised 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 an unsound 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.

Sunshine Loans' major concern is that any introduction of caps only be initiated after proper and objective research and analysis is conducted, to avoid highly subjective impositions on creditors. Basing caps on what consumer advocates and financial counsellors "think" might be a good idea is very impractical.

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?

Option A - lenders to substantiate reasonableness

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. It is noted that this explanation is not compatible with the interpretation embraced in the "Pros" and "Cons" table.

The "Cons" - Sunshine Loans agrees.

However, given it should be expected that most lenders would document their cost and fee settings in response to these costs - there is no need to introduce the subjective standard of "reasonableness" into the assessment.

Option B

According to Paragraph 102, this involves ignoring actual costs, because these "vary widely".

Sunshine Loans notes that 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". However, there is no necessary explanation as to the nature of these fees.

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

1. The size of the loan.

   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 result will be market distortion with 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. 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. This depending on 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? It is these factors that primarily determine the comparative risk, rather than whether the loan is secured or unsecured.

3. Whether secured over personal or real property.

   Sunshine Loans recognises 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. Sunshine Loans would hope that any differentiation beyond that which Sunshine Loans has 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*" - it must be asked, 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. This would allow a competitive market to emerge with the opportunity for price comparison by the borrowers.

In regard to the application of fee caps, as indicated above in the answer to Paragraph 105 - all lenders in all finance sub-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.

<u>The "Pros"</u>:

Consumers would not benefit from "improved comparability" - fee caps would set the price without any possible comparison associated with fees between lenders. Sunshine Loans notes that wherever fee caps have been introduced, the cap becomes the industry norm. As in Australia, that means the introduction of any cap will effectively establish the price consumers will pay.

Any reduction in non-compliance may come without any benefit to the consumer, with the difference between the future cap and current fees being transferred to the interest rate.

Sunshine Loans' substantial experience with the permitted fees for small amount loans in Australia, means the company recognises that a fee cap regime would take the ambiguity and complexity out of calculating the different fees.

<u>The "Cons"</u>:

Sunshine Loans agrees - as indicated above, 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.

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

It is important 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.

<u>The "Pros"</u>:

Sunshine Loans agrees 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.

	<u>The "Cons"</u>: Dealing with revolving credit can be addressed by prescribing a time calculation according to the maximum credit level under the contract. Transition costs may not be substantial, as 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, Sunshine Loans recommends adopting the term "equivalent interest rate", as it appears to adequately 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?
	Sunshine Loans suggests option C, with all fees separately identified and not merged into an interest rate, plus the adoption of an equivalent interest rate. Sunshine Loans believes it should remain optional for a lender to declare the various fees in an advertisement. However, an all embracing equivalent interest rate would assist potential borrower comparison. The new regulatory regime would have 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.
	To avoid subjectivity and arbitrary decision making, the new regulations 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 lender generally has no control over an unrelated third party. To impose any condition adverse to 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 "excessive" be detremined, while avoiding the introduction of a highly subjective rule that introduces uncertainty, because it will entirely depend on the Commerce Commission's officer/s involved? 2. How will there be segregation of the 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?

Sunshine Loans accepts that, where the lender insists on the borrower incurring the fee/s, particularly those charged by a related entity, the current situation where it is considered a “credit fee” should continue. However, 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 generally 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.

We are concerned about this issue, because it is our intention to market directly to the public. This will be expensive and it is not our intention to encourage brokers to contact us on behalf of their clients. Other third party fees that the borrower might agree to incur will be entirely outside our control.

In general

The impact of an aggregated fee cap that does not recognise both lender and broker costs and the requirement for some level of profit, will seriously reduce profitability and, 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.

In addition, there is the other issue as to where payment for the third party service provider is not sought from loan funds advanced. Sunshine Loans would 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 amount Sunshine Loans charges for the company's loans. Sunshine Loans could breach the imposed cap without knowing that this has occurred.

Sunshine Loans considers the easiest way to control broker costs is to let the market determine them, facilitated by having all brokers declare their fee as a percentage of the loan they facilitate.

Issue 5: 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?

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.

There should be effective regulation, because a distortion in recovery success created by bad practices will be to the disadvantage of lenders who adopt acceptable in-house practices, and use debt collectors that do not adopt such unacceptable behaviour.

Sunshine Loans is concerned that no research on this topic has been referred to in the Discussion Paper. Sunshine Loans has yet to enter the New Zealand market, but their contracted Australian debt collectors have never used such practices. When operating in New Zealand, Sunshine Loans will take the same approach.

One element of concern for Sunshine Loans 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”.

It must be considered as to 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.

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. In Australia, it is not unknown for some consumer advocates and financial counsellors to encourage such exaggeration, or accept such claims without verification. Sunshine Loans considers that the debt collection regulation model developed by the Australian Consumer Competition Commission (ACCC) and Australian Securities and Investment Commission (ASIC), could be considered during the review.
22	What information should be provided to borrowers by debt collectors? When and how should this information be provided?
	The adoption of Option A, and the disclosure of all the information listed in Paragraph 119, appears necessary.
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?
	Sunshine Loans has already adopted Option A in Australia and would expect to do so when operating in New Zealand. In the absence of specific regulation, as with a major debt collection company in Australia, it is Sunshine Loans' intention to provide the following to a debt collector in New Zealand: • Loan reference number • Full names • Date of birth • Gender • Amount outstanding • Contract date • Last payment date and amount • Charge off date • Date listed on credit file • Drivers' licence number • Address • Current duration (at address) • Mobile phone, home phone and email address • Work phone • Employer name and address • Employment position • Loan total • Total income • Pension • Referee name, address and phone number • Referee relation • End state.

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.
	Sunshine Loans considers that an appropriate frequency is three successful times per week. Success being defined as personal contact with the debtor - not including attempts that lead to automatic diversion to message banks and the like. Contact after a payment arrangement is entered into will depend on whether or not the debtor satisfies the new arrangement. If the debtor defaults on the new arrangement, then the debtor should face the 3 successful times per week regime.
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.
	Option A - Sunshine Loans agrees with the assessments concerning benefits and costs and consider Option A should be adopted. **Option B** - 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; i.e. by the creditor. 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. The debt collector would only assume the role of being able to negotiate payment of a lesser amount than is owed, etc if the lender contracted that role to the debt collector. The debt collector could simply be included in the CCCFA, 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 listed are correct. The Option introduces a whole new category of service providers that would have to be monitored like the lenders. Sunshine Loans is not convinced that the benefits listed would be created. 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 unless the contract between that debt collector and the creditor prescribes that role to 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.

In Sunshine loans' opinion, Proposal B would be so problematic for the debt collector that they would concentrate on repossession and court action, and avoid attempts at negotiation.

Option C - limiting contact with the borrower.

This is the model that operates reasonable successfully in Australia. As indicated above, Sunshine Loans would suggest a limit of 3 times per week.

Sunshine Loans acknowledges that, in regard to revealing the debit, contact with others is already restricted under the privacy regime. However, 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.

It is important to note that contact and negotiation with 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 resulting 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 generally applied fees and/or interest rates by the lenders to maintain their economic viability, if not their profit margins.

<u>The identified benefits</u>

Without previous involvement in the New Zealand market, Sunshine Loans is reluctant to comment on the assertion in the Discussion Paper that the debt collector proposals in the Discussion Paper will lead to "a large reduction in harassment of borrowers" in New Zealand.

<u>Costs of Option C</u>

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

Option D - regulating debt collectors

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

However, Sunshine Loans considers that compliance costs associated with Option D will be passed on to the borrowers who are targeted by the debt collectors.

The benefits

Sunshine Loans agrees with the benefits identified.

The costs

Under the proposals, compliance requirements for debt collectors would increase. However, 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.

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, Sunshine Loans is concerned that Option E includes a proposal to limit debt collectors' fees to "actual costs", because there is an expectation that lenders will pay any other costs, like the fee for service, however calculated.

Unfortunately, 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.

In Sunshine Loans' opinion, there is only part of Option E that should be adopted. This 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. The inclusion also stressing that the amounts are paid directly to the debt collector under the new regulations, or by way of disbursement of the proceeds of a sale of the loan security - and that they are not set by the lender.

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 effectively guess the level of reduction in "irresponsible debt collection and consumer harms" is impossible and objective research is required.

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.

Sunshine Loans notes 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?
	Sunshine Loans does not intend to offer loans to small business, or offer investment or family trust loans.
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.
	Sunshine Loans has no lending experience in these fields and therefore cannot provide informed comment.
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 is one other issues concerning the CCCFA that does not appear to have been addressed in the Discussion Paper and which Sunshine Loans believes deserve attention, given the review appears to be an omnibus effort - The need to address borrower responsibility as a contracting party.

Any other comments

We welcome any other comments that you may have.
The talk is repeatedly about the "vulnerable" borrower. However, 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; 6. with few exceptions, have life experience and education that provides literacy and a basic understanding of contract law; and 7. generally have substantial experience as a borrower with other loans and often other lenders. In Sunshine Loans' experience, these borrowers understand that, if you borrow someone else's money, there is a legal duty to repay the money that has been borrowed.

In Conclusion

Sunshine Loans invites the review secretariat to actually talk to lenders, inspect what they do and actually talk to borrowers before introducing radical reform to the current regulatory regime. Our compliance advisers will be pleased to arrange these visits.

Sunshine Loans thanks you for your consideration of this submission.

Shane Powe

Managing Director

1st August 2018