



Cabinet Economic Growth and Infrastructure Committee

EGI (12) 190

Copy No: 35

Summary of Paper

10 September 2012

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Responsible Lending and Changes to Consumer Credit Law

Portfolio Consumer Affairs

Purpose This paper seeks approval to additional changes to credit laws including repossession provisions.

Previous Consideration In October 2011 Cabinet:

- agreed to a package of reforms to the Credits Contracts and Consumer Finance Act 2003 (CCCFA) to provide for responsible lending;
- directed the Ministry of Consumer Affairs to consult the Treasury, the Ministry of Economic Development, the Commerce Commission, and the Financial Markets Authority on the proposal that the FMA have regulatory responsibility for the CCCFA and the Credit (Repossession) Act 1997 [instead of the Commerce Commission]
- agreed to the release of an Exposure Draft of the Amendment Bill to allow for consultation on the proposed detailed responsible lending provisions

[CAB Min (11) 40/5].

Summary

Submissions on an Exposure Draft CCCFA Amendment Bill have indicated strong support for responsible lending, improved disclosure and clearer consumer protections regarding hardship, oppressive contracts and unreasonable fees.

Credit repossession is one aspect of responsible lending and debt management where decisions are outstanding. The Law Commission has reviewed credit repossession laws and has made 58 recommendations, to which the government is required to respond. The Law Commission recommendations are attached at **page 20**.

The most significant recommendation from the Law Commission is to add credit repossession provisions to the CCCFA so that repossession is seen as part of the credit process begun when a credit contract is entered into.

The Minister proposes that other recommendations made by the Law Commission that should be supported include:

- restricting the use of certain essential household items for security;
- licensing credit repossession agents given that repossession agents enter people's homes and are repossessing goods over which there can be property disputes;
- improved disclosure before and at the time of repossession;
- retain the Commerce Commission as responsible regulator for monitoring and enforcement of credit repossession law alongside the CCCFA.

The Minister does not support cost of finance caps to address problem debt issues.

Two types of consumer credit contracts, voluntary targeted rates and pawnbroking, are not wholly suited to the CCCFA regulatory framework. It is proposed to add a regulatory making power to the CCCFA to provide that consumer credit contracts, such as VTR and pawnbroking, can be exempted from particular provisions of the Act.

**Regulatory
Impact Analysis**

A Regulatory Impact Statement is attached. The MBIE Regulatory Impact Analysis Review Panel considers that the RIS meets the quality assurance criteria. The Minister is satisfied that the regulatory proposals are consistent with the government's commitments in the Government's Statement on Regulation.

**Baseline
Implications**

The Commerce Commission uses its discretion to determine where it focusses its enforcement activities and any extra credit enforcement costs will be met through existing baselines and cost savings associated with other credit, fair trading or competition enforcement.

**Legislative
Implications**

The proposals will require amendment to the Credit Contracts and Consumer Finance Act 2003, and revoking the Credit (Repossession) Act 1997. The amendments to the CCCFA will also result in amendments to the Credit Contracts and Consumer Finance Regulations 2004 at a later date and may result in new exemption regulations under the CCCFA. The paper also proposes amendments to the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

These amendments will be made through a Consumer Credit Law Amendment Bill which has a category 4 priority (to be referred to a select committee in 2012) on the 2012 Legislative Programme.

Timing Issues

None indicated.

Announcement

A press statement on the key decisions made on the proposals in the paper may be made.

Consultation The Minister of Consumer Affairs indicates that the following Ministers have been consulted: Finance, Justice, Economic Development, Social Development and Commerce. The Minister indicates that discussion will be required with the government caucus and has been discussed with other parties represented in Parliament.

Paper prepared by MBIE. Treasury, MBIE, Justice and PIA. The Commerce Commission and the Law Commission have also been consulted. DPMC, MSD, TPK and the FMA have been informed. There has been public consultation on the Exposure Draft Credit Contracts and Consumer Finance Amendment Bill.

The Minister of Consumer Affairs recommends that the Committee:

Background

- 1
 - 1.1 note that in October 2011, Cabinet made a number of decisions to provide for responsible lending in the Credit Contracts and Consumer Finance Act 2003 (CCCFA);
 - 1.2 note that submissions on an Exposure Draft Bill detailing proposed amendments to the CCCFA have indicated overwhelming support for responsible lending
[CAB Min (11) 40/5];
- 2 note the following proposals are particularly directed at bringing in tougher consumer credit laws to target loan sharks and protect unwary consumers, which is one of the key actions in the Economic Development 120 Key Actions Plan;
- 3 note that:
 - 3.1 credit repossession is relevant to the responsible management of credit contracts;
 - 3.2 the Law Commission in its report, "Consumers and Repossession: A Review of the Credit (Repossession) Act 1997" (Review of Credit Report), tabled in the House in April 2012, has made a number of recommendations to improve the workability of credit repossession law;

Amendments to the CCCFA from consultation on the Exposure Draft Bill

- 4 note there are two areas where unintended costs with compliance with the CCCFA have been identified, that it would be appropriate to address in the Consumer Credit Law Amendment Bill (the Bill):
 - 4.1 Voluntary Targeted Rates – the CCCFA continuing disclosure provisions and early repayment provisions do not fit with the administrative arrangements supporting annual rates notifications;
 - 4.2 pawn transactions - complying with both the CCCFA and the Secondhand Dealers and Pawnbrokers Act 2004 is problematic regarding interest and disclosure;

- 5 agree to amend the CCCFA to provide a new regulation-making power that particular classes of consumer credit contracts can be exempted from particular sections of the Act;
- 6 agree to exempt, either by way of amendment to the Act or by progressing regulations:
- 6.1 Voluntary Targeted Rates from the requirements in the CCCFA for six-monthly continuing disclosure and early repayment;
- 6.2 pawn transactions from the CCCFA disclosure, continuing disclosure, and early repayment provisions;

Credit Repossession

- 7 note that the Law Commission has recommended in its Review of Credit Report, that:
- 7.1 repossession law is included in the CCCFA and comes under the new responsible lending regime;
- 7.2 a number of improvements to repossession law be made to improve clarity, efficiency and fairness in the application of credit repossession law;
- 8 agree to add to the Bill provisions covering repossession of consumer goods, including consumer goods used to secure non-consumer credit contracts, as currently set out in the Credit (Repossession) Act, subject to amendments as set out below (Law Commission recommendations 1, 4);
- 9 agree that the Bill repeal the Credit (Repossession) Act;
- 10 note that if credit repossession is included in the CCCFA and is covered by the new lender responsibilities provisions, these new provisions will address the Law Commission's recommendations 18 and 28, including consumers obtaining information in a clear and transparent manner;

Credit repossession and responsible lending

- 11 agree that the new lender responsibilities set out in new Part 1A (clause 7) of the Bill apply to credit repossession and specifically provide that the principles or code of responsible lending must:
- 11.1 require creditors or creditors' agents who repossess consumer goods to act responsibly when dealing with a debtor in a credit repossession matter;
- 11.2 set out the type of repossession conduct that would not be considered responsible;
- 11.3 set out how the granting of security and repossession of goods, such as children's toys, that have high sentimental value but little or no economic value, should be approached;
- 11.4 set out what "commercially reasonable" and "reasonable efforts to obtain the best price" mean in different situations, including that repossessed goods must be sold in a manner that provides for competitive bids (Law Commission recommendations 12, 25, 26, 27, 34, 35 and 36);

- 12 note the lender responsibilities set out in the Bill address the Law Commission's recommendations 18 and 28:
- 12.1 to ensure information is given to consumers in a clear and transparent manner with a view to ensure consumer understanding; and
 - 12.2 the code of responsible lending is prepared in consultation with the credit industry and consumers;

Credit repossession, clarity and disclosure about what can be repossessed

- 13 note an important element of responsible lending is clear disclosure to assist a consumer's understanding before entering into a credit contract and during its administration, and that the Law Commission has made several recommendations regarding repossession consistent with this principle;
- 14 agree to amend the CCCFA in the following ways to provide clarity to consumers regarding what can be repossessed:
- 14.1 include a "checklist" as part of disclosure requirements, setting out when repossession can occur (Law Commission recommendation 2),
 - 14.2 clarify the definition of security interest in the CCCFA and provide for a plain English explanation of security interest and the consequences of giving security in schedule 1 of the CCCFA (Law Commission recommendations 3 and 17);
- 15 15.1 note the Law Commission has given particular consideration to whether some goods should not be subject to repossession and has concluded that tools of trade and cars should be available for use as security but the following consumer goods should be excluded: medical equipment, bedding, portable heaters, stoves, washing machines and cooking equipment;
- 15.2 note that in October 2011 Cabinet agreed to amend the CCCFA to require that any goods over which security is taken must be specified in the contract and the goods that are protected on bankruptcy under the Insolvency Act 2006 are also protected from secured creditors (e.g. tools of trade, necessary household furniture, and a motor vehicle up to the value of \$5,000), except if the credit contract is for purchase of the item [CAB Min (11) 40/5;
- 15.3 agree to recommend that Cabinet rescind the decision in paragraph 15.2 above, and
- 16 agree, instead, based on Law Commission's recommendations 5, 8, 9, 10, 13 and 14:
- 16.1 to add to the CCCFA that for consumer goods to be repossessed they must be sufficiently identified in the security agreement/credit contract so they may be individually identified at the time of repossession;
 - 16.2 agree to add to the CCCFA that the following goods should not be subject to repossession (except when purchased through a purchase money security): medical equipment, bedding, portable heaters, stoves, washing machines, cooking equipment and refrigerators;

- 16.3 agree to specifically restrict the granting of security and the subsequent repossession of passports, identity documents and credit and cash cards;
 - 16.4 agree to add to the CCCFA that other goods or classes of goods deemed to be exempted from repossession may be prescribed by regulation;
 - 16.5 agree to add to the CCCFA that taking possession of keys that open or provide access to secured property is deemed to be repossession of the secured property;
- 17 note that Part 2 of the Bill amends the Personal Property Securities Act 1999 to prevent the repossession of after-acquired goods unless added by the debtor and the use of power of attorney by the creditor, and that these amendments address the Law Commission's recommendations 6 and 7;

Disclosure before, when and after a repossession occurs

- 18 note that to provide clearer and more meaningful information to debtors, the Law Commission has recommended improved disclosure before, at the time of and after repossession (recommendations 16, 19, 20, 21, 23, 24, 31, 32);
- 19 agree that the new CCCFA repossession provisions require the pre-possession notice:
- 19.1 includes a statement of the amount needed to reinstate the agreement and payment of that amount should forestall repossession;
 - 19.2 sets out the nature and extent of the default and what the debtor needs to do in order to remedy the default and by when;
 - 19.3 states that doing nothing is not an option;
 - 19.4 provides information about where the debtor may go to access help;
 - 19.5 encourages the debtor to contact the creditor;
 - 19.6 provides details about the right to seek relief in circumstances of hardship;
 - 19.7 provides details about dispute resolution processes and what the debtor needs to do if he or she disputes some aspect of the situation;
 - 19.8 advises debtors to retrieve and/or delete personal information stored on computers or other devices before repossession takes place (Law Commission recommendation 11);
- 20 agree that the CCCFA provides the documents that must be produced at the time of repossession additional to those to be carried forward from the Credit (Repossession) Act at sections 17 and 18 include:
- 20.1 a copy of the credit contract;
 - 20.2 a document setting out the debtor's name and property address, the repossession agent's licence number and the reason why the goods are being repossessed; and
 - 20.3 a document outlining the requirements that a creditor or repossession agent must fulfil in order to repossess goods and the debtor's rights if he or she believes that the creditor or agent has not met those requirements;

- 20.4 a statement that the premises have been entered, the date of entry and an inventory of consumer goods taken;
- 20.5 a statement why the goods have been repossessed, where the goods will be stored, the creditor's contact details and the debtor's rights under the consumer credit repossession legislation following the repossession of goods, including the right to make a complaint about the creditor's or agent's conduct;
- 21 agree to add to the CCCFA that the form and content of the pre-possession and post-possession notices may be prescribed by regulation;
- 22 agree to provide in the CCCFA and Part 2 of the Schedule to the Electronic Transactions Act 2002 that if the parties agree, the repossession notice requirements may be fulfilled by electronic communication (Law Commission recommendation 24);

The repossession process

- 23 note the Law Commission has recommended clarifying the rules about "goods at risk", whether repossession must be completed before 9.00pm and allowing repossession on Sundays (Law Commission recommendations 29, 30 and 43);
- 24 note allowing repossession on Sundays could be controversial as Sunday is the day of worship and day for family for many people;
- 25 agree to provide in the Bill that:
- 25.1 repossession is allowed on Sundays; and
- 25.2 repossession must finish by 9.00pm;
- 26 invite the Minister of Consumer Affairs to draw the proposal to allow Sunday repossessions to the attention of the Select Committee examining the Bill and ask for the Committee's particular consideration of whether it should proceed;
- 27 agree the definition of "goods at risk" includes where the creditor has reasonable grounds to consider the consumer is offering to sell the goods;
- 28 note the Law Commission considered the various timeframes for pre-possession, repossession and post-possession requirements and have recommended some changes to achieve a level of consistency where possible, and have recommended prepossession notices have a clear expiry date (Law Commission recommendations 22, 37, 38 and 39);
- 29 agree that the following timeframes carried forward from the Credit (Repossession) Act to the CCCFA are amended:
- 29.1 the requirement at section 23 becomes that following service of a post-possession notice, but before the 15 day period has expired, the debtor may request the creditor to sell consumer goods immediately after the request;
- 29.2 the minimum 14 days specified in section 29(2)(b) of the Credit (Repossession) Act 1997 concerning failure by debtor to remedy fault becomes a minimum of 15 days;
- 29.3 the 10 days specified in section 33 to give the debtor and others a written statement of account becomes within five working days after the sale of goods;

30 agree to prepossession notices having an expiry period of 28 days;

Selling of repossessed goods and debtor's liability post repossession

31 note the Law Commission has identified that credit repossession law is not clear regarding debtor's liability after the sale of repossessed items;

32 agree to provide in the CCCFA that a debtor's obligations are frozen at the time of the sale of the secured property;

Remedies and penalties

33 note the Law Commission has concluded there should be criminal offences for breaches of pre-possession and repossession requirements given they provide protection to debtors, for example, concerning entry of a property, and has made several recommendations to strengthen repossession penalties (recommendations 40 and 41);

34 agree that the CCCFA include criminal offences and penalties for breaches of the protections regarding entry of residential premises and provision of documents on entry of premises to apply to repossession agents and creditors who are complicit in the breach (sections 15, 17 and 18 of the Credit (Repossession) Act);

35 agree that the CCCFA include orders for civil remedies against creditors and repossession agents with respect to breaches of the repossession requirements and statutory damages for breaches of prepossession disclosure requirements;

36 note the Law Commission has recommended aligning the offences and penalties regime and the relief provisions for repossession with the penalties and offences regime and the relief provisions in the CCCFA (recommendations 45, 46, 47 and 48);

37 agree that:

37.1 the maximum penalty level for obstructing a creditor or agent is \$10,000 (as in the Credit (Repossession) Act);

37.2 the maximum penalty is \$30,000 for all other credit repossession offences (as in the CCCFA);

37.3 the statutory damages available for breaches of repossession disclosure requirements are the same as those currently available for breaches of the CCCFA disclosure requirements;

37.4 the relief provision for breaches of consumer credit repossession requirements match the relief provisions of the CCCFA to the extent possible (Law Commission recommendations 45, 42 and 48);

38 note the Law Commission has identified an anomaly between the new Criminal Procedure Act 2011 limitation periods and those in the CCCFA and the Credit (Repossession) Act;

39 agree that:

39.1 section 105 of the CCCFA is repealed;

39.2 the limitation periods in section 25 of the Criminal Procedure Act 2011 apply to offences in the CCCFA including new credit repossession offences (Law Commission recommendation 44);

Dispute resolution

40 note the Law Commission:

40.1 considers financial sector dispute resolution schemes, which all financial service providers including credit providers must belong to, can provide the appropriate forum to deal with many complaints about credit repossession practices, including oppressive exercising of powers;

40.2 has recommended that section 63 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 require scheme providers to have rules to cover repossession matters (recommendations 49, 50);

41 agree to amend section 63 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 to:

41.1 cover repossession matters, including oppressive exercising of powers;

41.2 provide for adequate compensation to be awarded to complainants for non-financial loss, humiliation, stress, and inconvenience suffered as a result of the financial service providers' actions, as well as financial loss or damage, where the complaint relates to a credit repossession matter;

42 invite the Minister of Consumer Affairs to invite the financial sector dispute resolution schemes to consider amending their rules to provide for credit repossession complaints;

43 agree to provide in the CCCFA a mechanism for halting repossession when a repossession matter is the subject of a complaint to a creditor or to a dispute resolution scheme (made within 14 days of the creditor's decision on the complaint) (Law Commission recommendations 51 and 52);

Licensing

44 note the Law Commission has recommended licensing of credit repossession agents in to provide greater protection to debtors and creditors from repossession agents who act illegally and unreasonably (recommendation 56);

45 45.1 agree to licensing of credit repossession agents;

45.2 invite the Ministers of Consumer Affairs and Justice to determine whether this is best achieved through the Private Security Personnel and Private Investigators Act or other appropriate legislation;

Other recommendations

- 46 note that the Law Commission's recommendations 54 and 55 concerning banning a person from being a creditor will be addressed by credit repossession being incorporated into the CCCFA;
- 47 note that the Law Commission's recommendation 53 concerning access to dispute resolution when a credit contract is sold, is dealt with in existing law by the CCCFA and the Financial Service Providers (Registration and Dispute Resolution) Act 2008;
- 48 invite the Minister of Consumer Affairs to discuss with the Commerce Commission the appropriate mechanism for addressing the Law Commission's recommendation 58 to require creditors to report 6 monthly to the regulator the number of repossessions undertaken;

Car disabling devices

- 49 note that the Law Commission's report included discussion on whether car disabling devices should be considered a form of repossession;
- 50 agree that disabling devices are not deemed a form of repossession but that because they are a form of interference with property rights:
- 50.1 the CCCFA provide that creditors may only disable a car (or other good) if a loan is in default and after the debtor has been given reasonable warning;
- 50.2 that there must be disclosure about how the device system works and how to obtain use of a disabled car in emergencies;

Responsible Regulator

- 51 note that as directed by Cabinet, Consumer Affairs investigated the Financial Markets Authority (FMA) being the regulator responsible for monitoring and enforcement of the CCCFA and monitoring of credit repossession practices under the Credit (Repossession) Act 1997, rather than the Commerce Commission, in consultation with the Treasury, Ministry of Business, Innovation and Employment – Economic Development, the Commerce Commission and FMA;
- 52 note that the investigation found that either party would be well placed to be the responsible regulator but there are beneficial alignments in the status quo (Commerce Commission) particularly monitoring and enforcement of credit law alongside the Fair Trading Act 1986;
- 53 agree that the Commerce Commission remains the responsible regulator for monitoring and enforcement of the CCCFA, including repossession (also addresses Law Commission recommendation 57);

Legislation

- 54 note a Consumer Credit Law Amendment Bill has a category 4 priority (to be referred to a select committee in 2012) on the 2012 Legislative Programme;
- 55 invite the Minister of Consumer Affairs to issue further drafting instructions to the Parliamentary Counsel Office for the Consumer Credit Law Amendment Bill covering the proposals above;

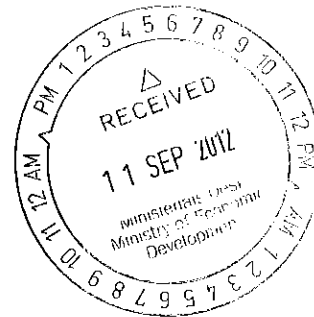
Publicity

- 56 note that the paper under EGI (12) 190, the corresponding Minute and the Regulatory Impact Statement will be posted on the Consumer Affairs website, at an appropriate time;
- 57 note that the Minister of Consumer Affairs may release a press statement on the main elements of the above proposals

Bob Macfarlane
Committee Secretary

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In Confidence

OFFICE OF THE MINISTER
OF CONSUMER AFFAIRS

The Chair
Cabinet Economic Growth and Infrastructure Committee

Responsible Lending and Changes to Consumer Credit Law

Proposal

- 1 This paper proposes the Economic Growth and Infrastructure Committee (EGI) agrees to additional changes to credit laws following consultation on the Exposure Draft Credit Contracts and Consumer Finance Bill and in response to the Law Commission's report "Consumers and Repossession: A Review of the Credit (Repossession) Act 1997".

Executive Summary

- 2 The National Party's Economic Development Action Plan includes "Bringing in tougher consumer credit laws to target loan sharks and protect unwary consumers".
- 3 Cabinet agreed in October 2011 to a package of reforms to the Credit Contracts and Consumer Finance Act 2003 (CCCFA) to provide for responsible lending. The decisions were taken following the Financial Summit held in August 2011. The reforms complement other financial sector reforms that have been agreed over the last 4 years.
- 4 Submissions on an Exposure Draft Credit Contracts and Consumer Finance Amendment Bill, released on 2 April 2012, have indicated strong support for responsible lending, improved disclosure and clearer consumer protections regarding hardship, oppressive contracts and unreasonable fees.
- 5 Credit repossession is one aspect of responsible lending and debt management where decisions are outstanding. The Law Commission has reviewed credit repossession laws and has made 58 recommendations, to which the Government is required to respond. The recommendations are attached at Appendix 1.
- 6 The most significant recommendation from the Law Commission is to add to the CCCFA credit repossession provisions so that repossession is seen as part of the credit process begun when a credit contract is entered into. I propose this is done as part of the Credit Contracts and Consumer Finance Amendment Bill.
- 7 I propose EGI supports the other recommendations of the Law Commission that include:
 - a. restricting the use of certain essential household items for security,
 - b. licensing of credit repossession agents given repossession agents enter people's homes and are repossessing goods over which there can be property disputes,
 - c. improved disclosure prior to and at the time of repossession,
 - d. the Commerce Commission, as responsible regulator for monitoring and enforcement of credit repossession law alongside the CCCFA.
- 8 Some submitters on the Exposure Draft favoured cost of finance caps to address problem debt issues. In consultation meetings I held throughout New Zealand, there was a muted response to having cost of finance caps. I consider that responsible lending is a significant initiative that should protect vulnerable consumers without imposing specific lending limits and do not recommend implementing cost of finance rate caps.

In Confidence

- 9 There are a range of types of consumer credit contracts. Whilst the provisions of the CCCFA work well, two types of credit contracts – Voluntary Targeted Rates and pawnbroking - are not wholly suited to the CCCFA regulatory framework. It is proposed to add a regulation-making power to the CCCFA to provide that consumer credit contracts can be exempted from particular provisions of the Act. It is likely this power will be used only if other laws provide for equivalent protections to the CCCFA.
- 10 Following direction from Cabinet, a consultation Working Group was established to examine whether the Commerce Commission or the Financial Markets Authority should be responsible for CCCFA enforcement. The working party recommended to the Ministers of Consumer Affairs and Commerce that the Commerce Commission should remain the regulator responsible for the CCCFA. There are beneficial alignments in the status quo, which include Commerce Commission enforcement of the CCCFA alongside the Fair Trading Act and established profile and communications channels with consumers.

Background

- 11 Credit law reform is part of the National Party's Economic Development 120 Key Actions (Loan Sharks: Bringing in tougher consumer credit laws to target loan sharks and protect unwary consumers).
- 12 There are two key credit laws: the Credit Contracts and Consumer Finance Act 2003 (CCCFA) and the Credit (Repossession) Act 1997. The CCCFA promotes competition among credit providers and enables consumers to make informed decisions, through requiring disclosure of interest rates, fees and contract terms. The CCCFA also includes provisions that protect consumers in the event of unforeseen hardship and against unreasonable fees and oppressive credit contracts.
- 13 The Credit (Repossession) Act 1997 applies where a "security agreement" creates a security interest in consumer goods. "Consumer goods" are defined in the Act as goods that are used or acquired for use primarily for personal, domestic, or household purposes. The Act sets out repossession and resale procedures and protections.
- 14 On 31 October 2011, Cabinet agreed to a package of reforms to the CCCFA to provide for responsible lending [CAB Min (11)40/5 refers]. The package includes:
 - Requiring lenders to exercise the care, diligence and skill of a responsible lender when considering credit applications and during the life of the loan by complying with a Code of Responsible Lending.
 - Providing that borrowers will not have to pay interest or fees if their lender is not registered as a Financial Service Provider.
 - Disclosure of terms and conditions before the loan contract is signed. The disclosure requirements cover dispute resolution services, hardship provisions and a list of specific goods used as security against the loan.
 - Requiring goods over which security is taken must be specified in the contract and protections regarding using necessary household items as security.
 - A five-working day cooling off period, rather than the current three days.
 - Improved processes for hardship applications and increased consumer protection against oppressive credit contracts.

In Confidence

- 15 These reforms recognise the CCCFA is not providing adequate consumer protection against unscrupulous lending practices, which may contribute to financial hardship and spiralling debt among some groups of consumers.
- 16 Cabinet also directed Consumer Affairs, Ministry of Business, Innovation and Employment (MBIE), to consult on the appropriate body to monitor and enforce the CCCFA and the Credit (Repossession) Act. Cabinet further directed Consumer Affairs to report to EGI on three outstanding issues. These are the possibility of cost of finance rate caps, the relationship of credit law to credit repossession law and the outcome of consultation on the Exposure Draft Credit Contracts and Consumer Finance Amendment Bill.
- 17 An Exposure Draft Credit Contracts and Consumer Finance Amendment Bill, detailing the agreed responsible lending reforms, was released for consultation on 2 April 2012 and attracted 90 submissions. Submitters were also asked to comment on the regulator responsible for the CCCFA, whether cost of finance rate caps should be considered and credit repossession (including the recommendations of the Law Commission following their review of credit repossession).
- 18 With respect to the latter, during 2011 the Law Commission undertook a review of credit repossession and its final report "Consumers and Repossession: A Review of the Credit (Repossession) Act 1997" was tabled in the House by the Minister responsible for the Law Commission in April 2012. The report made 58 recommendations. The Minister of Consumer Affairs is the portfolio Minister responding to the report.
- 19 The Cabinet Guide requires that following receipt of a Law Commission report, the portfolio Minister submits a paper to a Cabinet Committee seeking approval of the recommendations in the report to the extent the Minister considers appropriate. The government must then respond to the report by way of a paper presented to the House or through the introduction of a Bill giving effect to the recommendations. Either response requires Cabinet Committee to consider and resolve on each recommendation. This paper seeks EGI's agreement to the Law Commission's 58 recommendations on improving credit repossession law and practices.

Comment

- 20 The 90 submissions on the Exposure Draft Credit Contracts and Consumer Finance Bill were overwhelmingly supportive of the Cabinet decisions to provide for responsible lending in the CCCFA.
- 21 Some submitters raised questions about aspects of the drafting of the Exposure Draft and these will be discussed with the Parliamentary Counsel Office. Additional matters that were raised that require further decisions by EGI relate to the disclosure and early repayment provisions in the CCCFA and how they affect:
 - Voluntary Targeted Rate consumer credit contracts, and
 - Pawnbroking consumer credit contracts.

In Confidence

Voluntary Targeted Rates

- 22 Voluntary Targeted Rates (VTR) schemes work in association with annual rates and are attached to a property. They are in place to provide credit assistance to ratepayers on reasonable terms. Currently, several regional and district councils provide VTR schemes in association with the Warm Up New Zealand scheme, to help ratepayers fit their homes with insulation¹.
- 23 Councils offering VTR schemes are consumer credit providers in that they advance credit and charge interest (through rates). It is appropriate that they come under the general provisions of the CCCFA, including that they provide initial disclosure of terms and conditions at the time the contract is entered into, engage in responsible lending and participate in membership of a Financial Service Provider dispute resolution scheme.
- 24 However, there are two specific problems for councils in complying with the CCCFA:
- The CCCFA requires that every creditor must disclose to the debtor every 6 months the unpaid balance, interest charges and amounts paid over the previous period. However, rates are determined and disclosed annually. Councils advise that administrative settings cannot support six-monthly disclosure.
 - If rates are calculated annually but then paid before the end of the year, councils may find themselves having charged interest that has not yet fallen due, which creates a technical breach of the CCCFA. Administrative arrangements would need to be significantly changed in order to refund ratepayers the very small amount of interest that would be prepaid.
- 25 Councils are currently not complying with the provisions. There have been no consumer complaints. However, councils are concerned that they could be found in breach of the CCCFA and required to meet unnecessary costs to comply for VTR loans.
- 26 The CCCFA early repayment provisions are designed to ensure both the creditor and debtor are not penalised from early repayment. These provisions and the six monthly disclosure requirements, however, are of limited relevance for VTR schemes. The annual disclosure provides sufficient transparency for consumers and providing for a prepayment interest refund is likely to cost significantly more in administrative costs than the refund. It would likely affect the willingness of councils to offer VTR schemes.
- 27 Accordingly, I propose that provision is made to exempt VTR schemes from the requirements in the CCCFA for six-monthly continuing disclosure and the prohibition on pre-charging interest by way of regulation. There is a regulation making power in the CCCFA to prescribe any class of credit contract that is exempted from being a consumer credit contract and the terms and conditions applying to the exemption. This regulation making power has proved difficult to use as it exempts classes of contract from the entirety of the CCCFA, subject to particular terms and conditions. A regulation making power to exempt types of consumer credit contracts from specific sections of the CCCFA would be preferable and, accordingly, I propose such a power is added to the Act.

¹ Payment is the grant plus currently 7% interest.

In Confidence

Pawnbroking Consumer Credit Contracts

- 28 Pawn transactions involve money advanced on goods, interest, a redemption price (the advance plus interest) and a redemption date. Pawn transactions must comply with both the CCCFA and the Secondhand Dealers and Pawnbrokers Act 2004. Both Acts commenced on 1 April 2005 and were intended to work alongside each other and focus on consumer protection and crime prevention respectively.
- 29 In practice, overlapping but somewhat different disclosure requirements and approaches to interest and fees in both Acts, if properly applied, are an unnecessary compliance cost for pawnbrokers and potentially cause consumer confusion. In the CCCFA, interest is a charge that accrues over time and fees (for example, for setting up the contract), and other charges must be identified separately. In the Secondhand Dealers and Pawnbrokers Act, the redemption price (cost of credit) is the amount advanced plus interest. "Interest" is the only allowable charge, is a set price and covers all costs that in the CCCFA are described as interest, fees and other charges.
- 30 Some of the consumer protections in the CCCFA should apply to pawn transactions, including provisions around hardship and oppression and the proposed new responsible lending provisions. These protections are important as while pawn transactions are simple and easy to understand, they are still costly for consumers and are commonly used by more vulnerable consumers. However, subjecting pawnbrokers to the overlapping requirements of the two Acts in relation to disclosure, fees and interest provides no benefit to consumers, while imposing a significant compliance cost on businesses.
- 31 I propose to exempt, by way of regulation, pawnbrokers from the following provisions of the CCCFA:
- the initial disclosure requirements as these are satisfied by substantially similar disclosure requirements in the Secondhand Dealers and Pawnbrokers Act,
 - the prepayment and ongoing disclosure requirements.

Credit Repossession

- 32 Credit repossession is a difficult area of law, balancing the rights of creditors and consumers when there is a credit default. The primary conclusion of the Law Commission from its review of credit repossession is that credit repossession should be seen as a part of the credit process begun when a credit contract is entered into. It has recommended:
- A number of changes are needed to credit repossession law to ensure clarity, efficiency and fairness.
 - Repossession, including the proposed changes, should be included in the CCCFA.
 - Repossession should be premised on creditors exercising well defined rights in a manner that is responsible.
- 33 The Law Commission's 58 recommendations cover the above points and what may be repossessed, disclosure, process, penalties, remedies and redress and regulation. The recommendations address the main issues with the current legislation:
- Goods are repossessed wrongfully and/or without warning.
 - Essential household items and items belonging to debtors' children or flatmates are repossessed.
 - Credit contracts contain very broad security clauses, known as "drag-net" clauses that

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allow repossession of any goods from the homes of borrowers in default and for repossession agents to return to take more household effects if the sale of goods does not clear the debt. Some contracts also contain power of attorney clauses that purport to allow the creditor to add other goods to the security.

- Repossession agents behave aggressively and threaten to return to take further goods.
- Debtors incur penalty interest and fees.
- Debtors do not receive fair value for their goods or are unable to make the best decisions in relation to their loan after repossession.
- Debtors do not enforce their rights or seek relief or redress (self-enforcement is not working).
- Penalties in the Credit (Repossession) Act favour the creditor.

One process, one statute, one regulator

- 34 The Law Commission has recommended that credit repossession is seen as part of the credit process begun when a consumer credit contract is entered into and is covered by the new responsible lending framework being added to the CCCFA. This recommendation accords with the Cabinet decision taken in October 2011 to include responsible lending provisions in the CCCFA, that "there is a general duty that a lender must exercise the care, diligence and skill of a responsible lender before entering into and throughout the management of a contract or lease" [CAB Min (11) 40/5 refers].
- 35 The Law Commission has also recommended there should be a regulator responsible for monitoring compliance with credit repossession law. The Commerce Commission is currently the responsible regulator for the CCCFA.
- 36 I propose EGI agrees to the Law Commission's recommendations that credit repossession provisions are added to the CCCFA, and the regulator responsible for the CCCFA is responsible for monitoring compliance with the credit repossession provisions.

Security interest and what can be repossessed

- 37 Consumer advocates have for some time been calling for restrictions on repossessing certain household items, children's items, family photos and passports. This issue was raised at the Financial Summit and one of the interim repossession decisions taken by Cabinet was to "protect important goods, such as tools of trade, necessary household items, and motor vehicles with a value of up to \$5,000, from being used as security against a loan (except if the credit contract is for the purchase of such an item)" [CAB Min (11) 40/5 refers]. This list was based on the Insolvency Act 2006 list of protected items.
- 38 The Law Commission has examined in detail whether there should be restrictions on repossession of some items. Its findings include that cars are a common form of security and that "the reality is that many New Zealand cars used as security are valued below the suggested \$5,000 threshold". Therefore, the Law Commission is concerned that a restriction on the repossession of cars would unduly prevent consumers from using what might be their major asset as security for borrowing.
- 39 The Law Commission also concluded that the proposal to protect important goods based on the Insolvency Act is not apt as repossession law only covers consumer goods and tools of trade are not consumer goods. The Insolvency Act itself does not prevent secured creditors from repossessing goods over which there are attached security interests.

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- 40 The Law Commission's examination of this issue is persuasive. I propose that EGI agrees to recommend Cabinet rescind its previous decision restricting goods that can be repossessed and instead propose that EGI agrees with the Law Commission's recommendation that the following goods should not be subject to repossession (except when financed through a purchase money security interest): medical equipment, bedding, portable heaters, stoves, washing machines and cooking equipment. I propose also to include a refrigerator as an essential item.
- 41 The Law Commission has also recommended that goods used as security should be specified in credit contracts which accords with the previous decision of Cabinet in October 2011 to amend the CCCFA to require that any goods over which security is taken must be specified in the contract. With respect to children's items and family photographs, the Law Commission has not recommended these are included on the list of restricted goods. It has noted that children's items cover a wide range of goods including game consoles and trampolines and some of these may be appropriately used as security. It has noted that if goods used as security must be specified on the credit contract this will stop the indiscriminate repossession of children's items and family photographs to apply pressure to debtors. It has also suggested the Responsible Lending Code could provide guidance on repossession of such items. I concur with these findings.

When repossessions may occur

- 42 Credit repossession law provides a creditor must not enter residential premises outside the hours of 6am - 9pm on Mondays to Saturdays, and any time on a Sunday or public holiday, without the written consent of the debtor.
- 43 The Law Commission has recommended that repossession should be allowed on Sundays, as many creditors prefer to repossess goods when debtors are at home. It recognised that for some creditors, repossession on a Sunday may be insensitive. However, on balance the Law Commission considered it was more important that debtors were more likely to be at home.
- 44 A change to credit repossession law to enable repossessions on Sundays is likely to be a sensitive issue. Allowing for repossessions to occur on Sundays may be interpreted as opening the door to repossession taking place without due consideration of debtors' cultural and religious sensitivities and Sunday being family time for many people.
- 45 I have given this recommendation some thought and propose the Credit Contracts and Consumer Finance Amendment Bill should provide for repossession on Sundays. I propose to invite the Select Committee to undertake particular examination of this matter.
- 46 The Law Commission also received submissions that the law is unclear as to whether repossessions must be completed by the legislated time of 9pm or only have to be commenced by then. It recommended that a repossession commenced but not finished by 9pm should not breach the law. However, I consider there would be more certainty for debtors if the law stated repossessions must be completed by 9pm. I propose EGI agrees to address the clarification of the law but not to adopt the specific recommendation.

Licensing of repossession agents

- 47 Repossession agents are not currently licensed. Section 16 of the Credit (Repossession) Act restricts who can repossess goods, by disqualifying certain persons who have certain types of criminal convictions and making them criminally liable if they enter premises for the purpose of repossession. The Law Commission has recommended licensing noting it would offer benefits over the section 16 provisions as follows:

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- Minimum requirements could be tied to licensing, both basic requirements such as "fit and proper person" tests and more advanced competency requirements. (People in similar occupations, such as towing operators, are required to be vetted and licensed.)
 - Licensing provides a pro-active approach rather than penalising a repossession agent who does not meet the section 16 requirements after a repossession has occurred.
 - The current restrictions under section 16 are essentially self-enforced. Consumers can seek remedies through the courts but there is no agency that is charged with regulating the repossession process or to whom consumers can complain. Licensing of agents would make enforcement of the law easier, as agents who repeatedly fail to comply with the law could be deregistered. It could also assist a creditor's due diligence process when selecting a repossession agent.
 - A requirement to use a licensed repossession agent might solve the problems that arise when people conduct the private repossession of goods.
 - Licensing would assist the Police and the CCCFA regulator and would also assist debtors to identify a repossession agent for the purposes of pursuing a complaint about his or her actions if the repossession was in any way problematic.
- 48 The Law Commission has recommended that credit repossession agents be licensed through an appropriate body and noted repossession agents perform a similar role to private security personnel, who are licensed under the Private Security Personnel and Private Investigators Act, administered by the Ministry of Justice. The function of this Act is about ensuring the veracity of persons whose occupation habitually takes them into premises owned by others. Given the similarities, repossession agents could be included in the licensing regime in this Act, which would mean that the necessary protections could be provided to debtors and creditors in a least-cost way through using an existing regime.
- 49 I consider there are merits in having a licensing regime, especially protecting debtors and creditors from repossession agents who act illegally and unreasonably, as they could be excluded from the repossession industry. Accordingly, I propose EGI agrees to licensing of credit repossession agents and EGI invites the Ministers of Consumer Affairs and Justice to determine whether this is best achieved through the Private Security Personnel and Private Investigators Act or other appropriate legislation.

Car disabling devices

- 50 The Law Commission review raised the issue of disabling devices installed in cars that are security for loans. A disabling device installed in a car is used to warn the debtor that a loan payment is due or overdue, to disable the car if repayments are overdue, and to disable and locate a car for repossession if required. Warnings may be provided by the device itself and/or by text messages to the borrower. The Commission did not make a recommendation on this issue, questioning whether the issue falls within the scope of the review and whether it might already fall under repossession law.
- 51 It appears that these devices are mostly used as a tool to "encourage" regular loan repayments and that car finance companies view these devices as distinct from repossession in the credit contract process. Disabling devices are a debt management tool whereas repossession is a means of debt recovery.
- 52 Disabling devices are a fairly new development and are currently used by only a very small number of car financiers. In the United States, disabling devices are widely used. It is likely the use of disabling devices will become more common and may in future be installed in other goods such as computers and televisions.

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- 53 There has been little evidence of problems associated with disabling and the industry appears to be acting responsibly. (It has formed the Automotive Collection and Repossession Association and is developing a code of conduct.) However, in anticipation of the increasing use of disabling devices across a range of goods and recognising that the devices potentially impinge on consumers' ability to go about their lives, it would be useful to have low-level provisions in credit law to ensure that the devices are used responsibly and safely, and borrowers are made aware of how they will be used.
- 54 Accordingly, I propose the CCCFA provide creditors may only disable a car (or other good) if a loan is in default and after the debtor has been given reasonable warning, and that there must be disclosure about how the device system works and how to obtain use of a disabled car in emergencies. The Code of Responsible Lending, additionally, could provide guidance on disabling, especially around notifications and warnings.

Other recommendations

- 55 Most of the Law Commission's recommendations address aspects of the current law that are not working well or as intended, particularly concerning disclosure and penalties. The Law Commission has undertaken a very thorough review and examination of the issues. It released an issues paper in July 2011, "Review of the Credit (Repossession) Act 1997", on which the Commission received 39 submissions. It held meetings with consumer organisations, lenders, and regulatory and dispute resolution bodies alongside the Financial Summit. Meetings were also held in Otara, Glen Innes and Christchurch.
- 56 I propose EGI agrees to the other recommendations made by the Law Commission. Most of these will involve changes to repossession law that I propose are included in the Credit Contracts and Consumer Finance Amendment Bill. There are also recommendations that affect the financial sector dispute resolution schemes and I will meet with the chairs of the schemes to determine the best way to address these recommendations. There is also a recommendation concerning collecting data on credit repossessions and I propose to meet with the Law Commission and Commerce Commission to determine the best way to approach this matter.

Responsible Regulator for the CCCFA and Credit Repossession

- 57 There are two main financial market regulators in New Zealand, the Financial Markets Authority and the Reserve Bank. The Commerce Commission also has a role through the regulation of credit. Key roles are:
- The Reserve Bank: prudential regulation and the licensing of banks, non-bank deposit takers and insurance providers.
 - The Financial Markets Authority (FMA): regulating securities exchanges, financial advisers and brokers, trustees and issuers.
 - The Commerce Commission: monitoring and enforcement of CCCFA compliance.
- 58 Cabinet directed Consumer Affairs to consult the Treasury, the Ministry of Business, Innovation and Employment - Economic Development, the Commerce Commission, and the FMA on a proposal for the FMA to become the regulator responsible for monitoring and enforcement of credit under the CCCFA, and of credit repossession practices under the Credit (Repossession) Act 1997 [CAB Min (11) 40/5 refers].
- 59 A consultation Working Group with representatives from those agencies reached broad agreement that the Commerce Commission should remain the regulator for the CCCFA (the Commerce Commission and FMA expressed neutrality on the outcome).

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- 60 The main findings were that either agency could regulate the CCCFA based on organisational mandate and general skillsets, and both agencies use similar regulatory and enforcement tools (including education, collecting market intelligence, taking representative cases and providing guidance notes to businesses). Change would require the transfer of credit law expertise from the Commerce Commission to the FMA. A commonality of approach by the Commerce Commission to enforcement of the Fair Trading Act and CCCFA was also identified, and benefits recognised of regulating the Fair Trading Act alongside the CCCFA. The CCCFA also covers some types of transaction that are considered non-financial products.²
- 61 The Commerce Commission has an established profile and communications channels with consumers. The FMA works in the securities markets at present, and many of the submissions on the Securities Law Review 2010 (which led to the establishment of the FMA) wished to see the FMA's focus remain in those markets.
- 62 The costs of changing regulators were noted as: uncertainty, loss of staff and specialist skills, opportunities for gaming (by parties under investigation), costs of public and business education and some new costs for the FMA.
- 63 A paper was prepared by Consumer Affairs earlier this year for the Ministers of Consumer Affairs and Commerce. Given that either party could be the regulator and there are beneficial alignments in the status quo, the Minister of Consumer Affairs and the Minister of Commerce propose to EGI retaining regulation of the CCCFA by the Commerce Commission.

Cost of Finance Caps or Limitations

- 64 High-cost credit can lead to over-indebtedness and financial hardship. The responsible lending provisions being included in the CCCFA are designed to ensure financial providers consider the circumstances of those seeking credit and take into account whether consumers can afford repayments. However, responsible lending provisions do not prevent the provision of very high cost credit.
- 65 Some consumer organisations favour cost of finance caps to address problem debt issues and have been campaigning for interest rate or cost of finance caps for some time. As part of the consultation on the Exposure Draft Credit Contracts and Consumer Finance Amendment Bill, I invited comments on whether cost of finance caps are needed, or not, alongside the responsible lending initiatives.
- 66 At the public meetings I held, there were few comments on cost of finance caps. In the written submissions there was both support and opposition to caps. Having examined this matter, I consider that responsible lending is a significant initiative that should protect vulnerable consumers without imposing specific cost of finance limits. I do not recommend there is a cost of finance cap included in the CCCFA.

²Individuals and companies who provide hire purchase, buy-back schemes and no interest credit contracts (also covered by the CCCFA) are not considered "financial service providers" and do not need to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008

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Consultation

- 67 The Law Commission, Treasury, Economic Development Group within MBIE, Commerce Commission, Ministry of Justice, Ministry of Pacific Island Affairs and OEGI have been consulted on this paper. The Financial Markets Authority (FMA), Department of Prime Minister and Cabinet, Ministry of Social Development and Te Puni Kokiri have been informed about this paper.
- 68 It is proposed that following consideration of this paper by Cabinet the Minister of Consumer Affairs writes to the Law Commission advising it of the Cabinet decisions.

Financial Implications

- 69 The Treasury has advised that given the considerable fiscal pressures the Government is facing and its desire to return the Budget to surplus as soon as possible, funding or any other costs associated with the changes proposed in this paper will need to be met by reprioritising within existing baselines.
- 70 Including credit repossession in the CCCFA and adding monitoring of credit repossession to the Commerce Commission's responsibilities will have financial implications for the Commission. Funding of the Commission's credit enforcement activity is under its General Markets appropriation, which also covers Commerce Act and Fair Trading Act enforcement. The Commerce Commission uses its discretion to determine where it focuses its enforcement activities and any extra credit enforcement costs will be met through existing baselines of this appropriation and cost savings associated with other credit, fair trading or competition enforcement.

Human Rights

- 71 The proposals in this Cabinet paper appear to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final view as to whether the proposals will be consistent with the Bill of Rights Act will be possible once the legislation has been drafted.

Legislative Implications

- 72 The paper proposes amending the CCCFA and revoking the Credit (Repossession) Act 1997. The amendments to the CCCFA will also result in amendments to the Credit Contracts and Consumer Finance Regulations 2004 at a later stage and may result in new exemption regulations under the CCCFA. The paper also proposes amendments to the Financial Service Providers (Registration and Dispute Resolution) Act.
- 73 The Credit Contracts and Consumer Finance Amendment Bill has a priority 4 on the 2012 Legislative Programme.

Regulatory Impact Analysis

- 74 The Regulatory Impact Analysis requirements apply to the proposals in this paper and a Regulatory Impact Statement (RIS) has been prepared by Consumer Affairs, Ministry of Business, Innovation and Employment and is attached.

Quality of the Impact Analysis

- 75 The MBIE Regulatory Impact Analysis Review Panel has reviewed the RIS prepared by Consumer Affairs and associated supporting material, and considers that the information and analysis summarised in the RIS meets the quality assurance criteria.

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Consistency with Government Statement on Regulation

- 76 I have considered the analysis and advice of my officials, as summarised in the attached Regulatory Impact Statement and I am satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper:
- Are required in the public interest
 - Will deliver the highest net benefits of the practical options available, and
 - Are consistent with our commitments in the Government Statement on Regulation

Publicity

- 77 A press statement on the key decisions from this paper may be made.

Recommendations

Background

- 1 **Note** that in October 2011, Cabinet made a number of decisions to provide for responsible lending in the Credit Contracts and Consumer Finance Act 2003 (CCCFA) and submissions on an Exposure Draft Bill detailing proposed amendments to the CCCFA have indicated overwhelming support for responsible lending [CAB Min(11) 40/5 refers].
- 2 **Note** these decisions are particularly directed at bringing in tougher consumer credit laws to target loan sharks and protect unwary consumers, which is one of the key actions in the Economic Development 120 Key Actions Plan.
- 3 **Note** credit repossession is relevant to the responsible management of credit contracts and that the Law Commission in its report, "Consumers and Repossession: A Review of the Credit (Repossession) Act 1997", tabled in the House in April 2012, has made a number of recommendations to improve the workability of credit repossession law.

Amendments to the CCCFA from consultation on the Exposure Draft Bill

- 4 **Note** two areas where there are unintended costs with compliance with the CCCFA have been identified, that it would be appropriate to address in the Credit Contracts and Consumer Finance Amendment Bill:
 - 4.1 Voluntary Targeted Rates – the CCCFA continuing disclosure provisions and early repayment provisions do not fit with the administrative arrangements supporting annual rates notifications,
 - 4.2 Pawn transactions - complying with both the CCCFA and the Secondhand Dealers and Pawnbrokers Act 2004 is problematic regarding interest and disclosure.
- 5 **Agree** to amend the CCCFA to provide a new regulation-making power that particular classes of consumer credit contracts can be exempted from particular sections of the Act.
- 6 **Agree** to exempt, either by way of amendment to the Act or by progressing regulations:
 - 6.1 Voluntary Targeted Rates from the requirements in the CCCFA for six-monthly continuing disclosure and early repayment,

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- 6.2 Pawn transactions from the CCCFA disclosure, continuing disclosure, and early repayment provisions.

Credit Repossession

- 7 **Note** that the Law Commission has recommended in its report, "Consumers and Repossession: A Review of the Credit (Repossession) Act 1997", that:
- 7.1 Repossession law is included in the CCCFA and comes under the new responsible lending regime, and
- 7.2 A number of improvements to repossession law are made to improve clarity, efficiency and fairness in the application of credit repossession law.
- 8 **Agree** to add to the Draft Credit Contracts and Consumer Finance Amendment Bill provisions covering repossession of consumer goods, including consumer goods used to secure non-consumer credit contracts, as currently set out in the Credit (Repossession) Act, subject to amendments as set out below (Law Commission recommendations 1, 4).
- 9 **Agree** that the Credit Contracts and Consumer Finance Amendment Bill repeal the Credit (Repossession) Act.
- 10 **Note** that if credit repossession is included in the CCCFA and is covered by the new lender responsibilities provisions, these new provisions will address the Law Commission's recommendations 18 and 28, including consumers obtaining information in a clear and transparent manner.

Credit Repossession and Responsible Lending

- 11 **Agree** that the new lender responsibilities set out in new Part 1A (clause 7) of the Draft Credit Contracts and Consumer Finance Amendment Bill apply to credit repossession and specifically provide that the principles or code of responsible lending must –
- 11.1 Require creditors or creditors' agents who repossess consumer goods to act responsibly when dealing with a debtor in a credit repossession matter,
- 11.2 Set out the type of repossession conduct that would not be considered responsible,
- 11.3 Set out how the granting of security and repossession of goods, such as children's toys, that have high sentimental value but little or no economic value, should be approached,
- 11.4 Set out what "commercially reasonable" "and "reasonable efforts to obtain the best price" mean in different situations, including that repossessed goods must be sold in a manner that provides for competitive bids (Law Commission recommendations 12, 25, 26, 27, 34, 35 and 36).
- 12 **Note** the lender responsibilities set out in the Draft Credit Contracts and Consumer Finance Amendment Bill address the Law Commission's recommendations 18 and 28:
- 12.1 To ensure information is given to consumers in a clear and transparent manner with a view to ensure consumer understanding, and
- 12.2 The code of responsible lending is prepared in consultation with the credit industry and consumers.

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Credit Repossession, Clarity and Disclosure about What can be Repossessed

- 13 **Note** an important element of responsible lending is clear disclosure to assist a consumer's understanding before entering into a credit contract and during its administration, and that the Law Commission has made several recommendations regarding repossession consistent with this principle.
- 14 **Agree** to amend the CCCFA in the following ways to provide clarity to consumers regarding what can be repossessed:
- 14.1 Include a "checklist" as part of disclosure requirements, setting out when repossession can occur (Law Commission recommendation 2),
- 14.2 Clarify the definition of security interest in the CCCFA and provide for a plain English explanation of security interest and the consequences of giving security in schedule 1 of the CCCFA (Law Commission recommendations 3 and 17).
- 15 **Note** the Law Commission has given particular consideration to whether some goods should not be subject to repossession and has concluded that tools of trade and cars should be available for use as security but the following consumer goods should be excluded: medical equipment, bedding, portable heaters, stoves, washing machines and cooking equipment.
- 16 **Note** that Cabinet previously agreed to amend the CCCFA to require that any goods over which security is taken must be specified in the contract and the goods that are protected on bankruptcy under the Insolvency Act 2006 are also protected from secured creditors (e.g. tools of trade, necessary household furniture, and a motor vehicle up to the value of \$5,000), except if the credit contract is for purchase of the item.
- 17 **Agree** to recommend that Cabinet rescind the decision referred to in paragraph 16 above and instead, based on Law Commission's recommendations 5, 8, 9, 10, 13 and 14:
- 17.1 **Agree** to add to the CCCFA that for consumer goods to be repossessed they must be sufficiently identified in the security agreement/credit contract so they may be individually identified at the time of repossession,
- 17.2 **Agree** to add to the CCCFA that the following goods should not be subject to repossession (except when purchased through a purchase money security): medical equipment, bedding, portable heaters, stoves, washing machines, cooking equipment and refrigerators.
- 17.3 **Agree** to specifically restrict the granting of security and the subsequent repossession of passports, identity documents and credit and cash cards,
- 17.4 **Agree** to add to the CCCFA that other goods or classes of goods deemed to be exempted from repossession may be prescribed by regulation,
- 17.5 **Agree** to add to the CCCFA that taking possession of keys that open or provide access to secured property is deemed to be repossession of the secured property.
- 18 **Note** that Part 2 of the Credit Contracts and Consumer Finance Amendment Bill amends the Personal Property Securities Act 1999 to prevent the repossession of after-acquired goods unless added by the debtor and the use of power of attorney by the creditor, and that these amendments address the Law Commission's recommendations 6 and 7.

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Disclosure Before, When and After a Repossession Occurs

- 19 **Note** that to provide clearer and more meaningful information to debtors, the Law Commission has recommended improved disclosure before, at the time of and after repossession (recommendations 16, 19, 20, 21, 23, 24, 31, 32).
- 20 **Agree** the new CCCFA repossession provisions require the pre-possession notice:
- 20.1 Includes a statement of the amount needed to reinstate the agreement and payment of that amount should forestall repossession,
 - 20.2 Sets out the nature and extent of the default and what the debtor needs to do in order to remedy the default and by when,
 - 20.3 States that doing nothing is not an option,
 - 20.4 Provides information about where the debtor may go to access help,
 - 20.5 Encourages the debtor to contact the creditor,
 - 20.6 Provides details about the right to seek relief in circumstances of hardship,
 - 20.7 Provides details about dispute resolution processes and what the debtor needs to do if he or she disputes some aspect of the situation,
 - 20.8 Advises debtors to retrieve and/or delete personal information stored on computers or other devices before repossession takes place (Law Commission recommendation 11).
- 21 **Agree** that the CCCFA provides the documents that must be produced at the time of repossession additional to those to be carried forward from the Credit (Repossession) Act at sections 17 and 18 include:
- 21.1 A copy of the credit contract,
 - 21.2 A document setting out the debtor's name and property address, the repossession agent's licence number and the reason why the goods are being repossessed, and
 - 21.3 A document outlining the requirements that a creditor or repossession agent must fulfil in order to repossess goods and the debtor's rights if he or she believes that the creditor or agent has not met those requirements,
 - 21.4 A statement that the premises have been entered, the date of entry and an inventory of consumer goods taken,
 - 21.5 A statement why the goods have been repossessed, where the goods will be stored, the creditor's contact details and the debtor's rights under the consumer credit repossession legislation following the repossession of goods, including the right to make a complaint about the creditor's or agent's conduct.
- 22 **Agree** to add to the CCCFA the form and content of the pre-possession and post-possession notices may be prescribed by regulation.
- 23 **Agree** to provide in the CCCFA and Part 2 of the Schedule to the Electronic Transactions Act 2002 that if the parties agree, the repossession notice requirements may be fulfilled by electronic communication (Law Commission recommendation 24).

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The Repossession Process

- 24 **Note** the Law Commission has recommended clarifying the rules about "goods at risk", whether repossession must be completed before 9.00pm and allowing repossession on Sundays (Law Commission recommendations 29, 30 and 43).
- 25 **Note** allowing repossession on Sundays could be controversial as Sunday is the day of worship and day for family for many people.
- 26 **Agree** to provide in the Credit Contracts and Consumer Finance Amendment Bill that:
- 26.1 Repossession is allowed on Sundays, and
- 26.2 Repossession must finish by 9.00pm.
- 27 **Invite** the Minister of Consumer Affairs to draw the proposal to allow Sunday repossessions to the attention of the Select Committee examining the Bill and ask for the Committee's particular consideration of whether it should proceed.
- 28 **Agree** the definition of "goods at risk" includes where the creditor has reasonable grounds to consider the consumer is offering to sell the goods.
- 29 **Note** the Law Commission considered the various timeframes for pre-possession, repossession and post-possession requirements and have recommended some changes to achieve a level of consistency where possible, and have recommended prepossession notices have a clear expiry date (Law Commission recommendations 22, 37, 38 and 39).
- 30 **Agree** the following timeframes carried forward from the Credit (Repossession) Act to the CCCFA are amended:
- 30.1 The requirement at section 23 becomes that following service of a post-possession notice, but before the 15 day period has expired, the debtor may request the creditor to sell consumer goods immediately after the request,
- 30.2 The minimum 14 days specified in section 29(2)(b) of the Credit (Repossession) Act 1997 concerning failure by debtor to remedy fault becomes a minimum of 15 days,
- 30.3 The 10 days specified in section 33 to give the debtor and others a written statement of account becomes within five working days after the sale of goods.
- 31 **Agree** to prepossession notices having an expiry period of 28 days.

Selling of Repossessed Goods and Debtor's Liability Post Repossession

- 32 **Note** the Law Commission has identified that credit repossession law is not clear regarding debtor's liability after the sale of repossessed items.
- 33 **Agree** to provide in the CCCFA that a debtor's obligations are frozen at the time of the sale of the secured property.

Remedies and Penalties

- 34 **Note** the Law Commission has concluded there should be criminal offences for breaches of pre-possession and repossession requirements given they provide protection to debtors, for example, concerning entry of a property, and has made several recommendations to strengthen repossession penalties (recommendations 40 and 41).

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- 35 **Agree** that the CCCFA include criminal offences and penalties for breaches of the protections regarding entry of residential premises and provision of documents on entry of premises to apply to repossession agents and creditors who are complicit in the breach (sections 15, 17 and 18 of the Credit (Repossession) Act).
- 36 **Agree** that the CCCFA include orders for civil remedies against creditors and repossession agents with respect to breaches of the repossession requirements and statutory damages for breaches of prepossession disclosure requirements.
- 37 **Note** the Law Commission has recommended aligning the offences and penalties regime and the relief provisions for repossession with the penalties and offences regime and the relief provisions in the CCCFA (recommendations 45, 46, 47 and 48).
- 38 **Agree** the maximum penalty level for obstructing a creditor or agent is \$10,000 (as in the Credit (Repossession) Act), that the maximum penalty is \$30,000 for all other credit repossession offences (as in the CCCFA), that the statutory damages available for breaches of repossession disclosure requirements are the same as those currently available for breaches of the CCCFA disclosure requirements and that the relief provision for breaches of consumer credit repossession requirements match the relief provisions of the CCCFA to the extent possible (Law Commission recommendations 45, 42 and 48).
- 39 **Note** the Law Commission has identified an anomaly between the new Criminal Procedure Act 2011 limitation periods and those in the CCCFA and the Credit (Repossession) Act.
- 40 **Agree** section 105 of the CCCFA is repealed and the limitation periods in section 25 of the Criminal Procedure Act 2011 apply to offences in the CCCFA including new credit repossession offences (Law Commission recommendation 44).

Dispute Resolution

- 41 **Note** the Law Commission considers financial sector dispute resolution schemes, which all financial service providers including credit providers must belong to, can provide the appropriate forum to deal with many complaints about credit repossession practices, including oppressive exercising of powers, and has recommended section 63 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 requires scheme providers have rules to cover repossession matters (recommendations 49, 50).
- 42 **Agree** to amend section 63 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 to cover repossession matters, including oppressive exercising of powers, and to provide for adequate compensation to be awarded to complainants for non-financial loss, humiliation, stress, and inconvenience suffered as a result of the financial service providers' actions, as well as financial loss or damage, where the complaint relates to a credit repossession matter.
- 43 **Invite** the Minister of Consumer Affairs to contact the financial sector dispute resolution schemes and invite them to consider amending their rules to provide for credit repossession complaints.
- 44 **Agree** to provide in the CCCFA a mechanism for halting repossession when a repossession matter is the subject of a complaint to a creditor or to a dispute resolution scheme (made within 14 days of the creditor's decision on the complaint) (Law Commission recommendations 51 and 52).

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Licensing

- 45 **Note** the Law Commission has recommended licensing of credit repossession agents in order to provide greater protection to debtors and creditors from repossession agents who act illegally and unreasonably (recommendation 56).
- 46 **Agree** to licensing of credit repossession agents and **invite** the Ministers of Consumer Affairs and Justice to determine whether this is best achieved through the Private Security Personnel and Private Investigators Act or other appropriate legislation.

Other recommendations

- 47 **Note** the Law Commission's recommendations 54 and 55 concerning banning a person from being a creditor will be addressed by credit repossession being incorporated into the CCCFA.
- 48 **Note** that the Law Commission's recommendation 53 concerning access to dispute resolution when a credit contract is sold, is dealt with in existing law by the CCCFA and the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- 49 **Invite** the Minister of Consumer Affairs to discuss with the Commerce Commission the appropriate mechanism for addressing the Law Commission's recommendation 58 to require creditors to report 6 monthly to the regulator the number of repossessions undertaken.

Car Disabling Devices

- 50 **Note** that the Law Commission's report included discussion on whether car disabling devices should be considered a form of repossession.
- 51 **Agree** that disabling devices are not deemed a form of repossession but that because they are a form of interference with property rights the CCCFA provide that creditors may only disable a car (or other good) if a loan is in default and after the debtor has been given reasonable warning, and that there must be disclosure about how the device system works and how to obtain use of a disabled car in emergencies.

Responsible Regulator

- 52 **Note** that as directed by Cabinet, Consumer Affairs investigated the Financial Markets Authority (FMA) being the regulator responsible for monitoring and enforcement of the CCCFA and monitoring of credit repossession practices under the Credit (Repossession) Act 1997 in consultation with the Treasury, Ministry of Business, Innovation and Employment – Economic Development, the Commerce Commission and FMA.
- 53 **Note** the investigation found that either party would be well placed to be the responsible regulator but there are beneficial alignments in the status quo particularly monitoring and enforcement of credit law alongside the Fair Trading Act 1986.
- 54 **Agree** that the Commerce Commission remains the responsible regulator for monitoring and enforcement of the CCCFA, including repossession (also addresses Law Commission recommendation 57).

Legislation

- 55 **Note** the Credit Contracts and Consumer Finance Amendment Bill has a priority 4 on the 2012 Legislative Programme.

In Confidence

56 **Invite** the Minister of Consumer Affairs to issue further drafting instructions to the Parliamentary Counsel Office for the Credit Contracts and Consumer Finance Amendment Bill covering the recommendations above.

Publicity

57 **Agree** to the publication of this Cabinet Paper, the corresponding Minute and the Regulatory Impact Statement on the Consumer Affairs website, at an appropriate time.

58 **Note** a press release may be made on the main elements of the above recommendations.



Hon Simon Bridges
Minister of Consumer Affairs

5/9/12

Recommendations

CHAPTER 1 — INTRODUCTION

R1 The provisions of the Credit (Repossession) Act 1997 that are discussed in this Report should be redrafted and included in the Credit Contracts and Consumer Finance Act 2003, as part of the amendments to the latter Act that the Government is currently preparing. The provisions that are not discussed in this Report should simply be included in the Credit Contracts and Consumer Finance Act 2003.

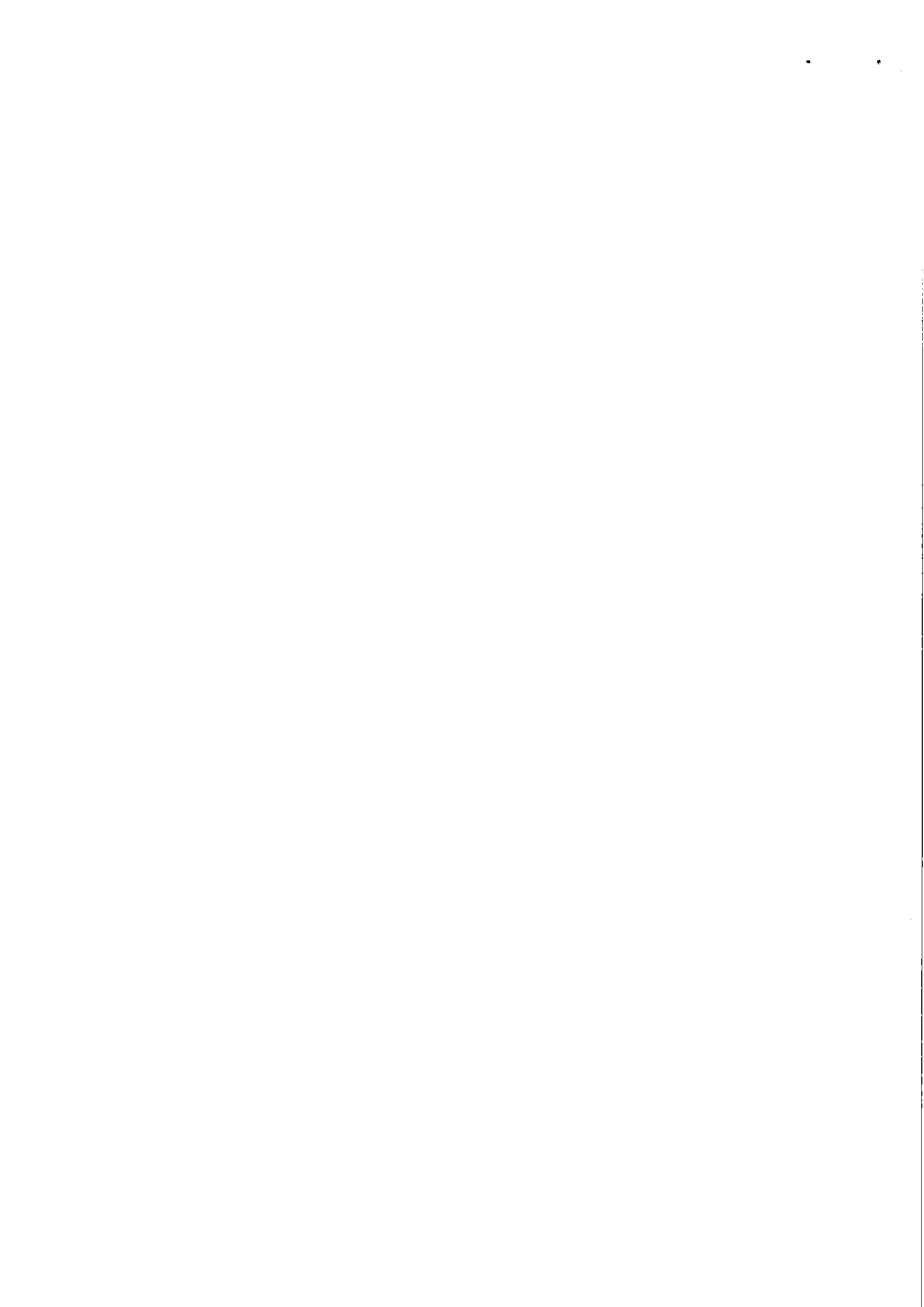
CHAPTER 3 — REPOSSESSION AND THE RIGHT TO REPOSSESS

R2 The legislation should provide a 'checklist' that is both obvious and instructive as to when repossession can occur.

R3 The definition of security interest in s 2 should be modified to more completely parallel that in s 17 of the Personal Property Securities Act 1999.

R4 The consumer credit repossession legislation should make clear that, in situations where a contract creates security interests in both consumer and non-consumer goods, it applies to the consumer goods only.

R5 The consumer credit repossession legislation should require that for goods to be repossessed they must be sufficiently identified in the original security agreement so they may be individually identified at the time of repossession.



R15 Section 35 should be redrafted in the new consumer credit repossession legislation to more clearly reflect the policy underlying it, namely that a debtor's obligations are frozen at the time of the sale of the secured property.

R16 Pre-possession notices should include a statement of the amount needed to reinstate the agreement and payment of that amount should forestall repossession.

CHAPTER 4 — INFORMING THE CONSUMER

R17 Schedule 1 to the Credit Contracts and Consumer Finance Act 2003 should be amended to remove the description of the "security interest" from the information required for initial disclosure and develop a plain English explanation of the nature of the security interest which conveys in lay terms the meaning and consequences of giving security to be included in the standard forms that are to be prescribed in an amendment to the Credit Contracts and Consumer Finance Regulations 2004.

R18 The Code of Responsible Lending should include a requirement for creditors to ensure that information is given to consumers in a clear and transparent manner with a view to ensuring the consumer understands the nature of the arrangement into which they are entering. This should include, where feasible, information in languages that the consumer readily understands.

R19 The pre-possession notice should be required by statute to:

- set out the nature and extent of the default and what the debtor needs to do in order to remedy the default and by when;
- state that doing nothing is not an option;
- provide information about where the debtor may go to access help;
- encourage the debtor to contact the creditor;
- provide details about the right to seek relief in circumstances of hardship; and
- provide details about dispute resolution processes and what the debtor needs to do if he or she disputes some aspect of the situation.

R20 The form of the pre-possession notice should be prescribed by way of regulations rather than in primary legislation.

R21 The form in which that information is required should be redesigned and the pre-possession notice should be consumer tested to ensure the notice is effective and in clear, plain English.

R22 If a repossession is to be carried out, it must occur within 28 days of a pre-possession notice being served or in the event that a complaint has been made, within 28 days of the creditor having made a decision with respect to the complaint or of a dispute resolution scheme having reached a determination with respect to the complaint. If a repossession is to be carried out after 28 days, a new pre-possession notice must be served.

R23 The post-possession notice should be redesigned and consumer tested to ensure the notice is effective and in clear, plain English.

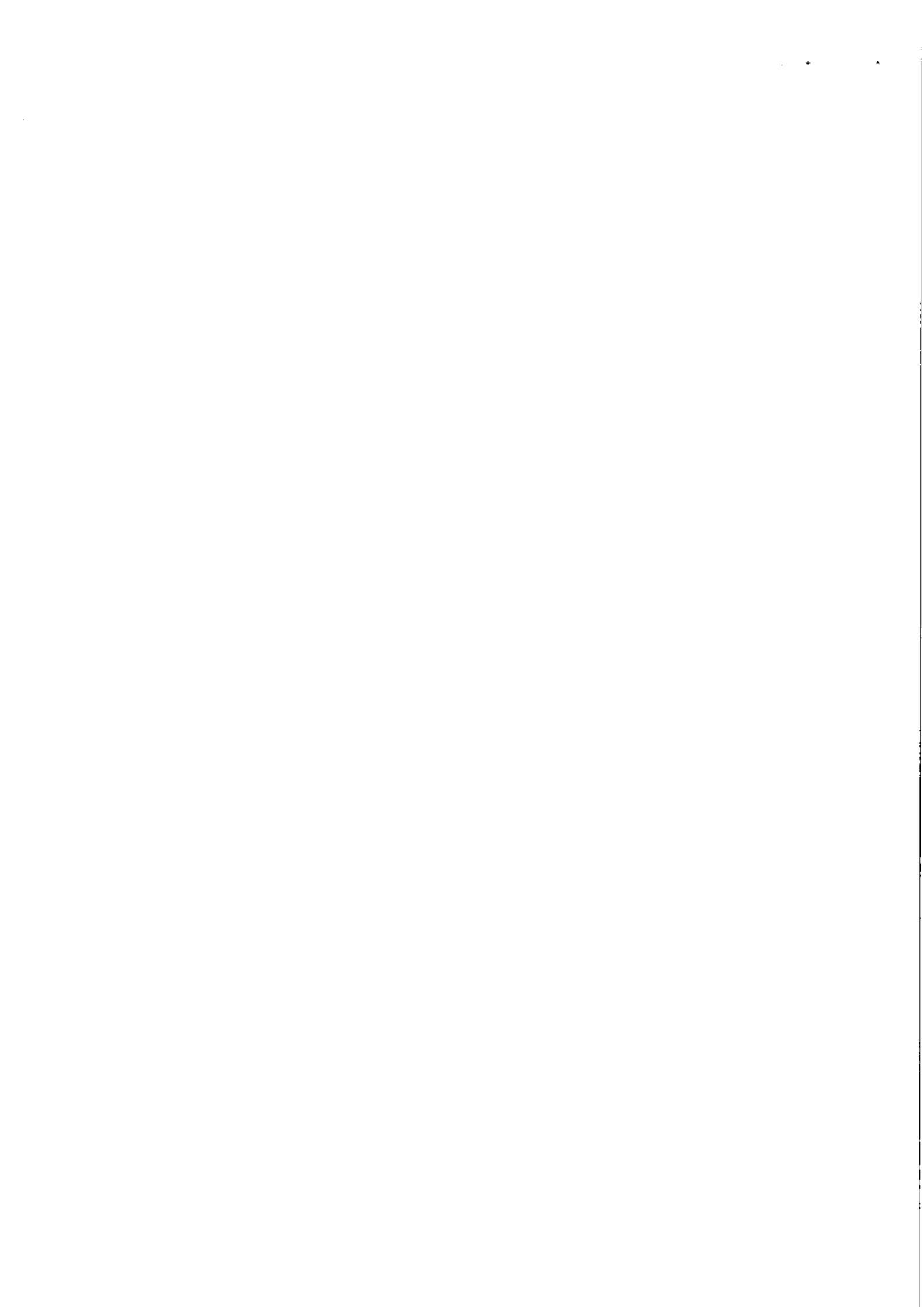
R24 The reference to ss 8, 9, 17, 20, 21, 29(2)(a), 33 and 38 of the Credit (Repossession) Act 1997 in Part 2 of the Schedule to the Electronic Transactions Act 2002 should be removed so that the notice requirements under the consumer credit repossession legislation may be fulfilled by electronic communications if the parties agree.

CHAPTER 5 — THE REPOSSESSION PROCESS

R25 Section 14 should be repealed and replaced with a provision that requires a creditor or a creditor's agent to act in accordance with the Government's proposed Code of Responsible Lending when dealing with a debtor in a credit repossession matter.

R26 The Code of Responsible Lending should apply to persons who repossess goods.

R27 The Code of Responsible Lending should require persons who repossess goods to act responsibly when dealing with a debtor in a credit repossession matter and set out the type of conduct that would not be considered to be responsible.



R35 The Code of Responsible Lending should set out what the terms "commercially reasonable" and "reasonable efforts to obtain the best price" in s 26(1) of the Credit (Repossession) Act 1997 mean in different situations.

R36 The Code of Responsible Lending should set out what does not constitute an online auction.

R37 Section 23 of the Credit (Repossession) Act 1997 should be amended to allow creditors to sell consumer goods after a post-possession notice has been served but before the 15 day period has expired if the debtor consents to them doing so.

R38 The timeframe of 14 days in s 29(2)(b) of the Credit (Repossession) Act 1997 should be amended to 15 days.

R39 Section 33 of the Credit (Repossession) Act 1997 should be amended so that a creditor is required to give the debtor and the other persons referred to in s 21A(1) of the Act a written statement of account within five working days after the sale of goods.

CHAPTER 6 — DISPUTES, PENALTIES AND REMEDIES

R40 Criminal offences should be included in the consumer credit repossession legislation for breaches of the repossession requirements currently set out in ss 15, 17, and 18 of the Credit (Repossession) Act 1997 by either creditors or repossession agents.

R41 The consumer credit repossession legislation should be amended to ensure that:

- repossession agents can receive criminal penalties and be liable for civil remedies for illegal acts that they commit during the repossession process; and
- creditors are not criminally liable for the actions of their repossession agents, unless they have been complicit in the commission of the offence; and
- debtors can seek relief from creditors for any breaches that their agents commit.

R42 All of the offences under the consumer credit repossession legislation should carry the same maximum penalty as offences under the Credit Contracts and Consumer Finance Act 2003, except the offence of obstructing a creditor or agent, which should carry the current penalty.

R43 Section 7(2) of the Credit (Repossession) Act 1997 should be amended to include offering to sell the consumer goods.

R44 Section 105 of the Credit Contracts and Consumer Finance Act 2003 should be repealed and the limitation periods in s 25 of the Criminal Procedure Act 2011 should apply to both the current offences in the Credit Contracts and Consumer Finance Act 2003 and the credit repossession offences that we are recommending be included in the consumer credit repossession legislation.

R45 The relief provision for breaches of consumer credit repossession requirements should match the relief provisions in the Credit Contracts and Consumer Finance Act 2003, to the extent that is possible.

R46 The consumer credit repossession relief provision should empower the court to make an order for compensation where a person has suffered non-financial loss or damage, humiliation or stress as a result of the actions of a creditor or a creditor's agent.

R47 Debtors should be entitled to recover statutory damages for breaches of our recommended new pre-possession notice disclosure requirements, just as they are entitled to such damages for breaches of the disclosure requirements in the Credit Contracts and Consumer Finance Act 2003.

R48 The amount of the statutory damages for breaches of our recommended new pre-possession notice disclosure requirements should mirror those available for similar disclosure requirements in the Credit Contracts and Consumer Finance Act 2003.

R49 All of the dispute resolution schemes should amend their Terms of Reference or Rules to provide for the consideration of complaints relating to the oppressive exercise of powers or rights conferred by a contract in relation to repossession.



R50 Section 63 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 should be amended to require scheme providers to issue rules that provide for adequate compensation to be awarded to complainants for non-financial loss, humiliation, stress, and inconvenience suffered as a result of the financial service provider's actions, as well as financial loss or damage, where the complaint relates to a credit repossession matter.

R51 The consumer credit repossession legislation should be amended to prevent creditors from repossessing goods, enforcing payment of a debt owed by a debtor or disposing of repossessed goods from the time that a debtor makes a complaint to the creditor until the complaint has been resolved by the creditor, to the satisfaction of the debtor, or been dealt with by a dispute resolution scheme.

R52 The amendment in R51 should provide that, if a debtor fails to make a complaint to the dispute resolution scheme of which the creditor is a member within 14 days of the debtor being advised of the creditor's decision with respect to the complaint, the creditor may take enforcement action against the debtor.

R53 The consumer credit repossession legislation should provide that, in the event that a credit contract has been sold and the original contract was with a financial service provider, only financial service providers, as defined in the Financial Service Providers (Registration and Dispute Resolution) Act 2008, should be permitted to repossess goods.

CHAPTER 7 — REGULATION

R54 Section 108 should be amended to ensure that an application can be made by any person for a court order to prohibit or restrict a person from acting as a creditor if the creditor has been convicted of one or more serious offences under the consumer credit repossession legislation or has persistently failed to comply with the provisions of that legislation.

R55 Sections 108(a)(i) and (iv) of the Credit Contracts and Consumer Finance Act 2003 should be amended to ensure that they do not target creditors who have committed a single, minor breach.

R56 Repossession agents should be licensed by an appropriate body.

R57 There should be one body responsible for performing the regulatory role under the Credit Contracts and Consumer Finance Act 2003 and the consumer credit repossession legislation.

R58 Creditors should be required to report the number of repossessions they have carried out and the location of those repossessions to the consumer credit repossession regulator every 6 months.

Regulatory Impact Statement

Responsible Lending and Changes to Consumer Credit Law

Agency Disclosure Statement

- 1 This Regulatory Impact Statement has been prepared by Consumer Affairs, Ministry of Business, Innovation and Employment. It provides an analysis of options for additional changes to credit laws following consultation on the Exposure Draft Credit Contracts and Consumer Finance Amendment Bill and consideration of the Law Commission's report "Consumers and Repossession: A Review of the Credit (Repossession) Act 1997".
- 2 This Regulatory Impact Statement is supplementary to the previous Regulatory Impact Statement: Responsible Lending Requirements for Consumer Credit Providers, October 2011. This statement noted in particular that credit laws do not provide adequate consumer protections against unscrupulous lenders operating at the third tier and that the lender practices of such credit providers result in some people getting into severe financial hardship and spiralling debt.
- 3 Cabinet agreed in October 2011 to a package of reforms to the Credit Contracts and Consumer Finance Act 2003 (CCCFA) to provide for responsible lending. The reforms complement other financial sector reforms that have been agreed over the last four years.
- 4 Submissions on an Exposure Draft Credit Contracts and Consumer Finance Amendment Bill, released in April 2012, have indicated strong support for responsible lending, improved disclosure and clearer consumer protections regarding hardship, oppressive contracts and unreasonable fees.
- 5 Submissions also identified that two types of credit contracts, voluntary targeted rates and pawnbroking, are having difficulty complying with the CCCFA disclosure and early repayment requirements. The preferred policy option to address this problem is to add a regulation-making power to the CCCFA to provide that certain consumer credit contracts can be exempted from particular provisions of the Act.
- 6 Credit repossession is one aspect of responsible lending and responsible debt management for which decisions are outstanding. The Law Commission has reviewed the Credit (Repossession) Act and identified there are particular problems with consumers having essential household items repossessed, with intimidating and unlawful behaviour by repossession agents, with contracts allowing repossession of any household items, with unclear repossession notices, with the penalty regime, and with the lack of an enforcement agency with responsibility for credit repossession law. Its main conclusion is that credit repossession should be seen as a part of the broader credit process. It has made 58 recommendations to improve clarity, efficiency and fairness in the application of credit repossession law.
- 7 The preferred policy approach reflects the Law Commission's recommendations and is to include the provisions of credit repossession law in the CCCFA and to introduce a licensing regime for repossession agents.
- 8 Evidence of market practices and consumer detriment is taken from:
 - Consultation at the Financial Summit;

- Submissions on the Exposure Draft Credit Contracts and Consumer Finance Amendment Bill;
 - The Law Commission's report, Consumers and Repossession a review of the Credit (Repossession) Act 1997, which included consultation and in depth face-to-face interviews;
 - Qualitative research commissioned by Consumer Affairs and the Families Commission; and
 - Anecdotal evidence from the case files of Consumer Affairs.
- 9 The analysis of policy options that has been undertaken is consistent with the Government Statement on Regulations. Consumer Affairs is satisfied that new regulation is required and the problem cannot be adequately addressed through private arrangements.

Evelyn Cole

Manager, Consumer Policy
Consumer Affairs, Ministry of Business, Innovation and Employment

Date

Overarching Problem

Status Quo

- 10 There are two key credit laws: the Credit Contracts and Consumer Finance Act 2003 (CCCFA) and the Credit (Repossession) Act 1997. The CCCFA is focused on promoting competition among credit providers and enabling consumers to make informed decisions. These goals are delivered through requiring disclosure of interest rates, fees and contract terms. The CCCFA also includes provisions that protect consumers in the event of unforeseen hardship and against unreasonable fees and oppressive credit contracts.
- 11 Repossession is governed by three separate pieces of legislation. The right to repossess goods owned by a defaulting debtor comes from the security clauses in their credit agreement under the CCCFA, and the Personal Property Securities Act (PPSA) and the Credit (Repossession) Act uphold the security interest and provide the procedures to be followed for repossession.
- 12 The Credit (Repossession) Act applies when there is a "security agreement" creating a security interest in consumer goods. One of the aims of the Act is to ensure that creditors and repossession agents behave appropriately in repossession situations by requiring that they follow specified processes and procedures for repossession and resale.
- 13 In October 2011 Cabinet agreed to a package of reforms to the Credit Contracts and Consumer Finance Act to provide for responsible lending [CAB Min (11) 40/5 refers]. The package includes:
 - A requirement that lenders must exercise the care, diligence and skill of a responsible lender when considering credit applications and during the life of the loan by complying with a Code of Responsible Lending;
 - Providing that borrowers will not have to pay interest or fees if their lender is not registered, as required, on the Financial Service Providers Register;
 - Disclosure before the loan contract is signed and a longer five-working day cooling off period, rather than the current three days;
 - Easy-to-read disclosure requirements, including advice on dispute resolution services and hardship provisions and a list of specific goods used as security against the loan; and
 - Changes to the rules around oppressive credit contract provisions and hardship applications to provide increased consumer protection.
- 14 The proposed changes are set out in the Exposure Draft Credit Contracts and Consumer Finance Amendment Bill.
- 15 During 2011, the Law Commission undertook a review of the Credit (Repossession) Act. The Law Commission's final report "Consumers and Repossession: A Review of the Credit (Repossession) Act 1997" was tabled in the House by the Minister responsible for the Law Commission in April 2012.

Problem

Credit Contracts and Consumer Finance Act

- 16 In addition to the problems addressed by the Exposure Draft Credit Contracts and Consumer Finance Amendment Bill, an issue that was raised by submitters is that there are compliance issues for two specific types of credit contracts. These are voluntary targeted rate schemes by local government councils and pawnbroking contracts.
- 17 For pawnbroking contracts there is a problem with the interaction of the CCCFA and the provisions of the Secondhand Dealers and Pawnbrokers Act with which pawnbrokers also must comply. In practice pawnbrokers are required to provide two disclosure documents in order to be fully compliant. This creates an unnecessary compliance cost and double disclosure is confusing for consumers.
- 18 For voluntary targeted rates schemes provided by local government councils such as the Warm Up New Zealand scheme, the on-going disclosure required under the CCCFA does not fit with the timing of rates charges and there is a technical issue with the early repayment provisions in the CCCFA. Councils have indicated that they do not currently comply with the CCCFA.

Repossession

- 19 The Law Commission has identified a number of problems in the area of credit repossession. These are:
- Goods are repossessed wrongfully and/or without proper warning as required under the Credit (Repossession) Act;
 - Essential household items are repossessed causing consumer detriment;
 - Items that belong to debtors' children or flatmates are repossessed;
 - Credit contracts contain very broad security clauses that allow repossession of any goods from the homes of borrowers in default and for repossession agents to return to take more household effects if the sale of the goods does not clear the debt. Some contracts also contain power of attorney clauses that purport to allow the creditor to add other goods to the security;
 - Repossession agents behave aggressively and threaten to return to take further goods;
 - Debtors do not receive fair value for their goods or are unable to make the best decisions in relation to their loan after repossession;
 - Debtors do not enforce their rights or seek relief or redress (self-enforcement is not working); and
 - Penalties in the Credit (Repossession) Act favour the creditor.
- 20 The Law Commission has made 58 recommendations covering the above points and what may be repossessed, disclosure, process, penalties, remedies and redress and regulation. The Law Commission has also noted the law is unclear with respect to remote disabling devices.

Measure of Consumer Detriment/Magnitude of the Problem

- 21 In the area of pawnbroking and voluntary targeted rates schemes the level of consumer detriment is not considered to be high. Consumer Affairs is not aware of consumer complaints relating to these types of credit contracts. This is likely because pawnbrokers and local government councils are not complying with the CCCFA. The detriment is in the compliance costs for pawnbrokers and local government if they comply with respectively the Secondhand Dealers and Pawnbrokers Act and the Local Government (Rating) Act 2002.
- 22 There is a lack of information available on the nature and scale of problems associated with repossession. Repossession is a civil matter, administered without central oversight and for borrowers it is a source of embarrassment and not widely talked about.
- 23 Qualitative research carried out by the Families Commission notes that half of 40 families interviewed reported having items repossessed and that repossession had resulted in the loss of essential items and stress and embarrassment¹. Information from the case files of Consumer Affairs shows that creditors do not always follow the required procedures, and repossession agents' conduct is sometimes aggressive and intimidating this information reveals that significant problems are occurring in some cases, but not their extent across the industry as a whole.
- 24 Research for Consumer Affairs found that an estimated 130,580 people accessed a third tier credit provider in 2010 and 2011². Finance companies submitting on the Law Commission's review of the Credit (Repossession) Act noted that repossessions occurred in relation to less than one per cent of clients, this would suggest that approximately 1300 households experienced repossession in 2010 and 2011³. There are 29 specialist repossession agencies listed in the Yellow Pages, however, it is noted that companies may carry out repossession "in house".

Objectives of Government Action

- 25 Reforms to consumer credit and credit repossession laws aim to increase consumer protection in credit markets, promote confident and informed participation by consumers in credit markets and to promote and facilitate fair, efficient and transparent credit markets.
- 26 The reforms are a component of reforms in the financial sector since 2008 that have had the following objectives:
- A sound and efficient financial system;
 - Investment which encourages growth and innovation;
 - An environment which facilitates wealth accumulation;
 - Confidence in the sector which encourages participation by consumers and market participants;

¹ Families Commission. *Escaping the Debt trap: Experiences of New Zealand Families Accessing Budgeting Services*. Wellington: Families Commission, 2009

² Colmar Brunton. *Using a Third Tier Lender: experiences of New Zealand borrowers*. Wellington: Ministry of Consumer Affairs, 2011.

³ In fact as many borrowers had borrowed multiple times from the same lender or from multiple lenders this number is likely to be higher. Additionally this research only focussed on third tier lenders, many second tier lenders carry out repossession it is likely that a greater number of households have experienced repossessions. Colmar Brunton. *Using a Third Tier Lender: experiences of New Zealand borrowers*. Wellington: Ministry of Consumer Affairs, 2011.

- To better protect consumers; and
- To meet international commitments and standards.

27 The objective of credit repossession law is to:

- Balance the rights of creditors and consumers when there is a credit default;
- To enable creditors to access security when a debt is in default; and
- To provide protection to consumers from unreasonable repossession and a creditor entering the home at certain hours and without proper notice and the opportunity to rectify the default.

28 The framework for consumer credit and credit repossession law, including responsible lending, which meets the objectives is as follows:

<p>Responsible lending – before entering into and throughout the management of a contract or lease, including credit repossession</p>	<p>Information disclosure – to allow consumers to make more informed decisions and to allow consumers to understand the consequences of repossession</p>	<p>Promotion of competition – through disclosure that allows comparison of offerings</p>	<p>Consumer protection –from unreasonable, harsh and oppressive behaviour -from unreasonable credit repossession practices, including repossession of essential household items and entry into a home without notice</p>
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Regulatory Impact Analysis of Specific Proposals

NON-STANDARD CREDIT CONTRACTS	
<p>Status Quo</p>	<p>At present, the CCCFA allows for particular types of credit contract to be exempted from its requirements altogether, subject to requirements defined in regulations. However, there is no possibility for partial exemption from only some of the requirements of the CCCFA. This is an issue for two forms of non-standard credit contract; voluntary targeted rate schemes operated by local and city councils and pawnbroking. The lack of flexibility to partially exempt forms of credit could also become an issue in the future as new means of lending develop and require regulation.</p> <p>These two forms of lending present different specific problems, but have in common that only particular aspects of the CCCFA protections are problematic. As such, policy options for both problems are presented together.</p>

VOLUNTARY TARGETED RATES	
<p>Status Quo</p>	<p>Voluntary targeted rate (VTR) schemes work in association with annual rates and are attached to a property. They are in place to provide credit assistance to ratepayers on reasonable terms. Currently, several regional and district councils provide VTR in association with the Warm Up New Zealand scheme, to help ratepayers fit their homes with insulation⁴.</p> <p>Councils offering VTR schemes are consumer credit providers in that they advance credit and charge interest (through rates). It is appropriate that they come under the general provisions of the CCCFA, including that they provide initial disclosure of terms and conditions at the time the contract is entered into, engage in responsible lending and register and join a dispute resolution scheme as required under the Financial Service Providers (Registration and Dispute Resolution) Act.</p>
<p>The Problem and its Source/What is the Problem?</p>	<p>There are two specific problems for councils in complying with the CCCFA:</p> <ul style="list-style-type: none"> • The CCCFA requires that every creditor must disclose to the debtor every 6 months the unpaid balance, interest charges and amounts paid over the previous period. However, rates are determined and disclosed annually. Councils advise that current administrative settings cannot support six-monthly disclosure. • If rates are calculated annually but then paid before the end of the year, councils may find themselves having charged interest that has not yet fallen due, which creates a technical breach of the CCCFA. Administrative arrangements would need to be significantly changed in order to refund ratepayers the very small amount of interest that would be prepaid. <p>Councils are currently not complying with the provisions in the CCCFA. Councils are concerned that they could be found in breach of the CCCFA and that costs of compliance with the above provisions in particular would be significant and unjustified.</p>
<p>Measure of Consumer Detriment/Magnitude of Problem</p>	<p>VTRs can be used to provide assistance to consumers for potential projects, in conjunction with local or central government, or some combination of the two. These schemes are likely to relate to improvements in housing or property infrastructure that have the possibility to significantly benefit consumers. An current example of a VTR scheme is Warm Up New Zealand.</p> <p>The Warm Up New Zealand scheme is a \$347 million Government initiative which provides assistance to consumers, with more than 133,000 households having received assistance in retrofitting insulation.</p> <p>If local government bodies exit the scheme or are dissuaded from initiating or entering future schemes (due to unwillingness or inability</p>

⁴ Payment is the grant plus currently 7% interest.

	<p>to comply with the CCCFA) consumers will lose the ability to defer repayment of debts incurred in relation to these schemes. This is likely to result in many consumers being unable to engage in the schemes and receive their benefits.</p> <p>Consumer Affairs has not been made aware of consumer complaints relating to VTRs and the Warm Up New Zealand scheme not complying with the CCCFA.</p>
Measure of Local Government Detriment	<p>There is a cost to local government bodies who risk being found in breach of the CCCFA by not providing six monthly disclosure statements. For an early repayment the administrative cost of providing a refund on prepaid interest would be significantly more than the refund the ratepayer would receive.</p> <p>Local government bodies advise that if they are not exempted they will continue to be unable to meet their legal obligations. Consequently they may withdraw from the Warm Up New Zealand scheme, leaving existing ratepayers obliged to repay their retrofit costs without deferred payments. In addition, Councils may be unlikely to engage in future VTR schemes, limiting consumer access.</p>
Measure of Business Detriment	<p>Demand for insulation retrofitting would decline if councils stopped providing VTR for the Warm up New Zealand Scheme. Insulation installers and manufacturers would also be affected.</p>
Measure of Government Detriment	<p>VTR schemes provide a useful avenue for local and central government policy interventions that share costs with consumers. They represent an opportunity to minimise the cost of large scale policy interventions, usually in relation to housing.</p> <p>The Warm Up New Zealand scheme has had benefits for Government in the form of health benefits.</p> <p>A report on the programme found that the programme as a whole has had sizeable net benefits, with the central estimate of programme benefits being almost five times resource costs attributable to the programme. The central estimate of gross benefits for the programme is \$1.28 billion compared with resource costs of \$0.33 billion, a net benefit of \$0.95 billion⁵.</p>
The likely consequences of taking no policy action/ Cost of Status Quo	<p>Local government bodies are currently unable to comply with the law.</p> <p>Local government representatives have advised they may cease participating in the Warm Up New Zealand scheme. This would have negative consequences for consumers who are ratepayers, for the insulation industry and for government.</p>
Objectives of Government	<p>Enable the Warm Up New Zealand scheme (and similar schemes</p>

⁵ Grimes, A., Denne, T., Howden-Chapman, P., Arnold, R., Telfar-Barnard, L., Preval, N., & Young, C. (2011). *Cost Benefit Analysis of the Warm Up New Zealand: Heat Smart Programme*. Wellington: Ministry of Economic Development.

action	based on VTRs) to function in compliance with the CCCFA without compromising the basic principles of the CCCFA: to ensure adequate disclosure and protect consumers from unreasonable practices.
PAWNBROKING	
Status Quo	<p>Pawnbroking transactions are credit contracts where a consumer takes an item of value to a pawnshop to use as security against a loan. The consumer has a fixed period to repay the amount owing (the redemption price) and if the consumer fails to do so the item is sold. Where the item is sold for a price that is less than the amount of the loan that loss is incurred by the pawnbroker. Where the item is sold for a price that is greater than the redemption price, 90 per cent of the additional profit must be given to the consumer.</p> <p>The risk to consumers with this type of loan is limited as the loans are well understood and there is not the potential for a "debt spiral" as in other consumer loans. Pawn transactions are typically for small amounts of money⁶.</p> <p>Pawnbroking involves a deferred payment of a debt and thus must comply with the CCCFA. Pawnbroking is also governed by specific protections in the Secondhand Dealers and Pawnbrokers Act 2004 (SDPA). The two Acts focus on consumer protection and crime prevention respectively.</p> <p>The two Acts contain different requirements in relation to disclosure, interest and fees.</p>
The Problem and its Source/What is the Problem?	<p>In order to comply with their legal requirements a pawnbroker either needs to provide two separate disclosure statements to the consumer or be non-compliant.</p> <p>In the CCCFA, interest is presumed to be a rate and accrues over the term of the loan. Interest must be disclosed separately from fees. Under the SDPA however the pawnbroker is only allowed to charge an amount which is the difference between the amount of the loan and the redemption price that the consumer pays back. This flat amount is termed "interest" for the purposes of the SDPA and there are no fees allowable.</p>
Measure of Consumer Detriment/Magnitude of Problem	Consumer's receiving two different disclosure documents may find this confusing. (This is not a current problem as it is understood pawnbrokers are not meeting the CCCFA requirements. Compliance costs (caused by uncertainty for pawnbrokers) could lead to higher pawn costs.
Measure of Business Detriment	The conflicting requirements in the CCCFA and SDPA mean that pawnbrokers are required to carry out double disclosure, and there is uncertainty on how some provisions apply. Where pawnbrokers do

⁶ According to the New Zealand Licensed Traders Association (in a submission on the 2009 Review of the Operation of the Credit Contracts and Consumer Finance Act) the pawn agreements typically involve advancements of \$100 or less. The New Zealand Licensed Traders Association represents second-hand dealers and pawnbrokers.

	not comply with the CCCFA there is a risk and cost associated with Commerce Commission investigation and prosecution.
The likely consequences of taking no policy action/ Cost of Status Quo	Pawnbrokers will be required to provide two forms of disclosure. This has compliance costs for pawnbrokers and may be confusing for consumers.
Objectives of Government action	To promote consumer protection and transparency in the pawnbroking process.
POLICY OPTIONS: VOLUNTARY TARGET RATES AND PAWNBROKING	
1 No change	<p>Consumer Affairs does not support this option.</p> <p>This option is not recommended as local government bodies are currently unable to comply with the law. Local government representatives have advised they may cease participating in the Warm Up New Zealand scheme; this would be to the detriment of consumer ratepayers and the government.</p> <p>In addition, pawnbrokers will continue to incur compliance costs in complying with both Acts and there is no additional consumer benefit.</p>
2 Include a regulation-making power to exempt credit contracts from aspects of the CCCFA	<p>The CCCFA could be amended to include a regulation-making power which would allow the Government to exempt certain credit contracts from aspects of the CCCFA where this is appropriate.</p> <p>This would enable the Government to exempt councils providing VTRs from the requirement to provide six-monthly disclosure and to not charge interest before it has fallen due.</p> <p>It could also be used to address issues for pawnbrokers. Regulations could be passed to exempt pawnbrokers from the initial disclosure requirements of the CCCFA (where pawnbrokers provide SDPA disclosure). Additionally pawnbrokers could be exempt from the on-going disclosure and pre-payment requirements as these are not relevant for short-term pawn contracts.</p> <p>The other provisions of the CCCFA would continue to apply to VTR and pawnbroking transactions. This is appropriate as there are relevant consumer protections such as access to relief in cases of unforeseen hardship and access to dispute resolution.</p> <p>The regulation making power would also enable the government to respond in a similar manner to new forms of lending that should more appropriately be dealt with through partial exemption as they arise in the market.</p> <p>VOLUNTARY TARGETED RATES</p> <p>Costs to Consumers</p> <p>There would be a small cost to consumers where loans are repaid early. This loss needs to be balanced against loss of access to VTR schemes and low interest loans. The annual rates disclosure, whilst not compliant with the CCCFA is sufficient for consumers to know their debt obligations.</p>

	<p>Benefits to Consumers Continued access to credit through VTRs.</p> <p>Consumers would benefit from the other protections of the CCCFA such as up front disclosure and protections in cases of unforeseen hardship.</p> <p>Costs to Local Government Local Government would still be required to comply with other provisions of the CCCFA. Complying with the provisions in the CCCFA, other than on-going disclosure and early repayment of credit, has not been raised as an issue.</p> <p>Benefits to Local Government The removal of compliance costs associated with complying with the provisions.</p> <p>PAWNBROKERS</p> <p>Costs to Consumers There are no costs identified for consumers.</p> <p>Benefits to Consumers Consumers would not need to receive double disclosure when entering into a pawnbroking agreement, avoiding potential confusion.</p> <p>Costs to Businesses Pawnbrokers would not be exempt from the provisions of the CCCFA in full. It is noted that the new responsible lending provisions will apply to pawn contracts. One submitter made the point that this was inappropriate as the consumer is not obliged to repay a pawn contract (so capacity to repay is less important). In response to this concern it is considered that if the consumer did not intend to reclaim the pawned item then the consumer would have sold the item in the first instance. Consumer Affairs considers that it is appropriate for the responsible lending provisions to apply to pawn agreements. The issue of how responsible lending applies to very small amount loans will be addressed in the Code of Responsible Lending.</p> <p>Benefits to Businesses Pawnbrokers will have reduced compliance costs as they would not need to provide CCCFA disclosure.</p>
<p>3 Exempt local councils and pawnbroking from the CCCFA in full</p>	<p>Consumer Affairs does not support this option.</p> <p>There are important consumer protections in the CCCFA which are relevant to voluntary targeted rates schemes and pawnbroking and should be maintained.</p> <p>VOLUNTARY TARGETED RATES</p> <p>Costs to Consumers Ratepayer consumers who use in VTR schemes such as Warm Up New Zealand at present have the protections of the CCCFA including up front disclosure of the terms and access to a free and independent disputes resolution scheme. If Local Government was exempted from the CCCFA in full then consumers would lose these protections. There are not equivalent protections in local government</p>

	<p>laws to those in the Student Loans Act which supported student loans being exempt from the CCCFA.</p> <p>Consumer Affairs accepts that local government bodies are unlikely to take advantage of ratepayers but considers that there is not justification for completely exempting VTRs from the CCCFA and it is preferable to retain as many consumer protections as practicable.</p> <p>Benefits to Local Government</p> <p>The main benefit to Local Government is that councils would not have to register as Financial Service Providers and join an independent disputes resolution scheme. This would decrease costs.</p> <p>PAWNBROKERS</p> <p>Costs to Consumers</p> <p>Consumers would lose access to current CCCFA protections such as access to relief in instances of hardship, protection from oppression and access to independent dispute resolution. Consumers would also not have the protections of the new responsible lending provisions.</p> <p>It appears that many pawnbroking agreements are entered into by vulnerable low-income consumers for whom these additional protections are particularly important.</p> <p>Benefits to Consumers</p> <p>The benefits to consumers are as above.</p> <p>Benefits to Businesses</p> <p>Being exempted from the CCCFA in full would lead to a reduction in compliance costs for pawnbrokers.</p>
REPOSSESSION: ENFORCEMENT	
Status Quo	<p>The Credit (Repossession) Act is self-enforcing legislation. Where a credit provider or repossession agent contravenes the provisions of the Act a consumer would need to resolve the issue with the lender or take a case to a disputes tribunal or court to seek relief.</p> <p>The Act gives repossession agents intrusive powers and does not provide consumers with adequate protection from abuse of those powers.</p> <p>What penalties the Act has, seem to favour the creditor. For example, with respect to the right of entry to seize goods, there are no penalties for creditors who do not follow the rules for entry (for example, entering in a manner that is unreasonable or at prohibited hours). On the other hand, a person who obstructs the repossession of goods is liable on conviction to a fine of up to \$10,000.</p>
The Consumer Problem and it's Source/What is the Problem?	<p>For credit repossession self-enforcement is not effective. Evidence from case files of Consumer Affairs shows that behaviours are carried out by repossession agents which contravene the Credit (Repossession) Act. It appears that the regime is essentially</p>

	<p>unenforced.</p> <p>As noted above, where a credit repossession agent or lender has breached the provisions the consumer would need to seek redress from a disputes tribunal or court. The consumer would need to know their rights and be prepared to enforce them in order for self-enforcement to be effective. The National Consumer Survey carried out for Consumer Affairs in 2009 found that only one per cent of consumers can name the Credit (Repossession) Act (let alone have knowledge of its provisions)⁷. As many consumer goods depreciate rapidly upon the consumer purchasing and taking possession (as pointed out by submitters on the Law Commission's review) the value of items repossessed may be low. As such consumers may not consider that it is worth the effort required to dispute the matter.</p> <p>Consumers who borrow in third tier credit markets often have particular vulnerabilities such as:</p> <ul style="list-style-type: none"> • A lack of financial literacy (some families do not understand the credit contracts they have signed⁸); • English as a second language (this has been identified as a particular vulnerability for Pacific borrowers⁹); • Low household incomes, the Families Commission noted that common characteristics of third tier borrowers include: main income from a benefit, dependent children, living in rented accommodation, single parents¹⁰; and • Addictions (debts are often caused by addictions to alcohol, drugs or gambling¹¹. In Australia 8 per cent of problem gamblers have accessed small amount credit¹²). <p>These vulnerabilities, coupled with the shame associated with having items repossessed may mean that consumers are unlikely to seek remedies for breaches of credit repossession law.</p>
<p>Measure of Consumer Detriment/Magnitude of Problem</p>	<p>The Law Commission noted in its issues paper that the Disputes Tribunal decisions database reveals only a handful of decisions addressing the Credit (Repossession) Act, this is surprising for an Act that has been in force for nearly 15 years and may suggest that consumers are not taking action where repossession agents breach the Act.</p> <p>Some examples of behaviours which would contravene the Credit (Repossession) Act and in some cases the CCCFA from case files at</p>

⁷ Colmar Brunton. (2009). *National Consumer Survey*. Wellington, New Zealand: Ministry of Consumer Affairs.

⁸ Families Commission. *Escaping the Debt trap: Experiences of New Zealand Families Accessing Budgeting Services*. Wellington: Families Commission, 2009.

⁹ Anae, Melani, and Eve Coxon. *Pacific Consumers' Behaviour and Experiences in Credit Markets with particular reference to the "Fringe Lending" Market*. Wellington: Ministry of Consumer Affairs, 2007.

¹⁰ Families Commission. *Escaping the Debt trap: Experiences of New Zealand Families Accessing Budgeting Services*. Wellington: Families Commission, 2009.

¹¹ Families Commission. *Escaping the Debt trap: Experiences of New Zealand Families Accessing Budgeting Services*. Wellington: Families Commission, 2009.

¹² Australian Treasury. *The Regulation of Short Term, Small Amount Finance: Regulation Impact Statement*. Canberra: Australian Treasury, 2011.

	<p>Consumer Affairs include:</p> <ul style="list-style-type: none"> • Failure of the lender to obtain a fair price for the repossessed items (as is required in the Act). For example where a car is repossessed and car dealers on-sell vehicles at a reduced rate to another dealer. In research carried out for Consumer Affairs one respondent explained: <p><i>"But you see what happens is you go through the process and you come in and you buy your car and you might be able to maintain payments for six months, the car is repossessed, your twelve thousand dollar car. Then, under the act, they've got to get the best possible market price for that vehicle and it's very seldom challenged because they will put down that the car was sold for two and a half thousand... you'll find that that car was sold in theory to another car dealer who subsequently two days later sold it back again for twelve thousand dollars. Now how can you say that that's a fair and reasonable price for that car dealer to pay two and a half thousand when you can sell it two days later for twelve thousand?"¹³</i></p> <ul style="list-style-type: none"> • Some creditors fail to provide the pre and post-repossession documents that are required. Examples from the Consumer Affairs case files include: <p><i>The consumer's car was repossessed in 2003 due to non-payment. The creditor sold the car and filed for a judgement debt. The consumer doesn't know how much he owes because he was never given a statement of account after sale.</i></p> <p><i>The consumer bought a van on finance in 2006. He became unemployed suddenly and missed two instalments. He told the creditor about his circumstances, but no agreement was reached over the phone. He managed to pay \$370, but the creditor repossessed his car regardless. He was not given a prepossession notice and there was no reason for the creditor to consider the goods were at risk. The consumer said the repossession agent was "very aggressive".</i></p>
<p>Measure of Business Detriment</p>	<p>It would appear that few credit contracts end in repossession and repossession is a last resort for credit providers. Finance companies submitting on the Law Commission's review of the Credit (Repossession) Act submitted that repossessions occurred in relation to less than one per cent of their clients.</p> <p>The business detriment associated with poor enforcement of credit repossession law is likely to be low.</p>
<p>The likely consequences of taking no policy action/ Cost of Status Quo</p>	<p>The consumer detriment described will not be addressed; credit repossession laws will remain largely unenforced and ineffective.</p>
<p>Objectives of Government action</p>	<p>Credit repossession law should provide clear rules for lenders who repossess items and effective protections for vulnerable consumers.</p>

¹³ Anae, Melani, and Eve Coxon. *Pacific Consumers' Behaviour and Experiences in Credit Markets with particular reference to the "Fringe Lending" Market*. Wellington: Ministry of Consumer Affairs, 2007.

POLICY OPTIONS: REPOSSESSION ENFORCEMENT	
<p>1 No change</p>	<p>Consumer Affairs does not support this option. The consumer detriment outlined above will not be addressed.</p> <p>Credit repossession law would remain largely unenforced.</p>
<p>2 Include the provisions of the Credit (Repossession) Act in the CCCFA so that the Commerce Commission becomes responsible for the enforcement of credit repossession law</p>	<p>This is Consumer Affairs' preferred option.</p> <p>The Law Commission has recommended the provisions of the Credit (Repossession) Act 1997 are included in the CCCFA.</p> <p>The effect of including the provisions of credit repossession law in the CCCFA would be that the Commerce Commission, as the enforcement agency for the CCCFA would have responsibility for the enforcement of repossession law.</p> <p>The Law Commission noted broad support for a "one process – one statute" approach.</p> <p>Consumer Benefit Having an agency charged with enforcement of credit repossession law would provide a greater level of protection for consumers than is currently available. Over time the presence of an enforcement agency enforcing the provisions would be expected to improve market conduct to the benefit of consumers.</p> <p>Consumer Cost The limited business costs associated with compliance discussed below could be partly or wholly passed on to consumers.</p> <p>Business Cost There may be a business cost in changing processes for business that carry out repossessions which do not comply with the Credit (Repossession) Act provisions at present.</p> <p>As the provisions of the Act will not substantially change (it will simply be enforced by an agency) there should not be compliance costs for creditors and repossession agents who are already compliant.</p> <p>Government Costs This proposal would be a further increase in the responsibilities of the Commerce Commission which have already been increased by the new responsible lending provisions.</p> <p>The Commerce Commission would be expected to meet the requirements within baseline. Credit enforcement activity is part of the Commission's General Markets appropriation, which also includes Commerce Act and Fair Trading Act enforcement. An increased emphasis on credit enforcement due to the inclusion of repossession could lead to a reduction in enforcement activity in relation to these other two areas.</p>

REPOSSESSION: DISCLOSURE AND WHAT CAN BE REPOSSESSED	
<p>Status Quo</p>	<p>There is some ambiguity as to whether specification of goods used as security is necessary. Specification is not always necessary under the PPSA to create a valid security interest. The Credit (Repossession) Act does not specifically require specification of goods but Schedule 1 which sets out the form of the pre-possession notice requires creditors to "describe" the goods that are to be repossessed.</p> <p>There is ambiguity about whether a consumer credit contract is legally able to contain a clause which purports to give creditors security over all present and after-acquired property (an All PAAP clause).</p>
<p>The Consumer Problem and it's Source/What is the Problem?</p>	<p>There are a number of problems with credit repossession which relate to what can be repossessed and the disclosure of security for consumers. Where security is not clearly itemised in the credit contract this can lead to issues in the repossession process. Issues include:</p> <ul style="list-style-type: none"> • Some credit contracts contain broad "dragnet" security which purport to allow the creditor to repossess all of the consumers present and after acquired property; • Some credit contracts include a power of attorney clause which is used by the creditor to add additional security items to the credit contract without the borrower's permission; • Repossession agents sometimes repossess goods which do not belong to the debtor at all, but may belong to the debtor's flatmates; • Some creditors repossess essential household items which causes a high level of consumer detriment. These consumer goods often have a low resale value so are not helpful in clearing the consumer's debt; and • Some credit providers repossess items with high personal value but low financial value (such as emotionally valuable items such as family photographs, or items of cultural value such as tapa cloths) it would appear that in these cases repossession is used to compel the consumer to repay the debt rather than to sell to reduce the debt.
<p>Measure of Consumer Detriment/Magnitude of Problem</p>	<p>As noted there are difficulties in quantifying the consumer detriment as repossession is a civil matter without central oversight.</p> <p>Examples from Consumer Advisors of consumer detriment arising where security is not itemised and disclosed are:</p> <ul style="list-style-type: none"> • <i>When the consumer arrived home, the repossession agents had forced entry by breaking a window at the rear of their house and taken most of their household possessions. The consumer said many of the things which were taken did not belong to him.</i> • <i>The contract contains an All PAAP and a term stating: "if you</i>

	<p><i>have granted security over after-acquired property and if you obtain consumer goods in future, you must appropriate these goods to the lender's security interest".</i></p> <ul style="list-style-type: none"> <i>The consumer was later adjudicated bankrupt. When she told the creditor of this, they sent a repossession agent to her home. The agent seized all of her property, including things that the consumer told them belonged to her boyfriend and her children. The consumer said the creditor began "...a campaign of bullying and intimidation which included contacting members of my extended family and making threats". The creditor also went to storage business where the consumer rented a container and presented "a warrant to repossess" to the owner and said they had to comply. The owner thought this was a court document and gave them access to the container. The agent took everything including low value, sentimental items such as the children's art and school work and furniture the consumer had since she was a child. The creditor told the consumer that as soon as they acquire any new goods, these would be taken. The creditor relied on an All PAAP in the contract.</i> <i>The consumer and his sister took out a loan. They subsequently bought a car. The creditor sent them a letter saying they had taken out security interest on the car based on an All PAAP and threatened to take it unless they paid an extra \$50 per week on the loan.</i> <p>The Law Commission noted it saw a number of contracts with all PAAP clauses. The Commission notes it was advised of a number of situations where goods were repossessed which did not belong to the debtor.</p> <p>Consumer Affairs has seen a number of contracts with all PAAP and power of attorney clauses.</p>
<p>Measure of Business Detriment</p>	<p>Repossession is relatively uncommon. Submitters on the Law Commission's review of the Credit (Repossession) Act noted that repossession occurs in less than one per cent of credit contracts. Repossession is seen as a last resort by many finance companies.</p> <p>Business detriment associated with the status quo is likely to be low.</p>
<p>The likely consequences of taking no policy action/ Cost of Status Quo</p>	<p>The consumer detriment outlined above will not be addressed. The Law Commission noted that an important part of resolving the conflict around repossession is to ensure clarity as to which goods are liable for repossession and which are not.</p>
<p>Objectives of Government action</p>	<p>To ensure that there is clarity for both parties about which goods are liable for repossession and which are not and to ensure that consumers do not lose essential household items and items of high personal but low financial value.</p>
<p>POLICY OPTIONS: REPOSSESSION DISCLOSURE AND WHAT CAN BE REPOSSESSED</p>	
<p>1 No change</p>	<p>Consumer Affairs does not support this option.</p>

	The consumer detriment outlined would not be addressed.
<p>2 Amend the Credit (Repossession) Act to require that security must be specifically itemised and require that specific items cannot be used as security</p>	<p>This is Consumer Affairs' preferred option.</p> <p>The Law Commission recommended a package of changes to address issues relating to what can be repossessed and how that is disclosed to consumers. The Commission recommended that:</p> <ul style="list-style-type: none"> • The consumer credit repossession legislation should require that for goods to be repossessed they must be sufficiently identified in the original security agreement so they may be individually identified at the time of repossession. • The consumer credit repossession legislation should contain a provision similar to the effect of s 44 of the PPSA which would prevent the repossession of after-acquired goods unless they represent a purchase money security, are brought in substitution of an item that is subject to security or are added as security though the express agreement of the consumer. • Powers of attorney should not be able to be used to add consumer goods to security that can be repossessed. • The list of goods that are deemed to be exempted from repossession should be prescribed by regulation. • The following goods should never be subject to repossession (except when financed through a purchase money security): medical equipment, bedding, portable heaters, washing machines, and cooking equipment (Consumer Affairs recommends also including a fridge). • The code of responsible lending should explicitly deal with the issue of the granting of security and the repossession of goods with high personal value but low financial value. • The consumer credit repossession legislation should include an express restriction on the granting of security and repossession of passports, identity documents and credit and cash cards. <p>Consumer Benefit</p> <p>Clear itemised security would allow consumers to know exactly what items they may lose in the event of a default in the credit contract. Consumers could make informed decisions about borrowing and security. At present all PAAP clauses and power of attorney clauses are often in a contracts terms and conditions and many borrowers in the third tier credit market do not read credit contracts in full.</p> <p>Consumers would not lose, through repossession, essential household items such as a stove or bedding. This will be expected to decrease the consumer detriment associated with repossession. The above list of goods that cannot be repossessed is primarily based on the Ministry of Social Development's list of items that can be considered for Temporary Additional Support. It is aimed at protecting consumers from the loss through repossession of items whose absence would significantly diminish wellbeing. However, restriction to a specific list is also intended to retain certainty as to</p>

	<p>what items can and cannot be repossessed.</p> <p>Consumers who are not the debtor but who live with the debtor should not see their possession's repossessed for a debt that is not theirs.</p> <p>Addressing, in the code of responsible lending, taking items of high personal value but low financial value would provide additional protection for consumers and could be evidence of irresponsible lending.</p> <p>Consumer Costs Consumers would not be able to use certain items as security such as a stove or fridge. This may mean that some consumers are unable to obtain credit. Consumers who wish to do so are likely to be in significant financial; hardship and the debt could exacerbate problems. This cost is considered justified.</p> <p>Loans will not be able to be secured with broad "drag-net" security interests. This may increase the risk of loss for a lender and consequently increase the cost of credit for consumers.</p> <p>Business Benefit A clear security interest should make the repossession process easier for businesses.</p> <p>Business Costs Businesses will not be able to secure loans with broad "drag-net" security interests. This may increase the risk of loss on each loan for a credit provider.</p>
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REPOSSESSION: AGENTS

<p>Status Quo</p>	<p>Repossession agents are not required to be licensed. The Credit (Repossession) Act restricts who can repossess goods, by disqualifying certain persons who have certain types of criminal convictions but there are no "good character" requirements or legal knowledge requirements for repossession agents. Submitters on the Law Commission's review of the Credit (Repossession) Act noted that this is not enforced at present.</p> <p>There is no liability on a creditor or their agent if an employee carrying out repossessions is disqualified under the Act from doing so and participants at the Financial Summit suggested that some lenders do not carry out adequate checks before hiring repossession agents.</p> <p>There are no penalties in the Credit (Repossession) Act for repossession agents acting unlawfully and few restrictions on the behaviour of repossession agents (apart from restrictions on the times in which repossession can occur and a general requirement that the creditor must not enter premises in unreasonable manner. Unlike other jurisdictions creditors and repossession agents are not required to obtain approval from a court or regulator to repossess goods.</p> <p>Repossession agents have significant powers to enter into consumers' homes. Credit contracts may provide for the</p>
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	<p>repossession agent to break and enter into the consumer's home if the consumer is not present.</p>
<p>The Consumer Problem and it's Source/What is the Problem?</p>	<p>Repossession is intrusive in nature as agents enter into consumers and are repossessing goods over which there can be property disputes.</p> <p>There are obvious concerns about the serious possibility for abuse presented by the ability to enter somebody's home. As noted by the Law Commission "such an invasive power invites regulation to prevent it from being abused or exercised in a way that is unreasonable".</p> <p>In addition the nature of the repossession process is often confrontational, with a risk of physical violence. Some people would also consider the requirement of entering property and removing personal property distasteful. It is important therefore, that repossession agents be able to exercise care and strong interpersonal skills to prevent these situations from escalating.</p>
<p>Measure of Consumer Detriment/Magnitude of Problem</p>	<p>Vulnerable consumers who have items repossessed by repossession agents are unlikely to complain or may not know where to complain to. As such there is a lack of evidence of the consumer detriment associated with unscrupulous persons acting as repossession agents.</p> <p>As noted an estimated 1300 households experienced repossession in 2010 and 2011¹⁴ there are 29 specialist repossession and debt collection companies listed in the Yellow Pages.</p> <p>Repossession is relatively uncommon across the credit market as a whole. It would appear the behaviour of unscrupulous repossession agents causes serious consumer detriment for a small number of consumers who experience it.</p> <p>The fact that there is no central register of repossession agents makes it difficult for both consumers and businesses to know whether they are dealing with an unscrupulous repossession agent and to complain about that person. This problem may diminish with the Commerce Commission actively enforcing repossession law as part of its wider credit enforcement role. However, there is still a need to prevent undesirable individuals from operating as repossession agents in the first place.</p>
<p>Measure of Business Detriment</p>	<p>There is difficulty for lenders in carrying out due diligence when hiring repossession agents as there is no centralised register of repossession agents.</p>
<p>The likely consequences of taking no policy action/ Cost</p>	<p>Consumers who experience repossession will continue to feel harassed or threatened by unscrupulous repossession agents.</p>

¹⁴ In fact as many borrowers had borrowed multiple times from the same lender or from multiple lenders this number is likely to be higher. Additionally this research only focussed on third tier lenders, many second tier lenders carry out repossession it is likely that a greater number of households have experienced repossessions. Colmar Brunton. *Using a Third Tier Lender: experiences of New Zealand borrowers*. Wellington: Ministry of Consumer Affairs, 2011.

of Status Quo	
Objectives of Government action	To ensure that where repossession is carried out it is carried out in a responsible manner and to protect consumers where repossession agents enter their homes to carry out repossession.
POLICY OPTIONS: REPOSSESSION AGENTS	
1 No change	Consumer Affairs does not support this option. If there is not change consumers will continue to feel threatened or harassed by repossession agents.
2 Introduce a licensing regime for repossession agents.	<p>This is Consumer Affairs' preferred option.</p> <p>People in similar occupations to repossession such as private security and towing operators are required to be vetted and licensed and A licensing regime would be modelled on the occupational licensing of security guards and private investigators under the Private Security Personnel and Private Investigators Act 2010. This Act sets out grounds for disqualification for company and individual applicants of a licence. Disqualification of an individual applicant for a licence may occur on a number of specific grounds geared towards ensuring that those acting as security personnel or private investigators have not been convicted of any serious crimes and are otherwise suitable to act in that position.</p> <p>Minimum requirements can be tied to licensing, both basic requirements such as "fit and proper person" tests and more advanced competency requirements. A licensing regime would be administered either under the Private Security Personnel and Private Investigators Act 2010, in conjunction with existing licensing under that Act, or under alternative legislation, as determined by the Ministers of Justice and Consumer Affairs.</p> <p>The majority of submitters on the Law Commission's review of the Credit (Repossession) Act, including most repossession agents supported a licensing regime for repossession agents.</p> <p>Consumer Benefit This would decrease the likelihood that people who carry out repossessions behave in a manner which is threatening or intimidating.</p> <p>A licensing regime would provide greater protection for consumers from agents who act unreasonably or illegally as they could be excluded from the industry.</p> <p>Consumers would be able to identify an agent for the purposes of pursuing a complaint about his or her actions.</p> <p>Business Benefit Licensing would assist a creditor's due diligence proves when selecting a repossession agent.</p> <p>Licensing is designed to promote a greater level of professionalism in the industry; creditors could be more confident that their</p>

	<p>repossession agents will not act in an illegal manner and will not damage goods being repossessed.</p> <p>Business Cost There will be a compliance cost for repossession agents in becoming licensed. The licensing regime would be funded through licensing fees charged on application for a license. This is the case for security personnel under the regime set out in the Private Security Personnel and Private Investigators Act 2010. A five year certificate of approval (for those who work as security personnel) currently costs \$170. Five year company or individual licences (for those who run a business that provides certain security services) currently cost either \$616 or \$510. Licensing of repossession agents would follow a comparable model and likely result in comparable costs. Should the licensing regime be combined with that for private security personnel and private investigators fixed costs could be further divided and this figure could be reduced somewhat.</p> <p>Some current repossession agents may not pass the general and knowledge requirements for licensing (or may have their licenses revoked). At present, there is no training requirement under the Private Security Personnel and Private Investigators Act 2010, though there is a possibility to prescribe such requirements by regulation. Were this requirement to be introduced for repossession agents, it could add an additional cost for business.</p> <p>Government Benefit Licensing of agents would make enforcement of the law easier for the police and the Commerce Commission as agents who fail to comply could be deregistered.</p> <p>Government Cost There could be a cost of establishing the licensing regime. However, if the regime is combined with that in the Private Security Personnel and Private Investigators Act 2010 this upfront cost is likely to be minimal. Over the long term the regime would be funded through licensing fees.</p>
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REPOSSESSION: REMOTE DISABLING DEVICES

<p>Status Quo</p>	<p>Remote disabling devices are installed in motor vehicles that are purchased on credit and are used to stop the car from operating if the consumer has not made the payments on the loan. (The technology could potentially be used in consumer electronics in the future).</p> <p>There appear to be two types of remote disabling devices. One sort can be seen below the steering wheel of the car and requires a receipt code be entered at specified times. If the code is not entered after a three day warning period where the device lights up the car will no longer start. The other sort of remote disabling device is activated remotely by the lender. This type includes a GPS tracking device.</p> <p>The Law Commission considered, but did not make a recommendation on the law governing remote disabling devices</p>
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	<p>noting that "we have had some difficulty making a recommendation on this submission. The question is the degree to which the issue falls within the scope of our review, and to the extent that it does, whether what is prescribed may already fall under the Act".</p> <p>The Credit (Repossession) Act does not include a definition of repossession. Repossession, has however, always been understood to be seizure and sale of goods to repay a debt in default. Remote disabling does not fit with this model as the goods are not seized or sold. As such remote disabling is likely to fall outside credit repossession law and the protections it provides.</p>
<p>The Consumer Problem and it's Source/What is the Problem?</p>	<p>There is the potential for consumer detriment with remote disabling devices as they are unlikely to be governed by the credit repossession laws and thus do not have basic consumer protections.</p> <p>There will be consumer detriment where a consumer's car is remotely disabled, however, it is noted, that the lender does have a security interest in the car and the consumer is not meeting their repayments. In practice it appears that credit providers give consumers fair warning about remote disabling and are reasonably flexible with accepting repayments. One provider advised that around 70 per cent of people pay on time and the vast majority pay before the sixth day, after which the car is immobilised. This demonstrates good consumer understanding of the process.</p> <p>The crux of the problem in the area of remote disabling is that, although lenders practices appear to be reasonable and responsible there are no set procedures and consumer protections in place for the use of remote disabling devices. The oppression provisions under the CCCFA would provide a basic level of protection but would not govern the manner in which remote disabling is used.</p> <p>If remote disabling is considered to be repossession (Consumer Affairs considers that this is not the case) then there is a problem that the Credit (Repossession) Act is insufficiently flexible to deal with remote disabling or other new technologies which may not fit the current repossession process. Many of the protections in the Credit Repossession Act are not relevant to remote disabling (including the post-sale provisions).</p>
<p>Measure of Consumer Detriment/Magnitude of Problem</p>	<p>Consumer Affairs is aware of two companies providing the technology in New Zealand to just two finance companies. The two providers have slightly different technology and approaches but essentially if the consumer misses a payment that has fallen due the consumer receives warning (by text message or lights on the remote disabling device itself) for a number of days and if the consumer does not make the payment then the car will not start the next time that the consumer tries to start it.</p> <p>There is not evidence at this point in time of consumer detriment arising from the use of remote disabling devices. This may be because there are only two loan companies (out of approximately</p>

	<p>218 third tier credit providers this is a tiny proportion of the third tier credit market¹⁵) using remote disabling devices at present.</p> <p>Industry members have suggested that remote disabling devices are a helpful means of ensuring that consumers manage their debts and enable them to lend to consumers with poor credit history (who may not otherwise be able to access credit or may face very high costs of finance). Additionally remote disabling devices may include GPS tracking. Being able to disable and track the car reduces the cost of repossessions (the cost of which is passed on to consumers).</p> <p>It is noted that this is invasive technology and as such, there is potential for consumer detriment if remote disabling devices are not used reasonably and responsibly by credit providers. Industry members have suggested that the technology is becoming increasingly common and that others are likely to enter the market. This appears to be borne out in the USA where the technology is far more common¹⁶.</p> <p>One budget advisor spoken to suggested that there was a problem that lenders would not reactivate the motor vehicle to allow the consumer to return it when the consumer wanted the item voluntarily repossessed (voluntary repossession can be used by consumers to avoid having to pay the high fees sometimes charged for repossession costs). However a member of the industry stated that their company can and does mobilise the vehicle if the consumer wants to return it as a voluntary repossession.</p>
<p>Measure of Business Detriment</p>	<p>The industry does not appear to have concerns with the use of remote disabling devices and members consider that they are using the technology responsibly and to the benefit of both lenders and consumers.</p> <p>An industry member has advised that it is expected that other providers will enter the market in the coming years and as such issues may arise for consumers.</p> <p>One member of the industry has advised that they are in the process of establishing an industry association which will include all remote disabling device providers and the lenders which use them in their credit contracts. The group's draft Code of Conduct includes five principles: Disclosure; Notification; Communication (including the need to have a call centre); Fairness; and Professionalism.</p> <p>The industry members consider that the industry is working well for both business and consumers but consider that there is a risk that less responsible providers will enter the market and this will have negative consequences for both businesses and consumers.</p>
<p>The likely consequences of taking no policy action/ Cost of Status Quo</p>	<p>Although there is neither considerable consumer nor business detriment identified in the market at present, there is scope for considerable consumer detriment as other providers enter the</p>

¹⁵ Ministry of Consumer Affairs. *Third-tier Lender Desk-based Survey 2011*. Wellington: Ministry of Consumer Affairs, 2011.

¹⁶ Welsh, Jonathan. "Late on a Car Loan? Meet the Disabler." *Wall Street Journal* (2009)

	<p>market.</p> <p>The technology is intrusive on the lives of consumers and reasonable protections are required to ensure that consumers are protected and lenders act appropriately.</p> <p>The technology is likely to become more common and the legislation could be out-dated in a short time if the issue is not addressed.</p> <p>It is possible that other new technologies in consumer credit markets may arise and may also not fit tidily within the specific provisions of the Credit (Repossession) Act.</p>
<p>Objectives of Government action</p>	<p>Intervention in this area would aim to provide basic consumer protection while ensuring that the use of remote disabling technology remains a viable option for consumer credit providers.</p> <p>The objective is to ensure that consumer credit law is appropriate now and in the future.</p>
<p>POLICY OPTIONS: REPOSSESSION REMOTE DISABLING DEVICES</p>	
<p>1 No change/industry self-regulation</p>	<p>Consumer Affairs does not favour this option.</p> <p>An industry association has been formed and is developing a code of conduct for the use of remote disabling devices. As noted, the current draft Code of Conduct includes five principles: Disclosure; Notification; Communication (including the need to have a call centre); Fairness; and Professionalism.</p> <p>This code of conduct would improve consumer protection in cases of remote disabling.</p> <p>However it is noted that from a principles-basis, there should be basic consumer protections with such intrusive technology to ensure that it is used appropriately.</p> <p>Consumer detriment is likely to emerge as more providers of the technology enter the market and more credit providers choose to use it. Industry members and the experience in the USA suggest that the technology is likely to become more common.</p> <p>There is a risk that new entrants would not join the industry association (and thus would not abide by the Code of Conduct). There is also limited scope to influence the content of the code of conduct in order to ensure that protection is adequate.</p>
<p>2 Provide in the CCCFA basic, consumer protections for the use of remote disabling devices as follows:</p> <ul style="list-style-type: none"> • Remote disabling cannot occur if a consumer is up-to-date on payments (with an exception where the security is at risk); 	<p>This is Consumer Affairs' preferred option.</p> <p>The government could introduce basic protections for to the use of remote disabling devices. This would enable remote disabling devices to be treated differently to repossession while still promoting consumer protection.</p> <p>Alongside specific provisions governing remote disabling included in statute would be more general principles of responsibility and acting reasonably in the Code of Responsible Lending. Requirements would be based on those in the Code of Conduct being developed by</p>

<ul style="list-style-type: none"> • Disclosure is required of the presence of the remote disabling device and the terms and conditions that govern its use; • Before a car can be remotely disabled warning in an agreed form that a vehicle will be remotely disabled and a reasonable timeframe (5 working days) between the warning and remote disabling must be provided; • The creditor must enable reactivation of the vehicle in an emergency; • The unreasonable fees provisions of the CCCFA would apply to remote disabling devices; and • The financial sector dispute resolution schemes would be able to hear complaints about remote disabling devices. 	<p>industry.</p> <p>Both the basic protections in consumer credit law and the broader principles in the Code of Responsible lending would be based on and complementary to the industry's Code of Conduct which is being developed at this time. The provisions provide a lower level of consumer protection that what is proposed in the draft code of conduct at present.</p> <p>Including basic protections in legislation alongside key principles in the Code of Responsible Lending has the benefit of ensuring that credit repossession law has the flexibility to address new technologies in the future.</p> <p>Consumer Benefit This approach would provide basic protections for consumers to ensure that remote disabling is used in a responsible and appropriate manner.</p> <p>The intent of the proposal is that remote disabling remains a viable option for credit providers. This will ensure that consumers who are deemed a greater credit risk and thus unable to obtain finance on other terms are able to access credit.</p> <p>The basic protections will ensure that the consumer is not disabled for no reason, is made aware of the terms and conditions of remote disabling, is able to use their car in an emergency, is not charged very high costs for the remote disabling device and has access to redress if things go wrong.</p> <p>Consumer Cost The limited business compliance costs discussed below could be passed on to consumers in the form of increased credit fees.</p> <p>Business Benefit Industry has raised concerns about new market entrants who may have irresponsible practices. Industry members have considerable consumer protections and there are costs associated with the provisions of these (a 24 hour call centre is a useful example). As such an industry association has been formed and a code of conduct is being developed to ensure that standards are maintained by all industry participants.</p> <p>Including basic protections in legislation will ensure that new entrants to the market behave appropriately and do not cut corners in terms of responsibilities.</p> <p>The provisions suggested are based on the Code of Conduct being developed by industry and on advice from industry about how their business works already. Contracts from the providers of the technology have also influenced the proposal.</p> <p>Business Costs Because the provisions are taken from industry practice at present or clarify existing law (i.e. the unreasonable fees provisions should apply already and disputes resolution schemes should already be able to consider complaints about remote disabling) and the industry is very small, compliance costs are expected to be low.</p>
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<p>3 Introduce a definition of repossession in consumer credit law which would capture remote disabling</p>	<p>Consumer Affairs does not favour this option.</p> <p>A submitter on the Law Commissions review of the Credit (Repossession) Act suggested that repossession should be defined to include remote disabling devices.</p> <p>The effect of this provision would be that the provisions for repossession would apply to remote disabling. The particular provisions that are relevant are the requirement to issue a pre and post possession notice.</p> <p>Pre and post possession notices must be posted and take a prescribed form. The notices are subject to timeframes: there must be 15 days allowed between the issuing of a pre repossession notice and repossession taking place and there must be 15 days allowed between the issuing of a post repossession notice and sale of the security.</p> <p>These requirements do not align with how remote disabling works at present.</p> <p>The two remote disabling device systems use different modes of communicating with consumers. One provider sends the consumer a warning text message that the car will be remotely disabled if payment is not made and the other provider uses a series of flashing lights on the device itself to warn consumers that the car will be remotely disabled if payment is not made. A posted pre-possession notice would be more costly than current arrangements and this cost would be passed on to consumers as a fee. Current arrangements appear to work well.</p> <p>A posted pre-possession notice is not appropriate because the timeframes are shorter than for repossession. One company uses a six day grace period and the other three days. The preferred policy option is a five day period. This is significantly less than the 15 days required for repossession.</p> <p>A post-possession notice is to set out that goods have been repossessed and the estimated value of the goods. This is simply not relevant for remote disabling as the goods are not to be sold.</p> <p>Finally treating remote disabling as repossession would mean that when the motor vehicle has been remotely disabled it has already been repossessed and as such the consumer would not receive a prepossession notice before the creditor takes the car. This raises questions about the necessary process for when the vehicle is actually repossessed and may result in a loss of consumer protection for repossession.</p> <p>Consumer Benefits</p> <p>This option would provide longer timeframes for the consumer to make the payment before the consumer lost use of the vehicle because the 15 day timeframe between prepossession notice and repossession would apply.</p> <p>Consumer Costs</p> <p>The consumer would be likely to be charged a fee for pre and post</p>
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possession notices.

Some consumers may not be able to access credit if significant compliance costs are placed on providers of remote disabling devices.

Consumers may face a greater instance of repossession because remote disabling is less low-cost in comparison to repossession and thus the incentive to remotely disable as opposed to repossession is decreased.

If remote disabling is considered to be repossession for the purposes of the law then the consumer will not receive additional warning before the car is repossessed. The consumer may not know that the motor vehicle will be repossessed.

There may be unintended consequences for consumers if remote disabling devices are treated as repossession. One provider of remote disabling devices suggested that a siren could be installed in the car to sound rather than remote disabling. This may be more humiliating for consumers.

Business Costs

Treating remote disabling as repossession would impose compliance costs on lenders who use remote disabling because of longer timeframes before remote disabling can take place, less timely loan payments by consumers (remote disabling is a significant incentive for consumers to make loan payments) and the need to send written notices.

Industry members advise that remote disabling is currently seen as completely distinct from the repossession process and so the change would be expected to lead businesses to changes processes.

Recommendation

- 28 As a result of earlier decisions by Cabinet in October 2011, amendments to the CCCFA are being progressed. These have been tested with the release of an Exposure Draft Credit Contracts and Consumer Finance Amendment Bill. There is strong support for adding to the CCCFA responsible lending provisions.
- 29 From submissions on the Exposure Draft and Consideration of the Law Commission's report "Consumers and Repossession: A Review of the Credit (Repossession) Act" additional amendments to the CCCFA are recommended. The most significant recommendation is to add to the CCCFA credit repossession provisions so that repossession is seen as part of the credit process begun when a credit contract is entered into. Including credit repossession in the CCCFA will also give the Commerce Commission responsibility for monitoring and enforcement of credit repossession law.
- 30 It is recommended that goods which are used for security are clearly specified on the credit contract and there are restrictions on using certain essential household items for security. It is also recommended that there is licensing of credit repossession agents given repossession agents enter people's homes and are repossessing goods over which there can be property disputes.
- 31 Additionally, it is recommended the CCCFA is amended to enable pawnbrokers and local government councils with voluntary targeted rate schemes may be exempted from disclosure, early repayment and other provisions of the CCCFA which are causing compliance difficulties for pawnbrokers and councils. There will not be consumer detriment from the exemptions.
- 32 Remote disabling devices are a new development which interferes with the use of a consumer good. Some basic protections where these are used are recommended.
- 33 The above recommendations all contribute to the Government's objectives to increase consumer protection in credit markets (including with respect to credit repossession), promote confident and informed participation of by consumers in credit markets, promote and facilitate fair, efficient and transparent credit markets and balance the rights of creditors and consumers when there is a credit default.
- 34 The package of credit reforms covered by the above recommendations and the decisions of cabinet in October 011 contribute to the overall reforms of the financial sector since 2008, particularly the objectives "a sound and efficient financial system", "confidence in the sector which encourages participation by consumers and market participants" and "to better protect consumers".

Consultation

- 35 An operational review of the CCCFA commenced in 2008 following a Financial Summit in November 2007, which was attended by around 100 representatives from industry, consumer groups and government. The review looked at how the CCCFA was meeting its objectives five years after coming into effect. A discussion paper on this review was released and a second financial summit was held in September 2009. The discussion paper covered information disclosure and hardship and 59 submissions were received on this discussion paper.

- 36 In 2011 the review of consumer credit law was widened in scope and a Financial Summit was held in Auckland in August 2011 to discuss consumer credit issues and responsible lending. This Financial Summit was attended by around 250 representatives from industry, consumer groups and government. All of the 218 third tier lending companies which were identified in Consumer Affairs' Desk Research project were invited to attend the financial Summit. There was broad agreement at the Financial Summit that consumer credit law should be amended to include provisions to promote responsible lending and responsible debt management.
- 37 Following the Financial Summit an Exposure Draft Credit Contracts and Consumer Finance Amendment Bill was released for consultation. Submitters had the option of providing detailed feedback on specific questions or using a "quick submission" tool on the Consumer Affairs website. The Exposure Draft was publicly released on 2 April 2012.
- 38 During the consultation period the Minister of Consumer Affairs held a series of meetings with industry and consumer groups throughout the country to discuss the Exposure Draft Bill. Meetings were held in Wellington, Auckland, Christchurch and with Pacific Island community representatives in South Auckland. Attendance at these meetings ranged from 110 attendees at the Auckland meeting to 20 attendees at the Christchurch meeting.
- 39 90 Submissions on the Exposure Draft Credit Consumer Finance Amendment Bill were received, from primarily business and consumer interests (about 40 per cent each), as well as from government agencies, independent lawyers and dispute resolution bodies. Submissions indicated strong support for responsible lending, improved disclosure and clearer consumer protections regarding hardship, oppressive contracts and unreasonable fees.
- 40 Alongside the review of the CCCFA, the Law Commission began a review of the Credit (Repossession) Act in 2011. In July 2011, the Law Commission released an issues paper with the goal of eliciting information about the Credit (Repossession) Act and issues arising with the operation of the Act. The Law Commission received 39 submissions on the issues paper.
- 41 The Law Commission held three separate meetings with consumer representatives, financial service providers and dispute resolution bodies in Auckland alongside the Financial Summit in August 2011. Additionally the Law Commission held public meetings in Otara and Glen Innes to meet with community representatives to discuss credit repossession and held a meeting with industry and consumer representatives in Christchurch.
- 42 The Law Commission also attended a consumer rights training day for consumer advisors such as budget advisory services and community law centres hosted by Consumer Affairs.
- 43 The Ministry of Justice and the Commerce Commission have discussed the content of the paper with Consumer Affairs and have not identified any problems or concerns with the proposals that are relevant to their responsibilities.

Implementation

- 44 The recommended policies will be implemented through the Consumer Credit Law Amendment Bill. This Bill will amend the Credit Contracts and Consumer Finance Act 2003 and repeal the Credit (Repossession) Act 1997. There will be subsequent amendments to Credit Contracts and Consumer Finance Regulations 2004. A further Regulatory Impact Statement will be made addressing these amendments.

- 45 There will also be a Code of Responsible Lending issued by Order in Council on the recommendation of the Minister of Consumer Affairs. The Code will be developed by MCA in consultation with the credit industry and will then be enforced by the regulator. A further Regulatory Impact Statement will be required when the Code of Responsible Lending is recommended.
- 46 Consumer Affairs and the Commerce Commission will both undertake an education and publicity programme to explain to consumer and business groups changes to credit and credit repossession laws following amendment of the CCCFA.

Monitoring, Evaluation and Review

- 47 It is proposed that there is a requirement to review the effectiveness of the new laws and to report back to Parliament within five years of the legislation coming into force.
- 48 A separate project will be undertaken to enable the review, which is likely to involve updated qualitative research on the experiences of borrowers from lenders in general, including third-tier lenders, as well as compliance information from credit providers and the regulator. Benchmarks statistics will also be established for monitoring and evaluation. The case files of Consumer Affairs and community agencies will also be monitored to determine if the nature of the issues with lenders change after the new laws are introduced.
- 49 In addition, if progressed, the proposed licensing regime for repossession agents will include a requirement to report on repossessions on a six monthly basis. This will provide basic quantitative data to assist in establishing if systemic problems in the industry still exist.

Consultation on Cabinet and Cabinet Committee Submissions

Certification by Department:	
Guidance on consultation requirements for Cabinet/Cabinet committee papers is provided in the CabGuide (see Procedures: Consultation): http://www.cabguide.cabinetoffice.govt.nz/procedures/consultation	
Departments/agencies consulted: The attached submission has implications for the following departments/agencies whose views have been sought and are accurately reflected in the submission: <i>Treasury, Ministry of Business, Innovation and Employment - Economic Development, Commerce Commission, Ministry of Justice, Ministry of Pacific Island Affairs</i>	
Departments/agencies informed: In addition to those listed above, the following departments/agencies have an interest in the submission and have been informed: <i>Financial Markets Authority, Department of Prime Minister and Cabinet, Ministry of Social Development, Te Puni Kōhiri</i>	
Others consulted: Other interested groups have been consulted as follows: <i>Law Commission, Public consultation on an and Exposure Draft Credit Contracts and Consumer Finance Amendment Bill (40 submissions plus public meetings)</i>	
Name, Title, Department: <i>Evelyn Cole, Manager Consumer Policy, Consumer Affairs - Ministry of Business, Innovation and Employment</i>	
Date: <i>5/9/12</i>	Signature: <i>Evelyn Cole</i>

Certification by Minister:		
Ministers should be prepared to update and amplify the advice below when the submission is discussed at Cabinet/Cabinet committee.		
The attached proposal:		
Consultation at Ministerial level	<input checked="" type="checkbox"/> has been consulted with the Minister of Finance (required for all submissions seeking new funding) <input checked="" type="checkbox"/> has been consulted with the following portfolio Ministers: <input type="checkbox"/> did not need consultation with other Ministers	<i>Commerce Economic Develop. Justice Social Develop.</i>
Discussion with National caucus	<input type="checkbox"/> has been or <input checked="" type="checkbox"/> will be discussed with the government caucus <input type="checkbox"/> does not need discussion with the government caucus	
Discussion with other parties	<input type="checkbox"/> has been discussed with the following other parties represented in Parliament: <input checked="" type="checkbox"/> Act Party <input checked="" type="checkbox"/> Maori Party <input checked="" type="checkbox"/> United Future Party <input type="checkbox"/> Other [specify] <input type="checkbox"/> will be discussed with the following other parties represented in Parliament: <input type="checkbox"/> Act Party <input type="checkbox"/> Maori Party <input type="checkbox"/> United Future Party <input type="checkbox"/> Other [specify] <input type="checkbox"/> does not need discussion with other parties represented in Parliament	
Portfolio <i>Consumer Affairs</i>	Date <i>6/9/12</i>	Signature <i>[Signature]</i>

