Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation

Name	Andrew Shann
Organisation	Personal Submission. **I drafted the Credit Reforms (Responsible Lending) Member's Bill** (commonly known as the Loan Shark Bill) for former Labour Justice Spokesperson Charles Chauvel in 2008.

Responses to discussion document questions

Regarding the excessive cost of some consumer credit agreements

1	Do you agree that the problems identified with high-cost lending (even where it is compliant with the CCCFA) are significant? Do you have any information or data that sheds light on their frequency and severity?
	Yes the problems are significant, but the matter needs to be looked at holistically. <u>Small amounts for short terms justify higher fees and a higher rate of interest.</u>
2	Do you support any of the extensions of Cap Option A? What would be the impact of these extensions on borrowers, lenders and the credit markets? Do you have any information or data that would support an assessment of the impact of these extensions?
	<u>Keep it simple.</u> I have been researching interest rate caps for 10 years. Mainstream lending rates are market driven whereas usury is not. A cap on fringe/payday lenders will not affect mainstream interest rates and cannot be compared to Prime Minister Muldoon capping practically all rates of interest (including mortgage rates) in the early 1980s. I have only once seen mainstream rates rise to three figures. This was briefly at tax time in 1985 and is unlikely to happen again in the foreseeable future. In line with global developments I believe that loans should be capped at 1% per week (as many payday loans are for very short terms) with a reasonable fee allowed. In Australia loans between $2,000 and $5,000 with a term between 16 days and two years can entail a one off fee of $400 and a maximum interest rate of 48%pa. I believe that what we should adopt should be similar.

	I believe that the capped interest rate figure should be contained in delegated legislation so that it does not need to go through Parliament every time there is a change. The rate could perhaps be set by the Reserve Bank.
3	Do you agree with our assessment of the costs and benefits of the options for capping interest and fees? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?
	I do not see the solution fitting uniquely into the three cap options listed. Refer to my answer in 2.
4	Do you have any suggestions for the design of options for capping interest and fees? If so, what would be the impact of your proposed design on borrowers, lenders and the credit markets?
	<u>Small short term loans for small amounts justify higher fees</u> Many people look at rates charged by fringe/payday lenders and regard them as much too high. It must be realised that the handling and approval time for small short term loans is disproportionately higher than larger loans for longer terms. Therefore such lenders are justified in charging higher fees for this. Now that a lender has to assess a borrower's ability to repay a loan, assessing this for a small amount for a short term can take as much time as for a larger amount for a longer term. Accordingly, fees need to be capped according to the type of loan and the time involved in establishing it.
5	Which interest rate cap options, if any, would you prefer? Which interest rate options would you not support? Please explain how you made your assessment.
	As above in 4. I would not support any option that would unfairly put a lender out of business and perhaps deny a lender their only source of credit.

Regarding continued irresponsible lending and other non-compliance

6	If directors have duties to take reasonable steps to ensure that the creditor complies with its' CCCFA obligations, should any duties apply to senior managers?
7	If there are to be more prescriptive requirements for conducting affordability assessments,

	what types of lenders or loans should these apply to?
	Refer to my answer in 8
8	Should there be any change to the requirement that lenders can rely on information provided by the borrower unless the lender has reasonable grounds to believe the information is not reliable? What would be the impact of such a change on borrowers, lenders and the credit markets?
	<u>Short term lenders not properly assessing a borrower's ability to repay.</u> From reading the background paper this would seem to be a significant issue and one that I saw coming when these impositions were placed on lenders in 2015. A number of people in lower socio-economic areas seek small loans for short terms to meet essential expenses like the power bill in order to avoid having it disconnected that day. If a small loan was required for a couple of weeks, the lender is still required to do an assessment of the borrower's ability to repay in the same way as they do for a three year car loan of $6,000-00. This is a huge cost and a lot of time involved in proportion to the size and term of the loan. This is no doubt why lenders checks on the borrower have only been superficial as highlighted in para 37 of the MBIE background paper. Consider a borrower who wants a two week loan for $150-00 in order to pay the power bill in the middle of winter in order to desperately avoid disconnection –especially if children suffer from asthma. To assess the borrower properly and do a credit check, this could involve more than an hour's worth of work for a $150-00 loan. This would add a huge (out of proportion) cost to the loan. It is little wonder why lenders would only be doing superficial checks for such small loans. If the screws were put more tightly on the lenders and that fees and interest were capped, lenders would simply withdraw from the market and deny such desperate borrowers their only source of credit in order to meet immediate essential expenses. I believe that it is just as important to explore what is reasonable in the circumstances rather than only look at penalties for non-compliance. I believe that the assessment criteria for such small loans should be relaxed. Now that the assessment criteria has been in for three years, this could be a hard thing to do and where to draw the line. Online agreements have become more common in recent years. When I did a research paper as part of my Master of Laws in 2008, pawnbrokers were a main source of very short term payday loans for essential expenses. If a pawnbroker adequately complies with 5.5 – 5.15 of the Responsible Lending

	Code, this could involve about $60-00 worth of time for a small loan of $150-00 for a few days. Accordingly, maybe look at relaxing the assessment criteria for pawnbrokers for simple short term loans for small amounts. However, this could also find itself open to loopholes with borrowers accumulating a number of small loans from different lenders. As I explain under "Any other comments" at the end of this submission, the law is going to have to change in order for pawnbrokers to be allowed to charge a reasonable fee for the ridiculous time they have to spend assessing a borrower for a tiny little two week loan. If this is not looked at it will close them down over night.
9	Do you consider there should be any changes to the current advertising requirements in the Responsible Lending Code? If so, what would be the impact of those changes on borrowers, lenders and the credit markets?
	[Insert response here]
10	Do you agree with our assessment of the costs and benefits of the options to reduce irresponsible lending and other non-compliance? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?
	Refer to my answer in 8
11	Do you have any suggestions for the design of options for reducing irresponsible lending and other non-compliance? If so, what would be the impact of your proposed options on borrowers, lenders and the credit markets?
	Refer to my answer in 8
12	Which options for reducing irresponsible lending and other non-compliance would you support? Which would you not support? Please explain how you made your assessment.
	Refer to my answer in 8

Regarding continued predatory behaviour by mobile traders

13	Do you agree with our assessment of the costs and benefits of the options for covering

	additional credit contracts under the CCCFA? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?
	From the publicity it is clear that mobile traders are often a problem. I do not know enough about their workings in order to make a fair comment.
14	Do you have any suggestions for the design of options for covering additional credit contracts under the CCCFA? If so, what would be the impact of your proposed options on borrowers, lenders and the credit markets?
	[Insert response here]
15	Which options for changes to cover additional credit contracts would you support? Which would you not support? Please explain how you made your assessment.
	[Insert response here]

Regarding unreasonable fees

16	If prescribed fee caps were introduced, who should they apply to, and what process and criteria should be used to set them?
	Fee caps should apply across the board, but particular attention must be given to short term loans for small amounts. The administration for these is disproportionately high and can require the same amount of handling as for a larger loan for a longer term. Accordingly, a short term lender would be justified in charging a higher proportion in fees. Again, refer to my answer in 8
17	Do you agree with our assessment of the costs and benefits of the options for capping interest and fees? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?
18	Do you have any suggestions for the design of options for reducing unreasonable fees? If so, what would be the impact of your proposed options on borrowers, lenders and the credit markets?
	They need to be separated out because some loans as discussed above justify a high ratio of fees.

19	Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment.
	[Insert response here]
20	Have you seen issues with excessive broker fees, or other unavoidable fees charged by third parties, being added to the loan? If so, are there any specific changes that should be made to the regulation of third-party fees? What would be the impact of these changes on lenders, borrowers and third parties?
	[Insert response here]

Regarding irresponsible debt collection practices

21	Is this an accurate picture of the problems for consumers experiencing debt collection? Do you have information that confirms or refutes these issues, or sheds light on how widespread or severe they are?
	I am not experienced enough in this area to be able to provide comment.
22	What information should be provided to borrowers by debt collectors? When and how should this information be provided?
	[Insert response here]
23	Do you agree with our assessment of the costs and benefits of the options for addressing irresponsible debt collection? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?
	[Insert response here]
24	Do you have any suggestions for the design of options for addressing irresponsible debt collection? In particular, what is an appropriate frequency of contact with debtors before (and then after) a payment arrangement is entered into? Please state the likely impact of your proposed options on borrowers, lenders and the credit market.
	[Insert response here]
25	Which options for changes to the regulation of debt collection would you support? Which

	would you not support? Please explain how you made your assessment.
	[Insert response here]

Regarding other issues

26	Are you seeing harm from loans to small businesses, retail investors or family trusts as a result of them not being regulated under the CCCFA?
	I am not informed enough in this area to make any comment.
27	Do you think small businesses, retail investors or family trusts should have the same or similar protections to consumers under the CCCFA? Please explain why/why not.
	[Insert response here]
28	Are there any other issues with the CCCFA or its impact on vulnerable people that are not addressed in this discussion paper? If so, what options should MBIE consider to address these issues?
	I've included this in "Any other comments" below

Any other comments

We welcome any other comments that you may have.

Secondhand Dealers and Pawnbrokers Act 2004

A very significant matter that has not been mentioned in the background material (or anywhere else) is section 57 of the Secondhand Dealers and Pawnbrokers Act 2004. That only allows a pawnbroker to charge interest but not any sort of fee. This gets overlooked every time the issue of interest rate caps gets raised.

If any kind of interest rate cap is introduced this section of the Secondhand Dealers and Pawnbrokers Act 2004 must be repealed. This was taken into account in all the bills I drafted for MPs. If interest rate caps are introduced without pawnbrokers being allowed to charge reasonable fees, it will close them down overnight. For example, if a 1% per week interest cap was introduced, and a borrower sought a two week loan of $$200-00 for an essential expense, the pawnbroker lender could only charge $4-00. Considering that a lender has to do an assessment of the borrower's ability to repay the loan, only making $4-00 on such a loan would close pawnbrokers down instantly. Often these sorts of loans are a borrower's only source of credit.

I have done years of research on this matter and I have never been able to ascertain what the idea was behind prohibiting pawnbrokers from charging reasonable fees. This is partly what has led to exorbitant rates of interest being charged. In this way, pawnbrokers have made up for the "no fees" by charging horrendous rates of interest instead of a one off fee of say 10% of the loan. They have been commonly charging 8 – 10% per week interest for a number of weeks and months. Frequently, loans have been doubling their size every three months.

I am all for interest rate caps but I also believe that lenders should be able to generate a reasonable return.