Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation

Name	Dr Rob Thomson
Organisation	Debt Blocker Inc.

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?
1	Yes. Despite working with financial mentors and making significant cuts to their spending people are not making any headway on repaying loans; and when even small life events (e.g., need a new tyre) occur the only option is to go into more debt. When no interest loan (NIL) schemes such as Moray Foundation are able to help consolidate high interest debt, people are able to achieve a small weekly surplus and pay off their loans. Over time they can get themselves into a sustainable financial position. The risk is that they then go and take out additional loans and increase their debt. Unsustainable debt is a major issue for those in financial crisis, as insolvency statistics highlight that “excessive use of credit” is the most significant cause of personal bankruptcy (29%), and “debts over the debt limit” is the most common cause of NAP (44%). Although it is difficult to estimate the number of people who have loans that they can’t afford, this is a significant social problem and is related to family violence, mental health issues and crime. In our community, we are seeing vulnerable people with addictions (e.g., gambling and substance abuse), mental health issues (e.g., Bipolar depression, head injury), or who lack cognitive capacity getting loans that they will struggle to meet.
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?
2	I believe Cap A and extensions will make little difference as many people will still struggle to escape the debt spiral.
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?

3	Generally the assessment is fair, although these options in isolation without other services (e.g., NIL for essentials), strategies to improve financial literacy, better identify vulnerable borrowers, tackling gambling and address financial abuse they will make little difference. I disagree that high-cost lenders closing is a cost. High interest is charged on lending to vulnerable borrowers, and capping interest rates significantly would make them not worth the risk.
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?
4	I believe a cap on high interest interest and fees is the only solution and this must be a fixed amount and applied to all lending. There must not be any ambiguity or grey areas that can be exploited.
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.
5	Option C is the only option that would make any difference. Reducing the profits of lending to high risk vulnerable borrowers is the only way to solve this problem.

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?
6	Yes, they should be held accountable for the behaviour of their staff.
7	If there are to be more prescriptive requirements for conducting affordability assessments, what types of lenders or loans should these apply to?
7	All lending and loans. If there is ambiguity or different rules for different loans then people will seek loopholes and ways to get around rules. Responsible companies, with responsible practices will easily meet these suggested requirements. It is not just the lower tier lenders that are at fault, but all lending companies including the major banks are failing in their duty to conduct adequate affordability assessments.
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?
8	Some people may not be completely honest about their financial situation, or personal factors that may affect their application for credit. They may not disclose their mental health issues, gambling & other addictions, or financial situation that would indicate they are vulnerable borrower under the Responsible Lending Code. They may also being pressured by other people into taking out loans (or guaranteeing loans) that they don't want and can't afford.

	Borrowers may also be desperate and are willing to say anything or sign anything to get what they want. Credit checks are not able to provide this information, and it can be difficult to assess whether someone is a vulnerable borrower if they are not being honest or providing all the information you need to assess whether they are a vulnerable borrower. We need better tools to identify vulnerable borrowers. Debt Blocker for example, is a social enterprise to help vulnerable people take responsibility for their borrowing, avoid taking on debt they can't afford, and to help lenders better identify vulnerable borrowers and those at high risk of defaulting on their loans. Debt blocker is a voluntary and completely free list, where people can indicate to lending companies that they don't want to be given credit. This will be useful for people with risky spending habits, mental illness, addictions or those who may be coerced into taking out loans for other people. They sign up and their name and DOB go onto a secure list, that can be searched by a potential lender as part of an an application for credit. This search will only indicate "Yes" or "No" whether the person is on the list, as no other information is recorded.
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?
9	There certainly does, many adverts are misleading, and deliberately targeted to vulnerable borrowers. Requirements in the RLC around advertising need to be compulsory and non-compliant lenders need to be prosecuted. These requirements also need to be better communicated to borrowers and social services. The Commerce Commission's Red Flag resource is a good example of how this could be done and needs to be promoted.
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?
10	I think it is a fair summary of costs and benefits. I support all of the suggested options as it would make it much less attractive to lend to vulnerable borrowers. Many of the reputable firms would easily meet the requirements.
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?
11	A standard loan description and agreement form that is easy to follow. There needs to be greater education on the rights and responsibilities of both lenders and borrowers, and what they can't do. For example we have seen cases of lenders regularly charging interest on interest and fees, and insisting that borrowers assign power of attorney to the lending company. If they are challenged they may apologise and refund the illegal charges, but most cases are not challenged.

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.
	All options are essential and will need resourcing. Although the Commerce Commission are doing a great job and achieving some good results, they lack the resources to tackle all the irresponsible lending. Consumers, social support agencies and the general public need to be made aware of these measures, so breaches can be detected and prosecuted.

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?
	The three concerns raised are valid and very common. These traders deliberately target low income households and vulnerable borrowers who are unlikely to complain. I agree with the costs and benefits, although an additional benefit is that this business model that specifically targets vulnerable borrowers will become much less attractive.
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?
	There needs to be clarity and consistency with no ‘grey area’ that can be exploited.
15	Which options for changes to cover additional credit contracts would you support? Which would you not support? Please explain how you made your assessment.
	I would support both options, but care would need to be taken to ensure that lenders do not charge additional fees for ‘other services’ (e.g., convenience fee, insurance etc).

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?
	These must be universal and apply to all lending companies. There should be reasonable and standard fees for processing loans, assessing affordability and credit checks, based on the amount of time (at a fixed rate) and credit search fees.
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?

17	Yes.
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?
18	There has to be clear direction and consistency so there is a level playing field. A working group could be formed to assess the cost of processing loans and making affordability assessments that can be applied universally. If the lender wants to do additional assessment to satisfy their requirements then this would be at their own cost.
19	Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment.
19	*[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?
20	No

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?
21	There are clear rules about debt collection and these are frequently ignored as few people know about them or are intimidated by collection agents. A recent case occurred where someone was going through a NAP and approached a lender to find how much they owed. They were told they had to pay a fee for this information and were required to assign their car as collateral for the loan (so it was not subject to the NAP)
22	What information should be provided to borrowers by debt collectors? When and how should this information be provided?
22	Their rights and the rules about repossession.
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?
23	Yes. All options should be adopted together.

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.
24	
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.
25	Yes. All options should be adopted together.

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?
26	I can't comment on this.
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.
27	I can't comment on this but I would think so.
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?
28	This review is failing to address the drivers of unsustainable debt and bad lending practices, and tinkering around the edges We need to address both lender and borrower behaviour, as the three drivers of problematic borrowing/lending are: 1. Predatory lending companies who specifically target vulnerable people. Many vulnerable people with addictions, mental health issues, or who lack the cognitive capacity to understand what they are signing are getting loans that they will struggle to pay. 2. Some people are not being honest about financial history and current finances with lending companies, and are taking out credit they can't afford to repay or sometimes have no intention of paying. This may be cash loans or obtaining goods on credit to sell to fund gambling and other addictions. 3. People being coerced into taking out (or guaranteeing) loans for other family members (i.e financial abuse) who can't or won't get credit themselves. Elderly parents and victims of family violence are particularly at risk. <u>Case 1</u>: A young man who has severe cognitive impairment and is under total money management and always will be because he is incapable of managing his money. He wanted a loan to buy some presents for friends and approached a major bank. His credit file was clean as he had no lending and all his bills were paid on time so the bank approved the loan.

Case 2:

A middle aged man who was being supported to address his gambling addiction had a really bad week, and bought some electronic goods on credit in the morning, went to Cash Converters to obtain cash in the afternoon, and went to the casino and blew it all that evening.

In these cases who was at fault? The companies didn't do anything wrong, but contributed to significant financial hardship. We need strategies and mechanisms to address spending and credit provision. Without addressing these the client will never be able to manage their finances effectively.

Debt blocker is a voluntary list where people can indicate to lending companies that they don't want to be given credit. This will be useful for people with risky spending habits, mental illness, addictions or those who are coerced into taking out loans for other people. They sign up and their name and DOB go onto a secure list, that can be searched by potential lender as part of an an application for credit. This search will only indicate Yes/No whether the person is on the list as no other information is recorded.

This will help lenders identify risky and vulnerable borrowers. This helps them identify people that are likely to not pay back their debt, and also meet their obligations under the Responsible Lending Code. The income generated from the searches will go back into the community for financial literacy education programmes, and collaborative projects to address unsustainable debt.

Debt blocker is an innovative solution to tackling unsustainable debt and the social consequences for mental health, addictions, poverty, family violence, and crime. It allows both borrowers and lenders to be more responsible and avoid bad debt. Debt Blocker benefits vulnerable borrowers and their whanau, the social service providers who are working with them, lending companies and the wider community.

Any other comments

29 We welcome any other comments that you may have.

30 We need to address the wider issues about how we spend, and borrow money to pay for things we can't afford. Our economy thrives on people buying things they don't need and although we may be pleased when consumer spending is up, the consequence is that personal debt goes up too. It is essential that we focus on the underlying issues such as poverty, social exclusion and inequality that are driving people into financial crisis.

Debt is a consequence of increased spending and several drivers have been identified for risky spending: manic spending (during a high), comfort spending (to boost low mood), social value spending (to boost status), impulsive spending (where people do not know why they purchased the item) and addictive spending to feed addictions (Holkar & MacKenzie, 2016). Often people with these drivers do not have the funds to make purchases so do so on credit. Obtaining cash loans or goods that can be sold for cash is also used to feed gambling addictions. The resultant stress and stigma associated with debt in turn increases the likelihood of risky spending and gambling and the situation gets worse.

Debt is also related to other social problems, and there is a clear relationship between debt and mental health. Mental illness makes it harder to manage finances, and living in financial stress can harm mental health (Holkar & MacKenzie, 2016) Jenkins et al, (2008) found that a more than a quarter of people with a mental disorder were in debt and more than a third of people with a drug dependence were in debt compared to 8% of those with no disorder. The more debt a person had, the more likely they were to be suffering from mental illness. Debt can also have indirect effects on psychological well-being over time such as economic pressure, stigma or shame, mental health of children and relationship difficulties (Fitch et al., 2009).

Mental illness can also lead to increased levels of debt (Holkar & Mackenzie, 2016). When people are suffering from mental illness they are more likely to spend more and buy things on credit, make poorer financial decisions and avoid dealing with creditors. People suffering from mental illness often lack the capacity to make a good decision because they are less likely to understand the terms and conditions of the loan, remember what they had been told or be able to discuss the loan with the provider.

There is also a relationship between debt and family violence. Family violence has a significant effect on a victim's economic security through debt (Marcia, Faulkner, & Nicholson, (2016). Victims of family violence often stay in a violent relationship to avoid debts, or struggle to rebuild a new life because they are saddled with large debts from the relationship (CUAC, 2014). Another form of family violence and elder abuse is financial abuse through coerced debt (Littwin, 2012), where abusers take out loans in their partner's or other family member's names without their knowledge, force victims to obtain or guarantee loans, or sign over assets.

Although debt may not directly cause these other issues, it certainly makes it worse, and if debt can be brought under control then it may be easier to address other issues. Furthermore, debt may be one of the easier issues to deal with as it can be measured. The amount of money owed, the interest rate and the ability to service the debt can be easily established, and a strategy to address this can be developed with a financial advisor.

There is currently a greater awareness for the need to address the level of debt that people are accruing, and the need for improved financial literacy. In 20016 a working party was developed to develop a new Building Financial Capability entity to develop training, resources and systems for financial mentors. The Responsible Lending Code was also introduced in 2015 to encourage lenders to be more responsible and make a greater effort to ensure that the borrower can afford the loan. It is a good starting point as it sets a benchmark, and works really well for some companies. There is also an increase in referrals from some lending companies to social services. On the other hand, some companies are making little effort to identify vulnerable borrowers (especially when they are not being truthful), and there are difficulties in interpretation ("substantial financial hardship" & "reasonable enquiry"). It would help both borrowers and lenders if here was a means to better identify vulnerable borrowers, who really shouldn't be getting credit.

Although there appear to be some positive changes at a national level, we need to take responsibility for supporting our own community to change. Unsustainable debt is a huge source of stress, which can strain relationships, increase violence, substance abuse, and increase gambling to pay back debt. These effects can in turn increase debt, and the problems escalate. We need borrowers and lending companies to take responsibility for addressing debt, and the tools to help them do this.

There is also a need for collaboration with other service providers and wrap-around support. Issues such as family violence & financial abuse, mental health issues, drug & alcohol dependence, intellectual and cognitive impairments, and addictions such as gambling and spending are closely entwined with financial difficulties. There needs to be clear assessment of other issues and referral pathways.