Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation

Name	Mark Spring, Managing Director
Organisation	Thorn Group Financial Services Limited ('**Thorn**')

Introduction

Thorn has operated in New Zealand for some 56 years now, providing finance to the 'aspirational' market as well as the 'near prime', and ‘prime’ lending markets through the dtr and Thorn Finance brands. Its suite of lending products spans Personal Lending, including debt consolidation, Point of Sale Financing through its own and other retail channels, and Vehicle Financing. It offers these services on both schedule-based (term loan) and revolving credit platforms.

Thorn is a member of the Financial Services Federation, a Registered Financial Services Provider, a member of the Approved Dispute Resolution Scheme operated by Financial Services Complaints Limited, and (unlike many other finance companies) a QFE (Qualifying Financial Entity) approved by the Financial Markets Authority.

Thorn is not a high cost lender (by reference to the chart on page 11 of the Discussion Paper) but does have the privilege and responsibility of providing consumer finance (through its dtr brand) to a socio-economic customer segment that has limited access to reputable finance options and is typically not able to access finance from banks. Thorn’s extensive history operating in this segment has given it a relatively unique insight into this most sensitive of New Zealand’s credit markets.

We do not believe that the needs of this customer segment (including the nature of the problems that these customers experience and the solutions to those problems) are properly understood or accurately reflected in the Discussion Paper. It is dangerously easy to lapse into broad generalisations and censure of both lenders and borrowers in relation to consumer credit, and we note that many of the recommendations in the Discussion Paper are in response to calls from consumer advocacy groups operating in the fringe lending areas of the industry.

Thorn agrees that there are harmful lending practices in New Zealand and strongly favours a more effective regulatory regime. However, based on our decades of experience providing financial services to New Zealanders who are working hard to get by, we have material concerns about the scope and effectiveness of some of the options put forward in the Discussion Paper. In particular, we are concerned about the range of prescriptive recommendations at a micro level that will likely increase compliance costs for conscientious lenders without addressing root causes around the predatory behaviour of some lenders. Past history of regulatory reforms indicates that a different approach will be needed to make a real difference.

In our view, for the reasons explained in more detail below, many of the problems would be more effectively and appropriately dealt with by focusing on tougher enforcement of the existing lender responsibility principles where there is known poor conduct. We would also like to see government resources being used to give customers more meaningful tools to increase their financial comprehension, because no disclosure regime or legislative path will be completely effective against an environment where people lack the basis for understanding and discernment.

It goes without saying that compliance in this market requires a complex and disciplined operational regime, the features of which are too numerous to list here. Thorn's long-held view is that consumer credit in New Zealand should always be provided on the basis that it is affordable and that customers have appropriate support (effectively, Thorn believes in principled assistance throughout the borrowing lifecycle to avoid debt traps/spirals). We agree with the introductory words of the Minister in the Discussion Paper that point out that 'accessing credit can help New Zealanders achieve a long-term standard of living and meet the goals of individuals and families if done in a safe and affordable way'.

For us at Thorn, this means a supporting and respectful culture in which these disciplines will thrive, as well as a 'high touch' customer interface model (particularly with our aspirational customers). Our dtr fairness promise ('we won't let you get in over your head') is embedded throughout our culture and operations. For instance, we have a one-on-one flip chart process that we use with our customers in store to go through all of the features of the proposed lending arrangement and ensure that the customer is fully informed and supported.

We invite MBIE to review our customer testimonials online. These testimonials emphasise our business's operating values: *https://www.dtr.co.nz/pages/testimonials*

These are not cynical statements about corporate values. We do operate as a successful business, but we are genuinely proud of the customer outcomes we deliver.

We would also welcome a visit to our head office by MBIE to further discuss these features in depth, and potentially provide further context to constructively shape this discussion. The attached White Paper may also provide some deeper insight into some of the underlying psychology driving consumer behaviour in the lending market and is the type of deeper context that Thorn feels is lacking from this wider debate.

Unless otherwise stated, Thorn supports the Submission of the Financial Services Federation, and as a member has played a constructive role in the creation of the Federation's submission. The specific nature of Thorn's business warrants a separate submission, allowing it to submit additional context or to provide a differing position where appropriate.

General comments

Thorn wishes to provide general comments in relation to the Discussion Paper (to expand on the introductory points made above) as follows:

What is the current problem?

The provision of credit in a responsible manner is a critical function in modern society (and for a modern economy), and unfortunately the demand for it is accelerating as the well-documented increase in inequality continues. For some, consumer credit enables the purchase of occasional big ticket items such as a house or a car or a family holiday. For others, particularly people on low incomes, the reality is that access to finance provides a means of enabling them to cover the costs of everyday life when the need arises. Without legitimate and responsible finance companies to bridge these incidents, there would be hardship, exclusion and further inequality in a manner unlikely to be considered acceptable in a first world country in the 21st century.

It is deeply disappointing that the Discussion Paper fails to recognise increasing consumer demand as a critical factor in the lending ecosystem and the problems therein.

In addition to the unavoidable need and demand for consumer credit in modern society, many of the current issues and problems outlined in the Discussion Paper relate to:

- poor conduct (some lenders irresponsibly engaged in unconscionable profiteering from customers)
- long-term lack of enforcement of the current and prior legislative regimes against that poor conduct
- relatively high compliance and operating costs for compliance-conscious lenders
- lack of access to financial education and advice for customers (and therefore low levels of financial literacy).

It is not Thorn's view that consumer credit products and services (even high cost loans) are, of themselves, necessarily harmful. However, the predatory practices of some high cost lenders are a problem.

The general theme of these comments, therefore, is that any CCCFA reform should incentivise more effective enforcement targeted at harmful conduct, rather than additional prescriptive compliance requirements at a general product level across the market.

Its tenure in the market gives Thorn a view of legislative changes which spans multiple decades, providing an insight into both the intended and unintended consequences of legislative changes. Our view is that we must face up to the failure of successive rounds of consumer credit regulation to address the real problems described above. The exponential growth in pay day lending in the wake of the last round of CCCFA amendments is a prime example of this.

What must MBIE avoid in this regulatory review?

Thorn submits that it is important that the outcomes of this regulatory review avoid:

1. restricting access to financial products and services especially to those in lower socio-economic segments
2. assuming that all borrowers are making bad decisions, or are incapable of making good ones
3. taking an inconsistent approach with other regulation and policy objectives
4. underestimating the potential of the current consumer credit regime.

1. Restricting access to financial products and services

Further consumer credit regulation must be targeted directly at the real issues and must minimise any compliance costs that will not in practice bring about material improvements to consumer outcomes. Financial inclusion is very important for individuals, businesses and the economy in New

Zealand – regular access to finance enables many New Zealanders to participate in life, work and their broader communities.

Compliance costs for financial services businesses are already significant. If an additional compliance burden is unnecessarily placed on the many consumer credit businesses in New Zealand that continue to work diligently to comply with the existing regulation (including the Responsible Lending Code), there are real risks that:

- borrowing will become more expensive for New Zealand consumers generally

- smaller and alternative providers, however responsible, will decide that the 'cost to play' is simply becoming too high and will exit the market.

Some options in the Discussion Paper would place significant compliance costs on lenders (including many lenders that are already responsible) for little benefit. As an example, the substantiation obligation identified as an option at paragraph 61 of the Discussion Paper would place an obligation on a lender to supply a copy of its affordability and suitability assessments to the borrower or their agent on request. Thorn notes that:

- Proposed changes such as this may on their face appear straightforward to implement for an already-compliant lender. However, the many hidden costs (such as people costs, external advisers' costs and process re-engineering costs) involved in these types of options must not be underestimated.

- Lenders are already required to conduct affordability and suitability assessments. The Commerce Commission can already request evidence of compliance from a lender (and it is appropriate that this role of 'keeping lenders honest' remains with the Commission, rather than borrowers or consumer advocates). To the extent that there are bad practices in this area, the Commission should focus on enforcing the existing regime. As with the majority of options in the Discussion Paper, this appears to be a new solution where a solution already exists.

- Being required to provide such evidence to a borrower (or adviser) would increase administrative costs for lenders, which costs would ultimately be passed on in the cost of credit. Additionally, this option would introduce indirect adverse effects, particularly for smaller and alternative providers, by: (i) allowing competitors to obtain important insights into a particular lender's credit model and business model; and (ii) potentially, allowing borrowers to become aware of ways to 'work the system' by tailoring responses to future credit applications to more easily obtain approval.

While additional compliance burdens may be well-intentioned, they need to be balanced against the material risk of decreasing the supply of legitimate consumer credit products and services. Such a decrease (fuelled by rising compliance costs) could:

- undermine financial inclusion

- result in poor outcomes for customers who are elderly, young, on low incomes or who have disabilities

- drive some borrowers to underground (illegal) credit providers

- suppress innovation and competition.

'Diversity of provision in the retail banking market matters. The Commission sees value not just from more new banks with orthodox business models, but also from alternative providers. Diversity of provision can increase competition and choice for consumers and make the financial system more robust by broadening the range of business models in the market.' ['Changing Banking for Good', Report of the Parliamentary Commission on Banking Standards (UK), 2013]

2. Assuming that some types of borrowers are making bad decisions

Thorn's experience (and research) has shown that it is often incorrect to assume that lower income customers need to be protected against their own decisions. In Thorn's view, people on low incomes are deserving of the same level of respect as any other customer segment and are, by and large, equally capable of making sound financial decisions (absent illegal or predatory conduct by financial service providers).

Consumer credit arrangements, even the more limited options (involving relatively high costs of borrowing) that may be available to those customers, can serve important purposes that go beyond a purely financial analysis.

For instance:

- Customers may need an item for practical and basic quality-of-life purposes - a car to get to work or a washing machine to avoid daily trips to the laundrette with the kids, both of which free up time and reduce stress.

- There are important psychological and social benefits of allowing lower income customers to purchase occasional consumer goods (subject to affordability and the availability of appropriate support). Self-control is a limited resource and everyday decision-making can become significantly impaired over time if every decision involves an exercise in self-control (see attached White Paper for more information). Additionally, the purchase of consumer goods such as home entertainment equipment, while ostensibly not 'essential', can be very important to a family or community with limited alternative options for safe social activities.

- Even if someone on a low income does borrow for the 'wrong reasons', it does not automatically follow that anyone else has the right to remove his or her freedom to choose, any more than we have the right to dictate the choices that those on high incomes make. Indeed, high income earners make 'bad' financial decisions. Setting aside the question of who decides what are 'good' reasons and what are 'bad', one of the principles of a free society is that people should be entitled to choose their own future, even when that choice looks bad to someone else.

However, these comments must, of course, be subject to and balanced against the need to protect lower income borrowers against predatory and oppressive practices that trap them in debt. It is Thorn's view that the lender responsibility principles and the Responsible Lending Code already provide a framework to address these issues, but more effective enforcement is required.

3. Taking an inconsistent approach with other regulation or policy objectives

A Focus on conduct

The Financial Markets Authority and the Reserve Bank of New Zealand are both focussed on regulating the conduct of their supervised bodies. As a result, banks and other licensed financial market providers are now deeply engaged in initiatives focussed on good conduct and culture, which are intended to elevate compliance processes beyond prescriptive 'tick-the-box' exercises.

Consequently, it seems unusual that:

- the Discussion Paper does not adopt a similar approach encouraging the Commerce Commission (a regulator with jurisdiction over many financial institutions who are also supervised by FMA and/or the Reserve Bank) to use conduct as a lens in its enforcement of the lender responsibility principles

- as a result, some smaller non-bank lenders in the consumer credit market (whose customers may be at the more vulnerable end of the spectrum) will not be subject to the same explicit and overarching expectations about general good conduct as larger providers such as banks, even though consumer credit customers are equally deserving of protection.

B Focus on innovation and competition

Thorn submits that the consumer credit market needs to be subject to the same policy of promoting innovation and competition as has been the case for other parts of New Zealand's financial markets in recent years. For example, the promotion of innovation and flexibility in the financial markets is embedded as an express statutory purpose in the Financial Markets Conduct Act 2013, and the Government is presently looking at the potential of Open Banking to deliver economic development and consumer benefits through innovation and competition.

We are concerned that imposing the types of additional prescriptive requirements identified in the Discussion Paper will: (i) stifle innovation (at a time when it needs to be encouraged) and (ii) entrench the larger players in the consumer credit market to the detriment of challengers and ultimately consumers.

4. Underestimating the potential of the current consumer credit regime

The current CCCFA is considerably more comprehensive than it is given credit for.

More rigorously enforcing the existing provisions (including the provisions that allow for the re-opening of oppressive credit contracts) would address a number of the problems identified in the Discussion Paper.

As an example, in relation to the requirement for disclosure to be available in the same language as advertising (identified as an option at paragraph 80 on page 24 of the Discussion Paper), Thorn notes:

- lenders are already required to assist borrowers to make informed decisions

- the Responsible Lending Code provides guidance on using interpreters where a lender reasonably suspects that the borrower does not have a good understanding of English.

In addition, the responsible lending changes only took effect a little over three years ago. A large part of that period involved the Commerce Commission educating borrowers, lenders and consumer advocates on the new responsible lending landscape. The Commission has shifted its focus to enforcement. However, enforcement efforts to date on the lender responsibility principles have been very limited. Indeed, the Discussion Paper records that 'The Commerce Commission issued no warnings, settlements or prosecutions for breaches of the lender responsibilities between the reforms coming into force in June 2015 and February 2018...' (refer paragraph 53 on page 20). To frame this in another way, no enforcement action was taken for breach of the lender responsibility principles until 19 March 2018, a little over 3 months before the release of the Discussion Paper.

Making significant changes to a regime which MBIE acknowledges has been under-enforced to date would be premature and unsound.

What is Thorn asking MBIE to do?

To avoid undesirable consequences outlined above and ensure a more effective regulatory regime, we are asking that MBIE evaluates any regulatory response to the current review of consumer credit regulation to ensure that it:

1. focuses on conduct, not prescriptive regulation of products and services
2. closes off gaps in the supply chain, so that poor conduct cannot persist via unregulated channels
3. better utilises and enforces existing tools, rather than introducing new compliance obligations
4. increases financial literacy
5. introduces licensing
6. learns from the past.

1. Focus on conduct

As discussed above, Thorn is concerned about the potential for further prescriptive regulation aimed at products or services rather than conduct.

In Thorn's view, minimal changes to the CCCFA would be required to ensure a focus on conduct led by the Commerce Commission as the consumer credit industry regulator (particularly given the existing lender responsibility principles). We would like to see the Commerce Commission working collaboratively with FMA and the Reserve Bank on conduct-related initiatives. We would prefer the Commerce Commission to be incentivised to take meaningful action targeted at predatory or exploitative behaviour, rather than an outcome of this review being a new wave of product-focused compliance obligations (e.g. rate or fee caps) across the whole industry that could restrict access to financial products and services, and stifle innovation and competition in New Zealand's financial markets.

Conduct regulation is better suited to the fast-evolving consumer credit market because it is neutral as to products and channels. It can apply to online lending and new products as much as to mobile traders and traditional consumer lending products, and it can be used to promote financial literacy and lending models that provide appropriate support to customers throughout the credit lifecycle.

2. Close off gaps in the supply chain

There is potential for harm in segments of the market where there are loopholes. Vulnerable areas include:

- dealers, retailers, intermediaries or debt collection agencies who are not directly subject to the CCCFA or the current Financial Advisers Act 2008
- mobile traders and part-pay providers with products that arguably fall outside the scope of the CCCFA
- non-bank lenders who are not subject to conduct regulation by FMA or the Reserve Bank.

In Thorn's view, casting the net of 'conduct' across the whole consumer credit ecosystem (and penalising failures fairly and evenly) would more effectively address macro issues.

Dealing with issues in a prescriptive way by closing off isolated issues at a micro level, would likely see poor conduct make its way through the cracks.

In other words, we support attempts to ensure that the scope of consumer credit regulation does not allow for loopholes.

3. Better utilise and enforce existing tools

Thorn submits that a number of key issues in the Discussion Paper could be addressed by the existing regime being enforced more rigorously. The types of themes which lend themselves to more enforcement action include:

- lack of meaningful adherence to lender responsibility principles relating to affordability, suitability and assisting borrowers to make informed decisions; and
- consumer credit contracts which are oppressive.

In Thorn's view, the Commerce Commission likely knows the irresponsible lenders operating in New Zealand, and the CCCFA and other regulation (e.g. the Fair Trading Act) already provide tools for acting.

An increased level of enforcement action (targeted at the areas where there is the most harm) would be effective. Thorn is disappointed that the Discussion Paper did not properly address why the Commission has not been taking more enforcement action to date, and we are confused by statements indicating that the Commission has no incentive for doing so.

Lenders who aren't complying now, are unlikely to comply with any new changes, and in this regard, enforcement becomes a critical part of the solution.

However, Thorn wishes to make it clear that the current section 99(1A) position remains unsatisfactory and needs to be resolved.

4. Increase financial literacy

It is also Thorn's submission that government resources would be well employed in a programme aimed at increasing New Zealanders' financial literacy and financial confidence.

We have observed a trend towards the removal of all responsibility on the borrower in the lending relationship. However, in our view this has been counter-productive, with that undermining of personal responsibility degrading long term decision-making ability, which leads to reduced financial literacy and worse consumer outcomes.

A programme focused on financial education is absent from the Discussion Paper.

5. Introduce licensing

Thorn cautiously supports some form of licensing option as identified in the Discussion Paper if it is implemented in a manner that is effective to address poor customer outcomes. Retail borrowers are equally (if not more) deserving of protection as retail investors. As such, the Commerce Commission should have a 'supervisory' function in addition to its advocacy, education and enforcement functions. This would also bring the Commission more into line with other regulators' focus on conduct.

However, any licensing regime must not hinder competition, and should not simply be an additional administrative and compliance burden over and above the existing regimes around FSPR, QFE, and AML. Barriers to entry should not be too high but should be sufficient to 'weed out' (or make life more difficult for) predatory lenders. Additionally, there must be material consequences for operating as an unlicensed lender, and those consequences must be enforced.

6. Learn from the past

We attach our White Paper: Achieving the right balance between consumer protection and financial responsibility dated October 2012. Notwithstanding the significant changes made to the CCCFA in 2015, the content of this White Paper remains relevant. In particular, we draw your attention to the seven contentions set out in the Abstract - all of which remain as relevant today as they were in October 2012.

In this vein, we submit that the additional compliance burden arising from the 2015 changes has had the unintended consequence of driving some low-income borrowers away from responsible lenders and towards irresponsible lenders. Many lenders who were not complying before the last round of changes are not complying now and will not be complying with future changes. Thought has to be given as to how these lenders are reached and stopped if we are to get to the heart of the issue. Further amendments to the CCCFA that increase compliance costs while not effectively tackling consumer demand, dealing with enforcement, eliminating poor conduct and increasing customers' financial confidence will likely exacerbate the issue.

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?
	In the absence of a specific definition in the Discussion Paper, this response will default to the use of 'high-cost lending' and 'pay day lending' interchangeably, and where necessary assume that high-cost lending features annual interest rates in excess of 100%. Thorn does not currently participate in any forms 'high-cost' lending. Thorn would submit however that in this segment of the market, the interest rate itself is only one factor contributing to the cost of borrowing, and that in fact when it comes to pay day lending the interest rate is not actually the material issue. A 600% interest rate on $100 borrowed over two weeks results in what is actually a relatively small cost to the borrower. It's the 'cementing-in' of the interest rate that causes the actual harm, where the initial two-week term is extended over far longer periods. It is Thorn's view that this rolling over process is the key problem with 'high-cost' lending. For this reason, Thorn supports the Financial Services Federation (FSF) submission to investigate limits on the roll-over of payday lending products. When otherwise conducted in accordance with the current CCCFA, and when in adherence to the Responsible Lending Guidelines, 'high-cost' lending actually has an important place in the lending eco-system, and material limits on its existence (without any decline in demand) runs a real risk of un-regulated black-market lending exploding. As mentioned in our general comments above, in our view it is the bigger issue of unscrupulous and irresponsible conduct by some pay day lenders (and lack of enforcement against those lenders) that is the most problematic issue, rather than the product features of pay day loans per se.
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?
	Consistent with our comments in (1) above, Thorn considers that a general focus on more effective enforcement of the existing responsible lending regime (including the principle that requires lenders to consider affordability and the potential for hardship), or a regime limiting roll-overs in 'high-cost' lending, would be more effective and more productive in terms of the overall lending ecosystem, than the limits proposed under Cap Option A.
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?

	The hidden costs of interest rate caps, in so far as they see legitimate and responsible borrowers exiting the market, are potentially enormous, and unfortunately unquantifiable. Lenders have not created the demand for 'high-cost' lending products. That demand is a function of wider economic, demographic, cultural and social challenges, over which the lending market has no control. Without broader actions to see that demand suppressed, further restrictions on the margins available to legitimate and responsible lenders risk material unforeseen consequences. Creating an environment that sees such lenders withdraw from key market segments, will simply see that unmet demand satisfied in more expensive and un-regulated environments, dramatically increasing the harm seen. In relation to credit fees, the current legislative environment, tested successfully in the Sportzone/MTF case, is now working well when enforced. It has seen fee levels fall in the market and creates an environment which (in Thorn's opinion) creates a very balanced position between borrower protection and innovation. Any proposed combination of both interest rate and credit fee caps, has significant consequences from a market health and efficiency perspective, in that it effectively removes any avenues for product innovation. All lenders end up in a position of being forced to charge the same fees and interest rates, removing incentives for new product development, investment and innovation. In the long-term this must be detrimental to the consumer. In essence Thorn believes that the current environment restricting credit fees, and the disclosure regimes presenting Interest information to consumer, already promote a healthy lending eco-system when enforced along-side the other existing provisions of the CCCFA. In general terms, we reiterate the view that prescriptive regulation via caps for particular products and services will not effectively deal with the real issues and will likely have unintended consequences (e.g. financial exclusion).
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?
	Consistent with the previous commentary herein, Thorn does not support the introduction of interest rate caps but would give qualified support to controls around the roll-over of 'high-cost' loans, subject to the detail of how these might operate in practice, the markets/products to which they apply and how these are defined.
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.
	Thorn does not support any of Options A, B, or C for the reasons stated above. Overseas experience has clearly demonstrated that such caps quickly become a target if set too high, and if too low create unregulated black-markets as legitimate operators exit the market. Option C's proposal to effectively return to a 'finance rate' is flawed in our view, for the

reasons stated in the Discussion Paper, but also because of the prevalence in a modern lending environment for Revolving Credit products, and also due to the welcome trend of risk-based pricing which is specific to individuals. Both trends make a finance rate or APR approach meaningless or useless in so far as its value is at the point of advertising, where it cannot be ascertained.

History has consistently shown that an APR rate approach does lead to borrower confusion, particularly amongst those groups who most need rate comparison assistance. For these reasons it was excluded at the introduction of the CCCFA.

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?

There exists a general theme in the Discussion Paper that appears to take for granted that there is a level of harm being done in the marketplace, which can only be resolved through the introduction of new law.

That assertion may well be based on anecdotal feedback from advocacy groups, whom by their very nature will typically only see cases involving harm, and in those instances frequently only see it from a one-sided perspective.

Care needs to be taken to view such instances in perspective. That perspective must consider the actual size of the market and an evidence-based appraisal of harm when viewed against that scale.

Thorn suggests that if, for example, Approved Dispute Resolution Service complaints registers, and the numbers of verified complaints logged by them, were measured against the full scale of the market, then in fact the level of harm would actually seem incredibly low.

A second theme common in the Discussion Paper is the suggestion that new law is required to deal with the issues raised. There are in fact numerous instances herein where existing law already prohibits behaviours targeted. For example, the statement in para 54 that there are relatively weak incentives to comply with the CCCFA is untrue. The current CCCFA already enables the Court to make various orders (including for financial damages) if there are breaches of the lender responsibility principles. Further, Enforcement Option A already exists within both the CCCFA and Fair Trading Acts.

To the extent that new powers of registration and banning options were to be considered, then in principle Thorn would support Option A, with the Commerce Commission having refined responsibilities in this area, subject to the detail around how such powers could and would be invoked being debated.

In principle 'fit and proper person' tests are supported, although the current FSPR processes already cater for criminal checks on directors and senior managers and could be extended to other officers if required. The AML laws also already overlap with this requirement.

Given the points raised above and the powers already available to regulators, the option of introducing a comprehensive creditor licensing scheme seems redundant and overkill, and therefore must receive only our qualified support.

7	If there are to be more prescriptive requirements for conducting affordability assessments, what types of lenders or loans should these apply to?
	Thorn does not support a requirement to substantiate affordability and sustainability assessments, as this substantial additional cost will only increase the costs of borrowing, when the existing lender responsibility principles when enforced already deal with the underlying issue seeking to be addressed. All responsible lenders already operate on a good faith basis with advocates, as doing so is in both their and their clients bests interests. Any initiative to further formalise this, risks increasing borrowing costs. Additionally, Thorn would be concerned about any new regulation that could encourage 'advocates' to prey on vulnerable borrowers and commence vexatious claims, while raising customers' hopes of particular outcomes through litigation etc. To the extent that such a good faith provision were to be introduced, at a minimum it should apply both ways.
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?
	The lending ecosystem requires a balance to act efficiently and safely for all participants. The legislative changes of last 15 years or so have seen that balance shift from one of ‘borrower beware’ to one where the borrower is required to take less and less care and self-responsibility. Real care must be taken to avoid a situation whereby the borrower has no accountability in the lending decision-making process and has no share in its outcomes. The risk in many of the initiatives suggested in the Discussion Paper is that the borrower can effectively sit back and abdicate all responsibility, taking a position of “if they’re prepared to lend it to me it's their problem”, or “if they’ve said yes, I must be able to pay it back”. At face value, many external parties would look at that situation and see it as just, however the long-term consequences of that imbalance are actually materially adverse. It would see a continuation of the trend of degraded financial literacy, less responsible lenders in market-place segments where they are needed most, and significant increases in the costs of credit. Fundamentally, the long-term consequences of diminished borrower responsibility must logically lead to worse outcomes as a result. Whilst admittedly controversial in the current climate, sanctions for borrowers who knowingly provide false or misleading information would in the long-term lead to better outcomes than those suggestions in the Discussion Paper.
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?
	The Responsible Lending Code already contains significant guidance in this area, and the key to better outcomes surely lies in its enforcement rather than additional requirements. There is a real danger already that the level of detail required when advertising financial products is too cumbersome and long-winded to allow the levels of literacy required, given the brief

	attention span applied to advertising. Whilst the Code is not binding, lenders are required to show how they comply with the lender responsibility principles if not the Code. In essence sufficient consumer protection already exists in relation to advertising.
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?
	In general, the prior comments made in this submission answer this question. As a general theme, the Discussion Paper materially underestimates the costs of implementation (which is eventually passed on to the borrower), the unintended consequences of legitimate lenders abandoning key market segments, and the further degradation of financial literacy through enabling abdication of personal responsibility.
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?
	Please refer to the submission points already made in this document.
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.
	Please refer to the submission points already made in this document.

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?
	In recent times new contract forms have emerged which attempt to circumvent the CCCFA by charging default fees in lieu of Interest. Thorn can see no reason why such products should not be captured by the CCCFA, given their clear purpose and intent. As such we support Option A in this regard. Thorn does not support Option B to prohibit the price of goods or services sold under a credit sale from exceeding the ‘cash price’. A potential unintended consequence of this would be to force retailers who happen to also provide finance at point of sale from setting their own pricing, based on the nature of their business. The actual costs of goods, and their subsequent margin, are functions of the seller’s supply arrangements, scale, business model, service proposition, etc. Restricting the cash price of goods to fair market value would be unworkable in practice for those reasons and potentially severely anti-competitive. The ‘cash’ price of the goods is already required to be disclosed, as is the total costs of finance over and above this, providing the consumer with full transparency (assuming enforcement of existing laws). Further the offering of differing prices for cash and credit is already an

	offence. In practice the logistics involved in complying with Option B are also likely to be unworkable, as it suggests a constant, apparently daily, market scan of all retailer's pricing, and constant adherence to this to be compliant.
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?
	See response at 13 above.
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.
	See response at 13 above.

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?
	As with interest rate caps, fee caps will also become a target, which if set too high will see higher borrower costs, and if too low will see the difference included in interest rate charges. The current environment, when enforced, of requiring full disclosure of fees, and these being based on costs is now working well in Thorn's opinion. Importantly, the current regime considers that such costs vary widely between lenders, based on the business model. A 'high touch' lender, whose business model is more expensive because of the market in which it operates, or services it provides, should be able to have this reflected in its fees. Care should be taken to avoid setting up a regime in which an incentive exists for lenders to 'skimp' on the costs involved in lending responsibly. Such a risk applies in setting fee caps, and therefore may have adverse unforeseen consequences. It is not difficult to imagine a scenario whereby fee caps force lenders to operate in a 'low-touch' mode, presumably online biased, and therefore under-servicing those market segments most requiring care and attention, that is, vulnerable consumers. 'Caps' of any sort also have the impact of suppressing innovation, removing incentive for product and service differentiation, and therefore undermining the operation of efficient markets. Additional comments regarding fee caps have been dealt with in questions 3-5.
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?
	Thorn is in full support of the FSF's position that the existing fees regime, particularly since the Sportzone/MTF, and Harmoney determinations, is now effective and operating as designed. As such Option A, requiring lenders to substantiate their fees is already a feature of current legislation. As stated repeatedly herein, enforcement is a key component in

	ensuring its ongoing effectiveness, but that is also true of any change in legislation in this area.
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?
	See responses at 17 above.
19	Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment.
	See earlier responses herein.
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?
	Consumers have a clear choice to deal with brokers or third-parties, whether their fees be avoidable or not. Full disclosure of such fees is already required by law, and where that is not the case, enforcement is again the key factor. Generally speaking, unrelated third parties, are providing fees for a service, and as such should be free to make a margin on such services as these are typically the only or a key source of income. The proviso herein is that in all cases these fees should be explicitly disclosed.

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?
	As mentioned elsewhere in this submission, the Discussion Paper lacks an evidentiary approach to quantification of the issues raised around debt collection processes. If as strongly suspected, the incidence of these issues is actually extremely low as a percentage of transactions, then clearly enforcement is both a preferable and cheaper option to drive compliance. MBIE, potentially alongside the Commerce Commission clearly has the means and resources to quantify the claims made in the Discussion Paper, and should do so before enacting potentially unnecessary, expensive, and disruptive changes to the law.
22	What information should be provided to borrowers by debt collectors? When and how should this information be provided?
	All consumers are provided with a copy of the loan contract at origination. In the case of repossession action, additional documentation is also required to be provided to the borrower. Should the borrower require additional copies of such documentation, it should be mandatory to provide this, however the costs of doing so should be chargeable to the specific borrower, to avoid it being applied to all borrowers and further increasing the cost of

	borrowing.
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?
	Thorn echoes and supports the submission made by the FSF in regard to the options for addressing irresponsible debt collection:
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.
	As above
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.
	As above

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?
	Thorn does not operate in any non-consumer lending environments, and as such we have no comment in this regard.
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.
	As above.
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?

Any other comments

	We welcome any other comments that you may have.