CREDIT CONTRACTS & CONSUMER FINANCE AMENDMENT BILL (CONSULTATION DRAFT) - SUBMISSIONS SUMMARY

Ref	Submitter/s	Questions and Topics	Submitter's Comments	Comment

General Comments

1.	Save My Bacon (SMB)	General Comments	Support provisions in general, they make a positive contribution towards improving lending practices and consumer protection.	Agree.
2.	Debt-Free Newtown	General Comments	Support the amendments as a positive step towards reducing the harm that lending does to the community. Want to ensure that the amendment is meaningful and workable for the community.	
3.	St Vincent de Paul Society	General Comments	Support strongly that money lenders need to determine that borrowing is sustainable for borrowers. Those who have an understanding of finance should assist purchasers or borrowers to fully understand the consequences of borrowing.	
4.	Home Direct	General Comments	Supports provisions that enhance consumer protection and already complies with most of the proposed amendments.	
5.	Te Waipuna Puawai Mercy Oasis Ltd (TWP)	General Comments	The law needs to strengthen protections for consumers.	
6.	Peter James McLean, Tulai Project	General Comments	Support	
7.	Paul King	General Comments	Support. Wishes to appear before Select Committee.	Noted.
8.	Financial Services Complaints Limited (FSCL)	General Comments	Supports but believes not the complete answer, needs emphasis on financial literacy. Consider it extremely important that consumers are informed of their rights at every opportunity, and that dispute resolution schemes are empowered to investigate complaints of oppressive behaviour, refusal to consider/grant hardship application, complaints about credit fees, and other breaches of CCCFA.	Noted.

9.	Buddle Findlay	General Comments	Support use of pre-introduction exposure drafts.	Noted.
10.	ASB Bank Limited	General Comments	Implementation of the reform should focus on specific aspects such as registration and disclosure as a matter of priority.	Agree.
11.	Anonymous Third Tier Lender	General Comments	Strongly oppose the amendment of the CCCFA. Propose that everything should remain status quo - Reasoning detailed in corresponding sections. The current legislative framework is more than sufficient to protect borrowers and is up to date. Notes that borrowers can apply for bankruptcy or use the No Asset Procedure (NAP) – notes that the NAP is already a source of annoyance and frustration for creditors.	Disagree. The majority of lenders are already lending responsibly, but there is evidence of predatory lending with negative social and economic impacts among borrowers. This is a regulatory problem, as well as a social and economic problem.
12.	Anonymous Third Tier Lender	General Comments	Would like clarification on the definition of "loan sharks". Believe this is leading to a negative public perception towards the lending industry as a whole, seeing them all as loan sharks. Notes that a lender charging more than 70% APR is probably behaving oppressively, however, many other sectors in New Zealand make gross returns well in excess of this, and do not have the high risks and slow turnover that the personal finance industry must contend with. Consumers suffer from high prices in these sectors as much or more than they do in the finance sector, but these businesses do not face restrictions on their ability to make profits like personal lenders do. Lending is just another consumer service like the sale of retail goods. The returns they make on loans that may seem to have a high APR are actually quite modest after factors such as overheads and risk are accounted for.	Disagree. As a financial service, lending carries greater risks for consumers than the majority of other commercial activities. A consumer who finds themselves in financial difficulty due to excessive interest is likely to find it very difficult to extract themselves. This is in contrast to the "one time" harm that is likely to accrue where prices are excessive for other products. In addition, the financial complexity involved in modern debt products means that many consumers struggle to understand what they are signing up for. This leaves significant room for unscrupulous and abusive behaviour. While some emotive use of the term "loan shark" in the media may be unfounded, the point remains that consumer lending is an area that requires careful regulatory attention to protect consumers from the possibility of significant and far-reaching harms.

13.	Anonymous Borrower	General Comments	Personal situation referenced. Lender recommended the borrower take out a second loan to cover the repayments on the first loan. Notes that the lender took advantage of their youth and vulnerable circumstances.	Noted. This is the type of situation that could potentially be a breach of the Responsible Lending Principles, depending on the particular circumstances of the borrower.
14.	Auckland District Law Society	General Comments	There is no rationale to impose the controls this Bill suggests on all lenders. The majority of the industry behaves responsibly at present. There should be a differential regime in the CCCFA that applies specifically to loan sharks/predatory lenders, as defined by a trigger interest rate. Above this point more stringent protections should apply, potentially including a rebuttable presumption of predatory lending. Where predatory lending is made out on the basis of this presumption, additional principles and obligations should apply. There should also be effective remedies for the consumer in these scenarios. The committee acknowledges concerns with 'bright line' interest rate rules (proposition that bright line interest rate rules may be construed as a benchmark interest rate and therefore increase costs), but considers them justified when balanced against the widespread effects and costs if Bill is applied to all consumer lending. The differentiated obligations will not be so onerous as to pose a significant bright-line rule risk. If the rate is set to affect all but first tier lenders then it should not affect the market significantly. It would enable a stronger, more direct and targeted application in respect of predatory lending.	Disagree. All lenders are providing a financial service to consumers, and are already subject to the consumer protection provisions in the CCCFA and the guarantee of reasonable skill and care in the Consumer Guarantees Act. The fact that the majority of the industry already lends responsibly means they will be able to comply with the Responsible Lending Principles relatively easily. The intention it that mainstream lenders should set the benchmark for best market practice for other lenders.
15.	Westpac	General Comments	The existing law provides sufficient protection for consumers if properly enforced. Strongly support improving consumer protection law by targeting irresponsible lenders but the proposals in the Bill go beyond what is necessary to achieve this purpose and will create burden for reputable lenders where there is no evidence that mainstream lending is not working well. The Government objective is better achieved through enforcement of existing laws against unscrupulous lenders and targeting reforms	

			to specific areas to assist in that objective.	
16.	Lindsay Kincaid	General Comments	Submits that the proposed legislation is not fair, tilting the playing field in favour of the consumer, regardless of the consequences to lenders. If tier 4 lenders are the target of this legislation, then it needs to be specific to target them.	
17.	Buddle Findlay	General Comments	Important to keep in mind that any additional controls that the Bill puts in place will not just apply to the predatory lenders the government is aiming to target, but also the rest of the industry, which is largely compliant.	Noted. See comments immediately above. Also, section 9D(2) provides scope for the Code to contain different provisions in relation to particular lenders or classes of lenders.
18.	Mr Rental (NZ) Limited	General Comments	Submit that it is unnecessary, unfair and unreasonable for non-credit provider businesses that allow consumers to exit the arrangement at any time without penalties to be caught by the additional obligations proposed in the Bill. Submit that an exemption should be made for those businesses that operate on a business model that offers the ability to exit the arrangement at any time without penalties, and that already have adequate consumer protection measures.	Noted. Finance leases are a form of consumer credit contract that is regulated by the CCCFA, and there is no reason to treat them differently from other consumer credit contracts. The Responsible Lending Principles will not apply to consumer leases or hire agreements which are not consumer credit contracts.
19.	Citizens Advice Bureau	General Comments	Support generally however in some situations do not consider that the proposed amendments provide the same level of protection for consumers that consumers receive in equivalent overseas jurisdictions such as Australia.	Noted. The Australian National Consumer Credit Protection Act takes a much more prescriptive approach to responsible lending (and some other consumer protections) than the CCCFA. The Bill is consistent with the principles based approach in the CCCFA.
20.	Admiral Finance Limited	General Comments	The timeframe has been tight. The next round of submissions that incorporate the Law Commission's repossession review should allow for at least eight weeks for submissions.	The next round of consultation will be the Select Committee process.
21.	Full Balance	General Comments	Most New Zealand families can barely afford to cover their basic costs of living. There should be a greater focus on preventing them from coming under stress due to taking on debt in the first place.	Noted. The aim of responsible lending is to prevent the most vulnerable consumers from taking on debt obligations that they will not

				be able to meet.
22.	Wellington Community law Centre	General Comments	Credit law should be straightforward and accessible for consumers. It should also recognise that borrowers are vulnerable.	Agree. One of the primary policy objectives of this reform is the protection of consumers, particularly vulnerable consumers.
23.	Motor Trade Association Inc.	General Comments	Given the mutually linked relationship between dealers and their respective finance companies, MTA has not made a separate submission but instead fully supports the submission made by the Financial Services Federation.	Noted.
24.	Ken Bohm	General Comments	The word assessment should mean the total account regarding credit limit increases not an undisclosed risk factor calculation. All accounts prior to any changes of the regulations should be reassessed to ensure that there's no burden on the total account and advise on how to manage the account [verbatim].	Noted
25.	National Council of Women of New Zealand	General Comments	Applaud the intent to increase and improve existing protections however note concern with where desperate people will turn for credit when the Bill is passed and the Code is in place.	Agree, but high cost credit is often a bad option for people who are desperate.
26.	Nelson City Council	General Comments	Strongly supports the submission of the Greater Wellington Regional Council. Submits that the local government sector was not the intended target for both the Act and the Amendment Act. Local Authorities are already regulated by legislation and regulations and dual compliance is simply too costly and outweighs the benefits.	Noted. See section on Voluntary Targeted Rates for comments.
27.	Alan Liddell	General Comments	Notes that the changes to the Act are not based on research which shows the need for the change and the solutions are poorly thought out and rely on poorly expressed definitions.	Disagree. There is good evidence that there are problems with the current Act, and that the protections for consumers are not effective.
28.	Lee Morgan	Responsible Lending Code	References throughout the amendments are "the Minister must" but in relation to lenders, "may" is used, this is an anomaly. Lenders should be seen as improving and demonstrating their	Noted. The Government has decided against a full licensing regime for creditors, even with exemptions for institutions subject to other

			responsibility. They should be 'trained' accredited by an approved institution, allowed to lend up to certain amounts as an incentive for further training, registration, etc. Establish a body of 'good lenders' to regulate those who step out of line. Then borrowers can access this informed and sensitive group for expert help before situation gets dire.	regulatory controls. The FSP registration requirement is lighter-handed than a full licensing regime, but it still has some regulatory 'bite' that can be taken advantage of to protect consumers.

Compliance Costs

29.	Symon Philip Nausbaum	Compliance Costs	It is unlikely that increasing participation costs will lead to any substantial increase in black market operations. Tier 3 lenders attract and maintain clients through high visibility. A decrease in the number of these will mean remaining participants are under less pressure to lend in an irresponsible manner.	Noted.
30.	Symon Philip Nausbaum	Compliance Costs	Regulation should be paid for by industry participants. Increased participation cost in the industry will lead to a positive outcome for consumers as smaller third tier lenders will be pressured to exit.	Industry-funded self-regulation has achieved good results in the past. The Responsible Lending Code provisions are based on current voluntary industry standards. However, this mechanism is only effective to a point. It relies on substantial industry buy-in and incentives on participants to sign-up and comply with standards. Particularly at the lower end of the lending market, these incentives do not operate effectively. As a result, there is a case for mandatory government regulation. In addition, a balance must be struck between the need for effective consumer protection, and increases in compliance costs that may drive some lenders from the market. While removing non-compliant lenders is a desirable outcome, increased costs of borrowing, or decreases in accessibility are not. Often it is the most disadvantaged in society who have the most need for credit, and who will suffer

				the most from financial exclusion if costs are too high.
31.	Telecom Rentals	Compliance Costs	Lenders who already take their compliance obligations seriously will no doubt face additional costs and business risks, despite not being the principal target of the proposed law changes. Existing reputable lenders who already provide services to consumers in need may face greater competition in the less risky segments of the retail consumer market and be less willing to lend to those who represent a greater credit risk. Vulnerable consumers most in need of protection may not receive benefit if Bill drives 'loan sharks' underground. Believe that a portfolio of diversified risk provides the most efficient method for all lenders to provide credit to a wide range of borrowers. However, draft Bill does not appear to encourage this and may have the opposite effect for reputable Tier 1 lenders, who may focus on 'prime' customers. Draft Bill focuses on upfront lending practices, but loan sharks' approach to debt collection may be the more relevant practice to focus on. A timely and legally binding remedy is required (hence suggestion to focus on disputes resolution).	Agree that there are risks that 'loan sharks' will not comply with the law. Enforcement will be important. Agree that responsible lending has the potential to limit access to credit for high risk borrowers, but credit is a problem for those borrowers. Responsible lending will also apply to credit repossession and debt collection.
32.	Mr Rental (NZ) Limited	Costs of compliance	Considers that any increase in compliance costs is likely to result in the rise of costs for consumers. Such rise in costs may limit access by the most underprivileged consumers to essential household items, driving them to turn to loan sharks and fringe providers for debt.	Disagree. Responsible lending as proposed in the Bill is not a high compliance cost model.
33.	Alan Liddell on behalf of 24 Finance Companies	Cost of compliance	The responsible lending provisions will lead to an increase in establishment fees due to the cost involved with establishing "circumstances, requirements and objectives". This will be particularly serious for small value loans. The principles and Code will increase interest rates as lenders pass on the cost of compliance and uncertainty.	

PART 1 CCCFA PRELIMINARY PROVISIONS

Purposes

(Clause 4 of the Exposure Draft sets out a new CCCFA Purposes section 3, adding a new subsection (1) primary purpose (to protect the interests of consumers in connection with credit contracts, consumer leases and buy-back transactions of land) and at subsection (2) two second order purposes to promote confident and informed participation in markets for credit by consumers and to promote and facilitate fair, efficient and transparent markets for credit. Subsection (3) taken from the existing CCCFA, lists specific purposes including the addition of responsible lending.)

34.	M.Wallmannsberger, Full Balance	Purpose Clause	Support new purpose clause emphasising consumer protection	Noted. Since the Exposure Draft there has been further consideration of new s 3(2)(a). We do not think it is necessary to separate out buyback transactions from other credit contracts. Buyback transactions are a form of credit even though not a consumer credit contract. With respect to consumer leases, the main protection in the Act is to provide that most consumer leases are consumer credit contracts and for those that fall outside that there is some minimum disclosure. **Decision**: Accordingly we have simplified s.3(2)(a). to say "promote the confident and informed participation in markets for credit by consumers." Regarding s.3(2)(b)(i), "or competing lease arrangements" is not relevant for consumer leases as the purpose of disclosing information to those taking out consumer leases is to ensure they are informed of their contract conditions rather than for the purposes of comparing alternative products.
35.	Wellington Community Law Centre	Purpose Clause	Strongly support primacy of new s.3(1) goal of consumer protection. An additional subsection could be added saying that a purpose of the Act is to prevent the individual and societal harm caused by irresponsible lending.	
36.	NZ Law Society, Buddle Findlay, Finance Now, Consumer NZ, Christians Against Poverty. Financial Services Federation, Child Poverty Action Group, Cash Converters, Financial Services Complaints Limited (FSCL), Jonathan Flaws (Sanderson Weir), Te Waipuna Puawai Mercy	Purpose Clause	Supportive in principle.	

	Oasis Ltd (TWP), Whitireia Community Law Centre, Mangere Community Law Centre			As well, the words at s.3(2)(b)(iii) "and consumer leases" are not appropriate as there are no disclosure requirements that allow for the monitoring of consumer lease arrangements. **Decision**: Accordingly we have simplified s.3(3)(b)(i) to say "to enable consumers to distinguish between competing credit arrangements; and s.3(3)(b)(iii) to say "to enable consumers to monitor the performance of consumer credit contracts." We have added a new provision in 3(3)(e) to cover consumer leases "provides for the disclosure of adequate information to consumers under consumer leases to enable consumers to be informed of the terms of the leases before they become irrevocably committed to them and to make it clear the leases are not consumer credit contracts."
37.	Finance Now	Purpose Clause	This brings the law into alignment with other legislation impacting on the industry	
38.	ANZ	Purpose Clause	Support. The purpose statement should be amended to more appropriately reflect the importance of responsible borrowing. The reference to "before entry into" should be removed from s 3(3)(b) as it is not always practical to disclose before entry into a contract (see comments on disclosure).	
39.	Susan Schweigman	Purpose Clause	Agree with purpose clause, but how well borrowers are protected will depend on diligence at 9B(2) – Lender Responsibility Principles.	
40.	Christians Against Poverty	Purpose Clause	No additional purposes are necessary, suggested are sufficient, in conjunction with an education and awareness campaign for lenders to explain the changes.	
41.	NZ Bankers Association	Purpose Clause	Supports the emphasis on consumer protection as it is consistent with the general purposes of other consumer laws. Does not see the need for the additional purposes (i.e. promoting the confident and informed participation in markets for credit by consumers, creditors, lessors, lessees, and transferees and occupiers under buy-back transactions; and promoting and facilitating fair, efficient, and transparent markets for credit).	Noted. The amendments ensure that the primary focus is to protect the interests of consumers. The additional purposes are consistent with other consumer laws following the Consumer Law Reform Bill (e.g. Fair Trading Act). Since the exposure draft we have made minor amendments to simplify the purpose provisions, including: • s.3(2)(a) - "promote the confident and informed participation in markets for

				credit by consumers." • s.3(3)(b)(i) - "to enable consumers to distinguish between competing credit arrangements; and • s.3(3)(b)(iii) to say "to enable consumers to monitor the performance of consumer credit contracts."
42.	Alan Liddell on behalf of 24 Finance Companies	Purpose Clause	Do not support. The reference to the Act being about consumer protection should be removed. It creates a danger that the court or Disputes Resolution Provider will tend to rule in favour of the consumer even where the lender's interpretation was a reasonable one in the circumstances.	Disagree. Consumer protection is the primary purpose of the CCCFA, and the words in the purpose clause are consistent with other consumer protection legislation (Fair Trading Act and Consumer Guarantees Act).
43.	Jonathan Flaws (Sanderson Weir)	Purpose Clause	An unintended consequence of emphasising the protection of consumer interests may be to drive lenders to make it more difficult for borrowers to meet their lending requirements. It would be appropriate to balance 3(1) with a proviso that acknowledges that in achieving the purpose, the Act should not unduly restrict the ability of properly informed consumers to obtain credit.	Noted. Efficient markets as a concept includes that markets are as for as possible accessible and competitive. It is an acknowledged consequence of responsible lending that some potential borrowers who are most vulnerable will not be able to access credit, but credit is a serious problem for those people.
44.	Cash Converters	Purpose Clause	Considers financial inclusion to be important S3(2)(b) should be amended to read "promote and facilitate fair, efficient, transparent *and accessible* markets for credit" This will increase the scope for courts to consider access to credit when interpreting the Act	
45.	Waitakere Community Law Centre	Purpose Clause	Welcomes the shift in purpose but suggests additional purpose to promote the protection of vulnerable consumers from unscrupulous or fringe lenders.	Noted. The primary purpose emphasises protecting the interests of consumers.
46.	Save My Bacon (SMB)	Purpose Clause	Add to 3(2) to the effect that borrowers have an obligation to act honestly.	Disagree. The Responsible Lending Principles are obligations for lenders, not borrowers.

47.	Admiral Finance Limited	Purpose Clause	Amendments in the Bill do little to assist lenders. Borrowers are not required to act in good faith. Considers that the Act is not designed to create efficient markets.	Obligations on borrowers are found in various other locations within and outside the Act.
48.	Child Poverty Action Group	Purpose Clause	Suggests section 3(2) (b) should read "promote, facilitate and enforce fair, efficient and transparent markets for credit". Submits that the rules about interest charges, fees and payments are not adequately delivered in the proposed amendments.	Disagree. The Commerce Commission has responsibility for monitoring compliance with the CCCFA. The dispute resolution schemes approved under the Financial Service Providers Act also have a role in considering complaints about alleged non-compliance with the Act. It is not considered necessary to include a specific reference to enforcement in the purpose.
49.	Financial Dispute Resolution Scheme	Purpose Clause	Suggest broaden to "promote consumers' confidence in financial service providers"	Disagree. Not all credit providers are required to be registered financial service providers, for example, those only dealing in consumer leases that are classed as credit contracts under s.16 of the CCCFA.
50.	Financial Services Complaints Limited (FSCL)	Purpose Clause	No additional purpose is necessary.	Noted.
51.	GE Money	Purpose Clause	Comfortable with proposed purpose clause but note the following: 3(3)(b) it is unlikely that variation disclosure would enable consumers to distinguish between competing credit contracts. 3(3)(b)(iii) unclear what is meant by monitoring of performance of consumer contracts and consumer leases or how disclosure will enable this to occur.	Noted. Subsection 3(3) uses words already in the CCCFA, which is a list of the sorts of provisions in the Act rather than 'purposes' as such.
52.	EB Loans	Purpose Clause	Section 3(1) should not be any more important than section 3 (2) (a) or section 3 (2) (b). Section 3(2)(a)(b) should be incorporated into section 3(1) and the	Disagree. Consumer protection is an appropriate primary purpose for the CCCFA.

			word "primary" should be removed. The purpose should be to provide a level playing field, not take one party's side to the detriment of the other.	
53.	ASB Bank Limited	Purpose Clause	Considers that given the relevance of the purpose statement to Court guidance and application of the CCCFA and the Principles-based approach taken in the bill, it should be amended to: (1) The primary purpose of this Act is to protect the interests of consumers in connection with credit contracts, consumer leases, and buy-back transactions of land by: a. promoting the confident and informed participation… ; and b. promoting and facilitating … etc.	Disagree. The 'Market' purposes referred to in section 3(2) are important in their own right, not only in the context of consumer protection.
54.	Citizens Advice Bureau	Purpose Clause	Support the new purpose clauses, explicitly identifying consumer protection as a key purpose of the Act would be a significant step forward.	Agree.
55.	NZ Federation of Family Budgeting Services	Purpose Clause	In 3(3)(g) it may be appropriate to include the remedies available via financial disputes resolution bodies if a dispute exists.	Noted. Financial dispute resolution is referred to in the Financial Service Providers Act, but not in the CCCFA.

Interpretation

56.	Electricity and Gas Complaints Commissioner	Definitions	Neither the CCCFA nor the Bill are clear about whether electricity and gas contracts are credit contracts, consumer credit contracts or neither. It is therefore unclear what provisions of the CCCFA, including the proposed principles of responsible lending, apply to them.	This will need to be tested in submissions to the Select Committee.
57.	Buddle Findlay	Definitions	The Commerce Commission has previously indicated that it considers prepayment to also amount to "credit". The Bill is an opportune time to clarify this. The legislation should indicate that prepayments are not credit. It is not the intention of the CCCFA to capture these arrangements, which are similar in form to layby	It is unlikely that the current section 6 would be interpreted as such. It repeatedly uses the terminology of "deferring" payment of a debt. By definition, paying for a good or service in advance of receiving it is the opposite of

			sales.	deferring payment.
58.	Commerce Commission	Definitions	There should be a refinement of the definitions of "credit contract" and "consumer credit contract" to clarify whether or not certain transactions like layby sales, pawnbroking and fixed subscription services are covered. The definition of "primarily" in s 11(1)(b) [definition of consumer credit contracts] should also be clarified. One possibility is to state that if the majority of loaned funds will be used for household or domestic purposes then the loan is a "consumer credit contract".	Noted. The Bill amends section 11(1)(b) to refer to credit "wholly or predominantly for personal , domestic or household purposes". Predominant purpose is defined as being more than 50%. This follows the Australian approach.
59.	Barry Allan, University of Otago	Definitions	In relation to ss 14 and 15, considers that these provisions are easily circumvented. If the price is payable immediately on supply of the goods then there is no period of credit and therefore no credit contract (CCCFA will not apply) even if the contract provides for the consequences of non-payment so long as it is clear that non-payment is a breach. This gives lenders considerable latitude to provide for the consequences of breach. Submits that an amendment to s 6 or 7 is required. One option is to expand s7(2) and provide the ability to look to the substance to see if there is a concealed amount of interest of credit charges. Submits that this is not a sufficient remedy and if there is to be effective control of the charges and interest arising from defaults, the Act needs to include any contract which would be a consumer credit contract but for the absence of a right to a deferred payment, if the contract makes provision for the consequences of default. The s 11 definition of consumer credit contract only applies to fees or charges that are made explicit. It is difficult to see how a contract where the price is front-loaded with concealed costs of interest could be regarded as having any credit charges. In combination with the definition of interest, this means that a credit sale of goods will never be a consumer credit contract so	We believe that no expansion of s 7(2) is required to encompass the situation where a contract nominally provides for payment immediately, with consequences for non-payment that in effect render it a credit contract. In such a situation the contract will clearly amount to a credit contract in substance and so fall under s 7(2). Deliberately misleading borrowers will be a breach of the Responsible Lending Principles (and the Fair Trading Act), and the Bill provides the Commerce Commission with better enforcement options.

			long as the price of the goods matches the amount payable, unless the creditor takes security. Noted that although the Act makes provision for a cash price in the definition (requiring disclosure of difference between cash price and price payable by the debtor if the contract was a consumer credit contract) it provides no mechanism for taking these matters into account in deciding if a contract is a consumer credit contract.	

NEW PART 1A LENDER RESPONSIBILITIES

General Comments Supporting Lender Responsibility Principles

60.	Business NZ, Cash Converters, Commerce Commission, FSCL, Dun and Bradstreet, Dunedin Community Law Centre, J L Le Heron, NZ Law Society, Visa, Kate Waru, Wellington Community law Centre, Whitireia Community Law Centre, Full Balance, Auckland District Law Society	Lender Responsibility Principles	Support the Lender Responsibility Principles in principle.	Overall in the submissions there is strong support for adding responsible lending provisions to the CCCFA.
61.	Financial Services Complaints Limited (FSCL)	Lender Responsibility Principles	Welcomes the responsible lending principles as they provide more certainty for decision making in this area by creating a standard that all lenders in the industry, regardless of class, must adhere to. FSCL already investigates irresponsible lending but cannot consider complaints about the lender's commercial judgement.	
62.	Banking Ombudsman	Lender Responsibility Principles	Support the intent of the reforms, particularly responsible lending. Considers principles appropriate, notes consistency with other legislation and harmonisation with Australia. Generally speaking the banking industry complies with many of the proposed reforms. However the banking industry is not immune and changes should apply across the board.	Agree. The responsible lending provisions will apply to all creditors offering to provide and entering into consumer credit contracts and all transferees with respect to buy-back transactions.

63.	Buddle Findlay	Lender Responsibility Principles	Note that many lenders will already be complying with similar principles e.g. through FSF or NZBA guidelines. However, there may be difficulties for some lenders in ascertaining the extent of their obligations. Terms like "reasonable care and skill" and "substantial hardship" are undefined and the extent of investigations required is unclear in the context of the wide range of unforeseeable future events that could affect a borrower's ability to repay. This will be especially difficult for the two year period during which lenders will have to comply with the principles even though no Responsible Lending Code has yet been published. Uncertainty tends to lead to a conservative approach by lenders and as a result a restriction of the availability of credit.	The Financial Services Federation Responsible Lending Guidelines and the Banking Code of Practice are examples of responsible lending initiatives. They have informed the definition of the lender responsibility principles and will also inform the development of the Responsible Lending Code. It is considered appropriate that all lenders should have to abide by a Code that is both uniform and binding. Those lenders that are already compliant with existing industry Codes will likely find compliance with the Responsible Lending Code easier than others.
64.	Kiwibank	Lender Responsibility Principles	Support for the introduction of lender responsibility principles, and principles based approach. Note that some of the proposed principles are similar to those in their own existing responsibility Code. Support toughening up on unscrupulous behaviour in the credit industry; and providing greater protection for consumers when they borrow money.	
65.	Finance Now	Lender Responsibility Principles	Support. Finance Now already operates under responsible lending principles as a Financial Services Federation member. The wording is very broad in scope and meaning and duplicates the principles in the Code of Professional Conduct published by the FMA in relation to the FAA. Would not like to see the Code inhibit the majority to balance the risk posed by the minority.	
66.	Save My Bacon (SMB)	Lender Responsibility Principles	Has a published Code already. Principles are core to promoting right behaviours and practices.	
67.	Nicola Mapelsden	Lender Responsibility Principles	Considers that the Code could be developed as one option that lenders may choose to refer to but leave space for other codes to be developed by lenders or groups of lenders.	

68.	Financial Services Federation	Lender Responsibility Principles	Support. FSF members have already signed onto a voluntary Code of responsible lending. The responsible lending principles in the draft bill should only apply to lenders who do not already subscribe to voluntary responsible lending principles	
69.	BNZ	Lender Responsibility Principles	In principle supports the responsible lending principles outlined in the Bill. However, many of the principles raise a high level of uncertainty and concern as to how they are to be applied in the practice, and may result in unnecessary compliance costs. If the intention is to regulate loan sharks rather than banks (which are already highly regulated) then the compliance burden may be disproportionate to the benefit which could otherwise be achieved.	More guidance will be developed as part of Responsible Lending Code. The Responsible Lending Principles in the exposure draft have been refined and sharpened.
70.	Admiral Finance Limited	Lender Responsibility Principles	Generally supports the concept of responsible lending principles. The principles are very broad and without specific guidance it's unclear what attention what attention to detail and investigation of circumstances is required. The Code needs to be developed before finalising the bill and the entire package to be reviewed as a complete unit.	
71.	Save My Bacon (SMB)	Lender Responsibility Principles	Support a principles approach. However, for certainty, the Ministry should publish guidance and responses to lender questions. In addition it should provide a consultation or pre-clearance service.	Noted. The Responsible Lending Principles will be elaborated on, and guidance will be provided, through the Responsible Lending Code.
72.	Commerce Commission	Lender Responsibility Principles	The obligations in the Act and the principles must have their relationship clearly defined. Where they are closely related their language should mirror one another. The scope of transactions to which the principles apply should be clarified. E.g. third party insurance contracts.	Agreed. The Responsible Lending Principles in the exposure draft have been refined and sharpened. So has the scope of the Responsible Lending Principles – they now expressly include credit-related insurance, for example.
73.	Financial Dispute Resolution Scheme	Lender Responsibility Principles	Many credit contracts include insurance as a condition of lending. –there is likely not the proper needs-analysis that would be	

			required of a registered insurance adviser. Suggest credit provider be required to undertake a needs analysis and disclosure when selling insurance with credit.	
74.	Christians Against Poverty	Lender Responsibility Principles	Support. Considers the principles a step in the right direction in terms of shift the power balance from the lender to the borrower.	Noted.
75.	Douglas Kerr	Lender Responsibility Principles	Supports any changes to legislation which result in responsible lending. Mental health is very often a major cause of indebtedness. Though lenders are not responsible for treating those with mental illness, they should still be required to have procedures in place to respond sensitively and positively to them. Suggest examination of UK "Debt and Mental Health Evidence Form" as good practice guidelines for lenders and financial advisers.	
76.	Citizens Advice Bureau	Lender Responsibility Principles	Strongly support the introduction of Responsible Lending provisions into the CCCFA. Note that borrowers often use the acceptance or rejection of a loan to assess whether they can afford it. RL Principles will help to address this issue.	
77.	Child Poverty Action Group	Lender Responsibility Principles	Support the principles, note link between indebtedness and poverty and domestic violence.	
78.	Westpac	Lender Responsibility Principles	Many of the principles go beyond what is required as a minimum standard of protection. Many duplicate existing statutory provisions. It is not clear if the amendments are only seeking to codify these existing obligations or expand them. This creates confusion.	Agree. The principles in the exposure draft have been refined and sharpened.
79.	NZ Law Society	Lender Responsibility Principles	The principles should clearly identify what elements should be subjective in nature, and what objective.	Agree. The amended principles do a better job of this.
80.	Barry Allan, University of Otago	Lender Responsibility Principles	Support the objective of turning creditors into responsible lenders. Notes that the provisions are only required to be complied with for consumer credit contracts but that these principles can be taken into account when determining oppression, but oppression applies	Noted. The Court is only required to have regard to the factors in section 124 (guidelines for oppression) "to the extent they are

			to credit contracts generally. It is not appropriate for the principles to be taken into account in the oppression test if the contract is not a consumer credit contract. The principles should not protect borrowers who conceal the details of their financial situation. The principles should not apply to the lender with such rigor if the borrower has had the aid of a professional advisor (unless this person was in intermediary for the lender). There are situations where the borrower is in desperate situation. The principles would prevent any responsible lender from assisting and the borrower's urgent need for credit would either not be met or would be met by an irresponsible lender. Thought could be given as to how this could be legitimised for an informed borrower.	applicable." The Responsible Lending Principles will not be applicable if they do not apply to a particular transaction. The Principles have been amended to protect lenders relying on information provided by borrowers. The effect of professional advisers can be referred to in the Code, but it would be unhelpful to refer to legal or other professional advice in the Principles. The effect of responsible lending will be that there will be situations where it would be irresponsible to lend money that the borrower might desperately want.
81.	ANZ, GE Money	Lender Responsibility Principles	Support subject to concerns about current drafting (detailed under topic headings).	Noted.
82.	David Houghton	Lender Responsibility Principles	Generally agree with the Bill. If it is shown that a debt could never have been serviced then if the borrower cannot repay, the debt should be written off and defaults removed from their credit history.	
83.	Age Concern New Zealand	Lender Responsibility Principles	Considers the responsible lending provisions to be a significant improvement on the status quo. Expresses concern about a lack of clarity about the terms specifically reasonable care, reasonable inquiries, unduly onerous and unreasonable fees which will require judicial interpretation.	Noted. Other submitters have also raised comments about the clarity of terms. These are addressed under the comments on 9B(2)(a) to (h).
84.	NZ Law Society	Lender Responsibility Principles	Recommend using the term "consumer" in Part 1A, rather than "borrower".	Disagree. Drafting point. "Consumer" is not a term generally used in the CCCFA.
85.	Waitakere Community Law	Lender Responsibility Principles	Agrees with the intention of the principles however concerned that the principles are too vague and that time to develop Responsible	Noted. The drafting of the Principles has been

	Centre		Lending Code has the potential to add to uncertainty of interpretation.	refined and sharpened.
86.	ASB Bank Limited	Lender Responsibility Principles	Submitted that the principles are unnecessarily complicated and overlap in some instances. There is no recognition of scalability which is crucial to maintaining an effective and dynamic market.	
87.	Thorn Rentals NZ Limited	Lender Responsibility Principles	Not opposed to the concept of responsible lending however does not support the particular responsible lending principles set out in proposed 9B which are general and uncertain in scope and which in some cases appear to unfairly shift the responsibility for borrowing decisions by borrowers on to lenders. Submits that the Bill has failed to address debtor responsibility. Recommends amending the Bill to impose obligations on the borrower: a) To provide accurate information and full disclosure to creditors in relation to any proposed agreement with the lender, with it being an offence not to provide accurate information and full disclosure, and b) Not to sell or dispose of securities contrary to a loan agreement, with it being an offence for borrowers to do so.	Noted. The drafting of the Principles has been refined and sharpened. The intention of the Bill it to increase protections for borrows because consumer lending is an area that requires careful regulatory attention to protect consumers from the possibility of significant and far-reaching harms. The draft Bill has been amended to provide that lenders may rely on the information provided to them by borrowers (section 9B(4)).
88.	GE Money	Lender Responsibility Principles	Purpose of Code: these appears to be an inconsistency between 9C(b) and 9D section 9C(b) refers to how the principles *may* be implemented while 9D refers to processes the lender *should* follow – unless the Code is intended to be mandatory 9D should reflect 9C(b) 9D(1)(b)(ii) expands the responsible lending principles which do not include a verification obligation. All primary obligations should be included within the Act and the Code should not add to these. Reference to "suitable" in section 9D(b)(ii) is inconsistent with corresponding principle 9B(2)(f)(ii), which uses the wording	Agree. The drafting is now clearer. Disagree. Verification is an operational step, and the requirements will be variable according to the circumstance of different transactions. It would therefore be better to provide for verification in the Code, rather than treating verification as a principle. Agree that "suitable" should be removed from

			"otherwise appropriate" The stated purpose of the Code is to provide guidance on how the responsible lending principles may be implemented. However 9D(1)(B)(iii), (iv) and (v) effectively create strict liability obligations by requiring a lender to "ensure" the respective outcomes. Although we note that in relation to advertising and fees the Code reflects existing strict obligations we suggest that the above sections be modified to require a lender to "take all reasonable steps" to ensure such outcomes.	section 9D(1)(b). Noted. The principles do require lenders to meet certain obligations, and the drafting now makes the distinction between the principles and the Code clearer.

Lender Responsibility Principles (Section 9B)

89.	NZ Bankers Association	9B Principles	NZBA supports responsible lending practices, but is concerned that enacting principles as legal obligations creates uncertainty about legal requirements. More particularly, the proposed principles address activities that are already regulated by more detailed obligations in the CCCFA and in other legislation. NZBA submits that a more focused approach be adopted to support clarity and certainty, through removing certain principles and/or clarifying how they interact when overlapping with requirements under existing legislation. NZBA Code of Banking Practice effectively self regulates the banking industry by recording minimum standards of good banking practice that NZBA member banks must satisfy. NZBA members, who comply with the NZBA Code of Banking Practice, should not be obliged to comply with any new code Any new code should be targeted at third tier lenders. The legal status of the code would be uncertain. Would the code bind the regulator? Would it be taken into account by the courts when interpreting the obligation to comply with the principles? There needs to be more clarity as to the link between the principles and the proposed code.	The policy design is for the Responsible Lending Principles to be supported by guidance in a Code. The Bill now says the Code will be treated as evidence of compliance with the Responsible Lending Principles. The Code will provide a safe harbour. This clarifies the status of the principles and Code relative to one another. The intention is that the Code will be able to include different types of guidance for different types of lenders (or borrowers), and to that extent could target third tier lenders. The intention is that the Principles and the Code represent industry best practice. The NZBA Code of Banking Practice will inform the development of the Code and It is likely that the banks are already acting in a manner that is consistent with the Responsible Lending Principles. The objective of the policy is to bring the rest of the industry in to line with that standard. It also aims to ensure that all industry players will continue to meet that

				standard of conduct in to the future.
90.	ASB Bank Limited	9B Principles	If verification obligations are deemed necessary in the Code, they also need to reflect scalability to avoid unwarranted cost and inefficiencies for reputable lenders. It is reasonable to expect that a lender would have a lower level of inquiry for a personal loan that for a mortgage.	Agree. The Code is the appropriate place to deal with the scalability of the steps required to fulfil the responsible lending obligations, including verification.
91.	Consumer NZ	9B Principles	Principles in the draft bill should be reflective of the following: Consumers should be able to understand and easily comply with terms and conditions. Consumers should be able to assemble complete, clear and timely information to choose an appropriate product. Consumers should be assessed for credit risk in a realistic and fair way that reflects their borrowing patterns and financial status. Consumers should be able to manage their finances in a way that suits their circumstances and lenders should take specific responsibility for helping those in financial difficulty. Consumers should not be pressured or incentivised to take on additional debt.	Noted. These are the type of matters that will be covered in the Responsible Lending Code. The Responsible Lending Principles include lenders treating borrowers and their property reasonably and with respect when they are in difficulty, although this is short of a specific responsibility to help borrowers.
92.	ANZ	9B Principles	The focus of responsible lending should be on not giving loans that consumers cannot afford to repay without substantial hardship. This general principle should be the sole one included. (a), (d) and (h) overlap with provisions in other Acts, so should be removed. (b), (c) and (g) are covered elsewhere in the Act.	The responsible lending principles have been reworked to provide new section 9B(1) that "every lender must comply with the lender responsibility principles." Section 9B(2) says the lender responsibility principles are that every lender must at all times, (a) Exercise the care, diligence and skill of a responsible lender
93.	Auckland District Law Society	9B Principles	The principles should apply in relation to any advertisement, application or offer to enter an agreement, rather than merely where an agreement is actually entered in to.	

94.	ASB Bank Limited	9B Principles	Recommends amendment: *The Principles are that lenders will, having regard to the nature of the agreement with the borrower:* *a) Exercise reasonable care and skill, and;* *b) Make reasonable inquiries as to the borrowers –* *i) Financial circumstances; and* *ii) Requirements and objectives in entering into the agreement; and* *c) Not do or say, or omit to do or say, anything that is, or is likely to be misleading, deceptive to the borrower5; and* *d) Be satisfied before entering into the agreement, that –* *i) The borrower can be reasonably expected to make repayments under the agreement without suffering substantial hardship; and* *ii) The agreement is otherwise reasonably appropriate for the borrower having regard to the borrower's circumstances, requirements and objectives.* Considers that the inclusion of "having regard to the nature of the agreement" reflects scalability.	(i) in any advertisement for providing credit, and (ii) before entering into an agreement to provide credit, and (iii) in all subsequent dealings with the borrower." (b) Comply with the lender responsibilities (specified in subsection (3)) Subsection (3) sets out the more specific lender responsibilities, and it no longer refers to the Code. The primary wording is intended to be similar to wording in the Consumer Guarantees Act s.28 which requires "where services are supplied to a consumer they will be carried out with reasonable skill and care". It is also similar to the wording in the Financial Advisers Act s.33 that requires "A financial adviser, when providing a financial adviser service, must exercise the care, diligence, and skill that a reasonable financial adviser would exercise." There is also considerable merit in extending the responsible lending duty to cover advertisements for credit. Rather than referring to the obligations in other parts of the CCCFA and other Acts, we are including a general obligation to comply with those obligations. This will be a clear signpost that there are obligations for lenders under these Acts which contribute to the
95.	Auckland District Law Society	Lender Responsibility Principles	A number of the principles repeat principles which are already contained in the Fair Trading Act. Philosophy of principles based consumer legislation should be respected. On that basis, principles in the Bill which are already in the FTA or other legislation are better removed from the Bill to avoid the risk that settled application of principles becomes uncertain or particular to different types of situation.	

				overall picture of being a responsible lender, without creating uncertainty by doubling-up obligations.

9B(2)(a) Exercise reasonable skill and care

96.	Financial Services Federation	9B(2)(a)	Concern that as the principle is worded it imposes a duty of care on consumer lenders across the range of their activities. Suggested the wording should be a more specific duty such as "exercise reasonable care and skill in lending money or providing credit to a borrower."	Agree. Bill now refers to the care, diligence and skill of a responsible lender, in particular specified contexts (advertising, before entering into a lending transaction and in subsequent dealings with the borrower). This is intended to address concerns raised.
97.	Barry Allan, University of Otago	9B(2)(a)	Duty to exercise reasonable skill and care is too broad to be meaningful. Courts do not use an unanchored duty of skill and care but consider what duty is being carried out. Submits that the legislation should identify which tasks should be carried out with reasonable skill and care. Legislation should provide a statutory rule as to whether breach of this duty leads to a claim for damages by the borrower or not. At present, there is potential for a breach of statutory duty type claim or for a claim in negligence, but where common law duties are alleged to arise from a statutory source an essential preliminary step for the court is to decide whether the statutory intentions is to allow such claims. To minimise litigation costs is such a claim is intended, I submit the legislation should say so. If no such claim is intended and borrowers are to be protected by the scheme set up in the Act then it should say so to avoid fruitless legislation.	
98.	Buddle Findlay	9B(2)(a)	Proposed s 9B(2)(a) seems to impose a general duty of care that is not present in any other comparable industry. The provision should be clarified so that the duty of care and skill need only be exercised by the lender in respect of the provision of credit to the borrower. This would be consistent with the equivalent provision relation to financial advisers.	

99.	Full Balance	9B(2)(a)	Recommend making this clause clearer by including what a lender must exercise reasonable skill and care in relation to.	
100.	Jonathan Flaws (Sanderson Weir)	9B(2)(a)	Section (2)(a) refers to reasonable care and skill – reference should be tagged to care and skill in applying the reasonable lending principles.	
101.	Alan Liddell on behalf of 24 Finance Companies	9B(2)(a)	Do not support. Recommend that the requirement that a lender exercise reasonable care and skill is too general and should be removed.	Disagree. There is already a reasonable skill and care guarantee that applies to lenders and service providers under the Consumer Guarantees Act. The idea that lenders owe a duty (or responsibility) to borrowers underpins responsible lending.
102.	Auckland District Law Society	9B(2)(a)	Do not support. Requiring the exercise of "due care and skill" is too uncertain and will therefore be difficult to apply. This requires removal or clarification.	
103.	Westpac	9B(2)(a)	This is not needed in light of other provisions.	
104.	Thorn Rentals NZ Limited	9B(2)(a)	To say that a lender must 'exercise reasonable care and skill' is unclear and meaningless without stating the respects in which a lender must exercise such reasonable care and skill.	

9B(2)(b) Provide borrower with sufficient information to make informed decision

105.	Financial Services Federation	9B(2)(b)	Lenders should not be answerable about whether the borrower makes an informed decision. Lender can only provide information that it actually has. Not all relevant information may be known to it, e.g. because not disclosed. Providing information during all subsequent dealings with the borrower is an impossible objective. Concern that providing borrower with sufficient information to make an informed decision is akin to financial advice and for point of sale sellers arguably is inconsistent with the Financial Advisers	This principle has been reworded as new section 9B(3)(b) to read "assist the borrower to reach an informed decision as to whether or not to enter into the agreement and to be aware of the full implications of entering into the agreement by ensuring that: i) the terms of the agreement are expressed in a clear, concise and intelligible manner; and ii) any information provided to borrowers

			Act. It should be clear that the lender is not required to give advice. Suggested rewording "to the extent reasonably possible, provide the borrower with sufficient facts to enable a reasonable borrower to make informed decisions for themselves about the products available from the lender at the time of entering into the agreement."	(including through advertising) is not presented in a manner that is or would likely to be misleading, deceptive or confusing." The subsequent dealings aspect is now dealt with in section 9B(3)(c) which reads, assist the borrow to reach informed decisions in all subsequent dealings in relation to the agreement by ensuring that: i) any variation to the agreement is expressed in a clear, concise, and intelligible manner; and ii) any information provided after the agreement has been entered into is not presented in a manner that is, or would be likely to be, misleading, deceptive or confusing. Note that the obligation is to assist the borrower, rather than the lender being responsible for the borrower's decision. The drafting also indicates in general terms how the lender is expected to assist the borrower. The duty to assist borrowers sits alongside lenders' disclosure obligations.
106.	Commerce Commission	9B(2)(b)	Need to define somewhere the standard implicit in subjective terms like "sufficient information" etc. This could be done in the principles or in the Responsible Lending Code.	
107.	Barry Allan, University of Otago	9B(2)(b)	9B(2)(b) is already largely satisfied by the disclosure requirements. The lender can be expected to only go so far in providing information as to the wisdom of borrowing, cannot be expected to provide all information a consumer might need to make an informed decision.	
108.	Alan Liddell on behalf of 24 Finance Companies	9B(2)(b)	Do not support. Recommend that the requirement be removed and replaced with a list of specific items of information that the lender must provide or make available to the borrower from time to time or at various steps of enforcement.	
109.	Buddle Findlay	9B(2)(b)	Proposed s.9B(2)(b) should be clarified to provide an objective standard i.e. what the reasonable lender would have considered sufficient in the circumstances. It should also be clarified that the information provided need only be about the agreement, and not for example the borrower's financial situation or other potential lenders' products. "All subsequent dealings" should be defined as meaning any refinancing or other dealing in which amendments are made to the terms of the consumer credit contract.	
110.	Full Balance	9B(2)(b)	In making informed decisions, recommend adding what the informed decision is in reference to.	Agree. This is achieved in the redrafting of the responsible lending principles.

111.	Consumer NZ	9B(2)(b)	Recommend adding reference to "easily compare products" to 9A(2)(b) as well as changing timing to refer to "before" entering an agreement.	Disagree. Consumers' making informed decisions is the primary principle. A duty to compare products would be going too far.
112.	BNZ	9B(2)(b)	It is unclear whether existing mainstream practices will be sufficient to fulfil this principle.	Noted. The redrafted principles should provide greater certainty because they say how the lender should assist the borrower to reach and informed decision.
113.	GE Money	9B(2)(b)	9B(2)(b) is subjective and could be unworkable for lenders. Reference to a reasonable borrower would be more certain and workable.	
114.	Westpac	9B(2)(b)	Requires re-drafting. A lender should satisfy the requirement to provide "sufficient information" if it complies with the existing disclosure mandated under the CCCFA. It also lacks objectivity since what is sufficient will differ between customers. Moreover, "All subsequent dealings" should read "all subsequent dealings involving variations to the contract".	Disagree. All subsequent dealings with the lender is not just constrained to variations to the credit contract. However the redrafting of the principles does say how the lender can meet the obligation, which should provide greater certainty.
115.	ASB Bank Limited	9B(2)(b)	Unnecessary duplication. Recommend removal.	Disagree. Drafting is now clearer, and not duplicative.
116.	Citizens Advice Bureau	9B(2)(b)	Generally support the principles. Consider that clause (b) should be amended to make it clear that the lender has an obligation to provide this information in a manner that will be comprehensible to the lender.	Agree.

9B(2)(c) Ensure terms not unduly onerous and are expressed in clear concise and intelligible manner

117.	Financial Services Federation	9B(2)(c)	'Not unduly onerous' is subjective and too general. Should simply read "ensure that the terms of the agreement are expressed in a clear, concise and intelligible manner"	Agree that the reference should be to "oppressive" rather than "unduly onerous". Proposed new 9B(2)(f) reads "Ensure the terms of the agreement, the circumstances in which the agreement is entered into and the exercise of the lender's rights or powers under the agreement are not oppressive to the
118.	Westpac	9B(2)(c)	This section duplicates existing concepts and reduces clarity. Section 32(1)(c) of the CCCFA already requires that disclosure is expressed clearly and concisely and in a manner likely to bring the info to the attention of a reasonable person. No benefit in	

			expanding.	borrower". Proposed new 9B(3)(b) includes that "the terms of the agreement are expressed in a clear, concise and intelligible manner".
119.	Barry Allan, University of Otago	9B(2)(c)	Submits that introducing a requirement that terms not be "unduly onerous" is confusing when there are already provisions in the CCCFA relating to oppression. Submits that this principle should be restated as requiring creditors ensure that terms not be oppressive, as that will permit the Code to then address oppression. Considers that the principle that terms be expressed in a clear, concise and intelligible manner is so important that it should be a discrete principle in its own right. It should also be qualified by referring to a borrower to whom the terms need to be clear and intelligible (in the same way as 9B(2)(h))	
120.	Commerce Commission	9B(2)(c)	Need to define somewhere the standard implicit in subjective terms like "unduly onerous", "sufficient information" etc. This could be done in the principles or in the Responsible Lending Code. Does "unduly onerous" have the same meaning as "oppression"? If these are similar concepts then the language used should be the same.	
121.	Kiwibank	9B(2)(c)	Considers there is potential for confusion and uncertainty where the subject matter is already regulated elsewhere in the CCCFA. For example the principle that the terms of the agreement not be unduly onerous may affect the guidelines in relation to oppressive credit contracts. Kiwibank considers this relationship between existing obligations and principles needs to be clarified.	
122.	EB Loans	9B(2)(c)	"Unduly onerous" and 'confusing" should be defined.	
123.	GE Money	9B(2)(c)	The term 'unduly onerous' is too broad – not clear how requirements fit with restrictions on unreasonable credit fees and oppressive contracts in other parts of the Act. In the absence of guidance, requirement should be deleted.	

124.	BNZ	9B(2)(c)	Clarification on the meaning of 'unduly onerous' required.	
125.	Buddle Findlay	9B(2)(c)	The term "unduly onerous" in proposed s 9B(2)(c) is potentially subjective and uncertain and it is unclear why it is necessary given existing protection against "oppressive" contracts. These words should be removed.	
126.	Auckland District Law Society	9B(2)(c)	The use of "unduly onerous" in the third principle could have the effect of introducing a subject focus on the borrower or upsetting the established meaning of "oppressive" in s 118 of the CCCFA. This reference should be replaced with "oppressive".	
127.	Consumer NZ	9B(2)(c)	Recommend changing 9A(2)(c) to make the agreement "fair and easy for the borrower to comply with" rather than "not unduly onerous".	
128.	Alan Liddell on behalf of 24 Finance Companies	9B(2)(c)	The requirement for a lender to ensure that terms are not unduly onerous is a concern because "unduly onerous" is not defined and it is unclear how it would differ from "oppressive" (concern raised again in relation to oppression). The expressions "onerous" and "unduly onerous" should be removed or clearly defined in a precise manner. If disclosure is regarded as insufficient, add specifically to what must be disclosed.	See above. With respect to detailed disclosure requirements, these are specified in other parts of the CCCFA. There will be guidance in the Responsible Lending Code on how lenders would be expected to deliver on the principle that "the terms of the agreement are expressed in a clear, concise and intelligible manner".
129.	Thorn Rentals NZ Limited	9B(2)(c)	Difficult obligation given the poor financial literacy of some borrowers. The obligation to ensure that the terms of the agreement are expressed in an "intelligible manner" – is this to the average person or to the borrower? The expression 'unduly onerous' is inherently subjective and will likely mean different things to different people. There are specific restrictions on oppressive credit contracts and unreasonable credit fees elsewhere in the Act. Uncertain as to	Noted. There will be guidance in the Responsible Lending Code on how lenders would be expected to deliver on the principle that "the terms of the agreement are expressed in a clear, concise and intelligible manner". This may in some cases require that there is access to translation or information in the first language of the borrower. Whilst the CCCFA provides that oppressive contracts may be reopened, there is no

			whether paragraph (c) imposes additional, more stringent obligations and if so, what these obligations are.	general duty not to behave in an oppressive manner or have oppressive contracts. Accordingly, it is appropriate to include this general obligation in the responsible lending principles.
130.	Tulai project	9B(2)(c)	Should require lenders to consider language abilities, including providing translation services where relevant.	
131.	ASB Bank Limited	9B(2)(c)	Sufficient protection is already provided by the oppressiveness and disclosure provisions and under the FTA and FAA.	Disagree. General consensus is that current legal protections are insufficient to adequately protect consumers from the minority of lenders which are unscrupulous.

9B(2)(d) Not do or say, or omit to do or say, anything that is misleading, deceptive or confusing to the borrower

132.	Financial Services Federation	9B(2)(d)	FSF has no issue with this except for the use of the term "confusing" which does not appear in the FTA and which would be subjective in terms of determining what is confusing.	Now covered in proposed new s.9B(3)(b)(i) which reads: Any information provided to borrowers (including through advertising) is not presented in a manner that is or would likely to be misleading, deceptive or confusing." This language is consistent with s.35 of the Financial Advisers Act. This is also addressed through the proposed new principle at section 9B(3)(g) which references the legal obligations under other legislation, including the Financial Advisers Act and the Fair Trading Act.
133.	Barry Allan, University of Otago	9B(2)(d)	At best, a lender can only be expected to make reasonable efforts to ensure that the borrower understands. The principle should focus on steps taken by the lender rather than whether the borrower subjectively understands or not.	
134.	Auckland District Law Society	9B(2)(d)	There is some overlap between the principles and the FTA. If codification of existing principles is the intention then there is merit in this, but it should be made clear that a cause of action does not also exist under the FTA. However, the Committee prefers a principles-based legislation approach. Consumer credit contracts do not warrant deviation from this general approach reflected in the Consumer Law Reform Bill.	
135.	BNZ,	9B(2)(d)	'Confusing' is too subjective and should be deleted. Provisions should refer to misleading and deceptive to align with the established tests in the Fair Trading Act.	
136.	ASB Bank Limited	9B(2)(d)	Submitted that "confusing" should be removed on the basis it is excluded from the FTA (but included in the FAA) and its meaning is	

			highly subjective.	
137.	GE Money	9B(2)(d)	2(d) is subjective and could be unworkable for lenders. Reference to a reasonable borrower would be more certain and workable. References to "confusing" in sections 2(d) and (h) should be deleted. The term is too subjective.	
138.	Westpac	9B(2)(d)	"Confusing to borrower", how is the lender to assess this? It should possibly read "deliberately misleading or confusing". "Misleading and deceptive" has a well-established jurisprudence, but that is not true of "confusing". Sufficient protection already exists in relation to information.	
139.	Buddle Findlay	9B(2)(d) and (h)	The requirement that terms be "expressed in a clear, concise and intelligible manner" is different from the wording in the FMC Bill. It is not clear if this is meant to impose a different standard.	Noted. The FMC Bill refers to terms expressed in an 'effective' manner, while the Bill refers to an 'intelligible' manner. Intelligibility is different from effectiveness. An alternative may be to refer to information being "expressed in reasonably plain language" (which is the phrase used for the definition of 'transparent' in the CLR Bill.
140.	Lindsay Kincaid	9B(2)(b) and 9B(2)(d)	Should have reciprocal obligation on borrower.	Noted. Proposed new s.9B(4) provides that the lender may rely on information provided by the borrower unless the lender has reasonable grounds to believe the information is unreliable.

9B(2)(e) Make reasonable enquiries as to the borrowers financial circumstances and requirements in entering into agreement

141.	Financial Services Federation	9B(2)(e)	Support. The principles in e) and f) reflect actions that lenders already have every incentive to take as well as those of their borrowers. The FSF has no issues with those principles, except to say that in some contexts it is not necessary to make such enquiries as the borrower's objectives in entering into the	Noted. Now covered in s.9B(3)(a) "make reasonable inquiries, before entering into the agreement, to be satisfied that: i) the credit provided under the agreement will meet the borrower's requirements and

			agreement will be obvious on the basis of the product that is being applied for.	objectives; and ii) the borrower can be expected to make the repayments under the agreement without suffering substantial hardship. New section 9B(4) then provides that in considering (i) and (ii), the lender may rely on information provided by the borrower unless the lender has reasonable grounds to believe the information is not reliable."
142.	Financial Dispute Resolution Scheme	9B(2)(e)	Debtors should be required to undertake a credit check. Lending decisions are only as good as the information on which they are based.	Noted. There will be guidance in the Responsible Lending Code on how lenders would be expected to deliver on the principle "make reasonable inquiries, before entering into the agreement". Responsible credit providers already are likely to be asking questions/making reasonable enquiries about a person's income and other debt in order to establish their credit worthiness. Note proposed new s.9B(4) provides that the lender may rely on information provided by the borrower unless the lender has reasonable grounds to believe the information is unreliable.
143.	Telecom Rentals	9B(2)(e)	9B(2)(e) shifts responsibility from the borrower to the lender. This is risky for lenders given could be multiple lenders and only the borrower knows all circumstances. Hard to verify all information about a consumer (relative to commercial information). Recommend that the draft bill be modified to provide clear guidance as to what information a lender can rely on to meet the requirements to make 'reasonable inquiries' as to the borrower's financial circumstances.	
144.	BNZ	9B(2)(e)	Concerned that lenders making 'reasonable inquiries' could be defined in too prescriptive a manner that would create significant compliance costs.	
145.	Veda Advantage	9B(2)(e)	Lenders should be obliged to go beyond *verification* of what the borrower has *disclosed*. Submit that identifying what the borrower has not disclosed and assessing the independent and objective evidence afforded by credit reporting is critical to enabling more responsible lending. On 1 April 2012 the office of the Privacy Commissioner permitted the collection use and disclosure of credit information	

			(Comprehensive Credit Reporting). This compels the borrower to act responsibly, as their liabilities will come to light. Suggest amendment to 9B(2)(e) *"(e) make reasonable inquiries as to the borrower's—* (i) *financial circumstances; and* (ii) *credit history; and* (iii) *requirements and objectives in entering into the agreement; and "*	
146.	Thorn Rentals NZ Limited	9B(2)(e)	Privacy issues around requiring the lender to make inquiries into personal circumstances.	As noted by Veda Advantage, since April 2012 the Office of the Privacy Commissioner has permitted the collection, use and disclosure of credit information (Comprehensive Credit Reporting).
147.	National Council of Women	9D(1)(b)	Concerned with the issue of privacy as opposed to the requirement for lenders to make more in depth background checks as part of responsible lending.	
148.	Patrick Murdoch	9B(2)(e)	The credit manager should be able to plug into a "central point" to find out if the client is OK.	
149.	Fair City Finance Ltd	9B(2)(e)	Generally support with some reservations. We already attempt to establish whether borrowers can repay, as there is no point lending to someone who cannot. However, with the best efforts, some loans are still written off. Lending to pay household bills is generally not a good policy, as this is indicative of a likely inability to repay any loan. However, the proposed amendment is likely to stop all lenders from lending for these purposes, which may disadvantage genuinely needy consumers. The worst feature is that loan decisions will be judged in hindsight – it is easy to look at bad payers after the fact and judge that it was irresponsible.	Agree that most lenders already seek to satisfy themselves that borrows can repay their loans, and that lending is responsible. It is an inevitable consequence of responsible lending that some loans will not be able to be made where the credit would be harmful to the borrower.
150.	Auckland District Law Society	9B(2)(e)	Do not support. The fifth and sixth principles (sections 9B(2)(e) and (f)), relating to pre-contractual enquiries, are not specified and will introduce uncertainty. Lenders are likely to consider that they are already complying with them and/or that they are invasive or paternalistic. They could also be unduly onerous on lenders and require them to intrude on borrowers' private affairs. These	Noted. The wording in proposed new section 9B(2)(a) (see above) is modified compared to the Exposure Draft section 9B(2)(e) and this may address some of the concern. It is good business practice to establish that a borrower

			principles should be deleted or only applied to non-first tier lenders.	has the right type of credit and is able to repay the loan. Responsible credit providers already are likely to be asking questions about a person's income and other debt in order to establish their credit worthiness.
151.	Westpac	9B(2)(e) and (f)(ii)	The requirements to make enquiries lack objectiveness in their approach and are intrusive. A more appropriate approach would be to require lenders to 'only provide credit to a consumer when the information available to the lender leads the lender to believe that the borrower will be able to meet the terms of the credit facility'.	
152.	Alan Liddell on behalf of 24 Finance Companies	9B(2)(e)	It is unclear how a lender is to determine a consumer's "requirements and objectives" and there is no provision to allow the lender to rely on what the borrower says. It is also unclear whether the lender is to assess requirements purely from the borrower's point of view, or more objectively. This obligation is unrealistic for a small loan and for applications by way of the internet. Considers that consumers may find it offensive to be cross-examined in relation to requirements and objectives other than those they have notified to the lender. Recommend that this requirement should be removed or its meaning specified.	
153.	Ken Anderson	9B(2)(e)	Considers that borrowers find it invasive to disclose their financial position in detail and potentially not be permitted to borrow.	
154.	ANZ	9B(2)(e)	Principles (e)(ii) (requirements and objectives of the borrower) and (f)(ii)(appropriate in the circumstances) introduce significant uncertainty. The appropriateness of a product for a borrower is their prerogative. The level of inquiry required crosses in to financial advisers' territory. They should be removed.	Noted. The wording in the Bill is softened in a way that is expected to reduce uncertainty. In particular the word 'appropriate' is no longer being used. section 9B(2)(a) reads: "make reasonable inquiries, before entering into the agreement, to be satisfied that: the credit provided under the agreement will meet the requirements and objectives of the borrower".

155.	Full Balance	9B(2)(e)(i)	Suggest "current and reasonable future foreseeable future financial circumstances". This puts the responsibility on the lender to inquire about the security and consistency of the borrower's situation.	Noted. Reference to the borrower's circumstances has been removed from the Bill because of the likely uncertainty it would introduce.
156.	Nicola Mapelsden	9B(2)(e)(ii)	Agree with intention of the Bill but feel it may go too far and result in borrowers being denied credit by responsible lenders as they will be averse to risking breaching some of the more subjective, less well defined principles such as 9B(2)(e)(ii) and (f)(ii).	Noted. The principles have been better defined the Bill. Nevertheless it is an inevitable consequence of responsible lending that some loans will not be able to be made where the credit would be harmful to the borrower.
157.	EB Loans	9B(2)(e)	Section 9B (2)(e)(i) and (f) (i) are straightforward and could be resolved with a budget and statement of position Section 9B(2)(e)(ii) and (f)(ii) are very broad and there would probably be a different right/wrong answer for every single lending situation. That would be unworkable. These sections almost suggest a consumer should not even be allowed to apply for even a small loan until the consumer has been to an AFA financial advisor and has a full financial plan completed, this would never be feasible. Recommend removal of 9B(2)(e)(ii) and 9B(2)(f)(ii).	Disagree that requirements to take into account the borrower's requirements and circumstances will mean a consumer must have seen a financial advisor and have a financial plan. The requirement in proposed new s.9B(2)(a) is very similar to the Consumer Guarantees Act (s. 29) supply of services guarantee as to fitness for particular purpose. Note there is no longer a reference to a borrower's circumstances.
158.	Christians Against Poverty	9B(2)(e)	Re section 9B(2)(e)(i) would like to see provisions made for the borrower's situation to be reviewed by an independent accurate budget being supplied with income confirmed though payslips, financial statements or proof of benefit income. Considers that some creditors have their own "in house budgeting services" that are inadequate.	Disagree. A credit provider will be required to make reasonable enquiries about a borrower's ability to repay a loan. The creditor may ask for information to establish income and existing financial commitments as part of the information gathering prior to making a decision on lending. It is not proposed that there is regulation requiring in all circumstances certain steps are taken to check the ability of a consumer to repay a loan.
159.	Citizens Advice	9B(2)(e)	Suggest amending to make is clearer that "making enquiries" may include taking steps to verify information provided by the	Disagree. Verification is an operational step, and the requirements will be variable

	Bureau		prospective borrower. This would bring the legislation in line with Australia which includes taking "reasonable steps to verify the consumer's financial situation" as a key element of their responsible lending provisions.	according to the circumstance of different transactions. It would therefore be better to provide for verification in the Code, rather than treating verification as a principle.

9B(2)(f) Be satisfied the borrower can be reasonably expected to repay and the agreement is appropriate

160.	Financial Services Federation	9B(2)(f)	Support	Noted. This principle is now addressed in s.9B(3)(a).
161.	Barry Allan, University of Otago	9B(2)(f)	9B(2)(f)(ii) – this duty is too absolute and leaves the door open to a borrower being less than truthful. Submits that the lender can only really be made responsible on the basis of information made known to it or information which would have been made known had it conducted reasonable enquiries.)	Now covered by s.9B(3)(a). Note there is no longer a reference to a borrower's circumstances. Proposed new s.9B(3) provides that for the purposes of inquiries required under s.9B(3)(a), the lender may rely on information provided by the borrower unless the lender has reasonable grounds to believe the information is unreliable.
162.	Alan Liddell on behalf of 24 Finance Companies	9B(2)(f)	The reference to the borrowers' circumstances is unclear. Submits that it is unclear how circumstances differ from requirements and objectives. Recommend that the requirement be removed or "circumstances" defined and show how they differ from the definitions of "requirements" and "objectives".	
163.	Home Direct	9B(2)(f)(i)	The Bill should Include provision for decisions made by lenders to be based on information provided by borrowers, and excuse lenders from liability for entering an agreement that breaches the CCCFA where those lenders have reasonably relied on information provided by the borrower. The Responsible Lending Code should also contain a statement along the lines that a lender is only required to determine whether an agreement is suitable based on the information provided by the borrower.	
164.	Telecom Rentals	9B(2)(f)	Recommend 9B(2)(f) is modified so the lender is entitled to rely on information provided by a borrower at face value, unless seem to be reasons to believe that the information is not correct. In that case, lender would be responsible for checking from publically	

			available sources.	
165.	Christians Against Poverty	9B(2)(f)	Concern with the term substantial. Considers that hardship should be defined to encompass situations where borrowers are unable to meet basic living expenses including food rent and power.	Noted. The guidance in the Responsible Lending Code will discuss terms such as substantial hardship. Substantial hardship is a term used in Australian responsible lending legislation, and guidance has been published by the Australian regulator.
166.	Jonathan Flaws (Sanderson Weir)	9B(2)(f)(i)	"Substantial hardship" is not defined. In some cases a borrower might be prepared to accept the risk of substantial hardship. Example given is a person returning to the country who may not be able to obtain a loan other than from a non-bank lender for a limited term. The borrower understands that there is a refinancing risk but is prepared to take this as they expect their financial position and ability to borrow to change over time. The substantial hardship should be limited to repayments during the term and should not apply to any final repayments provided the borrower has taken independent advice and is aware of the risk.	
167.	Alan Liddell on behalf of 24 Finance Companies	9B(2)(f)	"Substantial hardship" is not defined and it is unclear how this differs from hardship and/or oppression as in the unforeseen hardship provisions. It is confusing that relief can be applied for unforeseen, non-substantial hardship, but a debtor can knowingly enter a contract that will certainly cause them non-substantial hardship. This requirement should be removed or specifically define "hardship" and "substantial hardship".	
168.	Full Balance	9B(2)(f)(i)	Considers that "substantial hardship" should be reconsidered and give more direction as to its meaning including how basic living costs are defined and take into account the amount of stress that additional debt payments will put on peoples abilities to cope with current and foreseeable future costs. This should be included as a definition in the interpretation section.	
169.	BNZ	9B(2)(f)	Principle goes too far, placing the responsibility on the lender, for a decision that is ultimately that of the borrower. Clarification on the meaning of 'substantial hardship', 'appropriate'	

			and 'unreasonable credit fees' required.	
170.	Thorn Rentals NZ Limited	9B(2)(f)	Recommend deletion. It should not be the lender's obligation to assess whether the borrower can make repayments without suffering hardship and it should not be for the lender to decide whether the agreement is appropriate for the borrower.	Disagree. The proposition that these obligations are appropriate for lenders is fundamental to responsible lending.
171.	Jonathan Flaws (Sanderson Weir)	9B(2)(f)(ii)	Asking the lender to form the view that the agreement is otherwise "appropriate for the borrower" is too strong a test. A lender cannot say with certainty that a loan is appropriate without complete information and it is unlikely that a borrower will provide this. Suggest using 'not inappropriate' (or not unsuitable).	Agree. The relevant test in new section 9B(3) no longer refers to the loan being appropriate for the borrower.
172.	Admiral Finance Limited	9B(2)(f)(ii)	Considers this section is too onerous for small loans. Would like clarity as to whether this will be required for loans under $5000.	
173.	ANZ	9B(2)(e) and (f)	Principles (e)(ii) and (f)(ii) introduce significant uncertainty. The appropriateness of a product for a borrower is their prerogative. The level of inquiry required crosses in to financial advisers' territory. They should be removed.	
174.	Auckland District Law Society	9B(2)(f)	Do not support. The fifth and sixth principles (section 9B(2)(e) and (f)), relating to pre-contractual enquiries, are not specified and will introduce uncertainty. Lenders are likely to consider that they are already complying with them and/or that they are invasive or paternalistic. They could also be unduly onerous on lenders and require them to intrude on borrowers' private affairs. These principles should be deleted or only applied to non-first tier lenders.	Disagree that requirements to take into account the effect of the credit being provided is too difficult. The wording has been modified in the Bill, but the principle that the lender should make reasonable inquiries remains. It is expected that best practice lenders are likely to be already complying with the obligation, in which case the principles will not add any new burden.
175.	GE Money	9B(2)(f)	Subsection 2(f)(ii) appears to require a lender to advise on alternative products from other credit providers – this would be better worded to read "not unsuitable for the borrower", it would be better for this section to refer to a consumers "financial circumstances" rather than "circumstances" as this is overly	Noted. We are no longer referring to the borrower's circumstances in new section 9B(3)(b). The test is now that the responsible lender

			intrusive	will, "assist the borrower to reach an informed decision as to whether or not to enter into the agreement and to be aware of the full implications of entering to the agreement by ensuring that- (i) Any advertising is not, or is not likely to be, misleading, deceptive, or confusing to borrowers; and (ii) The terms of the agreement are expressed in a clear, concise, and intelligible manner; and (iii) Any information provided to borrowers is not presented in a manner that is, or would be likely to be, misleading, deceptive, or confusing; and"
176.	First Union	9B(2)(f)	Recommend deletion of "substantial" from proposed section 9B(2)(f)(i). Consumers should not be forced in to hardship of any kind when borrowing.	Disagree. As noted above, the guidance in the Responsible Lending Code will discuss terms such as substantial hardship, which is a term used in the Australian responsible lending legislation.
177.	Home Direct	9B(2)(f), Scale of lending	The lender will need to make enquiries about the borrower. There is no recognition of different types of lending, and for small scale lenders there could be a high compliance cost. Recommend that the Bill and/or Responsible Lending Code must distinguish between different categories of lender and detailed assessments only apply to money lenders. Home Direct only provides credit products for particular consumer goods, average debt $500 - $600. Believe not same risk as money lending and higher amounts.	Disagree. The types of steps that lenders would be expected to take to address the principle of being satisfied about the borrower's requirements and objectives and likely ability to repay, given different lending scenarios, will be addressed in the Responsible Lending Code.

178.	Commission for Financial Literacy and Retirement Income	9B(2)(f)	Support, but there may be adverse consequences from the prohibition on lending to individuals for whom repayment would cause substantial hardship. This is likely to reduce the number of loans being approved, and potentially drive consumers to oppressive black market loans. Recommend defining more clearly the steps that lenders must take to ascertain this issue so as to avoid imposing excessive procedures.	Noted. See above also regarding the Responsible Lending Code.
179.	Full Balance	9B(2)(f)(ii)	It is not the role of the lender to make a decision to whether the loan is appropriate to the borrower's objectives, as this would then put the lender in the role giving advice in an area that they are not necessarily trained in, and to which they have an invested interest in the outcome.	Disagree. The obligation will be on the lender to make reasonable inquiries to satisfy itself that the loan can be expected to meet the borrower's objectives. If the lender provides advice it will be a financial adviser (as many are), but the lender is not required to provide this advice.
180.	Nicola Maplesden	9B(2)(f)(ii)	Suggest it is only the borrower that can determine if the agreement is "appropriate for them".	Disagree. New section 9B(3)(a)(i) now only refers to the borrower's requirements and objectives. This imposes a more specific obligation on the lender to consider the appropriateness of the loan product in light of the reasons the borrower is seeking the loan.

9B(2)(g) not charge unreasonable credit fees

181.	Financial Services Federation	9B(2)(g)	Support. Reflects existing CCCFA.	Now covered through reference to "this Act" (CCCFA) at new section 9B(3)(g). The reference to unreasonable fees was to tie the responsible lending principles into the existing principles in the CCCFA. S.41 of the CCCFA provides that a consumer credit contract must not provide for a credit fee or default fee that is unreasonable.
182.	Telecom Rentals	9B(2)(g)	'Unreasonable fees' could become subjective. Recommend expressing the principle as a positive obligation; to set credit fees that the lender can substantiate are reasonable (rather than a prohibition).	
183.	Business NZ	9B(2)(g)	Do not support. Principle of "unreasonable fee" is too subjective. A reasonable fee for one customer would not be reasonable for	

			another. Recommends further consideration	The reason for having the cross references to the four other Acts (FTA, CGA, FSP and FAA), is that there is a clear signpost that there are obligations for lenders under these Acts which contribute to the overall picture of being a responsible lender. Most importantly the failure to meet the requirements of these Acts would be grounds that a person was not meeting the responsibility principles and thus grounds for deregistration under s.108 that then triggers s.14 of the FSP Act.
184.	Alan Liddell on behalf of 24 Finance Companies	9B(2)(g)	The principle that a lender must not charge unreasonable credit fees is addressed in the actual fees provisions and adds no additional value. Recommend removal.	
185.	Kiwibank	9B(2)(g)	The CCCFA already prohibits unreasonable credit fees and sets out factors the court must have regard to when determining whether a fee is unreasonable. It needs to be clear if the proposed principle imposes a separate obligation or whether the factors set out in the CCCFA would be relevant to compliance with the principle. Consider that the CCCFA should contain one clear statement that a consumer credit contract must not provide for a credit fee that is unreasonable, and that the court must have regard to one clear set of factors when determining whether a credit fee is unreasonable.	
186.	ANZ	9B(2)(g)	Principles (b), (c) and (g) should be removed as they are covered elsewhere in the Act.	
187.	GE Money	9B(2)(g)	Repeats an existing obligation and is unnecessary	
188.	ASB Bank Limited	Fees	Do not consider it necessary to deal with credit fees in the context of developing responsible lending principles as a prohibition on charging unreasonable credit fees is already contained in subpart 6 of the Act. Recommend removal.	
189.	Thorn Rentals NZ Limited	9B(2)(g)	Submits it is difficult to understand as to how it is intended that the new requirements proposed in (g) overlay the existing restrictions on oppressive credit contracts and unreasonable fees. Uncertain whether (g) imposes more stringent obligations and if so, what these obligations are.	
190.	Child Poverty Action Group	9B(2)(g)	Section 9(2)(g) should be expanded to state “not charge unreasonable establishment fees, credit fees, administrative fees or insurance charges”	See above. The CCCFA s.41 provision that a consumer credit contract must not provide for a credit fee or default fee that is unreasonable covers all consumer credit fees including

				establishment fees and administrative fees. The CCCFA provides for third party fees such as insurance fees to be passed on to the borrower.
191.	Consumer NZ	9B(2)(g)	Recommend changing 9B(2)(g) to prevent charging of unreasonable interest as well as unreasonable fees.	Disagree. The proposed new oppression provisions include that consideration is given to the comparable arrangements offered by other creditors. New s. 9B(2)(d) has as a principle that a responsible lender must ensure the terms of the agreement are not oppressive to the borrower.

9B(2)(h) not advertise in a manner that is misleading, deceptive or confusing to borrowers or class of borrowers

192.	Financial Services Federation	9B(2)(h)	Support as reflects Fair Trading Act. But do not support reference to class of borrowers.	Agree. Now covered in new section 9B(3)(b)(i) There is no longer a reference to class of borrowers in this section. The only reference to a class of borrowers is in relation to the content of the Responsible Lending Code.
193.	GE Money	9B(2)(h)	Do not support reference to "class of borrowers". The lender's obligations should apply evenly across all borrowers.	
194.	Auckland District Law Society	9B(2)(h)	The fourth and eighth principles relating to statements, advertisements or actions that may be misleading, deceptive or confusing is likely already covered by the FTA.	Noted. The overarching principles are now that lenders should assist borrowers to reach informed decisions, and be aware of the implications of entering into the agreement. The references to advertising and other information not being misleading, deceptive or confusing support the principles. The lack of control on credit advertising has been identified as a problem, so specifically referring to credit advertising is important. The addition of confusing is consistent with s.35 of the Financial Advisers Act.
195.	Alan Liddell on behalf of 24 Finance Companies	9B(2)(h)	Proposes that the requirement on the lender not to advertise in a way that is misleading, deceptive or confusing expands the provision prohibiting the use of misleading and deceptive material in disclosure and should be limited by following with the statement "with respect to any matter that is material to the lender's services or its consumer credit contracts".	
196.	ANZ	9B(2)(h)	If retained, the reference to "confusing" in principles (d) and (h)	Disagree. The addition of confusing in

			should be removed as it is undefined and uncertain.	subsection (h) is consistent with s.35 of the Financial Advisers Act.
197.	Tulai project	9B(2)(h)	Suggest "not permit advertising in a manner which targets vulnerable communities"	Disagree. The details of what will be expected in relation to credit advertising will more appropriately be in the Responsible Lending Code.
198.	Whitireia Community Law Centre.	9B(2)(h)	There need to be limits on advertising which emphasises the ease, speed of loan approval, flexibility and normality in obtaining a loan. Identified an issue with lenders using celebrity endorsement. Principle 9B(2)(h) needs to be expanded to achieve this outcome.	
199.	First Union	9B(2)(h)	There should be a higher standard on advertising than merely not being misleading or deceptive. They should go further to provide all of the information that borrowers need.	Disagree. See comment above regarding the Responsible Lending Code. The requirement to provide information to potential borrowers is also addressed in changes to the disclosure requirements including the need to make available to potential borrowers the terms and conditions of credit arrangements and to have disclosure up front.
200.	ASB Bank Limited	9B(2)(h)	Unnecessary addition to the proposed 9B(2)(d) which implicitly addresses all methods of communication (orally or through an advertisement).	Disagree. New section 9B(3)(b) deals with how information is presented to borrowers, including through advertising. The lack of controls on credit advertising has been identified as a problem, so specifically referring to credit advertising is important.
201.	BNZ	9B(2)(h)	See comments in relation to s 9B(2)(d)	Noted.

Additional Principles

202.	Buddle Findlay; Financial Services Federation; Michael Wallmannsberger;	Additional Principles	No other principles required.	Noted. The principles have been revised in the Bill.

	Banking Ombudsman;			
203.	Alan Liddell on behalf of 24 Finance Companies	Additional Principles	The principles should differentiate between type of loan including size, term, method of repayment and risk.	Noted. The Responsible Lending Code will further elaborate on the application of the principles to different kinds of loans.
204.	Te Waipuna Puawai Mercy Oasis Ltd (TWP)	Additional Principles	Add a principle that places the onus on the lender to ensure that the customer fully understands the credit contract.	Disagree. This is partly covered by the references in the revised principles to lenders assisting borrowers to reach informed decisions.
205.	Age Concern New Zealand	Additional Principles	Suggests adding a new clause 9B(2)(f)(iii) "*the borrower is acting in his or her own free will and has capacity in relation to his or her own financial affairs"*	Disagree. This is already adequately covered by case law rules around duress and contractual capacity.
206.	Alan Liddell on behalf of 24 Finance Companies	Additional Principles	There should be a requirement for borrowers to act with honesty and transparency and in good faith. A breach of good faith should be defined. Borrower fraud is very common, but lenders are limited in their remedies.	Disagree. The lender responsibility principles, and indeed all of the obligations imposed by the current CCCFA, are aimed at imposing obligations on lenders, not borrowers. There is no need for a general obligation of this nature, due to lenders' greater ability to protect themselves using existing statutory and common law remedies. New section 9B(4), however, tempers the obligations on lenders somewhat, by enabling lenders to rely on information provided to them by the borrower, even where that information might be incorrect.
207.	Cash Converters	Additional Principles	The borrower should have a reciprocal duty to provide information honestly and freely. Where a borrower fails to meet this obligation, for example by knowingly withholding relevant information or providing false or misleading information to the credit provider and the credit provider has otherwise acted responsibly to provider should not be considered to have breached the responsible lending principles. Considers that there should be another principle that, subject to the lender acting responsibly the borrower maintains responsibility for entering into a credit contract	
208.	GE Money	Additional Principles	There should be a borrower responsibility principle – borrowers should be accountable for information provided and statements	

			made to a lender at the time of entering into the contract	
209.	EB Loans	Additional Principles	Borrower good faith principles should be added. They have these in Canadian jurisdictions. There are two sides to a loan contract so why should only one side have to be responsible.	
210.	Save My Bacon (SMB)	Additional Principles	Propose a Code for responsible borrowers is developed, including: • Exercising care and acting honestly • Reading the credit contract • Understanding or seeking clarification when don't understand • Being accountable for decisions they make • Not knowingly entering into obligations they cannot meet.	
211.	Mangere Budgeting Services	Additional Principles	Submits there needs to be inclusion of the express requirement for the lender to ensure the borrower understands the contract.	
212.	Financial Services Complaints Limited (FSCL)	Additional Principles	The Code should also address the sale of credit-related insurance products If a lender requires a borrower to take out loan protection insurance that insurance must be suitable for the borrower's needs and circumstances. Loan protection is being sold to borrowers who do require it but the policy is so limited that it offers effectively no cover. This is a slightly different issue to that addressed by sections 69 and 70	Agree. The "agreements" to which the Responsible Lending Principles apply include credit-related insurance, and references to insurance have been added to the lender responsibilities in section 9B(3) of the Bill. Also note, amended section 45 puts in place extra obligations on lenders in relation to credit-related insurance.
213.	Mangere Community Law Centre	Additional Principles	May need to review practices and monitor any changes over time.	Noted.
214.	Christians Against Poverty	Additional Principles	Support Recommends that a budget advisor could provide a budget before the application. Notes that this removes the need	Disagree. Would be too prescriptive to add budget requirements as a responsible lending

			for lenders to collect this information. Considers that this would provide for the development of a common financial statement which sets out minimum allowances for individuals and families that are fair	principle, and the requirement would only be relevant in a minority of cases. Best practice around budgeting advice for particular categories of borrowers is likely to be included in the Responsible Lending Code.
215.	Save My Bacon (SMB)	Additional Principles	'Reasonable' standard of enquiries doesn't take into account scale, for example, between $300,000 mortgage and $300 25-day loan. Proposals as drafted are ambiguous and there should be provisions for scale should be a consideration.	Noted. What will be reasonable will vary according to the scale and other circumstances of the loan. This will be a feature of the Responsible Lending Code.
216.	First Union	Additional Principles	A principle should be added providing that the nature of a lending proposal must be based on the needs of the consumer and free from the lender's own business goals, objectives and practices. This would help to address the significant problem with sales targets within financial institutions creating a conflict between a lender's obligations to their customer and having to meet sales targets.	Disagree. The lender's own business goals are legitimate. The idea of responsible lending is to add an extra responsibility; it is not intended to frustrate lenders' own legitimate business goals.
217.	J Grose	Additional Principles	Considers borrowers should be advised in writing where a funder of a reverse mortgage is to be changed during the currency of the loan period and an opt-out option provided in this case. Considers that loan structure and all parties involved in the loan structure must be clearly identified in advance. Considers the lender must be clearly identifiable by the borrower.	Noted. This would not be an appropriate Responsible Lending Principle. It may however be a disclosure issue – see proposed section 26A in the Bill.
218.	Admiral Finance Limited	Additional Principles	Require further guidance on interpretation of the principles and Code. The Code should include a requirement that borrowers comply with good faith principles and should be subject to fraud charges or lose some rights if those good faith principles are breached.	Noted. The Principles will need to be scalable – up and down. More guidance to be developed as part of the Responsible Lending Code. The lender responsibility principles, and indeed all of the obligations imposed by the current CCCFA, are aimed at imposing obligations on lenders, not borrowers.

219.	Jonathan Flaws (Sanderson Weir)	Additional Principles	Lenders should be required to take reasonable steps, relying on the information provided, to ensure that borrowers are sufficiently qualified to make a decision. For example when a person acting on behalf of a borrower the lender should be under some obligation to verify that the person named as borrower and entering into the agreement to repay is aware of, and consents to, the application. It should be a principle that the lender has to be satisfied on reasonable grounds that the borrower is legally competent to enter into the transaction and is capable of understanding it.	Agree. The inquiry responsibilities, and the responsibility to assist the borrower to make informed decisions and understand the implications of the agreement, will require the lender to satisfy itself on these points.
220.	Save My Bacon (SMB)	Additional Principles	The responsible lending principles outlined are very much focused on the initiation of a loan. Lenders' obligations later in the life of a loan would benefit from more attention.	Agree. The redrafted responsible lending principles address this issue.
221.	Finance Now	Additional Principles	Section9B(2)(f)(i) (borrower able to repay without substantial hardship) is always the desired outcome, however in order to meet consumer demand for a quick, hassle free and simple application process finance companies must, at times subject to profile, take consumers word on their financial situation and (at the lenders risk) accept their disclosure as true and correct. There is a market trend towards virtual lending rooms which is the long run support consumer protection and lower cost of service. The burden of proof will inhibit this market trend. Where we audit results we find that in over 95% of cases information supplied in applications is correct.	Noted. It may be appropriate for the lender to take the borrower's word on appropriate cases. In other cases, some level of verification will be appropriate. This will be a matter for the Responsible Lending Code.
222.	NZ Law Society	Additional Principles	Suggest (2)(f) of 9B should commence "be satisfied, taking into account information provided by the borrower, before entering into the agreement…"	Noted. Section 9B(4) now provides that the lender may rely on information provided by the borrower, unless the lender has reasonable grounds to believe the information is not reliable.
223.	Consumer NZ	Additional Principles	Recommend adding new subsection (i) to address lenders responsibilities to assist borrowers in hardship: "Take responsibility	Noted. The redrafted responsible lending principles include treating borrowers reasonably and with respect in default

			for assisting borrowers who are in financial difficulties" Recommend adding subsection (j) to prevent lenders' from exerting pressure on borrowers to take on debt: "Not pressure or give borrowers incentives to take on debt"	situations, and also advertising responsibly. Giving borrowers extra incentives to take on debt is an area that could be covered under the Code.

General Comments against Responsible Lending Principles

224.	Anonymous Third Tier Lender	Oppose Responsible Lending Principles	Do not support the Responsible Lending Principles or Code. Consider it will increase opportunistic use by defaulting borrowers to avoid contractual obligations. The lack of clarity in relation to "responsible" behaviour leaves it open to interpretation by various parties. Decisions are subjective and made in reliance on the information provided by the borrower. Question whether lenders who refuse to provide credit to a class of borrowers, seeing them as high risk, can be subject to a complaint to the Human Rights Commissioner.	Disagree. The underlying principle of responsible lending is that lenders are providing a financial service to their customers. There have been financial market reforms under which financial service providers owe duties to investors, but financial service providers which are lenders do not generally owe the same sorts of duties to borrowers. Unscrupulous lenders particularly take advantage of this gap, but the general proposition that lenders owe duties to borrowers who receive financial services applies more broadly than to demonstrably unscrupulous lenders. It is a principle of consumer law that service providers guarantee to consumers that their services will be provided with due skill and care, and will be fit for purpose (Consumer Guarantees Act, sections 28 and 29). Consumer lending is an area that requires careful regulatory attention to protect consumers from the possibility of significant and far-reaching harms. Responsible lending will not enable lenders to discriminate against credit applicants on the
225.	Alan Liddell on behalf of 24 Finance Companies	Oppose Responsible Lending Principles	Do not support. Considers that the ability for Dispute Resolution Schemes to make an award against a lender for breach of the vaguely worded and indeterminate new Responsible Lending rules it is of considerable concern to lenders.	

				prohibited grounds of discrimination under the Human Rights Act.
226.	EB Loans	Oppose Responsible Lending Principles	It would be simpler if the Bill listed and forbade irresponsible practices because this is the problem. Most lenders already act responsibly. Notes that the theme appears to be 1) look after bad borrowers and punish good borrowers; and 2) don't take action against bad lenders but make life difficult for good lenders. The principles are too vague, too general and the lender is given all the responsibility to second guess the borrower. Only the Borrower can decide on the borrower's objectives and requirements and if they are legal and affordable can we really disagree with them? Can we tell them they must change these? The circumstances are vague. Considers this may be a contravention of Human Rights legislation. Comments that there needs to be Responsible Lending provisions so that it allows you to exit persistent unscrupulous lenders but the general vagueness of Section 9B seems to not disallow this type of behaviour to be directed at Lenders at the whim of the Regulators and Borrowers via the Dispute Resolution Provider Services. This is unjust. It is also unfair on the Regulators as well. The borrower should not be completely absolved and should also have to act responsibly. There will be a lot of harm to consumers by making credit harder or impossible to obtain. This will have a flow on effect to retailer sales and will not be good for the economy during this recession.	Disagree that the policy objective is to look after bad borrowers, and to make life difficult for good lenders. The Responsible Lending Principles are necessarily high level and general, because they are intended to apply to all lenders. They are now drafted more tightly. A more prescriptive approach in the Act would impose higher compliance costs, and would not be best practice.
227.	Michael Wallmannsberger	Oppose Responsible Lending Principles	Do not support. The Act's consumer provisions should apply whenever the borrower is a natural person, regardless of borrower's purpose or intention. Consumer provisions should also apply to guarantors where either the guarantor or the borrower is a natural person.	Disagree. This argument is to extend the coverage of the CCCFA to cover small business loans, and personal guarantees of business loans. The problems that have been identified with vulnerable borrowers and debt traps do not logically lead to these proposed changes.

Purpose of Responsible Lending Code

228.	Kiwibank	Purpose of the Code	The legal status of the Code needs to be clear. Suggest the Bill be amended to clarify: i) the consequences of breaching the Code, in particular whether a breach of the Code necessarily constitutes a breach of the principles; and ii) whether compliance with the Code will be taken into account by the regulators and the courts when considering compliance with principles.	Agree. The Bill has been redrafted to provide there is a duty to be a responsible lender and in proceedings concerning a contravention of this duty compliance with the Responsible Lending Code will be taken as evidence of compliance with the lender responsibility principles. If a lender complies with the relevant guidance in the Code this will be grounds for defence; in other words the Code will provide a set of safe harbour practices.
229.	ASB Bank Limited	Purpose of the Code	The status of the Code needs to be clarified. It should not be viewed as the only mean by which a lender could demonstrate adherence to the principles.	Agree. The Bill has been amended in a way that clarifies the status of the Code. The principles will always be the primary focus, and the Code will provide supporting guidance.

Support Responsible Lending Code as Guidance

230.	Financial Services Federation	Guidance	Code should provide guidance because it covers such a wide range of products and what is appropriate in one area may not be in another. A Code providing guidance will be more flexible so will be able to cope with a wide application.	Agree. The Bill provides that the Responsible Lending Code will be guidance on the Responsible Lending Principles. It provides that the purpose of the Responsible Lending Code is to: i) elaborate on the lender responsibility principles, and ii) offer guidance on how those principles may be implemented by borrowers.
231.	Jonathan Flaws (Sanderson Weir)	Guidance	Guidance is preferable to prescriptive. What is prescriptive in one circumstance may not be appropriate in another.	
232.	Finance Now	Guidance	Support a Code which provides guidance and principles as opposed to prescriptive formula on how all financial services are to be	

			provided The scope of products is wide and guidance rather than prescription will allow lenders to better meet individual consumers needs	A Code that sets out guidance rather than being a set of prescriptive requirements is in accord with the overall principles-based approach of the CCCFA and general consumer law.
233.	Banking Ombudsman	Guidance	Support Code should elaborate and provide guidance to provide flexibility to deal with different situations. Considers that an overly prescriptive Code may fail to consider all situations that could arise.	
234.	Buddle Findlay	Guidance	Support guidance approach. Given the wide range of situations that the RL Principles apply to "one size fits all" requirements are unlikely to be appropriate. Instead, the Code should provide safe harbours for lenders to be certain that they are complying with the principles, but sufficiently flexible to adopt approaches that fit different circumstances. It would also be preferable for the consequences of breaching the Code to be set out in the legislation. Guidelines of the type the FMA is being authorised to issue under the FMC Bill would be a helpful detailed addition to the Code and Principles.	
235.	GE Money	Guidance	The Code should not be overly prescriptive. There are a number of factors (lending product, borrowers circumstances etc.) and it is unlikely that the Code will be able to cater for all of these.	
236.	Te Waipuna Puawai Mercy Oasis Ltd (TWP)	Guidance	There should be guidance for clarity.	
237.	Cash Converters	Guidance	Support. Code should guide the application of the principles rather than detail prescribed processes as one size does not fit all A prescriptive Code would be likely to: - Have unintended consequences and/or	

			- Allow undesirable conduct by failing to account for all situations Must be drafted carefully and clearly to provide guidance to a wide range of products and segments Must consider each category of finance or rely on very broad principles, supports a Code which seeks to address the differing characteristics of various products including payday loans Notes that for payday loans for example credit checks do not provide useful information compared to bank statements	
238.	Child Poverty Action Group	Guidance	Support. The Code should elaborate and provide guidance on the principles. The Code should be reviewed after one year in consultation with affected people	
239.	ANZ	Guidance	The Code should not be prescriptive. This could result in reputable lenders having to make costly changes solely for the sake of compliance. References to mandatory terms in s 9D should be removed and made consistent with the guidance orientation of s 9C.	
240.	Dunedin Community Law Centre	Guidance	Believe the Code should provide guidance.	
241.	NZ Law Society	Guidance	Support the Code providing guidance.	
242.	Christians Against Poverty	Guidance	Support, but should be prescriptive in some areas particularly the definition of hardship. In general it should be principles-based.	
243.	ASB Bank Limited	Guidance	It is appropriate for the Code to provide non-prescriptive guidance to provide lenders with greater compliance certainty and to make relevant amendments to their business processes.	

244.	Mangere Budgeting Services	Guidance	Support the Code elaborating and providing guidance in clear and basic wording.	
245.	Westpac	Guidance	Does not support further prescription. The Code should provide guidance.	
246.	BNZ	Guidance	The Code should differentiate between mainstream lenders and others. The Code should take a principles approach and provide guidance. This is in contrast to the Australian Code of Responsible Lending.	
247.	Dun & Bradstreet Australia and NZ	Guidance	Code should provide guidance however should not be overly prescriptive, thus allowing flexibility for the lender. May be appropriate to outline a 'safe harbour' approach that establishes minimum requirements to meet obligations. Any such approach should offer a range of options.	

Support Prescriptive Responsible Lending Code

248.	Citizens Advice Bureau	Responsible Lending Code	Development of the Code should be guided by international experience in relation to the balance of guidance compared to prescription. Prescription can provide much needed certainty and a non-prescriptive approach does not provide sufficient clarity for consumers to make a judgment about whether their rights have been breached.	As noted above, a Code that sets out guidance rather than being a set of prescriptive requirements is in accord with the overall principles-based approach of the CCCFA and general consumer law. The Bill provides that if a person complies with the relevant guidance in the Code this will be grounds for defence; in other words the Code will provide a set of safe harbour practices. This provides lenders (and borrowers) with certainty about the practices that will be acceptable; but also allows for flexibility. Given the range of credit products it is considered desirable to provide for some
249.	EB Loans	Responsible Lending Code	Section 9 is so general the Code must elaborate and provide guidance. The regulator's primary purpose should be to provide guidance and ensure compliance by education and only thereafter use punitive measures where lenders have been obstinate, uncooperative and clearly wrong. As the enforcement provisions are prescriptive, the Code can only really be prescriptive otherwise there will be enforcement and	

			interpretation arguments. Notes that there needs to be consistency.	flexibility.
250.	Whitireia Community Law Centre.	Responsible Lending Code	Support: should be prescriptive as it's easier to point to a breach.	
251.	Tulai project	Responsible Lending Code	The Code should be more prescriptive.	
252.	Wellington Community law Centre	Responsible Lending Code	The Responsible Lending Code should be more prescriptive in order to make the Act effective. Borrowers need to be easily able to access clear examples in order to understand what the code means in practice. Notes the code should be: • Written in plain English • Written on the basis that consumers are vulnerable • Available in multiple languages • Available in audio visual formats • Provided to every customer who seeks credit • Written so that documentation requirements are clear, so that real enforcement is easily possible	
253.	Age Concern New Zealand	Responsible Lending Code	Do not accept the decision to limit the purpose of the Code to elaborating on the principles and offering guidance. See no reason why the code should not be a much more prescriptive set of rules.	
254.	Financial Holdings Ltd	Oppose Responsible Lending Principles	Concur with the code of responsible lending, however, preference for prescribed and mandatory information for credit application. This would alter the behaviour of borrowers, retailers and brokers (who write most loans). In most cases information around a loan application is received by lenders second hand. Standardisation will educate the population and aid the courts. It will enable market participants to ensure they have all the relevant	

			information to make an informed decision.	
255.	J Grose	Responsible Lending Code	The Responsible Lending Code should be completely prescriptive due to the recent poor record and questionable ethics of financial institutions.	
256.	Anonymous Third Tier Lender	Responsible Lending Code	The code needs to be more prescriptive and cover all scenarios so it is not as subjective and vague. The Responsible Lending Code should be as clear and certain as possible. Businesses require certainty and clarity in order to structure their operations effectively and ensure compliance.	
257.	Michael Wallmannsberger	Responsible Lending Code	The RLC should be prescriptive as well as providing guidance. Should offer examples of 'deemed to comply' or a 'safe harbour' to provide credit providers a way to meet requirements of the law and satisfy its intent.	
258.	Waitakere Community Law Centre	Responsible Lending Code	The Code should be more prescriptive. This will result in less uncertainty for both lenders and consumers. Notes that a guidelines based code can result in wide interpretation which may result in consumers having to apply to the courts for interpretation.	
259.	Full Balance	Responsible Lending Code	Considers it is OK for the code to provide guidance of how the principles can be implemented instead of the bill, as long as the code is still practical and prescriptive.	Agree. The consultation process for preparing the Code should ensure it is practical. Note though that the Code is not intended to be highly prescriptive.

Timing of Responsible Lending Code

260.	Kiwibank	Timing	Concerned that there will be a period where the principles will be in force with the Code still in development. Suggest a reasonable time is provided between publishing the Code and the Code coming into force, allowing creditors to review and change their processes in order to comply. Also suggest bringing the principles	Noted. As drafted, most of the Bill (including the Responsible Lending Principles) will come into force 6 months after it is passed. The first Responsible Lending Code must be

			and the Code into force at the same time.	published by the Minister (following a statutory consultation process) within 2 years of the section coming into force. The Responsible Lending Code could be issued in less than 2 years, as long as the prescribed consultation process is followed. There is an option to hold back the Responsible Lending Principles from coming into force until the Code is issued. This as an issue that should be considered by the Select Committee. .
261.	Thorn Rentals NZ Limited	Timing	Lender responsibility principles should not come into force until the Responsible Lending Code is promulgated to create certainty and avoid the need for lenders to change their practices and procedures on two occasions.	
262.	Home Direct	Timing	The legislation and Code should be developed and come into force at the same time.	
263.	Admiral Finance Limited	Timing	It is difficult and inappropriate to comment on the Bill without the Code. The Code needs to be developed prior to the completion of the Bill.	
264.	Financial Services Federation	Timing	The principles and the Code should be introduced at the same time. The later introduction of the Code may lead to industry having to change practices again. Adoption of the principles without the Code would create significant uncertainty	
265.	GE Money	Timing	9E(1)(b) provides that publication of the Code will be delayed for two years. The Code should be published at the time the principles come into effect so there is certainty around the principles	
266.	Barry Allan, University of Otago	Timing	Submits that the Code and the principles should come into force at the same time as the principles leave scope for uncertainty and this will give the industry a lead in time before the obligations bite	
267.	Wellington Community law Centre, Financial Dispute Resolution Scheme, Waitakere Community Law Centre, NZ Federation of Family	Timing	Consider that the two year timeframe for publishing the Code is too long.	

	Budgeting Services			
268.	Consumer NZ	Timing	The two year period for development is too long. Would like to see the Code developed within one year of the amendments coming in to force.	
269.	NZ Law Society	Timing	Suggest the Code should be in force within one year of the Bill being signed into law.	
270.	Commerce Commission	Timing	Code should be developed as soon as possible otherwise enforcement will be difficult. Two years allowed for the issuing of the Code may be too long.	
271.	Telecom Rentals	Timing	Recommend the RL Code is drafted and circulated prior to Draft Bill becoming law. The actual legal and business impact of the Draft Bill is closely linked to the content of the Code.	
272.	Westpac	Timing	RLC should be active within 12 months, rather than 2 years, as should all amendments.	
273.	BNZ	Timing	To minimise uncertainty around obligations, the Code should also come in to force sooner than is provided in this draft.	

Content of Responsible Lending Code

274.	Business NZ	Content of Code	Agree principles of lender responsibility should be clarified in the Responsible Lending Code (RLC)	Agree.
275.	Kiwibank	Content of Code	General support for the Code, in particular where the subject is not addressed elsewhere in the CCCFA.	Noted.
276.	NZ Law Society	Content of Code	9D(1) “set out” should be “give guidance on”. 9D(2) “provisions” should be “guidance”.	Disagree. Section 9C says that the purpose of the Code is to provide elaboration and guidance on the Responsible Lending Principles.

277.	Susan Schweigman	Content of Code	Definitions and examples should be clear for debtors to understand.	Agree. Will be addressed in development of the Responsible Lending Code
278.	Consumer NZ	Content of Code	The Code must be sufficiently detailed for lenders to be able to understand their obligations. Too much generality will result in lenders adopting their own approaches.	
279.	Admiral Finance Limited	Content of Code	More guidance is required for the principles and the Code. Notes that the consequence of errors of interpretation could be to put a lender out of business. More detail and thought is required on the broad principles.	
280.	NZ Federation of Family Budgeting Services	Content of Code	Concept of requiring the lender to exercise reasonable skill and care should be included (as in the Consumer Guarantees Act).	Agree. Proposed section 9B(2)(a) of the Lender Responsibility Principles requires the lender to exercise reasonable skill and care, and the Code will definitely need to deal with this principle.
281.	Home Direct	Content of Code	Concerned that it is not clear what practices will in fact be 'responsible' for the purposes of the CCCFA. Clear guidelines and examples needed of : i) What constitutes 'reasonable enquiries' ii) What sort of terms would and would not be considered 'unduly onerous' iii) steps required in order for a 'lender' to be 'satisfied' as to appropriateness of agreement. There is no recognition of different types of lending when making enquiries about the borrower and for small scale lenders there could be a high compliance cost. Recommend that detailed assessments only apply to money lenders. Home Direct only provides credit products for particular consumer goods, average debt $500 - $600. Believe not same risk as money lending and higher amounts.	Agree. Note that "unduly onerous" and "appropriate" are no longer included in the lender responsibilities in the Bill. Section 9D(2) says the Code may include different provisions for different sorts of lenders, borrowers and agreements.

282.	Save My Bacon (SMB)	Content of Code	Need guidance on 9B(2)(e) 'reasonable enquiries'. Balance – businesses need to develop their own approaches, to take a 'light touch' is a commercial decision. There are also 'red flags' a business can use, for example, credit checks now show how many inquiries have been made – multiple enquiries can indicate a spiral of debt. SMB use this indicator as a signal to make further enquiries.	
283.	Direct Selling Association	Content of Code	The Responsible Lending Code should: • contain clear guidelines on what steps are required in order for a lender to be "satisfied" as to the appropriateness of the agreement; • contain clear guidelines and examples of what constitutes "reasonable enquiries"; • set out what sort of terms will not be considered "unduly onerous" and give guidelines and examples of terms that will be considered "unduly onerous"; and • excuse lenders from liability where those lenders have reasonably relied on information provided by the borrower.	Agree. Note that "unduly onerous" is no longer included in the lender responsibilities. Lenders are also entitled to rely on information provided by the borrower under section 9B(4).
284.	Save My Bacon (SMB)	Content of Code	Need clarity about 'Substantial hardship'. Australian case law describes 'severe financial hardship' in terms of being unable to meet their reasonable and immediate family living expenses, refer Australia Securities and Investments Commission's Regulatory Guide 209 (Credit Licensing: responsible Lending Conduct).	Agree. Guidance on "substantial hardship" will be essential, and the Australian material will be a valuable resource.
285.	Finance Now	Content of Code	Would like to see a uniform Code which encases all related legislation and Codes of conduct FAA, Privacy, CCCFA, Consumer Guarantees, Fair Trading etc.	Noted. The lender responsibilities include compliance with relevant consumer laws, but the scope and extent of the Code will need to be worked through.
286.	Lindsay Kincaid	Content of Code	Lender relies on honest and truthful information from borrower. If borrower is honest no need for lender to verify. Borrower should	Disagree. Best practice responsible lending involves an appropriate level of verification,

			be responsible for determining their own needs.	which may vary according to the size of the loan. The Responsible Lending Code has the scope to be flexible in this regard.
287.	ANZ	Content of Code	Should be removed. It is unnecessary to list the types of processes, practices or procedures the Code may set out.	Disagree. The Act needs to provide guidance on the content of the Code, which will be a form of delegated legislation.
288.	Lindsay Kincaid	Content of Code	Suggests additional category (e) being classes of borrowers, this will recognise that various borrowers' circumstances may dictate different stances from lenders.	New section 9D(2) provides that the Code may contain different provisions in relation to particular: a) lenders or classes of lenders b) borrowers or classes of borrowers c) agreements or classes of agreements. Which distinctions are included in the Code will be determined as the Code is developed, but it is clear that not all loans will be treated the same under the Code.
289.	Admiral Finance Limited	Content of Code	The Code needs to be tailored for each of the different tiers of lending. One size does not fit all. It is not sensible for all applications for credit to be processed with the rigour of a mortgage application. This would lead to higher costs	
290.	Telecom Rentals	Content of Code	Recommends responsible lending code provides sufficient scope to differentiate between lenders by reference to their target segment and product offerings. For example, leased goods versus payday lending.	
291.	Westpac	Content of Code	The Code should differentiate between different types of lenders. There is no need to impose many of the Code requirements on Banks.	
292.	Direct Selling Association of New Zealand	Content of Code	Would like more than 3 classifications of lender tiers. Suggest that there should be additional categories of consumer credit providers from the third tier money lenders.	
293.	GE Money	Content of Code	Has the potential to differentiate lenders and impose differing compliance requirements, which may result in a competitive disadvantage for some lenders. Categorising lenders by tier may unfairly and improperly create the perception that tier one lenders are inherently more responsible than smaller or fringe lenders. The Code should apply equally to all lenders.	

294.	Full Balance	Content of Code	The Code should provide specific reference to how the lender ensures that they have enough information to make a decision regarding whether it is responsible lending. Recommend adding a requirement for a lender to provide a referral to other non-lender agencies if the borrower is refused credit and is unable to meet living costs because of this.	Agree. The section on the content of the Code refers to the nature and extent of inquiries that will be appropriate. A referral to other agencies is something that may be considered when the Code is being prepared.
295.	Veda Advantage	Content of Code	Section 9D should correlate to and directly support and reference the Lender Responsibility Principles. However in section 9D we submit there is a gap which should be filled expressly. The gap is in subsection 9D (1)(b). Whilst we appreciate that 9D(1)(c) is meant to catch what is not directly addressed in 9D(1)(b) we submit that the focus on verification in 9D(1)(b)(i) should be offset by adding a new clause as 9D(1)(b)(vi):To identify and inquire about the credit history of the borrower.' Or wording to similar effect. (Irrespective of whether the submitted amendment to 9B(2)(e) in paragraph 38 has been made.) There should be direct reference to the obligation to make reasonable enquiries as well as this goes beyond verifying. *Verification* of the borrowers *disclosed information* is not enough to underpin the making of reasonable enquiries in the Lender Responsibility Principle expressed in 9B (2)(e) and(f).Making reasonable enquiries should entail more.	Agree that section 9D (content of Responsible Lending Code) needs to mesh with the Responsible Lending Principles.
296.	Mangere Budgeting Services	Content of Code	The wording of the Code will need to be such that there will not be any doubt for interpretation for a lender to recognise that they may need to provide their disclosure statement in the first language of the debtor. This should be regarded as a critical element of responsible lending to ensure the lender is fully satisfied the borrower understands the terms and conditions.	Agree. The Responsible Lending Code is the appropriate place to deal with language issues and best practice.
297.	Debt-Free Newtown	Content of Code	The consumer must be informed by any advertising about the total costs, fees and payback deadlines associated with borrowing. It is also important that borrowers be informed about what will	Noted. New section 9B(3)(b)(i) specifically contemplates credit advertising, requiring that it not be misleading, deceptive or confusing to

			happen in the event of default.	borrowers. These issues will therefore be dealt with in the Code.
298.	NZ Law Society	Content of Code	Suggest that minor amendments to the Code, which do not require consultation, should be specifically prevented from altering the content or operation of the Code.	Disagree. This is a standard provision for making minor amendments to these sorts of instruments.
299.	GE Money	Content of Code	There should always be consultation. Alternatively as a minimum lenders should determine whether the change is indeed minor.	
300.	ANZ	Content of Code	Do not support 9G(3). An alternative test of materiality could have an effect on the lender rather than the Code.	Disagree. A change which materially affects a lender will also materially affect the Code.

Responsible Lending Code Consultation

301.	BNZ, Te Waipuna Puawai, Mangere Community Law Centre, Dunedin Community Law Centre, J Grose, Citizens Advice Bureau, NZ Law Society, ANZ, Christians Against Poverty, ASB Bank Limited, GE Money, Tulai Project, KiwiBank	Consultation	Support the Ministry of Consumer Affairs developing the Code in consultation with stakeholders/affected people.	Agree. This is the process provided for in the Bill (save that the Ministry of Consumer Affairs is not MBIE). The consultation requirements are set out in section 9E of the Bill. The consultation requirements have not been changed from the Exposure Draft.
302.	Dun & Bradstreet Australia and NZ	Consultation	Supports the development of a Code by the Minister and would welcome the opportunity to be involved.	Agree.
303.	Save My Bacon (SMB)	Consultation	Support the Code being developed in consultation with key stakeholders/affected groups	Agree. People substantially affected by the Code (and their representatives) will be

				required to be consulted under section 9E.
304.	Westpac	Consultation	Do not consider a committee approach is required.	Agree.
305.	Whitireia Community Law Centre.	Consultation	It is important to consider the views of those affected by law reforms. Law centres should be involved.	Agree. Representatives of people substantially affected by the Code will be required to be consulted.
306.	Banking Ombudsman	Consultation	Considers a Code developed by MCA will have greater credibility than a code committee.	Noted.
307.	Easy Group Ltd, Full Balance, Financial Dispute Resolution Scheme, Alan Liddell on behalf of 24 finance companies, Jonathan Flaws (Sanderson Weir), Finance Now, Waitakere Community Law Centre	Consultation	Support a committee approach	Disagree. A Code Committee approach is not being recommended, even though it was used for the Financial Advisers professional conduct code. The Code will be a form of delegated legislation, over which the Minister will have the final say. The Minister may be required to decide between the preferences of different groups.
308.	Veda Advantage, Commerce Commission, Financial Services Federation, Financial Services Complaints Limited (FSCL), First Union,	Consultation	Support a committee approach and would like to be involved.	
309.	Buddle Findlay	Consultation	Prefer development by a Code committee to enable better engagement with industry. Note success of this method in relation	

			to financial advisers professional conduct Code.	
310.	Admiral Finance Limited	Consultation	All affected parties need to be consulted and the code(s) need to be appropriate for the different lending products. It is quite likely that several codes need to be developed.	
311.	Finance Now	Consultation	A large proportion of the industry operate under Responsible Lending Codes of various forms and to be able to draw on this experience would be valuable for MCA This will enable existing Codes of practice to be combined into a meaningful document	
312.	National Council of Women of New Zealand	Consultation	Register strong interest in being involved in the development of the Code. Hope that as wide a consultation as possible will be made.	Noted.
313.	EB Loans	Consultation	Notes that any initial Code should go through a parliamentary process. The panel should include the MCA, consumer advocates, credit provider advocates and borrowers with an independent person having the casting vote - this could be the Law Commission or a retired judge Each separate lending market (tier 1, 2 and 3) should have their own unique Code. Credit providers should have the opportunity to submit a Code to the Panel for approval.	Noted. The Code will be subject to the Regulations (Disallowance) Act, which is a form of parliamentary oversight. The Code will be a form of delegated legislation, over which the Minister will have the final say. The Minister may be required to decide between the preferences of different groups. The Code may treat different types of lenders, borrowers and agreements differently.
314.	EB Loans	General	The draft bill is premature and incomplete without the Responsible Lending Code. Notes that any revamping of the CCCFA will affect every single Financial Service Provider and therefore all FSP's should have been consulted during the MCA research process. This would provide a balanced view and hopefully the finance company submitted will	Noted. Consultation will continue through Select Committee process. The exposure draft was the first stage, and was an additional opportunity for stakeholder consultation compared to most Bills.

			provide the much needed data and input which is severely lacking. This is crucial and complex legislation which will have wide ramifications on the economy and society so I would also strongly suggest that after considering all the submissions that an amended Draft Exposure Bill is put out for another round of Submissions before it goes to Select Committee.	
315.	Alan Liddell on behalf of 24 Finance Companies	Consultation	Recommends that high risk lenders should be consulted on the Responsible Lending Code and suggests that a lender representative be appointed by the Minister after consultation with the high-risk industry.	Noted. The Bill requires an inclusive consultation process.
316.	Financial Services Federation	Consultation	If it is decided to include the provisions of the Credit (Repossession) Act in the CCCFA there should be a further round of consultation	Disagree. The Law Commission engaged in extensive consultation in its investigation, and the Bill follows the Law Commission recommendations. A further opportunity for substantive input on the Bill as a whole will be available at the Select Committee stage.
317.	Consumer NZ	Consultation	No strong view on Minister vs. committee. Important to develop in an open and transparent manner and allow for public participation. If a committee is appointed it must include adequate consumer representation. Proceedings of the Committee must be available to the public.	Agree on the need for an open and transparent process.
318.	NZ Federation of Family Budgeting Services	Consultation	Support overall. Would like to be involved in developing the RLC.	Agree.
319.	Business NZ	Consultation	Support process for developing Responsible Lending Code, but recommend targeted consultation with stakeholder groups before the Draft is published.	Noted. Stakeholders are sure to be consulted in the preparation of the draft Code.
320.	Michael Wallmannsberger	Consultation	Code likely to be better if reflecting consensus of a balanced committee representing people affected by responsible or	Noted. The legal status of the Code is clarified in the Bill.

			irresponsible lending. RLC should have the force of law.	
321.	Wellington Community Law Centre	Consultation	Note that WCLC would be interested in the submissions of the community groups who would be on the committee. Active community consultation is vital rather than the committee making itself open to suggestions and input.	Noted.
322.	Susan Schweigman	Consultation	Recommend assessing how effective the Code of Professional Conduct for financial advisors has been from the user's point of view. This will provide guidance on selecting the team to create the RLC. Notes that consultation seems logical.	Noted.
323.	Home Direct	Consultation	Either the Ministry or a Committee Code can lead the work. Lenders across the market must be part of the development of the RL Code. Home Direct wish to participate.	Noted. Lenders will be part of the development of the Responsible Lending Code.
324.	Cash Converters	Consultation	Industry participation is vital to ensure the Code contemplates a wide range of products, consumers and lenders. Industry participation will also promote "buy-in". Cash Converters would like to be part of the process either through a "Code committee" or via consultation with the Ministry.	
325.	ASB Bank Limited	Consultation	Recommend leveraging the Code of Banking Practice as it is a well-developed industry practice.	Agree. The Code of Banking Practice will certainly be an input for the Code development.

PART 2 CONSUMER CREDIT CONTRACTS

Disclosure

326.	Commerce Commission	Disclosure	Section 99 of the Act needs to be clarified (prohibited enforcement for non-disclosure). The Bill should state that non-compliant disclosure extends to misleading and deceptive disclosure. It should also be clarified what "enforcement" of a contract means for the purposes of this provision. How the contract eventually becomes enforceable once disclosure is made also requires further work.	Noted. Not clear that misleading or deceptive disclosure should be treated as non-disclosure. Draft Bill expands elements of enforcement covered by the provision. Agree that the issue of 'remedial disclosure' will require further clarification and consideration at select committee stage.
327.	Paul King	Disclosure	Section 99, which prohibits enforcement of a loan where disclosure has not been properly made, is unclear and not well understood.	
328.	Mangere Community Law Centre	Disclosure	Submit that it would be good to see a model uniform one-page disclosure summary form developed to ensure compliance and to aid comparison shopping by consumers.	Noted. The model disclosure form in the 2004 CCCF Regulations (containing the key information referred to generally in Schedule 1 of the CCCFA) is widely used. It is not a one-page disclosure summary, and it is not available to aid comparison shopping by consumers. New regulations for mandatory disclosure forms could be made under the Bill, but disclosure would still have to include the Schedule 1 key information. The Schedule 1 key information does not include the total cost of credit (following amendments included in the CCCFA in 2003).
329.	Citizens Advice Bureau	Disclosure	Submit that disclosure must be via a standard template and should be provided in a layered approach. Every written disclosure should have a one page summary simply and clearly outlining key information including: - annual interest rate - total cost of credit - penalty interest - fees associated with missing payments - costs associated with early repayment - availability of hardship provisions	

			- right to make a complaint	
330.	Antonina Savelio	Disclosure	Lenders should be more forthcoming with their advertising. Often lenders will advertise the weekly charge in large font however the term will be barely visible.	Agree. Advertising is addressed further in the lender responsibility principles in addition to the disclosure obligations under the CCCFA, and the obligations under the Fair Trading Act.

Initial Disclosure

331.	Waitakere Community Law Centre, Wellington Community Law Centre, NZ Federation of Family Budgeting Services, Michael Wallmannsberger, Financial Services Complaints Limited (FSCL), National Council of Women, Age Concern, Tulai project, Full Balance, Mangere Budgeting Services, , Te Waipuna Puawai Mercy Oasis Ltd (TWP), Jonathan Flaws (Sanderson Weir), Susan Schweigman, Citizens Advice Bureau	Initial Disclosure	Agree with providing disclosure before the contract is entered into.	The Exposure Draft set out an amendment to section 17(1) to provide that there must be disclosure of the key information set out in Schedule 1, as applicable, before a consumer credit contract is made. There was a consultation question – "is there any justification for consumer credit contract disclosure after the contract is made?" The submissions indicate there is strong support for upfront disclosure. The proposals enable borrowers to read through a copy of the loan terms before signing. Additionally, a responsible lender would provide verbal disclosure. The upfront disclosure requirement will mean that new consumer credit contracts cannot be agreed over the phone unless there is some form of pre-disclosure. This could be done by sending the key information by email or fax. It is accepted that this may affect some credit providers' business model. Some banks raised as a scenario needing to obtain an emergency extension to a credit
332.	NZ Law Society	Initial Disclosure	Support. NZ Law Society notes that provisions may add to costs of retail agents of finance companies, and could lead to higher	

			administration costs, which may be passed to consumers.	card limit or overdraft facility. This would be dealt with as a variation to an existing contract and the proposed changes to s.22 will allow for disclosure within 5 days in circumstances such as this, rather than upfront. **Decision**: As set out in the Exposure Draft (but referred to before the contract is *entered into* rather than before the contract is *made*), amend s.17(1) as follows: (1) Every creditor under a consumer credit contract must ensure the disclosure of as much of the key information set out in Schedule 1 as is applicable to the contract before the contract is entered into.
333.	Consumer NZ	Initial Disclosure	Consumers need to have access to comprehensive and timely information to participate confidently in credit markets. Providing for disclosure after a contract is made undermines the goals of the CCCFA.	
334.	Christians Against Poverty	Initial Disclosure	Support. There is no justification for disclosure not being made up front. The delay is oppressive and disempowering for borrowers	
335.	Save My Bacon (SMB)	Initial Disclosure	Support disclosure at the time of contract. Electronic communication channels mean there is no need for lead-times.	
336.	Banking Ombudsman	Initial Disclosure	Support. There is little justification for delayed disclosure. As noted, it may be too difficult and costly for a consumer to change their mind if disclosure is made after the contract is concluded	
337.	Financial Dispute Resolution	Initial Disclosure	Support. Disclosure should always be on or before the date on which the credit is arranged. Guarantors should receive disclosure of rights, continuing disclosure, the same as if they were the borrower.	
338.	BNZ	Initial Disclosure	Support initiative that disclosure of relevant key information in most instances should occur before contract is entered into. However providing some consumer-specific information will slow lenders ability to respond effectively to customers' time demands (e.g. requiring disclosure of initial unpaid balance). In some cases it will be impossible to provide all of this information, for example when credit related insurance is provided. Some flexibility for post-contract disclosure is desirable.	
339.	Buddle Findlay	Initial Disclosure	There is no particular reason disclosure should be after execution. However, the amendment may not make much difference in practice. Disclosure can still be only immediately before the contract is signed. Consumers are still unlikely to read and comprehend the contract.	

340.	Easy Group Ltd	Initial Disclosure	Support. No problem with presenting disclosure documents as part of door-to-door sales process.	
341.	Mangere Community Law Centre	Initial Disclosure	Generally supportive however notes that there may be technical reasons why a creditor is unable to provide full disclosure materials to a debtor prior to a loan contract being concluded.	
342.	Admiral Finance Limited	Initial Disclosure	Agree with amended Section 17 and notes that AFL has always made up-front disclosure.	
343.	Debt-Free Newtown	Initial Disclosure	Effectiveness of disclosure is based on the assumption that borrowers read and analyse disclosure documents. The shame associated with asking for credit, and not understanding loan documents, prevents many people from asking for help or clarification. Rules must ensure that the onus is on lenders to prove that borrowers understood the total cost of the loan.	Noted. There are weaknesses in the current disclosure requirements, which is why responsible lending is necessary. Disclosure and responsible lending will be complementary.
344.	Finance Now	Initial Disclosure	The importance of this section is to ensure that initial disclosure is made properly to all parties and they are fully informed and understand their obligations In most cases this occurs at the time the consumer enters the agreement. However, note that this possibly provides little consumer protection as the consumer is motivated by desire for the loan or goods and does not actually read the disclosure up front This allows the consumer time to reflect on the decision made at the time of purchasing goods or entering into the loan There may be scope to split the disclosure requirements requiring some aspects to be disclosed at the time and allowing for other terms to be disclosed in the following five days. This would enhance consumer understanding of their contracts Disclosure needs to be simplified, the development of a disclosure	Noted. Splitting initial disclosure into separate components (at different times) is likely to increase compliance costs. The Bill does not propose to substantially alter the form of initial disclosure under the CCCFA, although the Bill includes a regulation-making power to prescribe disclosure requirements in particular cases.

			template would be helpful	
345.	Nicola Maplesden	Initial Disclosure	Section 17 currently says that as much of the key information in Schedule 1 "as is applicable to the contract" must be disclosed. This combined with Schedule 1 (l)(n) and (o) "if ascertainable" can arguably result in significant gaps in disclosure provided. e.g.; if the borrower does not have to draw down the full amount of a loan, then the total amount of interest, and even repayment amounts, may not be technically ascertainable. A borrower can enter into and drawdown credit without knowing what their repayments will be. Would it help to say "the total amount of interest charges payable under the contract, or if this is not ascertainable, an estimate of the total interest (or repayment amount) that would be payable if the borrower borrowed the maximum amount possible under the contract" - or something similar. The "if ascertainable" perhaps allows avoidance of disclosure obligations? Consider amending s17 to "before or at the time" the contract is made.	Noted. The annual interest rate, credit fees and charges will be ascertainable. The problem with actual payments possibly not being ascertainable is an existing issue. Extensions of credit will be covered by variation disclosure. Posting costs of credit under section 9I will be separate from the existing disclosure requirements under the CCCFA.
346.	Save My Bacon (SMB)	Initial Disclosure	Initial disclosure of a summary of key information would be useful. This would include the principal, fees and charges, interest rates, payment dates and amounts due, total cost of finance and the borrower's rights and obligations in various circumstances.	Noted. The Bill does not propose to substantially alter the form of initial disclosure, although the Bill includes a regulation-making power to prescribe disclosure requirements in particular cases. The Schedule 1 key information does not include the total cost of credit (following amendments included in the CCCFA in 2003).
347.	ANZ	Initial Disclosure	Prior disclosure is not always practical and flexibility needs to be retained for consumer benefit, e.g. reduce ability to transact by phone or online (increasing preference of consumers) and ability to provide emergency credit.	Noted. Extending a limit would be a variation for which variation disclosure is relevant (rather than initial disclosure). The Bill will provide for variation disclosure 5 working days after the change is made, or as part of on-going continuing disclosure. Prior disclosure is most important for *initial*

				disclosure.
348.	NZ Bankers Association	Initial Disclosure	There should be flexibility to disclose after the credit contract is made. This flexibility is needed to continue with current practices e.g. extending credit card or overdraft facilities for customers that are overseas or in an emergency. There should be consistency between the CCCFA and s 22 of the Financial Advisors Act. NZBA suggests that the CCCFA should require "every creditor under a consumer credit contract must ensure the disclosure of as much key information set out in Schedule 1 as is applicable to the contract before the contract is made or, <u>if not practicable before, as soon as practicable after the contract is made</u>." This would allow banks to provide disclosure to customers following the extension of a credit card or overdraft limit over the telephone, a common occurrence.	The Exposure Draft requires initial credit contract disclosure before the contract is entered into. Extending a credit limit in emergencies would be a variation of a contract and banks would not need to fulfil the initial disclosure requirements in those cases. Nevertheless, the submission raises a valid point in relation to variations of contracts. The Bill now provides for variation disclosure where a credit limit is increased either 5 working days after the change is made, or as part of on-going continuing disclosure. Prior disclosure is still important for *initial* disclosure.
349.	Whitireia Community Law Centre.	Initial Disclosure	Do not support. Customers rely on being able to get credit over the phone. These sorts of situations justify disclosure being made after the contract is concluded, although stricter guidelines should be in place around how this is done.	Disagree. Telephone credit with no written contract when the credit is made available is likely to breach the Responsible Lending Principles regarding reasonable inquiries by the lender, and assisting the borrower to make an informed decision. Usually telephone credit is a further advance under an existing contract, so *variation* disclosure will be relevant. The Bill proposes to allow for 5 day disclosure for variation disclosure 5 days after the change is made.
350.	GE Money	Initial Disclosure	Do not support. If the lender complies with 2(b) and 9H(2) and (3) pre-contractual disclosure is unnecessary – standard terms will be on the lenders website. GE is not aware of any evidence of consumers being prejudiced by	Disagree. The publication of standard terms and costs of borrowing are not a replacement for initial disclosure. The costs of borrowing are likely to include a range of variables.

			the current rules. There are some situations where providing pre-contractual disclosure will be impractical. GE has no direct contact with consumers. It provides a "signatureless" personal loan to existing consumers where key financial obligations and the consumer's acceptance are recorded over the phone. Formal written disclosure follows afterwards. Reducing the time it takes for a borrower to receive their advance provides a competitive advantage. If disclosure must be before – the law should allow for verbal disclosure.	Telephone advances to existing consumers are likely to be variation contracts, and after-the-fact variation disclosure is provided for under the Bill.
351.	Alan Liddell on behalf of 24 Finance Companies	Initial Disclosure	If pre-contractual disclosure by the consumer is to become compulsory, the amended Act should provide that disclosure may be made on the basis of certain terms or assumptions. If those terms or assumptions are altered by an act or omission of the borrower and this does not result in a material disadvantage or additional cost to the borrower, then initial disclosure shall be deemed to have been made correctly provided that the disadvantage or cost is disclosed before the contract is made.	Disagree. The payment disclosure requirements for initial disclosure are already qualified according to what is ascertainable when the disclosure is made. If disclosure is made with an initial advance then the consequent payments will be ascertainable.
352.	EB Loans	Initial Disclosure	Disclosure should be made at the time of the contract, however it is impractical to always make disclosure mandatory before the contract is made. This slows down the process especially for smaller loans and would increase business costs. Borrowers can change their minds several times meaning pre disclosure several times. Borrowers should not have to absorb the costs of "tyre kickers".	
353.	ASB Bank Limited	Initial Disclosure	The information which is currently disclosed to borrowers when a credit contract is taken out is in some instances predicated on what that borrower has agreed to borrow in terms of advances and the payments that will need to be made. It will not be possible to do this if disclosure is always required before the contract is made.	

			Proposal creates unwanted barriers to providing credit in a non-face-to-face environment. Disclosure processes and systems have been developed to reflect the environment in which a customer choses to make their purchasing decisions.	
354.	Financial Services Federation	Initial Disclosure	It is most important that disclosure is made properly and timing is less important. FSF considers that the current approach is sensible and better than the change proposed in the Bill. In most cases disclosure is presently already made before the contract is entered into, many consumer credit contracts contain an acknowledgement by the borrower that disclosure has been made to them. The time between disclosure and when the contract is entered may be brief (minutes). There is nothing in the bill to require a minimum period before the contract is made. As such, it is doubtful the proposed change will achieve anything. Making disclosure only a brief period before the contract is made will not add meaningfully to the borrower's cancellation rights or make it more likely that cancellation rights will be exercised. The borrower will seldom have time to read disclosures and is not motivated to do so at that stage. Considers that there is no justification for disclosure before the contract is made and is opposed to section17. This is also applicable to clause 27 –clause 27 would require significant changes to the practices of credit insurers, in particular, FSF is not satisfied that the benefits justify the costs of these changes.	Disagree. The current position under the CCCFA is that borrowers can enter into transactions without necessarily having the annual interest rate, credit fees and charges, or the payments required (among other things) disclosed to them. Disclosure is unlikely to provide sufficient consumer protection in every case. That is why disclosure is being supplemented by responsible lending. However allowing for initial disclosure of consumer credit contracts (and credit-related insurance) after the credit contract has been signed allows obvious potential for abuse.
355.	Westpac	Initial Disclosure	The five day period for disclosure should be retained, in line with the five day cooling off period.	Disagree. The only connection between the disclosure period and the cooling off period is that the cooling off period starts when initial disclosure is made. There is no logical reason

				why the periods should be the same.
356.	Kiwibank	Initial Disclosure	At present, a creditor that arranges credit- related insurance must disclose the terms within 15 working days (section 70). The Bill proposes disclosure on or before the date of arrangement. This could mean creditors are unable to meet customer demand for timely cover, for example a customer would no longer be able to obtain credit card repayment insurance over the phone as prior disclosure would not be possible. A pause in the process would be required for disclosure. Suggests that section 70 of the CCCFA be amended to provide disclosure of credit related insurance within five working days.	Disagree. Credit related insurance can represent a significant additional cost that may not prove necessary. Consumers should have the benefit of the full terms and conditions associated with both their loan and any related insurance contract prior to having to make this decision. The responsible lending obligations are proposed to apply to credit-related insurance, as well as actual loans.
357.	NZ Law Society	Initial Disclosure	It is not clear how disclosure of details around extended warranties must be made.	Disagree. Existing disclosure rules apply to extended warranties, and the only change proposed relates to the timing of disclosure under section 70 of the CCCFA.

Continuing Disclosure

358.	Commerce Commission	S.21(1)(a)	S 21(1)(a) (exemption from continuing disclosure where loan payments are set out in a schedule when the contract is made) should be repealed. The problem with s.21(1)(a) is that if a debtor does not make payments according to the schedule the debtor will not see the impact of late payments, part payments, default fees and default interest unless they make request disclosure. Often we see this issue arise when a debtor thinks they have fully repaid their loan only to find out significant default fees and interest have been added and continued to run on the loan as a result of a relatively minor default on the debtor's part.	The principle of disclosure is that consumers/debtors can be fully informed about their loans and on-going obligations. This is also an important part of responsible lending. The situation the Commerce Commission describes indicates the importance of continuing disclosure. Continuing disclosure can be in electronic form which reduces expense. **Decision**: Provide in the Consumer Credit and Financial Law Reform Bill for the repeal of s 21(1)(a).

Variation Disclosure

359.	Westpac	Variation Disclosure	Should retain exemptions to disclosure at s. 22(3) and s.23(5). Regarding s.22(3), there are legitimate situations where it is not practical or possible for credit contract disclosure to be made before contract is entered into, e.g., where an extension to credit is granted or the borrower rolls their credit from one fixed rate to another, over the phone. Suggest provide disclosure within five days of contract variation. Removing the exception under the current Act for disclosing changes to terms where the change is beneficial to the debtor adds an unnecessary and substantial compliance cost for responsible lenders.	It is important that debtors are provided with a written record of all agreed changes to their loan contract. This is so that they are aware of and have evidence of the current terms of their contract, any additional or reduced payments made (and how this affects the contract), fees charged as a result of a variation etc. In general, this disclosure should occur prior to the change taking effect, so that the consumer can make an informed decision about whether they will agree to the change or object to it in some manner. There are circumstances where a modification to a contract is beneficial to the debtor and needs to be completed quickly. These circumstances do not justify requiring upfront written disclosure but still require disclosure to record the agreement to the variation. The examples provided concern how a requirement for disclosure will negatively affect small amount loans customers with one off requests to increase or decrease payments for a particular week. We have given particular consideration to these examples and consider there must be some form of written record when a debtor and creditor agree to receive an additional payment or to postpone a payment. The advice we have received from budget advisors is that debtors not having records of what they understood had been agreed with a creditor has caused difficulties and disputes. We also consider a
360.	ANZ	Variation Disclosure	Do not support s. 22(3) and s.23(5) being repealed. Do not understand justification for removing exemptions. Compliance costs would be significantly increased if a customer's request to change their payment frequency or make a lump sum repayment necessitated re-disclosure of that event. Customers are increasingly choosing to transact over the phone or online because of speed and convenience, e.g., for credit card increases and overdraft approvals or extensions. Upfront disclosure for these transactions would negate the benefit of transacting via these channels. Understand that pre-disclosure is potentially an important safeguard for some consumers against unscrupulous lenders but downsides in terms of access to fast credit. Should allow disclosure after the fact (i.e. as a matter of record for the borrower) where the creditor and borrower have agreed to a variation of the contract. Requiring disclosure before the event currently prevents the parties making immediate changes to a credit contract.	
361.	Admiral Finance	Variation Disclosure	The repeal of these sections will create immense paperwork.	

	Limited		Concern there would need to be disclosure if a consumer wanted to make a minor change such as changing the amount of a direct debit or making a payment arrangement with a lender Disagree with section 22(3) and 23(5). Unless there is a materiality threshold the financial cost for the lender and borrower will outweigh the benefit to the borrower.	responsible lender should provide oral advice of the effect of the variation **Decision**: The Consumer Credit and Financial Services Law Reform Bill does not provide for the repeal of s.22(3). The Bill provides that: • S.22(2) is amended to provide that disclosure under s.22 must be made before the change takes effect except as provided at subsection 22(3). • S. 22(3) is amended to require that in respect of the circumstances set out in in s.22(3) there must be disclosure within 5 working days, or as part of continuing disclosure under s.18 where that continuing disclosure is at an interval not less than 1 month. • S. 22(3) is amended to delete existing (d) "changes the place where payments are to be made." • S. 22(3) is also amended to add as a new (d) increases any credit limit under the consumer credit contract. The Bill does not provide for the repeal of s.23(5). The Bill provides that: • S.23(1) is amended to add a new (d) any credit limit under the consumer credit contract.
362.	EB Loans	Variation Disclosure	Do not agree with repealing section 22(3) and section 23(5). There is no borrower detriment and there is no benefit for the borrower in removing these provisions. It requires more administration for the lender and thus is a cost to be passed on to the borrower It is not always possible to give variation disclosure in writing before the variation/change. A common example of this is: a Borrower ringing up advising they worked overtime and would like to put their $50 weekly loan payment up to $70 for one week. They usually ring just before the payment is to be made. The responsible thing to do is to consent to this. The other common example is the Borrower who rings up to advise they have been ill and have no sick leave so can only afford to pay $30 that week instead of $50. The responsible thing to do is to consent to this. Neither of these agreements would be possible with repeal of s22(3).	
363.	Buddle Findlay	Variation Disclosure	It is not clear what material harm the amendments to ss 22 and 23 removing exceptions to required disclosure of agreed changes are intended to address and/or the extent variation disclosure is needed in respect of such changes. There will be a significant cost to lenders to amend their systems to provide this information. Borrowers will receive this information through continuing disclosure in any event.	
364.	Alan Liddell on behalf of 24 Finance	Variation Disclosure	Do not support. Repeal will mean that if a debtor calls (or is called by) his lender	

	Companies		and asks for a suspension of a periodical payment and the lender agrees, it needs to be disclosed. Small finance companies receive this sort of request from debtors, either before or after a payment default, on a daily basis. Requiring disclosure, which would have to be charged for, is merely increasing any temporary hardship the debtor may be suffering. Most, if not all consumer loan agreements have provision for default fees to be payable when the debtor fails to make a payment on time. Those fees are imposed in addition to the default interest charged. If section 22(5) is repealed, all the minor casual arrangements that follow temporary financial difficulty will need to be documented for formal variation disclosure when it is unnecessary. It will add to borrower costs for no purpose. Recommend retaining section 22(5)	• S.23(3) is amended to provide that disclosure under s.23 must be made before the change takes effect except as provided at subsection 23(5). • S. 23(5) is amended to require that in respect of the circumstances set out in in s.23(5) there must be disclosure within 5 working days, , or as part of continuing disclosure under s.18 where that continuing disclosure is at an interval not less than 1 month. • S. 23(5)(a) is also amended to delete (iii) increases any credit limit under the consumer credit contract.
365.	GE Money	Variation Disclosure	Repealing s. 22(3) and s.23(5) will delay changes which assist the borrower. Disclosure in these sections should be made within five days.	
366.	Save My Bacon (SMB)	Variation Disclosure	The existing rules for variation disclosure should be retained. This is because many variations to short-term contracts are made over the phone and applied immediately. This is in contrast to situations when other forms of disclosure are required.	
367.	Whitireia Community Law Centre.	Variation Disclosure	Many consumer rely on making variations to the contracts over the phone , for example where funds are needed to attend a funeral. Requiring that all disclosure occur up-front inhibits this.	
368.	Financial Services Federation	Variation Disclosure	These provisions are important to lenders. It is harsh to expect lenders to incur costs of changing systems and to expose lenders to penalties in respect of actions that may be beneficial to borrowers. This is especially true in light of the lack of specific consultation on these potential changes.	

369.	Finance Now	Variation Disclosure	Repealing 22(3) and 23(5) may not affect all of the industry and most would already make efforts to disclose this. For companies that do not, this may increase operating costs and fees for consumers.	
370.	Commerce Commission	Variation Disclosure	S 23(3) should be repealed to make all disclosure compulsory before changes are made, regardless of agreement.	

Request Disclosure

371.	ANZ	Proposed new s.24(2)(fa) providing for a copy of the creditors standard terms to be made available	The creation and disclosure of standard terms is potentially misleading and confusing. It would be preferable to allow a borrower to request a copy of their loan contract.	The purpose of providing for request disclosure is to allow a debtor to obtain information in order to make well-informed decisions regarding the on-going management of their debt and to allow the debtor to obtain information about the contract after it has come to an end, for example, to assist in cases if there is a dispute about some aspect of the contract. As a protection against unreasonable requests the debtor may only make a request once in every 3 months and not after a year after the contract has ended. Providing for a copy of the creditors standard terms to be made available (now under section 24(2A)) will allow borrowers (and their advisers) to assess whether there is anything unusual in the borrowers' contract.
372.	ANZ	Proposed new s.24(2)(fb) providing that request disclosure can cover the same matters required by a	There are significant compliance costs in managing continuing disclosure. To produce the same disclosure at no charge and at the customer's request would be onerous. If this amendment is to be retained there should be provision for cost recovery.	Under section 24(3)(b), the CCCFA allows for the charging of a reasonable fees to cover such matters as request disclosure. Section 24(4) provides that a creditor does not have to comply with the request if disclosure

		continuing disclosure statement at s.19		of the matter has been made in the previous 3 months or if the request is received more than 1 year after the contract has come to an end. The Bill now adds a new section 24(2)(g) providing that request disclosure can cover the same matters required by a continuing disclosure statement at section 19.
373.	GE Money	S.24(2)(fb)	Should only apply where the creditor is unable to provide a continuing disclosure under subsection (g).	
374.	NZ Law Society	Request Disclosure	Clause 11 Section 24(2) should make clear it is the actual form of contract the customer entered into that should be provided (not a subsequent version, also notes standard contract may have variations).	New section 24(2)(c) provides that every debtor/guarantor under a consumer credit contract may request the contract between the debtor and the creditor.
375.	Commerce Commission	Request Disclosure	Support expansion of request disclosure regime. Request disclosure should be expanded so that debtors and guarantors can request a current or historical statement of account.	

Publication of Standard Terms and Costs of Borrowing Online

376.	Cash Converters	Standard Terms	Support. Considers that making terms available will promote transparency and competition.	Agree.
377.	Kiwibank	Standard Terms	General support for intent of "standard terms" being online and displayed at a lender's premises.	
378.	NZ Federation of Family Budgeting Services	Standard Terms	Support. Will promote shopping around for some consumers but in order to be effective, need higher levels of financial literacy.	
379.	Michael Wallmannsberger	Standard Terms	Support. Can improve the situation as buyers can reflect and choose without pressure, prior to choosing credit provider, applying for credit, or signing loan agreement.	
380.	Easy Group Ltd	Standard Terms	Support. Having standard terms and costs of borrowing available on lenders' websites and premises will improve transparency and	

			competition.	
381.	Wellington Community law Centre	Standard Terms	Support, but not sure that it will be sufficient. The provisions will have a positive effect on competition, but more is required. If the lender has more than one set of standard terms, all versions should be made available and clearly differentiated.	
382.	Kiwibank	Standard Terms	Considers that section 9H(2)(b) and /or the definition of "standard terms" be amended to clarify that the proposed publication requirements do not apply to master template legal documents with multiple options to suit different situations. They are used to tailor material to meet the customer's needs. For example, each home loan agreement is prepared using a template master home loan agreement from which options are selected (for example, security, insurance requirements and special conditions around construction), "Standard terms" should clearly include, for example, terms such as how to apply for a repayment holiday, how interest is calculated and charged, and how break fees are calculated, but the section as drafted could capture the lengthy templates used in tailoring each home loan. If the definition cannot be amended – Kiwibank propose that section 9H(2)(b) be amended to require standard terms to be available from the lender's business premises on request, free of charge. This would ensure that standard terms are available for those consumers that want them, and would also "future proof" the requirement by allowing disclosure in-store by way of automated self-service kiosks and the like.	Agree that standard terms should not include specifically tailored terms. Interesting idea that terms should only be available on request. Requests are already provided for in the Exposure Draft, but borrowers are not very likely to make requests in practice. Could be an issue for the select committee to consider.
383.	Mangere Community Law Centre	Standard Terms	Support publication of standard terms and costs of borrowing. Note that even if improved tools are available to the consumer, many borrowers will not be aware of them and perceived time constraints to borrow or in hire purchase "one stop" purchase and borrowing situations may reduce the inclination to shop around.	Agree. The standing disclosure is intended to inform the market, rather than necessarily being targeted to individuals who are often emotionally committed to a transaction by the time initial disclosure is made.
384.	Citizens Advice	Standard Terms	Submit that an extra clause be added to section 9(l) reading "the	Agree. The Bill does provide that a copy of the

	Bureau		lender must, at the request of any person, supply a copy of its standard terms, free of charge, to that person." Notes that many marginal lenders do not operate out of "business premises" and therefore a sub clause should be added to both sections which require lenders to provide prospective borrowers a written copy of both Standard Terms and Costs of Borrowing if the lender is not operating out of a business premise.	standard terms must be provided on request, free of charge. Not sure that many lenders operate without a website or premises. Need more information on how standing disclosure might apply to them.
385.	Auckland District Law Society	Standard Terms	Support public disclosure of costs of borrowing in a prescribed form.	Agree. Note prescribing the form is only a back-stop option under the Bill.
386.	Barry Allan, University of Otago	Standard Terms	9H(2)(b) should be amended to require lenders to have the terms in every premises from which it has a public-facing office to ensure that lenders do not rely on keeping a single copy at any one office as sufficient compliance. In addition, there should be an inclusive form of definition of premises so that, for example, where a lender has a mobile shop, this is covered. There is a challenge if a lender is not operating from a business premises. There is no positive obligation on lenders when they operate in any way other than from established business premises..	Agree. The Bill now refers to *publicly accessible areas* of business premises. Does not seem practical to require standing disclosure of standard terms where there are no business premises (including mobile shops).
387.	Whitireia Community Law Centre.	Standard Terms	Support. Note that "premises' must include mobile lenders. This change still does not address the underlying vulnerability of consumers.	
388.	Te Waipuna Puawai Mercy Oasis Ltd (TWP), Financial Services Complaints Ltd (FSCL), Waitakere Community Law Centre	Standard Terms	Supportive of a comparative site.	Comparative information is likely to be published if the information is publicly available. Sites such as interest.co.nz may publish comparisons.

389.	Tulai project	Standard Terms	When registering, lenders should have to submit their standard terms and costs of borrowing to the Companies Office, who then publish that information on the registry. Because this should apply only to lenders who are subject to the CCCFA, it may be that this information should instead be contained on a separate registry run through the Ministry of Consumer Affairs. Having the information on a central, regulated website would be much more effective at improving transparency and access.	
390.	Fair City Finance Ltd, Auckland District Law Society, Save My Bacon, Alan Liddell	Standard Terms	It is not clear what is meant by "standard terms".	Agree. "Standard Terms" are defined in the Exposure Draft, and in section 5 of the Bill. Standard terms are expected to be in printed forms, or similar. The obligation in the Bill to publish the standard terms does focus on those terms particularly.
391.	Barry Allan	Standard Terms	It is not clear what is meant by "standard terms". The definition needs to be workable and consistent with how the phrase is used understood in the commercial community. The definition currently requires publicity to be given to *any* terms, not *standard* terms.	
392.	ASB Bank Limited	Standard Terms	Support the publication of standard terms. It is reasonable to expect that increased transparency of standard terms and costs of borrowing should improve consumer decision making provided it is done in a way which encourages meaningful competition. It will also address the concern that borrowers do not get an opportunity to consider the terms of the lending prior to entering the agreement. Consider that the requirements need to reflect the position that current trends are to more flexible pricing of credit at an individual level reflecting individual risk profiles. Consider that publication will not be a complete solution as internet literacy and access to the internet amongst consumers of third tier lenders may not be high.	Agree. *Ranges* of interest rates and fees may need to be published.
393.	Banking Ombudsman	Standard Terms	Support. Difficult to predict the impact but the more information provided to the borrower the better.	Noted.

394.	Te Waipuna Puawai Mercy Oasis Ltd (TWP)	Standard Terms	Hope it will be effective, but not sure will be sufficient. Unsure that it will increase shopping around due to consumer behaviour.	Noted.
395.	Susan Schweigman	Cooling off Period	Will improve shopping around, registration status should also be published. However, online publishing won't help everyone as not everyone is online. Should have at Community Law centres, Citizens Advice Bureau, etc.	Noted. There is an assumption that all creditors will be registered (as required under the FSP Act), and complaints information will be included with initial disclosure. Disagree on other publication. On-line publishing is only part of the proposal. Interested community groups will have access to the information.
396.	Admiral Finance Limited	Standard Terms	No problem with making standard terms available on websites however notes it would be impractical to display standard terms and conditions on a notice board at the office. Would be feasible to have costs on a website but not practical to have the standard rates displayed in the office. Notes there is no such thing as a standard loan, interest rates are highly dependent on the borrower and the collateral and can be subject to negotiation. Interest rate disclosure would likely be a rack rate and therefore useless. There is an issue with consumers shopping around based on interest rates as this is not the total cost of the transaction. Disclosure of details of financial products will not assist borrowers that struggle with financial literacy.	Noted. Do not expect terms to be posted on a 'noticeboard'. Ranges of interest rates and fees may need to be publicly available to take account of tailored pricing. The standing disclosure is intended to inform the market, rather than necessarily being targeted to individuals who are often emotionally committed to a transaction by the time initial disclosure is made.
397.	GE Money	Standard Terms	Support publishing standard terms on the website but there is little value in doing so at the place of business. The requirement to provide copies of standard terms free of charge is not justified, particularly where these are available at the lender's website. The interest rate depends on the consumer's creditworthiness and is not practicable to be disclosed as described however there is no	Noted. Only providing the information on websites is likely to exclude some consumers. Requiring people to pay for standard terms would limit the effect of publishing the documents. Agree that ranges of interest rates and fees may need to be published, taking into account

			issue with website disclosure of fees and interest rates. See no justification for prescribing manner in which costs are displayed given requirements for prominence and clarity in subsection (2)(a) This is unlikely to promote shopping around by borrowers because many lenders provide this information already.	lending risks.
398.	EB Loans	Standard Terms	Standard terms are easier but every borrowing situation presents a different risk and thus a different price and different security and different maturities. It would add complexity when the theme of the legislation change is to simplify. Lenders should be able to customise standard terms and costs of borrowing to suit the individual circumstances. Notes that the provision will not change consumer behaviour at all. People who shop around now will continue to shop around and other who do not, will not.	Noted. Agree that provisions should allow for a range of interest rates and fees to be published. The standing disclosure is intended to inform the market, rather than necessarily being targeted to individuals who are often emotionally committed to a transaction by the time initial disclosure is made.
399.	ANZ	Standard Terms	Support information being available on request and on website. Publication of costs of borrowing as annual rates will help consumers make comparisons between lenders. Given wide range of lending products, standard terms cannot be sensibly published. Different loan products often contain different terms, and these can vary depending on the borrower.	Noted. Agree that standard terms should not include terms specifically tailored for particular customers. Standard terms are expected to be in printed forms, or similar.
400.	ANZ	Standard Terms	The requirement to display rates and fees at every place of business is also costly and unworkable. Forcing publication of cost of borrowing could inhibit the tailoring of contracts and harm consumers. Support only on website, not display at premises. The alternative publication requirements in the Credit Contracts and Consumer Finance Regulations 2004 should be amended to require public notice and information displayed either on the creditor's website *or* at all of a creditor's places of business (where the	Noted. Expect that having a sheet available with interest rates and fees available should not be costly or unworkable, especially if the possibility of publishing ranges is available. It is possible that website publication could achieve the objective of providing market information, but not everyone has access to information on the internet. There is a risk

			creditor does not have a website).	that some consumers will be excluded.
401.	Consumer NZ	Standard Terms	Publication of standard terms will help facilitate consumer choice and the operation of an efficient market. It will also facilitate scrutiny by regulators and consumer watchdogs. Recommend key information on interest and fees to be published in a standard format to assist comparison. Consumers' ability to shop around would better be facilitated by requiring disclosure in a standard form. Lenders should also have to publish their annual finance rate, which includes both fees and interest.	Noted. Agree on publication. Disagree on annual finance rate. Disclosure under the CCCFA focuses on annual interest rates and fees, and proposed section 9I is consistent with this approach. The annual finance rate approach was removed from the CCCFA in 2003 because it was confusing and hard for consumers to follow, especially when fees were converted to annual interest rates.
402.	Mangere Budgeting Services	Standard Terms	Transparency and competition will be improved by disclosure of Standard Terms provided the provisions specifically say how and what information must be provided so that borrowers are not surprised by these terms altering when they actually go ahead with the contract. Believe it will promote shopping around if borrowers can compare the total cost of borrowing and compare apples with apples.	Noted. The intention under sections 9I and 9H is that standard terms *and* costs of borrowing will be required to be displayed.
403.	J Grose	Standard Terms	Support. All marketing, advertising and publication documents should be dated with the publisher clearly identified.	Noted. Unsure about the level of prescription for lenders' marketing documents.
404.	Child Poverty Action Group	Standard Terms	Support. Considers that this will improve transparency and competition if the information is in the first language of the likely borrower	Noted. Language issues will be a topic for the Responsible Lending Code.
405.	NZ Bankers Association	Standard Terms	Display of standard terms will not enhance clarity or improve competition. Some consumers may even be overwhelmed by the sheer volume of information that may become available. Mortgage lending is the largest part of consumer credit in which banks are involved. Bank mortgage loan rates are already widely publicised and the market is competitive.	The intention is for all lenders to publicise rates and fees in the same way as banks, so borrowers can compare costs and shop around. This does not happen now, and is a significant market failure. Banks already publish their rates, so the provisions are not expected to impose high

			The requirement presupposes that there is only one or at least a small number of rates. This is unlikely to be the case for most sectors of the consumer finance market. This emphasises the need for the Bill to be targeted at the types of consumer finance that are predominantly dealt with by lower tier lenders.	compliance costs on banks. Where multiple rates exist, it should still be possible for lenders to publish a range of rates.
406.	Dunedin Community Law Centre	Standard Terms	Support the publication on websites but note difficulties with version control maintenance and the financial literacy of customers. It will improve transparency for some, but not all, consumers.	Noted. The standing disclosure is intended to inform the market, rather than necessarily being targeted to individuals.
407.	Finance Now	Standard Terms	Accept that publishing standard rates and terms may improve transparency and competition; but interpretation by consumers may lead to confusion rather than clarity. Rates may vary depending on the consumer's credit profile, loan term, security etc. One size does not fit all for finance. Consumers may not be able to understand the implications of standard terms and interpret their situation in relation to the standard terms. Not opposed but would like clarity and specificity. Also if a consumer obtains a loan through a retailer it will differ from the information on the finance companies website. It may promote competition but rates are not the only driver for the consumer's decision on where to purchase goods. Consumers would need to be aware of all lenders and have access to them through their websites or physical addresses to make comparisons.	Noted. The standing disclosure is intended to inform the market, rather than necessarily being targeted to individuals who are often emotionally committed to a transaction by the time initial disclosure is made. *Ranges* of interest rates and fees may need to be published. Information will need to be accurate at the point of sale – otherwise it would be misleading.
408.	Jonathan Flaws (Sanderson Weir)	Standard Terms	Do not support. Considers that in reality few borrowers will read and absorb standard terms and conditions so their publication will	Noted. The standing disclosure is intended to inform the market, rather than necessarily being targeted to individuals who are often

			not improve transparency or competition. Considers it more useful to provide a set of credit questions to lenders to answer with the plain English answers being made available on the Internet and at their premises. In order to prevent these from being confusing the questions could be limited in the same way as the key information in Schedule 1. It could also be required that information is given in respect of indicative products of indicative amounts. Considers this would encourage shopping around by borrowers on the internet. Considers the best question would be "are these terms fixed or negotiable?"	emotionally committed to a transaction by the time initial disclosure is made. Comparative information is likely to be published if the information is publicly available. Sites such as interest.co.nz may publish comparisons. Improving individualised disclosure of specific transactions is a different issue that warrants consideration.
409.	Christians Against Poverty	Standard Terms	Considers that this will not make a difference to competition as lenders do not need to seek new borrowers as they make their money from refinancing. Suggests disclosure of standard advertising costs by the lender. Considers that this will have a negligible effect on borrowers shopping around people continually go to the same lenders each time because lenders promote debt to them and because of issues of financial literacy and convenience.	Noted. The standing disclosure is intended to inform the market, rather than necessarily being targeted to individuals who are often emotionally committed to a transaction by the time initial disclosure is made.
410.	Fair City Finance Ltd	Standard Terms	Do not support. Additional information in contracts, especially if it must be phrased complexly to comply with difficult regulations, does not help consumers, and merely adds to their confusion. There are also significant compliance costs associated with such changes.	
411.	NZ Law Society	Standard Terms	Costs of borrowing are more important than showing standard terms on the website, and will be of more use to consumers. Would prefer on websites to displaying at premises. Prescribing the information that must be displayed is not consistent with the guidance-based approach taken elsewhere in the Bill.	Noted. Prescribing the form of the standing disclosure is a back-stop regulation-making power.

412.	Thorn Rentals NZ Limited	Standard Terms	Submits that the proposed reform will not assist in enabling borrowers to shop around. There will be a range of interest rates and accordingly, producing a standard terms and costs of borrowing that is legible and applicable to a borrower is next to impossible. It will add to lenders' costs and therefore to the costs of borrowing.	Noted. The intention is to increase the information generally available in the market. Ranges of interest rates and fees may need to be published. It is not intended to be a substitute for initial disclosure.
413.	Financial Services Complaints Limited (FSCL)	Standard Terms	Disclosure in this means will only help to a limited degree in the third-tier/payday lending market. Concerns include: many third tier lenders do not have websites, many consumers of third tier finance do not have internet access or email, consumers are not likely to read or understand the fine print and are unlikely to shop around for third tier credit. Increased disclosure only helps those consumers who actively read and understand the information and who then take further steps to shop around. In the absence of further analysis of consumer behaviour, conclude that 9a and 9b must be answered in the negative.	Noted. The standing disclosure is intended to inform the market, rather than necessarily being targeted to individuals who are often emotionally committed to a transaction by the time initial disclosure is made. Comparative information is likely to be published if the information is publicly available. Sites such as interest.co.nz may publish comparisons.
414.	Debt-Free Newtown	Standard Terms	Unless standard terms are very easily comparable they will have a limited effect. Suggest investigation of a star rating system or similar.	
415.	Financial Dispute Resolution Scheme	Standard Terms	Do not support. Too difficult due to multiple rates and fee schemes. Interest costs and fees are tied to risk, for which there are many variables. Could perhaps provide a lower and upper range of fees. However, suggest creditors could post or make available an example, story or FAQ of what the process could be if a loan went into default (notifications, penalties etc.). Should also advise how to apply for hardship. Suggest that info be given of how to access a dispute resolution scheme. Also if debt is sold to a collection agency the debtor and guarantor should be advised.	Noted. Agree that it may be necessary to publish a range of terms, interest rates and fees. Details on accessing dispute resolution schemes being added to initial disclosure. Changing the basis for disclosure is a different issue from sections 9H and 9I.

416.	Full Balance	Standard Terms	Unsure whether a legal obligation to provide complete disclosure on the website is reasonable. Recommend removal of 9H(2) and amend section (3) to include electronically available on request.	Disagree. It should be possible to easily click through to standard terms on websites. Standard terms should also be physically available in printed forms, or similar.
417.	Ken Anderson	Standard Terms	Do not support. Considers it onerous on a creditor to have to hand this information over to another creditor or anyone other than the borrower. In relation to display of T&Cs at premises - Standard terms and conditions are usually commercially sensitive. Queries whether this means an outside area or in a reception type area. Terms and conditions forms are expensive to have drafted and the law firm drafting them will usually retain the copyrights. This gives the law firm redress on the creditor where any part of the work is copied.	Disagree. The standard terms are a key part of lenders' offerings, and lenders are expected to compete on those terms. Transparency is important, to consumer groups and the regulator as well as individual consumers. The terms on which credit is offered to the public cannot be treated as confidential.
418.	Alan Liddell on behalf of 24 Finance Companies	Standard Terms	Do not support. Recommended that 9H(4) should be restricted to providing what information a lender must provide as opposed to imposing on lender what terms it may have.	Disagree. The regulation-making power in section 9H(4) would not allow particular terms to be imposed in the standard terms.
419.	Alan Liddell on behalf of 24 Finance Companies	Standard Terms	No other industry is required to display all costs of borrowing including interest and default interest and credit fees and default fees on its website in a prescribed form. Concerned that the consumer lending industry is being singled out. Interest, fees and loan agreements differ between person and class. Recommend that the requirement should be removed or amended to allow lenders to provide their range of interest rates and fees.	Disagree on market information. The intention is to make the consumer credit market more competitive. Agree that provisions should allow for a range of interest rates and fees to be published.
420.	Buddle Findlay	Standard Terms	Do not support. "Information overload" should be considered before providing additional disclosure information. The issues around poor consumer decision making are not to do with a lack of access to information. A better approach would be to reduce disclosure to the key information required for decision-making.	Disagree. There is evidence of a lack of public information, especially in the non-bank sector. This is a significant market failure. The standing disclosure is intended to inform the market, rather than necessarily being

			It will also be difficult for lenders that offer a wide variety of products to adequately provide disclosure. A single mandated form for disclosure may also be inappropriate across the industry. Consumer may also struggle to identify what among a range of terms and rates applies to their product. This suggests greater individual disclosure may be a better approach. Updating terms for disclosure across multiple locations may be difficult and result in failures. Finally, charges are likely to vary between consumers, so it may not be possible to disclose a set rate or terms. Recommend removal of proposed sections 9H and 9I. Consultation should take place with industry to determine an approach that will result in meaningful "shopping around". Proposed section 24(2)(fa) should relate to terms of a specific credit contract, rather than standard terms. Differentiated provisions should apply to repayment waivers and extended warranties as their conditions are different.	targeted to individuals who are often emotionally committed to a transaction by the time initial disclosure is made. Agree that provisions should allow for a range of interest rates and fees to be published.
421.	Financial Services Federation	Standard Terms	Support in theory – proposals may to some degree encourage transparency, rate competition and shopping around, but objectives need to be tempered with some realism. For residential mortgage lending rates are already widely publicised and shopping around is common so the effect of the proposal in the mortgage market is likely to be small. For smaller loans a high proportion of loans are to repeat customers who have a high degree of brand loyalty and relationships with the lender, they are not likely to shop around. Also in relation to smaller loans, many such borrowers are not well equipped to digest standard terms or subtle differences in fees. In those cases the changes will be of little use. There will be compliance costs and FSF questions whether sufficient benefits will result to warrant such costs.	Disagree. The value of the proposal lies in a better informed market overall, and the possibility of comparison sites comparing information that is not currently available. There are parts of the market where basic information is not currently available, and this is a significant market failure. This is clearly not the mortgage market. The standing disclosure is intended to inform the market, rather than necessarily being targeted to individuals who are often emotionally committed to a transaction by the time initial disclosure is made.

			FSF is firmly in opposition to proposed 9I which assumes there is one annual rate of interest for every type of agreement for each lender. The typical lender will have a range of rate which vary from customer to customer based on factors such as credit standing, security, etc… Borrowers will therefore be confronted with a number of rates and will not now which rate is likely to apply to them.	
422.	Westpac	Standard Terms	Do not support. Will not make a significant difference to transparency or competition. A better solution would be to require lenders to make standard terms and conditions available on request. Given the large number of products banks offer with terms and conditions that change reasonably frequently, it would be expensive, impractical, and unhelpful to consumers. Do not believe it will promote shopping around.	Disagree. Interesting idea that terms should only be available on request. Requests are already provided for in the Exposure Draft, but borrowers are not very likely to make requests in practice. Standard terms are expected to be in printed forms, which could be available. The value of the proposal lies in a better informed market overall, and the possibility of comparison sites comparing information that is not currently available. There are parts of the market where basic information is not currently available, and this is a significant market failure.
423.	First Union	Standard Terms	Do not support. Information about standard terms and costs will be little use without information about actual costs faced in their contracts. This should be provided to them prior to signing any contract, and should not be merely available.	Disagree. These provisions are in addition to initial disclosure, which is mandatory at (or, under the Bill, before) the contract being entered into. The interest rates and fees under section 9I will also give an indication of the actual costs.
424.	Save My Bacon (SMB)	Standard Terms	Do not support. Publishing standard terms and conditions is not commercially realistic for short-term lenders, especially annualised interest rate. There is variation loan to loan, and depends on	Disagree. Lenders are already required to disclose annualised interest rates and fees, but disclosure happens when borrowers have

			circumstances. Also, different types of loan have different terms. SMB's daily interest rate can never be charged, annual rate is 547.5%, but SMB never lend for more than 31 days, and cease any interest charges after 45 days. To force publication of a rate could produce anomalous results as rate will vary for each loan and when actually paid off. Customers are focussed on how much they have to repay, not interest rates.	already decided to enter into the transaction. The intention of the proposal is to increase transparency and comparability across the market. Agree that it may be necessary to publish a range of terms, interest rates and fees.
425.	Financial Services Federation	Standard Terms	There is a concern about how this applies to extended warranties Lenders have no control over extended warranty terms it may not be appropriate for sections 9H and 9I to require lenders to publish terms that they have no control over Is would be wrong for prescribed information under 9I(3)(a) to include information about matters such as rebating extended warranties on early settlements Information to be prescribed under 9I(3)(a) in respect to extended warranties, if any, needs to be very carefully considered and FSF requests to be consulted on such matters in due course	Disagree. If lenders are selling extended warranties as part of a credit transaction, the form of the extended warranty cannot be kept confidential. The standing publication of standard terms and costs of borrowing is not intended to be a substitute for disclosure, which is already required for extended warranties under the CCCFA.
426.	Auckland District Law Society	Standard Terms	Do not support publication of standard terms. Few consumers are likely to read many pages of standard terms. They are also unlikely to understand them, and without specific terms to give context they may not be of any use. There is therefore little advantage to be had in forcing the publication of standard terms. Less scrupulous lenders could also copy terms, which would give the impression of them being a more professional organisation than they are. There may be some merit in disclosure in a prescribed manner, along the lines of the cost of borrowing as part of the initial disclosure; envisage a 'question and answer' format perhaps with additional disclosure obligations. This would ensure comparability and important information would not be hidden in a dense set of	Disagree. The standing disclosure is intended to inform the market, rather than necessarily being targeted to individuals. The terms on which credit is offered to the public cannot be treated as confidential. The standing disclosure idea is separate from, and additional to, the existing initial disclosure obligations under the CCCFA.

			standard terms. On balance s 9H should be deleted but consideration should be given to reviewing the type of information provided under the existing disclosure obligations.	

Disclosure of assignment or transfer

427.	Commerce Commission	Disclosure of any transfer, assignment or sale of loans	Require mandatory disclosure of any transfer, assignment or sale of consumer loans. Debtors are sometimes contacted by people or companies they do not know, seeking payment under loans where they are unaware of assignment. Debtors sometimes do not understand the relationship they have with this new person. The disclosure that we suggest should provide updated contact details of the new creditor, and a summary of the impact of the transfer on the debtor (if applicable). It should also be made clear to debtors that the transfer does not change the agreement they initially entered into.	Agree. This is an appropriate protection for debtors and is particularly relevant given the increasing number of scam approaches affecting the financial sector that could be difficult to distinguish from genuine contacts. A similar type of protection is in place at s.51 of the Property Law Act regarding assignment of debt. Decision: Add to the CCCFA a new s.26A that requires disclosure to a debtor if there is a transfer, assignment or sale of their consumer loan and that the disclosure includes updated contact details of the new creditor, and a summary of any impact of the transfer on the debtor.

Disclosure – Credit Cards

428.	Consumer NZ	Disclosure - Credit Cards	Disappointed that proposed changes regarding disclosure of true cost of interest when only minimum repayments are made on credit cards have not been included. Recommend requiring that this be disclosed prominently on monthly credit card statements. Suggest adoption of US approach, including information on: number of payments required to pay off if consumer only pays minimum, total cost if this happens, monthly payments required to pay balance in 36 months, how to access	It is not recommended that the CCCFA include disclosure provisions regarding the impact of minimum repayments on credit cards. We consider this matter is most appropriately covered in the Responsible Lending Code under good practices regarding the on-going management of debt.

			information about debt management services.	

Right to Cancel Consumer Credit Contract

429.	Dunedin Community Law Centre, Full Balance, Admiral Finance Limited, Christians Against Poverty, National Council of Women, Age Concern New Zealand	Cooling off period	Support extending the cooling off period to 5 working days.	Noted. The extension of the cooling off period to 5 working days makes it consistent with the cooling off periods for uninvited direct selling door to door and by telephone as well as extended warranties that are included in amendments to the Fair Trading Act currently being progressed through Parliament as part of the Consumer Law Reform Bill. Working day is defined in the CCCFA. It defines working day as a day of the week other than Saturday or Sunday and public holidays (except Anniversary Days)
430.	NZ Law Society, Consumer NZ, NZ Federation of Family Budgeting Services, Michael Wallmannsberger, Banking Ombudsman, Wellington Community Law Centre	Cooling off period	Support and see no unintended consequences arising from extending the cooling off period to 5 working days.	
431.	Susan Schweigman	Cooling off period	Support. May need to define 'working days' in the CCCFA, to make clear to both parties how it applies, for example, to cover public holidays.	
432.	Finance Now	Cooling off period	Support. Does not foresee any issues with this. It is logical for this to be consistent across legislation.	
433.	Easy Group Ltd	Cooling off period	Support. Does not foresee any issues with extending the cooling off period from 3 to 5 working days. Also subject to Door to Door Sales Act which has a 7 day cancellation period – may be a sensible	

			time for all Acts to have a uniform cooling off period.	
434.	Citizens Advice Bureau	Cooling off period	Support the cooling off period. Provides consistency with the Consumer Law Reform Bill. Providing assistance to clients' to help them fully understand the conditions of their contracts would be more feasible with the extended timeframe.	
435.	Mangere Community Law Centre	Cooling off period	Approve of extended cooling off period but note that this may cause additional problems in time purchase situations where more opportunity is available for a consumer to take possession of the goods before changing mind as to finance arrangements.	
436.	Electricity and Gas Complaints Commissioner	Cooling off period	Supports consistency of information disclosure and cooling off provisions with similar provisions in the Consumer Law Reform Bill.	
437.	ASB Bank Limited	Cooling off period	Support the 5 day cooling off period – this is aligned with the cooling off periods in the Consumer Law Reform Bill.	
438.	Westpac	Cooling off period	Do not envisage any unintended consequences arising from extending the cooling off period to 5 working days.	
439.	Commerce Commission	Cooling off period	Section 27(1) should be clarified to deal with situations where the creditor and seller are associated parties. Consumers often assume that returning an item to the store cancels their credit obligations. A separate right of cancellation should be introduced for insurances, repayment waivers and extended warranties sold with consumer credit contracts.	The opportunity for borrowers to cancel a credit contract and a credit sale agreement under section 27 are limited. Generally borrowers who cancel the credit contract are nevertheless required to complete the purchase, and remain bound by insurances and extended warranties. Changing this approach would be a substantive policy change. Only dealing with sellers and creditors which are associated persons would be a more limited way of approaching the issue, although the insurer will probably not be an associated person.
440.	NZ Law Society	Cooling off period	The status of extended warranties may need to be considered in situations where borrowers exercise their right to cancel. Should be subject to the provisions in Consumer Law Reform Bill. Any refund of costs should not be included in the refunds under the CCCFA.	

441.	Commerce Commission	Cooling off period	Support consistency in cooling off periods. Would prefer a 10 day cooling off period (not 10 *working* days).	The increase in the cooling off period is to obtain consistency across consumer laws. The Door to Door Sales Act has always had a 7 day cooling off period. The Consumer Law Reform Bill that amends the Fair Trading Act to provide for uninvited direct sales has continued with this period but in the modernised form of 5 working days. The Consumer Law Reform Bill also has a 5 working day cooling off period for extended warranties.
442.	Te Waipuna Puawai Mercy Oasis Ltd (TWP)	Cooling off period	Suggest extend to 10 working days.	
443.	Tulai project	Cooling off period	Support, but should increase to seven working days in line with the Door to Door Sales Act.	
444.	Child Poverty Action Group	Cooling off period	Support. Considers 5 days is a minimum. Notes that the cooling off period for insurance is 30 days	
445.	Whitireia Community Law Centre.	Cooling off period	Support. However needs clarification with regard to car finance: does cancelling the credit contract mean cancelling the sale?	Cancelling a consumer credit contract does not cancel the sale. The Consumer Guarantees Act (CGA) sets out when a sale can be cancelled, essentially when a good is rejected, and amendments to the CGA included in the Consumer Law Reform Bill address collateral credit arrangements in this situation. If the consumer is unhappy with the credit arrangements, the cooling off period provides for alternative credit arrangements to be put in place but not for the cancellation of the sale of the goods.
446.	Waitakere Community Law Centre	Cooling off period	Do not see any unintended consequences from extending the cooling off period but note problem with existing CCCFA that cancellation of a credit contract does not automatically cancel a contract for sale if the borrower has taken possession of the goods. If a person enters into a contract for sale to purchase a vehicle they are still liable for the costs of the sale even after they have cancelled the credit contract. Would like a provision in the CCCFA that states when goods are purchased under a credit contract, the cancellation of the credit contract during the cooling off period cancels the whole transaction for sale. Alternatively, provide that possession of goods cannot occur during the cooling off period.	
447.	Buddle Findlay	Cooling off period	Not aware of any unintended consequences that could result from a cooling off period of 5 working days other than there could be delays in lenders extending funds if it is their practice to wait for the duration of the cooling off period to do so.	Noted
448.	EB Loans	Cooling off period	Any unintended consequences would already be happening with	The current requirement is for the borrower

			the 3 day cooling off period. There is no evidence that 3 working days is inadequate. Should the lender hold the funds during the cooling off period?	to repay the funds (or complete a credit purchase) on cancellation, which does limit the usefulness of the right. However it is not proposed to prevent borrowers from receiving the credit until the cooling off period has expired.
449.	GE Money	Cooling off period	Supports This further mitigates against the need for pre-contractual disclosure.	The cooling off period is related to pre-contractual disclosure, but consumers rarely cancel contracts during the cooling off period. The purpose of up-front initial disclosure is to ensure consumer is aware of the terms of the contract before they are irrevocably committed to it.
450.	NZ Bankers Association	Cooling off period	Do not consider that there is sufficient evidence of a problem to justify an extension in the cooling off period from 3 to 5 working days. More particularly, the NZBA is not convinced that borrower decision making will change if the cooling off period is extended by two working days, especially if the problem being targeted is pay day lending where finance is likely to be used by the borrower before the cooling off period has expired. Extending the cooling off period would only negatively impact business certainty for responsible lenders.	Disagree. Consumers often need to seek advice from a budgeting service, relative or citizens' advice bureau in order to fully understand the ramifications of a loan they have agreed to. Extending the cooling off period gives them a better chance of doing so before they are irreversibly bound.
451.	Save My Bacon (SMB)	Cooling off period	Do not think the change is necessary, particularly with upfront disclosure of credit contract terms. Some SMB loan terms are less than five days. Borrowers who choose to cancel should be obliged to pay application, or processing fees and interest for the period that funds have been advanced (especially where terms of the loan are short).	
452.	ANZ	Cooling off period	This is unlikely to provide any real benefit to vulnerable consumers. Low levels of financial literacy and desperation to secure credit will mean contracts are no more likely to be read. Borrowers are also likely to have already spent advances.	

			Extending the period to 5 days could exacerbate this.	
453.	Financial Services Complaints Ltd	Cooling off period	Have not received complaints about timing of disclosure or brevity of cooling off period. Comments that the effect of disclosure measures are likely to be negligible without greater attention towards improving financial literacy and comprehension of credit contract terms among customers.	
454.	Commerce Commission	Cooling off period	Models should be considered for making cancellation easier for consumers, such as model cancellation forms, verbal cancellations or assistance obligations on creditors.	Noted. The changes to Schedule 1 are intended to make the requirements to disclose cancellation details less prescriptive rather than more. There is an issue as to whether extra prescription would be helpful.
455.	Commerce Commission	Cooling off period	Sections 30(1)(c) - (e)are inconsistent with one another regarding the consequences of cancellation.	Agree. The drafting of section 30 has been improved in the Bill.
456.	Commerce Commission	Cooling off period	Different cancellation rules should apply to contracts where debtors must build up a deposit before receiving goods or services. The cancellation period should run from when the goods or services are received.	Disagree. The cooling off period is intended to be linked to disclosure, and the creditor has the option of retaining possession of any goods being sold until the cooling off period has passed. This still allows the borrower time to reconsider the purchase.
457.	Jonathan Flaws (Sanderson Weir)	Cooling off period	Preference for cooling off periods to apply differently to different types of consumer contracts. Suggest cooling off period stays at 3 days for mortgages of residential property, but be put out to 5 days for other types of credit.	Disagree. This would add complexity, and it is equally arguable that the cooling off period for mortgages should be longer, because of the seriousness of the transaction.

Disclosure Standards

458.	Commerce Commission	Disclosure Standards	Support. A mandatory and simplified disclosure form should be used to make compliance easier for lenders and to improve debtor understanding. Suggestions for what a simplified disclosure form should include.	Noted. The Bill does not propose any fundamental change to how disclosure takes place. The Bill does include a regulation making power for mandatory disclosure forms if that is considered necessary, and that may

			Disclosure of the fact that default interest is payable or of the acceleration of a loan should be mandatory on default. Relevant information about cancellation from ss 27, 28, 30 and 31 should be mandatorily disclosed.	include simplified forms for particular types of loans. The disclosure requirements regarding cancellation are less prescriptive under the Bill.
459.	Mangere Budgeting Services	Disclosure Standards	Supportive of prescription of the form of disclosure. Suggest it should be the right of the borrower to request that the disclosure information should be in first language of borrower. Support the inclusion of this right in Schedule 1.	Noted. This would be too difficult to achieve in primary legislation, but ensuring loan documents are in a language borrowers understand will be addressed in the development of the responsible lending code.
460.	Citizens Advice Bureau	Disclosure Standards	Submit that due to the high complexity of consumer credit contracts, it is not realistic to expect all consumers to be able to understand and compare products without a more prescriptive approach to disclosure.	Noted. The Bill includes the possibility of regulations setting out mandatory disclosure forms for particular loans. There are also risks with mandatory forms, and they would need to be designed carefully.
461.	Financial Services Federation	Disclosure Standards	Do not support. FSF strongly opposes changing section 32 to make mandatory a prescribed disclosure form. Prescribed disclosure does not fit every circumstance and the safe harbour form is often varied by FSF members	Disagree. Bill does not bring in prescribed disclosure forms – it only provides for regulations to be made to prescribe form in certain kinds of disclosure.
462.	Thorn Rentals NZ Limited	Disclosure Standards	Do not support a mandatory form. To ensure that disclosure to borrowers is full and fair, it is important that lenders be able to vary any prescribed form.	
463.	ANZ	Disclosure Standards	Do not support mandatory disclosure forms. Much effort has already been put in to simple and usable disclosure statements. Imposing a prescribed form will impose significant cost, with no meaningful benefit to consumers. The should be a “safe harbour” approach. Alternatively, s 138(1A) should include (1)(da) *to* (dc). There is no reason to exclude (1)(db). There is also an error in clause 34. It should replace s 138(1)(e), not 138(1)(d).	

Guarantor Disclosure

464.	ANZ	Guarantor Disclosure	The current guarantor disclosure regime requires the disclosure of information that is of little relevance to guarantors. ANZ receives numerous complaints about this. Either a materiality threshold or a specific list of exceptions should be introduced.	Disagree. The more usual complaint is that guarantors have insufficient information to understand the scope of their liability.

Disclosure Content - Schedule 1

465.	Full Balance, NZ Law Society, ANZ, Dunedin Community Law Centre	Disclosure Content	Supportive of the amendments to Schedule 1.	Agree.
466.	Child Poverty Action Group	Disclosure Content	Support. This should also include the name and web address of the provider's dispute resolution service and a statement that the disputes resolution service is available at no cost to the consumer	Agree. The name and contact details of the relevant dispute resolution scheme will be required to be disclosed under the Bill.
467.	Financial Services Complaints Limited (FSCL)	Disclosure Content	Supports mandatory disclosure of DRS contact details. FSCLs TOR already require providers to provide FSCLs contact details at the time the consumer complaints and when advising the consumer of the outcome of the complaint dealt with by the internal complaint handling system.	Agree.
468.	Wellington Community law Centre	Disclosure Content	Itemised disclosure of security should be required.	Agree. The Bill as introduced has included this as part of the new Part 4A repossession provisions and the proposed amendments to Schedule 1.
469.	Commerce Commission	Disclosure Content	The disclosure requirements in Schedule 1 do not set out information required for leasing arrangements, but can apply to leases under s 16. Recommend having s 16 refer to Schedule 2 disclosure forms, but with additional Schedule 1 information.	Agree. Need to explore this possibility, and assess whether it is necessary.
470.	Citizens Advice	Disclosure Content	Concerns that some credit providers are requiring borrowers to take out insurance regardless of whether a loan is secured and	Noted. Premiums for credit-related insurance

	Bureau		regardless of the circumstances of the borrower. Recommend the Bill prohibits credit providers from specifying which insurance company a debtor should purchase from and also recommend the Bill only permit credit providers to insist debtors take out insurance where the credit is otherwise not adequately secured. It needs to be very clear when the sale of insurance is optional and must be clear that the consumer has provides active consent to purchasing interest.	are credit fees under the Bill. The Bill proposes that commissions for credit-related insurance and extended warranties cannot be charged by the creditor if the creditor requires the insurance or warranty to be acquired from a particular provider (section 45(5) and (6)).
471.	Auckland District Law Society	Disclosure Content	All credit contracts, but particularly with predatory lending, recommend specific initial disclosure of the borrower's rights under sections 55 – 59 of the CCCFA (unforeseen hardship). Disclosure of these rights is important, particularly to the group of consumers subject to predatory lending.	Agree. This is being added to Schedule 1 (key information for disclosure) under the Bill.
472.	Full Balance	Disclosure Content	Agree that reference to right for relief under hardship and DRS details should be needed in the disclosure. Considers that the borrower should be made aware of which expenses have/have not been allowed for in providing credit to make sure the agreement doesn't put them under undue pressure/hardship.	Agree regarding hardship details being added to Schedule 1. Difficult to disclose expenses that have not been allowed for, although the responsible lending principles and code will be relevant.
473.	Waitakere Community Law Centre	Disclosure Content	Support inclusion of the borrower's right to make a hardship application and how an application can be made in disclosure. This disclosure should also include the lender's obligations in such circumstances. If legislation is not amended to mean that a sale is cancelled when its associated credit contract is cancelled, then consumers should be warned of this through disclosure.	Agree regarding hardship details being added to Schedule 1. The lender's obligations may be too detailed for initial disclosure. Noted on the issue regarding credit sales continuing, even if the consumer credit contract is cancelled during the cooling off period.
474.	Debt-Free Newtown	Disclosure Content	All fees must be disclosed. Community members are often hit with undisclosed fees or fees that they do not expect to have to pay. An example of this is letter fees.	Noted. All fees are currently supposed to be disclosed under section 17 (initial disclosure) and Schedule 1 (key information). Initial disclosure applies to credit fees which are

				'ascertainable'.
475.	Te Waipuna Puawai Mercy Oasis Ltd (TWP)	Disclosure Content	Support provisions, but not sure will be sufficient.	Noted.
476.	Whitireia Community Law Centre.	Disclosure Content	Support. Disclosure should be oral as well as written.	Noted. There are oral obligations in addition to written disclosure for some aspects of the Consumer Law Reform Bill. However credit is a more complex area, and oral disclosure is difficult to verify. Any requirement for oral disclosure would be effectively unenforceable.
477.	Tulai project,	Disclosure Content	There should be an obligation to convey more significant information orally as well as in writing due to language difficulties.	
478.	Jonathan Flaws (Sanderson Weir)	Disclosure Content	Recommends changing the disclosure requirements with respect to initial unpaid balance so that it is clear that this is the balance as at the end of the day on which the first advance is made. Considers it makes sense for the borrower to be told what is owing at the end of day one after all of the costs and fees have been deducted. Considers this also allows lee way for an interest rate that could change between signing and settlement. Notes that many lenders read the disclosure requirements to allow them to show the initial unpaid balance as zero on the grounds that the loan will not be advanced until after the disclosure is signed. Therefore on the date shown in the disclosure document as the effective date of the statement, there is no unpaid balance.	Noted. The initial unpaid balance and subsequent advances that are ascertainable are required to be disclosed under Schedule 1. There is a general issue as to how creditor avoidance behaviours can be dealt with under the CCCFA. New responsible lending obligations and enhanced Commerce Commission enforcement powers will be relevant.
479.	Finance Now	Disclosure Content	Lenders are required to comply with numerous laws. The single up front disclosure statement should cover FAA, Privacy, and CCCFA in simple, plain English language.	Noted. This will be considered in relation to Credit Disclosure Regulations. Agree that 'less can be more' in the context of disclosure.
480.	Westpac	Disclosure Content	This will not make a difference. The current disclosure requirements are sufficient.	Noted. The proposed changes are relatively minor. The 'key information' required to be disclosed is being enhanced.
481.	Jonathan Flaws (Sanderson Weir)	Disclosure Content	Does not believe any additional disclosure information needs to be provided as borrowers will not read anything too excessive. The amendments to the CCCFA Schedule 1 will sufficiently improve	Noted.

			disclosure.	
482.	Buddle Findlay	Disclosure Content	Do not support. The current Schedule 1 disclosure statement is almost universally used and appears to have worked well in practice. It is unclear why a more general obligation needs to be imposed. It would be preferable to specify that the form of disclosure will be prescribed in regulations in the relevant schedule. There could also be a transitional provision preserving the status quo pending regulations.	Noted. Extra elements are being added (e.g. references to hardship and dispute resolution), but the purpose of Schedule 1 is to set out key information required, rather than a specific form. The actual model disclosure forms are set out in the 2004 CCCF Regulations, which will need to be updated when the Bill is passed.
483.	Financial Services Federation	Disclosure Content	Do not support. FSF doubts the amendments to schedule 1 will improve disclosure at all - Section 27: this text is universally used and appears in practice to have worked well. There is no need to replace it and the change appears to allow lenders to interpret and summarise the section. Prescribed text should be used. - Pointing out a consumer's rights to apply for relief in the case of unforeseen hardship should be in the form of succinct prescribed test – FSF would be happy to assist in the development of prescribed text - Including information about the lender's dispute resolution scheme will achieve nothing. This information is already required under the Financial Advisors Act and the Financial Advisers (Disclosure) Regulations. Borrowers should already be receiving this information	Noted. The issue is whether greater prescription would be more helpful, when the purpose of Schedule 1 is to set out 'key information' that is required to be disclosed. The actual model disclosure forms are set out in the CCCF Regulations, which will need to be updated when the Bill is passed.
484.	Admiral Finance Limited	Disclosure Content	Amendments do not appear to have been developed yet. Notes that AFL's Disputes Resolution Provider has disclosure requirements about the process of making a complaint. Assume that the Bill's requirements would supersede these.	Noted. This will be consistent with the relevant change being proposed for Schedule 1.
485.	Cash Converters	Disclosure Content	Support changes.	Noted. There is a balance between providing

			Focus should be on simple, clear information and not increasing the information overload. Note that the ability for consumers to modify the payment schedule easily is an important consumer protection, considers that electronic communication (email or sms) should be an acceptable form of written variation disclosure.	more disclosure information, and keeping the disclosure forms as simple as possible. The CCCFA does provide for electronic communications with borrowers (section 32(4)).
486.	Age Concern	Disclosure Content	Emphasises importance of the use of plain English in advertising and contractual documentation. Recommends acronyms are not used unless clearly explained. Recommends a minimum font size of 12point.	Noted. There is a reluctance to include over-prescriptive rules, but responsible lending and the responsible lending code will be relevant.
487.	Financial Dispute Resolution Scheme	Disclosure Content	Support. Suggest borrowers and guarantors should be offered access to translation services. Suggest provide that if borrower falsifies their loan application they forfeit the right to a dispute resolution scheme.	Noted on language issues. Language issues will be a topic for the responsible lending code. Disagree that rules forfeiting right to access to dispute resolution should be included in legislation.
488.	Christians Against Poverty	Disclosure Content	Support. Considers that disclosure would be improved when an industry standard of rights is developed and translated into the borrowers first language	Noted on language issues. Language issues will be a topic for the responsible lending code.
489.	GE Money	Disclosure Content	Support. Has merit but borrowers may face an "information overload" Website disclosure of DR membership and cancellation rights may be more effective.	Noted. The information overload issue is critical for the effectiveness (or not) of disclosure. Lenders are free to provide whatever useful information they want on their websites.
490.	Consumer NZ	Disclosure Content	Support. However, this is unlikely to overcome the reluctance consumers have to pursue remedies.	Noted. Disclosure is only part of the range of consumer protection mechanisms in the CCCFA.
491.	Child Poverty Action	Disclosure Content	Support. Submits that consumers should be provided information in plain English including the total cost of borrowing and this	Noted. Initial disclosure is supposed to include all the payments required under

	Group		should be in large print and explained to the borrower.	consumer credit contracts.
492.	NZ Bankers Association	Disclosure Content	Support disclosure initiatives to ensure that appropriate information is disclosed to borrowers so they have the information necessary to make informed decisions. However, the proposals to change the content of disclosure statements would be improved. No changes should be made to the wording about rights to cancel a contract. It is understood by borrowers. Disclosing information about dispute resolution membership would be helpful and help the FMA and NZCC to identify which lenders are not members of schemes and may not be registered.	Noted. The model disclosure forms in the Credit Contracts and Consumer Finance Regulations will need to be updated following enactment of the Bill. The model disclosure forms are not mandatory under the CCCFA, but they may become so if new regulations are made under the Bill.
493.	EB Loans	Disclosure Content	The disclosure and the proposed disclosure is adequate. The words for the amended clauses are not provided in the draft Bill and therefore it is inappropriate to comment on them. Agree in principle but expressed concern about the detail. Comments that the exact schedule should have been provided now for comment.	Noted. The proposed changes to Schedule 1 are included in the Bill, but the model form is in the CCCF Regulations. Any future introduced mandatory form will also be in regulations.
494.	GE Money	Disclosure Content	Disclosure of credit related insurance – disclosure of full insurance policy terms is unlikely to assist the consumer. The consumer is more concerned with cost and general terms. Website disclosure would further reduce need for regulatory change.	Noted. Insurance premiums for credit-related insurance are included in the credit fees required to be disclosed. Website disclosure (under sections 9H and 9I) will be an additional requirement, and will not detract from existing disclosure obligations.
495.	Financial Holdings Ltd	Disclosure Content	Support. It should also be mandatory to display on the face of the contract the APR or annualised effective interest rate as is the case in most Western nations.	Disagree. Annualised percentage rates are themselves confusing, which is why they are not disclosed under the CCCFA. Separate interest rate and fee disclosure is regarded as more informative for consumers.
496.	Auckland District Law Society	Disclosure Content	Do not support. Increasing disclosure obligations alone is unlikely to be of benefit to the customers of predatory lenders.	Disagree. Although significant issues exist around financial literacy, it is still important for consumers to have key information disclosed to them at the time they sign a

				credit contract. This can aid their decision-making, and make it easier for them to obtain advice at a later date.
497.	Nicola Maplesden	Disclosure Content	Section 9I adds "costs of borrowing". Should this also be added to Schedule 1?	Disagree. Section 9I disclosure is different from initial disclosure of consumer credit contracts. Initial disclosure of separate interest rate and fee disclosure is regarded as more informative for consumers than a total cost of borrowing.

BuyBack Transactions

498.	Commerce Commission	Buy-back transactions (sections 71-	The provisions relating to buy-back transactions should be reviewed. Promoters should perhaps have a wider range of liability. Solicitors could also have specific obligations imposed on them. A prohibition on occupier equity remaining in the property could be considered. This has caused various problems. The s 80 limitation period should be extended to allow unreasonable fees to be annulled or reduced within 3 years, running from when the breach was reasonably discoverable.	Noted. We have received no other information that there are any particular problems with the current buy-back transaction provisions in the CCCFA. Agree that the limitation period and potential Court orders regarding unreasonable fees in relation to buy-back transactions should be consistent with the other unreasonable fees provisions in the CCCFA.

Pawnbroking

499.	Cash Converters	Pawnbroking	Notes that if the sale price is less than the redemption price then the pawnbroker realises a loss. This is unlike a traditional secured loan, and consistent with the principles that the consumer has no obligations and incurs no debt, the consumer does not pay any shortfall. If the sale price exceeds the redemption price, the consumer is entitled to 90% of the excess received.	Agree. We accept the proposition that pawn transactions are different in nature from credit contracts (or consumer credit contracts), principally because there is no repayment obligation. Having said that though, the fact that a consumer enters into a pawn transaction rather than an outright sale of a good
500.	Cash Converters	Pawnbroking	Notes that with a pawn transaction a consumer does not incur a debt, and has the right but no obligation to redeem the pledged	

			goods by paying the agreed redemption price. Notes that the three month minimum redemption period required by the Secondhand Dealers and Pawnbrokers Act is not supported by consumer behaviour or desire and that some behaviour supports a shorter redemption period: A) Consumers approach a pawn in the traditional manner – i.e. provision of short term funds with a fixed redemption amount, rather than as a secured credit contract over a period of multiple months. For example, only approximately 5% of Cash Converters consumers make more than one payment against their pawn transaction. B) Consumers redeem their goods substantially earlier than the mandatory three month redemption period. On average, Cash Converter consumers redeem their goods within 35 days. More than 25% of consumers redeem their goods within 7 days.	indicates that the consumer does have the intention of repaying the amount and redeeming the good. Aspects of consumer credit law are therefore likely to be relevant to pawnbroking. In particular, pawnbrokers should still have a basic set of duties to their customers, similar to conventional creditors.
501.	Philip Bell, Mr Money, Second Chance 'N Savings Ltd, Vice President NZ Licensed Traders Association Inc.	Pawnbrokers	Considers that the pawn broking industry is well governed and does not require another authority. Stores have to be licenced by the Second Hand Dealers and Pawnbrokers Authority, employees have to be licenced by the Authority, and transactions must take place on the premises and must be reported to the police by way of a copy of pledge ticket and regular police checks. Average pledge disclosed at the most recent NZLTA meeting was $70 - $80. The pawnbroker makes $20 on this pledge and this is all that is charged. Members of the NZLTA do not charge interest as is the case for pay day loans.	
502.	Cash Converters	Pawnbroking	Notes there is substantial adverse conflict between the Secondhand Dealers and Pawnbrokers Act and the CCCFA in respect to pawn transactions. The CCCFA was originally drafted without contemplating pawn would be subject to the Act. The major conflicts are:	Agree that the disclosure regimes for consumer credit contracts under the CCCFA and pawn transactions in the Secondhand Dealers and Pawnbrokers Act are unnecessarily duplicative and do not fit

			1) The Secondhand Dealers and Pawnbrokers Act allows the pawnbroker to charge only "interest", and prohibits charging any fees in connection with the pawn. The CCCFA definition and treatment of "interest" and fees is irreconcilable with the Secondhand Dealers and Pawnbrokers Act. 2) Different disclosure requirements. It is not possible to provide a pawn ticket which complies with the CCCFA. Pawnbrokers must provide multiple disclosure documents to consumers which describe the same transaction in different terms. 3) The interaction of the Secondhand Dealers and Pawnbrokers Act with the current CCCFA cooling-off period allows a consumer to cancel their pawn contract but prohibits the pawnbroker from recovering costs associated with the transaction. This conflict will be exacerbated by the extension of the cooling off period. Additionally while short term credit is intended to be exempt from the cooling-off period pursuant to CCCFA section 29(1), the mandatory three month redemption period required under the SDPA causes the exemption to be ineffective for pawn transactions. (Considers the reforms proposed in the exposure draft have been drafted without consideration for pawn transactions or the unintended adverse consequences to them.)	together properly. There are two options for separating disclosure for pawn transactions under the Secondhand Dealers and Pawnbrokers Act and consumer credit contracts under the CCCFA: 1) Rely on section 15(1)(d) of the CCCFA to make regulations exempting pawn transactions from being consumer credit contracts; or 2) Include a provision in the primary legislation exempting pawn transactions from the disclosure and other requirements that apply to consumer credit contracts under the CCCFA. Our preferred approach is to deal with the issue in the primary legislation.
503.	Cash Converters	Pawnbroking	Requiring a lender to establish a "reasonable expectation of payment" as per the responsible lending provisions conflicts with the nature of a pawn where the consumer has no obligation to repay.	Disagree. There is an assumption that although the consumer does not have an obligation to repay, if there was no reasonable expectation of payment then the consumer would have sold the good outright instead of pawning it. It is appropriate that pawnbroking businesses should have an obligation to act responsibly in relation to their customers, and the

				Responsible Lending Code could have provisions relevant to pawn transactions.
504.	Cash Converters	Pawnbroking	Restricting the goods which may be provided as security will limit the goods consumers may pledge in a pawn transaction and will exclude a significant number of consumers from access to short term emergency funds.	Noted. The policy of protecting essential household goods from creditors holding security interests (and therefore repossession) applies whatever the nature of the security interest. The point that consumers will not be able to use these types of assets to access emergency funds applies equally to other forms of credit.
505.	Cash Converters	Pawnbroking	Recommends amending the Secondhand Dealers and Pawnbrokers Act to reduce the minimum redemption period to one month, extendable at the option of the consumer.	Disagree. Amending the Secondhand Dealers and Pawnbrokers Act in this way is outside the scope of the Bill.
506.	Cash Converters	Pawnbroking	The CCCFA is substantially based on the Queensland Consumer Credit Code, under which pawn transactions are only subject to oppression provisions and are explicitly excluded from the remainder of the Code. This approach recognises and addresses the irreconcilable compliance obligations and adverse unintended consequences arising from applying traditional credit regulations to a pawn transaction. Recommend exempting pawn transactions from the CCCFA except sections 117, 118, 120 and 123-130 which allow oppressive contracts to be re-opened. Such an exemption can be made via regulation under section 138(1)(a) of the CCCFA. Pawn transactions and pawnbrokers remain regulated by: Secondhand Dealers and Pawnbrokers Act which provides strict disclosure requirements focused on total cost to the consumer, the pledged goods, key dates, and a summary of their rights. Also provided are residual equity rights to the consumer where they are entitled to 90% of any excess above the redemption price if the pledged goods are sold.	Noted. The Bill excludes pawn transactions from Part 2 of the CCCFA (including disclosure, unreasonable fees and unforeseen hardship). The Bill does not exempt pawn transactions from the oppression protection in the CCCFA. The guidelines for applying the oppression test (section 124) are being expanded and liberalised in the Bill, but they are not optimised for pawn transactions. Exempting pawn transactions from the disclosure requirements in the CCCFA, but leaving them subject to oppression, is consistent with the approach in the Australian National Consumer Credit Protection Act.

			The Fair Trading Act. Protection from false or misleading representations under section 13, under the jurisdiction of the Commerce Commission. Prosecution under the FTA constitutes a "specified offence" in the SDPA, and would render a pawnbroker ineligible to hold their licence. Consumers have access to the DTA. The Tribunal has broad powers to make orders including to pay money or to declare a party not liable to another to resolve inequity. The CCCFA oppression provisions. Provide the Courts with the ability to adjust contracts which are "oppressive, harsh, unjustly burdensome, unconscionable, or in breach of reasonable standards of commercial practice". The Courts may order the terms of the contract be varied, including repaying money or returning property to the consumer. Removing the conflict between the application of the CCCFA and the Secondhand Dealers and Pawnbrokers Act will increase product clarity and consumer understanding.	

Credit (Repossession) Act (CRA)

507.	GE Money	CRA	Generally supports the Law Commission's recommendations	Agree.
508.	Buddle Findlay	CRA	Agree that the CRA should be incorporated in to the CCCFA. As with the current law, many of the substantive recommendations will only be of use to the extent that they are enforced. A regulator should be appointed to deal with CRA issues. Prefer that this be the FMA.	Agree, although the decision has been taken that the Commerce Commission will continue to be the regulator under the CCCFA.
509.	Citizens Advice Bureau	CRA	Notes that the Act currently provides very poor protection to consumers and is unbalanced in favour of creditors and provides little protection against unlawful behaviour of creditors and their agents. Considers that the Law Commission Review offers a good start in	Agree.

			terms of key changes which need to be made.	
510.	Consumer NZ	CRA	Support majority of Law Commission's recommendations. Agree that CRA should be included in CCCFA. Strongly support the licensing of repossession agents.	Agree.
511.	Financial Holdings Ltd	CRA	Exempting particular types of goods, such as "tools in trade" will create distortions. Ultimately, lenders will make an assessment whether their loan is more likely to be repaid by seizing and disposing of the borrower's tools or by letting them continue in trade. Preventing the use of tools as security will make it more difficult or expensive for individuals to obtain credit. Alternatively, they may have to use other assets as collateral, such as their home.	Agree. The goods that are prevented from being used for security (apart from purchase money security interests) are set out in section 7A under the Bill. Tools in trade are not included.
512.	Buddle Findlay	CRA	Agree that criminal responsibility should not be imposed for breach of s 14 of the Credit (Repossession) Act (reasonable exercise of right to enter premises) due to difficulties interpreting the meaning of "irresponsibility". This also applies to civil liability. Clear guidance should be given as to what is required of lenders.	Agree. The Bill only treats breaches of specific process requirements as offences. More qualitative breaches are not offences, and the entry requirements in the Bill are now clearer.
513.	Buddle Findlay	CRA	Imposition of criminal liability for breach of s 18 of the Credit (Repossession) Act notice requirements (for entry when occupier is not present) should be accompanied by clarification of these requirements. Consideration should be given to reserving criminal liability for knowing or reckless breaches, consistent with the FMA.	Agree. The equivalent requirement in the Bill is primarily a specific notice requirement, and the obligation is sufficiently clear to be an offence under the Bill.
514.	Families Commission	CRA	Self-enforcement is not enough. The most vulnerable need help to complain, in first case to lender, then dispute resolution.	Agree. Dispute resolution schemes are relevant. The Commerce Commission will also be given responsibility for enforcement of the new credit repossession laws.
515.	Buddle Findlay	CRA	Support recommendation that section 108 of the CCCFA (power for the Court to order persons not to act as a creditor) be amended so that provisions relating to breaches do not apply to creditors who have committed a single, minor breach.	Agree. This change has been added in relation to offences under the CCCFA or crimes involving dishonesty.

516.	Buddle Findlay	CRA	The prohibition on repossessing property while a complaint is being processed should not extend to "at risk" property.	Agree. At risk property is an exception under proposed section 83G(3).
517.	Buddle Findlay	CRA	The requirement that repossession be by a FSP even when a contract is sold is acceptable, providing it only applies to consumer credit contracts. Assignees of credit contracts are already advised by the FMA to register in any event. However, this is not clearly the case under the FSP Act, and should be clarified.	Noted. The credit repossession provisions only apply to repossession of consumer goods, which for the most part will involve consumer credit contracts.
518.	Buddle Findlay	CRA	Support imposition of criminal liability on repossession agents and complicit creditors. However, some clarification will be needed as to the meaning of "complicit". Submit that it should require, at least, knowledge of the offending actions or recklessness (consistent with the criminal liability provisions of the FMC Bill) and a reasonable ability to control those actions (to establish causation).	Noted. The Bill does not use the word "complicit". The offence provisions apply to creditors and creditors' agents, and the defences under section 106 are available (which includes events being outside the person's control).
519.	Ken Anderson	CRA	Considers that the changes to the Credit Repossession Act are significant and notes that repossession agents are already often not available in the New Plymouth area resulting in finance companies either having to walk away or do their own repossessions.	Noted. Do not accept that there should be a trade-off between borrower protections and the supply of repossession agents.
520.	Commerce Commission	CRA	Support inclusion of CRA in CCCFA. Would welcome further consultation on this issue.	Noted. Further consultation will occur through the Select Committee process.
521.	Buddle Findlay	CRA	A further round of consultation on the Law Commission's recommendations would be useful.	
522.	Financial Services Federation	CRA	FSF requests a further round of consultation is undertaken	
523.	Dunedin Community	CRA	Support inclusion of a list of goods or classes of goods exempted	Noted. The goods that are prevented from

	Law Centre		from repossession including necessities and those goods with no economic value.	being used for security (apart from purchase money security interests) are set out in section 7A under the Bill. The list is specific and does not include indeterminate categories.
524.	Waitakere Community Law Centre	CRA	Support the recommendations put forward by the Law Commission that the provisions of the CRA should be included in the current changes to the CCCFA. Note that what can and should be used as security is closely linked to the CCCFA. There should be a ban on the use of essential household items and children's belongings as security.	
525.	Wellington Community law Centre	CRA	Support Law Commission's conclusion that some goods should never be repossessed, such as household utensils, whiteware, clothes, medicines, tools of trade, kids' belongings and personal papers.	
526.	Families Commission	CRA	Timeframe should be reconsidered. 14 days to respond to notices is not enough, many borrowers would have difficulty responding in timeframe.	Disagree. The repossession warning notice provides 15 days' notice of the possibility of repossession. After repossession there is another 7 days for a post-repossession notice, and at least another 15 days before a sale.
527.	Families Commission	CRA	Support a 'seize or sue' type of clause. Would provide greater protection to families than Responsible Lending Code by itself. Suggest considering incorporating both in the Bill	Disagree. The effect of such a provision would be to limit creditors' recovery to the value of the security. This could encourage responsible lending, although the CRA (section 35) already has a partial seize or sue effect, and it is carried forward into the Bill. The Law Commission, on balance, recommended against the seize or sue idea.
528.	Debt-Free Newtown	CRA	Security should be limited in value to the principal of the loan and after-acquired property should not be available as security. It should be up to the lender to check that no other security is registered against the property. Clients typically do not understand that an item subject to HP is not "theirs" as such.	Disagree. Borrowers should be able to offer after-acquired property as security under the law, but the problem is when after-acquired property is covered under securities without the borrower necessarily knowing. See comments regarding changes in relation to All PAAP clauses.

529.	National Council of Women of New Zealand	CRA	Concerned with the inclusion of the CRA as part of a new CCCFA.	Disagree. The analysis from the Law Commission supporting improvements in the effectiveness and enforceability of credit repossession law is compelling.
530.	Mangere Budgeting Services	CRA	Problem where goods have a higher 'sticker price' if financed which leads to unreasonable weekly payments and inevitably hardship and repossession. Suggest the amount the lender can recover should be capped and limited between the monies recovered and the market value of the item.	Disagree. This would effectively be a cost of finance cap, and the Government has decided not to proceed with such caps. The new responsible lending obligations will apply to such situations.

Dispute Resolution

531.	Financial Services Complaints Limited (FSCL)	Disputes Resolution	Stresses the importance of dispute resolution services in ensuring efficient and effective credit markets. It is unclear whether the intention is for DRS to be able to amend a credit contract under section 58 – question rests on whether a DRS is a "court, tribunal or arbitral tribunal" under section 5.	Noted. Dispute resolution schemes are not courts, tribunals or arbitral tribunals under section 5. Dispute resolution schemes do have jurisdiction to apply the law generally, and they have the powers conferred under their rules. Those rules will need to be revised to ensure the schemes are best placed to deal with disputes under the amended CCCFA.
532.	Financial Services Complaints Limited (FSCL)	Disputes Resolution	Submits that the Ministry must make it clear whether the DRS are intended to be able to make finding of oppression under s120 of the CCCFA. Considers that since the definition of "court" does not include DRS, lenders could argue that it was not intended for DRS to make findings of oppression under section 120.	Noted. The disputes resolution schemes are primarily responsible for ensuring lenders meet their legal obligations, and section 120 provides a *remedy* rather than an *obligation*. The inclusion of an obligation on lenders not to be oppressive under the responsible lending principles would open up the scope of dispute resolution schemes in this area.
533.	Families Commission	Disputes Resolution	Suggest that the dispute resolution schemes be empowered to report lenders to the Commerce Commission when they persistently and seriously breach the responsible lending rules.	Noted. Expect that this will happen without needing a specific section in the CCCFA.
534.	Anonymous Third	Dispute Resolution	The fees charged to be members of financial dispute resolution	Disagree. The disputes resolution schemes

	Tier Lender		services are already substantial for small lenders. On top of this on-going cost, the lender incurs further costs for each dispute. This can be used as leverage by consumers looking to force lenders in to contract variations.	are a valuable service for borrowers and lenders, and are not generally regarded as unfairly favouring borrowers.
535.	Admiral Finance Limited	Disputes Resolution	Considers that the lenders should have the opportunity to appeal all DRP decisions.	Disagree. Lenders agree to be bound by the determinations of the schemes, and appeals would be counter to the principles of dispute resolution under the schemes.
536.	Alan Liddell on behalf of 24 Finance Companies	Disputes Resolution	Considers that the disputes resolution schemes may not be capable of or experienced with dealing with responsible lending issues (notes that the borrower has a right of appeal but the lender does not).	Disagree. The schemes are likely to have to review their rules to accommodate responsible lending, but they will have greater capacity and experience dealing with financial disputes than Disputes Tribunals or the District Court.
537.	Anonymous Third Tier Lender	Disputes Resolution	Concern that the borrower will be given the benefit of the doubt on sympathetic grounds and binding decisions will be made derived from an incorrect thought analysis and incorrect interpretation of the ill-defined responsible test.	Disagree. Most Disputes Tribunal referees are legally qualified, and their jurisdiction is limited according to the amount in dispute. The responsible lending provisions have also been redrafted.
538.	Ken Anderson	Disputes Resolution	Considers a specific ombudsman would give consumers and creditors fairer and better access than the Disputes Tribunal.	Disagree. The Disputes Resolution Schemes are intentionally industry-led (particularly after the proposed removal of the reserve scheme). The Courts (including the Disputes Tribunal) are an alternative to the Disputes Resolution Schemes.

Enforcement

539.	Telecom Rentals	Enforcement – Disputes Resolution Schemes	Remedy through courts is beyond comprehension of many retail consumers most in need of protection. Recommend provide more jurisdiction to dispute resolution services (under Financial Service Providers) to hear and adjudicate on consumer finance disputes	Agree. Borrowers will have access to Dispute Resolution Schemes, and Disputes Tribunals, in relation to claims that fall within their statutory jurisdictions and liability limits.

			related to responsible lending standards.	Dispute Resolution Schemes are not referred to in the CCCFA, and therefore do not have statutory powers under the CCCFA. However under their schemes and rules they are generally able to apply the law, which includes the CCCFA. The Dispute Resolution Schemes are likely to have to review their rules to give effect to responsible lending and the other changes in the Bill (including hardship and reasonable fees). The Courts (including the Disputes Tribunal) are always an alternative to the Disputes Resolution Schemes for consumers.
540.	Save My Bacon (SMB)	Enforcement - Disputes Resolution Schemes	Disputing depends on going to court under section 41, however, few will have that ability. Suggest disputes tribunals have authority (also with clear guidelines on 'reasonable fees'). Debtors should be able to take hardship issues to dispute resolution, not just court (as is the case for other provisions, court action is out of range for most).	
541.	Citizens Advice Bureau	Enforcement – Disputes Resolution Schemes	Consider that even with proposed amendments; there is still a high barrier to action being taken to address unreasonable fees. Many clients affected by unreasonable level s of fees and unlikely to have the financial resources and/or confidence to undertake court action.	
542.	Tulai project	Enforcement – Disputes Resolution Schemes	Do not support going through Courts.	
543.	NZ Federation of Family Budgeting Services	Enforcement – Disputes Resolution Schemes	Few of the service's clients have the time, money and literacy required to successfully challenge a creditor through the court system. Where a hardship application is declined, a more accessible alternative would be the Disputes Tribunal and suggest this is considered instead of the courts. Another more accessible alternative would be the use of financial disputes resolution bodies. This should be included where disputes arise around hardship claims.	
544.	Financial Services Complaints Limited (FSCL)	Enforcement – Disputes Resolution Schemes	Submit that if the Disputes Resolution Schemes are intended to have the same powers as a court in this area of the Act, then specific reference must be made to the Disputes Resolution Schemes in the Act.	
545.	Mangere Budgeting Services	Enforcement – Disputes Resolution	Note that application to the Court for remedy does not work. Request that the Bill provide for another, less costly, time consuming and intimidating avenue for those whose rights have	

		Schemes	been breached. Suggest replacing "Court" with "Dispute resolution service" and give them the power to make a conclusion that would have been made in the Court.	
546.	Financial Dispute Resolution Scheme	Enforcement – Disputes Resolution Schemes	Considers Dispute Resolution Services are more appropriate than Courts to consider unreasonable fees, oppression and disputes. FDR has the jurisdiction, resources, skills and experience to be considering cases that might otherwise go before a Court.	
547.	Bank of New Zealand	Enforcement – Disputes Resolution Schemes	Complainants should seek Disputes Resolution Services rather than Courts.	
548.	Auckland District Law Society	Enforcement – Disputes Resolution Schemes	Very important that an agency has resources to assist with enforcement for specific borrowers and to monitor and take action against lenders who fail to meet obligations across a number of borrowers. Recommend two regimes of enforcement: • The Disputes Tribunal (and courts) should have powers to review predatory agreements based on applications by consumers with wide discretion for the Court or Tribunal to made orders amending the consumer credit contract; • A regulator's right to take action against a lender where systemic issues are evident.	Agree. Consumers also have the ability to apply to Disputes Resolution Schemes. The Commerce Commission will generally focus on systemic issues, although it also has the capacity to deal with individual complaints.
549.	Families Commission	Enforcement	Above all, you should consider issues related to increasing enforcement to protect borrowers. Better enforcement a key part of improving the law, particularly needed in following areas: • Registration of lenders • Disclosure of the costs of lending • The application of hardship provisions • Whole area of repossessions • Code of Responsible Lending	Agree. Enforcement will be a key to the success of the reforms proposed in the Bill. The Bill, • Creates new enforceable obligations and gives the Commerce Commission greater regulatory responsibilities (e.g. responsible lending, repossession) • Creates new regulatory powers (e.g.

			Concerned that unless the regulator takes a proactive enforcement approach, enforcement will continue to rely on borrowers taking action. This has failed in the past.	enforcing the registration of creditors and registering credit repossession agents), and • Clarifies the drafting in the CCCFA where the Commerce Commission has identified enforcement problems (e.g. unreasonable fees). The Commerce Commission will institute a broad-based enforcement strategy to back-up the amendments proposed in the Bill.
550.	Kiwibank	Enforcement	Consider any changes in the Bill need active enforcement to have a true effect of unscrupulous and predatory lending.	
551.	Telecom Rentals	Enforcement	Draft Bill is just part of a solution to irresponsible lending. Also requires support and adequate resourcing from enforcement agencies.	
552.	Wellington Community law Centre	Enforcement	Enforcement is vital – need an information campaign to counter the advertising by fringe lenders.	
553.	Save My Bacon (SMB)	Enforcement	Many of the principles are already reflected in Fair Trading Act and CCCFA already. Stronger enforcement could address many issues, and should go alongside regulation.	
554.	Symon Philip Nausbaum	Enforcement	Existing CCCFA provisions are not being complied with by some third tier lenders. Increased enforcement will be the most successful way to meet policy goals.	
555.	National Council of Women	Enforcement	Notes that however strict the law governing credit contracts is, it will be ineffective without stronger sanctions against those who operate illegally.	
556.	Nicola Maplesden	Enforcement	Providing education and information to consumers as well as resourcing Dispute Resolution Schemes would help with enforcement so that there is standardised interpretation and application of the law.	Noted. Continuing consumer education and information will be an on-going function of MBIE.
557.	Citizens Advice Bureau	Enforcement	In order for the Act to meet its objective there need to be changes made to make redress for breaches of the Act easier. Consider this could be done by:	Noted. Improvements are being made. The “Australian model” involves civil pecuniary penalties, which have not been included as part of the overall package of

			- increased powers of the Commerce Commission - Increased resources for the Commerce Commission to undertake enforcement action - An increased role for Financial Disputes Resolutions Schemes. Recommend that the Australian model of enforcement which is being introduced as part of their new National Consumer Credit Regime Legislation be investigated. Recommend that fines should be substantial enough to provide a significant incentive to comply with the Act. Recommend that if these recommendations are adopted, the Commerce Commission should be resourced to conduct a public campaign about consumer rights in relation to consumer contracts.	consumer laws in New Zealand. The importance of the Commerce Commission prioritising consumer credit and consumer issues generally has been recognised by the Government.
558.	Age Concern New Zealand	Enforcement	Risk that litigation will stand in the way of the consumer protection intended by the Bill. Suggest a lower cost mechanism be devised to assess fairness, such as policing by a government agency.	Noted. The Disputes Tribunal and Financial Dispute Resolution schemes do represent lower cost consumer protections than conventional litigation. The Commerce Commission will enforce responsible lending under the Bill.
559.	BNZ	Enforcement	The CCCFA has not been widely or adequately enforced. The Commerce Commission needs to be resourced to focus not only on large lenders, but also on smaller less reputable lenders. No view on FMA or Commerce Commission should be responsible for enforcement of the CCCFA. Supports the proposed provisions incentivising lenders who have not yet registered to register. The law should also be amended to require the use of a dispute resolution service whenever possible.	Noted. Agree that enforcement will be key to the success of the reforms proposed in the Bill. There are strong incentives for borrowers to use dispute resolution services, but it is not proposed to make them a mandatory first option. To do so would limit borrowers' access to conventional courts.
560.	EB Loans	Enforcement	The existing CCCFA should be adequate to stop irresponsible lenders, but it seems that unregistered lenders have not been	Disagree that the Bill directs harsh new amendments at responsible lenders.

			prosecuted. The draft Bill has directed new harsh amendments at registered and responsible lenders. There should be regulation and dispute resolution for budget advisory services as some provide irresponsible advice. There should be a Dispute Resolution Provider process for lenders when dealing with the Regulator and it should be the Regulator that bears this cost.	Budget advisers who charge for their services are covered by the Financial Advisers Act. Disagree that there should be a mandatory mediator between lenders and the Commerce Commission.
561.	Commerce Commission	Enforcement	The offence provisions should be tightened up. At present it can be unclear what conduct will give rise to a breach. This is important so that lenders know where they stand. Support inclusion within offence provision offences relating to credit-related insurance, waivers and extended warranties.	Noted. The Bill is intended to be clearer on which breaches of the CCCFA are offences, especially in relation to the new credit repossession provisions. It will not be appropriate for every breach of the CCCFA to be an offence, e.g. responsible lending provisions.
562.	Lee Morgan	Enforcement	Use 'mystery shopper' system. Use advocates, trained in the Act, to support vulnerable borrowers.	Noted. These sorts of initiatives will be part of the Commerce Commission enforcement strategy.
563.	Child Poverty Action Group	Enforcement – Section 108 order for persons not to act as creditors	Support. Submits that the general policy statement enables creditors to breach the lender responsibility principles twice before the Court has the power to ban them. Considers that this denies the rights and protections of borrowers and sends a message to creditors that the ban is unlikely to be applied.	Disagree. The power of the Court to make an order already exists under section 108, and responsible lending is being added as a new legal obligation. Such banning orders will only be appropriate when breaches are systemic, which will necessarily involve more than one breach. It remains a very strong protection for consumers, and incentive, for lenders to comply with the law.
564.	Thorn Rentals NZ Limited	Enforcement – Section 108 order for persons not to act as creditors	The lender responsibility principles should not give rise to potential banning orders. Submit that two minor breaches which occur years apart should not give rise to the ability to seek a banning order.	Noted. It seems reasonable to time-bound the section 108 remedy, especially given the seriousness of the implications.

			Suggest amending s 108(1)(a)(v) to read "has failed, more than once, within the last two years, to comply with any of the provisions of this Act"	The remedy is discretionary in any event, so a Court is unlikely to make an order on the basis of two breaches over more than two years.
565.	Commerce Commission	Enforcement – Section 108 order for persons not to act as creditors	Suggest amending s 108(1)(a) to provide that previous Fair Trading Act breaches can also act as a trigger for a banning order. The two statutes have some overlap and the Commission sometimes chooses to prosecute under the FTA rather than CCCFA.	Noted. Section 108 refers to breaches of the CCCFA and the Crimes Act. Offences under the Fair Trading Act could be added, although it is not clear whether this would result in lenders being banned more easily if the Commerce Commission has a choice between prosecuting under the CCCFA or the FTA.
566.	Alan Liddell on behalf of 24 Finance Companies	Enforcement – Section 108 order for persons not to act as creditors	Do not support. Expresses concern that a person can be excluded from an industry without ever committing an offence. Recommends that the words "more than once" be amended to read "5 or more times, in respect of five or more separate borrowers in respect of 5 or more separate consumer credit agreements".	Noted. It is not an offence under the Bill to breach the responsible lending principles, which is appropriate given the nature of the principles. It is nevertheless important that the principles be enforceable, including through the possibility of an order being made under section 108. Could consider whether two breaches is enough for section 108.
567.	Admiral Finance Limited	Enforcement – Section 108 order for persons not to act as creditors	2 strikes and you are out could be a low barrier for lenders processing a large number of loans or a small number of higher risk loans and introduces a benchmark of perfection at 100%. Recommend re-examination of this section.	Noted. The remedy is discretionary, so a Court is unlikely to make an order on the basis of innocent mistakes. The CCCFA includes a reasonable mistake defence in section 106.
568.	Buddle Findlay	Enforcement – FMA	Prefer enforcement by the FMA. This would be consistent with the assumption of responsibility for prohibitions on misleading and deceptive conduct – adapted from the Fair Trading Act – that the FMA will have under Part 2 of the FMC Bill in relation to financial services.	Noted. The Government has decided that the CCCFA should continue to be enforced by the Commerce Commission, rather than the Financial Markets Authority. The Commerce Commission's existing CCCFA jurisdiction sits alongside its complementary role in enforcing the Fair Trading Act, and the
569.	Thorn Rentals NZ Limited	Enforcement – FMA	Suggests that the administering body should be the Financial Markets Authority.	

570.	Finance Now	Enforcement – FMA	Recommends the FMA have responsibility	Commerce Commission has existing knowledge and networks relevant to credit enforcement. The types of complaints the FMA acts on are of a different nature to complaints about consumer credit.
571.	Symon Philip Nausbaum	Enforcement – FMA	Registration of lenders and enforcement should be at the same agency, the Financial Markets Authority or a new agency. Leaving CCCFA to be enforced by consumers is not strong enough, not enough incentive for lenders to comply.	
572.	ANZ	Enforcement – FMA	The FMA should be the enforcement agency for the CCCFA. This would provide a more consumer friendly and streamlined approach across the industry.	
573.	Commerce Commission	Enforcement	The level of statutory damages is too low, and the level of fines imposed is inconsistent with the FTA. Suggest review.	Noted. The availability of statutory damages is limited anyway (sections 88 – 92), so their level is academic. Agree that review of the level of fines will be appropriate for Select Committee.
574.	Commerce Commission	Enforcement	A new offence provision should be added prohibiting creditors from charging undisclosed fees. At present it can be argued that undisclosed fees do not contravene the fees provisions unless they are unreasonable.	Noted. Review will be appropriate for Select Committee as part of wider discussion on fees, disclosure and unreasonable fees.

Limitation Periods

575.	Commerce Commission	Limitation	The limitation provisions in the Act need updating. Section 95(2) should be a reasonable discoverability based limitation provision like those in the FTA and the Limitation Act 2010. Also need to consider section 41(4) of the CCCFA on the one year limitation period for unreasonable fees (omitted from the Bill), and the parallel provision in section 82(4) (unreasonable fees for buy back transactions).	Agree. This issue has been dealt with in the Bill by removing section 41 as an independent cause of action, and replacing it with a mere prohibition on unreasonable fees. Actions relating to unreasonable fees will therefore need to be taken under section 93. In addition, the limitation period of three years for actions under section 93, which is provided by section 105, has been made on the basis of "reasonable discoverability".
576.	Admiral Finance Limited	Limitation	Section 41 seems fair and the three year extension seems reasonable.	

577.	Financial Services Federation	Limitation	Clause 41 removes the 12 month time limit to challenge the reasonableness of a fee The assumption is that if a borrower is unhappy with a fee it is reasonable to expect that they challenge the fee within 12 months. No policy rationale is given for removing this provision	Disagree. The one year limitation period has the effect of protecting lenders by limiting consumer rights to complain about unreasonable fees. A three year limitation period applies in relation to other consumer protections under the CCCFA, and the Fair Trading Act. It is not clear why unreasonable fees should be treated as a special case with an unusually short limitation period.
578.	ANZ	Limitation	Do not support. A 1 year limitation for unreasonable fees claims remains appropriate. Section 41(4) should not be repealed. Extending the limitation period reduces certainty around fees and costs.	
579.	Westpac	Limitation	Do not support removing the one-year time limit for appealing unreasonable fees. This would limit business certainty, especially for short-term loans (if life of loan is much shorter than one year).	
580.	BNZ	Limitation	Section 41(4) should not be removed, in order to maintain business certainty.	

Fees

581.	Commerce Commission	Fees	Support 'splitting' of credit and default fees. These typically fail to be considered on different grounds. Support removal of "reasonable standards of commercial practice" test. It has proven difficult to apply in practice. If it is retained, guidance should be given as to how it should be applied. Greater prescription should be provided in relation to constraints on costs that can be recovered as credit and default fees. The Ministry's intention that creditors primarily compete on their interest rates and fees should only be used by lenders to recover specific costs and losses; is not carried through into the Bill. Would like to see this clarified in ss 44 and 44A. There should be clarity on whether profit and return on capital	Agree. Have added more prescription in the Bill dealing with average reasonable costs that relate directly to the transaction for credit fees and default fees. The Bill could still usefully state (one way or the other) whether profit and return on capital should be added as costs. As it is, they are probably excluded, but not sufficiently clearly.

			should come within the definition of "costs".	
582.	Kiwibank	Fees	Submits that the CCCFA contain one clear statement that a consumer credit contract must not provide for a credit fee that is unreasonable, and that the court must have regard to one clear set of factors when determining whether a credit fee is unreasonable.	Agree. Section 41 in the Bill is now a clear statement. Note that the factors to determine whether a fee is reasonable are specific to each type of fee, as also reflected in the Bill.
583.	Consumer NZ	Fees	The amendments are unlikely to help consumers to identify unreasonable fees. Recommend dealing with fees more substantively in Responsible Lending Code. Dispute resolution schemes should also have to consider complaints about unreasonable fees.	Agree. The responsible lending principles include complying with legal obligations, including in relation to unreasonable fees. The Responsible Lending Code could therefore deal with reasonable fees. Also agree that the disputes resolution schemes are intended to have jurisdiction over unreasonable fees – that is the case under the Financial Service Providers Act (section 63).
584.	Waitakere Community Law Centre	Fees	The unreasonable fees provisions remain too vague. More clarity is needed as to what actually amounts to an unreasonable fee. Court is not the best vehicle for appealing fees as it is seen as an obstacle for vulnerable borrowers.	Agree. The drafting of the legal tests for unreasonable fees in the Bill is now tighter. Dispute resolution schemes are not courts, and are not referred to in the CCCFA. They do however have jurisdiction over creditors' statutory obligations, including in relation to unreasonable fees. The terms of reference of some dispute resolution schemes are more restricted than the legislation indicates, and those schemes will need to review their terms of reference as a consequence of the Bill.
585.	Buddle Findlay	Fees	Support in principle clearer provisions relating to unreasonable fees and charges. However, it does not seem to be necessary to differentiate between credit fees and default fees. No clear	Agree. Distinction between credit fees and default fees has been clarified.

			distinction between the two exists at present. Because it is difficult to distinguish the two, the tests should be the same. Proposed sections 43(1) and 44(2)(c) should be clarified in relation to "administrative costs". It is not currently clear whether these costs must directly relate to the particular prepayment or whether they can include average reasonable administrative costs. The latter is more appropriate as in practice it is not feasible for lenders to determine their costs in relation to each specific prepaid loan. A requirement of reasonableness means that there is no significant benefit to the consumer from requiring the lender to establish actual costs. The narrowing of proposed s 44(1)(c) to refer to "performing and documenting the loan" is likely to cause problems due to the issues discussed above associated with many "default fees" not actually arising from a breach and so having to come under s 44 rather than 44A.	Bill amended to refer to average reasonable administration costs to address problem pointed out. Drafting error corrected.
586.	NZ Law Society	Fees	41(3) does not add any clarity. Suggest replacing "annulled" with "cancelled", also in sections 69, 80 and 82. Proposed sections 44 and 44A should be cross-referenced with new section 41. Additionally recommend clarification of the factors which courts must take into account in deciding whether fee is unreasonable. Suggest apply lender's average reasonable costs for each fee as that is more readily available and easily scrutinised. Suggest in new Section 44(2) delete reference to "or charge" as this provision should apply to all charges that come within the definition of "credit fee".	Agree. Drafting suggestions adopted.
587.	Kiwibank	Fees	In response to MCA note that for most lending the intention is that lenders should compete primarily on their interest rates. Consider that creditors will always seek to compete on fees as well as interest rates. Note that some products are designed to allow responsible	Partially agree. It is acknowledged that in some instances lenders will compete on fees, rather than interest. However, fees have much greater potential to be misleading. However, the provisions around various types

			borrowers to avoid paying interest by making payments on time, e.g. credit cards. Note that different combinations of low or high interest and fees are available on products and sometimes other features are competed on such as Airpoints. Consider that product development may be constrained if creditors are expected to compete primarily on interest rates.	of fees (such as establishment and prepayment fees) that are by their nature about cost recovery are designed to prevent profits being derived in a less transparent or unnecessarily complex manner.
588.	Save My Bacon (SMB)	Fees	It seems intent is that lenders compete on interest rates alone. SMB suggest total cost of funds is a better metric, and will encourage competition on all aspects of lending, rate, margins, and operational efficiencies. More certainty should also be provided as to what amounts to an 'unreasonable fee". The Ministry or Commission should provide safe harbour rules, and the Responsible Lending Code should provide additional guidance.	
589.	Cash Converters	Fees	Support. Considers that the amendments described the process well and do not leave open any avenue to charge a fee which is unreasonable. Submission discusses small amount (payday loans). Considers that requiring interest to be the mechanism through which the profit is made increases cost and creates uncertainty for consumers who do not pay on time. States that single fixed fee products ensure the incentives of the consumer and lender are aligned. The credit provider is incentivised to assist the consumer to repay in a timely manner as there is no accrual while the consumer is in arrears. Short term loan consumers appreciate the simplicity of a typical payday loan product. The UK Office of Fair Trading found that the total repayment amount rather than the Annual Percentage Rate increased a consumer's ability to make sound decisions.	Noted. Relative to headline interest rates, fees and fee structures tend to be hidden so there is less competition. Given the lack of transparency around fees, finance companies that do not charge interest at all on short term loans, and only charge fees, tend to not be subject to competitive pressures. The policy intention is for incentives to provide that fees are more reflective of costs. The Commerce Commission has found that the drafting of current provisions could be clearer. In particular, the status of a profit component under the current provisions is ambiguous.

			There is a problem that the Commerce Commission's current position prohibits fixed fee loans, this position disadvantages short term credit products. Considers that a profit component should be provided for in the fees provisions but still subject to the reasonableness provisions.	
590.	Child Poverty Action Group	Fees	Support changes as a welcome protection for the borrower. Submits that the disputes resolution schemes should be able to consider fees as the courts are inaccessible for the borrower. Submits that the provisions do not make the law clearer and leave avenues open to charge a fee which is unreasonable.	Noted. The jurisdiction of disputes resolution schemes is not referred to in the CCCFA at all, but that does not mean they don't have jurisdiction. The legislation providing for dispute resolution schemes (the Financial Service Providers Act) does provide that schemes have jurisdiction in relation to breaches of statutory obligations by creditors (section 63). This includes the obligation not to charge unreasonable fees. The terms of reference of some dispute resolution schemes are more restricted than the legislation indicates, and those schemes will need to review their terms of reference as a consequence of the Bill. Depending on the amount in question, the Disputes Tribunal may also be available as a further low-cost means of redress.
591.	Mangere Budgeting Services	Fees	Submits that disputes should not go to Court in the first instance as it reads in the amended section 41(2). See comment in relation to enforcement - DRS	
592.	Te Waipuna Puawai Mercy Oasis Ltd (TWP)	Fees	Support new provisions, as they will add clarity. They need to be publicised in clear language to consumers. Lack of consumer knowledge leaves an avenue open for lenders to still charge unreasonable fees.	Noted. A public education programme will be essential for the implementation of this and other aspects of the Bill in due course.
593.	Commerce	Fees	Support revision of current ambiguous fees provisions. An enforcement issue is that lenders are not required to use	Noted. The idea of prescribing the terminology used by creditors to describe fees

	Commission		appropriate terminology to describe their fees. Suggest an obligation to use the same names for fees as those in the Act.	is the sort of detail that may be more appropriate for the Responsible Lending Code than primary legislation. Worth further consideration.
594.	Finance Now	Fees	Support. Sections 40, 41, 45, 51, 52 appear to provide clarity on the position. The provisions do not leave open any avenue to charge a fee which is unreasonable.	Noted. The drafting has been improved in the Bill.
595.	Citizens Advice Bureau	Fees	Note there is a significant variation in both the range and application of fees and charges in the credit industry. Support a more prescriptive approach towards what fees are payable and how these fees are paid. Consider there should be regulatory guidelines which clearly set out what fees are 'reasonable'. The Bill should prevent fees from being front loaded on to loans. Where loans are relatively small and there is high interest it can add considerably to the cost of credit. Submit that the Financial Disputes Resolution Schemes should be able to assess the reasonableness of the fees and if necessary, make orders in relation to those fees.	Noted. The constraint on unreasonable fees is an example of principles-based legislation. Fees and loan transactions are too varied to regulate fees more prescriptively. Agree that fees can add considerably to the cost of credit, but they are required to be reasonable, and they are required to be disclosed. Financial Disputes Resolution Schemes will need to review their terms of reference following the passage of the Bill.
596.	Wellington Community law Centre	Fees	Support. The forum is important. The forum needs to be informal and accessible to consumers. Important that jurisdiction resides with the Disputes Tribunal, or a similar but specialised disputes resolution body.	Noted. The general jurisdiction rules that apply to Disputes Tribunals and Courts apply to the fees provisions.
597.	Jonathan Flaws (Sanderson Weir)	Fees	Does not believe that the provisions leave any avenues open to charge an unreasonable fee. Believes this sets out the process adequately.	Noted.
598.	Whitireia Community Law	Fees	Support. But consider "unreasonable" needs clearer definition. Commerce Commission view is that creditor should be	Noted. The Commerce Commission view reflects the current law, which is being

	Centre.		compensated for costs and that fees should accord with a reasonable standard of commercial practice.	amended.
599.	Christians Against Poverty	Fees	Support. Considers the process is adequately described. Considers that the provisions make the law clearer. Suggests that a company should be able to declare an hourly charge-out rate so that a refinancing fee can be itemised and justified. Suggests that the side effect of lower fees could be higher interest rates. Suggests an interest rate cap to resolve this.	Noted. How fees are calculated (including the possibility of hourly charge-out rates if they are relevant to some fees) is the type of issue where the Responsible Lending Code could be used to provide guidance. Correct that there is a trade-off between fees and interest rates, and any cost of finance cap would have to cover both. Cost of finance caps are not Government policy.
600.	J Grose	Fees	Costs incurred during the life of the loan should be option for the borrower to pay for at the time that the cost is incurred. For example the cost of a property valuation being included in a loan which incurs compounding interest over a period of 30 years.	Noted. The CCCFA does not prevent borrowers having the option to pay costs at the time they are incurred.
601.	Alan Liddell on behalf of 24 Finance Companies	Third Party Fees	Notes that if a lender can pay a third party (who profits) to carry out administration work, a lender should be able to choose to do this work itself and include a profit. Consumers can compare fees and choose whether or not to use a lender. The requirement that fees reflect actual costs should be removed and retain the reference to reasonable standards of commercial practice on an equal basis. Alternatively, if it is decided to retain the restriction, specify that "performing and documenting" does not mean that those actions cannot be carried out by a third party appointed by the lender.	Noted. There is an inconsistency between the credit fees provisions (which limit fees to reasonable average costs) and third party fees, which will inevitably include profit component for third parties (because the third parties will have no other source of income in relation to the loan). However this is not a reason to allow profits to also be recovered under credit fees apart from third party fees.
602.	Financial Services Complaints Limited (FSCL)	Fees	In most cases, will follow the current approach in the CCCFA and imputes the concept of reasonability from sections 41-44 into the word "standard" in relation to fees. FSCL's terms of reference does not allow the scheme to consider complaints about fees – but will where the fee is grossly exorbitant and therefore no longer	Noted. The Financial Service Providers Act says dispute resolution schemes have jurisdiction to deal with breaches of statutory obligations, and the requirement for creditors to not charge unreasonable fees is a statutory

			"standard". Amended sections go no further in determining what is reasonable in a legal sense. Comments that uncertainty about what is reasonable and unreasonable in context will continue to bother lenders.	obligation. The FSCL Terms of Reference do exclude the levels of standard fees and interest rates, but they do include a general jurisdiction to deal with breaches of statutory obligations. This contradiction is for FSCL to resolve. The legal tests in relation to unreasonable fees have been tightened in the Bill.
603.	Full Balance	Fees	Considers whether there needs to be a specific section to cover leases. E.g. where a leasing arrangement ends but the lessor has to pay out the whole lease.	Noted. Finance leases are consumer credit contracts, covered by unreasonable fees provisions (including prepayment provisions).
604.	Financial Services Federation	Fees	Support. If the question concerns the matters the court may take into account then those matters are adequately described in particular by changes to proposed sections 41 and 44A. Overall though supportive of many of the proposed changes FSF considers that the provisions will not significantly clarify what is an unreasonable fee.	Noted. The drafting from the Exposure Draft has been improved, and is intended to add clarity to the existing provisions.
605.	Admiral Finance Limited	Fees	Considers it is uncertain what the interpretation of unreasonable fees will be.	
606.	GE Money	Fees	The proposed amendments make the fees provisions less clear than they are currently. The existing and proposed changes provide adequate safeguards in relation to the charging of unreasonable fees.	
607.	Susan Schweigman	Fees	Not much clearer about what 'reasonable fees' will be. A definition would be useful (see Lawyers and Conveyancers Act which sets out the criteria on how fees can be charged). Unregistered lenders will also remain unaffected by any changes.	

608.	NZ Bankers Association	Fees	Current provisions on unreasonable fees should not be amended. Existing provisions already require that a fee have a strong connection with lenders' reasonable costs, and in the NZBA's view are appropriate and sufficient to deal with the large fees that may be charged by unscrupulous lenders. Banks charge reasonable fees based on their reasonable estimates of costs of services and generic costs. It is also reasonable commercial practice for a default fee to be charged to ensure there is an adequate disincentive to avoid default. The proposed amendments will reduce opportunities for product innovation. For example, banks commonly offer a suite of products and services for customers which often include price discounting on some aspects because costs are fixed across the portfolio. Also object to the removal of the one year limitation period for challenging unreasonable fees.	As currently drafted, it is difficult for the Commerce Commission to enforce the obligation to charge reasonable fees. This is because the provisions allow the charging of various fees that do not strictly relate to lenders' costs. "Reasonable standards of commercial practice" wording has proved particularly problematic. The Bill therefore proposes the removal of "reasonable standards of commercial practice" from all fees provisions. It also more clearly specifies that fees may only be charged in relation to actual costs associated with the matter giving rise to the fee. To the extent that lenders already do this at present, they will not encounter any problems. The removal of the one year limitation period that specifically related to unreasonable fees actions is part of wider changes to the way consumers' redress for unreasonable fees is limited. Previously, in practice, consumers only had one year from the time they signed the contract to challenge a fee as unreasonable. However, consumers rarely realise the magnitude of a fee until it is applied, often long after the loan is originally agreed to. Therefore, a longer limitation period that runs from when the fee is reasonably discoverable is justified.
609.	ANZ	Fees	Changes to the fees provisions are unnecessary and will harm consumers by introducing uncertainty, reducing innovation and increasing costs. "Reasonable standards of commercial practice" should be retained as a consideration.	Disagree. Relative to headline interest rates, fees and fee structures tend to be hidden so there is less competition.

610.	Westpac	Fees	Do not support the removal of some considerations for the reasonableness of fees. Existing law has been extensively tested – the law as it currently stands is clear. Changing the basis for calculation of credit and default fees would create uncertainty while being interpreted by courts. The amendments do not provide greater clarity. The majority of lenders are responsible. There is no rationale for making these changes and there has not been sufficient consultation. In general fees should be able to cover average economic cost.	Given the lack of transparency around fees, finance companies that do not charge interest at all on short term loans, and only charge fees, tend to not be subject to competitive pressures. The policy intention is for incentives to provide that fees are more reflective of costs. The Commerce Commission has found that the drafting of current provisions could be clearer. In particular, the status of a profit component under the current provisions is ambiguous.
611.	ASB Bank Limited	Fees	Do not support the suggested reforms to s 41 as they do not add substantially to the current position. The proposed test for unreasonable credit fees has not been appropriately considered or the justification demonstrated. The primary reform proposed in respect of credit fees creates a new test which is too simplistic, ambiguous and does not reflect the wide ambit of credit fees covered by the Act. If there are specific fees which raise particular concerns these could be separately treated in line with the current treatment of establishment and prepayment fees. Notes that it is artificial to look at credit fees in isolation from the credit product or the customer relationship as a whole. Cost is a relevant factor when assessing a credit fee and this is reflected in the current test, but this should not be the decisive factor when the fee is otherwise in accordance with reasonable standards of commercial practice. Removing the connection when an assessment is being made of what are the *reasonable standards of commercial conduct* and implementing an unclear test to be supplemented by a Code leaves open the possibility the ambiguity created will allow unreasonable	

			fees to be charged.	
612.	Thorn Rentals NZ Limited	Other Credit and Default Fees	Creditors should still be able to charge market prices and should not be prevented from doing so through an amendment to section 44 that implies that the amount of fees must be based on recovery of costs. If fees are to be based on costs then s44 should be further amended to specify that a lender's reasonable costs include achieving a return on capital employed. Submit that any new provisions relating to the reasonableness of credit fees should not have retrospective effect. New provisions should not apply to credit fees incurred under existing contracts entered into before the Bill is passed.	
613.	EB Loans	Fees	The process is well described in section 41 but the amendments are not all fair. Generally, they are anti-lender without any real borrower benefit.	
614.	First Union	Fees	Support. Fees should be more than merely "not unreasonable". They should be fair and reasonable.	Disagree. Adding "fair" obligations is generally regarded as being too uncertain for legislation, and is not generally done.
615.	Ken Anderson	Fees	Considers the amount of research required in relation to establishment fees will be similar to that of a property mortgage. Creditors lending consumer finance have to discount fees on many loans in order to keep fees low.	Disagree. The responsible lending principles, and the requirements of the responsible lending code, will be scalable. The Bill does not amend the reasonable establishment fees provision (section 42 of the CCCFA).
616.	First Union	Fees	Fees provisions should be more prescriptive about what can be charged. It should not be left to the discretion of lenders.	Disagree. The reasonable fees provisions are principles-based legislation, without being a specific fees cap.
617.	Debt-Free Newtown	Fees	Letter fees should be prohibited. No other business charges for this sort of communication.	Disagree. The principle underpinning the reasonable fees is that lenders should be able to recover costs specifically incurred in relation to particular borrowers.

618.	Mangere Community Law Centre	Fees	The unreasonable fee is still tied to the particular circumstances of each situation so there may be some uncertainty.	Disagree. The principle is that fees should be related to costs, which is necessarily tied to particular circumstances.

Establishment Fees

619.	Commerce Commission	Establishment Fees	Greater prescription is needed as to what is a sufficient "connection" to enable recovery of costs under establishment fees.	Noted. The Commerce Commission had otherwise requested that section 42 (establishment fees) not be amended.

Other Credit Fees and Default Fees

620.	Commerce Commission	Other Credit and Default Fees	Support removal of "reasonable standards of commercial practice" test. It has proven difficult to apply in practice. If it is retained, guidance should be given as to how it should be applied.	Agree. If the CCCFA aims to regulate reasonable fees, it is important that the regulation actually works.
621.	Commerce Commission	Other Credit and Default Fees	Clause 44(1)(c) – the ability to charge for documentation should only form part of the establishment fee.	Agree. Drafting error corrected.
622.	GE Money	Other Credit and Default Fees	Administrative costs are not considered as losses in section 44(1) - this is inconsistent with section 44A where administrative costs are considered as losses Section 44(1)(b) including that the amount of a fee may be considered in determining whether a fee is unreasonable may have the practical effect of capping fees below lender's actual cost or loss – this is unfair for smaller lender who cannot achieve economies of scale and thus have higher fees Section 44(1)(c) is unnecessary. Section 44(1) already provides more meaningful guidance to creditors. The removal of reasonable standards of commercial practice may be problematic, this should not be removed and instead guidance provided in legislation as to its use.	Agree. Reasonable average administration costs are now treated more consistently between the sections. Disagree. The amount of the fee is unavoidably relevant in determining whether a fee is reasonable. Agree. Drafting error corrected. Disagree. The reference to reasonable standards of commercial practice has rendered the current provisions virtually

				unenforceable by the Commerce Commission.
623.	BNZ	Other Credit and Default Fees	Supports having separate test for default fees and credit fees. Also supports having greater certainty around how lenders should determine whether a fee is reasonable. However, the proposed changes to the test of unreasonableness do not achieve greater certainty and could create more uncertainty. • It is unclear whether the costs associated with a credit fee must relate to activities relating to that particular fee or whether they can relate generally to the credit contract. • The removal of the 'reasonable standards of commercial practice' aspect of the current test could open the door for lenders to be subjective in their fees and the costs they use to substantiate those fees. • The extent and meaning of "the creditor's average reasonable administrative costs" (in relation to the reasonableness of default fees and "performing and documenting the credit contract is unclear. The proposed test imports a large and subjective element to its interpretation. See clarification on the meaning of "performing and documenting the credit contract" as the wording is unclear and could be interpreted widely. BNZ requests that: • clarification should be given on unreasonable fees and whether existing guidelines will continue to apply to the proposed provision; • clarification should be given to the exclusion of "fees and charges passed on to a person, body or agency that is not an associated person" from the definition of "credit fees";	Noted. The new drafting in the Bill will not be more subjective with the removal of the reference to reasonable standards of commercial practice. The Bill not refers to a reasonable estimate of the creditor's reasonable average costs, which retains a strong objective element. The costs must also relate directly to the matters giving rise to the fee and the relevant class of contract. The drafting error regarding the costs of performing and documenting the credit contract (which are in the nature of establishment fee matters) has been corrected. Third party fees continue to be dealt with separately under section 45 of the CCCFA.

			• while section 42(2) of the Bill retains the current system that only courts determine whether fees are unreasonable, the increased uncertainty may lead to unnecessary litigation; • If a debtor or guarantor believes that a fee is unreasonable they should be required to use a dispute resolution process.	
624.	GE Money	Other Credit and Default Fees	Support. GE does not charge default interest on consumer loans The proposed drafting may create uncertainty where the entire loan is called up as a result of non-payment. It is unclear whether the amendment enables default interest to be charged on the entire loan or only on the unpaid instalments.	Noted. The default could be a non-material default, or a non-payment default, which could affect the reasonableness of a default fee. Consistency of terminology improved in the Bill.
625.	EB Loans	Other Credit and Default Fees	Section 44: Do not support removing 'reasonable commercial practice' Reasonable is surely being "fair" so this amendment is inconsistent with the purpose of the draft Bill, The amendment is now unreasonable and unworkable for credit providers. The amended Section 44 needs to include "reasonable commercial practice" plus allow for "estimates" as per Section 43 and "averages" as per section 44A. S44 as amended is unworkable because fees must be disclosed upfront so they really need to be "estimates" and "averages" to meet disclosure requirements. Yet this clause is contradictory to that purpose. Notes that there is a lot of competition in the lending market and price setting, subsidies etc. do not work.	Disagree. The current inclusion of "reasonable standards of commercial practice" as a consideration for the reasonableness of fees is too permissive. It has resulted in significant difficulties pursuing fees that otherwise seem to be unreasonable. What is allowable within a market should not be determined by the behaviour of participants generally, rather than by the independent consideration of the Court. The fact that the majority of participants are doing the same thing should not be reason to allow the charging of objectively unreasonable fees.
626.	Kiwibank	Other Credit and Default Fees	Consider new tests for default fees may impose an unworkable level of prescription. Should retain 'reasonable standards of	

			commercial practice'.	
627.	Westpac	Other Credit and Default Fees	There is no appreciable improvement here. "Reasonable standards of commercial practice" should be retained as a consideration.	
628.	Admiral Finance Limited	Other Credit and Default Fees	Section 44 should continue to refer to "reasonable standards of commercial practice" notes that no reason is given for the removal of this test.	
629.	Thorn Rentals NZ Limited	Other Credit and Default Fees	Do not support the removal of 'reasonable standards of commercial practice' from the criteria for assessment of the reasonableness of credit fees. Submits that this will prevent lenders from charging a reasonable market price for services like installation and delivery and receiving a return on capital employed.	
630.	Kiwibank	Other Credit and Default Fees	MCA and the Commerce Commission need to engage the industry in a robust discussion to clarify the principles underpinning the existing test in section 44 rather than replacing it with new sections 44 and 44A as proposed. If this is not accepted, Kiwibank submits that: (a) the proposed new tests for credit fees and default fees be amended to incorporate the concepts of "reasonable compensation" and "reasonable standards of commercial practice" that underpin the existing test in section 44(1); (b) the proposed new test for credit fees be amended to explicitly allow averaging of costs;	Disagree. The policy justification for regulating the reasonableness of credit fees is to steer creditors towards competing on interest rates, and not to use various fee structures (which tend to be less transparent) to bolster their revenue. The Commerce Commission has attempted to have a set of guidelines on the application of the fees provisions accepted by industry, but the guidelines remain in draft form. The meaning of reasonable standards of commercial practice remains one of the main sticking points. Agree on referring to averaging of costs, and the Bill now refers to direct costs (rather than leaving open the position regarding indirect costs).
631.	Jonathan Flaws	Other Credit and	Do not believe provisions make the law clearer about what an	Disagree. A percentage cap would be much

	(Sanderson Weir)	Default Fees	unreasonable fee might be. Notes there will always be difficulty in calculating the costs incurred by a creditor in carrying out an activity. Does not believe the changes make this any easier, nor that any changes would make it any easier. Considers the only way to achieve this would be to allow creditors to charge a fee based on a percentage of the loan amount and regulate the percentage that would be deemed to be reasonable. Believes those who can afford to borrow more can afford to pay more and those who borrow less are less likely to be able to afford the same fees. Notes that this approach is contrary to the intention to limit fees to costs actually incurred.	easier to enforce, but it would be equivalent to a partial cost of finance cap. Cost of finance caps are not government policy. A fees cap would also be criticised as a one-size-fits-all solution, even if the cap was variable according to the size of the loan.
632.	ANZ	Other Credit and Default Fees	Existing law is sufficient to prevent unreasonable credit/default fees from being charged. The new tests for unreasonable credit fees and default fees do not provide further clarity on the distinction between the two. Proposed s 44(1)(c) is also unclear as to what, of a range of costs, it is reasonable to include in credit fees.	Disagree. The Commerce Commission has advised that the current provisions are effectively unenforceable. Agree. Drafting error corrected.
633.	ANZ	Other Credit and Default Fees	The focus on cost/loss recovery within fees provisions generally fails to account for the role that fees pay in addressing the information disadvantages faced by lenders. Default fees, for example, act as deterrents to prevent risky debtor behaviour. If fees can no longer be used for this purpose, the risk premiums associated with this behaviour will have to be built in to interest rates. The banking sector is sufficiently competitive, and current regulations are sufficient, to prevent exploitative behaviour. The Bill already strengthens a number of provisions to deal with the third tier market, which might be less controlled by competition.	Disagree. In principle, default fees are supposed to be a mechanism to recover actual costs. Charging fees that are intended to be a deterrent goes beyond the current basis for default fees, and is akin to a penalty (which may be unenforceable under common law principles).
634.	Mangere Budgeting Services	Other Credit and Default Fees	Submit that 44A needs to have the addition of "the frequency of the fee". Notes that lenders who charge $15- $25 per default letter and send 4-5 per week to remind a borrower they are in default are greatly abusing these types of fees.	Disagree. The reasonable fees provisions are principles-based legislation, without including this level of specificity.

Prepayment Fees

635.	Admiral Finance Limited	Prepayment Fees	The provisions relating to prepayment fees seem fair.	Noted.
636.	EB Loans	Prepayment Fees	Section 43 is ok (prepayment fees). Support. Section 51(prepayment amount) is fine it just covers repayment waivers and is a necessary tidy up clause. Section 52 (insurance rebate) is fine - another tidy up clause.	
637.	J Grose	Prepayment Fees	Break fees should be clearly stated and examples given. Examples need to be specific. Words such as "break fees may be significant" are not specific enough.	Disagree. Examples are likely to be misleading, because break fees depend on interest rate movements which could go either way.
638.	Commerce Commission	Prepayment Fees	The full prepayment fee provision should be clarified. Guidance should be provided as to an "appropriate procedure" for calculating a reasonable estimate of loss. This could take the form of a compulsory formula, specification of principles/methodology or a maxima/cap. It should also be clarified whether the lender can unilaterally change this formula without the option to leave the contract for the borrower. The formula should also be made available to debtors. That it is not undermines prepayment disclosure. Finally, clarification is needed as to whether a full prepayment fee can be charged on a variable interest loan.	Noted. The Bill does not amend the current provisions in the CCCFA providing that full prepayment fees may be calculated under the "safe harbour" set out in regulations, or some other appropriate procedure in the consumer credit contract. A mandatory formula would be too inflexible, given the range of approaches currently taken by creditors, and a mandatory formula would be likely to be wrong. It is not intended that prepayment fees be charged on variable interest loans.
639.	J Grose	Prepayment Fees	The formula for the calculation of reasonable estimate of a creditor's loss arising from a full prepayment of a fixed rate contract is nebulous and complicated. The formula should be easy to understand and require specific and audited information as to the creditor's loss. As it stands the calculation relies on the honesty of the creditor.	

640.	Westpac	Prepayment Fees	Section 43 removes the reference to average reasonable costs. This should be retained. Should also reinstate the test of whether the fee "reasonably compensates the creditor". The creditor's recovery should not be limited to financial loss. Economic loss is reasonable (Commerce Commission agrees).	Agreed on average reasonable costs. The loss arising from prepayment/part prepayments references differences in interest rates for fixed rate loans.
641.	Financial Services Federation	Prepayment Fees	It is not clear why "the creditor's average reasonable administration costs" has been deleted. If the intention is that it should be actual not average costs this level of precision is unlikely to be achievable. This change does not add clarity and should be deleted	
642.	ANZ	Prepayment Fees	Recommend reinsertion of reference to "consumer credit contracts" to s 43 to avoid ambiguity of application.	Disagree. This is not necessary. Section 41 already means that the prohibition of unreasonable fees only applies to consumer credit contracts. Section 43 merely defines what is unreasonable in the case of prepayment fees.
643.	Financial Services Federation	Prepayment Fees	Do not support proposed new section 52A. The consultation document does not address the formula proposed for the rebating, This will be different to the prepayment fees formula.	Disagree. New section 52A mirrors section 52, but applies to repayment waivers. There is no current rebate formula specified for insurance.
644.	Finance Now	Prepayment Fees	Section 43, 44 leads to further confusion. They imply the creditor must detail exact costs relating to each contract at the time of prepayment – each borrower would be different and may have their costs/rates changed if their profile changes. This would need to be disclosed and could confuse the borrower rather than add value.	Disagree. Section 43 currently requires a methodology based on interest rates. The Bill does not change this general approach. Average costs are provided for, so it need not be an individual calculation.

Third Party Fees

645.	GE Money	Third Party Fees	Support deletion of section 45(5) (allowing creditors to charge	Agree.

			reasonable commission on credit-related insurance).	
646.	Financial Services Federation	Third Party Fees	Supports. The present section 45 is difficult and this adds clarity. FSF doubts any substantive change will result.	
647.	Commerce Commission	Third Party Fees	Support repeal of s 45(5) (reasonable commission on third party fees). It was in practice unenforceable.	
648.	Admiral Finance Limited	Third Party fees	Recommend clarification of the policy for payment of payment protection commissions. There appears to be no explanation of the removal of commission payable in the accompanying notes. Payment protection commissions should be permitted as it is a service facilitated as agent by the lender and lenders spend considerable amount of time and cost in this area and the cost needs to be reflected somewhere.	Partially agree. In general, where creditors incur effort in arranging a product for their client that is a genuine and legitimate value-add, they should be compensated. However, where the lender has required the borrower to purchase the product in question, it is not legitimate that they should then make a return on that product on top of other fee and interest charges. **Decision:** The new section 45(5) proposed in the Bill will allow creditors to charge a reasonable commission for credit related insurance and extended warranties, but only where the insurance or warranty is not required by them as a condition of getting the loan.
649.	EB Loans	Third Party Fees	Section 45(5) should remain. The regulator has already investigated the commission matter with lenders and has not pursued the matter which suggests that lenders are receiving only reasonable commissions. Most clients want credit insurance and it is responsible for a lender to offer such a product, Notes that this product is always optional and the lender should be able to charge commission. The alternative is that the client would go directly to the CRI provider who would charge the same commission. The borrower is not being disadvantaged.	
650.	Alan Liddell on behalf of 24 Finance Companies	Third Party Fees	Recommend that Section 45(5) remain and if there is evidence based on proper research of what is believed to be overcharging, properly conducted research take place to ascertain what is a reasonable commission in the circumstances and that that figure be imposed. It should be accepted that there may be more than	

			one type of credit related insurance leading to varying levels of commission.	
651.	Kiwibank	Third Party Fees	Kiwibank submits that section 45(5) should be retained. Without section 45(5), it is unclear whether a creditor that collects a premium for credit-related insurance from the debtor can deduct a reasonable commission before passing the remainder to the insurer. The repeal of a sub-section included "for the avoidance of doubt" would merely introduce confusion and uncertainty, and on this basis is not good law. If the proposed repeal of section 45(5) is intended to prohibit arrangements structured in this way, Kiwibank submits that prohibition would have far-reaching implications and requires careful consideration.	Agreed that simply deleting section 45(5) creates uncertainty. The proposal in the Bill is that creditors will only be prevented from charging commission in the case of captive insurance that the creditor requires the borrower to take out.
652.	Westpac	Third Party Fees	The amendment does not solve the question of whether a commission can be included under s 45(2).	
653.	Citizens Advice Bureau	Third Party Fees	Consider that the Act should be amended to prevent third party fees and charges being passed on by a creditor unless they are at an arm's length relationship. These fees should be subject to the reasonableness test. Submit that the Bill prohibit credit providers from specifying which insurance company a debtor should purchase insurance from. Recommend that the Bill only permit credit providers to insist debtors take out insurance where the credit is otherwise not adequately secured. Such insurance should only be compulsory where it applies to the circumstances of the lender. It needs to be very clear when the sale of such insurance is optional and it must also be clear that the consumer has provided active consent to purchasing insurance.	Noted. Some creditors do use fees charged by non-arm's length third parties as a means of avoiding the control on unreasonable fees. Distinguishing between arm's length and non-arm's length third parties would add a level of complexity to the Bill. The Bill adds new rules in section 45(5) regarding insurance, preventing creditors from charging commission on compulsory insurance. The issue of selling unnecessary insurance will be covered under the Responsible Lending Principles (which apply to credit-related insurance).
654.	Mangere Budgeting Services	Third Party Fees	Submits that there needs to be clarity in the guidelines for the charging of fees of an insurance nature. These are greatly abused	Noted. The proposed amendments to section 45 are intended to improve this situation.

			in contracts.	
655.	Debt-Free Newtown	Third Party Fees	Consumers (and often advocates) often do not understand how loan protection insurance works and so cannot benefit from it even where it is available. This charge needs to be clearly explained.	Noted. Credit-related insurance is covered under existing disclosure rules, and will also be covered by the responsible lending principles and code.
656.	Whitireia Community Law Centre.	Third Party Fees	This provision is unclear as to whether unregistered lenders (who will not be able to charge fees) will still be able to pass on third party fees to organisations such as debt collection agencies.	Noted. Third party fees are able to be passed on because they are a special category. Note though that an unregistered creditor will not be able to enforce its consumer credit contracts (or, therefore, incur debt collection fees).
657.	NZ Law Society	Third Party fees	Need to clarify the nature of insurance which should be included in 'credit fees'. Clause 6(1)(a)(iii) and 6(1)(b)(v) Definition of an 'associated person' was repealed in 2005. Need to reinstate that definition, modelled on the definition of 'interconnected bodies corporate' in Commerce Act 1986.	Disagree. Section 45(5) (existing and as proposed in the new Bill) refers to credit-related insurance, which is a defined term in the CCCFA. "Associated person" is defined in section 8A of the CCCFA.

Extended Warranties

658.	NZ Law Society	Extended Warranties	Clause 27 Section 70 amended: "extended warranty" should be removed and replaced with the provisions of the Consumer Law Reform Bill. Clause 12 section 27 amended: Right to cancel extended warranty should be subject to the Consumer Law Reform Bill: a refund of extended warranty is excluded from the CCCF Bill. Section 9J: It's not clear how lenders can pre-disclose extended warranties. Some extended warranties have elements that make them more like insurance. Clarify.	"Extended warranty" is a defined term in the CCCFA. The disclosure rules for extended warranties will apply under the amended Fair Trading Act if the extended warranty is in relation to the purchaser of goods or services. Extended warranties that are entered into as a condition of a consumer credit contract will not be cancellable during the cooling off period in the Fair Trading Act. The cooling off period for the consumer credit contract in the CCCFA will

				prevail. There is no separate cooling off period for credit related extended warranties. Extended warranties can be pre-disclosed in the same way as insurance contracts.
659.	Protecta Insurance	Extended Warranties	It's unclear what applies to extended warranties. The finance company doesn't control the sale of warranties. The warranty should not be refundable (when the contract is cancelled) as the warranty stays with the vehicle or appliance. Financiers with a weak rating can self-insure; underwrite either a repayment waiver or an extended warranty; without being subject to the Reserve Banks' prudential supervision regime	Noted. There is no mechanism for extended warranty rebates on the cancellation of a consumer credit contract in the CCCFA (or the Bill). This may be a gap that needs to be addressed.

Default Interest

660.	Argos Financial Systems	Default Interest	Support. The Bill should clearly define the meaning of default interest as only applying to the actual amount in arrears. Although there is some justification for charging default interest on the entire balance because the entire loan is at risk, the lender would normally have a PPSR registration over the security, minimising the risk. Contractually, the balance of the loan is still payable over the life of the loan. The requirement that fees be reasonable should be extended so that default interest must also be reasonable.	Agree. Clause 14 of the Bill amends s 40(2)(a) of the Act so that default interest may only be charged on the actual amount in arrears. The decision has been taken not to cap interest rates, and to rely on the new responsible lending provisions to improve protection for vulnerable borrowers.
661.	GE Money	Default Interest	Support. GE does not charge default interest on consumer loans The proposed drafting may create uncertainty where the entire loan is called up as a result of non-payment.	Noted. The risk of the entire loan being called up is a potential problem. There are constraints on creditors calling up debts secured by mortgages. The Australian Consumer Credit Protection Act includes limits on calling up loans on default. These should
662.	ANZ	Default Interest	Do not support. Proposed section 40 introduces uncertainty as to the amount of the loan upon which default interest can be	

			charged, for example in situations of acceleration.	be considered.
663.	Whitireia Community Law Centre.	Default Interest	Agree that default interest should be paid on the amount in default only.	Agreed. The provision corresponds with clause 30 of the Australian National Credit Code (which is a schedule to the Australian National Consumer Credit Protection Act). The practice of charging default interest rates on the whole amount of consumer loans contributes to the debt trap that some vulnerable borrowers are caught in.
664.	Financial Services Federation	Default Interest	FSF welcomes this change as it clarifies what FSF believes section 40 is already generally understood to mean	
665.	Lindsay Kincaid	Default Interest	If the borrower has defaulted they've lost the right to the original interest rate so default interest should be charged on total outstanding debt. Default interest is part of lenders' contractual rights and compensation for risk and time involved. It incentivises borrower to get out of arrears. The lender should be able to cost-recover in relation to the default.	Noted. Lenders explain this as a risk pricing issue, rather than an issue of recovering losses or costs directly associated with the default. They also make the argument that non-defaulting borrowers would be cross-subsidising defaulting borrowers if this change is made. Withdrawing the amendment would remove a potential new protection for borrowers, and the protection does not seem to have been controversial in Australia.
666.	Westpac	Default Interest	Creditors should be able to recover the economic losses they make through foregone return on capital through default fees.	
667.	Alan Liddell on behalf of 24 Finance Companies	Default Interest	Do not support. Although some lenders currently only charge default interest on the unpaid instalment, lenders should be able to charge default interest on the entire unpaid balance. If a consumer defaults once then their risk profile is higher. If the lender does not have the option to charge default interest on the whole amount then this will load a greater burden on non-defaulting borrowers Recommend the amendment should be removed.	
668.	Admiral Finance Limited	Default Interest/Fees	The default interest rate should be permitted to be charged on the entire outstanding balance of the loan provided that the method is disclosed. Once a consumer defaults, their risk profile is deemed higher. If this is not allowed, the entire class of borrowers will face	

			a higher rate. Supports a user-pays approach.	
669.	Kiwibank	Default Interest	Consider the existing rules should be retained with respect to default interest charges. Note that a default makes it more likely that the entire outstanding balance will not be repaid, and consider this requires the creditor to provision accordingly.	
670.	EB Loans	Default Interest	Do not support. Disagrees with the amendment proposing that the default interest can only be charged on the amount in default The proposed amendment is unfair on Lenders and inequitable amongst Borrowers	
671.	Thorn Rentals NZ Limited	Default Interest	Do not support. Default interest should be available on the entire outstanding amount because that amount is now at risk. There is a greater incentive on a debtor to comply with his/her obligations under the credit contract if the consequence of being in default is that the default interest rate applies to the whole outstanding balance.	
672.	Jonathan Flaws (Sanderson Weir)	Default Interest	Section 40: Notes confusion between two types of default fees: 1. A rate that applies to the amount in default for the period in default. 2. A higher or lower rate applying to the whole loan amount until the default is rectified. Considers that 1) is fair and easy to understand. Recalls 2) was common for interest only loans where there was a grace period for correcting a default, this was included in the Credit Contracts Act 1981. Believes there should be two clear alternatives of either 1) or 2), both should not be an option. Believes 2) should be limited to applying to interest only loans and then to include a statutory grace period of either 7 or 14 days.	Noted. Interesting idea to distinguish between the two types of default interest, and to place restrictions on charging default interest on the whole amount of the loan, rather than prohibiting it entirely. Not clear that this would resolve the concerns of creditors, or necessarily protect borrowers.

Unforeseen Hardship

673. 674.	ANZ	Hardship	Do not support. Clarity is needed over what form acknowledgement of a hardship application must take. Retaining flexibility in this and the way that customers can apply for hardship is important to enable people to access these provisions more easily. A five day limit on creditors requesting further information is insufficient. It often takes longer than this for information to be provided, and hardship applications often involve working through a number of proposals, which necessarily involves a series of exchanges. The proposed provisions may force creditors to make decisions relating to hardship on limited information, making rejection more likely. The 20 days that the creditor has to assess the application should start from when they have all the information they require. It is important that consumers act as quickly as possible to work with lenders to remedy difficult situations. Increasing the length of time that hardship applications are available may undermine this. It is also possible that within 2 months of default a lender may have already repossessed assets and incurred costs. This introduces uncertainty around repossession and actions against debtors in default. The extended timeframe could also be subject to abuse by consumers not in genuine need. Should it be retained, the 2 month timeframe should be expressed in working days to remove ambiguity. It should be mandatory to report to the credit bureau when an account is under assessment or hardship has been granted.	Noted. Would prefer not to prescribe forms. Agree that flexibility is desirable. Agree that the 5 day limit for requesting further information is insufficient. Will be increased to 10 working days. Bill also provides that the time for processing hardship applications will stop running while additional information is outstanding (for up to 10 working days, or 20 working days if information is not provided). Agree that a blanket period of 2 months after a default to make a hardship application is too broad-brush an approach. Other circumstances may also be relevant. Vexatious applications can be managed by preventing borrowers from making repeated applications over time, and making sure any perverse incentives are minimised. Two months does not seem ambiguous.
675.	Admiral Finance Limited	Hardship	Agree the current hardship provisions are inadequate to protect the borrower in unforeseen hardship. Notes that AFL has always	Agree that a blanket period of 2 months after a default to make a hardship application is too

			found solutions for borrowers going through hardship and often a payment protection claim is useful. Does not understand why other lenders would not be so flexible. Considers that the two month time frame is too generous and will be confusing. Notes that most Asset Finance repayments are weekly and two months represents almost nine missed payments. Recommends that the hardship period should be the period of the pre-possession notice served or property law notice with an overall deadline of two months from when the borrower defaulted where no notice has been issued. Notes a drafting error 57(1)(a)(ii) - should be 2 months or more.	broad-brush an approach. The approach in the Bill will be to allow hardship applications up to the sooner of, • 2 weeks after service of a repossession warning notice or Property Law Act notice • 4 or more consecutive payments being missed, or • 2 months from default. Drafting error corrected.
676.	NZ Bankers Association	Hardship	Support, but concerned about the need for more protection from vexatious applicants. Suggest where creditor requests further information from debtor (within 5 working day deadline), the creditor's obligation to provide a substantive response should be suspended until that information is provided. A substantive response could then be provided within 20 working days. There appears to be a drafting error in new section 57(1)(a). It should read "2 months or more"	Agree. The Bill now provides greater flexibility for creditors to request additional information from borrowers. It also allows ordinary default fees and interest to continue to be charged to reduce the incentive for "gaming". The time limit for borrowers to make an application has also been amended to limit the possibility of using an unmeritorious hardship application as a last minute tactic to delay repossession. The drafting error in s 57(1)(a) has also been corrected.
677.	Susan Schweigman	Hardship	Support. Disclosures made at the time of the original agreement and recorded as part of the documentation to protect both parties.	Agree. Being included in new initial disclosure requirements.
678.	Te Waipuna Puawai Mercy Oasis Ltd (TWP)	Hardship	Support. Hardship provisions should be included and explained when the loan is established.	

679.	Whitireia Community Law Centre	Hardship	Support, it should be part of the initial disclosure	
680.	Waitakere Community Law Centre	Hardship	Note the amendments should greatly improve access for those in genuine need. Submits that the obligations of the creditor once an application is made should be stated in the disclosure.	
681.	Wellington Community law Centre, Whitireia Community Law Centre.	Hardship	Amendments can be expected to improve access but will need to provide very clear worked examples.	Agree.
682.	ASB	Hardship	Support amendments to sections 57 and 58.	
683.	Child Poverty Action Group	Hardship	Support.	
684.	Thorn Rentals NZ Limited	Hardship	Hardship applications should be made in writing. Suggests creditors have 30 working days to consider hardship applications. This is to allow creditors time to follow normal processes required for a proper consideration of the application, such as assessing (and indeed testing) if a debtor is able to make the required restructured payments.	Agree that hardship applications should be made in writing. Disagree that period for considering hardship applications should be increased to 30 working days. One month should be long enough for a creditor to make a decision, especially as extra time will effectively be available if further information is sought.
685.	Jonathan Flaws (Sanderson Weir)	Hardship	Support . Believes the unforeseen hardship provisions will improve access to hardship protections for those in genuine need. Does not believe any additional changes are needed to protect consumers or lenders.	Agree.
686.	Kiwibank	Hardship	Clause 22(1) of the Bill should replace section 57(1)(a)(ii) of the CCCFA with “2 months or more”, not “2 months or less” as drafted. This would be consistent with the MCA’s intent as set out in the	

			Explanatory Information.	
687.	Thorn Rentals NZ Limited	Hardship	57(1)(a)(ii) the words "in default for two months or less" should read "two months or more" or possibly "more than two months".	
688.	Citizens Advice Bureau	Hardship	Support amending the Act to allow hardship applications to be made when in default. The requirement that an application is made before the borrower is in default is unrealistic and greatly limits the effectiveness of the provision. Note that the proposed time frame is out of step with the equivalent clause in the Australian Universal Credit Code where an application under the hardship provisions in that Code can be made any time prior to court proceedings being taken against the debtor. Recommend the Australian approach is adopted in the Bill. Strongly support the proposals for amending the hardship provisions contained in section 57(a). Currently too many loopholes for lenders to stymie the purposed of the hardship provisions. Strongly support making disclosure of the hardship provisions part of the disclosure requirements of the Act. Note that many consumers are largely unaware of the hardship provisions and therefore not receiving the benefits.	Agree. The Bill now covers a range of situations limiting when applications may be made which are similar to the latest provisions in force in Australia. Also agree on disclosure point – being implemented through proposed changes to Schedule 1.
689.	Buddle Findlay	Hardship	Support. The current drafting appears to provide that a hardship application cannot be made if a debtor has been in default for two months or less. Recommend "been in default for more than two months" or similar. Support amendment in principle. Consider that the proposed s 57A(2) could be clearer. The current wording suggests that fees cannot be charged in respect of the application. The alternative interpretation, that default fees cannot be charged if a hardship application has been made, could encourage vexatious applications, reducing lenders' time and ability to process legitimate ones. The proposed section should be amended to	Agree – drafting error corrected. Drafting on default charges clarified in the Bill. Creditor may not charge a fee or default interest *in relation to an application*. Other fees and default interest are not affected, including documentation fees for any agreed changes. Only constraint on lenders is that enforcement

			clarify that default fees may still be charged and that a credit fee may be charged that reflects the costs incurred by the creditor in documenting the changes to the credit contract for a successful application. Submits that the proposed s 57A(4) adds nothing and should be deleted.	action cannot be commenced or continued while a hardship application is outstanding (except for repossession of goods at risk under the relevant repossession provisions).
690.	GE Money	Hardship	Supportive of the change, this generally reflects GE's current practice. Subsection (2), fees and default interest seem to be prohibited but this is unclear. Until a hardship application is considered and entered into, these are in the original contract. Sub clause 2 may be interpreted to suspend fees and default interest during the application process and there should be more certainty in the drafting. Clause (2)(a), the application fee should be defined. There is no need for additional changes to protect either consumers or lenders.	
691.	Finance Now	Hardship	Supports amendments. No additional changes to protect consumers are required. 57(1)(a) should be clarified with regard to when the claim must be made if he consumer is in default. The sooner the better. Section 57A(2)(b) is unclear. If it means that the lender cannot charge default fees then this is unreasonable for the lender due to the cost of the default to the lender. There needs to be further clarity here. This will be difficult for systems to account for. Further clarity is needed around sections 57A(3) and (4) – (4) cancels the right to charge given in (3)	
692.	Mangere Community Law Centre	Hardship	The two month arrears time limit will afford greater opportunity for borrowers' to make hardship applications whilst still providing a balance between the interests of creditors and debtors.	

693.	Christians Against Poverty	Hardship	Support. Considers that the provisions will be an improvement. Expresses concern that some lenders do not have specific hardship teams and the account manager may not wish to grant hardship even where hardship exists. Considers that the 2 months should be extended to 3 months in line with the 13 week WINZ stand down for access to benefits. Recommends that borrowers should be told that they can apply for hardship. Recommends that companies use standardised measures of living expenses. Recommends that second and subsequent hardship applications within a twelve-month period be accompanied with proof that a borrower is utilising a budget service.	Agree. Disagree on timeframe. 2 months (or having received statutory notices or missing 4 payments) is a substantial improvement for borrowers. Notice that hardship relief is available will happen through new initial disclosure requirements. Hardship applications will be required to be in writing, and to set out the reasons that have caused the unforeseen hardship. Creditors may also request additional information. Bill now includes constraints on subsequent applications within 4 months.
694.	Financial Services Federation	Hardship	The proposed amendments to sections 57 and 58 would result in improved access to hardship protections for those in genuine need. FSF is comfortable with the proposed changes but considers the following should be changed: The reference in proposed 57(1)(a) to a debtor not being able to make a hardship application if they have "been in default for 2 months or less" appears to be drafted back to front and should read "have been in default for 2 months or more" (so that hardship applications must be made within 2 months of a default). In any event, 2 months is too long – a borrower should be able to make an application within one month of a default if it is due to hardship. 57A(2) appears to prevent lenders from charging default fees or default interest in relation to an application. The drafting lacks clarity since such charges relate not to an application, but rather to a default.	Agree. Drafting suggestions have all been implemented.

			57A(4) is confusing – subsection (4) appears to state the opposite of (3). Suggest delete.	
695.	Alan Liddell on behalf of 24 Finance Companies	Hardship	Do not support. Submits that there is a lack of identified research in this area to demonstrate that all of the current situations are required to be covered. Considers that it is reasonable that borrowers should be required to notify their lender as soon as they miss a payment or they default. Considers that consumers may deliberately delay notification or make an application to delay paying the default interest rate for two months (which could be 5-10% higher than the ordinary interest rate). Recommends that consumers be required to provide supporting documentation for each type of hardship relied on and make it a criminal offence to make a fraudulent hardship application. Submits that the provision will lead to lenders sending default notices at an earlier stage and will be more likely to undertake physical checks on the collateral. Considers that lenders should be able to charge default interest and fees if an application is unsuccessful. Recommends that the word "successful" is inserted before the word "application in the first line of the proposed s.57A(2) and that s.57A(4) be deleted Recommends the provision be amended to read: "been in default for the lesser of: - Two months or - Two weeks after forwarding to the debtor notification of	Noted. Noted. Drafting clarified in the Bill. Creditor may not charge a fee or default interest *in relation to an application*. Other fees and default interest are not affected, including documentation fees for any agreed changes. Application will be required to be in writing, and lender can require further information. Agree that a blanket period of 2 months after a default to make a hardship application is too broad-brush an approach. The approach in the Bill will be to allow hardship applications up to the sooner of, • 2 weeks after service of a repossession warning notice or Property Law Act notice • 4 or more consecutive payments being missed, or • 2 months from default.

			default or - Four weeks after the grounds for inability to pay (illness, injury, loss of employment, the end of a relationship or other reasonable cause) arise - Four periodical payment dates"	
696.	EB Loans	Hardship	'Bad' debtors will take advantage of this. In practice most finance companies agree to accept reduced payments. Disclosing the extra cost of reduced payments and an extended maturity by way of variation disclosure in writing would be costly. Suggests that where the change is immaterial, say less than $50, disclosure should not be mandatory. The additional cost would be less than the cost of any variation disclosure. Comments that there appears to be no flexibility for Lenders being helpful; just more paperwork. Minor hardship could be handled verbally followed by a standard letter advising of the missed payment with a minimal fee being similar to the cost of forwarding a dishonoured payment letter. There should be consequences for borrowers fabricating a hardship application. Borrowers may use hardship applications to stall enforcement action and moreover blackmail lenders by threatening to complain to DRS. Suggests there should be a limit of a number of hardship applications per loan contract. Submits that lenders should be able to charge a small fee to cover their reasonable costs. Hardship application timeframes should expire when the pre-possession notice is up.	Noted. The Bill includes some changes that accommodate these sorts of concerns, • timeframes are more accommodating for lenders to process hardship applications • no freeze on default interest or fees • borrowers may not make more than one application in 4 months (unless the grounds are different) • 2 month timeframe refined (including in relation to repossession warning notices) • Documentation fees can be charged. Constraint on lenders is that enforcement action cannot be commenced or continued while a hardship application is outstanding.

697.	Westpac	Hardship	Do not support. Customers should act before they are in default. In Westpac's experience, most do, and this should be encouraged. Suggest that creditors should have 30 working days to assess a hardship application. There are complex cases where more than 20 days in required. Do not support requiring creditors to have a reason for declining a hardship application. Would create additional compliance burdens but there are no problems with current practice. Section 57(1) should read "a debtor may…"	Noted. Disagree on 30 working days, and disagree on not giving reasons for declining an application. Drafting error corrected.
698.	ANZ	Hardship	Do not support. Default fees and interest should not be prevented during a hardship application, though application fees for hardship should be. Default fees and interest are a legitimate part of the contract when it is entered in to. They are an important deterrent to consumers defaulting on their obligations and encourage an early approach to the lender when applying for hardship. Any fees that apply will still be subject to the control of fees provisions. The freezing of default fees and interest could encourage consumers to "game" the system and apply for hardship when they do not need it. Creditors often incur charges and costs in association with changing documents. It should be clear that these can be passed on to consumers.	Noted. Drafting clarified in the Bill. Creditor may not charge a fee or default interest *in relation to an application*. Other fees and default interest are not affected, including documentation fees for any agreed changes.
699.				
700.	Thorn Rentals NZ Limited	Hardship	Suggests that the words '(for example, a default fee)' be deleted in section 57A(2) as this might imply that a creditor is not allowed to charge a default fee on an existing debt.	
701.	Full Balance	Hardship	57A(2)(b) should be more specific with regard to when lenders can't charge default interest.	

702.	Debt-Free Newtown	Hardship	Support the amendment to remove the ability for lenders to charge a fee for a hardship application.	
703.	Lindsay Kincaid	Hardship	Do not support. Legislation is silent on untruthful information from borrower, If a borrower does not declare all liabilities at the time of application but declares them on hardship application; the lender is powerless to confirm information.	Noted. Verification is a key part of responsible lending. Note that the creditor does not need to accept an unforeseen hardship application if the circumstances were reasonably foreseeable when the contract was entered into (section 57(1)(c))
704.	Full Balance	Hardship	57A(1)(a) should require acknowledgement in writing, otherwise the borrower may not be aware that the application has been received. 57A(1)(b) request for extra information should be limited to reasonable information to provide evidence of hardship, and provided in a reasonable timeframe so it isn't too onerous on the consumer to apply for.	Noted. Process in the Bill has been specified more clearly, although creditor communications are not specifically required in writing.
705.	Barry Allan, University of Otago	Hardship	The term "in relation to" (fees for hardship application) is not clear. If the intention is to suspend the operation of provisions in the contract allowing the lender to charge in the event of a default pending the outcome of its consideration of the application, then this needs to be stated more clearly. Submitted that this could be an appropriate provision in that it provides an incentive for lenders to consider hardship applications. The provision could also be problematic as knowledgeable debtors could exploit it to avoid the consequences of going into default.	Noted. Drafting is improved in the Bill. Makes the point that no fee or charge is payable in relation to an application, whatever the outcome, and that it would be a fee or charge that would not otherwise be payable in the absence of the application.
706.	Kiwibank	Hardship	General support for the allowing borrowers in default for two months or less to apply for changes to the terms of a credit contract on the grounds of unforeseen hardship.	Noted.
707.	Lindsay Kincaid	Hardship	It is unclear how hardship provisions impact on Credit Repossessions Act in terms of notice period for defaulting debtors who claim hardship. For example, is repossession put on hold by a	Noted. The position is clear under the Bill as now drafted. Although the Bill includes an exception where the goods are at risk (in

			hardship request?	terms of the relevant repossession provisions).
708.	Save My Bacon (SMB)	Hardship	Experience is that few get in contact before they reach hardship. SMB have a proactive contact programme for any customer considered high risk. Suggest improvements to provisions: • If borrowers claim hardship, the must be required to comply with reasonable information requests by lenders, for example providing bank statements. • Any time limits must apply from when information requests have been complied with (so lenders have full information to make decisions) • Include 'good faith' or 'fair dealing' rules (if borrowers not honest, fee limitation should cease to apply)	Noted. Bill provides a 10 working day period for lenders to request further information. Bill also provides that the time for processing hardship applications will stop running while additional information is outstanding (for up to 10 working days, or 20 working days if information is not provided). Note the only fee limitation is on charging a fee in relation to the application.
709.	Dunedin Community Law Centre	Hardship	Creditors should not charge fees to recover costs for documenting changes to contracts. Fees on hardship applications go against the principles of relieving consumers from difficulty.	Noted. There are no fees on hardship applications under the Bill, although fees may be charged for documenting changes in the usual way.
710.	Consumer NZ	Hardship	Recommend that no credit fees are charged for successful hardship applications.	
711.	Commerce Commission	Hardship	Support changes, but note potential for 'gaming' by debtors. The proposed amnesty from fees is particularly concerning in this respect. Model forms could help to increase low uptake of hardship applications.	Noted. Under the Bill there is no amnesty from default fees or interest while the application is being processed. There is a stay on commencing or continuing enforcement proceedings.
712.	Banking Ombudsman	Hardship	Support the provision. Banking Ombudsman Scheme members already consider hardship requests when the consumer is already in default. Supports 57A and 58(1)(a) as prompt consideration is desirable	Noted.

			and statutory timeframes will achieve this.	
713.	Financial Services Complaints Limited (FSCL)	Hardship	Notes that in most cases, lenders are willing to work with borrowers to ensure repayment of their loan in full. The legislation does not obligate the lender to accept a hardship application, so long as they are not oppressive. The bar for oppression is high and a lender, under the CCCFA in its current form, can decline reasonable hardship applications. This must be addressed if the Ministry wishes to ensure that reasonable hardship applications are granted by lenders. It is difficult for FSCL to remedy a hardship application dispute. FSCL's normal remedy is to award compensation for financial loss – it is difficult to establish the financial loss in a hardship application.	Noted. Lenders will be required to acknowledge and deal with hardship applications under the Bill.
714.	Cash Converters	Hardship	Support. Considers the amendments will substantially increase access to the hardship provisions and increase consumer protection. Notes that, due to business practices, Cash Converters has never received a hardship application from more than 500,000 short term credit contracts. Considers that the most effective method to protect consumers is to promote competition from legitimate lenders. Recommends hardship application are required in writing to avoid confusion	Noted. Hardship applications will be required to be in writing.
715.	Mangere Budgeting Services	Hardship	The application of hardship is still at discretion of the lender. Considers that section 57(1)(b) is a factor that results in hardship, "the debtor has caused a credit limit to be exceeded". References the situation where a creditor has allowed a credit limit to be exceeded, the borrower then finds themselves in hardship, asks to apply for changes under the hardship provision and is declined because they have exceeded their credit limit. Although s 57(3)	Noted. Borrowers can apply for hardship relief at any time, unless they are in default for more than 2 months (or they have missed 4 payments or various statutory notices have expired). This will significantly increase the availability of hardship relief. Note that section 57(1)(b) is proposed to be

			circumvents this, it is still at the lender's discretion. Suggested addition to the new section 57(1)(a) by adding (iii) 'has not exceeded their credit limit by more than _____'. (insert a prescribed percentage). Submits that it should be an absolute right of the borrower to be able to apply for the hardship provision – not for it to be at the creditors discretion agreeing that an application can be made if the borrower has complied with the new section 57(1)(a). If the borrower's situation is outside of these parameters then it can be at the creditor's discretion.	repealed under the Bill. Hardship relief needs to be at the discretion of the creditor because the remedies relate to repayment arrangements. Note that lenders will have to take into account the responsible lending principles in deciding whether to grant hardship applications.
716.	Financial Dispute Resolution Scheme	Hardship	Support. However a responsible lender may receive a hardship application when the hardship is due to the irresponsible lending of other credit providers. Borrowers may go first to the more responsible lender as they expect a more positive response. Suggest borrowers should be required to apply to most recent lenders first for relief (assuming additional debt has been incurred after responsible lender's debt).	Noted. This degree of prescription, stipulating the order of hardship applications, seems impractical.
717.	Telecom Rentals	Hardship	Support. If hardship arises, and there are multiple lenders, it is not clear in what order those lenders are required to contribute to the solution or compromise on the debts owing.	
718.	Child Poverty Action Group	Hardship	Support. Recommends that amended section 22 should provide for debtors to apply for the terms to be revisited before they default on a payment.	Noted. Borrowers can make hardship applications at any time, as long as they have not been in default for more than 2 months (or received a repossession warning notice or Property Law Act notice more than 2 weeks, or missed 4 payments).
719.	Debt-Free Newtown	Hardship	Those who are denied hardship relief should have a more accessible means of redress than the court system.	Noted. The Court system includes the Disputes Tribunal, which is relatively accessible for consumers. Financial Dispute Resolution schemes also have jurisdiction to deal with breaches of legal
720.	Citizens Advice Bureau	Hardship	Consider that the barrier to making a complaint in relation to a decision about a hardship decision is too high. Submit it would be more effective if the FDRS were able to hear complaints under	

			section 58 about hardship provisions and to change the terms of the contract if necessary.	obligations by lenders, and the hardship provisions include legal obligations.
721.	Child Poverty Action Group	Hardship	Submits that the disputes resolution schemes should be able to consider hardship as the courts are inaccessible for the borrower, considers that the creditor is also protected by the disputes resolution scheme.	Some dispute resolution schemes may need to update their rules following passage of the Bill.
722.	NZ Law Society	Hardship	Support. Suggest requiring creditors to remind debtor of hardship rights before 2 month default period expired. Proposed section 57A is unclear, e.g. If a creditor reasonably considers a hardship application and declines it, it's not clear whether they can charge future default interest charges. Scope of prohibition on default charges should be clarified.	Noted. Do not want to stipulate content of reminder letters in legislation. Drafting on default charges clarified in the Bill. Creditor may not charge a fee or default interest *in relation to an application*. Other fees and default interest are not affected, including documentation fees for any agreed changes.
723.	BNZ	Hardship	Supports: • 2 month timeframe as it reflects the bank's current practice. • 5 days to acknowledge hardship application and 20 days to provide written notice of decision. • The proposed restriction on charging an application fee or other fee in relation to a hardship application. • The proposed new section 57(3) which clarifies that a creditor can consider hardship applications that do not strictly fall within the parameters set out in sections 55, 56 and 57. Notes that repayment deferrals can be detrimental to consumers as overall debt increases. Suggests allowing a maximum postponement period(for example, 3 months).	Noted. Not appropriate to stipulate a maximum debt holiday in the Bill. Adding responsible lending overlay will direct lenders to consider possible detrimental effects on borrowers.

			BNZ seeks clarification as to the restriction prohibiting a creditor from the charging of default interest "in relation to the application" (section 57A(2)). Practically it will be difficult to stop and start charging of default fees as these are generally automated system functions. BNZ notes that a prohibition on default interest charges in relation to an application may also provide an incentive to borrowers to lodge an application under section 55 simply to obtain the benefit of this restriction. This provision may result in unmeritorious applications and therefore administrative delays in assisting customers with genuine applications. A maximum period for deferral under s 56(1)(b) should be considered, as consumers can be harmed by deferring repayment while interest continues to accrue. There appears to be a drafting error in the Bill. In section 57(1)(a)(ii), 'less' should be 'more'.	
724.	Save My Bacon (SMB)	Hardship	Section 55 makes no reference to 'unforeseen' causes, if this is intention of amendments (to apply only for unforeseen then s55 should also be amended. In short term loans, borrowers only enter when they have unexpected short term needs. Need some provision to distinguish this from 'unforeseen'.	Disagree. Reasonably foreseeable circumstances are excluded under section 57(1)(c). The Bill also requires borrowers to provide reasons for the unforeseen hardship.
725.	Anonymous Third Tier Lender	Hardship	Most lenders will give concessions and adequate time to the consumer as long as the customer has the intention of paying. This is already the best consumer protection they need and the provision has already served that purpose.	Disagree. Other submissions say there is a need to improve existing hardship provisions.
726.	Tulai project	Hardship	The urgency that often exists around hardship applications, and the difficulties with applying to the Courts for a declaration, mean that there should be some sort of "middle man" that consumers can apply to for hardship relief. Borrowers should be entitled to a determination within three days of their application.	Disagree. Dealing with hardship applications is in the first instance the responsibility of the lender. The Financial Disputes Resolution Schemes are potential mediators. Three working days would be unworkable, and would lead to applications being rejected by

				lenders.
727.	Admiral Finance Limited	Hardship	Considers that the consumer's hardship application should be in a prescribed form and require supporting documentation including: • Statement of assets and liabilities • Income and expense budget • 3 months of recent bank statements • Proof of earnings for last 2 months for all parties Recommends that borrowers also make a declaration that the information provided is a true and fair representation. Also recommends that payment protection insurance should be encouraged via commissions for the time and cost involved as agent for the insurance company.	Disagree on prescribed form, but the process for the lender to require further information is being improved.
728.	Full Balance	Hardship	Considers that s 55(1) should be extended to cover excessive irresponsible lending as this can often be a cause of consumers experiencing difficulties in repayment.	Disagree. It would not be helpful to conflate unforeseen hardship and responsible lending, especially as the remedies for unforeseen hardship are relatively limited.
729.	Michael Wallmannsberger	Hardship	The provisions do not improve access to hardship protections unless applicants meet the very narrow definition of "consumer" in the Act. Suggests replacing purpose test with a natural person test to determine when consumer provisions should apply and to extend protections to guarantors.	Disagree. Unforeseen hardship is not relevant to guarantors, who will only face the prospect of making repayments if the borrower defaults.
730.	Kiwibank	Hardship	Propose amend s 57A(1)(iii)(A) to state "…to the extent practicable, the creditor's reasons for declining the application." The requirement that the creditor give the debtor written notice of its reasons for declining a hardship application may be difficult to comply with in practice. Privacy principles and confidentiality obligations may prevent the creditor from communicating the reason the terms of a loan in the joint names of a husband and wife cannot be changed. For example, transaction activity on the	Disagree. Matter of natural justice for the borrower to be given reason why a hardship application might have been declined. Also relevant to the right to have the decision reviewed. Third party privacy does not seem to be a credible reason for not providing reasons for a

			wife's individual account may indicate discretionary spending on gambling, and if that expenditure was not occurring the customers would otherwise be able to service their loan repayments. The only reason the creditor could give to the husband in these circumstances without breaching his wife's privacy is simply that the application does not satisfy the criteria set out in the CCCFA.	decision to affected parties.
731.	Consumer NZ	Hardship	Supportive of applications being able to be made when the borrower is in default. Recommend extending period borrower can be in default and lodge an application to 3 months.	Disagree. 2 months (or having received statutory notices or missing 4 payments) is a substantial improvement for borrowers.
732.	Full Balance	Hardship	Support extension of availability of hardship relief to two months after default, but recommend further extension to three months.	
733.	ANZ	Hardship	Support. It should be mandatory for all creditors to note on a consumers credit file at the credit bureau when an assessment for hardship is occurring and the time the consumer is covered by hardship, if granted. This would assist other lenders to make responsible lending decisions about that consumer.	Disagree. A payment default is likely to be notified to credit reporting agencies anyway.
734.	Debt-Free Newtown	Hardship	Debtors need longer than two months in default to come to terms with falling behind in their payment. Recommend extension to three months.	Disagree. 2 months (or having received statutory notices or missing 4 payments) is a substantial improvement for borrowers.

Oppression

735.	Child Poverty Action Group, Citizens Advice Bureau, Financial Dispute Resolution Scheme, Mangere Budgeting Services, Mangere Community Law	Oppression	Support	Agree.

	Centre, , Waitakere Community Law Centre			
736.	Christians Against Poverty	Oppression	Support. Considers that the current oppression test is high and would like to see the re-opening of credit contracts made easier for borrowers.	Agree. The proposed changes to the oppression test are designed to enable a broader and more consumer-friendly application of the oppression rules.
737.	Barry Allan, University of Otago	Oppression	The courts have supplemented the oppression factors for years and the amendment is appropriate. Submit that an additional factor needs to be present: compliance with the responsible lending principles should only be relevant where it is a consumer credit contract or lease.	Agree. The courts are likely to continue to apply different standards for consumer and commercial loans. The elements of the statutory checklist will only apply to the extent they are applicable in the particular circumstances.
738.	Commerce Commission	Oppression	Support clarification of oppression test. Recommend that the court should have powers to reopen all of any class of credit contract if it is oppressive.	Noted. This is already a possibility through the use of representative actions, and may in future be possible through class action suits. The practical difficulties include establishing systemic oppression as a matter of fact when the statutory tests (existing and proposed) tend to focus on individual circumstances.

739.	Finance Now	Oppression	The changes do provide a longer list for clarity to the courts However, The provision which states "the borrower obtained legal or otherwise professional advice" is not needed for small consumer loans. Requiring this would just add to costs and potentially remove the market for both consumers and retailers The intentions of the section need to be clarified	Noted. Whether the borrower has obtained legal or other professional advice is a relevant factor to be taken into account in assessing whether there is oppression. This is already the situation with case law. The factors in section 124 are a checklist for consideration; they are not hard obligations or requirements. They also only apply to the extent they are applicable in the particular circumstances.
740.	Consumer NZ	Oppression	Considers that there is a gap in consumer protection where a practice might not be oppressive but still be unfair. Grounds for reopening a credit contract are narrowly defined and have not served consumers well. Consumers should be able to challenge conduct that violates responsible lending provisions.	Noted. Agree that oppression remains a relatively high threshold, even with the additional guidance in the Bill. Compliance with the lender responsibility principles is included as one of the considerations for assessing an action for oppression (new section 124(1)(b)). Responsible lending will primarily be enforceable through the general orders that Courts may make.
741.	Michael Wallmannsberger	Oppression	Confusion between oppression under common law and oppressive, which as set out in s118 of the Act seems to be a broader net and a 'lower bar.' Difficult to contemplate what 'reasonable standards of commercial practice' might mean. Unlikely to go to Court, more likely to be heard by Banking Ombudsman or referee of Disputes Tribunal. Issue is how alternative dispute resolution mechanisms interpret a dispute if heard by a court, which could be a more error-prone approach than providing a RLC for guidance.	Noted. The intention of the amendments is to lower the bar on the existing tests, and to make the law more accessible. However the test (including the underlying definition of "oppressive") is not being fundamentally altered.
742.	Jonathan Flaws	Oppression	Considers that the more guidance that can be given on what constitutes oppressive behaviour the easier it becomes for both	Noted. Setting out enhanced guidelines in legislation will improve the transparency of

	(Sanderson Weir)		lenders and borrowers to determine if any action or proposed action is likely to be oppressive. Considers this more efficient for borrowers to counter oppression proactively by making the lender aware that proposed conduct is oppressive, than through the courts.	the law, and hopefully its accessibility for affected borrowers.
743.	Bank of New Zealand	Oppression	Lowering the threshold of "oppressive" is likely to lead to an increased number of unsubstantiated complaints. BNZ seeks clarification of: • "whether, before entering into the agreement, the borrower obtained legal or other professional advice in relation to the agreement". This could potentially encourage consumers not to seek legal advice in order to assist a possible future claim of oppressiveness. Further, this clause may be interpreted as imposing a positive obligation on lenders to always advise consumers that they should seek legal advice. • Subsection (j) should cross refer to section 9B(2)(c). • Whether non-compliance with the Code will automatically constitute a breach of the responsible lending principles. • Whether two or more breaches of the principles or the Code be considered to be oppressive or be a consideration towards a finding of oppressive behaviour? Compliance with the Code should either be a safe harbour for lenders or a presumption in favour of the lender that conduct is not oppressive. A borrower's first port of call for complaint should be under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. Recourse to the Courts should only be allowed in very limited circumstances.	Noted. Whether borrowers have received legal advice is a standard consideration by the courts, so the reference does not materially alter the assessment that would already take place. Referring the consideration expressly improves transparency. Compliance with the Responsible Lending Principles will also be a relevant consideration in determining whether a credit agreement is oppressive. There is some overlap between the proposed section 124 criteria and the lender responsibilities in section 9B (as amended), but cross referencing them would not be particularly helpful. Note that the Bill does not refer to the Code in this context, because the Code is intended to elaborate and provide guidance on the Responsible Lending Principles. The Code will not create binding legal obligations. Under the Bill as amended, compliance with the Code is a safe harbour for compliance with the Responsible Lending Principles, but there is no safe harbour for oppression. There is a strong financial incentive for borrowers to first seek recourse under the Financial Dispute Resolution Schemes, but it

				would be inappropriate for the CCCFA to restrict borrowers' access to the Courts.
744.	Susan Schweigman	Oppression	Support, question is whether they will improve in practice.	Noted.
745.	Wellington Community law Centre	Oppression	Hopefully new provisions will provide assistance, but they must be monitored and criteria should be made clearer if the threshold remains too high.	Noted.
746.	Buddle Findlay	Oppression	Support. The addition of new guidelines will make little difference as these matters were already available for consideration under the current drafting. In general, no objection to new considerations. Proposed s 124(j) seems to already be covered by the proposed responsible lending principle requiring clear expression of terms. It is unclear if this is intended to impose a separate or additional requirement. Proposed s 124(e) should be clarified so that it does not imply that consumers should obtain legal advice for all credit contracts. This will often be of less use than it costs.	Noted. The new guidelines in section 124 will have the advantage of being more transparent than existing case law. There are overlaps between the responsible lending principles and the oppression grounds, but the grounds are nevertheless valid consideration s in determining whether an agreement is oppressive. The criteria in section 124 are only to be considered to the extent they are applicable in the particular circumstances, and they are not hard obligations or requirements.
747.	Financial Services Complaints Limited (FSCL)	Oppression	The concern is not that the Courts are missing relevant considerations when determining whether a contract is oppressive; it is that the Courts have set the bar of oppression too high. Submit that the bar must be lowered if this is the problem that needs remedy. Note that the current amendments address what factors the Court ought to turn its mind to but not what standard a Court must be satisfied of when turning its mind to those factors in order to make a finding of oppression. Submit that the introduction of responsible lending standards will lower the bar to satisfy the "oppression" test in responsible lending cases.	Noted in relation to the oppression test. Agree that the problem with the current test is that the bar has been set too high. The intention of the new criteria in section 124 is to lower the bar, and to improve accessibility of the law (including through Dispute Resolution Schemes and the Disputes Tribunal). The responsible lending principles and lender responsibilities in the Bill represent our best effort at legislating for the standards expected

			Notes that historic application of the oppression provision has not had an effective enforcement provision and very few cases are brought to the Courts. The costs of challenging a payday loan via this way far outweigh the benefits. Strongly suggest 33(2)(e) should be amended to read "independent legal or other professional advice".	of lenders, and this is why the oppression criteria include reference to the responsible lending principles. Recommendation on 'independent' legal advice noted.
748.	NZ Law Society	Oppression	Concerned that amended section 124 will apply to business-to-business credit contracts of all kinds - not just consumer credit contracts – see section 117(a) of the CCCFA. Suggest changes apply to consumer credit contracts only, but existing definition of 'oppressive' and current section 124 should be retained for credit contracts which are not consumer credit contracts. Section 124(d) should refer to debtor's characteristics of which the creditor was aware or should reasonably have been aware at the time of entering into the contract. 124(2)9e) should require "independent" legal advice. 124(1) clause 33(3) should include "guarantor" in the definition of "indebted person".	Disagree. We carefully considered whether we should only enhance the existing oppression checklist for consumer credit contracts. Introducing a differential test between consumer and non-consumer credit contracts would have added a new distinction, which would have further complicated the law. Regarding debtors' characteristics, responsible lenders will be expected to understand their customers' personal circumstances. Courts will distinguish between independent and non-independent legal advice. Issue of whether Bill should refer to independent advice needs to be reviewed. Status of guarantors under oppression provisions is clarified in the Bill.
749.	NZ Bankers Association	Oppression	Support intention to improve protection of consumers from oppressive contracts. However, concerned that the proposed guidelines will unnecessarily lower the standard of oppression for all credit contracts (not just consumer credit contracts). Suggest that changes to hardship provisions will better achieve the same end. Furthermore, it unnecessary to list factors giving rise to oppression	Disagree. We carefully considered whether we should only enhance the existing oppression checklist for consumer credit contracts. Introducing a differential test between consumer and non-consumer credit contracts would have added a new distinction, which would have further complicated the law.

			in the way proposed (i.e. guidelines). The factors are already considered by the courts when relevant. The guidelines may be perceived as an attempt to codify the equitable doctrines of unconscionable bargain and undue influence. If that is the intention, then that is an important law reform task and should be subject to a separate discussion.	We have been criticised for not setting out the expected standards. The Responsible Lending Principles and lender responsibilities in the Bill represent our best effort at legislating for the standards expected of lenders, and this is why the oppression criteria include reference to the Responsible Lending Principles. To the extent that the new considerations the Bill adds are already considered by the Courts, there will be no change to their reasoning. Including these considerations clearly within the Bill will make them more accessible to consumer seeking to rely on the oppression provisions for relief. The inclusion of the new provisions will not alter the relationship of the oppression remedy to any similar common law rules. They will merely alter the way the Courts apply the statutory oppression remedy. The hardship provisions only apply in circumstances of unforeseen hardship, which are different from potential oppression.
750.	GE Money	Oppression	Have a number of concerns with guidelines, which appear appropriate only for large complex loans: Notes in relation to proposed section 124(c) that the creditor will always have greater bargaining power – it is not appropriate for the court to consider this. Section 124(e) professional advice is unlikely to be used for consumer credit and should not be a consideration as this would disadvantage the lender. Section 124(g)(i) the cost of borrowing should not be a factor as it	Disagree. It is appropriate for the relative bargaining power of the parties to be a consideration in evaluating whether a particular situation is oppressive. The lender may have greater bargaining power in ordinary situations that are not oppressive at all, but there may also be situations where borrowers are particularly vulnerable, and the consideration is very much relevant. In relation to section 124(e), whether the

			allows the court to set interest rate caps. Section 124(h) if the lender has complied with the responsible lending principles this should not be a factor as it allows the court to cap recovery. Section 124(i) unnecessarily revisits prepayment fees – these should be addressed in section 54.	borrower has obtained legal or other professional advice is a relevant factor to be taken into account in assessing whether there is oppression. This is already the situation with case law. In relation to section 124(g)(i), the cost of borrowing under comparable credit contracts is a good indicator of whether the credit contract might be sufficiently in or out of line with similar contracts to be oppressive (or not). In relation to section 124(h), the amount payable by the borrower is a criterion under the existing law. It is important that the Court should be able to take into account whether a credit contract is extremely expensive in determining whether it is oppressive. In relation to section 124(i), the amount payable by the borrower on a prepayment is already a criterion under the existing law, and the remedy for an oppressive credit contract (re-opening the credit contract) may be more flexible than a remedy for an unreasonable prepayment fee.
751.	Telecom Rentals	Oppression	Submits that changes are appropriate for consumer credit contracts, but if the intention of section 124 is to materially alter the existing law as it related to commercial credit contracts, it will be an unnecessary, material and unwelcome change for lenders. Expressed concern with the apparent lack of certainty as to the application and scope of s124.Need to clarify whether this section applies to non-consumer credit contracts. Recommends further consideration to the wording of this section so it is clear how the factors are to apply to various types of contracts, between various	Disagree. We carefully considered whether we should only enhance the existing oppression checklist for consumer credit contracts. Introducing a differential test between consumer and non-consumer credit contracts would have added a new distinction, which would have further complicated the law.

			types of customers and as between various types of lenders, especially if principles are to be applied to non-consumer credit contracts. Concern with the relevance to each of the following: • Potential future retail consumer credit contracts • Future commercial credit contracts, and • Existing commercial credit contracts. Based on the RIS released in October 2011, seemed intent was to protect vulnerable consumers. Submits that this distinction is not clearly illustrated and the only qualification is that the court must consider the factors in the proposed s124 "to the extent they are applicable in the particular circumstances". The increased onus should not apply uniformly to all credit contracts. Recommend further consultation, and clarify the wording so it is clear as to how the factors of the Draft Bill are to apply to various types of contracts between various types of lenders – especially if reference to the "lender responsibility principles" were to be applied when considering non-consumer credit contracts. Recommends clarification as to the extent to which the new guidelines in s124 will interact with s 123 of the CCCFA (in terms of assessing the fairness of a credit contract at the time it was entered into or performed. Queries whether new section 124 factors will be relevant in relation to finding that an existing contract is 'oppressive', even if it was not 'oppressive' at the time entered into.	The criteria that refer to responsible lending already only apply to consumers, and the courts will continue to apply different standards for consumers and non-consumers, as has been the case to date. The Bill does not propose any change in the interaction between sections 123 and 124. Whether a term of a credit contract, or any act of the creditor, is oppressive will be assessed as at the time the contract is entered into, or the relevant act is performed. This is unchanged.
752.	Admiral Finance Limited	Oppression	Section 124 is too vague, introduces concepts that are not defined and do not provide a meaningful benchmark. Considers it is not a practical solution and needs to be redeveloped with consultation with the lending industry. In addition, considers it is oppressive for lenders.	Disagree. The responsible lending principles and lender responsibilities in the Bill represent our best effort at legislating for the standards expected of lenders, and this is why the oppression criteria include reference to the responsible lending principles. There will be further consultation

				opportunities through the Select Committee and Responsible Lending Code development processes.
753.	Thorn Rentals NZ Limited	Oppression	Existing law relating to oppressive conduct works well when enforced. Having regard to the established body of case law precedent, there is reasonable certainty as to what is meant by oppressive conduct. The current law respects the sanctity of contract by ensuring that contractual obligations under credit contracts are respected unless and to the extent that there has been truly oppressive conduct by a lender. Amendments are not necessary and would be detrimental as they would create real uncertainty as to the enforceability of loan contracts entered into in good faith. Notes that allowing reopening of credit contracts by reference to a test of reasonableness seems to suggest a much lower threshold. Debtors should not be encouraged to challenge the enforcement of credit contracts that they have freely entered into unless the lender's enforcement action is truly oppressive.	Disagree. The issue is what "oppressive" means, and how the test is applied. Disagree that the bar should be set so high that the remedy is practically unavailable to borrowers.
754.	Alan Liddell on behalf of 24 Finance Companies	Oppression	Do not support. Expresses a general concern about consumers increased ability to challenge contracts that they agreed to, especially in light of new increased disclosure requirements. On specific factors (corresponding to paragraphs in proposed section 124): (b) *Compliance with lender responsibility principles.* This should not be activated until the responsible lending provisions have been clarified. (c) *Relative bargaining power.* The current bargaining power consideration should be removed as disclosure requirements are intended to increase competition and as	Disagree. The core definition of "oppressive" is not being amended, but there is an intention that the test should be applied more liberally. Noted. The responsible lending principles (and specific lender responsibilities) are being clarified. Disagree. The bargaining position of lenders and borrowers is a key indication of whether the resulting agreement might be oppressive.

			a result should increase consumer leverage. In the alternative, delete the requirements to provide pre-contractual information about loan terms.	
			(d) *Particular indebted person's characteristics.* Considers that this provision could make lenders appear to discriminate on grounds such as race (e.g. where a consumer cannot read a document in English). Recommends the insertion of a proviso that a decision not to lend to a loan applicant due to the characteristics of age, disability, race or national group will not breach the Human Rights Act, OR, specify that the issue of a person's characteristics of age, disability, race and national group may be ignored in relation to this factor.	Disagree. The criterion does not mean lenders cannot lend to disadvantaged people. What it means is that lenders need to be vigilant in not being seen to be oppressively taking advantage of people who do not have the ability to protect their own interests.
			(e) *Legal and other professional advice.* It is presumed that, unless the lender has concealed relevant information from the solicitor, a borrower's having obtained independent legal advice means the lender has complied with all responsible lending obligations and the court may not reopen the contract.	Disagree. Having received legal advice is one of the criteria the courts currently consider, so the reference does not materially alter the assessment that would already take place. This is an important criteria, but it is not necessarily determinative – especially when other actions apart from entering into the agreement may be subject to an oppression claim.
			(f) *Unfair pressure.* Does not oppose but believes that this does not happen in practice	Noted.
			(g) *Comparable agreements:* Two considerations: i) *Cost of borrowing.* Considers that it is not relevant if the lender has complied with the responsible lending obligations. Pre-contractual information provides for borrowers to compare loans and borrowers' should not then be able to rely on that factor in attempting to prove oppression. Recommend deleting this factor.	Disagree. This is a pro-competitive ground. The current definition of "oppressive" includes reference to the reasonable standards of commercial practice, and the cost and terms of borrowing from other creditors in the market are relevant.
			ii) *More onerous terms.* Does not support. Considers that the pre-contractual disclosure provisions promote competition and the law should not	Disagree. These are grounds for considering whether consumer credit contracts are unjust under the Australian National Consumer

			punish lenders who choose to borrow from these borrowers anyway. If the lender has lent responsibly this shouldn't matter. Considers that the terms onerous and significantly more onerous are undefined. Recommends that this factor be removed.	Credit Protection Act.
			(h) *Amount payable.* No comment	Noted. This is a criterion in the existing law.
			(i) *Prepayment.* Considers that this argument is wrong and has been tested in the District and High Courts with the Avanti Finance case where the High Court ruled that the reinvestment issue was irrelevant due to the fact that money is fungible. The industry should not be penalised for trying to collect losses assessed on ordinary common law principles. Recommend removal of this factor.	Disagree. The reference to prepayment costs as an indicator of oppression is already included in the existing law (alongside the relevant unreasonable fees provisions).
			(j) *Plain language.* This provision should be assumed to be met if the lender has complied with the disclosure requirements.	Noted. There is an overlap with the lender responsibilities in the Bill. It is a helpful indication of possible oppression, and it is worth referring to expressly.
			(k) Terms of the arrangement: i) *Indebted person reasonably able to comply.* If the lender has complied with responsible lending, pre-contractual advertising and disclosure provisions then whether the indebted person is reasonably able to comply with the agreement should not be taken into account. ii) *Reasonably necessary.* Considers that whether the provision is reasonably necessary to protect the interests of the credit provider is unclear in its meaning. Recommends that this factor be deleted	Disagree. These criteria are similar to the lender responsibilities in the Bill. They are a helpful indication of possible oppression, and they are worth referring to expressly.
			(l) *Length of time to remedy default.* Submits that there is no evidence of a problem with providing insufficient time to remedy a default. Considers that if the debtor has tried to	Disagree. This is already a criterion for assessing oppression under the existing law, and is not being changed by the Bill.

			discuss the situation with the borrower and the borrower has not been co-operative then this should not apply. Recommends that any statutory time limit should be deemed to be appropriate under this provision and if the creditor has given the debtor written notice and the debtor has failed for (say) 5 working days after deemed receipt of the notice to either remedy the default or to enter into discussions with the lender in order to arrange to remedy the default and any other time limits in the loan agreement have expired, then this factor shall not be applicable. (m) *Release of security.* Considers that this provision is already provided for in existing section 124 (n) *Enforcement action reasonable in circumstances.* Considers that the meaning of reasonable in the circumstances is unclear. Submits that the remedies necessary with respect to repossession should be separately contained in the Credit (Repossession) Act. Recommends that this factor be deleted (o) *Other matters.* No comment	Disagree. This is already a criterion for assessing oppression under the existing law, and is not being changed by the Bill. Disagree. Repossession is only one type of enforcement action, and how lenders exercises, or intend to exercise, their powers is one of the elements that may lead the court to re-open a credit contract under section 120. Another option may be to consider whether enforcement action is lawful, rather than reasonable.
755.	Anonymous Third Tier Lender	Oppression	Strongly oppose changes to oppression provision.	Noted.
756.	ANZ	Oppression	Do not support amended guidelines for re-opening contracts. Better enforcement of existing protections in the Act is a better way to protect consumers from oppressive practices. It is inappropriate to refer to responsible lending principles in s 124 when it applies to credit contracts generally. Comparison to comparable terms offered by other lenders also raises issues for non-consumer contracts. Loans in this area tend to be more bespoke and so less susceptible to meaningful	Noted. The Commerce Commission and creditors have been reluctant to bring oppression proceeding s in cases that have seemed appropriate because the test has been so difficult to meet. The criteria in section 124 that refer to responsible lending will only be relevant to consumer credit contracts. The elements of

			comparison. Do not support alternative approach to the re-opening jurisdiction in the Australian National Consumer Credit Protection Act 2009.	the statutory checklist will only apply to the extent they are applicable in the particular circumstances. Whether there are comparable arrangements in a particular case will be a matter of fact.
757.	Financial Services Federation	Oppression	Do not support. Doubts that the provisions will improve consumer protection. The specific items are already covered by the present section 124(a) "all of the circumstances relating to…the contract" and 124(c) "any other matters the court thinks fit". 124(e) (legal or professional advice) is unrealistic for most consumer credit contract with the exception of mortgages. This factor would be better deleted. New section 124 will not materially improve the position of consumers and should not proceed.	Disagree. The courts already have a wide discretion to decide to re-open credit contracts on the ground that they are oppressive, but they very rarely do so. Having received legal advice is one of the criteria the courts currently consider, so the reference does not materially alter the assessment that would already take place. The elements of the statutory checklist will only apply to the extent they are applicable in the particular circumstances. The intention of the amendments is to lower the bar on the existing tests, and to make the law more accessible. A do-nothing approach will not lead to any improvement in borrower protection.
758.	EB Loans	Oppression	The discretion is so broad and vague that almost any credit contract has the distinct possibility of being able to be reopened. In particular, (g) "terms of comparable agreements offered by other creditors" (this is a double standard as the Bill removes "reasonable commercial practice" when setting fees) and (i) "costs of borrowing". This is really oppressive on the creditor. Lenders are risking their money so their "commercial judgment" is both valid and required. Section 124 is not consistent with the purposes of the Bill namely	Disagree. The intention of the amendments is to lower the bar on the existing tests, and to make the law more accessible. However, for the most part, the new guidelines are a restatement of existing case law and legislation. A do-nothing approach will not lead to any improvement in borrower protection. The need for more than one breach over a

			section 3(2)(a) "confident creditors" and section 3(2)(b) "fair credit markets". Comments it is unfair that the test for oppression is being lowered at the same time a Lender can be put out of business for two mistakes during a time period of infinity.	period of time for the purposes of section 108 warrants consideration, although it is an existing provision in the CCCFA.
759.	Save My Bacon (SMB)	Oppression	Do not support. Prefer a high standard of 'oppressive' to remain. This clause can cause uncertainty for lenders; 'safe harbour' provisions to protect lenders should be produced. No lender wants to be oppressive – such claims usually arise when relationship has already become adversarial (so need some clarity for lenders).	
760.	Westpac	Oppression	If additional guidelines in s 124 for reopening credit contracts to enable enforcement are required, they should be restricted to consumer credit contracts. The amendment should be limited to new section 124(b) – the other matters referred to in paragraphs c) to n) will introduce untested matters which would allow a Court to reopen a credit contract even where no perceived failure by the lender to observe responsible lending principles.	Disagree. Disagree. We carefully considered whether we should only enhance the existing oppression checklist for consumer credit contracts. Introducing a differential test between consumer and non-consumer credit contracts would have added a new distinction, which would have further complicated the law. It would fundamentally change the basis of the oppression remedy if oppression was solely linked to the new Responsible Lending Principles. Those principles will be enforceable (civilly) in their own right, and oppression is a different matter.

Oppression 'unjust'

761.	Buddle Findlay, EB Loans, Finance Now, Jonathan Flaws (Sanderson Weir), Financial Services	Oppression unjust	Support. Retain 'oppression'. Australian use of 'unjust' is noted but not supported.	Agree. The definition of "oppressive" in the CCCFA includes oppressive, harsh, unjustly burdensome, unconscionable, or in breach of reasonable standards of commercial practice.

	Federation, NZ Law Society, Westpac			"Unjust" in section 79 of the Australian National Consumer Credit Protection Act does not have a wide ranging definition like this, but it does include a list of matters to be considered by the Court which is similar to (although more extensive) than the new list proposed for section 124. The existing definition of "oppressive", together with the proposed amendments to section 124, give the Courts scope to evaluate particular situations and the "unjust" approach in Australian legislation may not in fact be wider, even if the term "unjust" may be plainer English.
762.	NZ Bankers Association,	Oppression unjust	Comment on whether the existing "oppressive" terminology in the CCCFA should be replaced with "unjust", which is used in the equivalent Australian law. The Australian consumer credit law defines 'unjust' in terms similar to those used in the definition of 'oppressive'. It is unclear how following the Australian approach would be different from the existing law or proposal.	Agree. The definition of "oppressive" in the CCCFA includes oppressive, harsh, unjustly burdensome, unconscionable, or in breach of reasonable standards of commercial practice. "Unjust" in section 79 of the Australian National Consumer Credit Protection Act does not have a wide ranging definition, but it does include a list of matters to be considered by the Court which is similar to (although more extensive) than the new list proposed for

				section 124. The existing definition of "oppressive", together with the proposed amendments to section 124, give the Courts scope to evaluate particular situations and the "unjust" approach in Australian legislation may not be wider, even if the term "unjust" may be plainer English.
763.	Admiral Finance Limited	Oppression "unjust"	Requests more information on the "unjust credit contracts" in Australia.	Noted. See comments immediately above.
764.	Michael Wallmannsberger	Oppression "unjust"	"Unjust" is a better term than "oppressive" but suffers the same problem and does not address fundamental mismatch between effect of legislation and its intent.	Disagree. See comment above.
765.	Christians Against Poverty, Financial Dispute Resolution Scheme, Susan Schweigman, Te Waipuna Puawai Mercy Oasis Ltd, (TWP)Tulai project	Oppression "unjust"	Prefer 'unjust' to 'oppressive'	

766.	Citizens Advice Bureau	Oppression "unjust"	Recommend that the 'oppressive conduct' provisions are replaced by 'unfair contracts' provisions which would provide more protection for consumers and bring them into line with their overseas equivalents.	
767.	Wellington Community law Centre,	Oppression "unjust"	"Unjust" has a meaning for consumers unlike "oppressive". Without more detail, there is no reason to prefer the more limited "oppressive" and be out of step with Australia.	
768.	Whitireia Community Law Centre.	Oppression "unjust"	The Bill seems to propose following the Australian approach to 'unjust' contracts. If this is the case, the terminology should be the same. The amendments will provide better consumer protection due to the inclusion of additional provisions the Court must take in to account in assessing oppression.	

Unregistered Lenders

769.	BNZ	Unregistered lenders	Support registration of lenders.	Agree. Note that the proposal complements the provisions of the Financial Service Providers Act. It is intended to provide an additional financial incentive for lenders to register, to be members of dispute resolution schemes, and to operate in the open. Lenders which are not registered will lose the ability to recover interest and fees from any borrowers. It also provides an additional legal tool in respect of black-market style lenders which exist outside the mainstream.
770.	NZ Bankers Association	Unregistered lenders	Support registration regime as a way to protect consumers from unregistered lenders. Also support greater use of existing sanctions and enforcement powers to protect consumers from unscrupulous lenders.	
771.	Financial Services Federation	Unregistered lenders	Support. No additional provisions would be required to ensure unregistered lenders are operating. FSF does question whether this is the best solution. It is already an offence for unregistered lenders to be carrying on business. The provision needs to be better enforced.	
772.	Patrick Murdoch	Unregistered lenders	The local credit manager should be certified to safe guard all parties.	

773.	Ken Bohm	Unregistered lenders	All lenders should be required to be registered and have credentials to ascertain capability of reliable and responsible processing of industry practices.	
774.	Consumer NZ	Unregistered lenders	Any creditor acting outside registration requirements is acting unlawfully and as a result, the contract should be unenforceable.	
775.	Susan Schweigman	Unregistered lenders	Support. Compulsory disclosure of registration status should be required, supported by on-going publicity about the importance of only using registered lenders (and easy access to registration details). Also watchdog monitoring.	
776.	Jonathan Flaws (Sanderson Weir)	Unregistered lenders	Support. Considers the prohibition of recovery for unregistered lenders will be sufficient and no additional provisions are necessary.	
777.	Wellington Community law Centre	Unregistered lenders	Provisions depend on enforcement of the requirement to register. Significant resources need to be dedicated to enforce registration and education about borrowing from registered lenders.	
778.	Mangere Community Law Centre	Unregistered lenders	Support the amendment. Consider that with the sanctions and offences created under the Financial Advisors Act 2008 there will be increased compliance by lenders.	
779.	East Auckland Home and Budget Service	Unregistered lenders	Support the requirement for registration of creditors and the requirement to join a disputes resolution service. Strongly urge that these provisions are enacted so that borrowers have a simple and cheap way to enforce responsible lending requirements.	
780.	Financial Holdings Ltd	Unregistered lenders	Support. Unregistered lenders should be removed from the marketplace.	
781.	Finance Now	Unregistered lenders	No issue with the provision as it strengthens the provisions in the FAA and FSPA.	
782.	Westpac	Unregistered lenders	S99A. Utility of this section will rely on rigorous monitoring of non-compliant lenders and swift enforcement. This could occur without	

			the need for change to this legislation.	
783.	Te Waipuna Puawai Mercy Oasis Ltd (TWP)	Unregistered lenders	It should be illegal for unregistered lenders to operate in the New Zealand credit market.	Agree. It is illegal for unregistered lenders to operate, and this amendment provides an *extra* incentive for lenders to comply with the law.
784.	Tulai project	Unregistered lenders	There should be criminal sanctions for unregistered lenders.	Agree. It is already an offence under the FSP Act to be in the business of providing a financial service without being registered (section 11).
785.	National Council of Women of New Zealand	Unregistered lenders	Concerned with the number of lenders still operating without a licence and the punishment (or lack thereof) for such activity.	Noted. This has been addressed following publicity at the time of the Financial Summit in 2011.
786.	Christians Against Poverty	Unregistered lenders	Support provisions but considers that additional provisions are required. Suggests - Disclosure of the lender's registration number with all documentation - Creation of a register which is easily accessible to check who is registered - Harsher penalties for intentionally unregistered lenders.	Noted. This proposal complements the provisions already found in the Financial Service Providers Act – including regarding registration of financial service providers and penalties. The Financial Service Providers Act does not constitute a full credit licensing scheme, and while it is important, it should not be over-emphasised.
787.	Whitireia Community Law Centre.	Unregistered lenders	Support. But note that if debts are passed on to unregistered debt collectors it becomes moot.	Noted. Registration requirement in relation to repossession agents is being dealt with in the repossession part of the Bill. Debt collectors may be a separate issue.
788.	Waitakere Community Law Centre	Unregistered lenders	Support. There should also be a prohibition on unregistered lenders repossessing security.	
789.	Thorn Rentals NZ	Unregistered lenders	Support. Submits that the amendment does not go far enough to deter the operation of unregistered lenders. Suggests that	Noted. Carrying on business as an unregistered lender is already an offence

	Limited		operation as an unregistered lender should be an offence giving rise to a significant fine and should allow the Court to order that the lender be banned from in future acting as a creditor.	under the Financial Service Providers Act (section 11), and this proposal is intended to be complementary to that Act.
790.	ANZ	Unregistered lenders	Support. This is an adequate incentive for registration. However, it does not deal with unscrupulous lending within the marketplace. For this reason a licensing regime should be introduced that includes assessment of good character. Banks and non-bank deposit takers should be exempted from this regime due to the robust regulatory frameworks already in place in these areas.	Noted. The Government has decided against a full licensing regime for creditors, even with exemptions for institutions subject to other regulatory controls. The FSP registration requirement is lighter-handed than a full licensing regime, but it still has some regulatory 'bite' that can be taken advantage of to protect consumers.
791.	Mangere Budgeting Services	Unregistered lenders	Support. Suggest clarifying that once an unregistered lender becomes registered the contract must remain the same. The creditor can't, for example, increase fees once they are registered to try and recover costs.	Noted. Any variation would need to be accepted by the borrower. Fees will be subject to the unreasonable fees requirements. A unilateral fee increase in these circumstances would be very likely to be an unfair contract term under the new provisions in the Fair Trading Act.
792.	Financial Services Complaints Limited (FSCL)	Unregistered lenders	Support. Suggest that greater attention must be put by the Ministry toward actively identifying who the non-compliant lenders are and taking appropriate enforcement action to ensure they join a DRS.	Noted. This has already happened.
793.	Buddle Findlay	Unregistered lenders	Support. No problem in principle with the incentive provided by proposed s 99A. However, providing a financial service when unregistered is already an offence. Improvement of awareness of obligations or enforcement may be a better approach. The wording of the sections also implies that assignees of debts might not be able to recover fees and interest from the period the debt was owed to the assignor, if the assignee is not required to be registered. This could impede factoring through assignment of bad	Noted. The status of assignees, and whether they become creditors in their own right when they take over loans, is an issue that needs to be considered in this context, and also in the context of 'transfer disclosure'. The definition of 'creditor' under the CCCFA includes assignees, and creditors are required to be registered under the FSP Act if they are

			debts, increasing costs. This should be clarified.	providing credit under a credit contract.
794.	EB Loans	Unregistered lenders	If the existing provisions in section 11 of the Financial Service Providers (Registration and Disputes Resolution) Act 2008 were enforced then there would not even be a need for section 99A. The penalty is 12 months in prison and/or a $100,000 fine Voiding the contract completely could be included in the Financial Service Providers (Registration and Disputes Resolution) Act 2008 and together this would stop unregistered lenders in their tracks. Comments that by forcing unregistered lenders to register and become subject to the CCCFA, the existing CCCFA would be adequate to bring these irresponsible lenders into line and there would not be a need for the draft Bill and the new anti-lender provisions.	Noted. The proposal complements the provisions of the Financial Service Providers Act. Voiding contracts completely risks creating a perverse incentive for unscrupulous borrowers to borrow from unregistered lenders, and to receive a windfall benefit. Disagree that there is no need to make other borrower-protection improvements to the CCCFA.
795.	Admiral Finance Limited	Unregistered lenders	Unclear why section 99A is required as the Financial Advisors Act and Financial Service Providers Dispute Resolution and Registration Act 2008 contains substantial penalties for unregistered persons and breach of disclosure obligations.	Disagree. The proposal complements the provisions of the Financial Service Providers Act. It is intended to provide an additional financial incentive for lenders to register, to be members of dispute resolution schemes, and to operate in the open. Lenders which are not registered will lose the ability to recover interest and fees from any borrowers. The Bill also provides an additional legal tool in respect of black-market style lenders which exist outside the mainstream.
796.	GE Money	Unregistered lenders	Do not support. Not convinced that this will deter those lenders who currently operate outside the law. The provisions will instead drive consumers to these lenders	
797.	Alan Liddell on behalf of 24 Finance Companies	Unregistered lenders	Notes that failure to register already carries heavy penalties under the Financial Service Providers Act and considers it is unfair to punish a lender twice Submitted that registration is an issue between the lender and the state, not the lender and the borrower. The issue is not so harmful to the industry as a whole that a recommendation need be made.	
798.	NZ Law Society	Unregistered lenders	Suggest section 99A states clearly that credit contract entered into by an unregistered lender is an illegal contract and cross-references to Illegal Contracts Act 1970. Schedule 1 of Disputes Tribunal Act 1988 give the tribunal jurisdiction to hear claims	Disagree. Legal advice has been that the Illegal Contracts Act does not necessarily deliver the same outcome as section 99A, especially as the remedies in the Illegal

			under Illegal Contracts Act.	Contracts Act are discretionary.
799.	Debt-Free Newtown	Unregistered lenders	All creditors should be required to advertise the fact that they are registered. This will make it clear when creditors are operating illegally.	Disagree. The Financial Service Providers Act does not constitute a full credit licensing scheme, and while it is important, it should not be over-emphasised.
800.	Child Poverty Action Group	Unregistered lenders	Submits that section 99A(2) enables registered creditors to operate by including a third party in each of their credit contracts.	Disagree. Section 99A(2) only allows third party fees to stand in cases where the creditor is unregistered and is unable to recover its own fees (and interest).
801.	Full Balance	Unregistered lenders	Questions whether this is the right place to provide penalties for another Act.	Disagree. The purpose of the proposed amendment is to link to the lenders' ability to make money, which is through consumer credit contracts under the CCCFA.
802.	Symon Philip Nausbaum	Unregistered lenders	Section 99A provisions on registration are a helpful addition, but do not go far enough for protection.	Disagree. Section 99A is only one element among a package of proposed amendments, including responsible lending and enhanced consumer protections.

All Present and After Acquired Property Clauses

803.	Christians Against Poverty	All PAAP	Support, but the provision needs to go further as it will not currently address the issue sufficiently Recommends that All PAAP clauses be specifically illegal and power of attorney clauses be illegal and unenforceable. An additional amendment should be made to disallow security to be taken of items of spiritual or sentimental value	Agree. There are two relevant changes in the Bill, 1) Preventing lenders from using power of attorney clauses to add (or "appropriate") after acquired property under their security agreements; and 2) Requiring after-acquired goods that are repossessed to be specifically
804.	GE Money	All PAAP	Support All PAAPs are not appropriate in consumer lending situations.	

805.	Banking Ombudsman	All PAAP	Support. An explicit prohibition on the use of powers of attorney seems appropriate Notes that few members take security over personal property of consumers. Those that do eschew all-PAAPs	identified in the consumer credit contract (section 83B). The second change was not in the Exposure Draft, and is a stronger response than prohibiting the use of powers of attorney. The two changes are complementary. The goods that may not be taken as security (apart from purchase money securities) are listed in section 7A. They do not include items of spiritual or sentimental value.
806.	Cash Converters	All PAAP	Support the amendment. Cash Converters non-pawn loans are entirely unsecured.	
807.	Buddle Findlay	All-PAAP	Support. Together with the Law Commission's recommendation that all security be individually identified this will ensure consumers are properly informed regarding security.	
808.	Financial Services Federation	All PAAP	Support. FSF has no issues with the proposed amendment; in principle such appropriations should be signed only by the borrower in person FSF doubts if the amendment will materially restrict the practice of using drag-net clauses to obtain security over after-acquired goods. FSF is anecdotally aware of such clauses (not members) and suspects the practice may continue. A stronger response is required. FSF would have no issue in principle with making it an offence to repossess after-acquired consumer goods where the lender does not have an appropriation signed by the consumer – this should be in the CCCFA or Credit (Repossession) Act not the PPSA.	
809.		All PAAP	Support. Submits that the practice of "drag net" securities over all personal property will be prevented.	
810.	Te Waipuna Puawai Mercy Oasis Ltd (TWP)	All-PAAP	Support. Hope will be sufficient to stop 'drag-net' securities.	
811.	Child Poverty Action Group	All-PAAP	Support. Agree it will prevent all-PAAP clauses.	

812.	Admiral Finance Limited	All-PAAP	Considers that the provision will prevent dragnet security. Notes that AFL has only ever repossessed specific items listed as collateral. Some consumers may not be able to get credit using personal goods as collateral. Rules in the PPSA for tracing will still apply.	
813.	Dunedin Community Law Centre	All-PAAP	Support LawCom recommendation regarding All-PAAP clauses.	
814.	Consumer NZ	All-PAAP	Would like to see a clear provision in the CCCFA that provides a good cannot be seized unless sufficiently described and also prevents creditors from using powers of attorney in loan agreements.	
815.	Jonathan Flaws (Sanderson Weir)	All-PAAP	Believes the amendment of section 44 of the Personal Property Securities Act 1999 will prevent the practise of "drag-net" securities over all personal property.	
816.	Citizens Advice Bureau	All PAAPs	Do not consider that banning all PAAP clauses alone will have much of an impact on the issues around repossession.	
817.	Mangere Community Law Centre	All PAAPs	Submit that there is uncertainty whether the situation will be greatly improved by the amendment to s44 PPSA. This is an area where repossession powers are often misused by repossession agents and consumers are unclear of their rights.	
818.	NZ Federation of Family Budgeting Services	All-PAAPs	Support. This should go a long way to prevent All-PAAPs.	
819.	Finance Now	All PAAP	Support. FNL do not use All PAAPs and would not expect any reputable financial organisation to operate in this manner. Supports changes that would prevent the consumer from losing goods which are not specifically documented. This may be best legislated in the CCCFA or Credit (Repossession)	Agree. Attempting to repossess goods over which there is no valid security will be an offence under the new repossession provisions that will be enforceable by the Commerce Commission.

			Act as the documents are required to comply with these acts.	There is no need for the offence to be under the PPSA.
820.	Mangere Budgeting Services	All-PAAP	Suggest disclosure should state in simple language that the creditor can only repossess goods listed in the original contract. Suggest using All-PAAP clauses should become an offence for which there is a consideration payable to the borrower. Considers this would go a long way to prevent the practice of 'drag-net' securities.	
821.	Instant Finance	All-PAAP	Support but needs better enforcement. Many of the problems Instant Finance observes with punitive repossessions of household goods occur as a result of second-ranked securities held by fringe lenders that are nonetheless repossessed ahead of the first ranked security holder (e.g. Instant Finance). The drafting of clause 37 of the Bill is fine, but should be applied retrospectively, and additional provisions should be added: 1) Stating clearly that an APAAP clause over consumer goods has no effect without the lender holding express acknowledgement signed by the borrower that the relevant goods are subject to the security. 2) Making second or subsequent security interests in household chattels ineffective. 3) Making it an offence to enforce illegal security interests outlined in 1 or 2 above. The first suggestion above is merely a clarification of the likely current effect of the PPSA, and reflects a Law Commission Recommendation from its review of the CRA. The second is justified as household items tend to be low value. As such there is unlikely to be any equity remaining in them after a first security interest is registered. This means there is no economic justification for allowing registration of subsequent securities.	Agree on enforcement. A key change in the Bill is that the Commerce Commission will be responsible for enforcing credit repossession laws under the CCCFA. This is not the case under the Credit (Repossession) Act. Attempting to repossess goods over which there is no valid security will be an offence under the new repossession provisions that will be enforceable by the Commerce Commission. There is no ability to make the provisions in the Bill retrospective. Disagree with making subsequent security interests ineffective.

			An offence is also necessary as at present section 44 of the PPSA is often ignored without consequence.	
822.	ANZ	All-PAAP	Support. Success is dependent on adequate enforcement.	
823.	NZ Bankers Association	All-PAAP	Amendment preventing creditors using powers of attorney to take extra security over after-acquired assets. Support but suggest more enforcement from an actual enforcement agency is needed to prevent lenders 'trying it on' with All-PAAP clauses.	
824.	Waitakere Community Law Centre	All-PAAPs	Agree with insertion into s44 of the PPSA removing the ability of a lender to appropriate property by acting as the borrower's attorney or agent. Notes it should also clearly state that a lender may not repossess goods belonging to other family members or children.	Noted. Section 83B requires the consumer goods subject to a security interest to be specifically identified in the credit contract.
825.	Wellington Community Law Centre	All-PAAPs	Question the adequacy of the proposed amendment to s44.	Noted. The PPSA is being amended to say the appropriation of after acquired property cannot be made by a creditor acting as an attorney or agent. Section 83B also includes new specific rules relevant to repossession.
826.	NZ Law Society	All-PAAPs	Won't go far enough to prevent all-PAAPs. Instead should include additional plain language in the bill e.g. prohibit the creditor from appropriating property using a power of attorney. Suggest add "unreasonable breadth of collateral used as security" as a reason to re-open a credit contract under amended Section 124 (Clause 33).	
827.	Alan Liddell on behalf of 24 Finance Companies	All PAAP	Considers that this provision will not make a lot of difference. However considers that this is an issue for motor vehicles where it is common for borrowers to sell vehicles with a security interest (without telling the lender) and then purchase other vehicles. Notes that it is unfair to seize from the new buyer as they will not have a remedy. If the consumer has purchased another vehicle and it is not clear that that is a replacement then the lender may not have security for the new vehicle.	Noted. Section 83B(2) provides that after acquired goods that have been acquired as replacements for goods otherwise specified in a credit contract may be repossessed. This is intended to address the concern raised.

828.	EB Loans	All PAAP	This is unfortunate and unfair and now subject to Borrower abuse with no protection for the Lender. For example, if a borrower sells a stereo system and buys a replacement stereo system then the lender should automatically have the new system as security. Borrowers should have requirements to act in good faith. The amendment should still allow PMSI's and automatically allow "like-for-like" without specific appropriation, this is not drag net.	
829.	Ken Anderson	All-PAAP	Do not support. Considers this change will exclude a large number of consumers from the ability to borrow as the clause gives creditors leverage in circumstances where a consumer disposes of security during the term of the loan. Notes that in some circumstances consumers are currently disposing of and not replacing secured goods or replacing goods with hire purchased goods. Considers in these circumstances the amendment would leave the loan partly or fully unsecured with no cost effective means to remedy. Considers there is already protection against drag net practices in that a creditor can only take possession of goods of sufficient value to cover outstanding debt plus reasonable costs and any oppressive behaviour in these circumstances can be referred to the disputes tribunal or courts. Considers Part 5 Clause 54 on the Personal Properties Security Act needs attention to prevent fraudulent behaviour by borrowers. This allows consumer goods not exceeding $2000 to be sold free of security interest. The section allows consumers to obtain consumer goods on hire purchase and take out loans to the extent that credit is refused and then sell the secured goods or hire purchase goods by private sale or disposing of goods to a friend when they are moving, especially overseas. This leaves creditors no	Noted. See comment immediately above. The requested amendment to the PPSA is outside the scope of the Bill.

			effective means of remedy.	

Transition

830.	GE Money, Buddle Findlay, Christians Against Poverty	Transition	Support	Noted.
831.	Cash Converters, EB Loans, Westpac, Admiral Finance Limited	Transition	Amendments should not apply retrospectively; should only apply to new contracts.	Bill would apply retrospectively only for aspects of the contract that are forward-looking (continuing disclosure, variations) Standard rules of statutory interpretation (including no retrospective effect) will apply.
832.	Child Poverty Action Group	Transition	Submits that the Bill should apply to all existing contracts	
833.	Debt-Free Newtown	Transition	Regulation should apply to existing loans so that complications are minimised.	
834.	Jonathan Flaws (Sanderson Weir)	Transition	Considers that all the situations where the new law should have an effect on existing contracts are covered in the Bill.	
835.	NZ Bankers Association,	Transition	Support transitional clause, except in relation to provisions regulating fees. New fees provisions should only apply to new contracts and should not be retrospective.	Agree in general terms. Standard rules of statutory interpretation (including the presumption against retrospective effect) will apply.
836.	Mangere Budgeting Services	Transition	The new law should have an effect on existing contracts for unregistered creditors. Notes that if costs of borrowing are unenforceable until lenders are registered, this will send a very strong message.	Noted. It would be important to have evidence of consumer credit contracts that would actually be caught by such a provision if we were to make a persuasive argument justifying section 99A having retrospective effect.
837.	Admiral Finance Limited	Transition	The implementation period appears to be less than one month. Recommends an implementation period of 6 -9 months that does	Agree. The implementation period for the Bill is now generally 6 months.

			not clash with the implementation of the new anti-money laundering rules.	
838.	ANZ	Transition	Support, except that any amendments to fees provisions should not apply to fees incurred under any existing contracts.	Noted. The Exposure Draft provided that the new fees provisions should only apply to fees incurred after the commencement of the relevant provisions. This has been carried over to the Bill (Schedule 1). We need to consider this specifically in light of the new fees provisions in the Select Committee. A special rule may be warranted.
839.	Finance Now	Transition	Comfortable with the majority of the provisions Not comfortable with the unreasonable fees provisions, these are determined when the contract is taken out and therefore should be exempt.	
840.	Financial Services Federation	Transition	Mostly comfortable with the transitional provisions Clause 36(2)(e) is not appropriate and may be unworkable. Clause 36 ought not to provide for the fee-related provisions of the Bill to apply to fees incurred under existing contracts. Clause 36(2)(e) should be deleted.	
841.	ASB Bank Limited	Transition	Considers that the correct approach is one that implements some aspects of the Bill when passed that can deliver immediate outcomes in respect of the market failure. Effort should focus on elaborating on the principles in the Code, which along with associated breach remedies would then come into force after the Code has been finalised. This could be achieved by including a transitional provision in the Act. In this case, the requirement for every lender to have regard to and comply with the Principles would not come into force until there has been an opportunity to work through and finalise their elaboration in the Code.	Noted. The implementation of the Responsible Lending Principles potentially coming into force ahead of the Responsible Lending Code will need to be worked through.
842.	NZ Law Society	Transition	Suggest a lead-in period of six months. Suggests that the one month transition for the proposed section 124 is too generous. If commencement is delayed, consider that proposed section 99A could be commenced. Note error in 2(2).	Noted. Transition provisions have been updated. The Bill will come into force 6 months after the date on which it receives the royal assent.
843.	EB Loans	Transition	Nothing in the new law should become effective for 6 months to give lenders time to amend computer software, train staff and	

			update contracts. This would also give the regulator time to provide guidance to credit providers.	
844.	BNZ	Transition	There is a lot of regulatory change currently occurring within the financial sector. This may justify some delay in the overall timing of the Bill's changes coming in to force.	
845.	Fair City Finance Ltd	Transition	The last credit law change took approximately six months to implement internally. This is likely to be the same. As such, the immediate effect of the proposed changes is unrealistic.	
846.	Full Balance	Transition	Will the suggested inclusion of hardship due to irresponsible lending be applicable for current agreements? If so it would have a more immediate positive effect for struggling families.	Disagree. Not proposed to link responsible lending to unforeseen hardship.

MISCELLANEOUS ADDITIONAL ISSUES

Cost of Finance Caps

847.	Cash Converters	Cost of Finance Caps	Do not support. Considers that the cause of over-indebtedness and hardship is reckless and irresponsible lending, products that cause debt spirals and oppressive debt collection practices. Submits that the responsible lending provisions address the root cause of over-indebtedness and financial hardship and render cost of finance caps unnecessary Considers cost of finance caps: - A blunt and ineffective tool - Increase access to illegal credit - Reduce credit access - Increase personal bankruptcies - Increase hardship and over indebtedness as households cannot access small amount finance to manage emergencies - Notes the World bank, Asian Development Bank and Consultative Group to Assist the Poor have all rejected cost of finance caps as damaging for consumers - Notes that the Office of Fair Trading identified a number of issues with cost of finance caps - Consumer demand for short term small amount credit is significant and continuing. Cost of finance caps will leave borrowers no viable alternative	High cost credit can lead to over indebtedness and financial hardship. The Responsible Lending provisions being included in the Bill are designed to ensure financial providers consider the circumstances of those seeking credit and take into account whether consumers can afford repayments. The Responsible Lending provisions are not designed to limit the provision of high cost credit directly, and do not provide a "bright line" that bans unacceptable credit. Cost of finance caps are a contentious area and there are challenges in designing a cost of finance cap which is effective but does not have unintended consequences. It appears that the cost of finance cap coming into force in Australia will provide a high level of consumer protection without imposing compliance costs on responsible lenders or having unintended consequences. **Decision:** The Government agrees that responsible lending is a significant initiative that should protect vulnerable consumers without imposing specific lending limits, and that cost of finance caps should not be implemented. Not introducing cost of finance caps at this

848.	Financial Dispute Resolution Scheme	Cost of Finance Caps	Considers that the reforms in the Bill make cost of finance caps unnecessary.	time will allow policy-makers to evaluate the impact of the new Responsible Lending provisions, and the new cost of finance cap regime in Australia.
849.	Business NZ	Cost of Finance Caps	Support Bill overall and agrees that unintended consequences of interest rate caps would have outweighed any benefits. Recommend not introducing interest rate caps.	
850.	Save My Bacon (SMB)	Cost of Finance Caps	Cost of finance caps would inhibit short term lending, which has a useful place in credit market. Risks of caps include: reduced access, migration of rates towards caps, reduced competition and diversity of products, increase/introduction ancillary fees, growth in unregulated market. Reference: PWC, www.pwc.co.nz *"UK consumer credit in the eye of the storm: Precious Plastic 2011"* p16.	
851.	Buddle Findlay	Cost of Finance Caps	Agree that amendments are likely to make cost of finance caps unnecessary. It is difficult to design such provisions in a way that cannot be circumvented. In practice a cap could also become a safe harbour and prevent certain types of credit being offered. Caps do not properly account for differing circumstances as the current provisions in the Bill do.	
852.	Ken Anderson	Cost of Finance Caps	Considers an interest rate cap would be the end of small short term loans and Payday Advance.	
853.	Kiwibank	Cost of Finance Caps	Consider the package of reforms in the Bill (particularly the lender responsibility principles), together with the existing principle of reasonableness in fees make cost of finance cap provisions unnecessary.	
854.	East Auckland Home and Budget Service	Cost of Finance Caps	Interest rates above 29.5% should be prohibited. However, this will not solve the problems of most borrowers as their loans should not have been granted in the first place. Hopefully responsible lending requirements will see a decline in high interest lending.	
855.	BNZ	Cost of Finance Caps	Do not support interest rate caps.	

856.	ANZ	Cost of Finance Caps	These provisions are unnecessary given the strengthened protections provided in the Bill. These figures also either become the default rate for lenders, or are so high they do not change market behaviour. They should only be considered if other protections prove insufficient.	
857.	Financial Services Federation	Cost of Finance Caps	FSF does not favour cost of finance caps and considers that if the provisions in the Bill meet their objectives then cost of finance caps will be unnecessary	
858.	NZ Bankers Association	Cost of Finance Caps	Understand that cost of finance caps are often adopted as the default rate by high risk lenders seeking to recover the cost of borrowing with a higher interest rate. NZBA considers it unnecessary to consider the cost of finance caps at this time, given the range of consumer protection reforms considered in the Bill.	
859.	National Council of Women	Cost of Finance Caps	Extremely high interest rates may be more oppressive than other aspects of credit contracts. Concerned that no interest rate cap is suggested.	
860.	Antonina Savelio	Cost of Finance Caps	A cap of 40% should be introduced on loans.	
861.	Ken Bohm	Cost of Finance Caps	Lenders should only have a 10-15 percent rate limit above the reserve bank rate and should be adjusted accordingly.	
862.	Whitireia Community Law Centre.	Cost of Finance Caps	Support Caps. Should apply to consumer credit contracts only.	
863.	Child Poverty Action Group	Cost of Finance Caps	Support Caps. There needs to be a cap on the total costs of borrowing (as defined in 6(2))	
864.	Te Waipuna Puawai Mercy Oasis Ltd (TWP)	Cost of Finance Caps	Support caps. Would like to see the introduction of a cost of finance cap of 25%.	
865.	Wellington Community law	Cost of Finance Caps	Cost of finance caps should have a limit of 50% interest, inclusive of all fees and potential costs. For families in serious financial	

	Centre		difficulty it is better that no credit is available than credit at exorbitant rates. Believe that clients would want to comply with the law and would be reluctant to borrow from underground lenders.	
866.	Anonymous Third Tier Lender	Cost of Finance Caps	Interest rate caps rather than a "subjective" responsible code are a better mechanism for targeting lenders that are deemed by the government to be predatory.	
867.	Families Commission	Cost of Finance Caps	In favour of interest rate caps as a means of protecting vulnerable from unscrupulous lenders. Do not accept arguments against interest rate caps, especially credit exclusion. Reference: Thiel V. 2009, *"Doorstep Robbery: Why the UK needs a fair lending law",* New Economics Foundation – the conclusion in article, credit exclusion is a dangerous problem is a dangerous view based on scant evidence. Dispute that the supply of credit would be endangered – caps have been introduced in some countries without compelling evidence that this has left families unable to access credit.	
868.	First Union	Cost of Finance Caps	Support interest rate caps. They are an appropriate and fair instrument. Not addressing this means that New Zealand's most vulnerable and low income consumers will continue to be exploited by exorbitant interest rates. The consequences of default on small loans are often extremely disproportionate to the value of the loan because of exploitative interest rates.	
869.	Age Concern	Cost of Finance Caps	New Zealand should follow the Australian example and introduce a cost of finance cap. Suggests that from time to time a maximum rate of interest be gazetted – at present this maximum might be 12%p.a. cap Suggests separate caps on fees to make it easier for the Commerce Commission and consumers to identify and contest unreasonable fees.	

870.	Debt-Free Newtown	Cost of Finance Caps	Expect that a cap on the cost of borrowing is necessary, as has been accepted in many other countries.	
871.	Tulai project	Cost of Finance Caps	Support. Cost of finance caps should be included in the Bill.	
872.	Jenny Brash	Cost of Finance Caps	Supports caps. Believes interest rates should be capped to a responsible level. This submitter places a particular emphasis on the need for caps on short term type loans where a weekly interest rate may be charged.	
873.	Christians Against Poverty	Cost of Finance Caps	Supports an interest rate cap at 30-40%. Considers that free market principles don't work as the borrower cannot negotiate the rate. Notes that some rates are incredibly high (e.g. 1860% pa)	

Miscellaneous

874.	Financial Holdings Ltd	General	A national identification card would help to reduce credit fraud and lead to more efficient credit markets.	Noted. Outside the scope of the Bill.
875.	Patrick Murdoch	General	Not everyone has a passport or drivers licence. If everyone is issued with an identification card they will have an easier passage for credit.	
876.	Patrick Murdoch	School Savings Schemes	Considers the reintroduction of the School Savings Scheme so that funds in this account cannot be used until the child is 16.	
877.	Cash Converters	General	Recommends registration and minimum competence requirements for budget advisors, who are providing financial advice outside of the Financial Advisors Act, to ensure well informed and responsible advice is given	
878.	Thorn Rentals NZ Limited	Cost of Borrowing	Concerned that there is no reform in the proposed Bill that will reduce the cost of borrowing. Considers that the correct policy response is for the relevant agencies to focus on enforcement of existing law rather than on rewriting law in a way that will have the	Noted. The analysis is that the existing law does not provide sufficient rights to protect consumers, who can be vulnerable to less than scrupulous lenders. There are currently

			consequence of imposing higher costs on borrowers and discouraging legitimate creditors from entering the market.	no obligations on creditors to lend responsibly. The new rights and protections for consumers may involve higher costs for lenders, but they will also sharpen competition for the benefit of borrowers and the economy generally.
879.	Jonathan Flaws (Sanderson Weir)	General	Notes differences between Australian and New Zealand lending regimes in mortgage lending and considers these differences need to be allowed for when implementing a responsible lending regime. Every mortgage borrower in NZ will instruct a lawyer to act when borrowing or refinancing. In Australia most borrowers do not instruct a lawyer. This is due to NZ's land registration system that requires lawyers or conveyancers to sign and certify a mortgage for registration. For this reason the Australian regime is predicated on there not being any independent third party between the borrower and lender and therefore needs to be more prescriptive. The submitter considers that the presence of lawyers provides a second line of defence against unscrupulous mortgage lenders. The submitter gives an example using reverse mortgages. In New Zealand best practice guidelines are issued by the NZ Law Society. It is usual for lenders to make it mandatory for their borrowers to obtain comprehensive legal advice before settlement. Australian law societies have not adopted a similar stance and the standard of legal advice on reverse mortgages in varied. The submitter notes that the NZLS is developing a process by which lawyers may be accredited as specialists in areas of law. The submitter suggests it may be appropriate to provide that the Court can also have regard to whether or not the lawyer or professional was appropriately qualified to give the advice.	Noted. The responsible lending principles in the Bill are much less prescriptive (and less costly for lenders) than the Australian approach, which ties responsible lending to credit licensing. The responsible lending principles are intended to be sufficiently universal that they are relevant to all consumer credit, including mortgages. Lenders which are lending under best-practice should already be operating responsibly.
880.	Ken Anderson	General	Questions if an intention of the Bill is to remove third tier lenders	Disagree. There are clearly responsible third tier lenders in the market, and there is

			from the market entirely.	definitely demand for their services.
881.	Ken Bohm	Credit limits	Credit limits (increases) should not be set by the lender, but should rather be set through an application from the borrower with the total account being assessed. An application should have a compulsory financial position statement from the borrower to ascertain that the credit limit is relative to a borrower's income and other debts. All information held within banks should be used in ascertaining an available credit limit. Credit limit increases should not be promoted. In order to ascertain that a borrower has the capability to understand the terms and conditions they must be provided with disclosure of key information including the cooling off period, ability to specify a credit limit and a understanding of their financial position. Credit limits should mean no more credit until the account has been lowered.	Noted. Responsible lending principles will apply to initial approval and increases in credit limits, and will be relevant to the issues referred to.
882.	Financial Holdings Ltd	Student Loans	The State should not be extending credit to the populace in the form of student loans as this is not part of its business and creates distortions.	Noted. Outside scope of the Bill.
883.	Financial Holdings Ltd	Credit Reporting	Defaults should be reported for a longer period of time. This would enable a more efficient credit market and place less pressure on Courts.	
884.	ANZ	Drafting	Clause 34 is presumably intended to replace s 138(1)(e), not 138(1)(d). However, if this is not the case, suggest retaining 138(1)(d) nonetheless and expanding to prescribe any class of change for which disclosure under ss 22 – 26 is not required.	Agree. This has been changed in the Bill as introduced.
885.	Commerce	Drafting	Once a loan is repaid neither creditor nor debtor owe any on-going	Noted. Section 48 of the CCCFA is intended to

	Commission		obligations. Overpayments may therefore not be captured under s 48. This should be clarified.	deal with this situation, and is not amended in the Bill.
886.	Barry Allan, University of Otago	Drafting	The legislation should talk about when the contract is "entered", rather than when the contract is "made". Made is not a defined term nor is it commonly understood by those without knowledge of contract law and thus leaves scope for lenders to manipulate any uncertainty.	Agree. Amended sections 15, 17 and 25 of the Bill.
887.	Buddle Findlay	Electronic Communications	Though the CCCFA contains similar requirements for disclosure by electronic means as the Electronic Transactions Act 2002, it is unclear on the issue of inferring consent from conduct. This should be clarified. The distinction between electronic disclosure and electronic communications can also cause confusion. It is unclear if a customer can consent to the latter, without consenting to the former. The interrelationship between the CCCFA and ETA is also unclear generally. Specific provisions in the CCCFA should be repealed, and reference to the ETA made instead.	Noted. The CCCFA deals with electronic disclosure (section 32(4)). There are no exemptions from the Electronic Transactions Act that are relevant to the CCCFA, so the provisions of the Electronic Transactions Act apply. Query whether more work is necessary in this area.
888.	Save My Bacon (SMB)	Licensing	SMB is open to future consideration of a licensing regime.	Noted. Government policy is not to proceed with a full credit licensing regime (such as in Australia).
889.	Telecom Rentals	General	Recommend that the Draft Bill be expanded to cover both the entities offering consumer credit and all associated persons, for instance, to avoid shell companies being used as a shield from this legislation.	Noted. Do not have evidence of this type of avoidance behaviour. The party which provides the credit (including assignees) will be the creditor.

Financial Literacy

890.	Debt-Free Newtown	Financial Literacy	Education needs to address over-optimism about ability to repay loans.	Agree that improved financial literacy is a priority. It is clear that responsible lending and improved consumer protections under the Bill will only be part of the solution necessary to deal with the problems of borrowers being vulnerable to lenders, including predatory lenders.
891.	Dunedin Community Law Centre	Financial Literacy	Financial literacy needs to be improved overall. Young people often find themselves in financial strife that can last a long time. Many of them see a no asset procedure as a quick fix, when it actually carries a great deal of stigma as a form of bankruptcy.	
892.	Anonymous Third Tier Lender	Financial Literacy	Greater emphasis should be placed on educating the public about the dangers of borrowing so that they can take responsibility for their own actions.	
893.	Telecom Rentals	Financial Literacy	Recommend a consumer education campaign similar to the electricity supplier campaign on www.sorted.co.nz, including information about dispute resolution services.	
894.	Commission for Financial Literacy and Retirement Income	Financial Literacy	Recommend making reference to the need to focus more effort on improving financial literacy so that consumers are less likely to have need of short term, high interest lending, and are more likely to be able to look after themselves if they do need it.	
895.	ANZ	Financial Literacy	Responsible lending can only go so far. It needs to be complemented by better financial literacy education. The focus should be on helping consumers to understand contracts, obligations and implications of credit.	
896.	Financial Services Federation	Financial Literacy	The Bill does not address the objective of improving borrower comprehension but FSF is supportive of this	
897.	Financial Holdings Ltd	Financial Literacy	The State should take some responsibility for educating the general population about finance. A large portion of New Zealanders appear to have inadequate financial knowledge.	
898.	St Vincent de Paul	Financial Literacy	Those who are buying beyond their means and don't understand budgeting are hopelessly disadvantaged. People seeking to buy	

	Society		items that are really beyond their means or items they desperately need, should be referred to services like St Vincent de Paul Society.	
899.	Thorn Rentals NZ Limited	Financial Literacy	Danger with the proposal is that it will further insulate borrowers from any requirement for personal responsibility or financial literacy. While borrowers should be protected from misleading conduct and oppressive practices, responsible policy setting should encourage individuals to take personal responsibility for budget setting and compliance with personal financial obligations.	
900.	ASB Bank	Financial Literacy	There is a financial literacy and personal responsibility issue which is particularly relevant to issues such as verification and disclosure	
901.	National Council of Women of New Zealand	Financial Education	Concerned with the lack of financial education for consumers so they are warned about and armed against loan sharks.	

Guarantors

902.	Barry Allan, University of Otago	Guarantors	Submit that the present review of the Act is an opportunity to consider the level of protection given to guarantors. The CCCFA treats guarantors as party to the contract between creditor and debtor and entitled to specific protection in that category. There is a problem if the debtor is not a natural person or if the loan is for business purposes it will not be a consumer credit contract under the CCCFA. This is even if the guarantor is a natural person providing the guarantee for personal reasons. The guarantor will not have any CCCFA protections except a claim of oppression. Oppression is not particularity helpful as the concern for oppression is with the credit contract, there is nothing to regulate oppressive enforcement of a guarantee.	Agree. Disclosure to Guarantors is required under current Act. New section 9B(3)(d) proposed by the Bill will also extend the information requirements in the Responsible Lending Principles to guarantors.

903.	Citizens Advice Bureau	Guarantors	Consider that guarantors often face the same issues as borrowers. Recommend that a standard form, setting out guarantors' rights and responsibilities in plain English should be given by creditors to all guarantors before guarantors sign up to any guarantee. Recommend that the guarantor should be able to withdraw any time before the credit is first provided.	Noted. Guarantors will be covered by responsible lending under the Bill. Note that the cancellation right during the cooling off period following initial disclosure does not apply to guarantor disclosure. However guarantors are free to revoke their guarantee in respect of future advances (which may then not be made).
904.	Financial Dispute Resolution Scheme	Guarantors	Suggest guarantors should receive same protection as borrowers. Guarantors should be made aware that they need independent legal advice.	New section 9B(3)(d) of the Bill imposes an obligation on lenders to provide information to guarantors to enable their decision-making.

Voluntary Targeted Rates

905.	Nelson City Council	Voluntary Targeted Rates	In the event that a full exemption for council-based schemes is not deemed appropriate, the NCC would have to seek an exemption from areas in which the Council is unable to achieve technical compliance (early payment of interest charges, debtor's right to full prepayment) and also from those areas where the costs of compliance are so prohibitive as to make it difficult for the Council to consider such a scheme in the future (continuing disclosure and request disclosure). Suggest either being exempted from, or allowing 12-monthly continuing disclosure rather than 6-monthly so statements could be prepared and provided to ratepayers along with their annual rates statement.	After continued consultation with EECA and Greater Wellington Regional Council, officials consider that local government bodies are currently meeting the principles of the responsible lending approach. Consequently, and given the requirements Councils already meet under the Local Government (Rating) Act, it is recommended that local government bodies operating VTR schemes be exempted from specific sections of the CCCFA. **Decision:** This be affected by extending the regulation-making powers under the Act to allow exemptions from specific provisions of the CCCFA only. Local governments will then be able to be exempted from provisions as required. Local government bodies would still be required to sign up as financial service providers under a dispute resolution scheme.
906.	Greater Wellington Regional Council, Hawkes Bay Regional Council	Voluntary Targeted Rates	Do not consider that Councils implementing voluntary targeted rates schemes are engaged in the business of providing credit. Would like an amendment to exclude all local authority schemes and rates from the definition of a Consumer Credit Contract.	

			Support disclosure requirements (while noting the difficulty of councils conforming to six-monthly continuing disclosure). Request amendment to section 18 reducing the compliance requirements to annual statements for local authorities. Requests an amendment exempting local authorities from hardship provisions (section 55) as the Local Government (Rating) Act already requires councils to have policies for rates relief on the grounds of hardship. Requests an amendment to new section 99A (clause 30) to specifically exclude local authorities from registering under the Financial Services Providers Act (dispute resolution).	
907.	Energy Efficiency and Conservation Authority	Voluntary Targeted Rates	Supports the intent of the Bill to strengthen consumer protection from unscrupulous lenders. However, proposes amendments to exempt Local Government Voluntary Targeted Rates (VTR) schemes, because: • Not-for-profit local government agencies providing VTR initiatives are not the intended target of the CCCFA • There is adequate protection for ratepayers through the contracts entered into with councils, the Fair Trading Act, and the processes around the Local Government (Rating) Act. • The local government rating system overlaps with, and at times conflicts with, the CCCFA meaning councils cannot operate VTR schemes and comply with the CCCFA. • The additional administration will add unnecessary costs to the schemes and threaten their viability. Therefore, EECA proposes that VTR schemes operated by local government bodies be exempted under section 15 from being consumer credit contracts. Alternatively, EECA proposes that local government bodies be	

			exempted from the specific provisions in the CCCFA which are inconsistent with the LGRA or which would make VTR unviable.	
908.	Nelson City Council	Voluntary Targeted Rates	Early payment provisions become a problem if a participant elects to pay rates annually (in advance) as the interest payments attached to each quarterly payment will become payable at the commencement of the relevant year and therefore be a technical breach of section 38 of the CCCFA. Also, charging the total for the rating year could technically be an 'unreasonable' charge as there is no loss to the local government body that needs to be cost-recovered.	Not a problem if paying quarterly, only if pay off one year in a lump sum. Does not apply if the ratepayer is paying off the loan in order to sell the house, because in that case the debt is cancelled.
909.	Greater Wellington Regional Council, Hawkes Bay Regional Council	Voluntary Targeted Rates	CCCFA provides that interest cannot be charged before it falls due. However Rates are set annually so reductions can only be applied on the predetermined rates' due dates – hence technical breach of existing Act. Suggest that local government bodes offering VTR schemes should be exempted under section 15 at a minimum from those aspects of the Act that are incompatible with VTR operation.	

Personal Property Securities Register

910.	NZ Federation of Family Budgeting Services	Consultation	There should be a requirement to check securities on the Personal Property Security Register.	Noted. There is an *incentive* for new lenders (and purchasers of secondhand goods) to check the PPS Register, but it would not be helpful to make this a *requirement*.
911.	Auckland District Law Society	PPSA	The inability of lenders to take additional security, coupled with a lack of mandatory checks, can lead to lenders, as well as other involved parties being disadvantaged where borrowers deal with or dispose of secured property dishonestly. Therefore recommend consideration of requirement on second hand traders to check PPSR or imposition of constructive notice of security interests for those in trade. Those who purchase goods with registered security interests over them would then be responsible for the secured	Noted. Out of scope of the Bill.

			party's loss.	
912.	Financial Holdings Ltd	PPSR	The PPSR should be linked with Australia, and it should be easier to pursue debts cross-border.	