

Regulatory Impact Statement

Responsible Lending and Changes to Consumer Credit Law

Agency Disclosure Statement

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

- Submissions on the Exposure Draft Credit Contracts and Consumer Finance Amendment Bill;
- The Law Commission's report, Consumers and Repossession a review of the Credit (Repossession) Act 1997, which included consultation and in depth face-to-face interviews;
- Qualitative research commissioned by Consumer Affairs and the Families Commission; and
- Anecdotal evidence from the case files of Consumer Affairs.

9 The analysis of policy options that has been undertaken is consistent with the Government Statement on Regulations. Consumer Affairs is satisfied that new regulation is required and the problem cannot be adequately addressed through private arrangements.

Evelyn Cole

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

Date

Overarching Problem

Status Quo

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

Problem

Credit Contracts and Consumer Finance Act

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

Repossession

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

Measure of Consumer Detriment/Magnitude of the Problem

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

Objectives of Government Action

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

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

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

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

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

27 The objective of credit repossession law is to:

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

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

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

NON-STANDARD CREDIT CONTRACTS

Status Quo	<p>At present, the CCCFA allows for particular types of credit contract to be exempted from its requirements altogether, subject to requirements defined in regulations. However, there is no possibility for partial exemption from only some of the requirements of the CCCFA. This is an issue for two forms of non-standard credit contract; voluntary targeted rate schemes operated by local and city councils and pawnbroking. The lack of flexibility to partially exempt forms of credit could also become an issue in the future as new means of lending develop and require regulation.</p> <p>These two forms of lending present different specific problems, but have in common that only particular aspects of the CCCFA protections are problematic. As such, policy options for both problems are presented together.</p>
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VOLUNTARY TARGETED RATES	
<p>Status Quo</p>	<p>Voluntary targeted rate (VTR) schemes work in association with annual rates and are attached to a property. They are in place to provide credit assistance to ratepayers on reasonable terms. Currently, several regional and district councils provide VTR in association with the Warm Up New Zealand scheme, to help ratepayers fit their homes with insulation⁴.</p> <p>Councils offering VTR schemes are consumer credit providers in that they advance credit and charge interest (through rates). It is appropriate that they come under the general provisions of the CCCFA, including that they provide initial disclosure of terms and conditions at the time the contract is entered into, engage in responsible lending and register and join a dispute resolution scheme as required under the Financial Service Providers (Registration and Dispute Resolution) Act.</p>
<p>The Problem and its Source/What is the Problem?</p>	<p>There are two specific problems for councils in complying with the CCCFA:</p> <ul style="list-style-type: none"> • The CCCFA requires that every creditor must disclose to the debtor every 6 months the unpaid balance, interest charges and amounts paid over the previous period. However, rates are determined and disclosed annually. Councils advise that current administrative settings cannot support six-monthly disclosure. • If rates are calculated annually but then paid before the end of the year, councils may find themselves having charged interest that has not yet fallen due, which creates a technical breach of the CCCFA. Administrative arrangements would need to be significantly changed in order to refund ratepayers the very small amount of interest that would be prepaid. <p>Councils are currently not complying with the provisions in the CCCFA. Councils are concerned that they could be found in breach of the CCCFA and that costs of compliance with the above provisions in particular would be significant and unjustified.</p>
<p>Measure of Consumer Detriment/Magnitude of Problem</p>	<p>VTRs can be used to provide assistance to consumers for potential projects, in conjunction with local or central government, or some combination of the two. These schemes are likely to relate to improvements in housing or property infrastructure that have the possibility to significantly benefit consumers. An current example of a VTR scheme is Warm Up New Zealand.</p> <p>The Warm Up New Zealand scheme is a \$347 million Government initiative which provides assistance to consumers, with more than 133,000 households having received assistance in retrofitting insulation.</p> <p>If local government bodies exit the scheme or are dissuaded from initiating or entering future schemes (due to unwillingness or inability</p>

⁴ Payment is the grant plus currently 7% interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REPOSSESSION: DISCLOSURE AND WHAT CAN BE REPOSSESSED

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

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

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

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

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

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

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

	<p>repossession agents will not act in an illegal manner and will not damage goods being repossessed.</p> <p>Business Cost There will be a compliance cost for repossession agents in becoming licensed. The licensing regime would be funded through licensing fees charged on application for a license. This is the case for security personnel under the regime set out in the Private Security Personnel and Private Investigators Act 2010. A five year certificate of approval (for those who work as security personnel) currently costs \$170. Five year company or individual licences (for those who run a business that provides certain security services) currently cost either \$616 or \$510. Licensing of repossession agents would follow a comparable model and likely result in comparable costs. Should the licensing regime be combined with that for private security personnel and private investigators fixed costs could be further divided and this figure could be reduced somewhat.</p> <p>Some current repossession agents may not pass the general and knowledge requirements for licensing (or may have their licenses revoked). At present, there is no training requirement under the Private Security Personnel and Private Investigators Act 2010, though there is a possibility to prescribe such requirements by regulation. Were this requirement to be introduced for repossession agents, it could add an additional cost for business.</p> <p>Government Benefit Licensing of agents would make enforcement of the law easier for the police and the Commerce Commission as agents who fail to comply could be deregistered.</p> <p>Government Cost There could be a cost of establishing the licensing regime. However, if the regime is combined with that in the Private Security Personnel and Private Investigators Act 2010 this upfront cost is likely to be minimal. Over the long term the regime would be funded through licensing fees.</p>
REPOSSESSION: REMOTE DISABLING DEVICES	
<p>Status Quo</p>	<p>Remote disabling devices are installed in motor vehicles that are purchased on credit and are used to stop the car from operating if the consumer has not made the payments on the loan. (The technology could potentially be used in consumer electronics in the future).</p> <p>There appear to be two types of remote disabling devices. One sort can be seen below the steering wheel of the car and requires a receipt code be entered at specified times. If the code is not entered after a three day warning period where the device lights up the car will no longer start. The other sort of remote disabling device is activated remotely by the lender. This type includes a GPS tracking device.</p> <p>The Law Commission considered, but did not make a recommendation on the law governing remote disabling devices</p>

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

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

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

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

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

<ul style="list-style-type: none"> • Disclosure is required of the presence of the remote disabling device and the terms and conditions that govern its use; • Before a car can be remotely disabled warning in an agreed form that a vehicle will be remotely disabled and a reasonable timeframe (5 working days) between the warning and remote disabling must be provided; • The creditor must enable reactivation of the vehicle in an emergency; • The unreasonable fees provisions of the CCCFA would apply to remote disabling devices; and • The financial sector dispute resolution schemes would be able to hear complaints about remote disabling devices. 	<p>industry.</p> <p>Both the basic protections in consumer credit law and the broader principles in the Code of Responsible lending would be based on and complementary to the industry's Code of Conduct which is being developed at this time. The provisions provide a lower level of consumer protection that what is proposed in the draft code of conduct at present.</p> <p>Including basic protections in legislation alongside key principles in the Code of Responsible Lending has the benefit of ensuring that credit repossession law has the flexibility to address new technologies in the future.</p> <p>Consumer Benefit This approach would provide basic protections for consumers to ensure that remote disabling is used in a responsible and appropriate manner.</p> <p>The intent of the proposal is that remote disabling remains a viable option for credit providers. This will ensure that consumers who are deemed a greater credit risk and thus unable to obtain finance on other terms are able to access credit.</p> <p>The basic protections will ensure that the consumer is not disabled for no reason, is made aware of the terms and conditions of remote disabling, is able to use their car in an emergency, is not charged very high costs for the remote disabling device and has access to redress if things go wrong.</p> <p>Consumer Cost The limited business compliance costs discussed below could be passed on to consumers in the form of increased credit fees.</p> <p>Business Benefit Industry has raised concerns about new market entrants who may have irresponsible practices. Industry members have considerable consumer protections and there are costs associated with the provisions of these (a 24 hour call centre is a useful example). As such an industry association has been formed and a code of conduct is being developed to ensure that standards are maintained by all industry participants.</p> <p>Including basic protections in legislation will ensure that new entrants to the market behave appropriately and do not cut corners in terms of responsibilities.</p> <p>The provisions suggested are based on the Code of Conduct being developed by industry and on advice from industry about how their business works already. Contracts from the providers of the technology have also influenced the proposal.</p> <p>Business Costs Because the provisions are taken from industry practice at present or clarify existing law (i.e. the unreasonable fees provisions should apply already and disputes resolution schemes should already be able to consider complaints about remote disabling) and the industry is very small, compliance costs are expected to be low.</p>
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3 Introduce a definition of repossession in consumer credit law which would capture remote disabling

Consumer Affairs does not favour this option.

A submitter on the Law Commissions review of the Credit (Repossession) Act suggested that repossession should be defined to include remote disabling devices.

The effect of this provision would be that the provisions for repossession would apply to remote disabling. The particular provisions that are relevant are the requirement to issue a pre and post possession notice.

Pre and post possession notices must be posted and take a prescribed form. The notices are subject to timeframes: there must be 15 days allowed between the issuing of a pre repossession notice and repossession taking place and there must be 15 days allowed between the issuing of a post repossession notice and sale of the security.

These requirements do not align with how remote disabling works at present.

The two remote disabling device systems use different modes of communicating with consumers. One provider sends the consumer a warning text message that the car will be remotely disabled if payment is not made and the other provider uses a series of flashing lights on the device itself to warn consumers that the car will be remotely disabled if payment is not made. A posted pre-possession notice would be more costly than current arrangements and this cost would be passed on to consumers as a fee. Current arrangements appear to work well.

A posted pre-possession notice is not appropriate because the timeframes are shorter than for repossession. One company uses a six day grace period and the other three days. The preferred policy option is a five day period. This is significantly less than the 15 days required for repossession.

A post-possession notice is to set out that goods have been repossessed and the estimated value of the goods. This is simply not relevant for remote disabling as the goods are not to be sold.

Finally treating remote disabling as repossession would mean that when the motor vehicle has been remotely disabled it has already been repossessed and as such the consumer would not receive a prepossession notice before the creditor takes the car. This raises questions about the necessary process for when the vehicle is actually repossessed and may result in a loss of consumer protection for repossession.

Consumer Benefits

This option would provide longer timeframes for the consumer to make the payment before the consumer lost use of the vehicle because the 15 day timeframe between prepossession notice and repossession would apply.

Consumer Costs

The consumer would be likely to be charged a fee for pre and post

possession notices.

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

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

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

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

Business Costs

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

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

Recommendation

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

Consultation

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

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

Implementation

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

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

Monitoring, Evaluation and Review

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

