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Consumer Policy
Ministry of Consumer Affairs
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By email: cccfa@mca.govt.nz

**SUBMISSION on
Draft Credit Contracts and Consumer Finance Bill**

Introduction

Thank you for the opportunity to make a submission on the draft Credit Contracts and Consumer Finance Bill. This submission is from Consumer NZ, New Zealand's leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial, and comprehensive consumer information and advice.

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Responses to questions

Responsible lending

1. How well do you think the responsible lending principles in the Bill (new section 9B) reflect the principles which should apply?

There are five key responsible lending principles that we believe the Credit Contracts and Consumer Finance Act (CCCFA) should reflect. These are:

- Consumers should be able to understand the terms and conditions of the credit product, and comply with them easily.
- Consumers should be able to assemble complete, clear and timely information to choose a fair and appropriate credit product that suits their needs.
- Consumers should be assessed for credit risk in a realistic way that reflects their borrowing patterns and financial status.
- Consumers should be able to manage their finances in a way that suits their circumstances; lenders should take specific responsibility for helping those in financial difficulty.

- Consumers should not be pressured or given incentives to take on additional debt.¹

The proposed principles in the draft bill reflect aspects of the above. However, we believe they need to be improved in several areas (see discussion under question 2).

2. Should any additional principles be included in (or removed from) the principles of responsible lending?

The responsible lending principles should provide for the following:

- Information provision

Lenders need to provide information in a way that enables consumers to easily compare credit products. This information needs to be available before the consumer makes a decision to enter into an agreement. We recommend amending the wording of clause 2(b) as follows (changes in bold and underlined):

*Provide the borrower with sufficient information to enable the borrower to **easily compare products** and make informed decisions, both **before** ~~at the time of entering into an agreement~~ and during all subsequent dealings with the lender.*

- Compliance with terms

Lenders need to ensure credit agreements contain terms that are fair and easy for consumers to comply with. Clause 2(c) does not adequately reflect this principle, requiring only that terms are "not unduly onerous". We recommend amending the wording of clause 2(c) as follows (changes in bold and underlined):

*Ensure that the terms of the agreement are **fair and easy for the borrower to comply** with ~~not unduly onerous~~ and are expressed in a clear, concise and intelligible manner.*

- Unreasonable interest charges

Lenders should have a responsibility to ensure both interest and fees are reasonable. Interest and fees can significantly inflate the effective annual finance rate on loans. Clause 2(g) only requires lenders to ensure they do not charge "unreasonable credit fees". We recommend amending the subsection to also include reference to interest charges as follows (changes in bold and underlined):

*Not charge unreasonable **interest or** credit fees.*

- Financial difficulty

In situations where consumers find themselves in unforeseen financial difficulties, lenders have a responsibility to assist them. The hardship provisions of the Act recognise this. We believe the responsible lending principles in the bill should also reflect lenders' obligations to facilitate solutions for these consumers. We recommend adding new subsection 2(i) as follows:

Take responsibility for assisting borrowers who are in financial difficulties.

- Undue pressure

We also recommend the addition of a subsection setting out lenders' responsibility not to exert pressure on borrowers to take on debt. Proposed provisions 2(d) and 2(h)

¹ These principles are adapted from the responsible lending principles developed by the UK consumer organisation Which?.

oblige lenders not to mislead or deceive borrowers. We recommend adding a specific subsection 2(j) as follows:

Not pressure or give borrowers incentives to take on debt.

3. Should a responsible lending code be developed by the Minister of Consumer Affairs in consultation with affected people, or by a code committee as with the Code of Professional Conduct for financial advisors?

We do not have a strong view on whether the code should be developed by the Minister or a code committee. Our primary concerns are that the code is developed in an open and transparent manner, and that there is an effective process for public participation.

If a code committee is appointed, the committee's membership must include adequate consumer representation. Proceedings of the committee must also be available to the public.

We are concerned that the proposed two-year period for development of the code (clause 9E) is too long. We would like to see the code developed within one year of the amendments coming into force.

4. Is it appropriate for the code to elaborate and provide guidance on the responsible lending principles in the Bill, or should it be more prescriptive?

The code needs to be sufficiently detailed to ensure lenders understand the practical effect of the responsible lending principles. A code that only provides general, high-level guidance will create uncertainty for both lenders and borrowers. It will also result in lenders developing their own interpretation of how the principles apply, weakening standards of consumer protection.

We would like to see sufficient prescription in the code to provide certainty for the market and ensure lenders are interpreting the responsible lending principles consistently. If lenders have wide discretion on how they give effect to the principles, consumer confidence will be undermined and the amendments will fail to achieve the desired outcome.

New purpose clause

5. Do you agree with the new CCCFA purpose clause emphasising consumer protection and the market behaviours stated in new section 3(2)(a) and (b)?

In principle, we support the new purpose clause. We agree that consumer protection should be the primary purpose of the CCCFA.

Disclosure

7. Looking at amended sections 17, 22 and 23, is there any justification for consumer credit contract disclosure being made after the contract is made?

We believe there is no justification for providing disclosure after a contract is made. Such provisions are inconsistent with the principles of CCCFA and the operation of a fair and efficient market. Consumers need to have access to comprehensive and timely information to participate confidently in credit markets. Providing for disclosure after a contract is made does not support this need.

8. Looking at amended section 27, do you envisage any unintended consequences from extending the cooling off period from 3 working days to 5 working days?

We support the extension of the cooling off period and can see no unintended consequences of the amendment.

Publication of standard terms and costs of borrowing

9. Looking at new sections 9H and 9I:

a) Will making standard terms and costs of borrowing available at creditors' premises and on their websites be sufficient to improve transparency and improve competition?

b) To what extent will these provisions promote shopping around by borrowers and effective competition among lenders?

Requiring the publication of standard terms and costs of borrowing is critical to facilitating consumer choice, and the operation of an efficient market. Publication of this information will also facilitate scrutiny of the credit market by both regulators and consumer watchdogs.

We believe the ability of consumers to shop around would be further enhanced by requiring key information on interest and fees to be publishing in a standard format (e.g., a single-page table). We therefore support the development of regulations setting out how disclosure should be presented. A standard format would assist consumers to compare products.

As part of the disclosure, we believe lenders should be required to publish the effective annual finance rate (AFR), which includes both interest and fees. Our 2011 mystery shop found fees being charged that were 20 to 25 percent of the original loan value. These fees are a form of disguised interest. Requiring lenders to publish the AFR will assist borrowers in making comparisons between financial products and deciding on the most appropriate option.

Fees

10. Looking at the amendments to sections 40, 41, 43, 44, 45, 51, 52 and new sections 44A and 52A:

a) To what extent do the amendments and additions adequately describe the process by which an unreasonable fee may be altered?

b) Do these provisions meet the objective of making the law clearer about what an unreasonable fee might be?

c) Do the provisions leave open any avenue to charge a fee which is unreasonable?

The amendments to sections 40 to 52 are unlikely to significantly assist consumers in identifying an unreasonable fee. In the absence of further amendments, we would like to see unreasonable fees addressed in a more substantive manner in the development of the code of responsible lending.

We also believe dispute resolution schemes should be required to consider complaints about unreasonable fees. The law has enabled several financial dispute resolution schemes to be established. However, in most cases the schemes will not consider any complaints relating to fees.

Hardship

11. Looking at the amendments to sections 57 and 58:

- a) Will the new unforeseen hardship provisions improve access to hardship protections for those in genuine need?**
b) Are additional changes necessary to protect consumers?
c) Are additional changes necessary to protect lenders from abuse of the provisions?

We believe hardship applications should be able to be made when the borrower is in default. Situations of default often occur when a person is under extreme stress and may not be in a position to take the necessary steps to resolve financial problems.

We are concerned the proposed two-month time frame within which a borrower in default must lodge an application is too short. We recommend a minimum of three months.

We are also opposed to credit fees being charged when a hardship application is granted. We believe these fees are inconsistent with the intent of the hardship provisions. Our preferred option is that no credit fees are charged for successful hardship applications.

Unregistered lenders

12. Looking at the new section 99A, are additional provisions needed to ensure unregistered lenders are not operating in the marketplace or to protect consumers from unregistered lenders?

In our view, creditors who fail to comply with the registration requirements of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 are operating outside of the law. As a result, any credit contract they enter into with a consumer should be unenforceable.

Oppressive or unjust contracts

13. Do you think the amended Guidelines for reopening credit contracts, consumer leases and buy-back transactions will improve the protection of consumers from oppressive credit contracts (amended section 124)?

The grounds for reopening a credit contract are narrowly defined and have not served consumers well. We believe the law should give consumers the ability to challenge credit contracts where the lender's conduct has breached the responsible lending principles, rather than only where the contract meets the high test of "oppression".

The courts have adopted a restrictive approach to the definition of "oppression". The Ministry's 2009 discussion paper noted many practices that do not fall within the definition might nevertheless be considered unfair. Proposals to prohibit unfair contract terms were being considered as part of the Consumer Law Reform Process but have not been included in the bill before the select committee.

This leaves a significant gap in consumer protection. One option to improve redress under the CCCFA is to provide consumers with the ability to challenge credit contracts on the grounds the lender has not complied with the responsible lending principles in section 9B. This would provide better protection for consumers.

Allowing contracts to be reopened in these cases would also encourage compliance with the responsible lending principles and help ensure changes to the law achieve the desired outcome. There will be a significant incentive for lenders to comply with the principles if their contracts can be challenged on the grounds they have not complied.

Disclosure of statement of rights

15. Do you think the amendments to the CCCFA Schedule 1 - Key information concerning consumer credit contract - will sufficiently improve disclosure or should additional information be provided in disclosure documents?

We support the proposed changes to the disclosure requirements in Schedule 1. We agree that lenders should disclose the name and contact details of the dispute resolution scheme of which they are a member. This information is important for consumers to help ensure they are aware of and can access dispute resolution processes, particularly given there are a number of dispute schemes.

However, the changes are unlikely to overcome the main barrier to consumers seeking to enforce their legal rights; that is, they are often in a vulnerable position and unwilling or unable to pursue a case. We therefore believe additional resources need to be provided to ensure monitoring and enforcement action can be taken by the Commerce Commission.

After acquired consumer property

17. In your experience, will the amendment of section 44 of the Personal Property Securities Act 1999 prevent the practise of "drag-net" securities over all personal property?

We agree the law should be amended to prevent creditors from using powers of attorney in their loan agreements. The Law Commission has also recommended amending the CCCFA to clarify the law in relation to drag-net clauses. In principle, we support the Commission's recommendation. We would like to see a clear provision in the CCCFA that provides a good cannot be seized unless it has been sufficiently described in the security agreement and also prevents creditors from using powers of attorney in loan agreements.

Other matters not included in the bill

18. Repossession

We support the majority of recommendations made by the Law Commission in its review of the Credit (Repossession) Act. We agree with the Commission's recommendations that the CCCFA should be extended to include repossession.

We also support the Commission's recommendation that only goods individually identified as being subject to repossession in the original credit contract can be repossessed, and that some goods should not be subject to repossession at all (e.g., bedding, washing machines, portable heaters, passports and identity documents).

We strongly support the Commission's recommendation that repossession agents should be licensed and subject to loss of licence for breaches of the Act. Similar occupations (e.g., towing operators) are already required to be licensed and "vetted" to ensure they are "fit and proper" people.

We would like to see the changes to repossession law included in the CCCFA Amendment Bill.

19. Credit card repayment

The Ministry's 2009 discussion paper on the CCCFA included proposals to require credit card issuers to provide disclosure regarding the true cost of interest that accrues when only minimum payments are made. We are disappointed this proposal has not been included in the draft bill.

Our preferred option is to see this information disclosed in a prominent place on monthly card statements. As in the US's Credit Card Act 2009, statements should be required to carry the following: "Minimum Payment Warning: Making only the minimum payment will increase the amount of interest you pay and the time it takes to repay the balance."

Consistent with the requirements set in the US Act, we also consider cardholders should be told:

- the number of months it would take to pay the entire balance if the consumer pays only the required minimum payments
- the total cost to the consumer, including interest and principal payments, if the consumer pays only the required minimum payments
- the monthly payment that would be required for the consumer to pay off the balance in 36 months, if no further advances are made and the total cost to the consumer of paying the balance in full over 36 months
- how to access information about debt management services.

Thank you for the opportunity to make a submission on this discussion document. If you require any further information, please do not hesitate to contact me.

Yours sincerely



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Chief Executive