



Brief Summary of Submissions on the Review of the Operation of the Credit Contracts and Consumer Finance Act 2003

Contents

- [Introduction](#)
- [Information Disclosure: Timing](#)
- [Information disclosure: Compliance and enforcement](#)
- [Information disclosure: Prepayment fees](#)
- [Information disclosure: Minimum credit card payments](#)
- [Disclosure and pawnbroking](#)
- [Credit fees and charges: Unreasonable fees](#)
- [Credit fees and charges: Frontloading of fees](#)
- [Credit fees and charges: Third party fees](#)
- [Hardship provisions](#)
- [Hardship provisions: Application fees and disclosure](#)
- [Unsolicited credit](#)
- [Credit repossession](#)
- [Credit repossession: Enforcement](#)
- [Fringe lending practices](#)

Introduction

In September 2009, the Ministry of Consumer Affairs released the discussion document "Review of the Operation of the Credit Contracts and Consumer Finance Act 2003". The discussion document included 16 questions associated with proposed changes to the Credit Contracts and Consumer Finance Act (CCCFA) and invited submissions on the proposals.

59 submissions have been received on the discussion paper. 17 submissions were from consumer representatives such as budget advisory services or community law centres; 10 from individuals; 2 from government agencies; and the rest from a general mix of mainstream banks, finance companies, legal professionals and industry representative groups.

This paper is a brief summary to highlight comments in the submissions. It is intended to provide a flavour of the submissions and does not represent the full analysis of the submissions which will be undertaken over the next 2 to 3 months. Most submitters provided their comments in relation to the questions asked in the discussion paper. Accordingly, the questions posed in the discussion paper are noted followed by the summary of views in submissions.

The general assessment of the submissions shows that the consumer representatives have expressed strong support for the majority of the proposals and recommendations. Submissions from those in and representing players in the lending industry have a mixture of comment for and against the proposals.

Information Disclosure: Timing

Q.1 Do you agree that amending the CCCFA to provide that when purchasing a motor vehicle from a motor vehicle trader (as defined in the Motor Vehicle Sales Act 2003), and accessing credit at the time of the purchase, the borrower must be provided with the disclosure as required by the CCCFA immediately at the time of sale would reduce problems associated with motor vehicle finance?. What advantages or disadvantages do you see the above proposed amendment to the CCCFA provides to consumers and traders?. Are there other options to address the issue?

Most submissions from consumer representatives such as community law centres or budget advisory services gave full support to amending the CCCFA so that when a consumer purchases a motor vehicle from a motor vehicle trader and accesses credit at the time of the purchase, the consumer is provided with the disclosure as required by the CCCFA immediately at the time of sale.

Benefits of this noted were that immediately borrowers would be given the opportunity to consider the credit contract in full at their leisure and decide if the finance was appropriate for them. Borrowers could even perhaps realise they should shop around for finance given there is a 3 day cooling off period in the CCCFA. This was tempered by the acknowledgement that disclosure documents are often not read by borrowers.

It was suggested by one submitter that the cooling off period be extended to 5 days from 3. An advisory service suggested that all contracts should be subject to the concept of a compulsory 'walk through' of the documentation with the lender.

Finance companies, while not objecting to the proposal, did not share the same enthusiasm as community-based agencies, noting that borrowers themselves often contributed to the problem when they suffered 'buyer's remorse' and attempted to use the CCCFA cooling off period as a means of exiting the purchase of the vehicle.

Two banks commented in favour of the proposal. One noted a motor vehicle trader would need to retain a signed copy of the disclosure information to indicate the consumer had received the information.

An industry group representing multiple lenders, suggested the proposals would not fix the issues cited in the discussion document and suggested that its members received few requests to return financed vehicles under the cancellation provisions of the CCCFA. A credit union submission suggested the proposal would not solve the issues discussed in the paper.

A motor vehicle industry group did not support the proposal noting those who wish to read disclosure information already choose to do so. It felt the option could retard the sale process and suggested instead a single, universal document be provided that provides general advice on credit contracts.

Information disclosure: Compliance and enforcement

Q.2

Is it reasonable to require insurance disclosure in accordance with sections 32, 33 and 35 of the CCCFA?

Many consumer representatives expressed support for this proposal. They believed it would help borrowers realise the contract was subject to insurance and for them to question whether they really needed it. It was suggested that any relationship between a lender and an insurer should be disclosed. Another suggestion was that a compulsory verbal walk through of the insurance be made if it was part of the credit contract.

Several banks did not support the proposal on the basis that they have a high standard of practice in relation to the manner in which they sell insurance and also asked the question: Why should credit related insurance be held to a higher scrutiny than any other insurance related product?

There was some comment from others in the non-bank lending industry with some support for the proposal but this was tempered with positions of comfortableness with the current situation.

Generally speaking, there is support for the proposal, however, there is some hesitation regarding the potential for the message to 'get lost'. Further, it is considered that insurance disclosure is generally of sound quality.

Information disclosure: Prepayment fees

Q.3 What are your views on increasing the disclosure required for prepayment fees? Is your preference for an "alert", for example, a matrix of possible scenarios, or detailed estimates? Will disclosing full information on potential break fees across various timelines and a range of differing interest rates provide a more useful basis than an "alert" on which to inform the lending decision? Will provision of such information crowd out other relevant disclosure information?

Consumer representatives expressed strong support for the disclosure of information (an alert) about prepayment fees. It was noted, however, that too much information could overload a borrower, although one submitter suggested it was more important to have the possibility of overload rather than no information being provided.

The banking industry generally noted the CCCFA already requires disclosure to the consumer that prepayment fees may be charged under the credit contract and to provide a means for their calculation.

A couple of banks said they provide more than the minimum requirements, expressing their support for increased information disclosure in this area.

It was suggested that the recent media concerns were brought about due to consumers not being acquainted with the risks of fixed interest loans and thus perhaps the issue was one of financial literacy. In this context, the use of additional information was further queried, as it would not address financial literacy shortcomings and the information could also distract the borrower from more critical information that is required to be disclosed.

Other lenders tended to acknowledge disclosure was useful but did not generally support the disclosure of more information, again concerned about too much information confusing borrowers. Industry groups also expressed similar sentiments.

Information disclosure: Minimum credit card payments

Q.4 Should credit card issuers be required to provide disclosure regarding the true cost of interest that accrues when minimum payments are made?

Consumer representatives across the board supported this proposal and that the information disclosed should be made in a prominent fashion. It was suggested two figures could be provided, one which shows the minimum payment required, another which showed the minimum required to reduce the principal balance.

Banks support providing information to borrowers about the effects of making minimum repayments only and some noted this information was already disclosed. Providing a calculation would prove difficult. It was suggested the issue was one of financial literacy and not regulation.

The remainder of submissions showed mixed support, with general concern about what and how 'true cost' could work.

Disclosure and pawnbroking

Q.5 Do you agree that the proposal allowing compliance with the requirements of section 59 of the SDPA to meet the CCCFA disclosure requirements of section 17, and exempting pawnbroking from the continuing disclosure and prepayment requirements of the CCCFA, would reduce problems associated with the clashes between the SDPA and CCCFA for pawnbroking credit transactions? What advantages or disadvantages do you see the above proposal provides to consumers and traders? Are there other options to address the issue?

Two substantial submissions were made on pawnbroking, with both suggesting the proposal to exempt pawnbroking from the continuing disclosure and prepayment requirements of the CCCFA, would reduce problems but does not go sufficiently far enough and does not address concerns about the treatment of interest, fees and charges and the consumer's right to cancel.

Both submissions proposed that pawnbroking be fully excluded from the provisions of the CCCFA. Both submissions suggested that if this was not possible, then pawnbroking should only be subject to the CCCFA's oppression provisions.

Credit fees and charges: Unreasonable fees

Q.6 Do you think the provision of fee guidelines will provide sufficient advice for industry to develop their fee structures? Does there need to be more regulation or prescriptive guidelines for fees; if yes, in what areas?

Generally consumer representatives supported the introduction of guidelines on the basis that fees would presumably be less expensive.

The banking industry signalled a strong reluctance for prescriptive guidelines within the CCCFA. The preference is the Act remain principled and flexible. The Commerce Commission's fee guidelines were welcomed but there was wariness that they will become de facto regulation (the fee guidelines are current in draft form).

Lenders outside the banking industry were more mixed in their responses. On one hand, there were those generally supportive of the Commerce Commission's proposed guidelines and, on the other hand, there were those critical of their use, suggesting guidelines are open to interpretation.

Individuals and groups representing lenders suggested the Commerce Commission's guidelines showed an anti-business bias. It was also suggested that a prescriptive approach to fees would result in some lenders setting fees at the maximum which would not reflect the true cost of the fee to the lender.

It is clear that submitters from across the industry are keenly awaiting the publication of the Commerce Commission's fee guidelines.

Generally there is a preference for the Act to be principle based, with the Commerce Commission's guidelines expected to be useful. However, some submitters would additionally like to see more enforcement in this area from the Commerce Commission as this in itself

would provide more transparency.

Credit fees and charges: Frontloading of fees

Q.7 Should the CCCFA prevent fees for future services from being frontloaded into the start of the credit contract?

Generally consumer representatives supported the prevention of frontloaded fees being a part of a credit contract.

Some of the lending industry commented that more detail is required as certain situations for front loading could be acceptable, including insurance and certain fees.

The banking industry did not support the proposal, citing periodic fees for credit card collections would be an administrative burden and cost.

The wider lending industry indicated an understanding of the proposal and appeared to accept that where a service has not been rendered it should not be charged but where, for example, a lender pays insurance on behalf of a borrower this should be able to be charged for immediately.

Credit fees and charges: Third party fees

Q.8 Is there a need to change the timeframe under section 41 of the CCCFA for applications to annul or reduce a fee?

Consumer representatives supported an increased time frame.

On the other hand, the banking industry did not support an extension citing one year being long enough for a consumer to make a claim. The wider lending industry had a similar view, though a couple of submitters from this group suggested 18-24 months could be considered.

A submission from the motor vehicle industry, whose members can be involved in motor vehicle financing, supported an extension on the basis that enforcement action can relate to non-compliant activity; whereas an industry group which also has members directly involved in motor vehicle financing was against any change to the timeframe.

Q.9 Should the CCCFA be amended to provide that fees or charges may only be passed on by a creditor if from an arm's length third party?

Submitters generally accepted that fees may only be passed on to the borrower if the third party is at arm's length from the lender and that fees that do not meet this test should be subject to the reasonable fee tests of the CCCFA. The Law Society suggested the CCCFA be specifically amended to make this clear. Submitters suggested the definition of arm's length would need to be very clear. Consumer groups that commented on this proposal all expressed their support.

Hardship provisions

Q.10 Do you agree that hardship applications should be able to be made when in default? Is the 2 month timeframe appropriate?

Consumer representatives were unanimous in their support for allowing hardship applications to be made whilst borrowers were in default. This was for the reasons as discussed in the paper. Some suggested 3 months as a minimum.

Conversely, the banks were firmly against the proposal with one submitting that the status quo meant borrowers had an incentive to approach the bank quickly. All banks suggested they will listen to claims post default on their merits. The wider lending industry appears to be split with some submissions supporting the proposals noting they already carry on their business in the fashion proposed. Representatives from the industry and the legal profession appear to support the proposal though some suggest the 2 month period may be too long.

Q.11 Will the proposed changes to the hardship provisions improve the effectiveness of the hardship provisions?

Are the acknowledgement and processing timeframes proposed realistic and appropriate?

Do you think failure of a lender to meet their obligations should result in the Disputes Tribunal being able to make any order it sees fit under the hardship provisions? By what means should an application for hardship be recognised? Should it have to be in a written form – letter or email – or should allowance be made for verbal applications? Should a lender have to provide the reasons for declining a hardship application?

Consumer representatives were generally supportive of the above questions.

Lenders suggested the timeframes could work, though several noted they have their own practices which they consider to be suitable. There was some wariness that these proposals were simply a response to the economic recession.

One industry representative questioned the proposed right to go to a Disputes Tribunal as such an action would fit within section 58. This is not the intention, however, of the proposal. It is intended to coerce quick decisions. A decision made within the proposed timeframes that is not 'fair' would still be subject to scrutiny under section 58.

Submitters would prefer communications regarding hardship between lenders and borrowers are in writing, though this can be difficult and some may prefer verbal communication. Indeed, one lender noted this was the easiest way for them to address hardship circumstances.

Where commented on, it was felt reasons for declining an application should be disclosed to the applicant.

Hardship provisions: Application fees and disclosure

Q.12 Do you agree that hardship application fees should not be permitted?

Should refinancing fees not be permitted when a consumer is in a situation of unforeseen financial hardship?

The submissions generally supported across the board that hardship application fees should not be permitted, though some lenders did not support the proposal, citing hardship applications attract business operating costs. A bank noted that charging fees for hardship was immoral and counterproductive.

With regard to refinancing fees, lenders generally submitted that they should be able to be charged where further credit is extended to the borrower as such transactions attract operating costs. They noted the fees would of course be subject to the reasonableness test of the Act.

Consumer representatives supported the proposals.

Q.13 Do you support the addition of information in the credit contract disclosure about hardship applications?

There was general support for the above proposal though its effectiveness was questioned with the reasoning that if the group intended to be helped by hardship proposals was not aware of them and did not read the disclosure they would not be likely to benefit from the additional disclosure.

One bank suggested this disclosure be voluntary and outside the time of initial disclosure.

Unsolicited credit

Q.14 Do you agree that credit and finance card limit increases should be opt-in only?

Should there be a timeframe from when the credit is first arranged to when the lender can make an approach with a limit increase?

There was a very strong consumer preference that credit and finance card limit increases be opt-in only. Some submitters noted this form of easy access to credit can lead to overburdensome debt. Some noted that the current opt-out model does not work well as many consumers passively accept and use the credit based on the ease of access to it rather than making a proper consideration of their borrowing needs.

The banking industry generally supported that credit and finance card limit increases should be opt-in. Only one of the banks did not support this proposal. The banks commented they generally only offer credit extensions when credit histories have been established or certain timeframes have elapsed.

These submissions were made on the basis that the proposals do not affect the operation of section 15(1)(b) which allows that unarranged overdraft or credit situations are not covered by the scope of the CCCFA.

The wider lending industry and some of their representatives generally supported the proposal, though some submitters did not. There was less support for the setting of timeframes for new approaches offering credit limit increases on the basis that the first opt-in proposal would mean the borrowers would make the decision whether the credit offer suited them or not. This would eliminate the need for a time delay for approaches offering additional credit.

Credit repossession

Q.15 Should there be more specific disclosure of personal property that may be taken as security by a creditor if a debtor is in default in the credit contract? Should the Credit (Repossession) Act provide that personal property cannot be seized unless it has been sufficiently described in the security agreement?

Across the board, consumer representatives and submissions from legal professionals supported the itemisation of security in both the credit contract and the notices required to be given during and after the repossession process.

Banks did not support the proposal. One noted that the requirements round the Personal Property Securities Act (PPSA) should be more greatly emphasised by enforcement activity and that prudent lenders should already be accurately identifying security. Another suggested that the PPSA is sufficient and that it is not necessary to list all present security as this is covered by the PPSA and that any after acquired security has to be specifically appropriated, therefore no change was necessary. Another bank noted that the law in this area can be confusing for consumers and lenders alike and suggested that the review also consider the effect of the PPSA and the Property Law Act 2007.

Finance companies suggested that they understood that 'all present and after acquired property' clauses were not appropriate for use in consumer contracts and some felt the law was sufficient in this area. A couple of submitters did support the need for more specific disclosure. One suggested an alternative to the proposal; that 'essential household property' should not be able to be repossessed.

Other industry representatives were mixed in their response. Some supported more descriptive practices, others felt the law was sufficient.

Credit repossession: Enforcement

Q.16 Does there need to be enforcement of compliance with the Credit (Repossession) Act by an agency such as the Commerce Commission? Is there the right balance between creditor and debtor rights in the Credit (Repossession) Act? Should a creditor be required to seek an order from an independent authority or warranted officer before commencing a repossession? Do there need to be more penalties to ensure compliance with the Credit (Repossession) Act entry onto premises and repossession notice provisions?

There was broad support for appropriate enforcement of the Credit (Repossession) Act. For the lending industry this appeared to be on the basis that the law was satisfactory and the issues were about its operation. For consumer groups, this was seen as a way to deal with the issues that arise during the repossession process.

Lenders expressed views that the balance of rights between lenders and borrowers was sufficient. Consumer representatives felt the law was weighted heavily in favour of the lender. A submission from the legal profession suggested that introducing strong penalties for failing to comply with the Credit (Repossession) Act would improve the balance. This same submission noted the need for a more thorough evaluation of the principles of the Act.

Consumer representatives generally supported a third party deciding if a repossession was able to be carried out. The lending industry was generally against this. The reasoning was that often goods are 'at risk' (e.g. goods may be hidden) and repossession agents need to be able to take quick action to protect the security and felt that a third party would hinder this process.

Fringe lending practices

Q.17 Part 2 of the Discussion Paper has highlighted concerns that have been raised in relation to fringe lending practices and noted various initiatives that are underway, or proposed that should have a deterrent effect on undesirable fringe lending practices. Your views are sought on:

- The regulatory initiatives proposed and whether you think these will help address fringe lending practices; and
- Other suggestions for addressing fringe lending practices.

Responses to this section were generally brief, expressing support for initiatives aimed at fringe lending. Many submitters did not comment on this section.

Lenders noted the problems at the fringe end of the market and supported initiatives to reduce their impact on consumers. Banks made a point to ask that any policy to prevent fringe lending practices should not place impositions on the wider lending community.

One bank and another lender commented that they did not support the introduction of interest rate caps. Of the consumer representatives submissions that expressed their thoughts, most were in support of their introduction or further consideration of their worth. One group suggested that fees should be 'justified' by lenders to allow scrutiny.

Some expressed support for the concept of responsible lending and the introduction of unfair contract terms. Support for the implementation of the Financial Service Providers (Registration and Dispute Resolution) Act was also expressed.

Some lenders noted their support for more comprehensive credit reporting believing it would allow more mainstream lenders to better assess applications for credit. Two credit reporting companies made submissions promoting credit reporting.

Other

One submission recommended entering the CCCFA to cover small business transactions and providing for close alignment with Australian credit law.