

CHiLD POVERTY ACTION GROUP

Child Poverty Action Group
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Ministry of Consumer Affairs
CCCFA@mca.govt.nz

Re: Consumer Policy:

Submission on Credit Law Exposure Draft

Credit Contracts and Consumer Finance Amendment Bill Exposure Draft

Child Poverty Action Group thanks the Minister of Consumer Affairs, the Hon Simon Bridges, for the opportunity to submit on this Exposure Draft of the Credit Contracts and Consumer Finance Amendment Bill.

Child Poverty Action Group (CPAG) comprises a group of academics and workers in the field dedicated to achieving better policies for children. The aims of our organisation are:

- The development and promotion of better policies for children and young people.
- Researching and sharing information and connecting with other groups with similar concerns.
- Elimination of child poverty in Aotearoa New Zealand by 2020.

Along with other children's agencies, we are very concerned about the implications of this Bill on children and young people. We urge you and your advisors to carefully consider the impacts of this legislation on the most vulnerable children in the community, and to act in their best interests.

Contact: Dr M.Claire Dale: m.dale@auckland.ac.nz

CPAG Submits:

CPAG welcomes the responsible lending principles included in this Exposure Draft Bill. High interest loans and other forms of irresponsible lending contribute to family poverty, hardship, and stress, and thus indirectly and directly contribute to child poverty. Poverty, particularly indebtedness, is also a major cause of domestic violence.

To meet the aims of the Bill and provide consumer protection and certainty in credit markets, a cap on total costs of borrowing is needed. The definition of 'costs of borrowing' in section 6 (2) which includes interest, credit fees, administration fees, and any on-charges such as insurance, provides the opportunity to introduce such a cap. It should not be legal to charge 500% interest on a loan.

CPAG submissions in response to the Ministry of Consumer Affairs' 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?

CPAG submits that the responsible lending principles included in this Exposure Draft Bill are welcomed. Our concern is that many clients of third tier lenders have little English, and are in urgent need of the money. If the responsible lending principles are to be more than merely decorative: the information for the borrower, including the total cost of borrowing, needs to be in plain English, in large print at the front of the loan document, and carefully explained by the lender.

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

CPAG submits that Section 9 (2) (g) "not charge unreasonable credit fees" needs to be expanded to read: "not charge unreasonable establishment fees, credit fees, administrative fees or insurance charges".

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?

CPAG submits that a responsible lending code needs to be developed by the Minister of Consumer Affairs in consultation with affected people and with experts including budget advisors and lenders.

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?

CPAG submits that it is appropriate in the first instance for the code to elaborate and provide guidance on the responsible lending principles in the Bill, however, after one year, the code needs to be evaluated in consultation with affected people and with experts including budget advisors and lenders, to determine if it is effective in its current form.

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)?

CPAG submits the new CCCFA purpose clause emphasising consumer protection and the market behaviours stated in new section 3(2)(a) and (b) is a welcome addition, however, for clarity, we suggest section 3(2)(b) should read: "promote, facilitate and enforce fair, efficient, and transparent markets for credit".

6. Should any additional purposes to those in new sections 3(1) and 3(2) be included (or be removed) in order to ensure that the CCCFA is interpreted in a way that meets its objectives?

CPAG submits the 3 (2) (c) "rules about interest charges, fees and payments in relation to consumer credit contracts" are not adequately delivered in the proposed amendments.

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?

CPAG submits that the amended section 22 be revised to enable debtors to apply for the terms of the loan terms to be revisited before they default on a payment. The current system traps the borrower into a 'bad credit' model. It is rare for an individual to be able to predict an 'unforeseen change in circumstances' and make the necessary precautions against default.

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

CPAG submits that the 'cooling off' period for insurance is 30 days, so extending the cooling off period from 3 working days to 5 working days is the minimum necessary time extension.

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?

CPAG submits that making standard terms and total costs of borrowing available at creditors' premises and on their websites will improve transparency and improve competition if the information is provided in the first language of the likely borrower, for example, in Pacific Island languages in South Auckland.

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

CPAG submits that, if the information is provided in the first language of the likely borrower, for example, in Pacific Island languages in South Auckland, then making standard terms and total costs of borrowing available at creditors' premises and on their websites will improve transparency and improve competition.

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?

CPAG submits that section 14 (section 40 amended) provides a welcome protection for the borrower.

CPAG is concerned at the reliance on the Court system to protect the rights of the borrower with regard to unreasonable fees. People borrowing from 'fringe lenders' or '3rd tier lenders' are unlikely to have the funds required to engage the services of a lawyer to represent them in Court.

CPAG submits that such issues and disputes should be heard by the external dispute resolution scheme that the particular creditor is a member of, at no cost to the borrower.

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

CPAG submits that these provisions DO NOT meet the objective of making the law clearer about what an 'unreasonable' fee might be.

CPAG submits that the adjectives 'reasonable' and 'unreasonable' are frequently used throughout the Bill, and result in a loss of transparency.

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

CPAG submits that these provisions leave avenues open to charge a fee which is unreasonable.

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?

CPAG is concerned at the reliance on the Court system to protect the rights of the borrower with regard to unforeseen hardship. People borrowing from 'fringe lenders' or '3rd tier lenders' are unlikely to have the funds required to engage the services of a lawyer to represent them in Court.

b) Are additional changes necessary to protect consumers?

CPAG submits that such issues as unforeseen hardship, if disputed by the creditor, should be heard by the external dispute resolution scheme that the particular creditor is a member of, at no cost to the borrower.

c) Are additional changes necessary to protect lenders from abuse of the provisions?

CPAG submits that the creditor, as much as the borrower, is protected by the external dispute resolution scheme that the particular creditor is a member of.

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?

CPAG submits that section 99 A (2) enables unregistered creditors to operate by including a third party in each of their credit contracts.

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)?

CPAG submits that the amended Guidelines for reopening credit contracts, consumer leases and buy-back transactions will improve the protection of consumers from oppressive or unjust credit contracts.

14. As an alternative, should we follow the approach to the re-opening jurisdiction in the Australian National Consumer Credit Protection Act 2009, and refer to "unjust" credit contracts rather than "oppressive" credit contracts?

CPAG submits that inclusion of 'unjust' credit contracts as well as 'oppressive' credit contracts provides a clearer indication of the intention and purpose of the amendments to the current legislation.

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?

CPAG submits that the key information in Schedule 1 must include, as well as the name and web address of the applicable Dispute Resolution Service, the statement that the dispute resolution service is available at no cost to the consumer.

Transitional Provisions

16. Are all the situations where the new law should have an effect on existing contracts covered in the Bill?

CPAG submits that each of the consumer protections introduced by this Bill, including the Responsible Lending provisions, could apply to all existing contracts.

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?

CPAG submits that the practise of "drag-net" securities over all personal property will be prevented by providing that security for a loan for purchase of assets is limited to such assets, and that security for a loan for purchase of perishables or non-material goods be limited to collateral to the value of the loan excluding interest and other charges.

In addition, CPAG submits that the General Policy Statement enables creditors to breach the lender responsibility principles twice before the Court has the power to ban them. This provision denies the rights and protections of the two borrowers who have suffered the breaches, and sends a clear message to creditors that the ban is unlikely to be applied.

Finally, to meet the aims of the Bill and provide consumer protection and certainty in credit markets, a cap on total costs of borrowing is needed. It should not be legal to charge 500% interest on a loan. The definition of 'costs of borrowing' in section 6 (2) which includes interest, credit fees, administration fees, and any on-charges such as insurance, provides the opportunity to introduce such a cap.