CHILD POVERTY ACTION GROUP

From Child Poverty Action Group

Box 56-150, Mt Eden

Web address: www.cpag.org.nz

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To the Ministry of Consumer Affairs

cccfa@mca.govt.nz

Submission on the Credit Contracts and Consumer Finance Act

Child Poverty Action Group thanks the Ministry of Consumer Affairs for the opportunity to participate in the Financial Summit on 25 September 2009 at Otara Music & Arts Centre; and in this written consultation, on changes to the Credit Contracts and Consumer Finance Act (CCCFA).

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

- Research to support development & promotion of better policies for children and young people.
- Sharing information and connecting with other groups with similar concerns.
- Elimination of child poverty in Aotearoa New Zealand by 2020.

Contact:

Dr M.Claire Dale, claire@powerlink.co.nz

1. General comments:

The 29 fringe lenders on the outskirts of Mangere charge up to 605% interest.

In South Auckland, KiwiSaver salespeople are collecting commissions by going door-to-door.

New Zealand uses a negative credit reporting system, and 29% of New Zealanders have an adverse event on their credit history.

In the last year, although there has been a 23% decrease in credit card use, there has been a 12% increase in default on consumer credit, with a 26% increase in credit defaults in the 26-40 age group; and a 53% increase in credit defaults by SMEs.

There is a relationship between problem gambling and fringe lending.

Greater consumer protection will be provided under the Financial Service Providers Act which will ensure that by late 2010, all lenders must be registered, and must belong to a free-to-consumers dispute resolution scheme.

2. Proposals on "disclosure":

We support the Ministry of Consumer Affairs (MCA) proposal that when accessing credit at the time of purchase, whether or not the purchase is a motor vehicle, furniture, or any other goods, the borrower is to be provided with the disclosure document and information as required by sections 32, 33, 34 and 35 of the CCCFA immediately at the time of sale.

We also support the proposal that insurance disclosure required under section 70(1) must be in accordance with the general disclosure requirements of sections 32, 33 and 35 of the CCCFA.

We support the MCA and community proposal that disclosure is to be presented in a form that is clear and concise. The purchaser needs to be aware of their total liability, including immediate costs, principle sum, interest rate, administration fees, repayment amounts, and insurance.

As the CCCFA section 52(1) enables the borrower to repay their credit contract earlier if such a right is included in the contract, we support the proposal that the lender must disclose the associated administrative costs or "break-fees". The formula for estimating the creditor's loss from early repayment to be on-charged to the borrower, based on the assumption that those funds can be loaned out immediately to a new borrower, is to be included in the disclosure discussion on break-fees.

We also support the MCA proposal that discussion on break-fees is in the form of an alert situated at the end of the disclosure document, and brought specifically to the attention of the borrower.

CPAG supports the consumer proposal that the purchaser has the right to have the disclosure document checked by an advisor or lawyer for reasonableness and fairness before they sign it.

CPAG supports the MCA and community organisations' proposal that requires disclosure of the true cost of credit when only minimum repayments are made eg on credit card loan.

We also join with community organisations in supporting the MCA proposal that the CCCFA is amended so that compliance with the pawn-broking disclosure requirements (the pledge certificate) meets the CCCFA disclosure requirements.

CPAG also proposes that disclosure includes the total $ cost of credit as well as % interest rate.

3. Proposals on "hardship"

Notes: the monetary limits of the Disputes Tribunal have been increased from $7,500 to $15,000. Also, currently, as soon as a borrower is in default, they cannot apply for hardship provisions. After a crisis, it can take time to return to control of ordinary business, and while there is a risk that an 8 or 12 week delay in repayments will worsen the situation, if the borrower accesses competent assistance from a budget advisor, they may regain control of their finances.

Proposals:

CPAG supports the community organisations proposal of a 12 week window after defaulting on payments in which a debtor can apply for hardship provisions.

We also support the MCA and community organisations' proposal that would enforce a 5-day rule for creditors to acknowledge hardship applications; and a 15-day rule for creditors to respond to borrowers' hardship applications. If no decision or response is made, the borrower can go to the Disputes Tribunal.

We support the MCA proposal that credit providers must include hardship information (criteria and application process) in the disclosure documentation.

We support the MCA proposal that fees are not permitted for hardship applications. We also accept that the associated refinancing may incur a small charge.

CPAG supports the community proposal that the MCA introduce a programme for the public education of borrowers (including SMEs) and lenders, on hardship provisions; on the meaning of "unforeseen circumstances"; and on the "oppressive contracts" test.

CPAG also proposes that MCA investigate the "responsible lending" legislation introduced in Australia, and include appropriate sections in the changes to the CCCFA.

4. Proposals on "credit repossession"

We support the MCA proposal that all security must be specifically identified in the credit contract and agreed to by the consumer; and no property can be taken from the borrower by the creditor unless it is specifically identified in the credit contract. Certain items (for example, beds and bedding) may need to be protected from creditors.

We support the MCA proposal that repossessions must be authorised by an independent authority or warranted officer.

We support the MCA proposal that the creditor must exhaust all possibilities of recovering the debt from the debtor prior to pursuing the guarantor.

CPAG also supports the MCA proposal that additional penalties may be required to encourage creditor compliance with the Act.

5. Fees and other issues including fringe lending practices

Issues: Community organisations suggested that access to credit is too easy, particularly in regard to increased credit limits offered and provided by mainstream banks as well as fringe lenders. They also noted that the absence of an interest rate cap in New Zealand means it is legal for lenders to charge in excess of 500% and 600% interest. For those people unable to access mainstream loans for whatever reason, the absence of an interest cap is a key contributor to ongoing poverty. Also, currently, penalty payments are regularly collected by creditors who require fortnightly repayments when the borrower is paid monthly.

Proposals:

CPAG proposes that such offers of increased credit limits require "opting in" for the credit to be available, rather than "opting out".

We support the MCA proposal for legislative change to restrict the frontloading of fees for services that have not yet accrued.

CPAG supports MCA's and community organisations' proposal of legislative change to extend the timeframe for taking action under section 41 of the CCCFA to reduce or annul a fee.

With other community organisations, and the MCA, we support the Commerce Commission's development of guidelines to inform creditors and consumers about their approach to enforcing CCCFA fees provisions.

We support the MCA proposal that clarity and definition be provided for consumers on the necessity for a third party to be at "arms length" from the lender in order for their charges to be passed on to the consumer.

CPAG supports the consumer organisation proposal that CCCFA legislation be changed to require that the creditor provide weekly, fortnightly or monthly options for repayment in order to match borrower's receipt of income to outgoings.

Finally, CPAG proposes that New Zealand follow Australia's example[1] and set a cap on the interest rate chargeable. Australia has set the limit at 48%. Competition among lenders is likely to keep the usual interest rate at current levels, and the cap will protect consumers from the worst cases of usury eg 605% charged by some fringe lenders.

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[1] http://www.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=59156
Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland, The Honourable Kerry Shine. Monday, July 14, 2008: 48% Rate Cap To Be Introduced on July 31st
The Bligh Government's interest rate cap of 48% inclusive of interest, fees and charges will commence at the end of this month, Attorney-General and Minister for Justice Kerry Shine announced today. "Lenders must comply with the new interest cap which will take effect on July 31st," Mr Shine said. "From that date any loans issued in Queensland will be subject to the 48% cap, additionally after 31st July, if the terms of an existing contract change it too will have to comply with the new legislation. "We have introduced this rate cap inclusive of interest, fees and charges to help protect vulnerable consumer who have been subject to some extraordinary interest rates of up to 1600%, particularly from pay day lenders." Mr Shine said the new cap would provide consumers with protection and assist them to get off the credit merry-go-round. ... "It's important to note the rate cap will cover all Queenslanders even if they borrow money from an interstate lender."