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13 November 2009

Ministry of Consumer Affairs
PO Box 1473
Wellington

SUBMISSION: Review of the operation of the Credit Contracts and Consumer Finance Act 2003

Background

The Federation is a collective of community organisations that share a common code of ethics, philosophy, and commitment to delivering quality, free budgeting advice to families/whanau and individuals. The current membership comprises 135 budget services throughout New Zealand that employ over 1200 predominantly volunteer staff and represent more than 29,000 clients annually.

Snapshot

Federation member services provide budget advice from Kaitiaia to Invercargill and, including Great Barrier and Waiheke Islands, provide coverage to most towns and cities in New Zealand. In the year to 30 June 2009, we had 676 certificated budget advisers, 254 service coordinators and staff, 601 other volunteers and 17 Federation tutors. Over that 12 month period, Federation services fielded 288,099 enquiries, worked with 29,510 client families and delivered over 600 education programmes to the community.

It is from this depth of community knowledge and experience in the consumer finance sector that the Federation makes the following submission.

Introduction

Thank you for providing the community with the opportunity of providing feedback on the *Review of the Operation of the Credit Contracts and Consumer Finance Act 2003*.

Submission

Question 1

We completely support this proposal. Our services constantly deal with clients who have purchased second-hand vehicles with little understanding of the contract they've entered into. This is one more option to ensure that consumers have access to *all* pertinent information *before* they complete their purchase.

However, a much more pressing issue that the current regulations in the CCCFA do not provide for is consumer understanding of credit contracts. The Federation firmly believes that the CCCFA should further regulate the disclosure requirements by requiring compulsory 'walkthrough' disclosure before the signing of any credit contract. The Federation believes that all lenders should be required to explain, clause by clause, all of the elements of a credit contract to the consumer before they are able to sign the contract, or advise the consumer to take the contract to an independent person of their own choice to have this done on the lender's behalf.

Yes, this will add some time to a transaction but if consumers do not understand the contracts they are signing then no matter how broad the written requirements of disclosure are under the CCCFA the legislation will fail to protect consumers. If the

retailer and the lender are different companies then the onus must fall to the retailer to explain the contract to consumers. However, both the lender *and* the retailer should be held to account under the CCCFA if adequate verbal disclosure is not provided to the consumer.

Question 2

The Federation is strongly in support of this proposal. Our services see numerous contracts where unnecessary and, in some cases, entirely redundant insurance (income cover for beneficiaries) is incorporated into credit contracts. This further disclosure requirement will go some way to ensuring consumers are aware of the conditions of the included insurance.

However, our support comes with the proviso that adequate disclosure of the insurance part of the contract is made via a verbal 'walkthrough' so that the consumer understands the wording of the disclosure.

Further, the Federation believes that a distinction should be made in credit contracts as to whether the insurance is compulsory and a requirement of the lending or is an optional extra to the contract itself. Again, this should be provided for under the CCCFA. There have clearly been cases where retailers have profited from commissions by including unnecessary insurance in their credit contracts. Many of our clients are often unaware that they have even been provided insurance under their contracts let alone aware that they were not necessarily required to purchase it.

Question 3

Budget service clients do not usually have mortgages and very few are in a position to prepay their debts (unless a loan consolidation is organised). Therefore, the Federation has not seen this as a big issue for its clients. We certainly do agree that break fee formulas should be made easier to understand than they currently are. However, we also believe that too much information at the time of signing a contract, as in the matrix option, may create information overload for the consumer. Again, verbal 'walkthrough' disclosure may help to mitigate this.

Question 4

The Federation supports this proposal. We also believe that the community sector is well-placed to increase the awareness of this issue as well. It would be more useful if consumers were educated about this issue *before* they sign up to a credit card. We would certainly be interested in hearing from MCA or the Commerce Commission if they were interested in supporting us to provide this sort of campaign to the communities that we work with.

Question 5

The Federation notes that there is currently an option in the *Credit Reforms (Responsible Lending) Bill* to allow pawn brokers to include fees in their contracts and provide for a maximum percentage interest rate. The Federation has concerns about this option as well.

A third option for consideration is removing the SDPA from the requirements under the CCCFA, acknowledging that that the two types of contract are not readily aligned. Then allowing MCA to have policy oversight for the SDPA in a similar way that they have oversight of the Layby Sales Act. This would remove considerable confusion around disclosure requirements and enable MCA to monitor the legislation and ensure consumer protection is being upheld.

Question 6

The Federation strongly supports the fee guidelines being prepared by the Commerce Commission. These will certainly help provide advice for industry on the acceptable structure for their fees.

The Federation is much more concerned about the lack of understanding by consumers about fees than the actual fees themselves. The general impetus of the CCCFA is that lenders must be able to justify their fees. Unfortunately, comparatively high fees are being justified by lenders. Therefore, there is little point in Federation advisers arguing against these fees on behalf of their clients. We would prefer to see the CCCFA provide for client understanding of the fees in their contracts and when and how they might be implemented. Even well written fee structures have not been understood or, in some cases, been explained well enough for many of our clients who are often shocked when their budget adviser explains what they have signed up to. This is a failure of the CCCFA in our opinion.

Question 7

The Federation entirely supports this proposal. Frontloading of fees should be made illegal at the earliest opportunity.

The very practice of using immobilisation devices in vehicles suggests that some lenders have no interest in lending responsibly to consumers. Instead of requiring the borrower to be in a sounder financial situation before they obtain credit these lenders are washing their hands of any form of responsibility and forcing the consumer to pay a massive premium for a service that is extraordinarily undignified.

These lenders would argue that these types of fee and service structures provide 'competition' and 'flexibility' in the market; we call these lenders loan sharks and hope MCA see that irresponsible lending of this nature is affecting consumers detrimentally and the CCCFA does not currently remedy this.

Question 8

The Federation certainly considers that there is a need to increase the timeframe as proposed. We would suggest that time limits under the Limitation Act could be appropriate or, at the very least, a time limit of up to 5 years be implemented.

Question 9

The Federation supports this proposal. There have been a number of situations (although these were limited to the South Auckland second-hand car market) where the retailer, the lender and the insurance company were all inter-related parties and the consumer appeared to have little choice but to have the associated charges included in their contracts.

Question 10

In our opinion the 'not in default' criteria for the hardship provisions precludes many people from qualifying to apply. Another issue is that there are no industry standard guidelines for how to invoke the provisions. The Federation, in consultation with MCA, has produced a letter template for budget advisers to use to invoke the provisions. However, some companies in the finance industry appear unaware of the provisions or how to implement them. This may be a case of the provisions being used so infrequently that no standards have been developed.

The current credit crisis and associated recession has shown that the provisions have *not* provided the consumer protection they were meant to provide. The Federation believes that being in default by up to two months *from when a borrower is first notified that they are in default* is a positive option for the CCCFA. Further, the Federation believes that the lender should provide the consumer with an outline their right to invoke the hardship provisions and how to do so when they first make contact about a default.

The Federation also believes that more industry and community training needs to be developed to ensure the provisions are utilised when appropriate.

Question 11

The proposed changes to the hardship provision applications should go some way to enabling the provisions to be used more effectively; the Federation strongly supports this proposal.

The Federation believes the timeframes are more than adequate for hardship applications to be processed. We believe it would be appropriate for consumers to have the Disputes Tribunal decide on their hardship application in the event the lender fails to acknowledge an application. However, in practice the Federation also notes that this option is unlikely to be used by the majority of consumers unless the process and procedure is outlined in the disclosure document and explained verbally to the consumer *before* they sign the contract.

A follow up letter or email for documentation purposes should be necessary. However, the Federation would like the allowance of verbal applications in the first instance to be legislated for. This would allow our budget advisers to invoke the provisions over the phone on behalf of their clients and the 20 working days requirement under this proposal would begin from this point. The initial verbal application could then be followed up more formally on request by the lender (if they require it). Again, as noted above applications made in writing when no standard guidelines have been produced is a barrier to applications being made.

Question 12

The Federation strongly supports that application fees should not be permitted for hardship applications. It is in the lender's best interest to allow the consumer to change the conditions of their contract until they are in a better financial position to resume it. Allowing fees to be added at this point in the consumer's credit crisis cycle would not be in keeping with the purpose of the Act to, "protect the interests of consumers."

Question 13

The Federation strongly supports this proposal as the most useful mechanism for ensuring that hardship provisions are better utilised under the CCCFA. The Federation also hopes that MCA goes further than this providing for written disclosure of the provisions, verbal 'walk-through' disclosure of the provisions and industry and community awareness of the provisions.

Question 14

The proposal to provide 'opt-in' only credit increases is an inspired proposal and will certainly help to mitigate irresponsible use of credit by some consumers. The 'opt-in' option should not only have a required timeframe but should also include an active form completion by the consumer. This will ensure that any changes in the consumer's financial position are brought to light *before* they are able to access further lines of credit.

Oppressive Contracts

The Federation is astonished that MCA would suggest the, "oppression provisions in the CCCFA are functioning as intended", and would enquire as to what the intention of the provisions was. MCA openly admits that terms such as security over all current and future borrower's assets, publishing of loan defaulters in local papers and taking of essential household items would not meet the oppression test. These were exactly the sorts of terms and practices that the Federation had hoped the CCCFA would abolish.

Further, MCA admits that there is little precedent for the test and no published cases from the Tribunal. "Consideration is being given to including in the Fair Trading Act 1986 a prohibition on unfair contract terms" appears as an admission from MCA that the practices we are seeing are unfair to consumers and that there is no protection for them under the CCCFA. The Federation would ask as to why another piece of

legislation would even be considered to legislate for this protection? The Federation proposes the CCCFA be changed as follows:

That Part 3, clause (g) be changed to:

(g) to prevent—

- (i) oppressive *or unfair* credit contracts, consumer leases, and buy-back transactions of land; and
- (ii) oppressive *or unfair* conduct by creditors under credit contracts, lessors under consumer leases, and transferees under buy-back transactions of land.

That Part 5, clause (e) be changed to:

(e) [Part 5](#) contains provisions relating to the reopening of oppressive *and unfair* credit contracts, consumer leases, and buy-back transactions of land:

That Part 5, clause 118 be changed to:

118 Meaning of oppressive

In this Act, **oppressive** means oppressive, *unfair*, harsh, unjustly burdensome, unconscionable, or in breach of reasonable standards of commercial practice.

Question 15

The Federation is strongly in support of both of these proposals. However, Federation budget advisers have seen numerous contracts where the security is listed in some detail but the number of assets listed and the inclusion of future assets is unfair, unjust, burdensome and, we would argue, oppressive. This proposal would only be effective if the 'unfair' contract terms are specifically included in the CCCFA.

Question 16

The Federation believes the Commerce Commission is well placed to take on an enforcement role under the Credit (Repossession) Act. Although an independent authority to order repossessions is a good idea, there will inevitably be costs associated with this that the consumer is unlikely to be in a position to cover, which is a concern. As the Federation has not specifically consulted on the impact of this Act on the community we would suggest that a further round of consultation be undertaken before changes are made.

Question 16

The Federation applauds MCA for all of the proposals being made and initiatives being implement to ensure that consumer finance regulations "protect the interests of consumers." The Federation notes a few areas that could be focused on to make the CCCFA much more robust in this regard.

Responsible Lending

Our further suggestion for addressing fringe lending practices is to consider the provisions outlined in the *Credit Reforms (Responsible Lending) Bill*. The purpose of this Bill is to, "require lenders to act responsibly when lending to unwary consumers and to prevent excessive rates of interest from being charged." The Federation finds it lamentable that this Bill was not even mentioned in its review discussion document and considers it a cop-out to 'monitor' what happens in Australia. While MCA monitors the changes in Australia, borrowers here in New Zealand will continue to pay 2000% interest rates (Chauvel, [online], 2009). Third-tier lenders, pay-day lenders and other 'loan sharks' appear to exist purely to prey on the some of the most vulnerable people in our society. The Federation proposes the following:

That the CCCFA provides for justification of the interest rate charged by lenders in relation to current market interest rates. This would be similar to the regulations around charging fees and would allow lenders to add margins for risk but would also allow community advocates to assess whether or not consumers are being overcharged. We also propose the following change to the CCCFA:

118 Meaning of oppressive

In this Act, **oppressive** means oppressive, *unfair*, harsh, unjustly burdensome, unconscionable, or in breach of reasonable standards of commercial practice, *and includes extending credit to a debtor without a reasonably held belief on the part of the creditor that the debtor is able to repay the amounts that will fall due under the terms of the credit contract.*

Call to Action

The New Zealand Federation of Family Budgeting Services Inc thanks MCA for offering it the opportunity to make this submission on the *Review of the Operation of the Credit Contracts and Consumer Finance Act 2003*. The Federation strongly endorses the proposals being made by MCA but also expects MCA to recognise the current flaws in the legislation and the negative impact this is having on the community. Our CEO, Raewyn Fox, is available to make a further verbal submission if this is required by MCA.

Yours sincerely

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