

13 June 2019

Committee Secretariat
Finance and Expenditure Committee
Parliament Buildings
Wellington

By email: fe@parliament.govt.nz

Submission on Credit Contracts Legislation Amendment Bill

1. Introduction

Thank you for the opportunity to make a submission on the Credit Contracts Legislation Amendment 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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We wish to speak to our submission.

2. General comments

Consumer NZ welcomes the introduction of the Credit Contracts Legislation Amendment Bill. The current legislative framework is not providing adequate consumer protection and we therefore support proposals to improve credit law.

While we support the bill, we are concerned the amendments will not be sufficient to substantively address the problems caused by the high-cost credit products sold to vulnerable consumers.

If the changes proceed as drafted, the bill must include a requirement for review of the amendments to assess whether they are achieving their intended effect. This review should occur no later than two years from the implementation date.

3. Comments on specific clauses

3.1 Clause 10

We strongly support proposed amendments to the lender responsibility principles, strengthening requirements related to credit advertising and lenders' obligations to make reasonable inquiries about the suitability of credit.

Existing provisions in the act and guidance provided in the responsible lending code have proved inadequate to ensure credit advertising is responsible. The market continues to advertise credit as easy to get and suitable for non-essential spending.

This is not only a problem in the payday lending market. Evidence of the impacts of unsuitable credit products being promoted to consumers can be seen in credit card debt statistics. Reserve Bank figures show total interest-bearing debt on personal credit cards stands at more than \$4 billion.

3.2 Clause 11

We support proposed amendments requiring lenders to keep records about the inquiries they have made to assess whether credit is suitable for the consumer.

3.3 Clause 13

We support proposed amendments allowing regulations to be made declaring certain types of credit arrangements to be consumer credit contracts. We are particularly concerned about the impact of buy now, pay later schemes and consider these arrangements should be declared consumer credit contracts.

3.4 Clause 14

We support proposed amendments requiring disclosure to be made in the language in which a credit product is advertised.

3.5 Clause 21

We support proposed amendments requiring lenders to keep records about how they calculate reasonable credit and default fees, and to make these records available on request to the Commerce Commission and dispute schemes.

We consider this information should also be available on request to the consumer where there are grounds to question the basis for credit charges. Consumers should have the right to access this information to help gauge whether fees are reasonable.

3.6 Clause 22

While we support measures to regulate high-cost, short-term credit, we are concerned the proposed amendments in clause 22 will be insufficient to address problems occurring in the market.

The bill proposes limiting the accumulation of interest and fees to 100 percent of the loan advance. This will only apply to credit contracts with an annual interest rate of 50 percent or more. We acknowledge these changes improve existing rules but do not consider they will provide adequate consumer protection.

Data from the UK, where a similar limit is used in conjunction with a 0.8 percent per day interest rate cap, indicates the average annual percentage rate for high-cost, short-term loans is about 1250 percent.¹ While this is lower than rates before the cap was put in place, it constitutes a significant cost of borrowing.

The proposed amendments in clause 22 also mean lenders will continue to be able to offer short-term credit on interest rates of up to 49.99 percent plus fees. For vulnerable consumers taking out these loans, debt problems associated with this type of credit will continue.

¹ See <https://www.fca.org.uk/data/consumer-credit-high-cost-short-term-credit-lending-data-jan-2019>. Data from the UK's Financial Conduct Authority also show 67 percent of payday loan borrowers and 49 percent of short-term instalment borrowers remain over-indebted compared with 15 percent of UK adults.

Further, we are concerned the changes will not prevent the *de facto* high-cost lending used by mobile traders. Rather than charge interest, these traders may instead significantly inflate the prices of goods they sell.

The total cost of purchases from mobile traders can be many times more than what the goods would cost in a retail store. Our 2015 investigation found prices for common consumer goods ranging from \$23.99 for biscuits to \$49.99 for rubbish bags.²

The main argument advanced against additional restrictions on high-cost, short-term lending has been that it will reduce access to credit for consumers who are unable to get loans from mainstream lenders.

However, no analysis has been provided to support this argument. Experience in other countries shows restricting high-cost credit has not negatively affected consumers. For example, research published in 2012 by the US-based Pew Charitable Trusts concluded:

In states that enact strong legal protections, the result is a large net decrease in payday loan usage; borrowers are not driven to seek payday loans online or from other sources ... Restrictive states either do not permit payday lending or have price caps low enough to eliminate payday lending in the state. This rate cap often is 36 percent APR.³

We recommend the committee consider additional measures to ensure legislation achieves the intended outcomes.

For instance, Australia has set a limit on the amount of a borrower's income that can go toward high cost loans if the borrower's predominant source of income is beneficiary payments.⁴

The cap is currently set at 20 percent. However, a 2015 review recommended reducing it to 10 percent. The cap has had a significant impact on reducing harm from high cost lending in Australia.

If the committee decides against further restrictions, at a minimum the bill should include a review date so the effectiveness of changes can be assessed. This review should occur no later than two years after the provisions come into force.

To facilitate market monitoring, we also consider high-cost, short-term lenders should be required to report to the Commerce Commission on their lending. Data should include loan volumes, interest rates and fees.

Without access to this data, it will be difficult for the regulator to monitor the market and assess the effectiveness of the amendments. Similar reporting requirements exist in the UK.⁵

3.7 Clause 23

We support proposed amendments requiring directors and senior managers to exercise due diligence to ensure compliance with the act.

² See <https://www.consumer.org.nz/articles/truck-shops>

³ See

http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf, pp19-20.

⁴ See <https://www.moneysmart.gov.au/borrowing-and-credit/payday-loans>

⁵ See <https://www.fca.org.uk/firms/regulatory-reporting/consumer-credit-reporting>

3.8 Clause 36

We support proposed amendments allowing civil pecuniary penalties. However, we consider the amount should be increased.

The courts should also have the ability to award penalties that reflect the income gained by the lender as a result of a breach. In many cases, this is likely to be higher than the \$600,000 maximum proposed in new subsection 107A(3).

3.9 Clause 41

We support new certification and "fit and proper" person requirements for creditors, mobile traders, and their controlling owners, directors and senior managers.

3.10 Clause 42

We support proposed amendments requiring debt collectors to make disclosure to debtors of key loan information before debt collection starts.

3.11 Clauses 49 to 57

We support proposed amendments to the Financial Service Providers (Registration and Dispute Resolution) Act 2008 requiring mobile traders to be registered on the Financial Services Providers Register and be members of a dispute scheme.

However, we consider the effectiveness of disputes schemes will continue to be constrained by the fact they are not required to publish their decisions or name companies that are the subject of substantiated complaints.

We consider this is one of the key reasons awareness of the disputes schemes is low. If public awareness remains low, the role the schemes are able to play in providing consumers with redress will be significantly limited.

We recommend the committee consider additional amendments to the Financial Service Providers (Registration and Dispute Resolution) Act requiring dispute schemes to publicly report on complaints data and publish their decisions.

We consider this would help to raise public awareness of the schemes and also provide an incentive for companies to improve compliance.

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

Yours sincerely



Sue Chetwin
Chief Executive