



financial
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21st May 2009

Manager
Consumer Credit Unit
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: consumercredit@treasury.gov.au.

Dear Sir/Madam,

RE: Draft National Consumer Credit Reform Legislation

I make this submission on behalf of the Financial Counsellors' Association of Queensland (FCAQ).

FCAQ is the peak body for the Financial Counselling sector in Queensland. The association has 55 members located from Cairns to the Gold Coast and west to Darling Downs.

Our membership's client base (depending on funding agreements) ranges from wage/salary earners, gamblers, and Centrelink recipients; self funded retirees, small business owners and primary producers. Financial Counsellors provide support to individuals or families experiencing financial difficulties. Support is tailored to each client and includes advocacy, budgeting, education, and empowerment. Referrals are made where necessary and appropriate to other services to further improve the situation of the client.

This submission is allowed to be put in the public domain.

FCAQ welcomes the intent of the draft National Credit Reform legislation and makes comment on the following aspects of the draft legislation.

Regulation 6.1 – Persons exempted from requiring a licence
(National Consumer Credit Protection Regulations 2009 p.16)

We welcome the recognition of the work Financial Counsellors do in the area of credit and agree with the exemption for a Financial Counselling Agency.

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This will allow Financial Counsellors to continue to help those who are facing financial difficulty by providing options and advocacy for the vulnerable.

Part 5 Exemptions-5.1 Persons exempt from being registered

(National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2009 pp. 9, 10, 11)

We endorse the circumstances listed for a person to be exempted as a Financial Counsellor. The exemptions listed demonstrate the difference between Financial Counsellors and a credit provider's hardship team and debt collection agents.

Division 5—Obligations of licensees-General conduct obligations of licensees Section ^LIC170

(National Consumer Credit Protection Bill 2009 No. , 2009 p. 42)

We welcome the concept that all credit providers, as part of their obligation to hold a licence, include an ASIC approved internal dispute resolution (IDR) procedure that covers all disputes in relation to credit activities, and are a member of an approved external dispute resolution (EDR) scheme.

We ask that minimum requirements for an IDR be included in the legislation. This will ensure that all parties, credit providers and ASIC are aware of the minimum requirements.

Hardship policies should be included in the legislation with an annual compliance check by ASIC to ensure adherence and transparency. We ask that the following be part of all hardship policies.

- Where a client requests hardship consideration, they should have the option of negotiating in writing, rather than by phone. The advantage of this to the client is that there is a written record of the process, and they can consider matters at their pace, and discuss with others. Some lenders have insisted that they will only negotiate hardship by phone. This can put some clients at a distinct disadvantage. They receive an unexpected phone call, and are pressured to make an instant decision about their repayment capacity. Many stressed clients lack the confidence, or language, cultural, technical, or conceptual skills, to effectively negotiate by phone.
- Any financial hardship arrangements should be automatically confirmed in writing by the lender within five working days.
- Hardship policy is given to the consumer before the credit contract starts, to allow the consumer to ascertain what may or may not happen if they should face hardship during the term of the contract.

We also ask that ASIC be required under the legislation to regularly test for compliance. Although the proposed legislation is potentially better than what is in place at present, we ask who will ensure that the intent and thrust of the legislation are maintained. Therefore we propose some guidelines for ASIC to ensure compliance by:

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- A number of test phone calls per month, to check that credit providers respond appropriately to consumer requests.
- Regular updating of hardship phone numbers (Financial Counsellors find that credit providers change their contact numbers on a regular basis without informing anyone).
- Whether credit cards are cancelled willingly, without argument.
- Whether lenders respond in writing when requested.
- Time taken to respond to hardship requests.
- Time taken to resolve issues taken to IDR.
- Number of issues taken to EDR.
- Ensuring the consumer has been contacted about their account being sold or assigned.

Division 2—Credit guide of debt collectors ^R430 *Credit guide of debt collectors*
(National Consumer Credit Protection Bill 2009 No. , 2009 p. 120)

Our members deal with Debt Collectors on a daily basis and find it hard to deal with companies or representatives of companies who refuse to negotiate and use intimidating collection methods such as calling people at night or suggesting that someone will come and take their kitchen table or bed as part payment for an unsecured debt.

The requirement for Debt Collectors to be part of an EDR scheme is welcomed. However we ask that there also be a requirement for Debt Collectors to have an ASIC approved IDR scheme. At times the debt collector’s representative dealing with a Financial Counsellor does not understand or will not acknowledge the client’s rights under the Uniform Credit Code. By having an IDR a Financial Counsellor would be able to speak with another representative of the company about the unprofessional service and attitude of the first representative.

Further we ask that where a debt is assigned to a debt collector, the consumer be informed in writing by both the lender and the debt collector. Quite often the clients seen by Financial Counsellors are unaware of the debt being sold or handed over to a debt collector. Usually they only become aware of a “new owner” once the debt collector starts pursuing the debt. Few debt collectors will provide proof of ownership of the debt when asked to do so.

We also ask that a debt cannot be transferred or sold or assigned to a debt collector whilst the account is under hardship or the application for hardship is being processed, or the hardship agreement has not expired. Financial Counsellors find the conduct of large foreign banks unconscionable in this area as the bank urges its customer to seek the help of a Financial Counsellor but as soon as the Financial Counsellor makes contact with the bank, the account is transferred or sold to a debt collector who has no knowledge of their owning the debt. Instead of taking two or three weeks to resolve the issue it can take up to three months from the initial visit from the client until a Financial Counsellor can actually talk to the debt collector.

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Further we ask that if a third party such as a Financial Counsellor makes contact with a credit provider and asks the credit provider not to have contact with the Financial Counsellor's client, that credit provider be penalised under the legislation if they do so. The story that follows is a recent example of the need for this.

A Financial Counsellor had a vulnerable client who was at risk of self-harm. They wrote a hardship application to the (major bank) lender, attached a medical report, and requested that all future correspondence be in writing with the Financial Counsellor. The lender then wrote a letter to the client, signed by the Collections and Fraud department, that demanded the client phone them immediately. When the counsellor phoned them, the bank said the letter was automatically generated by their computer section, and they didn't mean to upset the client. If the distressed client had committed suicide or suffered significant harm, who would have taken responsibility - the computer?

Financial Counsellors' ability to advocate for their clients is continually frustrated by the poor debt collection practices of credit providers, their agents, and debt collectors. Rarely do debt collectors confirm anything in writing; they choose to phone and use intimidating practices because there is no written record.

Recently some in our membership have seen clients who have had their houses sold by debt collectors for debts of around two and three thousand dollars. Some of these clients were able, with the intervention of a Financial Counsellor, to stop their houses being sold, while others lost their house.

In the draft legislation we note that there does not appear to be any penalty for a debt collector to be penalised for not notifying a consumer before a secured asset such as a house is sold without a consumer's knowledge.

FCAQ asks that there be a penalty for no notification; that resumption of the property becomes void if people are not notified within a certain period; and that sale of a property under resumption be subject to mediation to allow the consumer time to address the issue. This will ensure the events of recent weeks of houses being sold for a credit card debt of a few thousand dollars without the knowledge of the home owner will be unlikely to happen into the future.

Credit hawking - [Schedule 1, Part 9, section 146]
(National Consumer Credit Protection Bill 2009 No. , 2009 p.260)

FCAQ welcomes the intent of the credit hawking measures regarding door to door canvassing of credit. However we ask that paragraph (2) is changed. We ask that any person offering goods and services for sale and then offering to provide or arrange the provision of credit to finance the purchase of the goods or services, be deemed to have called to induce a person to apply for or obtain credit.

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A number of our membership work with migrants and regularly see people with limited or no English skills signing up for goods and services they cannot afford. It takes considerable time and effort to have these contracts overturned. An offer of credit is an offer of credit no matter what the circumstance.

R165 When credit contract must be assessed as unsuitable

(National Consumer Credit Protection Bill 2009 No. , 2009 p. 97)

We welcome the obligation of the credit provider to assess the consumer's capacity for an increase of credit.

Financial Counsellors constantly see the effects of poor credit assessment by credit providers; it appears the marketing arms of credit providers are only interested in growing market share and increasing risk.

A familiar story seen by our members is someone who had a job, became ill, and went onto the Disability Support Pension. As this person has been paying the minimum monthly payments they are sent an offer to have their credit limit raised without any assessment of capacity to pay being made. The writer has seen a credit card limit of \$5000 on one card go to \$44000 on two cards in the space of four years. At no time did the client have to apply; he was just asked to accept. This account was with one of the big four Australian banks.

7 Provision of credit to which this Code does not apply

(National Consumer Credit Protection Bill 2009 No. , 2009 p. 145)

Short Term Credit

When consumers are under financial pressure they will sometimes turn to a payday lender to borrow money at a huge interest rate or fee, or both. FCAQ is disappointed that the proposed legislation does not address the matter of payday lending and the exorbitant fees and interest charged by payday lenders.

Therefore we ask that the period of days for a short term loan be reduced from 62 days to 32 days. This will allow those who want to use this source of lending to do so, but will make it harder for consumers to be charged high interest and/or fees for a longer term debt.

15 Matters that must be in contract document

(National Consumer Credit Protection Bill 2009 No. , 2009 p. 156)

The contracts seen by our membership are often hard to read due to the small fonts being used and also lack contact details of how and where a consumer can seek further information regarding their contract/account, especially in the areas of hardship and disputes.

Further to the requirements listed we ask that the following be added:

- Contact details of internal dispute resolution.
- Procedure of internal dispute resolution.
- Contact details of external dispute resolution scheme.
- Minimum font size of all writing in contract to be 12 font.

59 Requirements for print or type (QR 39)

(National Consumer Credit Protection (National Credit Code) Regulations 2009 2009, p. 41)

We ask that the specified font be raised from the specified 10 font to 12 font.

FCAQ is not in favour of making it harder for credit providers to do business, but we firmly believe that it is in the public good to ensure that the disadvantaged in our community are protected and that consumer protection laws are uniform throughout Australia both at a state and national level.

On a daily basis Financial Counsellors see the effects of poor process and procedure by some credit providers.

In our opinion, consumers would be better served if businesses were made accountable for allowing or engaging in poor business practice.

Yours sincerely,

David Lawson
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