



**Credit Union**  
Industry Association

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Ms Pamella Criddle  
National Project Officer  
Uniform Consumer Credit Code Management Committee  
Department of Consumer and Employment Protection  
Locked Bag 14  
Cloisters Square WA 6850

Per email: [credit@docep.wa.gov.au](mailto:credit@docep.wa.gov.au)

Dear Ms Criddle,

### **Pre-Contractual Disclosure and the UCCC Consultation Package**

Credit Union Industry Association (CUIA) – formally CUSCAL Industry Association – appreciates this opportunity to respond to the *Ministerial Council on Consumer Affairs' (MCCA) December 2005 Pre-Contractual Disclosure and the Uniform Consumer Credit Code Consultation Package*. CUIA also thanks you for accepting this submission after your initial due date.

In principle, CUIA supports the objective of streamlining the contractual pre-disclosure process as currently regulated by s.14 of the UCCC. However, credit unions are concerned these proposals may merely produce yet another piece of throwaway documentation or duplicate information for consumers.

CUIA is the peak industry body for the majority of Australia's 151 credit unions. Collectively, Australia's credit unions have \$32 billion in assets and service over 3.5 million members. Credit unions are regulated by ASIC and subject to a broad disclosure regime as AFS licensees. Credit unions are also regulated by APRA and AUSTRAC and covered by privacy, trade practices, taxation and other laws in addition to their coverage under the Uniform Consumer Credit Code (UCCC).

CUIA understands that the *Pre-Contractual Disclosure and the Uniform Consumer Credit Code Consultation Package* seeks to enliven Recommendation 1.1 of the 1999 UCCC *Post Implementation Review (PIR)*, which stated:

*"Amend Regulation 13 to provide a simplified 'Schumer Box' format containing essential financial information. Other essential information would be provided outside the 'box' and would prominently indicate that other important information was contained in the contract document."*

Credit unions have always been supportive of pre-contractual disclosure and efforts to improve and simplify disclosure obligations for consumers balanced against streamlined compliance requirements for business.

CUIA has a number of misgivings about the capacity of these proposals to deliver on either of these objectives. In particular, CUIA is concerned about:

- the proposals being based on out-dated recommendations of the 1999 PIR;
- the proposals not being subject to normal testing and assessment prior to or post their implementation;
- the definitions failing to provide sufficient precision;
- the ability to practically achieve a separation of the proposed pre-contractual statement from the contract; and

- the likely additional costs to industry in respect of changes to core banking systems as well as staff training and policy and procedural changes.

CUIA is also concerned that alternative options have not been considered; instead regulatory reforms are being promoted as the first and only response.

### **1. *The proposals being based on out-dated recommendations of the 1999 PIR***

CUIA understands these proposals seek to reflect the policy intentions of the 1999 PIR and subsequent *National Competition Policy* (NCP) review of the UCCC. These reviews outlined the following objectives:

- that disclosure requirements provide useful information to consumers when making choices between credit products and providers; and
- that the disclosure information is presented simply, while still complying with the requirements of the UCCC.

In our response to the NCP review, CUIA noted that the proposed streamlined disclosure (per Recommendation 1.1 of the 1999 PIR) in the form of a Schumer Box to precede the contract documentation could benefit consumers by providing a single location for relevant information about the credit being obtained. However, CUIA was concerned the proposals could also add compliance costs for the production of pre-contractual materials without necessarily leading to an overall reduction in the amount of material disclosed to the consumer. Far from streamlining this would be an expansion of contractual information.

It should also be remembered that the 1999 PIR recognised, at paragraph 4.6.2, that technology leads to improvements in consumer access to financial information. Much has happened in the past 7 years, particularly in terms of the way in which consumers investigate competing credit products and services as well as the degree and quantity of information they have access to. Equity issues have also declined, though they remain present, in terms of access to online services with the ABS<sup>1</sup> reporting in 2004-05 that 67% of Australian households had access to a home computer and 56% had home Internet access.

Without the benefit of more recent analysis it is difficult at best and impossible at worst to identify the market failure. There is no empirical or anecdotal evidence that consumers are anything less than satisfied with the level of information they receive in current pre-contractual disclosure? In this environment, the timeliness and accuracy of pre-contractual disclosure needs to be considered very carefully before setting prescriptive obligations on credit providers in relation to the materials made available to consumers.

### **2. *The proposals not being subject to normal testing and assessment prior to or post their implementation***

In response to the 1999 PIR, CUIA called for further consultation before the recommendations were progressed to ensure they were practical and useful for consumers. Accordingly, CUIA is extremely disappointed that these latest proposals will not seek to be tested nor will there be a RIS or other post-implementation review to assess the practical affect and costs of these changes. In that context, it is of particular concern that legislative drafting will be the next step in this process, even though these proposals are merely issued for discussion purposes.

CUIA points to recent experience in relation to the mandatory comparison rate (MCR) regime. The MCR regime was introduced in 2003 to *“assist consumers to identify the true cost of credit offered by credit providers”* and was expected to enable consumers to understand the impact of the cost of credit and to make comparisons between credit products and providers. However, despite a defined sunset period, within which the regime was assessed in practice, this regime has failed to demonstrate any actual benefits for consumers to outweigh the direct costs to industry.

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<sup>1</sup> ABS, '8146.0 - Household Use of Information Technology, Australia, 2004-05', latest issue released 15/12/2005, located at: <http://www.abs.gov.au/Ausstats/abs@.nsf/0/ACC2D18CC958BC7BCA2568A9001393AE?Open>

The recent *Preliminary Regulatory Impact Statement*<sup>2</sup> (P-RIS) on the MCR regime recognised that the cost to industry has been considerable and the benefits to consumers remain merely theoretical. This rigorous RIS assessment of the MCR did not occur in 2003 but was undertaken during the sunset period. Arguably, this assessment should have been undertaken prior to the commencement of the MCR regime, although the inability to measure consumer detriment ante-commencement explains the approach taken. Nevertheless, the important message is that the MCR was subject to a RIS as part of an active process to determine whether it was effective.

CUIA believes the disclosure needs of consumers may vary significantly and the concerns addressed in the 1999 PIR may differ greatly 7 years on. Accordingly, CUIA believes that the statement: “*there are no plans to test the new scheme by simulation or survey prior to its implementation*” is both unsatisfactory and inconsistent with good policy development.

CUIA notes that the 1999 PIR said that it is important to be clear on what expectations can realistically be attached to a pre-contractual disclosure document. Where it should be a tool for comparative purposes or whether it should provide a snapshot of the cost of the credit to assist the consumer to assess affordability. Additionally, whichever the focus, the 1999 PIR pointed to the timeliness of the pre-contractual disclosure and the contemporary research about how and when consumers decide to purchase particular products or lenders.

Without adequate assessment of these issues, the burden of shaping and settling these proposals will fall to industry, and yet industry will have no ability to track and assess the costs of these changes. Equally, there will be no ability to assess the direct benefits to consumers. The result would be the creation of further regulation and compliance burdens and costs for industry in the absence of any measure as to their worth, effectiveness, efficiency or success.

Determining the merit of these proposals may be impossible without subjecting them to a rigorous assessment process. The passage of time since 1999 suggests further assessment is required before determining what information consumers can and cannot access or understand. Arguably, the addition of a separate *Financial summary table* and *Summary of other information* will merely add to the existing raft of information given to consumers, this is an expansion rather than a simplification.

CUIA refers to the recent observations of ASIC<sup>3</sup> and the Australian Consumers’ Association<sup>4</sup>, which have both cast doubt over the effectiveness of current disclosure practices. CUIA remains committed to open disclosure but urges consideration of existing learning post-FSR refinement. Clearly, empirical research into the current pre-contractual disclosure regime and the likely effectiveness of the new measures is warranted prior to imposing these reforms. This is not an argument against reform but a call for testing what measures might be the most useful for consumers compared to the costs to industry.

### **3. The definitions failing to provide sufficient precision**

These proposals seek to introduce the concept of “*ongoing fees and charges*” and “*upfront fees and charges*” and require that an aggregate of each of these be disclosed in the *Financial summary table*. CUIA believes it is critical these definitions are framed correctly so they are consistently understood. For instance, they ought to be consistent with the terminology used in s.15 for ascertainable and unascertainable fees or retained and non-retained credit fees and charges, which must be disclosed and not open to manipulation by credit providers – for example, it would be a poor outcome if credit providers were able to avoid disclosures by deferring certain payments (such as establishment fees).

If credit providers are to comply with these new requirements with any confidence and for consumers to receive useful information, there needs to be greater clarification of these terms, for example:

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<sup>2</sup> Hawkless Consulting, ‘UCCC: Mandatory Comparison Rates – Preliminary Regulatory Impact Statement’ 10 January 2006

<sup>3</sup> Garnaut J., ‘ASIC says disclosure rules not working’, SMH 06/02/06 at 19

<sup>4</sup> Coates N., ‘What will the red tape review mean for you?’, Money & Rights (Feb/March 2006) at 5

- Reg 13A(6) requires the disclosure of total upfront fees and charges and yet Reg 13A(6)(b) requires a statement explaining that additional government charges have not been included. Obviously government charges are intended to be excluded as they would be the same for all credit providers, but the drafting of Reg 13A(6) warrants clarification to make it clear government charges are not to be included;
- the reference to transfer duty on land under this heading is confusing because this is not a credit fee or charge as the duty is payable whether or not the purchase of land is financed. This information has been included as a warning that there will be other costs associated with the purchase of land, which is a useful disclosure, but the information must already be disclosed in the *Summary of other information*, so it seems redundant and confusing to disclose it here; and
- in relation to repayments, it would be useful to include a statement explaining that ongoing credit fees and charges are not included in the repayment amount and must be paid separately.

Additionally, as the financial information to be disclosed will no longer be picked up from s15 of the UCCC, there will be a subtle change to the disclosure of credit fees and charges. Section 15 requires the disclosure of credit fees and charges *that are, or may become payable under the contract*. The new Reg 13A(10) appears to require the inclusion of upfront credit fees and charges payable *in connection with making the contract or any mortgage or guarantee* that are payable before the first regular repayment is to be made under the credit contract.

There are also some credit fees and charges that are not necessarily payable under the credit contract. For example, loan application fees or valuation fees that are payable under some other contract, usually an agreement in the loan application form, are not payable under the credit contract, but they are still defined as credit fees and charges under Schedule 1 to the UCCC. Another issue is that the new requirement appears to require the disclosure of some fees and charges, which may have already been paid before the disclosure document is given.

Therefore, what upfront fees and charges in the new pre-contractual disclosure document mean may not necessarily equate with those disclosed in the credit contract under s15.

#### **4. *The ability to practically achieve a separation of the proposed pre-contractual statement from the contract***

These proposals are not intended to require any changes to the actual credit contract or when pre-contractual disclosure occurs. However, The *Summary of other information* is intended to support the *Financial summary table* by acting as:

*“a bridge between the Financial Summary Table and the credit contract [it] amplifies some of the entries in the financial summary table while for others, it simply refers to the relevant provision(s) of the credit contract.”*

The intention is that the pre-contractual statement is provided as a separate standalone document, albeit with references and linkages to the contract. It should be remembered that the detail would still have to be in the credit contract. CUIA is not convinced that these distinctions would work in practice.

The closeness in terms of the information disclosed will require, in practice, that the pre-contractual statement be provided coincidental and contemporaneously to the provision of the contract, otherwise the information disclosed will be meaningless. Additionally, because the information in the pre-contractual statement is closely aligned to (or drawn directly from) the contract it may be practically impossible to separate them. If this is not possible then the value of the pre-contractual statement may be questionable. CUIA also notes that the *Summary of other information* seems so personalised it effectively becomes part of the loan documentation itself.

There is also some doubt as to whether a pre-contractual statement of no more than two A4 pages (or the electronic equivalent) will be sufficient to contain the relevant and required

information and remain legible. The policy intention of streamlining the disclosure process will certainly be undermined if these proposals merely add 2 extra pages to a credit contract.

Even if the pre-contractual statement can be created as proposed, there is also a risk that the pre-contractual statement is potentially more confusing for consumers as it replicates or duplicates information otherwise found in the contract. It could also distract consumers from the contract, thus ignoring or missing other important and legally binding information.

Additionally, assuming the pre-contractual statement can be effectively separated from the contract, there is nothing in these measures to address situations where there are changes in the relevant information between the time the pre-contractual disclosure information is provided to the consumer and when the credit contract itself is signed.

By comparison, CUIA notes that the 1999 PIR<sup>5</sup> stated that:

*“The summary document would replace the current pre-contractual disclosure document and could be separate from the contract document or be part of the contract as is currently the case and would clearly draw attention to the fact that additional important information was included in the contract document.”*

This observation recognises the merit in linking the pre-contractual statement to the contract. CUIA sees no reason why the pre-contractual statement cannot accompany the contract (although not forming part of the contract) to ensure consumers get all relevant information and to ensure evidentiary requirements are satisfied.

The relative values of these different approaches clearly require further testing and assessment before any reforms are mandated.

#### **5. The likely additional costs to industry in respect of changes to core banking systems as well as staff training and policy and procedural changes**

CUIA believes there will be substantial compliance burdens for credit unions and other credit providers. Although these proposals do not seek to require changes to the contract per se, many ancillary materials and process will require change. This will primarily focus on changes to core banking systems, staff training and policy and procedures. The ability for any credit provider to make swift changes, particularly to their technology and people, will be difficult and credit unions, as smaller ADIs, lack the scale and capacity of larger providers in terms of resourcing and implementing these changes. This has a direct impact on lead times and transitional arrangements.

Costs will arise in terms of developing the businesses understanding of these proposed requirements and then seeking technological changes – including systems specifications, programming, creating new templates, testing and creating appropriate procedures and training. There will also be legal costs in terms of seeking appropriate sign-off as well as associated and ongoing compliance costs as these measures commence. This effort multiplies where there are a number of different regulated loan products a credit provider offers. Based on an estimate ranging between \$40 – 80,000 per credit union this could amount to a significant impost across the entire sector<sup>6</sup>.

CUIA notes that there is no timetable for the commencement of these proposals. Given the nature of these measures, in particular the heavy systems reliance involved, CUIA urge a significant transitional period. This is critical particularly in the absence of a review or testing process, as credit providers will be left to comply without the assistance of knowing how best to implement these measures. Accordingly, CUIA urges a transitional period of at least 2 years.

Additionally, credit reform does not occur in a vacuum. Credit unions, and may other credit providers, will be subject to significant reform in terms of anti-money laundering and counter

<sup>5</sup> UCCC *Post Implementation Review (PIR)*, 1999 at 30

<sup>6</sup> Determining costs is very difficult. This is an early estimate based on initial discussions with credit unions, precise costing would only be ascertainable with the benefit for further consultation and research, including detailed discussions with core banking systems providers.

terrorist financing (AML/CTF) over the coming 12 – 36 months. These reforms will involve substantial systems implications for reporting entities that will certainly have a significant cost implication for credit unions in terms of their core banking systems, their staff and their policies and procedures.

These AML/CTF measures will be a primary focus for many credit providers and their core banking system providers as well. This is in addition to the resources devoted to Basel II, FSR refinement and the recent electronic statements legislation that credit unions have been seeking to implement for some time.

### **Conclusion**

CUIA supports reforms to simplify disclosure obligations for consumers and to streamline compliance obligations for credit providers. However, these proposals may be self-defeating because by the time consumers wade through up to two pages of complex information, they are less likely to read the proposed credit contract in detail, and it is the credit contract that is legally binding. If this occurs then consumers may rely on the pre-contractual statement rather than place their reliance on the actual contract, this would be a perverse outcome for consumers and business.

For more information please contact me on (02) 8299 9033 or at [jmoyes@cuscal.com.au](mailto:jmoyes@cuscal.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Josh Moyes', with a stylized flourish at the end.

**Josh Moyes**

Adviser – Policy & Public Affairs