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31 March 2006

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



DIBBS ABBOTT STILLMAN | LAWYERS

By Express Post

By Email: credit@docep.wa.gov.au

Dear Ms Criddle

**SUBMISSIONS - PRE-CONTRACTUAL DISCLOSURE CONSULTATION PACKAGE
OUR REF: DCC**

I refer to the above matter and the Pre-Contractual Disclosure Consultation Package released for discussion and submission.

Set out below are submissions in response to the consultation package.

Introduction

I am the head of the Banking and Finance Cell Group at Dibbs Abbott Stillman, Sydney and am one of the partners in the Consumer Finance Team.

In the course of the Consumer Finance Team's practice, we act for and advise numerous credit providers who operate in the consumer credit market.

The advice work for our clients includes:

- drafting pre-contractual disclosure statements, credit contracts, continuing credit contracts and consumer leases;
- advising on the implementation of the contract documents and management of the loan accounts;
- advising on collection and repossession requirements;
- advising on regulatory requirements.

The submissions contained herein are the views of the Dibbs Abbott Stillman Sydney Consumer Finance Team's based upon our experience in acting for credit providers.

Effect on current business practices

The Code currently allows the pre-contractual statement to form part of the proposed contract document.

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Under the proposed changes the pre-contractual documents are stand-alone documents and are in addition to the actual credit contract.

At present there are no proposed changes to the information required to be disclosed in the loan schedule and terms and conditions comprising the credit contract.

Therefore the *financial summary table* and *summary of other information* will be an additional set of documents, with the requisite warnings, to be provided to the customer as part of the loan process.

The information to be disclosed in the summaries does set out the key features of the credit being supplied and to that extent provides a customer with information which is relevant to them.

However, without allowing the information in the summaries to carry over to the credit contract, the summaries simply add another layer of documents and disclosures to be provided to the customer on top of what the Code already provides.

As a result the proposed changes do not streamline the overall pre-contractual and contractual process.

If there was a corresponding simplification of the Section 15 disclosures required in the loan schedule and credit contract then as an overall package the revised disclosure requirements may well achieve not only the committee's objective of assisting customers to make informed choices when purchasing credit but also ensuring the customer is able to understand and meet their contractual obligations once they have chosen that credit.

Questions contained in consultation package

In responding to the suggested questions in the consultation package, I respond as follows:

Question: Will the proposed amendments improve the consumer's ability to understand the key features of the credit contract? If not, what improvements could be made?

Response: The information to be contained in the *financial summary table* is already provided in the existing pre-contractual disclosure requirements.

Whilst the tabular form may make the information easier to read, it does not contain any additional information.

Question: Will the *financial summary table* provide the right 'snapshot' of the credit product? Are there any matters that should be included in the table or not included?

Response: Anecdotal evidence suggests that the snapshot needed by a borrower is:

- How much am I borrowing?
- How much do I have to repay?
- How often do I have to make repayments?
- For how long, or how many, repayments do I need to make to repay the loan?

The *financial summary table* does disclose this information in a clear and concise manner. However, there is no significant improvement in the way the information is presented to the borrower than what is already provided under the existing pre-contractual disclosure requirements.

Question: Will the summary of other information be useful for consumers? If not, in what way can it be improved?

Response: To the most sophisticated of borrowers, the *summary of other information* may be useful.

However, the *summary of other information* does have the capacity to confuse the borrower as to what is “information” for the making of an informed decision and what is binding as part of a credit contract or continuing credit contract.

The proposed wording of Section 13B(1) of the Regulations is of concern in that the potential borrower is being told that in reading the *summary of other information* table it requires a prominent statement warning the debtor the summary of other information which follows:

- contains only partial information;
- directs the potential borrower to also read:
 - the *financial summary table*;
 - the credit contract;
 - the information statement;
- and that the potential borrower should read all of the information before signing a credit contract.

Providing more paper work and more warnings does not necessarily ensure the borrower knows any more about their potential credit contract nor are they clearer on what they need to do to borrow the money which they are seeking to obtain.

Question: Are the definitions of ‘ongoing credit fees and charges’ and ‘upfront credit fees and charges’ sufficiently concise to enable credit fees and charges to be allocated between these categories? If not, what improvements can be made?

Response: The definitions are sufficiently concise. However, a well prepared pre-contractual disclosure statement in the current form would provide the same information to the borrower.

Question: Are the proposals sufficiently flexible to cope with the innovations in credit products? If not, what changes need to be made to ensure flexibility?

Response: The innovation which has been catered for is making reference to “interest free period”.

However, there are numerous variations to the “interest free” offers which include “no interest payments” and “no repayments”.

Neither of these variations, which are prevalent in consumer credit advertising and offerings, would be fully covered by the “interest free period” disclosure in the *financial summary table*.

These additional concepts would require further explanation in the *summary of other information*.

The other innovation which may need to be dealt with is the concept of “bundled loans” which may involve a situation whereby a borrower has a combination of

fixed and variable loan facilities and different loan terms, all covered by a residential or chattel mortgage and single letter of offer.

There may be the need for additional information in either the *financial summary table* or *summary of other information* to cater for these circumstances.

Question: Does the implementation of the proposed amendments have unforeseen consequences for consumers or credit providers?

Response: One of the unforeseen consequences for consumers is that they may not be able to distinguish between a “pre-contractual statement” and a “credit contract” and the legal rights and obligations which flow from each document.

As set out above, the majority of credit providers take advantage of section 14(5) of the Code which allows the pre-contractual statement to be the proposed credit contract document.

The benefit of existing section 14(5) is that:

- (a) for credit providers – they do not have to have two separate forms of documents, thus saving on time and administration costs in preparing two different forms of documents; and
- (b) for consumers – the pre-contractual statement they were familiar with when deciding about the credit they should obtain, becomes the binding credit contract and thus they are already familiar with the format and the information contained in the credit contract as it is in the same format which is provided in a pre-contractual statement.

By amending section 14(5) of the Code to require that the pre-contractual statement must be a separate document to the proposed contract document means that:

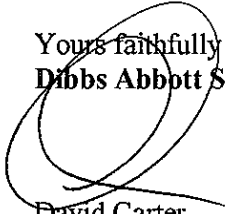
- (a) for credit providers – there is additional time and administration costs involved in preparing and providing the separate pre-contractual statement; and
- (b) for the consumers – they will be presented with two different documents, of which the pre-contractual statement is an information statement and in no way forms a binding contract between the credit provider and borrower.

Similarly, the amendment to section 14(1)(a) of the Code wherein the reference to section 15 of the Code is deleted and replaced with reference to “a pre-contractual statement containing the matters specified in the regulations” means that the link between what appears in the credit contract and what appears in the pre-contractual statement are further removed.

A consequence of this is that the customer, upon signing the credit contract will receive a document which may be dissimilar in form and substance to the pre-contractual statement.

Should you have any comments on these submissions, please do not hesitate to contact me.

Yours faithfully
Dibbs Abbott Stillman



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