



Submission to:

**Ministerial Council on Consumer
Affairs**

**Pre-contractual Disclosure and the
Uniform Consumer Credit Code**

**Centre for Credit and
Consumer Law, Griffith University**

March 2006

About the Centre for Credit and Consumer Law

The Centre for Credit and Consumer Law is an academic centre, hosted by the Griffith University Law School.

The Centre for Credit and Consumer Law was established in March 2004 as a source of expertise, and a centre of excellence, on credit and consumer law issues. The Centre's overall objective is to promote a fairer, safer, and more efficient marketplace, particularly for low income and vulnerable consumers.

The Centre was established to produce high quality research, relevant to current policy issues, and advocate for reforms to law, policies and practices from a consumer perspective. It also creates linkages with consumer, community, government and industry groups to further its overall objective.

The Centre for Credit and Consumer Law is funded by the Queensland Government's Consumer Credit Fund (administered by the Office of Fair Trading) and Griffith University.

Introduction

Principles of disclosure and financial literacy are central to consumer protection policy in Australia. Although we do not agree that these principles are the only ones relevant to a strong consumer protection system, we do agree that they are an important and essential pillar of such a system. For this reason, we welcome the opportunity to comment on the consultation package produced by the Ministerial Council on Consumer Affairs regarding pre-contractual disclosure in the Uniform Consumer Credit Code (UCCC).

Current Position

We are supportive of any initiative which strives to give better effect to the fundamental principle of disclosure – accessibility of information. We believe that for information to be accessible it must not only be easy to obtain, it must be clearly understood by an ordinary person. In order to enable the average consumer to make an informed choice between different credit products, his or her attention must be drawn to those parts of a credit contract which are particularly relevant and important. A consumer must be able to understand the true cost and effect of any decision made in relation to a credit product.

The current position under the UCCC does not achieve this goal. Of particular concern is the practice of providing consumers with a full copy of the credit contract as a form of 'pre-contractual disclosure'. This practice does not provide consumers with appropriately clear and accessible information about the important terms of the contract. Credit contracts are generally large and complex, and the important terms may not be readily apparent to a consumer because they are hidden within pages of information that are written using difficult legal terminology. Pre-contractual disclosure requires something more succinct. That is, it requires the disclosure of pertinent information essential for consumers making an informed decision. Without such disclosure it is impossible for consumers to have full financial literacy.

Proposed Amendments

We strongly support the proposed amendment, which requires that the pre-contractual statement is to be separate from the contract document. The reasons for our support are that such disclosure will help protect consumers, will require credit providers to be open and honest about the terms of the credit contract, and that it will enhance consumer financial literacy.

We support the concept of pre-contractual disclosure taking the form of a financial summary table and a summary of other information. A two-page document containing a summary of important information and clear signposts guiding consumers through a credit contract is an important step towards effective disclosure. One of the dilemmas facing such an approach is a determination of how much, and what, content to include in this short document. Paul O'Shea and Carmel Finn found in their study using 215 University of Queensland students, that the current UCCC disclosure requirements do little to enhance comprehension of important contract terms.¹ They recommend adopting a "Schumer box" format for simplified disclosure in consumer contracts".²

Keeping in mind the need for simplicity, we recommend the following amendments to the current proposal:

1. Fees and charges should include government fees, charges and duties, so that a consumer can have a clear picture of the full cost of credit.
2. If point 1 above is not accepted, we submit that the information about government fees and charges currently contained in Column Three be strengthened (perhaps the text could be in bold) and contain a warning that consumers should ascertain details of these fees and charges prior to signing a contract.
3. Fees and Charges, Column Three, makes reference to the fact that consumers can "see the summary information for further details about fees and charges". We believe this could be expanded to say "see the summary information for further details about fees and charges, including important information about default and termination fees". We think it is important that details of default and termination fees are brought to a consumer's attention at an early stage.
4. We believe that a comparison interest rate, and an explanation of the meaning of a comparison interest rate, should be shown in the financial summary table. We note that there is currently debate about whether or not to extend the mandatory disclosure requirement for comparison rates. According to the **Regulatory Impact Statement (RIS) on mandatory comparison rates** released on 10 January 2006 it is unclear whether the benefits to consumers in having mandatory disclosure of comparison rates outweigh the costs to industry.³ In fact, consultations with industry conducted for the RIS found that credit

¹ Paul O'Shea and Carmel Finn (2005) 'Consumer Credit Code disclosure: does it work?', *Journal of Banking and Finance Law and Practice* 16(1) 5-16.

² Paul O'Shea and Carmel Finn (2005) 'Consumer Credit Code disclosure: does it work?', *Journal of Banking and Finance Law and Practice* 16(1) 5-16, 15.

³ Hawkless Consulting Pty Ltd (2006) *Mandatory Comparison Rates, Preliminary Regulatory Impact Statement*, Uniform Consumer Credit Code Management Committee.

providers tended not to disclose their interest rates in advertisements in order to avoid having to show comparative rates. Interest rates of various credit providers have also tended to converge, which has reduced competition. Despite these claims, we strongly support the retention of mandatory disclosure of comparative interest rates. When making decisions it is important that consumers be provided with information that *may* influence their decisions. Comparative interest rates are important for consumers to be able to ascertain the real cost of various loan products. We are concerned that consumers do not appear to be making use of comparison rates. We believe this is a result of ignorance about the meaning of comparative rates, rather than the fact that comparison rates are unnecessary. For this reason, the inclusion of an explanation about comparison rates in the financial summary table (and in other documentation) is required for there to be full and proper pre-contractual disclosure.

Other comments

We strongly believe that the new scheme should be trialled prior to implementation. It is important for both business and consumers that the pre-contractual disclosure regime is efficient and effective. A trial can determine whether the proposed scheme achieves these goals. This could be done simply, and in a relatively short time frame, by randomly surveying the public to determine whether people gain a sufficient understanding of the contract by reading the proposed financial summary table and summary other information.

Contact for further information

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