

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

Response to the
Consultation Paper
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Introduction

This response is provided to the Consultation Package issued on behalf of the Ministerial Council on Consumer Affairs relating to Pre-Contractual Disclosure under the Consumer Credit Code.

I write this response as a solicitor in private practice in Queensland. For the past eight years or so, much of my time had been spent involved in giving advice to what is believed to be the largest small loan group in Australia, City Finance Loans and Cash Solutions ("City Finance"). As had been disclosed in other submissions made for City Finance, as part of that work in which I am now involved full time, the majority of my time is spent dealing with issues of a Consumer Credit nature, but issues of a general nature are raised, and information on other credit providers, particularly those operating in opposition to City Finance, are examined.

There seems to be available little information of the "fringe" credit market. There is information on the payday lenders, but I suspect that there is no real appreciation of the size of the market of other non-mainstream lenders.

City Finance is a franchised business operating in most States. Since the franchising system began in 1998, the group has provided credit pursuant to about 130,000 contracts throughout Australia. Those contracts are for between \$300.00 and \$5,000.00. Whilst the contract lengths vary, the majority are for periods less than a year, mostly in the order of 6 to 9 months. At present almost 40,000 contracts are written each year by the City Finance Franchisees.

Current Disclosure Requirements

The current disclosure requirements are satisfied in my experience either by the delivery of a lengthy document to the borrower, or as in the case of City Finance, by providing a copy of the proposed agreement, as is foreshadowed in section 14(5) of the Code. Where the financier relies on its own document which is not a copy of the contract, due to the apparent "if in doubt – disclose" principle, the documents are generally much larger than they need to be if it contained only the essential information needed for the borrower to make an informed decision.

The purpose of the pre-contractual disclosure was to provide the borrower with information enabling a choice to be made as to whether the credit should be taken. The provision to the borrower of a long and complicated document defeats the purpose.

Proposed Disclosure

The proposed amendments to regulation 13 of the Regulations are, in my view, a great advance. It may be that the borrower will receive information in a form which may be of some use – at least more use than the current regime.

Whilst there is no request for comments on it, the decision not to include the comparison rate is, for whatever reason it was made, a sound one. In the 60,000 or so loans made by City Finance in the time the legislation has been in place, although the Comparison Rate schedule has been prominently displayed in each office, there has not been, to the best of my knowledge, one request for a copy of the table, or one question from a borrower in relation to it. It appears to be a bit of a non-event.

There are two matters, however which I believe would provide borrowers with a better “snapshot”.

a. Type of Loan

There is a requirement in the proposed regulation 13A(2) for “(a) brief description of the type of credit facility being provided” to be inserted in the table. Whilst one would expect that it would be stated, there is no clear direction here, or anywhere else in the proposed regulation, to state whether it is intended that the advance be secured. Under the Mandatory Comparison Rate legislation, it is a requirement to make a disclosure of whether the loan is intended to be secured. Why not here?

b. Fees and Charges

The proposed regulation 13A(6) requires the ongoing credit fees and charges to be “shown as an amount per annum”. There is an ever increasing number of loans running for periods of less than a year as evidenced by, if nothing else, the number of City Finance loans. If a loan is intended to run for only 6 months, a statement of the ongoing credit fees and charges “as an amount per annum” does nothing to enhance the information given to the borrower, unless it is intended for the table to be a comparison chart between loans rather than a statement of the attributes of that particular loan.

Perhaps a better expression of the requirement may be:-

(6) Fees and Charges

The ongoing credit fees and charges (shown as an amount per annum *if the term of the loan is greater than 12 months, otherwise the total credit fees and charges*) and the total upfront credit fees and charges are to be inserted in column 2 and,...

It is submitted that the definition of “upfront” and “ongoing” credit fees and charges in regulation 13A(10) in relation to the time for their payment and the event which triggers them is adequate.

CONCLUSION

The current pre-contractual disclosure regime is inadequate, and does not achieve the purpose for which it is intended. The proposed changes are a great advance, and subject to the two matters raised above, will be supported by City Finance.