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19 June 2024

Consumer Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

By email to: consumer@mbie.govt.nz

Submission to the Ministry of Business, Innovation & Employment

Fit for Purpose Consumer Credit Legislation – Discussion Document May 2024

We value the opportunity to participate in the discussion regarding the consultation paper titled "Fit for Purpose Consumer Credit Legislation – Discussion Document" dated May 2024 (**'Paper**'). Our submission focuses on the particular matters raised in the Paper which we consider most relevant to our organisation.

Baycorp is one of New Zealand largest and longest serving debt collection firms, operating in both the debt purchase and contingent debt collection sectors. Baycorp both purchases, and collects on debts which arise in relation to credit contracts regulated under the *Credit Contracts and Consumer Finance Act 2003* ('**CCCFA**'). Where Baycorp purchases a debt, it stands in the shoes of the assignor, and the obligations of the CCCFA and related regulations apply to Baycorp as through it were the original credit provider.

Our submission focuses on specific questions raised in the Paper, relating to disclosure requirements under the CCCFA, and in particular discussion point 16.

16	Do you consider any of the disclosure obligations to be irrelevant, confusing, or inappropriate? If so, please tell us what obligations you are referring to and what impact this has.

Continuing Disclosure Statements for Debt Collection Accounts

The continuous disclosures obligations under section 18 of the CCCFA should be amended to remove the obligation to send ongoing statements where the debtor is in default under a credit contract and the credit provider has, before the commencement of the statement period, exercised a right not to provide further credit under the contract and has not provided further credit during the period.

Section 18 of the CCCFA, requires every creditor (including assignees of charged off, accelerated receivables) to send continuous disclosure statements on an ongoing basis, covering the information set out in section 19 of the CCCFA. We consider that such disclosures are generally appropriate and helpful to consumers for performing loans, however relief from the obligation should be granted in relation to non-performing loans, particularly where the debt has been accelerated under the terms of the credit contract and the debt is due and payable in full.

While section 21 of the CCCFA provides relief from this obligation in certain circumstances, the section does a poor job of removing the burden, requiring statements to be sent in circumstances where there is little corresponding consumer benefit.

Under section 21(1)(b)(ii) of the CCCFA, a creditor is relieved of the burden where it maintains a website that allows the debtor to access the information for any reasonable statement period. However, this section requires consent. We note the difficultly of obtaining consent from absconding debtors.

Recommendation:

We submit that the section should be amended to require notification, rather than consent. The legislation could allow a right for consumers with no reasonable access to online systems to request a physical statement from the creditor and require the creditor to provide it within a reasonable period.

Section 21(1)(c) of the CCCFA further relieves the creditor of the obligation to send continuing disclosure statements where neither interest charges nor credit fees are payable under the credit contract.

Recommendation:

S21(1)(c) should be amended so that notification is not required if the interest and fees are not charged during any particular statement period. We consider that there will be few contracts under which credit fees or interest are not payable. Accordingly, the current carve out is, in practice, unlikely to relieve the obligation for any accounts.

Section 21(2)(a) relieves a creditor of the obligation where it cannot reasonably locate the debtor. While this appears to be helpful on its face, it in fact imposes significant technical challenges on the creditor. After reliance on this carve out (as is true of any of the others listed here), the next continuing disclosure statement must cover every immediately preceding period for which a continuing disclosure statement was not sent. The technical challenges caused by this carve out create more of a burden that it removes.

Section 21(1)(2)(ii) relieves a creditor of the obligation where it has written off the unpaid balance and there are no subsequent credits or debits to the debtor's account. While helpful in part, this would require a creditor to issue statements for the period, and all preceding periods where a statement was not provided, when a payments is subsequently received on a closed account. Further, debt buyers would be required to send statements on charged off accelerated accounts on an ongoing basis, unless the debt buyer itself writes off the unpaid balance.

We note that the Australian legislation[1] provides greater relief in relation to defaulted debts under which no further credit is, or will be provided.

[1] See s33 of the National Consumer Credit Protection Act 2009

Recommendation:

We consider that amending s21 of the CCCFA to remove continuing disclosure obligations where the debtor is in default under a credit contract and the credit provider has, before the commencement of the statement period, exercised a right not to provide further credit under the contract and has not provided further credit during the period will ensure that statements given under the CCCFA add value to consumers, whilst removing the operational burden and cost for creditors where the notice is unlikely to add any corresponding consumer benefit.

Further, the obligation under s21(3) of the CCCFA to provide disclosure for earlier periods where the credit provider has relied on the exclusions under s21 should be removed and replaced with a new right allowing consumers to request statements manually, and requiring the creditor to comply with such requests on a reasonable period.

Disclosure before Debt Collection Starts:

We believe that giving consumers clear information at the start of debt collection to allow them to identify the debt and understand how the balance has been derived is beneficial to both consumers and creditors. We support the inclusion of a requirement to provide notice, which accords existing good industry practice. However, the disclosure requirements under section 132A of the CCCFA and section 23 of the *Credit Contracts and Consumer Financial Regulations 2004* ('**Regulations'**) create significant operational challenges and impose unnecessary costs on creditors with minimal corresponding benefit to consumers. We suggest maintaining the section, but simplifying the obligation to reduce complexity.

The matters under S23(3) and (4) of the Regulations (requiring in effect a partial continuous disclosure statement) presents the greatest operational challenge, with many debt collection clients simply not possessing the structured data that would enable provision of information to support this disclosure requirement. This presents significant challenges and barriers when on-boarding new clients and regularly causes new clients to delay referrals as they work through these complex technical challenges. Delaying collections activity is likely to lead to consumer detriment, where an obligation may increase due to the accrual of interest.

Since these provisions came into force, we have not seen any corresponding reduction in "proof of debt" complaints from consumers. This suggests that consumers are not deriving any benefit from the disclosure and it is not enhancing their understanding of the debt.

We note that in some instances, the obligation is leading to consumers receiving notices up to 50 pages in length. This dilutes the key message of the communication, adds to postage costs and may lead to greater confusion.

We note that the CCCFA already requires debt collectors to respond to expressions of dissatisfaction. Consumers are able to dispute their liability and are entitled to appropriate proof of debt. Where a consumer remains dissatisfied with the financial service provider's response, they are entitled to raise a dispute with the relevant external dispute resolution scheme.

Recommendation:

We submit that s23(3) and (4) of the Regulations add cost and complexity for no corresponding consumer benefit and should be removed.

S23(1)(g), which requires notice of a consumers' rights under section 55 of the CCCFA should be amended to preface it with the words "where applicable" to account for circumstances where the rights under section 55 have lapsed.

Disclosures Relating to Financial Mentors:

S26B(2)(a) of the CCCFA requires creditors to provide information about financial mentoring services to a debtor who defaulted on payment under the credit contract or has caused the credit limit under the contract to be exceeded.

Section 5A(3) of the Regulations, broadly requires such notification "when a payment reminder is provided by a creditor". Due to the board drafting of this clause, we consider that this obligation applies regardless of the medium in which the demand is communicated, including text messages and verbal telephone calls. Accordingly, all calls to consumers in collections would, on our read of the obligation, require a lengthy statement of the matters required to be disclosed under section 5A(5) of the Regulations.

This obligations makes sense and is useful for letters and emailed payment demands, however is unhelpful in text messages and in routine collections calls, where the recipient of the call will have already been provided the information in writing.

Our practical experience is that consumers find the verbal statement to be an inconvenient distraction, and it adds to the length of the collections call. For text messages, the notice results in the message exceeding the character count limit, either preventing the message from being sent, or causing the message to be sent over multiple messages, effectively double the cost of such communication.

Recommendation:
It is our view that the current position of the Regulation is inadvertent, and was likely meant to apply only to formal demand notices. We recommend that the Regulation 5A(3) be reviewed and amended to limit the obligation to formal letters of demand.

Disclosures Relating to Dispute Resolution Scheme:

Section 26B(1)(c) of the CCCFA requires a creditor to provide information about the creditor's dispute resolution scheme when the creditor receives a complaint. The term complaint is board, encompassing any expression of dissatisfaction received from a debtor under a consumer credit contract where the debtor explicitly or implicitly expects a response or resolution (see section 5A(2)(a) of the Regulations).

The timeframe for such disclosure, pursuant to s5A(2A) of the Regulations is two working days after a complaint is received or, if not practicable to do so, as soon as practicable after that time. This requirement imposes an unnecessary burden on creditors and significantly limits the opportunity for creditors to resolve the complaint through its internal dispute resolution processes, before being obligated to provide information about external dispute resolution schemes.

We support empowering consumers with knowledge about their options for resolving disputes, particularly if the creditor is unable to resolve the complaint to the consumer's satisfaction, however, the premature disclosure requirement forces creditors to meet the disclosure deadline instead of focusing on efficiently resolving the complaint, and pushes complainants toward external dispute resolution, which might not be necessary given enough time for the internal process to run its course. This can lead to increased costs, inefficiencies for both creditors and dispute resolution schemes, and a poor experience for consumers.

Our records indicate that consumer receive significantly faster resolution under the internal dispute resolution process in comparison to external.

Recommendation:
We propose extending the disclosure requirement timeframe under S5A (2A) to "twenty working days after a complaint is received or, if not practicable to do so, as soon as practicable after that time."

This amendment would balance informing complainants about their rights, while providing creditors with an opportunity to reasonably exhaust internal dispute resolution processes, which is likely to result in improved consumer outcomes and a reduction in external dispute resolution costs.

We support the efforts of the Ministry to reform the current regulatory landscape to simplify the legislation and create a fit for purpose consumer credit legislation. We hope that this submission assists MBIE to achieve the best policy outcomes for both New Zealander consumers and businesses.

We would be happy to discuss our submission in more detail if this would be of assistance to MBIE.

Best Regards

Privacy of natural persons

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