



FCRC

Financial & Consumer Rights Council Inc.

**Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill
Parliamentary Joint Committee Submission**

Financial and Consumer Rights Council

We thank the Parliamentary Joint Committee for the opportunity to comment on the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill (the **Bill**).

The Financial and Consumer Rights Council (FCRC) is the peak body and professional association for financial counsellors in Victoria and indirectly represents the interests of vulnerable consumers across the state.

FCRC provides a support network for approximately 250 member financial counsellors, primarily through ongoing training, education, professional development seminars and accreditation processes. Additionally, FCRC is active in promoting the rights of consumers through effective policy advocacy, support and casework.

1. Protection of the Term ‘Financial Counsellor’

General Comments

FCRC strongly supports the enhancements proposed at s.160C of the Bill prohibiting licensees from representing themselves or their services as financial counsellors or financial counselling.

As noted in the Explanatory Memorandum, financial counselling is essentially a not-for-profit (NFP) service, provided to vulnerable members of the community by licence-exempt organisations.¹ Many potential financial counselling clients have difficulty in distinguishing between legitimate not-for-profit financial counselling services and profit making companies adopting the name, whether in an attempt to capitalise on the misfortune of the vulnerable or in the genuine belief that they offer a financial counselling service.

The proposed protections will enable consumers to access financial counsellors secure in the knowledge that the service will be free, independent, and interested solely in assisting the client, not in extracting profit. The associated penalty provisions will discourage misleading advertising by non-financial counselling services, providing a much needed regulatory enforcement mechanism.

¹ Conditions are attached to this exemption by ASIC Class Order 03/1063 *Licensing relief for financial counselling Agencies*, including that no fees or charges are payable by the client.

Future Regulatory Requirements

We anticipate the need for further protection of related terms under the regulations, as proposed at s.160C(1)(c)(ii). Such terms might include 'credit counsellor' or 'debt counsellor.' Whilst we acknowledge that these terms are not commonly used in the community sector, we nonetheless believe that they are often employed in a manner designed to portray the advertised as a community organisation. The services of for-profit companies in this area rarely incorporate a true 'counselling' component to complement the financial aspect of the services provided. Certainly for-profit services have a role to play in assisting those in financial trouble, however it is important to delineate clearly the NFP and for profit sectors.

Enforcement

Further to the legislative proposals, we urge the Committee to consider encouraging a vigorous approach to enforcement of the provisions. Consumer protections will be of little use without an adequately funded regulator, be it ASIC or an alternative body. Enforcement needs to encompass not only credit licensees that breach s.160C, but also parties holding themselves out as financial counsellors who do not meet the criteria of the ASIC exemption, nor hold a credit licence.

We note with disappointment that the provisions have been narrowed since the exposure draft of the Bill, no longer applying to non-licensees. We urge a reconsideration of this change to facilitate easy regulation of non-licensees holding themselves out as financial counsellors, although we acknowledge that this practise is in all likelihood captured elsewhere in the legislation.

2. Further Comment

Given our limited resources, we will refrain from making further detailed comments on the Bill. FCRC has had the benefit of reviewing the submission of the Consumer Action Law Centre (CALC) and we wish to broadly endorse CALC's comments, particularly with regard to the provisions applying to small amount credit contracts. Our submission in response to the exposure draft of the Bill is attached as Appendix A and remains indicative of our own policy toward the small amount credit provisions.

I am available for further comment or clarification if so required, please do not hesitate to contact our office.

Peter Gartlan

Executive Officer

Appendix A:

FCRC Submission to Exposure Draft: National Consumer Credit Protection Amendment (Enhancements) Bill 2011: Small Amount Credit & Caps on Costs

General Comments

Given the short time frame involved and our endorsement of the Consumer Action Legal Centre (CALC) submission on the exposure draft, we will restrict ourselves to general comments. We fully support the detailed analysis available in CALC's submission.

FCRC commends the exposure draft as a welcome indication of a renewed political will to ameliorate the difficulties caused by under regulation of the short-term high-cost credit industry. Many of our members comment regularly on the problems caused to financial counselling clients by loans under such arrangements, in particular the high fees that commonly accompany them.

We view the proposals as an improvement on the current regulatory landscape in Victoria, where the soft 48% cap has proven largely ineffectual. The efficacy of any policy response will rely on the regulation not only of interest but of fees, and to this end we approve of the proposed reforms.

Crucial to the success of the draft legislation will be a strong enforcement model, and we mirror the concerns made in the CALC submission as to the practical implementation and enforcement of the amendments. Whilst admittedly a paternalistic viewpoint, we should not rely on consumers to be the reporting mechanism that drives enforcement. The temptation of easy credit will often outweigh the consequences – assuming that they are clear in the first place – and this may be a case of government protecting consumers from themselves. In lieu of the adoption of a comprehensive hard 48% cap on short term credit, we urge further consideration of enforcement under the proposed scheme.

Reservations

We also take this opportunity to reiterate our long-held preference for a comprehensive 48% cap on interest and fees, akin to the current Queensland legislation. We hope that the reforms mooted in the exposure draft prove in the long run to be a step toward such a position. Further, we note the inevitability of short term credit morphing its business model to escape the spirit of the legislation, and hope that through flexible regulatory reform any such move is counterbalanced promptly and efficiently.