SUBMISSION 10

Inquiry into the National Consumer Credit Protection Amendment Bill 2011

Submission by Wesley Mission

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Wesley Mission

Wesley Mission began in Sydney in 1812 as the Central Methodist Church, with a special focus on the poor and needy. When the church became part of the Uniting Church in Australia in 1977, the name was changed to Wesley Mission. Throughout its history, Wesley Mission has proven to be a dynamic and innovative organisation. We have delivered holistic care and support to a wide range of people using effective and integrated strategies to achieve sustainable employment and life outcomes. Wesley Mission believes that everyone should be given the opportunity to achieve their full potential, building on their strengths as individuals.

Wesley Mission conducts over 130 different programs of care and support across 350 locations using more than 2200 staff and 3000 volunteers covering:

- Child and Family Services: out of home care in western Sydney and the Central Coast;
- Youth Services: counselling and street outreach programs, anti-bullying programs, drop-in centres;
- Aged Care: retirement villages, home and community care, respite care, supported accommodation;
- Community Services; Vocational Institute, home modification services and recreation/conference centres;
- Counselling services: financial, gambling, Lifeline Sydney and Sutherland which takes more than 20,000 crisis calls a year;
- Homeless Personsô Services: emergency accommodation, supported accommodation for individuals and families caring for almost 600 people each night;
- Disability Services: accommodation, respite care, independent living support services;
- Wesley Uniting Employment; and
- Research and Advocacy: two major evidence based research projects each year.

Wesley Mission provides financial counselling through its highly regarded Credit Line programs. Credit Lineôs philosophy combines counselling, assistance and self-help. Through providing support, we enable our clients to become as independent as possible and ultimately take charge of their own financial affairs. Credit Line also has a role as a consumer advocate by being alert for cases of unethical practices by credit providers and by offering suggestions for legislative reform through the Australian Law Reform Commission, State and Federal Attorney Generals and Consumer Affairs.

Introduction

Wesley Mission believes that it is a fundamental principle of consumer protection that adequate information is required to enable informed consumer choice. In a market which offers an abundance of home loan and credit card products, consumers struggle with a confusing array of options, terms and conditions, fees and marketing ploys.

This Bill is a timely response to consumer demand for fairer products and better information. The decisions consumers make regarding home loans and credit cards have significant repercussions on their lifetime financial well-being. For a number of years, Wesley Mission's Financial Stress research has identified high levels of financial stress in our community. Difficulties with home loans and credit cards are among the major causes of financial stress. It is hoped that these reforms will result in consumers making better financial decisions which flow onto lower levels of stress in their lives.

Consumer Credit Protection – Home Loans and Credit Cards

Part 3-2A KEY FACTS SHEETS FOR STANDARD HOME LOANS

The provision requires lenders to provide a Key Fact Sheet providing information about their ñstandard home loanò on request to potential borrowers, on a website and prior to a borrower signing a home loan contract.

s.133A – What is a standard home loan?

Query the function of the word ñstandardò. Is it intended to differentiate a standard home loan from some other sort of home loan? Would the provision have the same effect if the word ñstandardò were omitted?

Also, the term applies to credit used for the purchase of residential property, so might be better described as a ñresidential property loanò.

It appears that the provision will apply to both residential properties used as the borrower's home and residential properties purchased for investment purposes. Will it also apply to residential properties that are combined with business properties, such as a traditional shop which has a residence upstairs? Will a predominant purpose apply or will it apply to all properties which include a residence? If so, it could include a large office building which incorporates a caretaker's flat.

s.133AB – What is a Key Facts Sheet for a standard home loan?

We anticipate that the KFS will provide the basic elements of the financial product in a clear presented form in plain English. At a minimum, the KFS should provide a comparison rate based on a number of standard scenarios ï say loans of $100,000, $300,000, $500,000 with data about the real cost of credit over a number of time periods ï say early payout at 2 years, early payout at 5 years and cost over the full term of loan. It is important to ensure that unusual features are disclosed and that the existence of features such as a redraw facility or offset are identified.

s.133AC – Credit provider's website

This requirement is innovative and will greatly assist modern consumers to compare products. As failure to offer the information on the website is an offence of strict liability, we consider that it would be reasonable to provide credit providers with protection against prosecution for inadvertent failures, e.g. there may be short periods of some hours when the information cannot be accessed from a website due to a computer malfunction.

s.133AE – What if more information is needed from the consumer?

We are concerned that lenders will use this loophole to circumvent the requirement to provide a KFS by developing loan products that contain a number of variables. For example, offering a dozen different rates which are applied to consumers based upon a complex risk profile. Borrowers have to provide information about their employment, credit history, savings history etc, before the computer calculates the rate at which the loan is offered.

This proposed provision does not counteract the above scenario. If a range of rates, fees and charges may apply to a standard home loan product, we recommend that the lender be required to publish the highest rates, fees and charges in the range, along with a qualifying statement that some borrowers may be entitled to a better deal upon making an application.

s.133BB – What is a Key Facts Sheet for a credit card contract?

We anticipate that the KFS will provide the basic elements of the financial product in a clear presented form in plain English. It is important to ensure that unusual features are disclosed and that the existence of features such as a redraw facility or offset are identified.

The legislation does not appear to cover the variable nature of credit card contracts, particularly the difficulties with honeymoon rates and other inducements to enter the contract. In the event that the credit provider offers a honeymoon rate, will only this be disclosed? If it is common practice for the credit provider to offer very low rates initially but substantially increase the rates after a period, how can this be disclosed in a KFS?

DIVISION 4 – OFFERS ETC. TO INCREASE CREDIT LIMIT OF CREDIT CARD CONTRACT

s.133BE – Credit provider not to offer etc. to increase credit limit of credit card contract

This provision has the potential to significantly reduce the problem of over commitment and we strongly support it. In particular, the structure of blanket prohibition subject to limited exceptions provides the strength needed to ensure it will not be easily circumvented.

s.133BF – Informed consent of the consumer to the making of credit limit increase invitations

We anticipate that lenders would put a standard provision in all their credit card contracts to comply with this informed consent requirement. The important thing is that the regulations require the consumer to make an active step to provide informed consent (e.g. tick a box to consent) instead of a situation where the contract automatically gathers informed consent unless the consumer actively refuses this (e.g. tick a box if you don't consent). Bear in mind that few consumers actually read their contracts, and a significant group don't have the education or literacy to understand the contract even if they try to read it.

DIVISION 5 – USE OF CREDIT CARD IN EXCESS OF CREDIT LIMIT

s.133BH – Credit provider not to approve use of credit card in excess of credit limit (or credit limit increased by buffer)

We strongly support this provision which will ensure that consumers who try to exceed their credit limits are given a strong message when further cash, goods or services are refused. Excessive use of credit is a major factor in causing financial stress and can result in serious consequences, such as bankruptcy, for some.

s.133BI – What is the default buffer and when does it apply?

This provision is clear and logical. The 10% default buffer is reasonable from both the viewpoint of the consumer and the credit provider. In some cases, a consumer may reasonably expect the credit provider to let them go a small amount over the credit limit. This will occur when interest or fees have been added to the account that the consumer did not expect, or when items of expenditure may miss a particular billing cycle and be added to the next. Also, purchases from merchants who do not have real-time online access to the credit provider could push the balance over the limit without the knowledge of the credit provider.

Where the consumer elects not to have the buffer apply to the contract, it would be reasonable to allow the credit provider to effectively buffer the contract downwards ï e.g. refusing transactions when the balance is very close to the limit.

s.133BJ – What is a supplementary buffer and when does it apply?

We cannot see the rationale for a supplementary buffer. It would be simpler for all concerned if the consumer to apply for a credit limit increase if they felt they might need to exceed the credit limit. The point of good money management is to keep well below the credit limit at all times. Offering a supplementary buffer to a consumer will confuse them and it is an invitation to get into trouble.

s.133BM- Credit provider to notify consumer of use of credit card in excess of credit limit

This sensible provision should be able to be satisfied by a telephone call or even a text message in the case of most consumers. The consumer should be able to nominate the type of notification they receive at the time of entering into the credit card contract.

There are benefits to both consumer and credit provider by ensuring that credit card use over the credit limit is discussed as soon as possible. Some consumers may wish to seek information about their options if they are in temporary difficulty, others may be unaware that they had reached their limit.

A small number may be the victims of fraud, in which case the credit provider will be in a position to take early action in response.

s.133BN – Credit provider not to impose fees etc. because credit card is used in excess of credit limit

The use of fees as a de facto penalty for exceeding credit card credit limits has long been a contentious consumer issue. The fact that a credit provider may decide to decline approval to a transaction exceeding the credit limit is a fairer and more effective way to encourage consumers to keep their expenditure within the credit limit. Consumers understand that they will be prevented from further spending when they reach their credit limit. They often don't understand how or why penalty fees or interest are imposed. We strongly support the parts of this provision that prohibit the charging of fees or default rates of interest when the credit limit is exceeded.

As noted earlier in this submission, the proposed supplementary buffer does not appear to be a beneficial option for consumers, particularly when an additional fee or charge may be imposed for its utilization. Surely a consumer would be better off applying for a higher credit limit than a supplementary buffer?

DIVISION 6 – ORDER OF APPLICATION OF PAYMENTS MADE UNDER CREDIT CARD CONTRACTS

s.133BP – Agreement to apply payment against particular amount owed

This section is appropriate as long as requests are genuine, and there is not a default provision in the credit contract that automatically takes legal effect as a request without any further steps being taken by a consumer. In practice we would consider that requests under this section would be rarely made, as most consumers would want payments allocated to the parts of the account with the highest rate. We recommend that the section be amended to provide for a standard form (to be in the regulations) for the making of such a request.

The issue of óinterest freeôperiods is raised at para. 3.66 of the Explanatory Memorandum. The proposed amendments do not tackle the problem of tricky provisions that retrospectively apply interest from the time of provision of credit in the event that the entire credit card balance or specified components are not paid by a certain deadline. To suggest that consumers may seek to allocate payments in a certain way to minimise the cost penalties of óinterest freeôprovisions is fanciful. The comment in para. 3.80 is an understatement. Interest free provisions need to be the subject of regulation.

s.133BQ – Application of payment against last statement balance, with higher interest debts to be discharged first

This provision seems clearly expressed, and would obviously be in the interests of consumers, subject to whatever tricky óinterest freeôperiod provisions may apply in the credit contract.

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