

19 June 2024

Consumer Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment

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

Thank you for the opportunity to participate in the discussion on the "Fit for Purpose Consumer Credit Legislation – Discussion Document" from May 2024 ('Paper'). Our submission addresses specific points raised in the Paper relevant to our organisation.

RML is debt collection firm working in debt purchase and contingent debt collection. We handle debts arising from credit contracts regulated by the *Credit Contracts and Consumer Finance Act 2003* ('CCCFA'). When RML purchases a debt, it assumes the assignor's role, adhering to CCCFA obligations as if it were the original credit provider.

Our submission addresses specific questions from the Paper, particularly discussion point 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.”

Continuous Disclosure Statements for Debt Collection Accounts

The continuous disclosure obligations under section 18 of the CCCFA should be revised to remove the need for ongoing statements when the debtor is in default, and no further credit is provided before or during the statement period.

Section 18 of the CCCFA requires creditors, including assignees of charged-off debts, to send continuous disclosure statements as per section 19. While this is useful for performing loans, it is burdensome for non-performing loans, especially when the debt is accelerated and due in full.

Section 21 of the CCCFA provides some relief, but still mandates statements in situations where little consumer benefit will be derived. Section 21(1)(b)(ii) offers relief if the creditor maintains a website with the necessary information, but this requires debtor consent, which is hard to obtain in the debt collection context.

Recommendation: Amend the section to require notification instead of consent, allowing consumers without online access to request physical statements, which creditors should provide within a reasonable timeframe.

Section 21(1)(c) relieves the obligation if no interest or fees are payable, but this is rare.

Recommendation: Amend s21(1)(c) to waive the requirement if no interest or fees are charged in a statement period, as the current relief is seldom applicable.

Section 21(2)(a) relieves the obligation when the debtor can't be located, but this imposes significant technical challenges, as the next statement must cover all previous periods without statements.

Section 21(1)(2)(ii) provides relief if the unpaid balance is written off, with no subsequent credits or debits. This requires statements for all periods when a payment is received on a closed account, burdening debt buyers.

We note that Australian legislation offers more relief for defaulted debts with no further credit provided.

Recommendation: Amend s21 of the CCCFA to remove continuous disclosure obligations for defaulted debts with no further credit, ensuring disclosures benefit consumers and reduce operational burdens on creditors.

Remove the obligation under s21(3) to provide disclosure for earlier periods when exclusions under s21 were relied on, replacing it with a consumer right to request statements, which creditors must fulfil within a reasonable period.

Disclosure before Debt Collection Starts

Clear initial information helps consumers identify debts and understand balances, benefiting both parties. While we support a notice requirement, sections 132A of the CCCFA and section 23 of the Credit Contracts and Consumer Financial Regulations 2004 ('Regulations') are overly complex and costly for creditors, offering minimal consumer benefit.

Sections 23(3) and (4) require partial continuous disclosure, presenting major operational challenges, especially for new clients lacking the necessary data. This delays collections, potentially increasing consumer debts due to interest accrual.

No reduction in "proof of debt" complaints since these provisions suggests they do not enhance consumer understanding. Some notices are excessively lengthy, confusing the key message and increasing postage costs.

The CCCFA already mandates responses to consumer disputes, with rights to appropriate proof of debt and external dispute resolution.

Recommendation: Remove s23(3) and (4) of the Regulations to reduce unnecessary costs and complexity. Amend s23(1)(g) to include "where applicable" for consumer rights notices under section 55.

Disclosures Relating to Financial Mentors

Section 26B(2)(a) of the CCCFA requires financial mentoring information for defaulting or over-limit debtors. Section 5A(3) of the Regulations mandates notification for any payment reminder, regardless of medium, including texts and calls, complicating routine collections.

This is practical for letters and emails, but unhelpful in texts and calls. Consumers find such disclosures distracting. For texts, this exceeds character limits, doubling communication costs.

Recommendation: Amend Regulation 5A(3) to limit the obligation to formal letters of demand.

Disclosures Relating to Dispute Resolution Scheme

Section 26B(1)(c) of the CCCFA requires dispute resolution information upon receiving a complaint, broadly defined to include any expression of dissatisfaction implicitly or explicitly requiring a response. The two-day disclosure timeframe under s5A(2A) limits internal resolution efforts, prematurely pushing complaints to external resolution, increasing costs and inefficiencies.

Our records show substantially faster resolutions through internal processes than external ones.

Recommendation: Extend the disclosure timeframe under S5A(2A) to twenty working days, balancing consumer rights and allowing thorough internal resolution, likely improving outcomes and reducing costs.

We support the Ministry's efforts to simplify and improve consumer credit legislation. We hope this submission aids MBIE in achieving optimal policy outcomes for New Zealand consumers and businesses.

We are available to discuss this submission further if needed.

Best Regards,

Privacy of natural persons

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