

APPENDIX THREE – SUMMARY OF FSCL’S KEY SUBMISSIONS

Issue 1: Excessive cost of some consumer credit agreements

Although we receive relatively few complaints about high-cost lending (HCL), we hear anecdotal evidence that many consumers get into spiralling debt after accessing HCL. We have provided some examples of this. We support a cap on the number of HCL loans consumers can take out within a certain period of time (say, every 90 days).

Issue 2: Continued irresponsible lending and other non-compliance

Complaints we have investigated

We have investigated a number of complaints involving irresponsible lending post the June 2015 CCCFA amendments. These includes cases where:

- a) A lender did not consider whether, in the borrower taking over a loan in her sole name, she could pay the loan without suffering substantial hardship, she understood the loan, and whether her requirements and objectives were being met.
- b) Lenders attempting to ‘contract out’ of their responsible lending obligations by relying on information provided by agents.
- c) Consumers are sold credit-rated insurance when polices are unsuitable.
- d) Lenders do not comply with the responsible lending principles in relation to guarantors.
- e) There is inconsistency and confusion in assessing unforeseen hardship applications.

Enforcement and licensing

We agree there are various options for increasing lender registration requirements and enforcement. We consider a comprehensive creditor licensing regime is worth exploring. We also consider lenders should actively refer borrowers to the lender’s dispute resolution scheme (DRS) if the borrower defaults within the first three months of a loan.

We strongly submit that it should be mandatory for lenders to provide its DRS’s details at the time a complaint is made, and tell borrowers they can contact the DRS if the borrower does not agree with the lender’s decision on an unforeseen hardship application. This would necessitate an amendment to CCCFA section 58.

Remedies for CCCFA breaches

It would be helpful if the CCCFA provided more guidance about the remedies available following a CCCFA breach. This would assist us in deciding how complaints should be resolved following a breach.

More prescriptive requirements for affordability assessments

We would welcome the introduction of more prescriptive requirements for affordability assessments for all lenders. The list of information set out in paragraph 280 of MBIE's additional discussion paper could form the basis of these requirements.

Issue 3: Continued predatory behaviour by mobile traders

Following the Commerce Commissions' enforcement work in relation to mobile traders, we have seen a decline in complaint volumes about mobile traders. We consider it could be beneficial if goods or services sold on credit are prohibited from exceeding the cash price.

Issue 4: Unreasonable fees

A risk of capping fees is that lenders will set fees at the amount of the cap. We therefore prefer option A (essentially being the *Sportzone/MTF* status quo).

We have also seen instances of brokerage fees which are not true third party fees, but essentially appear to duplicate lenders' establishment fees. These raise reasonable credit fee issues.

Issue 5: Irresponsible debt collection practices

We investigate relatively few complaints about debt collectors because in most cases the debt collector has not actually purchased the debt. We support option D (making all debt collectors subject to the CCCFA). However, if option D was not preferred, we would support a varied version of option B (where the debt collector is required to refer the consumer back to the underlying lender to undergo an affordability assessment).

Other issues

Small business, investment, and family trust loans

We strongly support small business, investment, and family trust loans being afforded CCCFA protections. FSCL investigates complaints from borrowers under these loans. We consider the same underlying policy reason for these types of complaints being able to be considered by FSCL, would apply to extending CCCFA protections.

CCCFA section 83J

We consider this section is unfair on lenders because it can result in some consumers abusing FSCL's process in order to delay the repossession and sale of the loan's security item, in circumstances where both parties' positions are deteriorating. We consider section 83J should be amended to give the DRS the discretion to allow a lender to take enforcement action before a determination is made, if the DRS considers this is in both parties' best interests.