

National Council of Women of New Zealand

Oral for the Credit Contracts and Financial Services law Reform Bill 104

7th November 2013 presented by Jean Fuller and Judy Whitcombe.

Commerce Select Committee. Present: Chairman **Jonathan Young**, National, New Plymouth; Deputy-Chair **Clayton Cosgrove**, Labour, List; **Kanwaljit Singh Bakshi**, National, List; **Carol Beaumont**, Labour, List; **Kris Faafoi**, Labour, Mana; **Julie Anne Genter**, Green Party, List; **Melissa Lee**, National, List; **Mark Mitchell**, National, Rodney; **Jian Yang**, National, List.

Good morning. My name is **Jean Fuller** and my colleague is **Judy Whitcombe**. We are both members of the Parliamentary Watch Committee of the National Council of Women of New Zealand. This submission has been prepared from a background of policy decisions and consultation with the members of our organisation.

Introduction. The National Council of Women of New Zealand has been following the development of this Bill through the tenure of several Governments and we have participated in various consultations. We are glad to see that at last there is a Bill before the House. We acknowledge that this Bill covers a complex commercial situation.

In the First Reading of this Bill Members of Parliament showed a remarkable degree of unanimity but turning sentiment into reality is a difficult task. Legal restrictions and arrangements are important but are often not common knowledge among those who most need protection. NCW would ask who is going to ensure that the Code of Practice is being followed? Are we still going to rely on “Fair Go” to bring offenders to public notice and obtain redress?

While it is not part of this Bill the companion piece to this legislation is the importance of an increased focus on **Financial Literacy**. The Commission for Financial Literacy and Retirement Income makes strenuous efforts to bring this knowledge to the public but there are frequent illustrations of just how much more needs to be done and that generally means the provision of greater financial support for this work.

We are advised that Work and Income requires that in order to qualify for an additional \$10 per week for the Youth Payment and Young Parents Payment applicants must attend a budgeting course. Workers in the budget advisory area report that this “carrot and stick” provision is starting to work and they would like to see it extended to people asking for large loans or food allowances from WINZ. There is no doubt that greater understanding of financial matters is a vital part of the wise use of credit.

A constant theme among our respondents was the use of small print to discourage borrowers from reading contracts carefully, and the difficulties arising with clients who do not speak English as a first language.

Clause 9A - 9G, The responsible lending code which is at the heart of this Bill still has to be developed although the Bill provides clear guidelines. We hope that it will be completed and published in a much shorter time than the Bill has taken. We accept that the Code is not binding but that following the prescriptions will count as evidence that the Law has been followed. This seems a curiously ambiguous situation. Probably the most difficult part of the Code will be the section that requires the lender to be aware of the borrower’s financial

circumstances but allows the lender to rely on information supplied by the borrower. NCW has some concerns as to the practicality of this section.

We have considerable anecdotal evidence of the difficulty of making this provision effective. A debtor frequently disguises or minimises an existing financial obligation in order to obtain the loan. The lender may have genuinely attempted to verify the supplied information or may have been happy to accept the application at face value. Either way the actual interpretation and use of this provision seems problematic. In one case which has been reported to us a family with poor English signed up for a loan before going to a budgeting service. When the situation was examined it was immediately obvious that there would not be enough money for food once the loan outgoings were covered. When the budgeting service attempted to discuss this with the lender the reply was, “Are you saying that the family provided us with fraudulent information?” It was a no win situation for the family.

Clause 83 We are very pleased to see the details for the registration of **Repossession Agents** and the restriction over which goods can be repossessed, as well as the need to provide written notices, but we are concerned about the costs involved. This is an area where we have anecdotal evidence of severe problems. Repossession Agents have a difficult job and may not always have correct information for their actions. This can result in items which have been *loaned* to the family being taken by agents. We also heard that costs for this action can be significant. Repossession charges average \$200 to remove household goods and \$200 to return them. Thus \$400 is added to the existing debt plus \$50 for each letter that precedes and follows the repossession. In one case \$1900 was added to the original debt.

Advertising remains a problem. Credit is represented as being a “right” and an “easy option”. While this Bill will require more details regarding the cost of the credit to be freely published and available to borrowers NCW remains concerned that borrowing is being socially promoted to communities where financial literacy, and possibly language ability, is poor. Companies that specialise in smaller loans such as the “payday loans” may offer increased credit if the client manages to pay regularly for the first few months. This traps the borrower into a cycle of indebtedness.

Clause 103 NCW is unsure about the proliferation of services covering disputes. We accept that there may be significant differences between the various lenders and therefore there is a need for different dispute resolution services, but for an average borrower the complexity of where to make a complaint could be baffling. We hear that a number of people bring their financial problems to the Citizens’ Advice Bureaus because they don’t know where to go. There is little understanding of the effects of compound interest and CAB members have told us that withdrawal from KiwiSaver is being used to pay loans.

We would suggest that some central clearing point might facilitate this process say an 0800 phone number. Again we have anecdotal evidence that even professional budget advisors find it difficult to determine which dispute resolution service is being used. The consequence of not accessing the appropriate service can mean that the dispute goes to Court and costs escalate.

Conclusion

National Council of Women of New Zealand is grateful for the work that has been undertaken to improve the current situation but we also feel that there are many issues still requiring action and given the reliance which the Bill places on the Code of Conduct we would like to see a requirement to revisit this document at regular intervals to ensure that it remains relevant.

Credit is an important part of our financial system and fair access to credit facilities affects the whole population. This Bill has many provisions that we wholeheartedly support and if they can be successfully implemented they should provide a more secure framework especially for those New Zealanders who need to use third tier lenders.

Comments from the Committee

Carol Beaumont noted that our submission contained a section on issues not covered by the Bill. She wanted clarification that we felt these points should have been included. We confirmed this.

There followed a discussion between **Jonathon Young, Mark Mitchell and Jean** concerning the practicality of that section of the Code of Conduct which requires the borrower to provide accurate information as to his/her financial situation, and the lender to attempt to ensure that this information is correct. The MPs wanted acknowledgement that this was an improvement on the present situation. While this is true, the NCWNZ position was that the new requirements were unlikely to be effective. A problem had certainly been identified, but we questioned whether the proposed solution was practical and used the example given in the submission in support of our claim. The MPs emphasised that a “balance” needed to be struck between the rights and obligations of both the borrower and the lender. We agreed but maintained that the situation outlined in the Bill was likely to be impractical since borrowers would tend to minimise their financial problems and lenders had limited means for checking the information they received. We were asked to present a solution but did not since that was not part of our brief.

Jean Fuller

Judy Whitcombe