



NATIONAL COUNCIL OF WOMEN OF NEW ZEALAND

TE KAUNIHERA WAHINE O AOTEAROA

25 October 2013

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Submission to the Commerce Select Committee on the Credit Contracts and Financial Services Law Reform Bill 104

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 30 organisations affiliated at national level and a further 40 organisations affiliated at branch level. It has 22 branches throughout the country attended by representatives of these organisations, as well as by individual members. NCWNZ's function is to represent and promote the interests of New Zealand women, their families and communities through research, discussion and action. This submission has been prepared by the Economics Standing Committee and the Parliamentary Watch Committee, supported by NCWNZ policy.

Introduction

NCWNZ welcomes this Bill, which is long overdue. Particularly welcome is the recognition that there are at least two parties to any contract, both with responsibilities to fulfil. The current imbalance of power and ineffective regulation has allowed lenders and creditors the upper hand, while too many vulnerable debtors have lacked the education and resources to fight for their right to be informed and protected.

This submission will consider some aspects of the Bill and how the changes may affect women in particular. What is not included in the Bill will also be discussed, in the hope that more change for the better is on the horizon.

Part 1

Clause 6 – Interpretation section, 5 Section 4 Amended (overview) and Clause 9

NCWNZ heartily approves of a Responsible Lending Code, and it is hoped that development of the Code follows the passing of this Bill in a timely fashion. Not as welcome is the non-binding nature of the Code, leaving the credit industry potentially open to being 'self-regulated', which has not always been effective in this and other industries.

Clause 8 Section 7A – Credit contract may provide for Security interest over goods.

(2) & (3) List of items which may not provide security cover.

This is an area that has been a source of abuse, particularly for women consumers. Specifying the goods in a contract, restrictions on holding keys and barring essential household items and important documents from repossession can only be a relief to a woman and her family.

Clause 9B – Lender responsibility Principles

While in this clause the responsibilities of lenders are outlined in general, specifically important is the requirement for lenders to publish standard terms and disclose costs. Information is what consumers have lacked, and also knowing what questions to ask to get that information.

Clause 9I – Publication of costs of borrowing

In this clause, **Subsection 2(a)** referring to websites reads: "... the lender must display prominently and clearly the lender's fees and annual rates of interest in relation to every type of agreement referred to in Subsection (1) on that site."

However, the wording of **Subsection 2(b)** which refers to business premises reads "... the lender must display prominently and clearly *those fees and rates of interest* in a publicly accessible area..." There is no mention of types of agreement referred to in Subsection (1) and may therefore be ambiguous and open to abuse. NCWNZ would prefer to see the words of subsection 2(a) "... the lender must display prominently and clearly the lender's fees and annual rates of interest in relation to every type of agreement referred to in Subsection (1)" repeated in subsection 2(b) to avoid any possibility that subsection 2(b) could be requiring a lesser standard.

Clause 20 – Right to cancel consumer credit contract

NCWNZ welcomes the various changes this Bill will make to the timing of disclosures. Vulnerable borrowers have too often entered into contracts and signed up for insurances or warranties, and only afterward found out the full details. Too often the 'cooling off period' ran out before full disclosure was made by the lender. Consumers will be better protected with a 'cooling off' period of five days. Requiring all kinds of creditors to give full disclosure before contracts are entered into is long overdue.

Clause 43 – Inserting a new part 3A, and repealing the Credit (Repossession) Act 1997 Repossession of consumer goods under credit contract

The reforming and tightening of regulations around this aspect of credit contracts will make a great deal of difference to vulnerable consumers, and women in particular. Anecdotal evidence suggests that some creditors employ large and frightening men to carry out their repossessions. These men may wait until male members of a household have gone out before entering and intimidating women and children, and taking away essential items such as beds and cooking equipment as part of the 'repossession'.

Clause 43, 83D – Creditor must serve repossession warning notice on debtor and other persons before taking possession of consumer goods.

NCWNZ is pleased that creditors will be required to observe strict procedures and provide written notice of each step before, during and after repossession of goods.

Clause 43, 83G – Effect of debtor’s complaint or application on grounds of unforeseen hardship on creditor’s rights to enforce credit contract

We are pleased to note that debtors have more choices for repayment and avenues for redress when they are treated unfairly.

Clause 43, 83N – Restrictions applying in relation to persons repossessing Consumer goods

This requirement for the registration and licensing of creditors and their agents is especially welcome.

Part 2 – Financial Services Law Reform

Clause 75, Section 11 amended (No being in business of providing financial service unless registered)

NCWNZ approves of the tidying and tightening effect this Bill will have on licensing of financial service providers, and the improved oversight by the courts of disputes resolutions.

Issues which have not been included, but which NCWNZ feels might usefully have been addressed:

Capping interest rates

There have been concerns regarding consumer finance that have been discussed in previous iterations of this topic. One is the level of interest charged by lenders. From many quarters there has been a call for establishing a cap on the annual rate of interest allowable.

‘Payday’ type lenders, who tend to be lenders of last resort when banks won’t co-operate, will loan money in the short term at a rate that translates into an annual percentage of 500% or more. The claim is that as the loans are short term – a fortnight or a month – there is no profit without setting this very high rate. However, too often the reasons for ‘payday’ borrowing also become the reasons for failure to repay: low income and unexpected expenses such as medical bills or car repairs.

Too many vulnerable people on low or fixed incomes become trapped by debt in this way. Far too many of them are women with children to support. The main objection to a cap on interest seems to be that a set level will negatively affect borrowing and lending behaviour. Yet NCWNZ feels that consumers need better protection in this area. Perhaps a restriction on the term of the loan – a longer period for borrowers to pay, with no penalty for paying off early – could be some protection against the hidden traps of these short term credit agreements.

Restrictions on outlets

Research¹ suggests that fringe lenders target specific communities, particularly those with low credit ratings – in other words, communities of people on low or fixed incomes. They do this by positioning shops in vulnerable neighbourhoods, placing advertising in local and ethnic newspapers, and running mobile shops and door to door sales that encourage credit contracts for goods.

In addition, ‘payday’ lenders advertise on TV without including any lending information, and using a misleading tone suggesting a fun, ‘don’t worry, be happy’ ease of borrowing that lures unwary customers into debt. It is hoped that with the content required as set out in Clause 9I, Subsection (1), the tone of lender advertising will also change when this Bill passes into law.

However, the proliferation of shopfront lenders in poorer neighbourhoods will continue. The regulation of the numbers and placement of these shops is not addressed in this Bill. In addition, the lack of clarity in Clause 9I Section 2(b) may mean that these shops will continue to trade without making full disclosure of rates, fees and charges. This is a small but serious gap in the Bill which should be remedied before it becomes law.

Conclusion

Over all, NCWNZ supports the strengthening of regulations around lending and the increase in consumer protection that this Bill contains. We have identified some gaps that we feel need to be addressed and we hope the Code that follows the passing of this Bill will not be too long in preparation.

Thank you for the opportunity to comment on this Bill.

Barbara Arnold
National President

Katherine Ransom, Convener
Economics Standing Committee

¹ Consumer Affairs – Review of the Operation of the Credit Contracts and Consumer Finance Act 2003