



**National Council of
Women of New Zealand**

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Submission to the Commerce Commission on the draft Consumer Credit Fees Guidelines

The National Council of Women of New Zealand, Te Kaunihera Wahine O Aotearoa (NCWNZ) is an umbrella group representing 288 organisations affiliated at either the national level or to one of our 21 branches. In addition to our organisational membership, about 260 women are individual members of branches. Collectively our reach is over 120,000 with many of our member organisations representing all genders. NCWNZ's vision is a gender equal New Zealand. Research shows we'll be better off socially and economically if we're gender equal. It's a basic human right. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision. This submission has been prepared by the NCWNZ Consumer Affairs Standing Committee based on existing policy and previous submissions.

1. Introduction

- 1.1. NCWNZ welcomes the development of these Draft Consumer Credit Fees guidelines now developed post the outcomes of the litigation CC v Sportzone/MTF. These guidelines are intended to reflect the Credit Contracts and Consumer Finance Act 2003 (CCCF Act) amendments as issued in May 2015.
- 1.2. NCWNZ submitted to the Commerce Select Committee on the Credit Contracts and Financial Services Law Reform Bill 104 (25 October 2013)¹ and noted the then current imbalance of power and ineffective regulation had allowed lenders and creditors to have an upper hand whilst too many vulnerable debtors lacked the education and resources to fight for their right to be informed and protected.
- 1.3. This submission will take into account a number of concerns NCWNZ had raised in the review of the CCCF Act in relation to these Draft Guidelines, and in particular the effect they may have on women and girls.
- 1.4. Of concern NCWNZ notes these are "Guidelines" only and as such cannot be enforced unless they become a Bill (law). This was noted in NCWNZ's previous submission (Clause 6).

¹ National Council of Women of New Zealand (NCWNZ). 2013. Submission to the Commerce Select Committee on the Credit Contracts and Financial services Law Reform Bill 104. Submission S13.17.

2. Overall

- 2.1. Whilst the audience of the guidelines is the lenders and creditors NCWNZ wishes to see user guidelines that are easily understood, available in Te Reo, English and other language translations that reflect the ethnicity of borrowers. These guidelines should also provide contacts to information sources such as the Commerce Commission, Legal Aid, and budget advisory services to ensure borrowers are well informed and know their rights and responsibilities.
- 2.2. NCWNZ notes the significant number of references to the CC v Sportzone/MTF litigation and outcomes. These should be referenced as end notes in the guidelines to enable clearer reading of the document.
- 2.3. The images used portray gender biases. For example the male dominated roles of men wearing business suits shaking hands to reflect the business deal (cover page, pages 15, 18 and 27), male reference to "Jim Gym", and two women at a cafe (page 27). There is minimal portrayal of different ethnicities, socio-economic status, age and overall diversity.
- 2.4. Similarly NCWNZ notes that in the examples such as on pages 8, 9, 16 lenders and creditors are referred to as A, B, C whereas borrowers are given names in other examples such as Jenny and Hoani on page 12.

3. Format

- 3.1. The current format order lacks an introduction overview outlining the intended audience and use of the guidelines.
- 3.2. Whilst clauses 17 to 19 emphasise that protection of the consumer is the primary purpose of the CCCF Act, this reference only appears as the fifth section. This should be upfront to ensure lenders and creditors recognise the implications of their fee setting on the consumers.
- 3.3. The current purpose and scope of the guidelines is listed as the second item but would be better placed in the initial section followed by the overview and then the Act and Fees provisions.
- 3.4. The use of referencing in the footnotes is not clear and appears to be inconsistent. For example footnote 2 (page 4) refers to a section and it is assumed to be of the Act whereas footnote 5 specifies "the Act".

4. Lender responsibility principles (Clauses 14 to 16)

- 4.1. As per the previous NCWNZ submission (Clauses 43, 83N)², NCWNZ is pleased to see that lenders are required to be registered.
- 4.2. Clearly displaying such registration in a way that is likely to be seen by potential borrowers should also be required to minimise the risk of vulnerable borrowers accessing services from any unregistered lenders. This disclosure requirement would also assist in maintaining industry standards and upholding its reputation.

² *ibid.*,3.

5. Interest levels (Clause 22)

- 5.1. It is noted there are no limitations on the interest charges that a lender can impose provided it is disclosed to the borrower and not set at an oppressively high level. As noted in the previous submission (Capping interest rates)³ NCWNZ called for establishment of a cap on the annual interest allowable. Too many vulnerable people on low or fixed incomes become trapped by debt through such interest level fees. As a cap has not been established NCWNZ recommends that lenders and creditors disclose and minimum and maximum scale of charges the borrower is likely to incur.

6. Fees are set before costs are incurred (Clause 27)

- 6.1. The current clause is silent on the manner in which fees must be disclosed and the scope of fees it refers to. NCWNZ wishes to ensure that all fees are clearly made known in advance of entering a contract. This would include actual cost, establishment, repossession, default, prepayment, optional, cancelation and interest fees. As per NCWNZ's previous submission (Clause 91)⁴ NCWNZ wishes that the following words be included:

all fees and interest rates be clearly disclosed in a manner as likely to be seen by potential borrowers....

- 6.2. To enable borrowers to be well informed of the impacts of fees NCWNZ recommends that a self-managed costs calculator resource be developed whereby potential borrowers could calculate future potential payments incurred in accessing any loan. In this way the borrower could reflect on each actual and potential likely fee incurred, what the accumulated cost and fee levels are likely to be, and when such payments might fall due.

7. Lenders must apply a transaction-specific approach to costs (Clauses 29-36)

- 7.1. The example provided refers to costs for the annual Christmas party as a fee that is "likely to be unreasonable". However in none of the fees tables (Table 1: Establishment fees, Table 2: Other credit fees, and Table 3: Default fees) are Entertainment costs identified as reasonable. Therefore it would be correct to say in the example that the fee is unreasonable.

8. Deterrent fees are unreasonable (Clauses 44 to 45)

- 8.1. To assist understanding, NCWNZ suggests some examples of deterrent fees not deemed to be acceptable be provided.

9. Fees should be regularly reviewed (Clauses 50 to 52)

- 9.1. Whilst NCWNZ endorses reviews of fees, the affect they have on borrowers also needs to be taken into account. Thus we wish to see a requirement that borrowers be able to participate and contribute to such reviews.

³ *ibid.*

⁴ *ibid.*,2.

9.2. We also argue that self-reviews have the potential to be biased and would prefer that a neutral independent body undertake fee setting reviews.

10. Demonstrating compliance (Clauses 53 to 55)

10.1. NCWNZ recognises the need to keep good records so lenders can demonstrate how they have apportioned costs to fees, and adherence to the mandatory principles. The record taking should also demonstrate how and when such fees have been made known to borrowers to ensure this was done in ways likely to be understood, particularly from the most vulnerable borrowers.

11. Fees provisions apply to all business models (Clause 61)

11.1. It is noted that the fees provisions apply to all business models, but there is no clarification of business boundaries. Do the guidelines cover businesses within New Zealand only or do they include businesses that might be based outside of New Zealand but operate within New Zealand?

12. Insurance premium credit fee (Clauses 100 to 101)

12.1. NCWNZ does not support borrowers being required to obtain insurance premiums for credit related insurance from a particular insurer or insurers. Where this is occurring we wish to ensure that any such third party relationships and conflicts of interest (real, perceived or potential) be disclosed.

13. Third party fees (Clauses 139 to 150)

13.1. In addition to insurance party relationships NCWNZ wishes to see that all third party relationships, particularly where conflicts of interest exist or could arise, be disclosed. The current guidelines do not appear to stipulate this disclosure requirement.

14. Absent from the draft guidelines

14.1. The guidelines appear silent on needing to disclose disputes and complaints procedures, or repayment options. NCWNZ's previous submission (Clauses 43, 83G, 75, 11)⁵ supported debtors having additional choices for repayment and avenues of redress. It is argued that borrowers have the right to be informed of their rights and choices in such circumstances.

14.2. The requirement for lenders or creditors to have established repossession processes or that they be disclosed does not appear to be covered by the guidelines. NCWNZ supported the requirement of clearer warning notice and process for the repossession of goods (Clause 43, 83D)⁶. It is argued that the borrowers would be empowered and better prepared to adhere to any repossession process if they are well informed of their rights and what to expect. In such instances vulnerable borrowers are unlikely to question or challenge those repossessing their goods which further impacts on their wellbeing and sense of control.

⁵ *ibid.*,3.

⁶ *ibid.*,2.

14.3. To ensure borrowers are well informed of their rights and responsibilities they may need access to services such as legal aid, budget advice and the Commerce Commission. Lenders and creditors are advised to make these contact details known to borrowers.

15. Conclusion

15.1. Over all, NCWNZ supports the update of these guidelines are clarification or a number of areas the lenders and creditors need to be aware of. It is noted however that they are guidelines only and thus not enforceable.

15.2. The Draft Guidelines appear very much written in the interests of lenders and creditors. There appears an absence of any requirements to disclose key aspects to the borrower which NCWNZ would like to see incorporated into the Guidelines.



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