

ISSUES – TREASURY

National Consumer Credit protection Bill 2009

Telephone conference Monday 3.8.2009

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AIPD submission made 1 May 2009. Submission is very specific.

MAIN ISSUES:-

- ❖ No provision in the draft bill at all to really protect the interests of the consumer. No mention or inclusion whatsoever relating to Debt Management practices or Investigation practices and the standards of these operations by the Credit Provider. – CERTIFICATION REQUIRED FOR all Debt Management staff and Investigation staff. Issued with a Practising Certificate in accordance with the established industry National Code of Practice 2008.
- ❖ The Standards of and the Framework of the Credit Provider's Debt Management and Investigation processes needs to be a licensable disclosure at the point of sale and a priority in the proposed legislation. The Consumer needs to know how the Credit Provider will treat them if they cannot pay or meet their obligations under the credit contract. The Consumer also needs to know what the Credit Provider when allegedly conducting an Investigation on their behalf e.g in relation to Identity Fraud. What they will do for the Consumer. The process of disclosure needs to form part of the actual credit contract in order to meet 'fair transparency' standards and Trade Practice obligations.
- ❖ The Draft Bill to date has, in real effect, no compliance mechanism as ASIC and ACCC do not have the resources or the expertise and qualified staff to manage compliance or to investigate complaints
- ❖ The so called ASIC approved Dispute Resolution Schemes will fail the consumer as they are not truly independent.
- ❖ The legislation and already approved Dispute Resolution Schemes by ASIC and ACCC essentially aide and abet the Credit Providers by essentially creating and a large CARTEL of 'invited players' called Licensed Credit

Providers which cannot be policed. The intent of the ASIC and ACCC and Treasury must also be questioned as the Legislation, proposed Regulation and extraordinary adjunct legislation – National Consumer Credit Protection (Fees) Bill merely provides a potential large income stream to the ASIC and ACCC. So this means they make money and the Credit Providers make money under the smokescreen of a so called ‘Consumer Credit Protection Act’ yet the rights of the actual consumer are completely ignored. It is essentially an oxymoron.

- ❖ If Treasury fails to include Certification for Debt Management and Investigation staff in accordance with the Industry Code of Practice, in the legislation, then it must be viewed as sanctioning (perhaps in collusion with the ASIC/ACCC), a Cartel situation under the guise of so called legislation and condoning material non-disclosure by Credit Providers against the interests of consumers.

Why should Treasury listen to or include AIPD in consultation process?

As the AIPD is the leading representative body representing Investigators and Mercantile Agents and established the National Industry Code of Practice in 2005 and revised in 2008 and is the Administrator of the Code. The Code embraces ‘best practice’ Certification, CPD and a three tiered DRS for the real benefit of all stakeholders and involved parties.

The standards identified in the Code of Practice are already set precedents by Australian Governments under the various Financial Services legislations requiring Finance and Insurance brokers to:-

- 1. Be qualified under AQF**
- 2. Be Licensed and Certified to trade in the Financial Services Industry**
- 3. Ensure CPD scheme requirements are met in order to maintain a Licence**
- 4. Are required to be a member of a recognised Industry Representative Body**
- 5. Are part of a recognised DRS**
- 6. Embrace ongoing improvement in service standards**

The same must be applied to Debt Management and Investigation personnel which are integral parts of the Credit Providers activities.

ISSUES FOR DISCUSSION

Treasury needs to encompass **both sides** of the Credit Provision process, in the interests of transparency, fair trade practice and for the benefit of the Consumer. The Consumer deserves to know ALL the facts in order to be in a reasonably informed position to make a decision on the purchase of a credit product from a Bank, Finance Institution or Credit Provider (or agent), in the purchase of a product.

The Draft Act only addresses half the product disclosure process at the point of sale. The legislation goes to great lengths to evince transparency to the customer about the actual product, HOWEVER fails to include the opposite end of the of the process and of equal importance to the consumer, (if not more important) being –

What happens if I can't pay my loan/debt etc. or I miss a payment, loose my job and suffer financial difficulties; Can I negotiate a payment plan with the Credit Provider; Will they allow me this option as Part of the deal? None of this is covered in the Proposed / Draft Protection laws, notwithstanding the extremely poor state of the financial markets globally due to the actions of the Banks, Finance Companies, Credit Providers and Financial Services Industry themselves and no doubt this is the reason for this new proposed legislation.

It is just as important to the Consumer in considering any credit offer, (by the company dangling the carrot) that the Credit Providers' policies and framework in respect of **Debt Management and Debt Collection**, be a core disclosure at the point of sale. The Consumer has the right to know what the Credit Provider's Policy actually is relating to how they will treat the Customer (as well as their basic legal responsibilities) regarding any breach of the contract or meeting their contractual obligations to repay the debt in some form. The Legislation should also include these processes in the proposed licensing framework. The Credit Provider should be required to provide a written Policy/Plan of these matters and also be required to ensure ALL their Debt Management and Collection staff or contractors are suitably qualified in accordance with the Australian Qualifications Framework (AQF) and the Financial Services Industry precedents of mandatory education, Certification and Continuous Professional Development and be part of an appropriate DRS Scheme. The precedents have already been set however but most Banks, Finance Companies, Credit Providers fail to comply.

Examples.

- Are their personnel suitably qualified in the activities of Debt Management
- Are personnel suitably trained?
- Are their Debt Management staff Certified to conduct such activities or Licensed where required;
- Do their staff meet the industry standards and Code of Practice for such activities? Are they Certified in accordance with the Industry Code of Practice? Do they breach Australian laws by engaging unqualified staff, unqualified contractors to perform this work and/or perhaps utilise foreign call centres for these tasks?,
- Do they invoke unfair or unreasonable debt management or collection processes upon their customers? Or unduly harass customers that fall behind in their repayment obligations; fail to be reasonable in their consideration of the client's changed financial circumstances and ability to pay;
- Credit Providers should be forced by the proposed legislation to be model litigants, particularly in the wake of the current financial crisis, as evidenced by the industry causing all the events leading to the global system financial collapse because of their lack of due diligence.

The other area of omission in the Draft legislation is **INVESTIGATIONS. These are desperately needed to ensure the independence of the Dispute Resolution Process is beyond reproach and in the interests of the consumer.**

The customer should be made aware of the standards by the Credit Provider in respect of their investigation processes and the standard of the personnel that will be provided by the Credit Provider in the event of an incident of fraud or identity theft being perpetrated against the customer.