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National Legal Aid

24 May 2013

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The Treasury
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Dear Mr Mikula

Discussion Paper: *Changes to disclosure requirements under the National Consumer Protection Act 2009*

National Legal Aid (NLA) represents the Directors of the eight state and territory legal aid commissions (commissions) in Australia. The commissions are independent statutory authorities established under respective state or territory enabling legislation. They are funded by state or territory and Commonwealth governments to provide legal assistance to disadvantaged people.

NLA aims to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- obtain access to independent legal advice;
- afford the appropriate cost of legal representation;
- obtain access to the federal and state and territory legal systems; or
- obtain adequate information about access to the law and the legal system.

Each of the commissions assists a significant number of consumers with credit related problems each year.

The Consumer Credit Legal Centre (NSW) Inc and the Consumer Action Law Centre have provided NLA with a copy of their submission to this Discussion Paper.

NLA is writing to endorse the content of this submission and we support the suggestions made therein.

We thank you for the opportunity to make this submission. Please do not hesitate to contact us if you require any further information.

Yours sincerely



Anthony Reilly
Chair

Consumer Credit Legal Centre NSW

consumer action law centre

May 2013

Joint Consumer Submission in relation to the Changes to Disclosure Requirements under the *National Consumer Protection Act* 2009

by the

Consumer Credit Legal Centre (NSW) Inc

and the

Consumer Action Law Centre

General Comments

Thank you for the opportunity to comment on the Changes Disclosure Requirements under the *National Consumer Credit Protection Act* 2009 (NCCPA).

The Consumer Credit Legal Centre (CCLC) and the Consumer Action Law Centre (Consumer Action) welcome Treasury's approach of basing revised disclosure on the findings made by the Uniquest report.[1] Uniquest was commissioned by the Standing Committee of Officials on Consumer Affairs (SCOCA) to develop an evidence-based disclosure model to meet the information needs of consumers and provide them with a better understanding of the cost and features of their credit contracts. We strongly support the goals and objectives of the report and the government's aim to achieve more effective disclosure. Given the Uniquest findings are based on detailed consumer testing we strongly encourage the government to follow Uniquest's feedback and recommendations wherever possible.

We also submit that the proposed changes to disclosure requirements under the NCCPA are not only for the purpose of providing consumers with information to help them make a more informed choice about credit products, but also about product safety. Although we strongly support the principle of keeping the proposed Financial Summary Tables (FST) simple, short and easy to understand, we have made a few discreet suggested additions to better inform consumers about some of the dangers associated with these products. These are explained under the relevant sections of this submission.

[1] Paul O'Shea (2010) *Simplification of Disclosure Regulation for the Consumer Credit Code: Empirical Research and Redesign - Final Report*, Uniquest Pty Ltd.

Responses to General Questions

1. *Whether credit providers should continue to be required to provide an Information Statement to borrowers under section 16 of the National Credit Code.*

   The Information Statement to borrowers includes some important information that is not covered in the Financial Summary tables including explanations for how to terminate contracts, get copies of contracts, who to contact if the consumer thinks the contract is unjust, or what to do if the consumer cannot make a repayment. The original Information Statement was clearly designed to explain some basic concepts and rights to potential borrowers with limited financial literacy or English literacy (for example, customers from culturally and linguistically diverse communities).

   We submit that there is some important information contained in the Information Statement that should still be given to consumers if the Form 5 document is dispensed with:

   Prior to entering the contract the prospective borrower should be given information about:

   - Early termination fees (if any) – either in the FST or in the other information
   - Do I have to take out insurance?
   - What is a mortgage? (if relevant) – including that your property can be sold if you don't pay or default under the contract and you may still owe money under the contract if the goods/real estate are worth less than you owe under the contract
   - What can the credit provider do if I can't pay? (take court action, list on your credit report, repossess secured goods/real estate)

   This information could be provided as a section in the other information following the FST, or on the reverse of the FST sheet.

   After entering the contract the borrower should be given plain English information about:

   - Can I terminate the contract?
   - How do I get a payout figure? (repeating ETF info if relevant)
   - How do I get a copy of my contract or insurance policy (if any) if I have lost them?
   - Responsible lending, unjust contracts, hardship and debtor harassment (very brief with instructions to raise with CP and then EDR if not resolved. Role of ASIC and complaints contact. Financial Counsellors, Legal Aid, Community Legal Centres may be able to give advice or assistance.

   This information could be provided with the contract or shortly after the contract has been entered (this would be more effective as it is not lost in the contractual documents).

2. *Whether any of the matters required to be disclosed in section 17 of the Code should be altered (in particular, the way in which commissions are disclosed).*

   Consumer advocates agree that the commission disclosure should be altered in line with Treasury's recommendations. Credit Providers and Lessors should have equivalent obligations to Credit Assistance Providers under the NCCPA. The "not ascertainable" option has seriously undermined the effectiveness of commission disclosure to date with a large proportion of credit contracts simply saying "not ascertainable". It is highly likely a large proportion of consumers do not understand this phrase. In any case an estimate in dollars is bound to have a greater impact.

3. *Whether credit providers should be required to provide pre-contractual disclosure documents, where practical, at an earlier point in time than is currently the case.*

   Since the Uniquest report recommends that disclosures are more effective when they are made sooner, we support providing pre-contractual disclosures as soon as practicable in all cases.

   Specifically, we submit that the Financial Summary Table (FST) should be provided to the consumer in the following procedure:

   a. Separately, on a single sheet of paper, and

   b. As the first document that the consumer receives as soon as practicable after the provider has determined the terms on which it is prepared to enter into a contract with the consumer.

   We strongly believe that the FST will be will be more effective if handed to the consumer separately, and not along with other disclosure documents, or the prepared contract. Consumers will be much more likely to read and appreciate the information on the FST if it is the only document they are handed, even if only for a short period (i.e. a couple of minutes). Further "as soon as practicable" provides a flexible test in so far as it does not create an obligation to interpose a "reasonable" interval of time if the application process is relatively fast, but still ensures consumers get the information as early as possible in all transactions (fast or slow and more complex).

Issue 1: Removing the Requirement to Provide the Information Statement

4. *If the requirement to provide the Information Statement is repealed, is there any information in the document that credit providers should still be required to disclose (for example, the Credit Guide)?*

   See response to question 1 above.

Issue 2: Changes to Disclosure Requirements in Section 17

5. *Where the amount of the commission is not ascertainable, should a credit provider be under an obligation to provide a reasonable estimate of the amount of any such commissions? If so, should this disclosure be in accordance with the methods used for calculating this amount for providers of credit assistance?*

   Consumer advocates submit that the amount of a commission should always be ascertainable. If for some reason a person providing credit assistance or a credit provider is unable to provide the exact amount of the commission, they should absolutely be able to disclose a reasonable estimate. See also response to question 2 above.

6. *Should lessors be under the same obligation as credit providers to disclose commissions? Alternatively, are there any differences in relation to commission arrangements for lessors that would prevent disclosure or require a different approach to be taken to disclosure of commissions?*

   Lessors should be under the same obligation as credit providers to disclose commissions. Considerable work has gone into trying to align the commitments of credit providers and lessors as much as possible to remove opportunities for regulatory arbitrage which undermine competition and cause detriment to consumers. Commission disclosure should be no exception.

7. *Should there be any other changes to the matters required to be disclosed by section 17?*

Yes. Section 17 should be amended to incorporate the suggested changes noted elsewhere in this submission, including:

- The commission field should not be permitted to read 'not ascertainable'
- Inclusion of additional information from the Key Facts sheets
- Stating that where there is no interest is charged on the credit contract, a personalised comparison rate must be disclosed.

Issue 3: Timing of Pre-contractual Disclosure

8. *What are stakeholders' views on the advantages and disadvantages of changing the timing for disclosure in relation to credit contracts?*

Consumer advocates submit that the earlier disclosures are made, the better. As Treasury's discussion paper notes, the Uniquest research found that consumers tended to choose lower risk products with lower over all cost of credit, and had higher rates of confidence and comprehension when disclosures were made at an early stage of the transaction. We encourage the government to follow this recommendation of the report as much as possible.

9. *Are the phrases 'a reasonable time before the contract is entered' and 'as soon as practicable' sufficiently certain for credit providers to be able to readily comply with a requirement based on such terms? If not, are there any other more precise ways to articulate the trigger for compliance?*

The Uniquest Report found that disclosure is more effective the earlier it is made in the process of a consumer obtaining a loan. To this end, it is the position of consumer advocates that disclosure should happen at the earliest point possible.

Currently the Credit Guide is required to be provided to the consumer "as soon as practicable after it becomes apparent to the licensee that it is likely to enter into a credit contract with a consumer who will be a debtor under the contract": section 126 NCCPA. Consumer advocates support the application of this test in this context also and propose that the Financial Summary Table and other pre-contractual disclosure should be provided within the same time frame.

To ensure that the Financial Summary Table has maximum effectiveness in disclosing the key product features and costs to the consumer, we suggest the following requirements in relation to this particular pre contractual disclosure document. The Financial Summary table should be:

a. the first document provided to the consumer;

b. physically separate from the other contract and disclosure documents (for example, the other information from section 17 should be on the back or a following page and no other documents given at the same time); and

c. provided to the consumer with sufficient time to read and digest the document prior to proceeding with the transaction. We see no reason why this cannot be achieved in the online and telephone space web publishing and electronic communication.

10. What costs might industry incur if they were required to provide the pre-contractual summary of the contract to the consumer within a reasonable time before the contract is entered?

    Consumer advocates are unable to comment on this.

11. Should any such obligation apply to all credit products, or only to particular categories?

    Consumer advocates believe that any changes to the timing requirements of disclosures should apply to all categories of credit contracts without exception. Credit card transactions and small amount credit contracts are high risk products and should not be exempt. The Uniquest report was commissioned to achieve better consumer outcomes and to increase financial literacy among Australians. Its recommendations should be applied as consistently as possible.

Attachment A: Home Loans Key Fact Sheet

We support the Treasury's preferred model (Model A.1) We agree with the key factsheet and financial summary table being merged. The key facts sheet and the financial summary table serve the same purpose and it is preferable that disclosure is consistent across all home loans to allow more easy comparison (rather than having the Key Facts Sheet model apply to some and the Financial Summary Table apply to others). Key Fact sheets are only currently required to be given in limited circumstances. Merging the two requirements means that consumers will always get information in this format before they enter a contract (and prevent duplication).

1. *The requirement to provide a Financial Summary Table, to the extent it imports known concepts from the Home Loans Key Facts Sheet, could apply to standard home loans, as defined in section 133AA of the Credit Act and Credit Regulation 28LA. What are stakeholder's views on what modifications, if any, would be necessary to enable the Financial Summary Table to apply to other home loans?*

    Consumer advocates submit that there should be one model of the table that applies to all types of home loans. This means that there is a recognisable format for all products. Where arrangements are complex Treasury should work with industry to ensure any assumptions used to represent the information in simple form are not misleading. If this basic information about the product cannot be conveyed relatively simply it is questionable whether consumers are able to effectively judge whether the product is good value or not in any event.

2. *The draft* FST *addresses a scenario in which the home loan has a simple variable interest rate. There are a range of other ways in which interest rates can operate, for example, honeymoon periods. It is considered that these alternatives could be encompassed within the existing template (consistently with the disclosure developed for the Home Loans Key Facts Sheets). Are there any difficulties in using the Financial Summary Table to address home loans where the interest rate applies in this way?*

    We do not anticipate that would be difficulties in using the Financial Summary Table to address home loans where the interest rate applies in this way. There should be one model of the table (with approved variations to capture common scenarios) that can apply to all types of home loans. All financial products being offered to consumers should be able to be disclosed in a simple and easily understood way.

3. *What are the advantages and disadvantages of introducing new requirements to disclose the following matters (noting that these matters are required to be disclosed in the Home Loans Key Facts Sheet):*

   Consumer advocates believe there are advantages in putting all of the following matters in the new FST.

   a. *The Name of the Credit Facility***:** This matter is relevant to consumers because they need to know what type of contract they are getting into.

   b. *The Estimated Cost of Credit:* We cannot think of anything more important.

   c. *The Estimated Total Amount To Be Paid Back*: This too is extremely important, as it is the cost of credit plus the amount of the loan. Consumers relate far more readily to dollar figures than to percentages. Many consumers do not readily understand the impact of say 0.25% more interest for a loan with more bells and whistles – but they can evaluate whether the additional facilities are worth an additional XX thousand dollars over the life of the loan.

   d. *Personalised Comparison Rate*: This is a very good tool for consumers to compare cost of credit between different loans. Fee arrangements can be very complex. The requirement to disclose a personalised comparison rates provides protection for consumers against complex fee structures which undermine the interest rate as a point of comparison.

   e. *The Term of the Loan:* This is essential.

4. *The Uniquest report only proposed including a statement of the Amount of Credit, and not a breakdown of how it was paid. Currently Section 17(3)(a)(ii) requires a credit provider to disclose "the persons, bodies or agents (including the credit provider) to whom it is to be paid and the amounts payable to each of them, but only if both the person, body or agent and the amount are ascertainable." Should this information be disclosed in the Financial Summary Table or separately?*

   Yes, absolutely. Consumer advocates believe that information about the persons to whom the Amount of Credit is paid is essential. Our Centres have had experience with consumers whose money was being paid to people that the consumer didn't even know. This information must be disclosed. Consumers should be told where their money is going. The breakdown should appear in the 'details of your contract' column (second column) as an explanation of the Loan Amount.

5. *The Financial Summary Table refers to both 'Fees and Charges', noting that section 17(8) of the Code refers to credit fees and charges. Is there any distinction between fees and charges, or could the disclosure in the Financial Summary Table be simplified by only referring to fees?*

   We do not believe that consumers understand any difference between 'fees' and 'charges', nor do we believe there is any meaningful difference. The FST should simply refer to 'fees' to help prevent confusion. This should be changed across <u>all</u> of the FSTs.

6. *Should Late Payment Fees and Early Termination Fees be specifically disclosed in the Financial Summary Table, or should they be included in the list of all fees and charges to be separately disclosed?*

   They should be disclosed in the Financial Summary table. They are both very important pieces of financial information for consumers, and should not be buried in the list of other fees. However, there should also be a statement to the effect that other fees may also apply (and how the consumer can find out what these fees are) to avoid giving the impression that the late payment and early termination fees are the only ones.

Consumer advocates also submit that the information provided in Model A.1 under 'Early termination fee' is inadequate. There must be some information about the likely estimated fee or at least the maximum fee. Consumers will see $400 without realising that they might be charged many multiples of that amount on termination.

Attachment B: Lenders Mortgage Insurance (LMI) Information Statement

Consumer advocates support the proposed Information Statement about LMI. However, we suggest that it includes a section entitled "How can I avoid paying LMI" with information for the consumer about paying a higher deposit to avoid LMI. For example, "you may be able to avoid having to pay for LMI by paying a larger deposit (usually at least 20%) of the value of the property. This will save you a lot of interest over the life of the loan".

1. *It is proposed that credit providers would be obliged to give the debtor the Information Statement, and that it would be badged as a document of the credit provider, as it would include their name and Australian Credit Licence number. Given this, should the Statement replace the references to 'the lender' with either 'us' or the name of the credit provider (as appropriate)?*

   Yes. There is widespread confusion among consumers about LMI. Consumers often think that this type of insurance is to cover their potential shortfall, not the lender. Changing the tone of the Information Statement to the first person (coming from the lender) would help resolve some of this confusion.

2. *The Information Statement refers to the borrower paying an LMI premium. Will it always be the case that the premium is deducted from the amount of credit, or do some credit providers has business models in which the cost is not paid in this way? If the latter, how should this type of arrangement be disclosed in the Information Statement?*

   Our Centres have never seen a case where the LMI premium is not deducted from the amount of credit.

3. *The draft encourages a borrower to contact the LMI insurer if they want more information about LMI. Stakeholders' views are sought on whether it would be better to direct the borrower to their lender, given that it is unusual for LMI providers to have such direct contact?*

   It will be much better to direct consumers to speak with the lender if they need more information about LMI. In our experience, no one contacts the insurer, and the consumer already has experience contacting the lender. Consumers should never have to have direct contact with the LMI, because the lender is the one taking out the policy, not the consumer. Asking the consumer to contact the insurer only reinforces the misconception that the consumer is covered by the insurance rather than the lender.

4. *Section 17 does not specifically address disclosure in relation to LMI products.Credit providers may have models where the LMI premium is not deducted from the amount of credit. If this is the case, should there be any new disclosure requirements in relation to the existence of an LMI policy, or is disclosure sufficiently addressed in the Information Statement?*

   We do think it is important to have a new disclosure requirement if the LMI premium if it is not deducted from the amount of credit.

Attachment C: Credit Cards Financial Summary Tables

Consumer advocates support the Treasury's preferred model (Model C.1), except we think the format of the 'Minimum Repayments" information is better in the Uniquest Model (C.4). The Treasury model is not easy to follow (the *maximum minimum repayment* is a confusing concept). The method of calculation followed by an example of what would be paid on the fully drawn limit is immediately comprehensible.

We also are concerned with the wording under 'Important Information" for the "Term of the Loan." We believe the current wording does not inform consumers that the credit provider can cancel the facility at <u>any time</u>, even before providing a default notice. This should be made clearer in the table.

1. *The models all refer to disclosure of an annual fee. However, this row of the Table could be adapted to allow for the disclosure of either monthly or annual fees (or both), according to how the credit provider charges fees. Do stakeholders have any comments on this approach?*

   Yes, the model would ideally disclose both. So if the fees are monthly, they should be disclosed as such and also annualised.

2. *Stakeholders' views are sought on whether other common fees (for example, cash advance fees and foreign transaction fees) should be disclosed in the Table, or only separately below the Table?*

   These other common fees do not need to be in the Financial Summary Table, and instead can be disclosed below the table of fees separately. There should however be a note next to the annual fee or establishment fee to indicate that other fees apply in some circumstances and where this information is found in the balance of the disclosure.

3. *The Uniquest templates (Models C.3 and C.4) include a minimum repayment warning above the table. Stakeholders' views are sought on whether this requirement should be retained, given that a similar requirement has already been mandated in relation to monthly statements on credit cards.*

   Yes, the minimum repayment warning in the Uniquest Model should be retained in the FST. This is an important piece of information that consumers need to make an informed choice about which credit card to sign up for. Minimum repayment rates vary among credit card merchants, and a total annual pay-off time would provide a critical point of comparison for consumers. It will also be useful to Include this detail on FSTs for consistency—consumers will become acquainted with the warning on statements for their current card(s) and so allow a further point of comparison between those and a new card.

   The information could be included in the information section for minimum repayments (following the existing sentence) rather than at the top of the Table, but the word Warning should be retained and bold.

4. *What are stakeholder's views on the advantages and disadvantages of introducing new requirements to disclose the following matters:*

   - *4.1. The Name (if any) of the Credit Facility*. YES: Consumers comparing different cards are likely to be comparing multiple cards from the same provider. Including the name of the facility on each sheet will make this simpler.

   - *4.2. The Term of the Loan.* YES

Attachment D: Personal Loans Financial Summary Tables

1. *Stakeholders' views are sought on the differences in disclosure in relation to the components of the total cost of credit and the ascertainable fees and charges, and whether they have a preference for a particular disclosure model.*

   Yes, consumer advocates support the Treasury Preferred Model (D.1).

2. *In relation to loans for the purchase of a motor vehicle, stakeholders' views are sought on the advantages and disadvantages of including separate statements of the amount of credit provided to purchase the motor vehicle, and the amount of credit provided for other purposes. Stakeholders' views are also sought on whether any such disclosure should be in the Financial Summary Table, or separately, with other items.*

   Consumer advocates support including separate statement of the amount of credit provided to purchase a motor vehicle and the amount of credit provided for other purposes. Again this could be provided in Column 2.

   In relation to loans for the purpose of a motor vehicle, we submit that the Table should including a specific break down of how the money is paid. For example, if there is an extended warranty, like is often the case in car yard finance, we strongly believe that the amount of the extended warranty needs to be disclosed in the Table as early as possible. In our experience, extended warranty premiums get hidden in the list of fees and consumers do not have a real opportunity to say they don't want an extended warranty. The same arguments apply for gap insurance, breakdown insurance, brokerage etc

   <u>We envision the breakdown should be in dollar amounts (not %) and would appear as:</u>

   $x borrowed for the car, registration, stamp duty

   $x borrowed for other purposes which are

   - Consumer credit insurance: $x
   - Extended warranty: $x
   - Other: $x

3. *What are stakeholder's views on the advantages and disadvantages of introducing new requirements to disclose the following matters (noting that these matters are required to be disclosed in the Home Loans Key Facts Sheet):*

   - *3.1. The Name (if any) of the Credit Facility.* YES
   - *3.2. A Personalised Comparison Rate.* YES
   - *3.3. The Term of the Loan.* YES

Attachment E: Reverse Mortgages Financial Summary Table

Consumer advocates support the Treasury's preferred Model (E.1) with some qualifications:

- We believe the 'Important Information" about 'Estimated total amount to be paid back' is confusing and inadequate.
    - The exception to the no negative equity guarantee is only when the consumer's house is sold for less than market value by the consumer. This exception does not apply if the lender sells the house for below market value. This point should be clarified in the table.
- It does not give any information about how equity will be eroded over time. It is unclear how this document will interact to the equity erosion disclosure already required under the NCCPA. It is vital that that information is given at the same time and cross referenced to the Table. Also, we have the same comment as above (Attachment A, Question 6) that the 'Early termination fee' must have a maximum amount listed as well as minimum.

1. *Where the contract has a fixed interest rate, should the credit provider be provided to include an example of the break fee that would be charged after a specified period?* **Yes, definitely.**

Case Study

S and V owned their home outright. In 2006 they attended a seminar at their local RSL in relation to reverse mortgages and equity release products. At the seminar discussion ensued over fixed rate reverse mortgages, the interest rate was at that time 8.49%. During the ensuing conversation exit fees were discussed and the representatives of the mortgagee/broker indicated verbally that any fees would not exceed $1500 in the event the loan was terminated. S and V proceeded in obtaining a reverse mortgage for $50,000 with a fixed rate of 8.49% pa. 2 years later, they obtained a further advance of $20,000 in 2009 fixed at 9.59% pa.

As the years progressed, S and V are looking to downsizing and planning for their future by entering a retirement home. They are currently 79 and 82 respectively. They inquired about exiting the loan and getting an indicative pay out figure in early 2013, and were advised the current balances are $89,608 and $29,902 respectively. The break fees for terminating the loan early was $34,550, effectively they would need to pay back $154,060 for an original borrowing of $70,000. This amount equates to approximately 49% of the original amount borrowed.

S and V have decided to remain in their home rather then proceed with downsizing and finding a retirement village. Looking at the loan contract no examples are provided as to the fees, rather the only warning is "break costs could be significant". However this statement coupled with the representation at the seminar that the fees would be $1500 if you left early S and V had no opportunity to really consider what "significant" really meant as the term is vague. There is no worked example in the loan contract, there is no equation and no real explanation that the fee could be almost 50% of the loan amount originally borrowed. S and V are now faced with the decision of remaining in their home, rather then transitioning to retirement village accommodation and transitioning to nursing home care.

2. *What are stakeholder's views on the advantages and disadvantages of introducing new requirements to disclose the following matters):*
    - *2.1. The Name (if any) of the Credit Facility.* YES
    - *2.2. A Personalised Comparison Rate (including whether this is feasible where the end date of the contract is not known).* YES

Attachment F: Consumer Leases Financial Summary Table

Consumer advocates have already submitted comments regarding changes to disclosure requirements for consumer leases. We would like to re-emphasise our support for including the cash value of the goods and the early termination fee in the Table. We believe these two pieces of information are essential for consumers to make an informed decision about signing a lease agreement. We also approve of the inclusion of a nominal interest rate to assist consumers to compare the cost of a consumer lease or Rent to Own contract with the cost of procuring the same goods on credit (particularly necessary where the lease is a rent to own arrangement).

We also strongly believe the FST should include a warning at the top stating:

> WARNING: You will have no right to own this product at the end of the lease period. If you want to own this product you should consider alternative means of purchasing this product outright.

We also suggest changes to the proposed FST to make key information clearer and to bring the leases FST into line with the principal + cost = total amount payable format used in the FSTs for credit contracts. Our suggested format is below.

(*Proposed alternate table for consumer leases)*

Consumer Leases Financial Summary Table

Items	**Details of your contract**
Goods being leased	106cm HD TV
Cash value of goods	$998
+ Amount paid in excess of cash value	$646
= Total amount payable	**$1728** Rental Payments: $1646 (24 payments of $72 per month) Deposit: $0 Fees: $72
Term of the lease	2 years
Assumed or notional interest rate	48 per cent
Early termination fee	
Late payment fee	

If a lease agreement also charges other amounts for ancillary goods or services (for example insurance or servicing) these should also be itemised in the 'Total Amount Payable' field alongside other costs.

Discussion Paper for Changes to Disclosure Requirements for Small Amount Loans

1. *Are there any additional matters required to be disclosed by section 17 that should be included in the Financial Summary Table (instead of being set out below the table)? In particular, would it be helpful to include a statement of the fees that would be charged for late payment?*

   Consumer advocates agree the table should include a statement that default fees may apply for late payment but do not think it is necessary for the specific fees should be included the Financial Table. The proposal set out below provides an example of fees for late payment should be disclosed in the Financial Summary Table. We also submit section 17 should also be amended to require the disclosure of a comparison rate as included in our proposed financial table.

2. *Should two disclosure models be allowed, according to whether or not the establishment fee is included in the amount of credit being provided, or should only one model be allowed (and, if so, which one)?*

   Only one model should be allowed and it should clearly disclose any establishment fee. We believe our alternate Model does this the best.

3. *The Financial Summary Table refers to both 'Fees and Charges', using the same language as in section 17(8) of the Code, which refers to credit fees and charges. Is there any distinction between fees and charges, or could the disclosure in the Financial Summary Table be simplified by only referring to fees?*

   Simply referring to 'fees' and not 'charges' is fine.

4. *The models propose two different models for disclosure of when the repayments are due. Views are sought on whether one approach is preferred to the other, or whether both should be allowed as alternatives.*

   The simpler model is preferable provided the actual repayment schedule is given to the client at some point during the transaction. *Other comments on the proposed Financial Summary Tables*

   The proposed Financial Summary Table incorporates above and includes some additional features which are explained below. Note that the bolding, italics, layout and spacing have been deliberately designed to draw attention to the most important aspects of the table. We prefer this design to the fully bolded versions in Model 1 and Model 2.

   <u>Removal of "Loan amount paid as follows"</u>

   Based on our casework experience we have not seen loan funds from small amount credit contracts directed to parties other than the debtor (other than those associated with the credit provider). Given that fees can only be charged consistent with section 31A *Consumer Credit Legislation Amendment (Enhancements) Act 2012* and loans funds will almost always paid directly to the debtor we do not see this section as needed and distracts from other information in the table.

Insertion of breakdown in fees

Given there are only two types of fees charged in relation to small amount credit contracts it is useful to specify these in the Financial Summary Table. While models 1 and 2 disclose the establishment fee; they do not state that a monthly fee applies and the amount of that fee.

We believe it is essential to disclose this fee in the Financial Summary table because it is the only ascertainable fee charged to the contract on an ongoing basis. The monthly fee is particularly important for the consumer because if the loan contract extends beyond the agreed time frame (due to non-payment) to non-payment the fee will continue to be incurred. For these reasons the fees have been broken down and the monthly fee specified in our proposed table.

Inclusion of the Comparison Rate

We are strongly of the view that small amount lenders should have to disclose a comparison rate similar to all other products. There is no reason why these loans should be exempt from truth in lending principles that have applied for decades. While many consumers in the small amount market will be unaffected by this disclosure, they should still be given this vitally important information. To do otherwise is to undermine any financial literacy efforts that are otherwise undertaken and to deprive the most vulnerable consumers of information we consider vital in all other parts of the market. It may also allow lenders to misleadingly promote the 4% monthly figure in the hope that consumers will favourably compare it to an annualised rate. Lenders have already started advertising in this way [paste in/attach Credit24 Ad]. It is vital that the misleading impression created by '4% per month' is corrected at least in FSTs, especially as this representation does not appear to be caught the usual requirements in sections 150 and 160 of the National Credit Code for lenders to advertise APRs and comparison rates.

Explanation of limits on the cost of credit

We strongly support the Financial Summary Table including a statement that advises the consumer of the limits on the cost of credit under Commonwealth law. However, the statement in Model 1 and Model 2 meets this objective as well as it could. Given the distinction between fees, charges and interest are unclear to the consumer; we suggest this statement be converted into dollar figures that enable the consumer to compare to the limits as stated to the amounts disclosed in their contract.

We submit this statement would be easy for the lender to complete, given that the fields could be automatically populated from the other figures in the table and much more effectively alerts the consumer to the limitation imposed by Commonwealth law.

(Proposed alternate table for small amount credit contracts)

Financial Summary Table

Loan by XYZ Finance Pty Ltd ("The Credit Provider") to Waldo Smith

Loan amount	**$1,000**
Plus total known fees	$440
	Establishment fee $200 PLUS Total Monthly fees of $240 ($40 per month x 6 months)
***Equals* total to be paid back**	**$1,440**
Comparison rate	X %
By repayments of	$240 per month for 6 months, starting on 1 January 2013 OR $240 per month for 6 months, with the first payment due on [inset date] and the 5 other payments due on [insert dates and amounts]
Default fees up to a limit can also apply to your loan if you do not make your repayments on time.	
Under Commonwealth law, the maximum that you have to pay XYZ Pty Ltd for this loan is an establishment fee of $200 and monthly fees of $40, as long as you make your repayments on time. If you do not pay on time, the maximum you will have to pay back (including default fees, establishment fees and monthly fees) is $2,000. XYZ Pty Ltd may also charge you enforcement expenses (for example, the cost of hiring a debt collector or taking court proceedings) if you fall behind in your repayments. This may be in addition to the $2000.	

Thank you again for the opportunity to comment on the Revised Disclosure for Home Loans under the *National Consumer Credit Protection Regulations* 2010. If you have any questions or concerns please do not hesitate to contact our centres on the numbers listed below.





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Who We Are

Consumer Credit Legal Centre (NSW)

Consumer Credit Legal Centre (NSW) Inc ("CCLC") is a community-based consumer advice, advocacy and education service specialising in personal credit, debt, banking and insurance law and practice. CCLC operates the Credit & Debt Hotline, which is the first port of call for NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. We provide legal advice and representation, financial counselling, information and strategies, referral to face-to-face financial counselling services, and limited direct financial counselling. CCLC took over 18,000 calls for advice or assistance during the 2011/2012 financial year.

A significant part of CCLC's work is in advocating for improvements to advance the interests of consumers, by influencing developments in law, industry practice, dispute resolution processes, government enforcement action, and access to advice and assistance. CCLC also provides extensive web-based resources, other education resources, workshops, presentations and media comment.

Consumer Action Law Centre

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action offers free legal advice, pursues consumer litigation and provides financial counselling to vulnerable and disadvantaged consumers across Victoria. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.