CONSUMER CREDIT too much information?

By Paul O'Shea

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Driven by the quest for 'truth in lending', regulators and legislators both here and in the US have demanded, over the last century or so, ever more complex, detailed and comprehensive disclosure by credit providers to their consumers. In Australia, this culminated in the Consumer Credit Code.

Criticisms of these comprehensive disclosure regimes as being expensive and ineffective have recently been borne out by empirical research. Policymakers in both countries are starting to take notice.

It seems self-evident that consumer credit transactions are characterised by gross inequalities of power and information. Banks and other credit providers are always more powerful and informed than their consumer customers. Consumer law should be directed towards addressing these structural inequalities so that the 'consumer market can perform appro-priately alongside contract law but without undermining it'.[1]

Not surprisingly, consumer credit regulation has required increasingly comprehensive and detailed disclosure as a means of protecting consumers and redressing this information imbalance. This seems like a good idea. Surely, if consumers only knew all the relevant information pertaining to their transactions they would make choices that maximised the benefits of the market?

Of course, consumer credit contracts – like all contracts, whether written or not – must specify with some certainty their terms, otherwise they will fail for uncertainty. Also, in a competitive market, credit providers are likely to voluntarily inform their customers or potential customers of those features of their products and transactions that make them more attractive. This may not, however, be the complete picture.

This article uses the word 'disclosure' in the context of regulated consumer credit. It addresses requirements by statute for credit providers to articulate specifically, usually in writing, certain terms of their consumer contracts, whether they are attractive to the consumer or not, so as to (hopefully) allow consumers to make more informed choices. This concept has received judicial acknowledgement. As Justice Kirby, then of the NSW Court of Appeal, said when considering the disclosure requirements of the old Credit Act:

> 'The ultimate theory behind the philosophy of truth in lending is that disclosure will help to ensure honesty and integrity in the relationship (where one party is normally disadvantaged or even vulnerable); promote informed choices by consumers; and allow the market for financial services to operate effectively.'[2]

Unfortunately, empirical research into consumer behaviour indicates that consumers frequently do not use the disclosure information well, if at all, and that asymmetries still operate so that consumers choose credit products that are not suitable for their needs, fail to meet their expectations and generally lead to market failure. One of

the factors leading to continued consumer confusion is allegedly the volume of disclosed information. As Professor Justin Malbon, one of the first Australian researchers to conduct empirical research into consumer credit, has concluded: 'The evidence shows that deluging consumers with enormous volumes of pre-contractual disclosure is a waste of everyone's time.'[3]

Too much disclosure may in fact be hampering, not helping, consumer choice.

A BRIEF HISTORY OF DISCLOSURE IN CONSUMER CREDIT IN AUSTRALIA

Early regulation of money lending was driven by moralistic and religious beliefs about 'usury' and focused on its proscription or on regulating interest rates.[4] It was not until the 19th century that a UK House of Commons select committee examined the consumer credit industry. Its report identified many 'abuses', many of which related to information.[5]

This report led to the passage of the English *Money Lenders Act* (UK) of 1900, which was copied by the Australian states. Requiring registration and criminalising certain more excessive conduct, it did not have much to say about disclosure. It was not until the 1927 *Money Lenders Act* (UK) that detailed requirements affecting the conduct of money-lending business, including disclosure in contracts, were imposed. Without really knowing what they were doing, early 20th century legislators mandated the first consumer contract disclosure requirements.

Either in response to other market forces or as a direct and conscious attempt to avoid the prescriptions of the Money Lenders' Acts, financiers turned to hire-purchase arrangements, which became a common form of consumer credit by the middle of the 20th century. Consumers' ignorance of their rights in hire-purchase transactions and a lack of understanding of the true costs of transactions were also identified as features of the hire-purchase market.[6]

The regulatory response was the Hire-Purchase Acts (HP Acts). In 1941, NSW passed the *Hire Purchase Agreements Act*, which became the model for largely uniform legislation passed in all states between 1959 and 1961.[7] These Acts provided, among many other things, for detailed documentary and disclosure requirements. As an example, the Queensland HP Act required all contracts to be in writing,[8] and a further 14 disclosure items.[9]

The penalty for non-compliance was loss of interest, described as the loss of the 'terms charges'. The Act also prescribed two statutory forms in Schedules 1 and 2, namely, 'Summary of your financial obligations' and 'Advice to hirers'.[10] A total of 15 prescribed pieces of information were to be disclosed. Disclosure in consumer credit was up and running.

The next 25 years saw a steady decline in the popularity of hire purchase and increased development of alternative means of securing credit transactions. Most commentators attribute this shift to the attraction of less-regulated types of contracts and the avoidance, where possible, of stamp duty.[11]

Consumer credit was the subject of reports and inquiries both here and overseas. In Australia, it was the 1969 Rogerson Report[12] and the 1972 Molomby Report.[13] Both of the Australian committees were influenced by the US *Consumer Credit Protection Act 1968* (also known as the 'Truth in Lending Act') and the regulations that supplement it, particularly 'Regulation Z' on disclosure in consumer credit contracts.[14]

The slow process of consultation and legislative reform culminated in the adoption in South Australia of the *Consumer Transactions Act 1972*, and the other states followed with their Credit Acts, 12 to 15 years later.[15]

The Credit Acts

Disclosure plays a prominent role in the consumer protection regime established by the Credit Acts. They adopted the disclosure requirements of the HP Acts and built on them.

The Credit Acts provided separately for both credit sale and loan contracts, although they did, however, contain mostly the same requirements. Described for the first time as 'disclosure', they require a total of 37 different items to be disclosed, more than twice those for the HP Acts.[16] Interestingly, there is no prescription for a 'financial table' as such but, given the large number of compulsory and variable disclosure items, many credit providers used tabular forms in their contract schedules to comply with the Act. >>

All in all, depending on the product, credit providers regulated by the Credit Acts had to address between 37 to 45 disclosure items in the case of credit sales or loan contracts that continued without default to completion; another nine items, including statutory prescribed information statements, if there was a default; and, in the case of continuing credit products, regular statements with 33 items of disclosure.[17]

Failure to comply led, under the Credit Acts, to an automatic civil penalty, being the loss of the right to collect any interest or credit charges on the offending contract. Credit providers could apply for relief from this penalty.[18] Consumer credit is almost always provided under standard form contracts, and disclosure errors are frequently attributable either to a fault in a standard form printed document, or a common human error in their completion by employees of the credit provider. It was very common, therefore, for breaches of the disclosure requirements of the Credit Acts to affect hundreds, if not thousands, of contracts.

Civil penalties in cases where credit providers applied for relief under the Credit Acts often ran into the tens of millions of dollars. These 'one-sided class actions' saw voluminous documentation presented to courts and tribunals, seeking to excuse the credit providers from their breaches of disclosure requirements, of which consumers were usually ignorant. Consumers could respond, but few did, represented usually by community legal services or legal aid offices.

Even as the Credit Acts became effective, however, they were subject to substantial criticism. Among the criticisms were that they applied to an ever-decreasing proportion of the consumer credit market, as financiers developed new products even more aggressively. Credit unions and building societies were exempt, as were all home loans, leases and 'term loans' offered by banks. In some states, credit over $40,000 of any kind was exempt. Estimates made in 1992 indicated less than 20 per cent coverage of the consumer credit market.[19]

The civil penalties and disclosure regimes were also widely criticised as being severe, imposing the automatic civil penalty for quite technical document-based breaches that did not disadvantage the consumer in a material way. Further, applications for relief from the civil penalty were costly, time consuming and rarely resulted in any refunds to individual consumers.[20] This, and many other problems, led to the uniform Credit Laws Agreement 1993 between the states, and eventually to the adoption by them of the *Consumer Credit Code* (the Code).[21]

The Consumer Credit Code

The Code covers all forms of consumer lending by all types of lenders, with a few specific exceptions in s7. It expressly applies to hire-purchase contracts, referring to them as 'instalment sales' in s10, and has a special part for 'consumer leases' in part 10.

The Code requires consumer credit contracts to be 'a written contract document signed by the debtor and the credit provider'. It returns to the HP Act prescription of a 'financial table', but does so only for 'pre-contractual disclosure', a new concept introduced by the Code. Curiously, the 'financial table' is not prescribed for those disclosures that must be included in the contract itself. However, most credit providers satisfy the pre-contractual disclosure and contractual requirement simply by providing the same document twice. Thus, financial tables that include all of the contractual disclosures are common to both.[22]

The financial tables provide for 41 potential items of disclosure. While some are contingent, almost all must at least be addressed in the negative. Again, there are statutory prescribed statements and warnings to be included in contracts and pre-contractual disclosure documents. One of these is portentously headed 'THINGS YOU MUST KNOW'.[23]

As opposed to the Credit Acts, periodic statements of account are prescribed for all types of contracts, not just continuing credit. These mandate a further 15 items of disclosure and, should enforcement be necessary, another 12 items are required in the requisite notices.[24]

Comprehensive disclosure has arrived in consumer credit.

THE NEW EMPIRICISM IN CONSUMER LAW

This is new, at least in Australia. The ministerial second reading speeches delivered on the introductions of the old Credit Acts to various state parliaments in the 1980s do not refer to any empirical research on consumer or credit provider behaviour.[25] The key feature of the Code, its disclosure regime, is not based on primary empirical research. It is largely the product of the secondary research of consumer affairs officials, looking overseas at the laws of other countries, at the existing disclosure requirements in the Credit Acts and the HP Acts, and putting something out for consultation with industry and consumer-group stakeholders.

This state of affairs, not confined to consumer credit or even consumer law, has come in for criticism from a variety of sources. A growing number of academics are calling for the use of empirical research in the identification of market abuses, and the development of policy to address them. Dr Elizabeth Lanyon, speaking about consumer credit at a conference in Melbourne in 2004, said:

> 'A new policy framework needs to be struck with its active involvement so that there is coherence between those macro-economic policy settings and micro-economic responses to particular abuses. The first step is to be as clear as possible about the nature and scope of particular abuses and test this by empirical research. Policy development needs to take account of economic analysis of markets and show how reform fits with that analysis or articulate a convincing case for a different policy response.'[26]

At the same conference, former President of the International Consumer Law Association, Professor Ramsay, criticises the 'very modest amount of empirical work on consumer law and institutions and their relationship to market behaviour' and that 'legal centralism is still influential in consumer law'. He says: 'it would be useful to have some further study of

consumer market norms and practices, particularly since major European harmonisation efforts are premised on the (somewhat dubious) empirical assumption that differences in consumer law affect the development of cross-border shopping'.[27]

EMPIRICAL RESEARCH INTO DISCLOSURE IN THE US

Not surprisingly, the US, the birthplace of behavioural social science and the 'truth in lending' acts, has been testing consumer behaviour and disclosure for quite some time.

The truth in lending laws (passed in 1969) were subjected to empirical testing by American economists and social scientists from their earliest adoption. Mandell in 1971, Day and Brand in 1974, Whitford in 1973 and Brand, Day and Deutchser again in 1975, all used personal interview techniques to assess the effectiveness of the truth in lending laws; in particular, the contractual disclosures mandated by Regulation Z.[28]

Their general conclusion was that the new disclosures mandated by Regulation Z had marginally improved consumer comprehension, but that it was still far from satisfactory. As Brand, Day and Deutscher concluded after their two-year longitudinal study, knowledge about interest rates had risen, the majority of consumers still remained uninformed and 'further gains in knowledge without major changes in the credit environment seem unlikely'.[29]

It took a lawyer at Rutgers University Law School in 1977 to go further and attempt to improve disclosure by simplifying it. Jeffrey Davis examined the work of the social scientists in the cognitive psychology field to conclude that 'information overload is detrimental to all consumers'. Interestingly, he says 'understanding seems to peak at approximately the same information load for all', regardless of intellectual ability.

Davis asserts, therefore, that '...the adjustment of information load to the optimal level for one class of consumers will work to the benefit of most other consumers as well'. This might be an argument against those who identify a special information disadvantage for low-income consumers, or those with lower standards of education.

He then conducts a series of slightly subjective simplifications of consumer credit contracts to show that such simplification will yield substantial benefits to consumers. While consumer transactions (particularly consumer credit) are potentially more complex today than when Davis conducted his studies, his basic findings are still convincing. 'Over-disclosure', as he calls it, is not the answer to information inequality in consumer contracts.[30]

The University of Michigan regularly conducts surveys of consumers which frequently, though not always, address issues of disclosure and consumer credit. Lee and Hogarth, in 1999, 'piggy-backed' on to these regular surveys of consumers and, of the usual 1,001 households interviewed, they found 131 respondents who had applied for a home loan in the last five years and 88 during the preceding five-year period. Of these, only 10 per cent correctly understood that the APR (which factors other fees and charges into a comparison rate) is greater than the contracted interest rate. Tellingly, 51 per cent said the APR was the same as the contracted interest rate, and 34 per cent underestimated the APR.[31] This not only undermines the truth in lending laws, in general, but mandated comparison rates in particular.

US REGULATORS TAKE NOTICE

Despite this growing body of work, it took 30 years for US regulators themselves to show much interest in empirical assessments of consumer credit disclosure and to fund such research with a view to informing policy and regulation. At a 2005 conference sponsored by the US Federal Reserve, called 'Disclosures and Beyond', Mark Furletti specifically argued the need to 'improve current disclosures by reducing the number of elements disclosed' and 'making the disclosures easier to read, and the importance of offering the disclosures at times when they are most useful'. The delegates also agreed that the process of creating disclosure regulation should be improved by 'seeking the input of marketers, researchers, and consumers'. This is clearly a call for simplification and the use of empirical research.[32]

More recently, even more work on the effectiveness of consumer credit disclosure has been funded by US regulatory agencies. The US Federal Reserve System has conducted regular surveys of consumer opinions for over a decade. This data is increasingly being used for more detailed analysis. Thomas Durkin, writing in the *Federal* >>

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Reserve Bulletin, examined consumers' opinions about information availability in the context of the earlier survey findings. The new data focused on consumers who use two, sometimes controversial, financial products: credit cards and credit insurance.

Complexity and usefulness of the 'truth in lending' statements were, as always, key issues, with 45 per cent of respondents in the 2001 surveys agreeing strongly with the statement that '"truth in lending" statements are complicated' and 38 per cent agreeing somewhat with the proposition that they were not very helpful. Still, the truth in lending regimes do make people more confident, according to 67 per cent of respondents.

The study examines how consumers search for mortgages; how well consumers understand mortgage costs disclosures and the terms of their own recently obtained loans; and whether better disclosures can help consumers to understand mortgage costs, shop for mortgage loans, and avoid deceptive lending practices.

The study's key findings include:

- Current disclosures failed to convey key mortgage costs to many consumers, and better disclosures significantly improved this deficiency.
- With current disclosures, both prime and subprime borrowers misunderstood key loan terms, and both groups benefit from better disclosures.
- For complex loans, where prime and subprime borrowers had the most difficulty understanding loan terms, better disclosures provided the greatest benefit.[33]

In a more recent study in 2007, Lacko and Pappalardo, funded by the Federal Trade Commission, do not just examine the current disclosure regime for FTC-regulated mortgages, but also develop what they call 'prototype disclosures'. An initial examination of the prototype disclosures developed in the Lacko and Pappalardo study and a comparison between them and the current disclosure forms mandated by the relevant US regulations, indicate that the prototypes appear 'cleaner' and simpler, providing less information in an apparently more readable form.

The study demonstrates that better disclosures can significantly help consumers to recognise loan costs, which can result in more efficient comparison-shopping, reduced vulnerability to deceptive lending practices, and enhanced competition in the marketplace. 'Better' in this context clearly means simpler and less comprehensive.

The US Federal Reserve recently announced a review of its Regulation Z disclosure requirements for open-ended credit, saying:

> 'In reviewing Regulation Z, the Board's primary goal is to improve, if possible, the effectiveness and usefulness of open-end disclosures and substantive protections. Consumers' use of open-end credit, especially lines accessed by credit cards, has grown markedly... Pricing has become more complex and products increasingly diverse, ...[T]he Board intends to study alternatives for improving the format of disclosures, including revising the model forms and clauses published by the Board, to ensure that consumers get timely information in a readable form.'[34]

The Federal Reserve Board commissioned Macro International Inc to conduct design and testing of effective truth in lending disclosures. Macro used focus groups and an interactive cognitive testing technique it called 'cognitive interviews' which used consumer-proxy participants both as behavioural subjects and cognitive interlocutors. Again, the new disclosure forms produced by these techniques reduce rather than increase the amount of information required to be disclosed, and do so with less reliance on text.

The conclusion to be drawn from the large body of empirical research into consumer credit disclosure in the US is not that improved 'truth in lending' is an unattainable goal, or that all contractual disclosure is a waste of time. Davis, Lacko and Pappalardo and Macro all argue for the simplification and improvement of the disclosure regime, not its abandonment.

AUSTRALIAN REGULATORS 'GET REAL'

In an ambitious project to review the entire consumer protection regime in Australia, the Productivity Commission conducted an 'Inquiry into Australia's Consumer Policy Framework and its Administration'. In his reference to the Commission, the Commonwealth Treasurer, Peter Costello, identified 'the need for consumer policy to be based on evidence from the operation of consumer product markets, including the behaviour of market participants' as a 'key consideration' for the inquiry.[35] This focus on behaviour is relatively new in Australia, and invites or even demands a new empiricism in the development of consumer policy.

In a submission to this inquiry, Consumer Affairs Victoria argued for the adoption of some of the insights provided by the school of behavioural economics. These include:

- The value of default mechanisms to influence consumer decisions away from those that are counter-productive in the long term without overly restricting their freedom of choice.
- Cooling-off periods as a means of addressing information imbalances and pressure sales situations.
- The need to influence consumers' approach to information.
- A more 'holistic' approach that looks at both the demand and supply side of consumer information.[36]

The submission says: 'More broadly, the reliance on disclosure as a key tool of consumer protection is being re-evaluated, both as a matter of theory and in terms of

practical outcomes.' The authors of the submission refer to behavioural economics research and conclude that:

> 'This also questions consumer rationality as a premise for mandatory warnings and disclosure. Information overload can compromise consumer choice, while an orthodox cost/benefit analysis might argue that the cost to credit providers of presenting the mandated information is not outweighed by the economic advantages to the consumer in choosing products either cheaper or better suited to them.'[37]

What is most interesting is that the authors of this research, themselves consumer law regulators, submit that consumer contract disclosure must be:

- targeted in terms of content and timing;
- empirically based;
- as simple as possible; and
- highly effective.[38]

REALITY BITES INTO CONSUMER CREDIT DISCLOSURE

Consumer credit is one area crying out for this approach. The Post-Implementation Review of the Code, which was conducted in 1999, three years after the effective date of the operation of the Code, commissioned Justin Malbon, then of Griffith University, to conduct empirical research into how consumers used the existing disclosure regime of the Code and how they wanted it improved. Significant resources were committed to this research and its reporting document, entitled 'Taking Credit', was cited extensively in the 2000 National Competition Policy Review of the Code.[39] Most of these citations related to a discussion of the effectiveness of the disclosure regime in the Code. The NCP review recommended the adoption of Recommendation 1.1 of the Post-Implementation Review, which was:

> 'Amend Regulation 13 to provide a simplified "Schumer Box" format containing essential financial information. Other essential information would be provided outside the "box" and would prominently indicate that other important information was contained in the contract document.'[40]

While it took some time, the state consumer affairs officials eventually took up this recommendation and, in 2005, produced a consultation package on *Pre-Contractual Disclosure and the Uniform Consumer Credit Code*. Prior to this, the author and Dr Carmel Finn published the results of their empirical research, which cast further doubt on the effectiveness of the disclosure regime mandated by the Code.[41] The consultation package not only included a proposed amendment to Regulation 13, but samples of how the officials imagined the new Schumer Box disclosures would look for a variety of credit products. Interestingly, the package specifically refers to empirical testing and says, perhaps enticingly, 'There are no plans to test the new scheme by simulation or survey prior to its implementation.'[42]

Most submissions in response to the Consultation Package generally supported the overall framework and design of the proposed disclosure model but many called for it to be subjected to empirical testing.[43] As one submission said:

> 'We may well agree with the authors of the consultation package that the sample documents look "better" than those produced in compliance with the existing regime but, in the absence of structured, scientific testing, this agreement is only based on an intuitive reaction. Intuition is no basis for policy or legislative change.'[44]

Ask and you shall receive. In February 2007, the Western Australian Department of Consumer and Employment Protection acting on behalf of the Uniform Consumer Credit Management Committee (UCCMC) and the Ministerial Council on Consumer Affairs (MCCA), issued a tender for 'Consultancy Services for the Simplification of Disclosure Regulation-Consumer Credit Code'. This tender made specific reference to the submissions in response to the consultation package, saying: 'The key message arising out of consultation was that any changes to existing disclosure should be based on consumer testing and analysis and consideration of current research in relation to consumer behaviour and patterns of comprehension'.[45]

The author has been appointed as chief investigator for this project on behalf of the University of Queensland. The results are due in the first quarter of 2009, in time for the transfer of regulatory control over consumer credit from the states to the Commonwealth. The process of formulating policy in this area of consumer law has taken longer as a result of empirical testing and research, but the outcome will be more empirically informed than any thus far in the history of consumer credit law in Australia.

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CONCLUSION

UK consumer law academic, Professor Michael Trebilcock, argues that if the value consumers put on information, in terms of 'making a better choice about what goods or services to buy and on what terms' is not high then '... in a world of information overload, consumer protection instruments that actually generate information that is costly for consumers to interpret or access may be counterproductive'.[46]

Regulators both here and in the US are taking notice of empirical research that indicates that this is the case. The resulting reforms will probably not abandon disclosure as a means of protecting credit consumers, but are likely to refine and simplify it. Hopefully, the volume of material will be reduced. Too much has not been good enough. ■

Notes: 1 L Griggs, E Webb and A Freilich, *Consumer Protection Law* (2008) Oxford University Press, p2 and P O'Shea and C Rickett, 'In Defence of Consumer Law: The Resolution of Consumer Disputes' (2006) 28 *Syd Law Review* 139, p144. **2** *Canham v AGC* (1993) NSWLR 246, p254. **3** J Malbon, 'Predatory Lending' (2005) 33(3) *Australian Business Law Review* 224 at p236. **4** For example, the Act of 1545 (37 Hen VIII c 9), which capped interest at 10%. For more detail, see A Duggan and E Lanyon, *Consumer Credit Law*, 1999 Butterworths, p2. **5** British Parliamentary Papers 1898 (260) X, 106 as cited in Duggan and Lanyon at p4. **6** Duggan and Lanyon, p8; Queensland Office of Fair Trading, *Possible Repeal of the Hire Purchase Act 1959*, Issues Paper p2. **7** *Hire-Purchase Act 1959* (Vic), *Hire-Purchase Act 1959* (Qld), *Hire-Purchase Act 1959* (WA). NSW repealed the *Hire-Purchase Agreement Act 1941* and replaced it with the *Hire-Purchase Act 1960* (NSW). **8** *Hire-Purchase Act 1959* (Qld) s3(2)(a). **9** *Ibid*, s3(2)(c) and (e). **10** *Hire-Purchase Act 1959* (Qld), ss3 and 5 prescribe Scheds 1 and 2 respectively. **11** Duggan and Lanyon, p10; V Corr and S Begg, 'Legal Aspects of Credit Plans of Financiers and Retailers' (1964) 38 *Law Inst J* 366 at 376; C Turner, 'Avoidance of the Operation of the Australian Hire-Purchase Legislation and the Development of alternative instalment Credit Contracts' (1974) 48 *ALJ* 63 pp134-6. **12** *Report of the Standing Committee of Commonwealth and States Attorneys-general on the Law Relating to Consumer Credit and Money Lending*, South Australian Government Printer, 1969. **13** *Report to the Attorney-General for the State of Victoria on Fair Consumer Credit Laws*, Law Council of Australia, Victorian government Printer, Melbourne, 1972. **14** Duggan and Lanyon, p19; R McGarvie and S Begg, 'The Implementation of Fair Consumer Credit Laws' (1971) 45 *ALJ* 708 at p768. **15** *Credit Act 1984* (NSW), *Credit Act 1984* (Vic), *Credit Act 1984* (WA), *Credit Act 1985* (ACT), *Credit Act 1987* (QLD). **16** *Credit Act 1987* (Qld) ss37,38, 39 and Scheds 1 to 5. **17** *Ibid*, ss108, 62 and Sched 7 respectively. **18** *Ibid*, ss86 and 86A. **19** T Burns, Second Reading Speech on introduction of Consumer Credit (Queensland) Bill 1994, *Hansard*, 4 August 1994, p8828. **20** Duggan and Lanyon, p22 and see P O'Shea, 'Class Actions and the Credit Act' (1991) *Qld Law Society Journal*, July, p44.; *Uniform Consumer Credit Code: Post Implementation Review*, Ministerial Council for Consumer Affairs, December 1999, para 5.2.3.1. **21** Under the Agreement, Queensland became the 'template state' and was the only one to pass the Code in its entirety as a Schedule to the *Consumer Credit (Queensland) Act 1994*. The other states then passed legislation adopting the Schedule to the Queensland Act – for example, *Consumer Credit (Australian Capital Territory) Act 1995, Consumer Credit (New South Wales) Act 1995, Consumer Credit (Northern Territory) Act 1995, Consumer Credit (South Australia) Act 1995,Consumer Credit (Victoria) Act 1995*. For domestic political reasons, Western Australia and Tasmania did not adopt the Queensland Code exactly, but passed virtually identical legislation: *Consumer Credit (Western Australia) Act 1996* and *Consumer Credit (Tasmania) 1996*. The Uniform Consumer Credit Code became effective in 1986. **22** Code ss12,13,14,15 and Reg 13. **23** *Ibid*, s15(o) and Forms 3A and 3B. **24** *Ibid*, ss32 and 80 respectively. **25** For example, see n19 above. **26** E Lanyon, 'Changing Direction? A Perspective on Australian Consumer Credit Regulation', Keynote Address, Australian Credit at the Crossroads Conference, Consumer Affairs Victoria, Melbourne, 8-9 November, 2004, p14. **27** I Ramsay, 'Consumer Credit Regulation as the Third Way' see n26 above, p15. **28** L Mandell, 'Consumer Perception of Incurred Interest Rates: An Empirical Test of the Efficacy of the Truth-In-Lending Law' (1971) 26(5) *The Journal of Finance* 1143-53. 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The NCP Report itself is *KPMG Consulting NCP Review of the Consumer Credit Code Final Report December 2000*, http://www.creditcode.gov.au/content/downloads/final.pdf. It cites Malbon 19 times. **40** NCP Report, p104. **41** P O'Shea and C Finn, 'Consumer Credit Code Disclosure: Does it work', (2005) 16(1) *Journal of Banking and Finance Law and Practice*, 5. **42** MCCA, *Pre-contractual Disclosure and the Uniform Consumer Credit Code Consultation Package* (Office of Fair Trade,NSW, 2005) p3. **43** For example, Qld Law Society, Small Business Development Corporation, Credit Union Industry Association, National Credit Union Association, Australian Bankers Association, Gadens Lawyers, Clayton Utz Lawyers, National Finance Federation, Australian Finance Conference, Centre for Credit and Consumer Law at Griffith University. The NSW Consumer Credit Legal service submission supported empirical testing generally but was concerned at further delay. **44** Queensland Law Society, Submission to the Ministerial Council for Consumer Affairs on Proposed Amendments to the Consumer Credit Code Relating to Pre-Contractual Disclosure, p4. **45** WA Dept of Consumer and Employment Protection, *Request for Consultancy Services for the Simplification of Disclosure Regulation-Consumer Credit Code*, February 2007, p27. **46** M Trebilcock, 'Rethinking Consumer Protection Policy' in C Rickett and T Telfer , (eds) *International Perspectives on Consumer's Access to Justice*, (Cambridge University Press, 2003), pp70-5.

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Editor's note: This article has been peer-reviewed in line with standard academic practice.