NEW ZEALAND BANKERS ASSOCIATION

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Ministry of Consumer Affairs
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Dear Evelyn

Proposed Amendments to the Credit Contracts and Consumer Finance Act 2003

The New Zealand Bankers' Association (NZBA) is writing to provide comments on:

- issues raised by the Ministry of Consumer Affairs (MCA) regarding Credit Reform in New Zealand at a meeting with NZBA staff on 6 September; and
- Proposed Key Policy Principles, new and amended provisions for the Credit Contracts and Consumer Finance Act (Key Policy Principles), provided to Presenters, Chairs and Commentators.

NZBA understands from discussions with officials and from participation in the August 2011 Financial Summit (Summit) that the target of reforms is the business activities of fringe lenders. NZBA supports this objective and would like to work with the Ministry of Consumer Affairs (MCA) in relation to any reform required to achieve this objective.

NZBA notes that there has been little time in which to analyse the policy proposals. Many of the proposals are new, having not been canvassed in MCA's 2009 Discussion Document on Consumer Credit Law or at the Summit. Therefore the comments in this letter are made at a high level and cannot be considered as definitive.

Accordingly, NZBA supports the release of an exposure draft of any amendments to the Credit Contracts and Consumer Finance Act 2003 (CCCFA) for public comment before any amendment bill is introduced. NZBA also suggests that further consultation and analysis be conducted before the details of policy decisions are made. This will be vital if unintended consequences and unnecessary compliance costs are to be avoided, given the complex nature of the relevant laws.

Comments

Responsible Lending

NZBA considers that any reforms to existing consumer credit law should be targeted either exclusively or primarily at the fringe lending sector. Banks are already responsible lenders and are already fully accountable as responsible lenders both through existing legislative requirements (such as the Credit Contracts and Consumer Finance Act and the Fair Trading Act) and the Code of Banking Practice.

At the Summit, banks were recognised as setting high standards as responsible lenders and much of the conversation was about raising other lenders to banks' standards.

Banks already have:

- internal codes of conduct and responsible lending principles
- commitment to the Code of Banking Practice which includes relevant principles
- staff training to ensure competent lending
- robust credit approval processes
- systems for working with customers experiencing hardship, and
- long standing internal and external dispute resolution processes.

Given this, NZBA would not expect reforms to require banks to make significant changes or incur significant costs to comply with any reformed lending laws targeted at fringe lenders.

In order to ensure proportionality and appropriate targeting of reforms, NZBA cautions against directly importing foreign regulation. Other countries will have had different objectives in reforming consumer credit laws and a different legislative framework and social context to New Zealand. For example, one of Australia's aims when it started credit market reform was unifying myriad state laws into a unified federal law; an objective that is clearly not applicable in New Zealand.

If foreign laws are imported directly there is a significant risk of unintended consequences such as missing the intended targets (fringe lenders), stifling credit innovation, and imposing significant costs on lenders that are already responsible and on our customers, especially those on low and middle incomes.

The above points are illustrated well by Australian banks' experiences with the new Australian National Consumer Credit Protection Act (NCCPA), which MCA has asked NZBA to provide. Member banks have consulted their Australian parents and NZBA advises that the NCCPA:

- went through rushed policy development, including only limited regulatory impact analysis and consultation

- imposes a very rigid set of obligations that preclude some legitimate responsible lending processes
- lacked a clear principle-based approach and instead took a prescriptive approach
- contained inadequate transitional provisions
- contains provisions aimed at pay day lenders that banks now have to seek exemptions from, such as rules around charges and fees by third parties, which impacted on loyalty schemes, and
- has, due to the above, forced banks in Australia to make significant changes to their lending processes and systems (despite banks' lending being responsible to begin with) leading to significant industry implementation costs.

Examples of the significant system and process changes banks were required to undertake to comply with the NCCPA include:

- changing existing forms and documents and the development of new forms for all consumer credit products
- collecting of new prescribed information from customers and changes to IT systems to accommodate the capture of this new information
- revising contract documents for all consumer credit products to ensure they met the new obligations, and
- making corresponding changes to IT systems for system generated documents.

Furthermore, the Australian National Credit Code has been in operation for less than a year. Consequently, it is not clear at this time how well it operates in practice and whether it meets the intended objectives. It is too early to assess whether New Zealand should adopt it for the banking sector, or if this is even necessary given the Summit's focus on problems associated with fringe lending.

Disclosure of Key Terms and Conditions

MCA has also asked about technical and legal impediments to providing initial disclosure under the CCCFA before the contract is signed. NZBA is not able to respond to this question in detail at present, as disclosure processes are complex and varied, and because MCA's exact objective and proposal are not clear to us. If, for example, initial disclosure required information under schedule 1 at the time of application it would be difficult, if not impossible in most instances, to provide as much of this is generated centrally. NZBA would be happy to meet with MCA to discuss current disclosure processes. However, we note in the interim that the changes that MCA appears to be contemplating could impose significant compliance costs.

Conclusion and recommendations

NZBA supports the objectives of reforming fringe lending practices. However, NZBA considers that further policy work and consultation is required before the details of reform are decided upon. Member banks are concerned that the current policy decisions are prematurely bordering on drafting proposals, which are disproportionate to the market problem. This creates a high risk of unintended consequences, such as high compliance costs for banks and other lenders that already act responsibly without effectively addressing issues among fringe lenders.

If Cabinet decisions are needed before the election, NZBA recommends that:

- Cabinet decisions in 2011 be relatively high level
- appropriate enforcement mechanisms be targeted at unscrupulous lenders in the market
- further policy analysis be undertaken before the details of reform are finalised, including precise problem identification, likely sector and customer impacts, and consideration of appropriate alternative options
- discussion takes place with the banking sector to give a fuller understanding of how we are already meeting our obligations as responsible lenders in order to more fully inform subsequent policy development and problem identification, and
- further industry consultation be conducted before the details are finalised, including consultation on an exposure draft before a bill is introduced.

NZBA would be happy to discuss any matters relating to credit law reform with MCA in order to advance the objectives of the project collaboratively.

Yours sincerely

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