

Submission

to the

Commerce Select Committee

on the

Consumer Guarantees (Removal of Unrelated Party Lender Responsibility) Amendment Bill

13 October 2016

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following fifteen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - Bank of Tokyo-Mitsubishi, UFJ
 - Citibank, N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - JPMorgan Chase Bank, N.A.
 - Kiwibank Limited
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited.

Background

3. NZBA welcomes the opportunity to provide feedback to the Commerce Select Committee (**Committee**) on the Consumer Guarantees (Removal of Unrelated Party Lender Responsibility) Amendment Bill (**Bill**), and commends the work that has gone into developing it.
4. NZBA would appreciate the opportunity to make an oral submission to the Committee on this Bill. Please contact Richard Bicknell, Government Relations Director at NZBA on 04 802 3350 regarding times for appearing before the Committee.
5. If the Committee or officials have any questions about this submission, or would like to discuss any aspect of the submission further, please contact Antony Buick-Constable, NZBA Policy Director & Legal Counsel on 04 802 3351.

Support for the Bill

6. NZBA supports the Bill and its proposed amendment of the definition of “supplier” in section 2(1) of the Consumer Guarantees Act 1993 (**CGA**) to exclude a lender who is not connected to a trader.

7. NZBA submits that this amendment will remove ambiguity and clarify when lenders should and should not be liable under the CGA, which will benefit both lenders and consumers in their understanding of their responsibilities and rights, respectively.
8. NZBA supports Heartland Bank's public comments on the current definition, which NZBA understands this Bill stems from. Specifically, NZBA agrees that:
 - a. the current definition of "supplier" under the CGA has engendered unintended consequences;
 - b. it is unprincipled for a lender – who finances the goods that their client wishes to purchase, but is ultimately ambivalent as to what those goods actually are, may have no knowledge about them, has made no representations in respect of them, and has little or no commercial interest in them – to become responsible to the consumer for them under the CGA; and
 - c. there appears to have been no debate around the consequences of this wide definition at the time it was amended.
9. The amendments proposed by the Bill will also align the New Zealand position to that under consumer protection legislation in other similar jurisdictions, such as Australia and the United Kingdom, where only lenders who are connected to traders are made liable.

Unintended consequences

10. It would appear that as a result of the current wide definition the various statutory protections conferred on consumers by the persons actually supplying goods are essentially underwritten by those consumers' financiers. NZBA submits that this risk is something that those financiers are not placed to manage and is, in NZBA's submission, inappropriate.
11. NZBA members have experienced this unintended consequence as a result of the current wide definition. By way of example, some customers have attempted to take recourse against our members as financiers, when an unrelated, third party supplier has supplied them with defective goods.
12. Furthermore, the current definition opens some of our members up to risk exposure as both banks and banking groups, via subsidiary finance companies.
13. There is also a lack of clarity if the current definition impacts shared equity home ownership schemes, where a developer enters into arrangements with select banks to receive loan applications for their customers as part of their shared equity arrangement. The amendment proposed by the Bill would clarify that the lender is not the supplier under the CGA.