NEW ZEALAND BANKERS ASSOCIATION

# Submission

to the

# Law Commission

on the

# Review of the Credit (Repossession) Act 1997

31 August 2011

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# Submission by the New Zealand Bankers' Association to the Law Commission on the Review of the Credit (Repossession) Act 1997

## About NZBA

1. The New Zealand Bankers' Association (NZBA) works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes which contribute to a safe and successful banking system that benefits New Zealanders and the New Zealand economy.

2. The following twelve registered banks in New Zealand are members of NZBA:
   - ANZ National Bank Limited
   - ASB Bank Limited
   - Bank of New Zealand
   - Bank of Tokyo-Mitsubishi, UFJ
   - Citibank, N.A.
   - 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.

## Opening comments

3. NZBA welcomes the opportunity to comment on the Law Commission's Review of the Credit (Repossession) Act 1997 (the Issues Paper). NZBA considers that the provision of consumer credit is an important area of public policy and notes that it is appropriate to evaluate the CRA as a part of the wider ongoing review of consumer credit laws.

4. NZBA concurs with the Law Commission's view in paragraph 2.5 of the Issues Paper that it is desirable to ensure that any changes to the Credit (Repossession) Act 1997 (CRA) minimise the effect on lenders that are already compliant with the Act.

5. As highlighted at the Government's 2011 Financial Summit, the most significant issue in the area of consumer credit is enforcement. NZBA considers that this should be the focus of regulatory change. Improving the enforcement of existing obligations has the potential to significantly improve the situation of at-risk borrowers without causing undue additional compliance costs for lenders already compliant with existing obligations

6. NZBA notes that its member banks have different views on some of the technical details in the CRA. Therefore, NZBA has limited this submission to a small number of

core questions in the Issues Paper that are of particular interest to member banks and on which member banks have a common position.

## Responses to Law Commission questions

### Questions 1 and 2

7. NZBA is not aware of any problems in the area of repossession in respect of its members but does acknowledge that there are issues among fringe lenders.

8. NZBA considers that the CRA strikes an appropriate balance between the rights of lenders and consumers when the obligations and processes in the Act are adhered to. However, problems could arise when the CRA is not followed. In light of these points, NZBA suggests that regulatory changes should be focussed primarily on enforcement, rather than on creating fresh obligations, and should be directed at the sectors where the problems are located, namely at fringe lenders.

### Question 4

9. The CRA is not fundamentally flawed and does not need to be totally rewritten. The problems that appear to exist at the fringes of the sector are, in our view, mainly due to inadequate enforcement of existing consumer protection legislation rather than fundamental problems with the CRA's obligations and processes. Giving an existing government agency responsibility for enforcing the Act could be a significant step towards protecting vulnerable borrowers, but might not be necessary at this stage.

### Question 12

10. NZBA does not agree that a provision is needed requiring that the consent of court or another enforcement agency be obtained before repossessing goods when the debt owing has been reduced.

11. Such a measure would have a range of negative outcomes. It would add court costs that lenders would ultimately have to recover either from the borrower in default or by increasing the cost of credit to all borrowers.

12. Furthermore, requiring a court order would lead to significant delays in repossession by all lenders – those that behave responsibly and those that do not – and may overburden the court system with low value claims.

13. NZBA also notes that there are protections for borrowers in other pieces of legislation. In particular, the hardship provisions in the Credit Contracts and Consumer Finance Act 2003 (CCCFA) provide a degree of protection for borrowers in the situations contemplated by the proposal in question 12. Although the CCCFA (including the hardship provisions) is currently being reviewed by the Ministry of Consumer Affairs, the overlap in protections between the two Acts needs to be taken into account to prevent unnecessary duplication.

## Questions 25

14. NZBA considers that the Financial Service Providers (Registration and Disputes Resolution) Act 2008 (FSPA) should not require additional qualitative assessment of the fitness of:

- Consumer credit providers (who offer one particular type of financial service); or
- All financial service providers.

15. As noted above, NZBA considers that regulatory changes should be directed at enforcement of existing obligations rather than the creation of new requirements.

16. If this submission is not accepted, any licensing of lenders should exclude those that are already subject to a robust licensing regime, namely banks and non-bank deposit takers. Any additional licensing of these businesses would be an unnecessary compliance burden. Furthermore, such licensing should not be contained in the FSPA, as this is outside of the scope of the purpose of that Act, being primarily concerned with the prevention of money laundering.

## Question 27

17. NZBA is of the view that introducing a requirement to obtain a court order before being able to enter premises to repossess goods is not desirable. As noted in our answer to question 12, such an obligation would overburden the courts and lead to increased costs to lenders, which may be passed on to borrowers.

18. Furthermore, NZBA understands that Schedule 1 of the National Consumer Credit Protection Act 2009 (the National Credit Code) has only been in force a little over one year. It would be beneficial to wait and see how the entry provision in section 99 works in Australia before considering it for New Zealand.

19. Nonetheless, if such a provision were adopted, it would be important to moderate it to minimise costs to lenders.

20. Similarly, ensuring that entry would not require a court order when repossession is urgent would also be an important limiting measure to protect lenders' interests.

## Questions 31 and 32

21. The first step is to strengthen the parts of the CRA that relate to non-compliance, as the Issues Paper proposes in paragraph 2.5, before moving to regulate through a government agency. If it were concluded that a regulator ought to take on the role of enforcing the CRA, the Commerce Commission and the Financial Markets Authority are the most obvious agencies to take on this role. NZBA is strongly of the view that a new regulatory agency should *not* be created to enforce the CRA. Creating a new

body would lead to unnecessary costs and to confusion in the market as to which agency has responsibility for different pieces of legislation.

22. Please do not hesitate to contact me if you have any queries.

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