

Submission

to the

Commerce Commission

on the

Annual returns guidance –
consultation on draft

27 January 2023

About NZBA

1. The New Zealand Bankers' Association (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.

2. The following seventeen 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
 - China Construction Bank
 - Citibank N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank N.A.
 - KB Kookmin Bank Auckland Branch
 - Kiwibank Limited
 - MUFG Bank Ltd
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited

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3. If you would like to discuss any aspect of this submission, please contact:

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Introduction

NZBA welcomes the opportunity to provide feedback to the Commerce Commission (**Commission**) on the Annual returns guidance – consultation on draft (**Guidance**). NZBA commends the work that has gone into developing the Guidance.

Our specific comments on the Guidance are set out below. Generally, we wish to flag that, from a timing perspective, there is potential for variability between the first and subsequent returns due to the ongoing changes to the CCCFA. We see the biggest areas for variability occurring due to the changes to variations and the likely higher usage of exemption pathways. MBIE have suggested the earliest the industry will receive final wording will be in February 2023 and the full benefit of any changes might not be realised until much later into 2023. In this context, the Commission should take into account that populations may shift between the first and subsequent returns, and that if they do, further thought may need to be given to exemption metrics if they are to be an effective tool.

We also note that, as our members are currently developing the systems and processes necessary to meet the reporting requirements, timing of the final Guidance is critical. It would therefore be helpful to understand the Commission's proposed timeframe and process for finalising the Guidance, and encourage the Commission to publish the final Guidance as soon as possible.

Clarification required in paragraph 7

Clarification in relation to paragraphs 7.3 – 7.6

We would be grateful for clarification on proposed paragraphs 7.3 – 7.6.

Specifically, Regulation 29(4)(b)-(c) provides that a lender may choose to report **either**:

- (a) the number of contracts that are consumer credit contracts (and material changes to contracts that are consumer credit contracts)

OR

- (b) the number of contracts the lender has treated as consumer credit contracts (and material changes to contracts the lender has treated as consumer credit contracts).

We believe the approach outlined in paragraph 7.3 – 7.6 requires a lender to report **both** the number of contracts that are consumer credit contracts and those contracts the lender has treated as consumer credit contracts.

As the Regulation doesn't require this, we suggest the position is clarified.

This clarification is important to support and reflect the intent behind the legislative drafting. MBIE originally proposed reporting only in relation to the number of consumer credit contracts entered into or materially changed. NZBA [submitted](#) that many members do

not separately identify consumer credit contracts within their consumer lending portfolios and significant and costly systems would need to be implemented to achieve that. Most lenders reported they tended to over-comply and treat all contracts within their consumer lending portfolio as if they were consumer credit contracts for process or documentation purposes, even if they are not subject to the CCCFA.

The outcome was that the Regulations were drafted to allow lenders to report new contracts or material changes across their entire consumer loan book, or just the number of consumer credit contracts entered or materially changed. One member has recently confirmed with MBIE that this position is correct.

We suggest that paragraphs 7.3 – 7.6 of the Guidance are amended to reflect the alternatives, not cumulative requirements, under Regulation 29(4)(b) and (c).

Clarification required in relation to paragraphs 7.7, 7.7.1, and 7.7.2

We would be grateful for clarification whether lenders must report:

1. the types of credit contracts and material changes to contracts, separately or combined, and
2. for material changes, the total credit limit or the amount of the material change only.

We illustrate the different outcomes that each approach could result in below.

A lender enters a home loan which is a consumer credit contract, where the total amount advanced is \$100,000.

The lender also enters a credit card agreement which is a consumer credit contract, where the credit limit is \$5,000.

Several months later, the lender makes a material change to the home loan contract to provide a further advance of \$50,000.

The lender also makes a material change to the credit card contract to increase the limit by \$1,000 to \$6,000.

If the lender reported new and material changes combined:

Non high-cost consumer credit contract (new and material changes)

7.7.1: \$150,000

7.7.2: \$6,000

If the lender reported new and material changes separately

Non high-cost consumer credit contract (new only)

7.7.1: \$100,000

7.7.2: \$5,000

Non high-cost consumer credit contract (material changes only)

7.7.1: \$50,000

7.7.2: \$1,000

If lenders must report new and material changes separately, then we assume the wording in Regulation 29(4)(d)(i) requires the amount of the material change to be reported, rather than the total credit limit (given the words 'as applicable'). But it would be helpful for the Commission to clarify this interpretation. We note that, from an operational stand point, some lenders may not be able to report all material change amounts for certain changes easily without context.

Using the examples above, we believe the lender should report \$50,000 for the material change to the home loan contract and \$1,000 for the material change to the credit card contract, rather than \$150,000 or \$6,000 which may confuse as to the level of lending provided at the time of the material change, or over the reporting period.

Paragraphs 12, 13 and 18 – lender may treat all contracts as a consumer credit contract where they do not differentiate

We recommend that paragraphs 12, 13 and 18 also be amended to reflect the proposed changes to paragraphs 7.3 – 7.6.

We also consider that an express clarification should be included in the Guidance to confirm that where a lender does not differentiate between consumer credit contracts and credit contracts within a lender's consumer lending portfolio, all may 'be treated as a consumer credit contract' for the purposes of annual return reporting.

Reporting in relation to credit contracts only does not align with the purpose of the annual return requirement as stated in paragraph 2 & 3 of the draft guidance, "to support the Commission's monitoring and enforcement functions by providing the Commission with information about the **consumer credit market**" [emphasis added].

Furthermore, the obligation to provide an annual return is the responsibility of every creditor under a consumer credit contract. It is not clear why a creditor under a consumer credit contract would be required to **separately** report on credit contracts it treats as consumer credit contracts, particularly given the CCCFA will not apply to those contracts.

Paragraph 14 - Date of entry into the contract

Paragraph 14 of the Guidance encourages lenders to 'give careful consideration as to when contracts are entered into', and to take make sure they account for the different manner and timing contracts may be entered into for different products.

NBZA previously submitted that several lenders were concerned that it would be difficult or impossible to extract data for the exact agreement date (for example, the date an agreement is signed and returned to the lender).

The Guidance's comments suggest that lenders will need to be able to extract the exact agreement date, or the date the contract has been materially varied for the purposes of determining the number of contracts entered into during the reporting period.

We would like to see commentary that a lender may assess an appropriate date for reporting purposes, including evidence of first drawdown or a limit being loaded in the lender's system (including where this is after an agreement is entered). This flexibility is necessary for some lenders to determine the number of CCCs entered into, or materially varied, for a reporting period where the exact date entry into the agreement (whether the date the agreement is signed and returned to the lender or another event) is not extractable from the systems in an automated way without significant development. For banks, aligning approach with reporting to the Reserve Bank's requirements would be more helpful and ensure consistency.

It should be noted that where there may be under/overreporting initially, these figures should even out over time as the reporting periods run back to back.

Paragraph 18 – Method of providing annual returns

We suggest that the portal be flexible in how it allows inputting of data (to allow lenders to reflect the data in different ways – for example, in response to paragraph 9.3). The wording in the paragraph should reflect this flexibility.

We would like to discuss the portal with the Commission when further details become available.

- UX/UI design: It would be helpful to see the portal's interface design, including UX/UI (User Experience/User Interface) and screenshots and what the fields/layout looks like, as this may inform the look and layout of banks' own reports.
- User management: Further information on access, including user authentication/authorisation, user adds/changes, passwords, "four-eyes" review (i.e. second person review and approval of entered data prior to final submission) would be helpful.
- Review or update to submitted content: Will there be a process to view previously submitted data/report? Will there be a process to update any previously submitted data/report (for example where an issue was identified subsequent to submission)?
- Will there be the flexibility to upload a pre-prepared file (e.g. an xml, csv file or similar which includes the report content) or other support for an automated submission? Members have expressed concern over manual entry risks, given the penalties that may apply. We consider such flexibility would be helpful as it would allow larger lenders to submit or populate reporting directly from systems, rather than needing to manually enter content.

Ability to provide context on approach

It would be extremely helpful if lenders were able to provide context in their answers, particularly for the initial reporting period. We think this would allow the Commission to understand the different approaches of different lenders. For example, it may be difficult for the Commission to interpret data on the use of Regulation 4AH without insight into the lender's systems or processes. The Regulation will now cover replacements of existing

contracts as well as refinancing of external contracts. And, replacement of existing contracts may also be driven by system or process constraints within a particular lender as much as customer desire. We would welcome acknowledgement in the Guidance that there will likely be significant under/over-reporting in relation to Regulation 4AH/paragraph 7.7.3, at least for the first and second reporting periods.

Similarly, whether consumer credit contracts or all contracts treated as consumer credit contracts and when those contracts were entered may depend on a lender's individual approach. For example, a bank may choose to align its approach with how it reports to the Reserve Bank. Again, it may be sensible for a lender to confirm with the Commission what may influence the data the Commission receives.

We don't think a lender should need to do this each time it submits an annual return (unless the data captured and reporting approach has changed), so we're not sure it needs to be part of the portal. We also think this should be a voluntary activity, but we think it would be helpful for the Commission to seek to understand the likely data, and the limitations of that data, particularly as the Commission may use the data in enforcement activities.