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14 June 2019

Committee Secretariat
Finance and Expenditure Committee
Parliament Buildings
Wellington

Emailed to: fe@parliament.govt.nz

Dear Committee Members,

ICNZ submission on Credit Contracts Legislation Amendment Bill

Thank you for the opportunity to submit on the *Credit Contracts Legislation Amendment Bill* ('the Bill'), which was introduced to Parliament on 9 April 2019.

ICNZ represents general insurers that insure about 95 percent of the New Zealand general insurance market, including about a trillion dollars' worth of New Zealand property and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

Please contact Andrew Saunders (andrew@icnz.org.nz or 04 914 2224) if you have any questions on our submission or require further information.

Submission

In this submission we focus on only the following two aspects of the Bill:

- the removal of Principle 7 of the Lender Responsibility Principles; and
- pecuniary penalties and insurance.

The removal of Principle 7 of the Lender Responsibility Principles

ICNZ is concerned with and opposes the proposal in clause 10 of the Bill to remove the presumption that lenders may rely on information provided by the borrower or guarantor unless the lender has reasonable grounds to believe the information is not reliable [current section 9C(7) of the *Credit Contracts and Consumer Finance Act 2003* (CCCFA)].

Principle 7 in the CCCFA currently reads:

"*9C(7) For the purposes of the inquiries required under subsections (3)(a), 4(a), and (5)(a), the lender may rely on information provided by the borrower or guarantor* ***unless the lender has reasonable grounds to believe the information is not reliable***."

We note this does not state the lender must or should rely on the information provided by the borrower or guarantor "without objective verification", as is stated on page 2 of the Explanatory Note to the Bill, and any responsible provider who had reasonable grounds to believe the information provided is not reliable should ask for objective verification. It does however leave a degree of flexibility for providers and a degree of responsibility on consumers to be honest and provide accurate information.

We consider Principle 7 has an appropriate role and should be retained for the following reasons:

- It is fundamental to remember that credit and credit insurance are both provided through a contract between two parties, both of which have obligations to the other. While the CCCFA is rightly weighted heavily towards the obligations required of the provider, it is important to recognise that Principle 7 of the lender responsibility principles is the only one that puts any responsibility on the consumer to provide reliable information to the provider.
- Removing Principle 7, seemingly primarily because of the lack of enforcement action being taken against the actions of a few lenders, will have the effect of inconveniencing providers and all consumers by adding unnecessary complexity and delay to the application process. If the provider cannot rely on information provided by the consumer then it's likely they would need to undertake some sort of third-party verification (e.g. getting information from independent sources). A longer and more involved process will add costs that will ultimately be borne by consumers. In effect the entire consumer community, the vast majority of which accurately outline their financial circumstances in applications, is going to be required to provide verification as a result of the actions of a few.
- We are also mindful that increasing the cost of assessing loan applications could have the effect that some loans are not made available, even when no responsible lending issues would necessarily arise. This could in turn drive some customers towards less scrupulous lenders, which would be the opposite effect of that intended by these changes.

We note that regulations currently being developed (to be issued pursuant to the proposed section 9C(5A) in the Bill) will provide more prescription for providers in the way they assess suitability and affordability. While it is difficult to comment on the Bill without knowing the content of those regulations, in concept the implementation of such regulations, combined with improved enforcement of those and other existing provisions, would appear to give more effective protection for those consumers on whose information providers should not rely on under Principle 7, whilst avoiding some of the costs and pitfalls for providers and consumers and the loss of balance associated with removing it.

Government will also need to be mindful of the implications of these changes in regard to whether financial advice is being given. Not all credit contracts are sold with financial advice and if a consequence of the proposed changes was that effectively financial advice is given then it could affect the availability of some products in the market, which could be detrimental to consumers.

Pecuniary penalties and insurance

Clause 23 of the Bill inserts a new section 59B into the CCCFA that provides a new statutory duty on directors and senior managers to exercise due diligence to ensure compliance with the CCCFA. Directors and senior managers found to have breached this duty are potentially liable for pecuniary penalties of up to $200,000 per act or omission. The Bill also provides that directors and senior managers cannot be insured or indemnified against this liability (new section 107E). The extent of due diligence required from a particular person is unclear at this stage and will presumably depend on the nature of the business and the individual's role within it.

We note that the *Financial Markets Conduct Act 2003* (FMCA) also provides limitations on indemnities and insurance for directors or employees (sections 526-528 of the FMCA). The scope of the prohibition in the proposed new section 107E is however broader (as it extends beyond the entity itself and to any person) and the nature of these differs (e.g. there are no exceptions as provided in sections 527 and 528 of the FMCA for example).

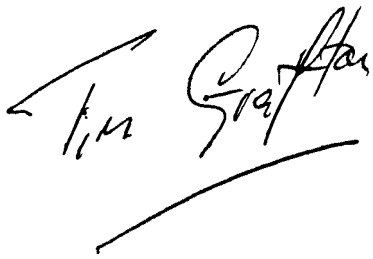
ICNZ is only aware of one similar provision prohibiting insurance/indemnification for directors/senior managers in such a way as the Bill, that being under health and safety law[1] where liability and penalties are likely to result from people suffering serious injury or death. We are not aware of any other industry in New Zealand where the penalty can be applied directly to the director or senior manager without the option of such indemnity or insurance cover. We note the rationale for this approach, and why to apply it to the CCCFA in particular, is not outlined in the Explanatory Note or the Regulatory Impact Statements for the Bill.

ICNZ supports the concept that penalties applied should be sufficiently severe to deter contravention of the law. However, making individuals personally liable for significant amounts without an option of indemnifying or insuring themselves against this eventuality risks deterring people from putting themselves forward for such positions. We suggest consideration is given to whether this is a proportionate approach and/or whether there might be cause for applying this more specifically to areas where particular problems or risks exist.

Conclusion

Thank you again for the opportunity to submit on the Bill. If you have any questions, please contact our Regulatory Affairs Manager on (04) 914 2224 or by emailing andrew@icnz.org.nz.

Yours sincerely,



Tim Grafton
Chief Executive

Andrew Saunders
Regulatory Affairs Manager

[1] Section 29 of the *Health and Safety at Work Act 2015*.