21 February 2020

The CCCFA review team

Competition and Consumer Policy – Building, Resources, and Markets

Ministry of Business, Innovation, and Employment

Draft Credit Contracts and Consumer Finance Amendment Regulations 2020 – Annual reporting requirements

Thank you for allowing ANZ Bank New Zealand Limited (ANZ) to submit on the proposed content of annual reports to the Commerce Commission under the Credit Contracts and Consumer Finance Act 2003 (CCCFA).

We understand the purpose of the annual reporting is to provide statistical information to the Commerce Commission, to support the Commission's monitoring and enforcement functions under the CCCFA.

We support the Commission having better information about market participants and the credit they provide consumers. However, we suggest refining content to ensure annual reports give an overview of the industry and potential trends, while not imposing significant compliance costs on lenders.

We draw your attention to our key suggestions below.

Key suggestions

1. A strong understanding of bank lending and the banking industry can be drawn through comprehensive reporting banks already provide to the RBNZ and APRA. We recommend extending availability of this reporting to the Commerce Commission, rather than imposing new, different requirements under the CCCFA.
2. The value of reporting comes from consistency of approach across the industry. To achieve this, strong definitions and clarity of scope of information required is critical.

   We suggest developing or allowing a 'test and learn' approach, with a more constrained initial category of information being reported on to the Commission. This will allow the Commission to test consistency and manage interpretation differences, working with lenders to refine the data they provide.

   Over time, greater granularity or content could then be added by way of Regulations, as reporting across the industry matures.
3. If reporting is kept in the form proposed, some of the information required is unlikely to be readily available or reflect lender behaviour or data capture practices.

   We anticipate significant changes will be required to data capture across the industry, which will impose substantial compliance costs for all lenders. We suggest a generous implementation period will be needed, and there must be recognition that information for existing contracts may be unavailable.

Contact for submission

We are happy to discuss our submission further with MBIE officials. Please contact Cushla Scholfield, Acting Associate General Counsel, at cushla.scholfield@anz.com or 07 557 7493. Once again, we thank MBIE for the opportunity to submit on these Regulations, and for being willing to engage collaboratively with the banking industry.

Yours sincerely

Cushla Scholfield

Acting Associate General Counsel, Retail and Business Banking

Reporting – contents of annual return

General comments

Banks already provide significant reporting to both the Reserve Bank and APRA. We believe this reporting does provide valuable insight into bank lending, and should be used as the basis for reporting of information about banks to the Commerce Commission under the CCCFA.

Existing reporting is at portfolio level, distinguishing between secured retail mortgage lending (capturing home loans) and other unsecured retail lending (capturing credit cards, overdrafts, and personal loans on a consolidated basis).

We believe we could split out the other retail lending products by product type to reflect the reporting provided for home loans, particularly if that information would be used to compare against lenders providing similar unsecured products.

As a snapshot in time, reporting generally covers:

1. the number of loans held on the book
2. the total amount of those loans – on a drawn or committed basis (see comments below under information about the loan book)
3. the amount of new lending advanced during the reporting period, and
4. the amount repaid during the reporting period.

The above information generally shows the size of the lending book.

We also report information about lending delinquencies, impaired assets, and credit loss provisions, including the number of loans that are 30, 60, or 90 days past due. This information generally shows whether there are changes to the 'health' of the lending book.

We believe this information would be useful to the Commission, particularly from lenders in the wider industry who do not currently report to other regulators.

The quality of reporting is driven by lenders taking a consistent approach and applying the same definitions to capture and report data. To provide valuable information for the Commission, we strongly suggest a 'test and learn' approach is adopted.

We suggest the portfolio based reporting, on a dashboard basis, as outlined above is used as the starting point, with discussion and development of definitions agreed between the Commission and the industry as a whole, to ensure the same information is reported in the same way. As the industry's reporting matures, further data could be added over time.

We provide more specific comment on the individual reporting requirements in the discussion document below.

Information about the loan book

Total dollar amount of consumer credit provided

We suggest lenders report on the *number* and total dollar amount, *by class of contract*, of any credit contracts *that may be* consumer credit contracts, *as if the credit is fully drawn*. We explain why below.

To reflect the range of compliance approaches in the industry, we suggest that lenders report on credit contracts *that may be* consumer credit contracts.

When implementing compliance programmes under the CCCFA, some lenders may have chosen to over-comply to simplify processes and minimise risks given the extent of penalties imposed. Lenders may find it difficult to identify with absolute certainty which loans are consumer credit contracts.

For example, lenders may treat lending on particular products *as if it is a consumer credit contract* from a document and process perspective, rather than attempt to identify if the fairly complex rules around the nature of the borrower and proportion of lending used for personal purposes apply to the specific loan.

As such, lenders may be able to identify loans that *may* be consumer credit contracts, but whether those loans *are* consumer credit contracts may involve an assessment of the individual circumstances of the loan.

Ultimately, whether a particular loan is or is not a consumer credit contract may be a matter for the Courts to determine, particularly if a lender challenges the presumption under section 13 of the CCCFA.

If lenders apply assumptions to how they've identified whether a credit contract *may be a consumer credit contract*, they should be required to explain this in their reporting to the Commission. We believe this will help the Commission assess consistency of reporting approach across the industry.

If lenders are required to report all credit contracts that *are* consumer credit contracts, then this will require significant changes to processes and systems. The information would not be available for existing credit contracts, and could only be provided on a go-forward basis.

The total dollar amount should also be based on the amount *available to be drawn* under the credit contract.

We make this suggestion because reporting must reflect different product types and how they're used by consumers. For example, a customer may take out a credit card with a $10,000 credit limit, but may have only used $500 of the available limit. Is the $10,000 to be reported, or the $500? Or, a customer with a home loan of $500,0000 may be drawing on the loan in instalments for a home build, and may have only drawn $100,000.

We suggest that the total dollar amount proposed, which we assume is to give an indication of the size of lending by lender, should be based on the credit limit *available to be drawn*. Guidance should be provided that for revolving credit contracts, the credit limit should be reported. And for any term lending advanced in instalments, the total amount to be advanced (if ascertainable).

Likewise, we suggest that lenders report *the number of credit contracts* and the total dollar amount by *class of contract*.

We note that the proposed reporting in 145 to 159 does not provide a general overview of how many loans a lender has provided, or the number by class of contract for lenders who offer multiple products.

We're concerned that for lenders who offer multiple products, reporting a total amount will distort the nature and scale of that lending. For a bank, for example, reporting the total amount of lending will not provide sufficient information about the makeup of that lending. Home lending total amounts will skew overdraft total amounts, and will not provide an adequate reflection of which products consumers are acquiring. The number of overdrafts may significantly outnumber the number of home loans, but that inference could not be drawn by only reporting the total amount lent.

Total dollar amount of consumer credit outstanding as at the end of the period

We recommend that the language in the reporting requirements better reflects the language in the CCCFA, to avoid interpretation differences. We suggest that this is intended to refer to the 'unpaid balance', as defined in section 5 of the CCCFA, of lending as at the end of the period.

Again, as suggested above, we recommend that this reporting includes number and class of credit contract.

Proportion of revenue coming from interest, fees, default interest, and default fees

We question the use of the term 'revenue' in reference to fees and default fees under the CCCFA. Given the reasonable fees provisions in the CCCFA, which requires fees to relate to a lender's costs or loss, the use of the term 'revenue' may be inconsistent.

We suggest instead that the provision simply require lenders to report the amount of interest, fees, default interest, and default fees charged over the reporting period. Again, this should be by class of credit contract, to give a better representation of the lenders' portfolio.

The number of consumer credit contracts entered into for which a security interest is or may be taken under the contract

If this is intended to capture guarantees, then we suggest that the provision specifically refers to both security interests and guarantees, as guarantees are not necessarily security interests.

We do suggest this reporting obligation is limited to where security is already held or has been taken during the reporting period. The terms of many unsecured credit contracts may still provide that security may be required by a lender in exceptional circumstances. As such, we're concerned that requiring reporting of credit contracts that *may require* security will distort reporting results and not reflect where security is actually held by lenders.

Again, we suggest that the number of credit contracts and information by class of credit contract is reported.

Number of high-cost credit contracts and related credit contracts

This is not currently relevant to ANZ, so we have no comments on this requirement. However, we note that this requirement overlaps with the requirement to report the number of consumer credit contracts provided over specific ranges of rates.

The number of consumer credit contracts provided over specific ranges of interest rates

We believe more clarity is needed on how this information is to be reported, particularly for products like credit cards which have multiple rates.

For example, a credit card may have a balance transfer interest rate, purchase interest rate, and cash advance interest rate. Those rates may fall into one or more of the reporting categories proposed. Likewise, a customer's home loan may have a range of interest rates available to the customer over the life of the loan.

We assume the intent is to require reporting using the highest interest rate applying to the specific consumer credit contract. However, we are happy to discuss this issue further with Officials.

The number of consumer credit contracts where the terms of the loan were extended or the loan was rolled over or refinanced

We do not believe this information is likely to be available for us or for other lenders. Requiring reporting of this information will require considerable changes to processes and technology to collect. For example, we may record the current loan term, but not specifically that the loan term has changed over time. We would only be able to determine this by reviewing each individual loan change a customer has made.

We also do not believe the information will provide insight into the market. For example, for certain types of loans, like home loans, a customer's loan term extends or decreases if the interest rate moves up or down, so reporting on 'extensions' to the loan may not show consumers in financial difficulties, but consumers simply using or the contract simply operating as intended.

The term 'rolled over' is also unclear, and would need to be carefully defined here. Is an 'extension' different to a 'roll over'? What is the difference between a 'roll over' and a 'refinance'?

'Roll overs' and 'extensions' are also likely to only be reported for term lending, not revolving lending, so will not provide any insight as to how those contracts are functioning and whether they are providing good customer outcomes.

Likewise, 'refinance' is uncertain, particularly in the context of banks who may offer several products. A customer may, for example, move from a credit card to a personal loan, or vice versa, but we would not necessarily treat this as a refinance. Or, is a refinance intended to capture where a customer has an existing product with another lender, and then acquires a replacement for that product, of the same class, with another lender? We may be aware of refinances for home loans, but may not always be aware of refinances for other products. Also, consumers may 'refinance' or change lenders for a range of reasons – preference, price, location, etc.

We would appreciate understanding what Officials intended to achieve through this requirement, and we may be able to provide alternate suggestions to better reflect industry practice.

Information about interest rates and fees as required to be disclosed under the Credit Contracts and Consumer Finance Regulations 2004, sections 4B to 4D and if interest rates and fees have changed during the reporting period, details about changes

We have no comments on this requirement.

The average term of a loan

We do not believe this would be possible to state for revolving credit contracts, as these have no term. As such, the information is unlikely to give an overview of behaviour across the market.

Likewise, for term lending, the information will not reflect where loans are restructured onto new loans for commercial reasons. For example, a customer of a fixed term home loan asks for changes to the loan – if we agreed, we would give the customer a new loan on new terms, and use that loan to repay the existing fixed term loan. The overall term of the loan may be unchanged, but one loan has been replaced by another loan, changing the average term of lending. We believe this common lending situation would distort reporting.

If reporting of average loan terms is required, we suggest limiting this to the loan term documented in initial disclosure for the consumer credit contract, where this is ascertainable.

Information to be provided about high-cost lending

This is not currently relevant to ANZ, so we have no comments on this requirement. However, we suggest that this requirement specifically uses the definition of high-cost consumer credit contract under the CCCFA to avoid any confusion as to the information to be disclosed.

We also suggest that disclosing the stated purpose, by a lender's internal categories, is likely to lead to inconsistencies in the information reported to the Commission, which may impact the Commission's ability to understand that industry. We suggest that a standardised list of purpose types is developed and agreed with that industry, if there is perceived value in reporting that information.

We would also note that what a customer says they will use the credit for and what they do use the credit for may differ. For example, a customer may indicate they are borrowing to buy a car, but use the money instead for other purposes. A lender would not necessarily have control over that or be able to determine that in all cases.

Information to be provided in relation to car finance

We're concerned over the scope of this reporting requirement and believe the information will be unavailable.

It is unclear what car finance is being referred to here? For example, customers of banks may get a personal loan to buy a car, or may use a home loan top up to buy a car, or may use their existing credit card to buy a car, etc. Is that lending intended to be captured?

Also, we're unclear why car finance in particular has been singled out for specific reporting obligations?

We also assume the requirements are intended to be in connection with credit-related insurance? The reference to insurance generally could capture where a customer acquires a car loan, but separately arranges their own insurance, where that insurance would not otherwise be credit-related insurance.

However, even if the requirement is to apply to credit-related insurance where the loan purpose is to buy a car, we don't believe the information required will be available for most lenders.

The information required assumes that the lender is also the insurer.

For insurance to be caught as 'credit related insurance' the insurance simply needs to be 'arranged' by the lender. This captures situations where the lender is not the insurer, but may receive commission or require insurance from particular insurers, etc. Unless the lender is also the insurer, a lender will not be aware whether insurance claims have been lodged, or paid out.

A lender would only be able to obtain information about claims, etc, from the insurer, with the customer's consent. Even if lenders were able to obtain a privacy waiver from customers, we doubt insurers would be willing to voluntarily provide the information, given the time and effort for them to do so.

We would appreciate understanding what Officials intended to achieve through this requirement, and we may be able to provide alternative suggestions to better reflect industry practice.

In particular, it may be preferable for lenders to report on the number of consumer credit contracts where credit-related insurance was arranged by the lender. However, we note that information is likely to only be known at the point the loan was taken out, and may change over the term of the credit contract. For example, while a lender may have arranged insurance, the consumer may stop the insurance or change insurers over the term of the loan. Likewise, a lender may arrange credit-related insurance at a later date during the term of the loan, for example, a bank arranging house insurance for a home loan customer years after the customer took out the home loan.

Information about loans

The number of unique borrowers (ie where each borrower is only counted once regardless of how many times they borrowed)

We have no comment on this requirement. We believe this information should be available.

The number of unique borrowers for high-cost consumer credit contracts

As this does not currently apply to ANZ, we have no comment on this requirement.

Information about consumer credit in brackets of total income before tax and other compulsory deductions

We do not believe income information is likely to be held in the form required.

Consistent with the approach in the draft affordability Regulations, lenders will generally capture and record net, not gross, income.

Likewise, lenders may not capture all income, as those lenders may choose not to rely on certain types of income when completing affordability assessments. Further, some income sources may be reduced or adjusted by lenders under affordability assessments, and only the reduced or adjusted income information recorded and held.

As such, income information held by banks and other lenders is likely to be the minimum income captured to assess affordability, but not necessarily the borrower's gross or total income before tax. Information about gross income before tax may be better sourced from Census and Statistics NZ household surveys.

Banks do provide some reporting to the RBNZ about debt to income ratios. However, we note that different banks take different approaches to calculating debt and income, which creates differences in data reported at a market level.

If income data is to be reported in the way proposed, this would require lenders to capture this data as part of affordability assessments, which would mean significant changes to processes and systems. A substantial lead in time would be required, and the information would be unavailable for existing lending. We also believe this would materially impact the customer interaction, as considerably more information than was needed to make an affordability assessment would need to be captured and verified.

The number of consumer credit contracts, broken down into the number that were new customers and the number that were returning customers, across a range of income brackets

We are unsure what is intended by this requirement. For example, we may lend to:

1. new customers, who have no existing products, including lending products, with us
2. existing customers, who have existing products, but no lending products, with us
3. existing customers, who have existing products and existing lending with us
4. existing customers, who have existing products, but no existing lending, but who have had lending with us in the past, and
5. new customers, who have no existing products, but who may have had a relationship with us in the past.

We are uncertain what value this information will provide the Commission. Movement between lenders should be encouraged and supported, as it may indicate an active market for credit with consumers making informed choices as to their credit provider. Considering lending volumes between new and existing customers is unlikely to be of significant value, other than in showing that a lender may be effective at drawing in new lending, which may be the result of effective brand marketing, not lending marketing.

If kept, we suggest that this requirement is limited to differentiating between new customers who have no existing products, including lending products, with the lender, and existing customers.

The number of applications for consumer credit that were declined, broken down into the number that were new customers and the number that were returning customers

We believe for many lenders this would be new information to capture and report, which may require significant changes to systems and processes. We do see value in this information, as it may show where credit reforms have impacted access to credit, however, sufficient time will be needed to implement.

As above, we do question the value of breaking this information down between new and existing borrowers though.

The number of applications for consumer credit that were withdrawn

We believe this information would be unavailable and would be difficult to capture and report. How would 'withdrawn' be defined — at what point in an interaction would an application be treated as withdrawn?

For example, a home loan customer is given a pre-approval for a home loan, but the pre-approval lapses without being used. We may not know that the application has been 'withdrawn', where the approval has lapsed. The customer may have obtained pre-approvals from several lenders, and has chosen to go with another lender. The customer may simply have not found a home to purchase, and decided to delay looking until there are more properties on the market and seek a new pre-approval at that time.

We believe the number of approved or declined applications is likely to be more indicative of behaviour in the market. However, we don't believe there is considerable value in reporting the number of withdrawn applications, even if that information could be obtained.

The number of loans which were defaulted on or fell into arrears within one month of taking out the loan

We believe care will be needed in how this requirement is defined. In particular, there will be differences between term lending and revolving lending that need to be adequately captured. We already hold concerns about how this trigger is used elsewhere in the CCCFA and Regulations, including debt recovery and financial mentoring disclosure rules. We strongly suggest that Officials engage further with the industry to ensure terms are defined appropriately.

We also suggest short term lending defaults in connection with bank lending is unlikely to be determinative of lending that is unaffordable or unsuitable. For example, a consumer may exceed their credit limit intraday on their overdraft, but self-correct when a payment is received into the account. For bank lending, we track lending that is 30 days, 60 days, and over 90 days in default. In our experience, for our products, lending in default after a longer period of time is more likely to indicate a customer in financial distress.

Short term defaults may also be as much caused by consumer behaviour as whether the initial lending was responsible. For example, consumers may overdraw their accounts by small amounts accidentally, and self-correct. They may do this even with an arranged credit contract in place. Reporting defaults shortly after facilities are drawn may not necessarily indicate irresponsible lending practices.

We suggest that consideration is given to limiting this requirement to high-cost consumer credit, where the term of lending is likely to be far shorter and where early default may be more likely to indicate issues with the original lending decision.

The number of loans which were repaid in full by taking out a new loan with the creditor

We believe this requirement will be problematic for banks and may not indicate responsible lending issues. Many lenders (and customers) will replace existing loans with new loans for a range of reasons, usually operational in nature.

For example, a customer may re-document an existing flexible home loan taken out when building a house onto a term home loan once the loan has been fully drawn down. Or, a customer on a fixed rate home loan may ask for changes to the loan, and we provide a new loan on the terms requested and repay the existing loan. Or, a customer may choose to split an existing loan into three separate loans on different loan terms, to take best advantage of a range of interest rates or repayment options. Or, a customer may want to top up their loan, and for operational reasons the lender documents the combined lending onto a new loan and uses that new loan to repay the existing loan. We believe these types of operational decisions will distort lending and will not give a clear picture on the loans were repaid in full.

It's also unclear how this requirement would apply where creditors offer multiple products. For example, we would not necessarily treat a customer taking out a new credit card, but cancelling their overdraft, as repaying one loan by taking out another loan.

We wouldn't capture this information currently, and it would require significant system and process changes to collect and report.

The number of loans which included an assignment of wages

We have no comments on this requirement, as we do not currently take an assignment of wages when lending.

The number of loans with attachment orders, as a result of default

We have no comments on this requirement, as we do not currently seek attachment orders on default.

The number of consumer credit contracts for which debt collection action was undertaken (for example, by being transferred to an internal debt collection team, by contracting a debt collector to collect the debt, or by on-selling the debt to a debt collector)

We strongly suggest that the language in this provision aligns with the CCCFA provisions associated with debt collection disclosure. In particular, repayment reminders should not be captured, only steps associated with debt collection.

We also suggest that, if kept, the information is provided as at a particular point in time, and records the number of consumer credit contracts that have commenced debt collection. Capturing lending for which debt collection *was* undertaken may capture loans that had defaulted, but are now complying with their terms and not in default. We believe this information could distort reporting results. Instead, lenders should report on the number of loans currently in debt collection at the time of reporting.

The number of hardship applications received and the number of hardship applications approved in this period

We do question whether this information will provide any indication of responsible lending behaviours across the industry? Hardship applications may only be made in situations of unforeseen hardship – events that the borrower and lender did not foresee when entering the credit contract. We assume the purpose is to help show whether the hardship provisions in the CCCFA are effective. As such, we have no comments on this requirement.

Number of loans for which there was a guarantor

We do question the value of capturing this information. Lenders may take guarantees for a wide range of reasons. For example, for many banks, guarantees are sought to link security being provided by a third party to the lending.

We also see issues with collecting this information. For example, under the CCCFA only certain types of guarantees will be relevant guarantees under the CCCFA. Guarantees from companies, for example, are not caught. This layer of granularity would require significant data resource to capture and report.

Number of loans where the guarantor was asked to repay the debt

For similar reasons as above, we believe many lenders would have difficulties collecting and reporting this information. Demand may be made on a guarantor, at the same time as demand is made against a debtor, however, the debtor may meet the demand, and the guarantee is not enforced further.

Information about complaints

We believe this requirement will duplicate work already underway within the banking industry.

Banks are voluntarily agreeing to report all complaints to the Banking Ombudsman based on ASIC's categorisation initiative. However, not all banks currently have the same capacity to capture and report complaints.

We understand the Banking Ombudsman has a memorandum of understanding in place with FMA about reporting complaint volumes, however, we don't believe there is currently a memorandum of understanding with the Commerce Commission. We wonder if this may be a better option to explore.

We do believe the nature of the information proposed needs to be refined. As set out in our earlier submission, the scope of 'complaint' is very broad, and is not specifically related to complaints about a consumer credit contract or complaints that, if upheld, would constitute a breach of the CCCFA.

Proposed period of reporting and timing

As above, we suggest that the extent of reporting required will mean lenders will need to make significant system and process changes. Given the criminal fines imposed if reporting is misleading or deceptive, the work to ensure information is collected appropriately and is accurate should not be underestimated.

We strongly submit that an appropriate transition period is provided before reporting begins. Depending on the final extent of information required, we suggest a minimum of 2 years to allow sufficient time for system builds and process changes, with then a further 12 months to collect the initial data set for reporting once the systems are available to collect. We also recommend that reporting is applied to new lending, not existing lending, as many of the categories identified above will not be available for existing loans.