Bank of New Zealand

# Response to the Ministry of Business, Innovation and Employment Discussion Paper:

# Review of consumer credit regulation

1 August 2018

## 1.0 INTRODUCTION

1.1 This submission has been prepared by the Bank of New Zealand ('BNZ') in response to the Discussion Paper, "Review of consumer credit regulation consultation" ('the Discussion Paper'), released by the Ministry of Business, Innovation and Employment ('MBIE') in July 2018.

1.2 BNZ welcomes this opportunity to provide a response to the Discussion Paper and acknowledges the industry engagement undertaken by MBIE on this matter.

1.3 At the outset, BNZ notes that a number of the topics raised in the Discussion Paper relate to issues that are typically associated with services and products provided by "high-cost" lenders. These lenders may be less likely to have comprehensive internal processes for the purpose of complying with the Credit Contracts and Consumer Finance Act 2003 ("**CCCFA**") and Responsible Lending Code, given the scale and nature of their businesses.

1.4 BNZ submits that recent CCCFA reform has provided a number of the necessary tools to deal with predatory lenders and predatory lending practices. Accordingly, BNZ submits that a focus on ensuring compliance with the existing law should result in positive outcomes for New Zealand borrowers.

1.5 BNZ submits that legislative reform, such as that proposed to the CCCFA, should be holistic, to ensure that the intended customer outcomes are achieved. The changes, as proposed across a range of related areas including the "Disclosure requirements for digital interactions" document dated July 2018, the changes proposed by MBIE to s 99(1A), and amendments to the CCCFA under Part 4 of the Regulatory Systems (Economic Development) Amendment Bill may benefit from being brought together (where possible), to enable more comprehensive analysis and consideration.

## 2.0 SUBSTANTIVE BNZ SUBMISSIONS

***Issue 1: Regarding the excessive cost of some consumer credit agreements***

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| **1** | Do you agree that the problems identified with high-cost lending (even where it is compliant with the CCCFA) are significant? Do you have any information or data that sheds light on their frequency and severity? |
| | BNZ agrees that the issues identified in Discussion Paper and the "Additional information to support the discussion paper" ('Additional Information') in respect of lenders operating as high-cost lenders are significant. However, BNZ considers that the problems identified in the Discussion Paper and Additional Information are likely to be less severe in respect of mainstream lenders, such as registered banks and licensed non-bank deposit takers.<br><br>Registered banks typically invest considerable resources to ensure their compliance with legislation such as the CCCFA and the lender responsibility principles. Consequently, mainstream lenders such as BNZ are more likely to have processes in place that preclude the issues identified in the Discussion Paper and Additional Information arising in respect of their customers. |

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| | BNZ also agrees with comments at paragraphs 32 to 35 of the Additional Information, to the effect that high-cost lenders may be more likely to engage in irresponsible lending due to their more vulnerable customer base. Mainstream lenders such as BNZ tend to operate in a comparatively informed and competitive market.<br><br>While BNZ considers that the issues identified in respect of high-cost lenders are significant, the definition of a "high-cost lender" will require consideration and thorough consultation to ensure that the problems identified in the Discussion Paper and Additional Information are addressed in a focussed and effective manner. Based on the data and commentary provided at paragraphs 19 and 20 of the Discussion Paper, BNZ submits that there may be merit in defining high-cost lenders by reference to interest rates offered: e.g. "high-cost" lenders being defined as any lender offering annual interest rates over 100%. However, more work may be needed throughout the reform process to confirm that there are no unintended consequences produced by such a definition, and that limited "avoidance" opportunities are created by this approach. |
| **2** | Do you support any of the extensions of Cap Option A? What would be the impact of these extensions on borrowers, lenders and the credit markets? Do you have any information or data that would support an assessment of the impact of these extensions? |
| | BNZ considers that the proposed extensions may be very challenging for lenders to implement, and difficult for the Commerce Commission to enforce, in circumstances where a customer is borrowing from multiple lenders where subsequent lenders may have limited visibility of previous lending. Further, the proposed extensions may unintentionally restrict a customer's ability to access credit, and may inhibit lenders from lending responsibly. |
| **3** | Do you agree with our assessment of the costs and benefits of the options for capping interest and fees? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits? |
| | BNZ agrees with the costs identified in the "benefits and costs" table appearing at paragraph 38 of the Discussion Paper. However, for the reasons set out at Question 5, it has concerns about whether any of these options would successfully reduce negative outcomes for borrowers from high-cost lenders. |
| **4** | Do you have any suggestions for the design of options for capping interest and fees? If so, what would be the impact of your proposed design on borrowers, lenders and the credit markets? |
| | No response. |
| **5** | Which interest rate cap options, if any, would you prefer? Which interest rate options would you not support? Please explain how you made your assessment. |
| | Paragraphs 30 and 35 of the Discussion Paper states that Cap Options A and B would only apply to "high-cost lenders", whereas paragraph 36 states that Cap Option C would apply to all lenders. |

In respect of Cap Option A, limiting the total interest and fees recoverable by a lender by reference to the original principal borrowed may be unhelpful for both lenders and borrowers. For example:

- Cap Option A is targeted at high-cost lenders. Some of these high cost-lenders may genuinely have higher cost business models which make the 100% interest and fees recovery challenging from a sustainability perspective. This may result in some of the higher quality lenders in this category withdrawing from the market, which may limit the available options for genuine, informed borrowers entering into short term loan contracts, contributing to an anti-competitive environment and resulting in worse outcomes for borrowers.
- Where the amount of borrowing varies (for example, under a revolving credit contract), it may be difficult for both lenders and borrowers to determine whether the borrower was going to pay more than 100% of the original loan amount, if the borrowing was small relative to establishment fees etc.

Similar issues also arise in respect of Cap Options B and C. For example:

- Cap Option B is also potentially unhelpful to borrowers, because it has a number of concepts borrowers would need to fully understand, being the equivalent interest rate concept (which we address further below), the 100% interest and fees recovery cap, and limits on default interest and fees. BNZ queries whether a vulnerable borrower would be in a position to readily understand all these concepts.
- BNZ notes that the equivalent interest rate (previously known as the "finance rate") concept proved to be unhelpful and confusing for borrowers under the Credit Contracts Act 1981 ("**CCA**") and was removed partly for this reason when the CCCFA was enacted. The concept was also subject to potential manipulation under the CCA, which could also occur again if it was reintroduced.
- There are a number of additional matters that should be considered in relation to fee caps, including the significant ongoing regulatory work required to maintain fee caps at the appropriate level (particularly in light of technology changes), and the fact that fee caps may disincentivise lenders from offering more comprehensive (and expensive) services that some customers are willing to pay for.
- In practice, to the extent that Cap Option B or C did not have the effect of completely prohibiting high-cost lending, the revenue lenders would lose as a result of either Cap Option could result in non-compliant high-cost lenders seeking to recover the costs elsewhere. For example, high-cost lenders may be incentivised to identify "loopholes" for re-categorising costs as falling outside the fees and interest charges regulated by either Cap Option.

As noted above and in Question 19, BNZ considers that it is questionable whether any Cap Option which includes a combined equivalent interest rate (such as Cap Options B and C) is would result in good outcomes for lenders or borrowers. One significant cost in respect of this approach is the confusion it historically caused for customers under the CCA. As set out in the Discussion Paper, one of the key successes of the 2015 reform and introduction of the lender responsibility principles is the improved transparency in respect of lenders' terms. BNZ has noticed customers tend to have a good understanding of the difference between interest rates and fees.

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| | BNZ would, however, support a modified Cap Option C, which capped interest rates only. BNZ submits that such an approach (coupled with enforcement of the reasonableness of fees) would have the desired effect of Cap Option C, without the potential drawbacks of that approach. From a lender's perspective, it is a simpler solution to implement than an approach that combines interest and fees into a single rate, and it does not raise any of the issues with capping fees or combining fees and interest that are set out above. It is also likely to be more helpful from a borrower's perspective. In our experience, customers generally have a good understanding of, and strong focus on, interest rates.<br><br>If this approach was adopted, careful thought and analysis would need to be dedicated to determining the level of the appropriate interest rate cap. |

***Issue 2: Regarding continued irresponsible lending and other non-compliance***

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| **6** | If directors have duties to take reasonable steps to ensure that the creditor complies with its' CCCFA obligations, should any duties apply to senior managers? |
| | BNZ does not support the imposition of personal duties on directors or senior managers for ensuring that a lender complies with its CCCFA obligations, for the reasons set out in more detail in response to Question 12. |
| **7** | If there are to be more prescriptive requirements for conducting affordability assessments, what types of lenders or loans should these apply to? |
| | BNZ does not support more prescriptive requirements for conducting affordability assessments. BNZ submits that the range of lenders and products may make any prescriptive requirements unworkable.<br><br>However, BNZ would support clarification of the guidance provided to all lenders conducting affordability assessments. This clarification should be provided through changes to the Responsible Lending Code rather than through amendments to the CCCFA or the Credit Contracts and Consumer Finance Regulations 2004 ("Regulations").<br><br>Before providing any such clarification it will be essential that there is thorough consultation with market participants in relation to further guidance. This will ensure the guidance is fit for purpose. For example, it may be appropriate to have different approaches for different types of loans (and, for example, whether lending is secured or unsecured).<br><br>The Discussion Paper contemplates requirements only applying to some types of lenders such as vehicle loans and high-cost loans. However, more guidance would be beneficial in respect of all loans and all lenders. |
| **8** | Should there be any change to the requirement that lenders can rely on information provided by the borrower unless the lender has reasonable grounds to believe the information is not reliable? What would be the impact of such a change on borrowers, lenders and the credit markets? |
| | BNZ understands the rationale, but does not support changes to the current ability of lenders to rely on information provided by the borrower unless the lender has reasonable grounds to believe the information is not reliable under section 9C(7) of |

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| | the CCCFA. BNZ considers this to strike the right balance between obligation on a customer, and duty of care on the lender.<br><br>The risk identified in the Discussion Paper is that the requirement acts as a barrier to lenders undertaking reasonable inquiries to assess the affordability of repayments.<br><br>BNZ takes the view that this risk is considerably diminished when a lender is fully compliant with its obligations under the CCCFA and the Responsible Lending Code. In particular, section 5 of the Responsible Lending Code requires a lender to make reasonable enquiries before entering an agreement with a borrower so as to be satisfied that the borrower will make the payments under the agreement without suffering substantial hardship. When read alongside section 9C(7) of the CCCFA, BNZ considers that that this obligation acts to prevent the mischief identified in the Discussion Paper.<br><br>However, BNZ considers that it would be beneficial to lenders and borrowers if there was more guidance available under the Responsible Lending Code in respect of what will constitute "reasonable grounds" for the purposes of deciding when a lender should determine that the information supplied by a borrower is not reliable and make further enquiries. |
| **9** | Do you consider there should be any changes to the current advertising requirements in the Responsible Lending Code? If so, what would be the impact of those changes on borrowers, lenders and the credit markets? |
| | BNZ considers the existing advertising requirements contained in the Responsible Lending Code to be fit for purpose and questions whether there would be any benefit in making those requirements mandatory.<br><br>It would be beneficial for lenders and borrowers if further clarity were provided in respect of the existing requirements. This could be achieved through guidance in the Responsible Lending Code. Such an approach would ensure that lenders adopt consistent advertising practices and will assist customers in comparing and understanding the products offered by different lenders. |
| **10** | Do you agree with our assessment of the costs and benefits of the options to reduce irresponsible lending and other non-compliance? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits? |
| | See response to Question 12. |
| **11** | Do you have any suggestions for the design of options for reducing irresponsible lending and other non-compliance? If so, what would be the impact of your proposed options on borrowers, lenders and the credit markets? |
| | To the extent that any of the proposed Options are adopted, BNZ considers that any new powers, obligations or penalties should be made as clear as possible and involve thorough consultation with market participants. BNZ makes comments on the potential design of the proposed Options in response to Question 12. |

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| **12** | Which options for reducing irresponsible lending and other non-compliance would you support? Which would you not support? Please explain how you made your assessment. |

*Registration Option A*

BNZ considers it is extremely unlikely that it would be affected by Registration Option A. BNZ notes however that this would significantly extend the Commission's powers. This Option would confer a broad discretion on the Commission without providing guidance on the circumstances in which the discretion could be exercised – this may result in considerable uncertainty for lenders.

In addition, BNZ questions the proposed changes to s 108 contemplated by paragraph 167 of the Additional Information, and has concerns that the approach suggested does not adequately recognise the complexities and governance arrangements associated with the successful operation of a large financial institution such as a registered bank.

*Registration Option B*

BNZ agrees with the costs and benefits identified in the Discussion Paper and additional Information as it applies to requiring directors and senior managers to show that they are fit and proper persons for the purposes of registration on the Financial Service Providers Register. Accordingly, BNZ supports Registration Option B.

In particular, BNZ considers that this will enable more accurate compliance monitoring and is likely to reduce negative outcomes for borrowers of certain unregulated lenders.

BNZ also supports the proposed exemption for lenders already licensed and regulated under a "fit and proper person" test for directors and senior managers such as registered banks, licensed non-bank deposit takers and market services licensees under the Financial Markets Conduct Act 2013 ("**FMCA**").

*Registration Option C*

BNZ agrees with the benefits and costs identified in the Discussion Paper and Additional Information in respect of introducing a comprehensive creditor licensing system and would support a licensing regime.

However, BNZ considers that more detailed consideration should be given to the direct and indirect compliance costs associated with a licensing regime, particularly as these costs are likely to be passed on to borrowers.

BNZ submits that, if a licensing regime is introduced, certain entities should be exempt from the regime on the basis of their existing licenses. For example, BNZ is currently:

- a registered bank under the Reserve Bank of New Zealand Act 1989 and is subject to prudential supervision by the RBNZ;
- a Qualifying Financial Entity under the Financial Advisers Act 2008; and
- a derivatives issuer with a market services licence under the FMCA.

BNZ submits that consideration should be given to exempting registered banks from the licencing requirements given they are already subject to significant regulatory oversight.

Alternatively, if the above preferred approach is not adopted and a registered bank is also required to have a CCCFA licence, consideration may be given to the following points:

- There should be no conflicts between the duties imposed on the licensee under the various licences/registrations.
- To the extent that the applicant for a licence has already had a New Zealand regulator consider aspects of licence criteria under an existing licence, those elements of the application should be deemed to be satisfied. This will help to reduce unnecessary compliance costs for the applicant and the regulator.

*Enforcement Option A*

While BNZ agrees with the costs and benefits identified in the Discussion Paper in respect of introducing pecuniary penalties and statutory damages, and expanding injunctive relief for breaches of lender responsibilities, BNZ does not support Enforcement Option A at this time.

The difficulty that arises is that the lender responsibilities are principles based and BNZ supports the continuation of a principles-based regime. While there is guidance available in respect of the ways in which lenders are able to meet those principles, in the form of the Responsible Lending Code, the Code is not prescriptive. BNZ submits that civil pecuniary penalties or criminal fines should only be imposed in respect of principles-based regulation in limited circumstances.

BNZ also submits that the focus should be on ensuring that the Commission has the tools to expand, and fully utilise, its investigatory powers before turning to the issue of penalties.

*Enforcement Option B*

BNZ opposes Enforcement Option B.

The main challenge with Enforcement Option B is that a director or senior manager, of a large financial organisation such as a bank, may have limited oversight in relation to the day-to-day placement of loans. The operational aspects of each customer screening would typically be delegated down from Board and Senior Managers to front line staff. While processes and procedures should be in place to monitor and report compliance upward to the Board and Senior Management, they would not typically be expected to be closely involved in day to day operations that would give them sight of a specific breach. To the extent that a lender is not complying with its obligations under the CCCFA, it is very possible that a director or senior manager will be unaware of a breach at the time it happens.

The primary issues raised in the Discussion Paper and Additional Information relate to the steps lenders should be taking at the time of originating a loan, for example in respect of:

- superficial testing of affordability;

- hasty loan approval;
- upselling and pressuring borrowers; and
- failing to adequately assist borrowers and guarantors make informed decisions.

The Additional Information seeks to draw some comparison between the CCCFA and obligations on directors under the FMCA. BNZ considers that this analogy may not be appropriate. Under the FMCA, duties are principally imposed on directors for offer documents and ensuring that issuer due diligence is thoroughly complied with. The duties that directors may have under the FMCA reflect the significance of each individual transaction in which a company is an issuer and the close relationship directors have with a transaction of this kind. Comparatively, the transactions effected under the CCCFA can occur hundreds of times a day.

Another key comparison between the FMCA and the CCCFA is the direction of funds: the CCCFA regulates businesses who provide customers with money on certain terms, while under the FMCA, investors pay issuers for an interest in the issuer's securities. Under the FMCA, money is being raised from investors (which may be members of the public); under the CCCFA, money is being lent to the public.

Given the fundamental differences between the FMCA and CCCFA regimes and the nature of credit transactions completed by most lenders, BNZ submits that personal duties for directors and senior managers under the CCCFA are unlikely to be an effective mechanism for ensuring compliance. Lenders are sufficiently incentivised to ensure compliance with their CCCFA obligations, and, if any of the other Enforcement Options is implemented, those incentives may increase. There is a real risk, as noted in the Discussion Paper, that this Enforcement Option would disproportionately disincentivise directors from serving on the boards of lenders.

*Enforcement Option C*

BNZ does not support Enforcement Option C, for the following reasons:

- In terms of the proposal to impose an obligation on lenders to substantiate their affordability and suitability assessments, BNZ considers that those lenders who are complying with the Responsible Lending Code (for example, clause 2.4) should already be maintaining this information. On this basis, no change is necessary for this aspect of the Enforcement Option C.
- In terms of the proposal to impose an obligation on lenders to supply copies on request to the borrower or their agent, BNZ does not believe this is necessary because of the Privacy Act 1993. Most information contained in an affordability or suitability assessment is likely to be personal information, which the borrower would be entitled to access and obtain a copy of under the Privacy Act 1993. However, to some extent BNZ's internal affordability and suitability assessments contain commercially sensitive information, which is not required to be disclosed under the Privacy Act 1993 and should not be required to be disclosed under the CCCFA. In this context, MBIE should also consider the Privacy Commissioner's submission to the Select Committee in relation to the Privacy Bill, to the extent that it relates to automated decision-making and individuals having the right to require human intervention in the process.

- In terms of the proposal to impose an obligation on lenders to supply copies to the Commerce Commission on request, BNZ notes that the Commerce Commission already has the power to request affordability and suitability assessments under s 113 of the CCCFA (by way of cross reference to s 98 of the Commerce Act 1986). On this basis, BNZ is of the view that a further power is not required.

*Enforcement Option D*

BNZ supports Enforcement Option D in principle; however, thorough consultation with market participants would be essential to ensure the proposals are fit for purpose and workable. Careful consideration would need to be given to the amount of the levy and how it is calculated, including to ensure that it adequately takes into account the risk profile of different types of lenders.

*Enforcement Option E*

BNZ queries whether a legal obligation is required to achieve the desired result. BNZ works directly with a customer's agent in good faith where requested to do so. However, "good faith" can be a difficult concept to define, and BNZ suggests that, if an obligation of this type is imposed, guidance is required on the meaning of "good faith" in this context.

BNZ notes that data security and privacy issues of the borrower would need to be considered if Option E is implemented.

*Responsibility Option A*

As per Question 7, BNZ considers that there should be additional guidance in relation to how affordability assessments should be conducted, rather than more prescriptive requirements - this may ultimately be more helpful for customers and lenders.

However, if prescriptive requirements were introduced, BNZ suggests that these should be clearly confined to high-cost, short term consumer credit contracts. This will ensure that the requirements target those lenders that are detrimental to vulnerable consumers and are not complying with CCCFA and Responsible Lending Code.

*Responsibility Option B*

See response to Question 9.

*Responsibility Option C*

No comment.

### *Issue 3: Predatory behaviour by mobile traders*

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| **13** | Do you agree with our assessment of the costs and benefits of the options for covering additional credit contracts under the CCCFA? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits? |
| | BNZ agrees with the costs and benefits identified in the Discussion Paper and Additional Information in respect of regulating mobile traders under the CCCFA regime. |
| **14** | Do you have any suggestions for the design of options for covering additional credit contracts under the CCCFA? If so, what would be the impact of your proposed options on borrowers, lenders and the credit markets? |
| | Please see Question 15. |
| **15** | Which options for changes to cover additional credit contracts would you support? Which would you not support? Please explain how you made your assessment. |
| | To the extent that products offered by mobile traders are not currently regulated by the CCCFA as consumer credit contracts, they should be regulated under the CCCFA.<br><br>BNZ considers that Scope Option A nor Scope Option B is optimal. It is possible that some traders could attempt to "work around" Scope Option A by carefully designing products to not impose default fees. There are likely to be practical difficulties in assessing the "cash price" under Scope Option B.<br><br>BNZ acknowledges the harm that both Scope Options are intended to address (for example, laybuy type schemes, where goods are provided and paid for in a number of instalments, failing which, default fees will apply). However, widening the scope of a "consumer credit contract" may have unintended consequences and may capture situations which were not intended to be subject to the CCCFA.<br><br>BNZ considers that more work is required to derive a solution that specifically targets and defines the types of credit sales that currently fall outside the CCCFA. For example, it may be possible to expressly define the relevant types of "mobile trader" and include them within the definition of "creditor" under the CCCFA. In order to provide flexibility to address charges in business practices, the definition of "mobile trader" could be included in the Regulations rather than the CCCFA. |

### *Issue 4: Unreasonable fees*

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| **16** | If prescribed fee caps were introduced, who should they apply to, and what process and criteria should be used to set them? |
| | Please see BNZ's response to Question 19 below. |
| **17** | Do you agree with our assessment of the costs and benefits of the options for capping interest and fees? Are any costs or benefits missing? Do you have any |

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| | information or data that would help us to assess the degree or estimate the size of these costs and benefits? |
| | BNZ has no additional comments on the costs and benefits of the options, beyond those set out in response to Questions 18 and 19. |
| **18** | Do you have any suggestions for the design of options for reducing unreasonable fees? If so, what would be the impact of your proposed options on borrowers, lenders and the credit markets? |
| | BNZ considers that a combination of Fees Option A and Registration Option C would most effectively resolve the problems identified in respect of unreasonable fees.<br><br>However, BNZ submits that the benefits of this combined option would need to be supported by guidance provided to lenders in respect of what the new obligations are, and how they operate. |
| **19** | Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment. |
| | *Fees Option A*<br><br>BNZ agrees with the costs and benefits identified in the Discussion Paper and Additional Information in respect of requiring lenders to substantiate the reasonableness of their fees and keep records showing how fees have been calculated. This is consistent with paragraph 10.13 of the Responsible Lending Code and paragraphs 83 to 85 of the Commerce Commission's Consumer Credit Fees Guidelines, and it is likely that many lenders are already doing this.<br><br>There would need to be clear guidance on lenders' reporting obligations to the Commission. For example, the form and frequency of reports made to the Commission in relation to the method for calculating fees will need to be made clear to lenders.<br><br>In addition to the benefits identified in the Discussion Paper and Additional Information, BNZ considers that Fees Option A is likely to reduce non-compliance from the outset as lenders who currently do not conduct detailed analyses of their fees become aware that they cannot substantiate the reasonableness of their fees and take measures to rectify the relevant fees.<br><br>*Fees Option B*<br><br>Fees Option B gives rise to significant practicality issues, such as the difficulty of identifying appropriate caps for different fee types, such as establishment fees, default fees and annual fees. Product offerings vary within lenders and from lender to lender. Accordingly, it would be difficult to monitor the effectiveness of fee caps and the impact on lenders and borrowers. If the fee caps are too restrictive, this may reduce the range of products offered by lenders and diminish the incentive to develop new products, for example developing different credit card options to cater for different customer preferences.<br><br>Further, many fees compensate lenders for the cost of additional optional services a borrower can access under a credit contract. In the event that a fee cap is set too |

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| | low, lenders may be encouraged to reduce costs by limiting the benefits or services offered by certain products, to the detriment of customers.<br><br>Caps on fees may have unintended consequences. Lenders may not only reduce, but may also increase, their fees to meet the cap imposed by the regulation. Further, this option would be inconsistent with the current purpose of fee regulation under the CCCFA (i.e. to reflect the lender's actual costs).<br><br>In the event that fee caps are introduced, BNZ considers that caps should target the most problematic lenders (in particular, high-cost lenders), by ensuring that establishment fees are reasonable, based on the size of the loan, and limiting default fees so that they do not exceed the original amount borrowed. For example, section 31A(2) of the National Consumer Credit Protection Act 2009 (AUS) prohibits establishment fees from exceeding 20% of the adjusted credit amount for small amount credit contracts (less than $2,000).<br><br>*Fees Option C*<br><br>BNZ urges caution in considering whether to require that an equivalent interest rate be provided for the purposes of disclosure and advertising. An equivalent interest rate is difficult to calculate and causes significant confusion for customers when applied to different loans. Factors such as the loan type and duration of the loan can affect the accuracy and clarity supposedly provided by an equivalent interest rate.<br><br>Further, BNZ has observed that customers have an understating of the differences between interest and fees. It acknowledges the Commission's recent report in respect of lender websites. The focus in respect of advertising and disclosure of fees should be on ensuring that fees are clearly communicated, rather than changing the landscape entirely. |
| **20** | Have you seen issues with excessive broker fees, or other unavoidable fees charged by third parties, being added to the loan? If so, are there any specific changes that should be made to the regulation of third-party fees? What would be the impact of these changes on lenders, borrowers and third parties? |
| | BNZ has not experienced issues in respect of fees imposed by brokers or other third parties.<br><br>Accordingly, BNZ believes that issues with third party fees are more likely to arise in respect of unregulated high-cost lenders.<br><br>Third-party fees should not be included within the definition of credit fees in BNZ's view. A lender does not have the ability to control the level of a third-party fee, so it would seem inappropriate to expect that lender to be responsible (including criminally) for the reasonableness of the fee. BNZ's view is that the existing regulation of third-party fees, including under s 45 of the CCCFA, is adequate.<br><br>Further, in addition to mortgage loans, other loans also may carry third party fees (for example, motor vehicle loans). BNZ considers that more guidance in respect of third party fees for smaller loans would be beneficial. |

***Issue 5: Regarding irresponsible debt collection practices***

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| **21** | Is this an accurate picture of the problems for consumers experiencing debt collection? Do you have information that confirms or refutes these issues, or sheds light on how widespread or severe they are? |
| | BNZ notes that the Discussion Paper attempts to address three different types of debt collection:<br>• in-house debt collection undertaken by the lender;<br>• a debt collection business acting as agent for the lender; and<br>• a debt collection business buying debt from lenders and pursuing it.<br>In BNZ's view, these are three different models and different risks may arise in respect of each of them. Different solutions may therefore be necessary. It is important that any solutions are appropriately tailored for the circumstances where the risks arise.<br>Further, paragraph 113 of the Discussion Paper appears to draw a distinction between "debt collection" and "short-term steps taken to correct missed payments". In BNZ's view, there is arguably little distinction between the two. A missed payment constitutes a default. That is not to say that a lender does (or should) take the same approach to every default, but that any distinction between "short-term steps to correct missed payments" and "debt collection" is unlikely to be helpful in defining and resolving the issues that may arise in this area.<br>BNZ has observed some of the practices described in the Discussion Paper and Additional Information in respect of irresponsible debt collection practices (noting that this is not in relation to the Debt Collection Agencies that BNZ employs). For example, the BNZ Community Finance team has seen examples from other lenders where loan statements provide for default fees that would appear unreasonable. For example, where the customer misses a payment of $15 and a $25 dishonour fee is charged. BNZ has also seen issues where customers are seeking information from debt collection businesses about the origination of a debt (i.e. who the original lender was) and the collection fees applied, and that information has been difficult to obtain.<br>BNZ does not sell its debt and only uses reputable debt collection agencies to act on its behalf. BNZ puts considerable effort into its debt collection practices and ensuring that debt collection businesses it engages with are operating appropriately. |
| **22** | What information should be provided to borrowers by debt collectors? When and how should this information be provided? |
| | Where the debt is being collected by a debt collection business, the borrower should receive:<br>• details of who the debt collection agency is collecting on behalf of;<br>• the amount of the debt that has been sent for collection plus the collection costs;<br>• the details of the debt being collected (for example, whether it is a loan or a credit card) including the facility number; |

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| | • information setting out how to make payment;<br>• contact details for the debt collection agency; and<br>• how to obtain independent budget, legal or consumer advice.<br><br>BNZ considers that this information is not necessary in the case of in-house debt collection, on the basis that, from the customer's perspective nothing has changed: they are still dealing with the original lender. In addition, the lender has continuing disclosure obligations under s 18 of the CCCFA.<br><br>BNZ also considers that it is unnecessary to provide copies of the original documentation, any subsequent variations or details of the composition of the debt (including interest and fees charged up to the point the loan was outsourced), as the borrower will have received this information at the time of taking out the facility and received statements detailing interest and fees as they are charged. |
| **23** | Do you agree with our assessment of the costs and benefits of the options for addressing irresponsible debt collection? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits? |
| | See Questions 22, 24 and 25. |
| **24** | Do you have any suggestions for the design of options for addressing irresponsible debt collection? In particular, what is an appropriate frequency of contact with debtors before (and then after) a payment arrangement is entered into? Please state the likely impact of your proposed options on borrowers, lenders and the credit market. |
| | Please see Question 25.<br><br>In respect of an appropriate frequency of contact between debt collection businesses and debtors, as set out in response to Question 25, BNZ's view is that this cannot be prescribed with reference to a set number of interactions, and a more principled basis for determining appropriateness will be necessary. |
| **25** | Which options for changes to the regulation of debt collection would you support? Which would you not support? Please explain how you made your assessment. |
| | *Debt Collection Option A*<br><br>BNZ supports requiring debt collection businesses (not lenders) to disclose the matters set out in response to Question 22. However, BNZ considers that requiring lenders and debt collection agencies to provide additional disclosure, particularly in respect of sometimes outdated documentation, risks causing unnecessary complexity and costs that are disproportionate to the stated benefits.<br><br>*Debt Collection Option B*<br><br>BNZ does not support Debt Collection Option B. By way of example, this Option does not adequately provide for the situation in which the borrower has multiple debts from different lenders. The first lender may have acted responsibly in approving the first loan, but subsequent non-compliant lenders may have acted |

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| | irresponsibly in approving subsequent loans. It would be unreasonable for the first lender (or that lender's external debt collector) to jeopardise their position by entering into a payment plan that is as result of subsequent lenders' irresponsible lending.<br><br>*Debt Collection Option C*<br><br>The Responsible Lending Code currently sets out appropriate hours and permitted days for a debt collector to contact a borrower. BNZ's view is that the limits set out in the Responsible Lending Code are appropriate.<br><br>One of the key costs that BNZ has identified in respect of this Option is the difficulty in prescribing an appropriate definition and frequency of "contact".<br><br>If this Option was pursued, the scope of the definition of "contact" will require thorough consideration and consultation. For example, a key question will be whether the definition accounts for circumstances in which a debt collection agency may attempt to contact a borrower without actually speaking to them (for example, leaving a voice message).<br><br>Further, in some instances, a debt collection agency may need to have several interactions with a borrower over the course one day, such as where the borrower has requested further information and the agency will need to call the borrower again to relay the requested information.<br><br>BNZ considers that this Option requires amendment to reflect the unpredictability of what will be "appropriate limits regarding contact" for any particular borrower on any given day.<br><br>Finally, BNZ notes that paragraph 125 of the Discussion Paper states that the agency should cease contact with the borrower and deal with their appointed agent if requested. BNZ agrees with this in principle; however, BNZ has also experienced situations where the appointed agent has not responded to the agency's attempts to contact then, or has not acted in the borrower's best interests. In these situations, it would be appropriate to preserve the agency's ability to make direct contact with the borrower.<br><br>*Debt Collection Option D*<br><br>BNZ does not have a strong view for or against Debt Collection Option D. However, as currently drafted it is not clear what provisions of the CCCFA would apply to third-party debt collection businesses.<br><br>*Debt Collection Option E*<br><br>BNZ is of the view that the costs identified in the Discussion Paper in relation to this option are likely to be passed on to all borrowers through higher interest rates. In effect, all borrowers (including those not in default) would subsidise those who are in default. On this basis, BNZ does not support Debt Collection Option E. |
| **26** | Are you seeing harm from loans to small businesses, retail investors or family trusts as a result of them not being regulated under the CCCFA? |

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| | BNZ does not consider that there is evidence of harm or mischief that would warrant the the application of the CCCFA being enacted into these borrower areas. These entities are not the types of entities to which "consumer credit contract" provisions of the CCCFA were intended to apply to. Such a change to the law would carry significant compliance costs for lenders and could encourage lenders to be unduly conservative in lending to these types of entities. |
| **27** | Do you think small businesses, retail investors or family trusts should have the same or similar protections to consumers under the CCCFA? Please explain why/why not. |
| | In addition to question 26, BNZ believes that these types of borrowers are sufficiently well-informed users of credit and tend to have professional advisers. |
| **28** | Are there any other issues with the CCCFA or its impact on vulnerable people that are not addressed in this discussion paper? If so, what options should MBIE consider to address these issues? |
| | BNZ considers that the CCCFA provides adequate protection for vulnerable customers. As noted at the outset, BNZ's view is that ensuring compliance with and enforcement of the existing law will result in positive outcomes for customers, including vulnerable customers. |

***Any other comments***

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| | We welcome any other comments that you may have. |
| | N/A |

**CONCLUSION**

3.1 BNZ appreciates the opportunity to provide this submission and supports the MBIE's industry engagement on this matter.

3.2 Should MBIE have any questions in relation to this submission, please contact:

Paul Hay
General Manager of Regulatory Affairs

DDI:
Mobile:
Email: