

Regulatory Affairs

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21 June 2024

Consumer Policy

Building, Resources and Markets

Ministry of Business, Innovation & Employment

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Dear Sir or Madam

Bank of New Zealand's submission on the Fit For Purpose Consumer Credit Legislation**1. Introduction**

- 1.1. Bank of New Zealand ("BNZ") appreciates the opportunity to respond to the consultation regarding the Fit For Purpose Consumer Credit Legislation.

2. Joint debt and economic harm

- 2.1. BNZ has not followed the format outlined in the submission template, as the issue of joint debt and potential economic harm caused by existing settings is not provided for in the template. BNZ submits that the disclosure requirements under the Credit Contracts and Consumer Finance Act 2003 (the Act) should be amended as a priority to prevent economic harm suffered by vulnerable borrowers. This is a particular issue in relation to joint debt where people separate from a relationship and one person (a perpetrator) continues to abuse the other person (the victim-survivor) by refusing consent to vary an agreement that would provide support to the victim-survivor, such as repayment relief / hardship treatment. For example, fixing a loan rate which can help stabilise finances and provide certainty of outgoings where the budget is tight.

3. Case Study

- 3.1. Perpetrator (P) and Victim-Survivor (VS) separate. VS, who has custody of the children from the relationship, applies to the Court for an occupation order to continue living in the

relationship property. The Court grants the order on the condition that VS pays the joint mortgage on the property while in possession.

3.2. As a result of the separation, VS is temporarily unable to afford the mortgage payments while relationship property matters are worked through and finalised and applies to their lender under s55 of the Act for a payment deferral on the grounds of unforeseen hardship (relationship breakdown being one of the examples where a lender must consider providing hardship treatment).

3.3. The lender must:

3.3.1. assist each borrower to reach an informed decision in relation to all subsequent dealings (including agreed variations) in relation to the agreement (s9C(c)); and

3.3.2. obtain the consent of both parties to vary the agreement; and

3.3.3. make disclosure of the full particulars of the agreed variation “to every borrower under the contract”

22 Disclosure of agreed changes

(1) Every creditor under a consumer credit contract must ensure that disclosure of the following information is made to every debtor under the contract if the parties to the contract agree to change the contract:

(a) full particulars of the change;

(b) any other information prescribed by regulations to be information that must be disclosed under this section.

3.4. P continues to abuse VS, for example by deliberately refusing to engage with the lender or to agree to the variation. The lender has no option but to decline the variation on the grounds of hardship. VS is unable to afford the loan repayments and ends up in breach of the occupation order and in default under the loan agreement with the potential resultant consequences:

3.4.1. losing occupation of the property and a stable home for the children;

3.4.2. not being able to meet the mortgage payments and going into arrears with the attendant downgrading of their credit rating, adversely impacting their ability to obtain finance (and their financial stability and independence in the future); and

3.4.3. risk of the debt increasing due to default interest being charged on unpaid loan repayments;

3.4.4. risk of mortgagee sale; and

3.4.5. other potential consequences such as mental health issues.

4. Regulator enforcement response

4.1. While the Commerce Commission may take a low or no enforcement approach if a lender were to provide hardship treatment in these circumstances, this does not prevent P from bringing their own action against a lender.

5. Purpose of the Act – Consumer Protection

5.1. While one of the stated purposes of the Act is to protect the interests of consumers under credit contracts, BNZ considers the Act does not achieve its stated purpose in these circumstances. Rather an unintended consequence is that the legislation can be used as a tool by perpetrators to continue to abuse victim-survivors in the manner described above.

6. Potential breach of the Human Rights Act 1993 (HRA)

6.1. BNZ submits that the current drafting be amended as it is potentially discriminatory (albeit inadvertently) on the basis of:

6.1.1.sex, given that a disproportionate number of women are victim-survivors (s21(1)(a) HRA); and/or

6.1.2.family status, on the basis that many victim-survivors who obtain an occupation order have the responsibility for part-time care or full-time care of children or other dependants (s21(1)(l)(i) HRA).

7. Statute Law v Common Law

7.1. The common law rule of joint and several liability applies to joint lending which means each borrower is fully liable for the full amount of a loan outstanding at any time. If one borrower reneges on their obligations, the other borrower(s) will be liable for all the outstanding debt.

8. It is our submission that borrowers in this position should be entitled to mitigate their loss by being able to enter into a repayment arrangement (including unforeseen hardship remedies) with their lender. This addresses the issue of disclosure and responsible lending obligations under the Act and the Responsible Lending Code cutting across well-established common law rights and responsibilities of joint and several liability and contractual norms in relation to joint borrowing. This issue limits options available to lenders to support borrowers who find themselves in these very vulnerable circumstances. **Potential Solutions**

8.1. BNZ submits the Act be amended to allow a borrower under joint lending, to agree to any variation, including hardship treatment, where economic harm is demonstrated and the

variation would provide financial relief to the victim-survivor over the short-medium term, notwithstanding there may be more interest to pay over the life of the loan (e.g. an interest only period). This could be achieved through:

- 8.1.1. development of an [Economic Abuse Evidence Form and protocols](#) as is used in the UK; and/or
- 8.1.2. the lender being provided with an occupation order on the condition that the party entitled to the order is responsible for paying any loan secured by the mortgage over the property the subject of the occupation order and therefore is the only party who must agree to a variation to the loan (e.g. hardship treatment); and/or
- 8.1.3. the lender being provided with a protection order where the victim-survivor may be renting and the perpetrator is living in the relationship property but demanding the victim-survivor pays the mortgage or a share of the mortgage which they can't afford (option 1 should also cater to this scenario if adopted); and
- 8.1.4. lenders keeping evidence of the above, which records would be discoverable only to a Dispute Resolution Scheme and/or the Commerce Commission/Financial Markets Authority on request.
- 8.1.5. Supporting these solutions, consideration should also be given to extending the ss21(2)(a), 23(7), 26(5) & 26A(4) exemptions to s22 agreed variation disclosure if the creditor cannot reasonably locate the perpetrator.

9. Other impacted scenarios for consideration include

- 9.1. Repayment relief for guarantors;
- 9.2. Repayment relief for joint borrowers where one is temporarily or permanently incapacitated with no Enduring Power of Attorney in place (e.g. mental incapacity, addiction, induced coma etc...);
- 9.3. Repayment relief where one party is prohibited from communicating with another;
- 9.4. Repayment relief where one party is incarcerated (there are often operational restrictions on how a lender can practically comply with its obligations). Where a perpetrator is incarcerated this can also exacerbate the case study example above with the perpetrator unable / unwilling to enter into a variation.



All enquiries on this submission may be directed to Paul Hay, Chief Regulatory and Compliance Officer at paul_hay@bnz.co.nz, or Privacy of natural persons

Yours sincerely

Privacy of natural persons

Paul Hay

Āpiha Matua: Waeture me te Tūtohu
(Chief Regulatory & Compliance Officer)