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MBIE – Review of Consumer Credit Regulation

ASB Bank Limited (**ASB**) welcomes the opportunity to make a submission on the *Review of consumer credit regulation* discussion paper (the **discussion paper**).

ASB is supportive of a review of the Credit Contracts and Consumer Finance Act 2003 (the **CCCFA**) and of MBIE's aims to address predatory and irresponsible lending and ensure responsible lending, particularly for vulnerable customers. We have contributed to the submission on this matter made by the New Zealand Bankers' Association (**NZBA**), and we support the points made in that submission.

We acknowledge ASB's submission may be published on MBIE's website, and may be released in response to a request under the Official Information Act. ASB does not seek confidentiality for any aspect of this submission other than my contact details below.

If you require any further information, please do not hesitate to contact me.

Yours sincerely,

Jonny Le Leu
Regulatory Affairs Manager
ASB Bank Limited

Introduction

In addition to the NZBA submission, ASB provides the following comments on Issue 2.

Issue 2: Continued irresponsible lending and other non-compliance

(a) Options for increasing lender registration requirements

Registration Option A: expanded powers to deregister lenders and ban directors from future involvement in the credit industry

ASB considers that the proposal under Registration Option A to give the Commerce Commission the power to direct the Registrar of the Companies Office to deregister a lender and ban directors needs to be carefully considered particularly in the context of banks (and other regulated entities) who provide a broad range of financial services and are already supervised and regulated by other supervisory and regulatory bodies. ASB is strongly of the view that its lending activities should not be regulated in isolation of its other financial activities.

Registration Option B: introduce fit and proper person test in registration of lenders

ASB supports Registration Option B, on the basis that lenders already subject to fit and proper person requirements under other regimes are exempted.

Registration Option C: a comprehensive creditor licensing system

ASB considers that while there may be benefit in a comprehensive creditor licensing system in assisting to regulate 'lenders which are otherwise not regulated (and in particular 'high cost lenders'), there would be no added benefit to borrowers in extending the requirements of a comprehensive creditor licensing system to entities which are already licensed under other financial regimes.

As noted above, ASB is of the view that its lending activities should not be regulated in isolation of its other financial activities. Accordingly, ASB is strongly of the view that as a bank and a Qualifying Financial Entity (or Financial Advice Providers under the Financial Services Legislation Amendment Bill) it should be exempt from any additional licensing requirements to undertake lending activities (including compliance with any standard license conditions).

This is because such entities are already effectively regulated and supervised and subject to conduct and reporting obligations which provide effective mitigation against such entities engaging in high risk predatory and irresponsible lending activities. As such, any benefits conferred by a comprehensive creditor licensing system are already in place in relation to such entities. The imposition of additional license application and on-going obligations will instead result in additional compliance costs and possible contradiction and confusion resulting from being subject to multiple overlapping licences, regulated by different regulatory and supervisory bodies.

(b) Options for strengthening enforcement and penalties for irresponsible lending

Enforcement Option A: civil pecuniary penalties, statutory damages and expanded injunction orders for breach of lender responsibilities

ASB considers that the proposal under Enforcement Option A to allow civil pecuniary penalties and statutory damages for breaches of lender responsibilities needs to be carefully considered and treated with caution. There is some danger in imposing penalties for breaches of a principles-based regime where the standards are not black and white.

Enforcement Option B: directors' duties

ASB is strongly of the view that it is not appropriate to expand liability to directors or senior managers of banks for compliance with responsible lending obligations. As the discussion paper notes, in a large organisation, the directors are likely to have more broad governance responsibilities, and are not generally in a position to ensure day-to-day compliance with CCCFA obligations. It would be unfair to expose directors in a broad governance role to this additional liability.

Enforcement Option C: substantiation obligations for lenders

We agree with the NZBA submission that there is a risk with supplying consumers with affordability criteria and that this option would increase compliance costs.

Enforcement Option D: increase industry levy on creditors to help fund advocacy, monitoring and enforcement of CCCFA; and

Enforcement Option E: require creditors and their agents to work with consumers' advocates if asked to do so, and in good faith

ASB supports Enforcement Options D and E.