



**Submission from the
Association of New Zealand Advertisers**

to the
Ministry of Business, Innovation & Employment (MBIE)

on the
**Review of Consumer Credit Regulation Discussion
Paper**

1 August 2018

PO Box 33385
Takapuna
Auckland 0740

1 Background

The Association of New Zealand Advertisers (ANZA) is pleased to have the opportunity to provide a submission to the Ministry of Business, Innovation & Employment (MBIE) on the 'Review of Consumer Credit Regulation' (the Review Paper).

ANZA represents the majority of New Zealand's leading advertisers who promote a wide range of products and services to New Zealand consumers, including a number of major advertisers in the Banking and Finance sector.

ANZA advocates for responsible advertising in all sectors and believes that this can best be achieved by robust industry self-regulation via the Advertising Standards Authority (ASA) through their Codes and Complaints Board (ASCB).

Advertising compliant with the ASA Code for Financial Advertising supports the objective of responsible lending obligations and reinforces good lending practices in order to protect consumers and in turn promotes informed choice and effective competition in consumer credit markets.

ANZA has previously submitted on the Responsible Lending Code in December 2014, specifically on the issue of advertising of High Cost Short-Term Credit products (HCSTC) and in this submission, we are addressing issues specific to advertising of such products and services, namely Responsibility Options B and C.

2 Overview

- 2.1 Advertising plays an important role in today's society. Policy discussions which may impact marketing communications should fully take into account the value of advertising for the economy, society and consumers.
- 2.2 Advertising increases value for consumers by helping companies differentiate themselves, thereby stimulating greater competition, increasing the range and quality of products and services in the marketplace and encouraging competitive pricing.
- 2.3 Advertising promotes consumer choice as it enables companies to tell consumers about the various/distinct products and services they offer in response to society's diverse tastes and needs. As a result, companies are able to provide a much broader range of options that consumers would otherwise be unaware of. Above all else, advertising ensures consumers exercise their right to choose.
- 2.4 ANZA made the case in 2014 to the review of the Responsible Lending Code, and we continue to believe that legitimate, responsible credit providers should not be burdened with additional compliance to solve a specific problem created by a very small percentage of credit providers (those often referred to as 'loan sharks' and/or 'mobile traders').
- 2.5 As with the Responsible Lending Code consultation, the current Review Paper addresses concerns related to the behaviours of a small sub-set of lenders but we are concerned that in reality it will catch a far wider group of reputable businesses. The aim of the current review should be to strike the right balance between regulation that will nullify the actions of 'loan sharks' and others, while ensuring against additional compliance costs for legitimate and responsible lenders.

Recommendation: That proposed changes aim to minimise the extent to which legitimate lenders are adversely affected.

3 Advertising Standards Authority Code for Financial Advertising

3.1 It is important for both the public and the advertising industry that proper advertising standards are maintained at all times. In New Zealand, the Advertising Standards Authority (ASA) is dedicated to ensuring that advertising is truthful and not misleading or deceptive, and that it is socially responsible.

3.2 The ASA has amongst its Codes of Practice, a specific *Code for Financial Advertising* (Appendix 1), which was reviewed and updated following the release of the Responsible Lending Code.

3.3 The ASA's Code for Financial Advertising (the Code) has two key principles:

Principle 1: Financial advertisements should observe a high standard of social responsibility particularly as consumers often rely on such products and services for their financial security.

Principle 2: Advertisements should strictly observe the basic tenets of truth and clarity. Advertisements should not or should not be likely to mislead, deceive or confuse consumers, abuse their trust, exploit their lack of knowledge or without justifiable reason, play on fear. This includes by implication, omission, ambiguity, exaggerated claim or hyperbole.

3.4 ANZA, and our Members, support the ASA Code for Financial Advertising. Responsible financial advertisers ensure they have extensive internal compliance measures in place to meet the required standards.

3.5 In 2017 just 12 complaints were received by the ASA about financial advertisements (2% of all complaints received), and in each case the complaint was not upheld. This highlights that legitimate, responsible credit providers are committed to complying with the Code.

3.6 All the ASA Codes are reviewed regularly, at least every five years. The Code for Financial Advertising was last reviewed following the release of the Responsible Lending Code. ANZA would support a further review of the existing Code, with particular focus on HCSTC products, in 2019.

3.7 We note the guidance developed by the ASA UK, since the last Financial Code review in this country, specifically for HCSTC products and services and believe they provide the basis of enhanced rules for the New Zealand market.

3.8 The ASA UK's guidance examines the specific issue of whether ads for HCSTC are likely to be considered socially irresponsible by trivialising the seriousness of taking out a loan. When assessing whether ads trivialise the nature of the product, the UK ASA is likely to consider issues such as:

- i) Undue emphasis on speed and ease of access, the promotion of the loan for non-essential products and/or the promotion of the loan to resolve financial difficulties. Given the potentially serious financial consequences, taking out a loan is a step that should only be undertaken following careful consideration. Ads should not encourage consumers to make an ill-considered or rushed decision about borrowing, particularly without considering the financial implications of doing so.
- ii) Techniques used in advertising should not distort the nature of the service being offered. Where ads only include factual information and simply alert consumers to the existence of the advertiser and the service they provide, the ASA is unlikely to find that they trivialise the product.
- iii) Understanding that HCSTC is primarily of benefit to and designed for those in need of money to cover occasional unexpected shortfalls for short periods of time, and are not intended as a wider solution to financial management. Advertisers should be careful not to promote their products as a long-term supplement to irregular, low income.
- iv) References to or the promotion of using HCSTC to fund non-essential purchases such as holidays are likely to be seen as encouraging frivolous spending of borrowed money with potentially serious consequences, and, as such are likely to be found to be irresponsible.
- v) Due consideration should be given to the decision to take out a loan. A disproportionate emphasis on speed and ease of access compared to interest rates is likely to be considered problematic. Such approaches can contribute to an impression that careful thought is not required in advance of taking out a loan.
- vi) An overall and disproportionately light-hearted or humorous atmosphere, in contrast to the serious nature of the product is likely to be problematic.
- vii) A prudent approach to counteracting any impression that the nature of the product is being trivialised is to include information about the procedures which are followed when assessing loan applications, including checks to ensure that those applying for credit can afford any repayments, regardless of the reason for them applying for a loan.

Recommendation: That the Advertising Standards Authority reviews the current Code for Financial Advertising in 2019 with specific regard to HCSTC lending, taking into account best practice international standards for financial lending rules and guidelines.

4 Responsibility Option B: Introduce More Prescriptive Requirements for Advertising

- 4.1 Moves to introduce more prescriptive requirements for advertising need to be treated with caution. We have seen no evidence that responsible lenders are non-compliant with the Responsible Lending Code, or the ASA Code for Financial Advertising. Currently compliant lenders should not incur additional compliance costs when the problem lies elsewhere.
- 4.2 Advertising that is thought to be non-compliant with the ASA Code, can be quickly, effectively and at no-cost to the complainant, removed, via the ASA's complaints system (the ASCB).
- 4.3 Complaints to the ASCB are typically dealt with to decision within 14 working days. Any advertisement for which a complaint is upheld, will be immediately withdrawn by media, a process supported by all New Zealand media organisations.
- 4.4 Rather than more prescriptive requirements, which will add compliance provisions to already responsible advertisers, we encourage greater use of the existing complaints system by the public and other concerned parties.

Recommendation: Advertising Self-regulation provides effective tools to deal to non-compliant advertising and can be used to target those responsible, rather than add burden to those already compliant.

5 Responsibility Option C: Require Disclosure to be in the same language as advertising

5.1 As New Zealand's population has become more diverse, with an increasing number of people for whom English is not their first language, so advertising has evolved markedly with a variety of media outlets, broadcast, published and digital carrying content and advertising in multiple languages.

5.2 Given the significance of lending, ANZA supports the Review Paper's responsibility option requiring disclosure to be in the same language as advertising. Changing languages between advertising and credit contracts creates the risk of significant confusion for the borrower. Disclosure should be in the same language with which they are most comfortable.

Recommendation: Disclosure should be in the same language as advertising.

Appendix 1

ASA Code for Financial Advertising

The object of this code is to ensure that advertisers maintain rigorous standards in financial advertising.

All advertising shall adhere to the laws of New Zealand and the Principles and Guidelines set out in this Code. The ASA [Code of Ethics](#) and the [Code for Comparative Advertising](#) should also be consulted, if appropriate, along with any relevant legislation. Advertisers should also be aware of requirements of their professional codes of conduct in relation to advertising. Relevant websites include www.fma.govt.nz, www.comcom.govt.nz, www.sorted.org.nz.

This Code covers all words and visual depictions in all advertising for the lending, saving or investment of money, for guarantees, financial instruments and the purchase or sale of securities.

In interpreting the code emphasis will be placed on compliance with both the principles and the spirit and intention of the code. The guidelines are merely examples, by no means exhaustive, of how the principles are to be interpreted and applied. It is also possible for an advertisement to be in breach of the principle without being in breach of a specific guideline. Upon complaint, the ASCB is vested with discretion to ensure a common-sense outcome. It is important to note that in considering a complaint both the likely audience and media placement, that is when and where the advertisement is broadcast, printed, or displayed, are key factors in determining code compliance.

For the avoidance of doubt, where relevant legislation that affects this Code has been updated and if a conflict occurs in relation to legislative and code requirements, legislative requirements will prevail.

Definition

'Financial advertisements' are advertisements for the lending, saving or investment of money, financial instruments, financial transactions, offers of securities and includes category 1 and category 2 products as defined in the Financial Advisers Act 2008. Advertisements for the provision of advice or services in respect of financial products, investments or securities are also deemed to be financial advertisements for the purposes of this Code.

PRINCIPLE 1:

Financial advertisements should observe a high standard of social responsibility particularly as consumers often rely on such products and services for their financial security.

Guideline 1 (a)

Advertisements shall be set out in a way that allows them to be readily understood by the audience being addressed. All relevant information should be disclosed.

Guideline 1 (b)

Advertisements shall not portray unrealistic or exaggerated financial expectations or outcomes.

Guideline 1 (c)

Advertisements shall not state or imply that investments are safe or free from risk.

Guideline 1 (d)

If examples of past performance are used, financial advertisements should make clear this does not necessarily give a guide for the future. Examples used should not be unrepresentative unless clearly identified as such.

PRINCIPLE 2:

Advertisements should strictly observe the basic tenets of truth and clarity. Advertisements should not or should not be likely to mislead, deceive or confuse consumers, abuse their trust, exploit their lack of knowledge or without justifiable reason, play on fear. This includes by implication, omission, ambiguity, exaggerated claim or hyperbole.

Guideline 2 (a)

Advertisements shall be accurate and statements and claims able to be substantiated.

Guideline 2 (b)

Key information shall be legible and / or audible with care taken to ensure disclosure commensurate with the importance of the information.

Guideline 2 (c)

Advertisements shall not claim or imply endorsement by any government agency, professional body or independent agency unless there is prior consent and the claim and endorsement are current and verifiable.

Guideline 2 (d)

Technical language and statistics are acceptable provided they are relevant and used in a way readily understood by consumers without specialist knowledge. Publication of research results must identify the researcher and source references.

About the Association of New Zealand Advertisers

Collectively advertisers spend more than \$2.6b annually. As the *Voice of New Zealand Advertisers*, ANZA advocates on behalf of leading New Zealand advertisers across a variety of product and service sectors, including food and beverage, finance, automotive retail, telecommunications, consumer goods, therapeutic products and services.

We do so with a four-point manifesto:

1. To champion the freedom to advertise responsibly and the effectiveness of industry self-regulation.
2. To enhance advertising standards in all media to create a transparent, responsible and accountable market which serves the needs of advertisers.
3. To promote innovation in media and marketing to improve effectiveness and ROI for advertisers.
4. To encourage a diverse, high-quality media environment, offering choice for advertisers.

ANZA is New Zealand's representative in the World Federation of Advertisers.

Contact:

Lindsay Mouat
Chief Executive
Association of New Zealand Advertisers

Phone: 09 488 7455

Address: PO Box 33385, Takapuna, Auckland 0740