Dr Duncan Web
Chair, Finance and Expenditure Committee
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CC: Members of Finance and Expenditure Committee
By email

CC: Hon. David Clark
Minister of Commerce and Consumer Affairs
By email: d.clark@ministers.govt.nz

Wednesday 5 January, 2021

Dear Dr Webb,

I write to ask that the Committee under Standing Order 191 initiate and inquiry into the effects of the Credit Contracts Legislation Amendment Act 2019. If the Committee is unwilling to initiate a formal inquiry, but feels that the matter is worthy of its attention, then it might consider a Briefing.[1]

Background

This legislation was considered by the Committee in the previous Parliament, but parts of it only commenced late last year after delays in commencement dates made by Order in Council. The provisions are given further effect by regulations made under the Act that came into effect on December 1.[2]

Since their commencement, these provisions created widespread frustration amongst bankers, mortgage brokers and their clients. In short, the provisions are forcing them to bear large administration and compliance costs, and in some cases denying credit that would have otherwise been forthcoming. The costs of these provisions appear to substantially outweigh any benefits.

I was a member of the Committee at the time. I recall intense debate which focused on the interest rates, auxiliary fees, and terms of small high cost loans on people facing acute financial hardship. It was widely believed that we were dealing with predatory lenders, such as those with mobile facilities referred to in the Bill.

There was only passing consideration of the wider effects on non 'high cost' loans to borrowers not considered to be vulnerable. In turn, the Committee's report on the Bill focused almost exclusively

[1] See *Parliamentary Practice in New Zealand,* p493
[2] See the Credit Contracts and Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020

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on high cost loans to vulnerable lenders. A short minority view refers only to a last minute change to the interest rate cap on high cost loans.

In the House, the legislation passed unanimously through all stages. Members appeared to believe that the Bill would focus only on 'vulnerable' borrowers, and unscrupulous lenders who might prey on them. In my view, having reviewed the Hansard and Committee report on the bill, the effects we are seeing now were not properly considered.

The Members' supposition was reasonable given that the General Policy Statement opened with:

> This Bill is the result of a review that identified ongoing issues in the credit market and significant harm to vulnerable consumers from problem debt. The issues identified included the excessive cost of some consumer credit agreements; continued irresponsible lending and other non-compliance, including by mobile traders; unreasonable fees; and irresponsible debt collection practices.

After listing a range of provisions, it concluded:

> As a package, the changes are intended to reduce problem debt and resulting consumer harms (such as financial hardship and mental and physical health issues).

Nevertheless, the Bill and related regulations are now affecting practically every lender with increased costs and credit that would otherwise be extended is being declined in some cases. This is not what the Committee anticipated and is a very unsatisfactory outcome. It has been described by one industry leader as trying to deal with bad lending practices using a 'sledge hammer rather than a scalpel.'[3]

It is important to untangle the effects of the CCCFA changes from rising interest rates and other changes to lending regulations such as Loan to Value Ratios. These are simultaneously affecting many people's access to credit, and it would be easy to blame people's frustrations on such other measures. While undoubtedly the CCCFA changes are not the only important change impacting on lending markets, they are nonetheless distinct and significant.

Key issues with the legislation

The Clause by Clause analysis of the Bill as introduced outlines the key changes that are impacting all lenders. Lenders are defined as anyone offering Credit, who is anyone offering a Credit Contract.

> *Clause 10* amends the lender responsibility principles that must be complied with by creditors under certain credit contracts and transferees under buy-back transactions. The clause proposes new requirements in 3 areas.
> First, lenders will be required to ensure that any advertising complies with advertising standards to be set in regulations…
> Secondly, the clause strengthens the current principle that lenders must make reasonable inquiries, before entering into an agreement with a borrower, so as to be satisfied that it is likely that the credit will meet the borrower's requirements and objectives and that the borrower will make the

[3] Bolton, J (2021) *Government takes to responsible lending laws with a sledgehammer* https://www.stuff.co.nz/business/opinion-analysis/300469749/government-takes-to-responsible-lending-laws-with-sledgehammer

payments under the agreement without suffering substantial hardship. Similar requirements apply before a relevant guarantee is given and before a relevant insurance contract is entered into. The clause requires lenders to comply with new regulations to be made that specify the inquiries that must be made and the way in which the results of inquiries must be taken into account.
Thirdly, it removes the current rule in section 9C(7) that the lender may rely on information provided by the borrower or guarantor (unless the lender has reasonable grounds to believe the information is not reliable). Lenders will need to verify information provided by borrowers in a wider range of circumstances. This includes, in appropriate circumstances, inquiries to determine whether it is likely that the borrower will suffer financial hardship as a result of making payments under the agreement.
Failure to comply with the new regulations about advertising and inquiries will be a breach of the principles and will carry the same consequences as failure to comply with the other lender responsibility principles…
Clause 11 requires lenders—

- to keep records about the inquiries that they have made under section 9C. Those records must demonstrate how the lender has satisfied itself as to the relevant matters:
- to make the records available to the Commission, the borrower, the guarantor, or the relevant dispute resolution scheme on request.

Having applied such provisions to all lenders, the bill goes on to add specific requirements for high cost loans (such as new Subpart 6A). Reasonable people might think that the lending provisions should be targeted at these loans rather than all loans, as has transpired.

The Bill goes on to introduce severe penalties for failure to comply. These include a $200,000 fine for individuals (new Section 107A). These have resulted in the provisions being interpreted conservatively by financial institutions, with attendant costs for consumers.

Outcomes to date

I have received a range of reports from senior bank executives, bank staff, mortgage brokers, and clients seeking credit. All report that the reality of these provisions is that Lenders must seek, verify and retain copious amounts of information for no benefit. They sometimes have to decline credit in circumstances where they previously would have advanced it and still judge the arrangement to be sound by any rational standard.

For instance, one member of the public has reported being issued with a fifteen page form when trying to increase his credit card limit from $9,500 to $10,000 despite being perfectly capable of servicing such a debt.[4]

The end result is that people spend a great deal of time administering and comply with rules that do not deliver a net benefit to their welfare. A country with a chronic productivity problem can ill afford such activity. A Parliament that seeks to be a good lawmaker should not allow such laws to stand.

Suggested Terms of Reference for Inquiry

[4] https://www.stuff.co.nz/business/127412663/fifteenpage-forms-to-do-everyday-banking-this-is-crazy

I suggest the Committee might like to initiative an inquiry into the operation of the Consumer Credit Contracts Act since the latest amendments commenced on December 2nd. If it was unwilling to do this, it might seek a briefing. In either event, it should not rely on the officials who advised on the Committee in 2019, it should seek testimony from industry practitioners.

It might ask:

- What have been the costs and benefits of the provisions, particularly those in Clauses 10 and 11 of the Bill as introduced, of the Credit Contracts Legislation Bill, and Regulations made under the Act that came into effect on December 1, 2021?
- Is the coverage of lenders in the bill too wide for the stated purpose of "ongoing issues in the credit market and significant harm to vulnerable consumers from problem debt."
- How could the legislation or regulations be amended to ensure administration and compliance costs are minimised while achieving the stated aims of the legislation as introduced?

I would be happy to have further discussions about this, including to speak to the Committee if you would like. In any event I would appreciate if you could reply and explain whether the Committee has agreed to conduct an inquiry or seek a briefing, and if not why the Committee thinks such action unnecessary.

Yours sincerely,

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