



**Submission to:**

Ministry of Business, Innovation and Employment

**Subject:**

Section 99(1A) of the Credit Contracts and Consumer Finance Act 2003

**24/11/16**

**Contact Person:**

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**Background**

Citizens Advice Bureau New Zealand (CABNZ) Ngā Pou Whakawhirinaki o Aotearoa welcomes the opportunity to comment on *Section 99(1A) of the Credit Contracts and Consumer Finance Act 2003*.

The purpose of our organisation is to:

- Ensure that individuals do not suffer through ignorance of their rights and responsibilities or of the services available; or through an inability to express their needs effectively — Me noho mataara kia kua te tangata e mate i tōna kore mōhio ki ngā āhuatanga e āhei atu ana ia, ki ngā mahi rānei e tika ana kia mahia e ia, ki ngā ratonga rānei e āhei atu ana ia; i te kore rānei e āhei āna ki te whakaputa i ōna hiahia kia mārama mai ai te tangata.
- Exert a responsible influence on the development of social policies and services, both locally and nationally — Kia tino whai wāhi atu ki te auahatanga o ngā kaupapa ā-iwi me ngā ratonga ā-rohe, puta noa hoki i te motu.

We support the principle of partnership reflected in the Treaty of Waitangi. E tautoko ana Ngā Pou Whakawhirinaki o Aotearoa i te mātāpono o te pātuitanga e ai ki Te Tiriti o Waitangi.

We work to empower individuals to resolve their problems and to strengthen communities. The person-to-person service provided by over 2,300 Citizens Advice Bureau (CAB) volunteers is unique in New Zealand. From 83 locations around New Zealand, the CAB provides individuals with a free, impartial and confidential service of information, advice,



advocacy and referral. Ka mahi mātou ki te whakakaha i ngā tāngata takitahi ki te whakatika i ā rātou ake raruraru, ki te whakakaha hoki i ngā hapori. He mea ahurei i roto o Aotearoa te ratonga kanohi-ki-te-kanohi e whakaratohia e ngā kaitūao 2,400 o Citizens Advice Bureau (CAB). Mai i ngā takiwā e 83 puta noa i Aotearoa, e whakaratohia ana e te CAB ki ngā tāngata takitahi he ratonga koreutu, tōkeke, matatapu hoki e pā ana ki te mōhiohio, te tohutohu, te tautoko me te tukunga.

In the 2015/2016 financial year we had over 550,000 interactions with clients, including over 200,000 in-depth enquiries where we offered information, advice and support across the gamut of issues that affect people in their daily lives.

We use our experience with clients to seek socially just policies and services in Aotearoa New Zealand.

## Overview

1. During the last financial year Citizens Advice Bureau New Zealand (CABNZ) dealt with over 2000 consumer financial enquiries, over 40,000 other consumer issues (which sometimes include consumer credit) and over 12,000 enquiries relating to financial difficulties.
2. As these figures and Ministry of Consumer Affairs' research<sup>1</sup> demonstrate the CAB is one of the key places people turn to when they are having difficulty in relation to consumer issues.
3. We consider any proposed reform to the Credit Contracts and Consumer Finance Act must be considered in light of the primary purpose of the Act:

3(1) The primary purpose of this Act is to protect the interests of consumers in connection with credit contracts consumer leases, and buy-back transactions of land.
4. The primary purpose (and additional purposes) of the Act gives the primary emphasis and weight to the protection of consumers. This reflects the reality that there is generally a significant imbalance of knowledge and power between lenders and borrowers.
5. We are reluctant to support any move to amend the Act to reduce protection for consumers (which is ultimately what this discussion document proposes to do). We are particularly concerned in this case because not only do the proposals reduce the protection for consumers but do so based on an abstract concern for the business interests of lenders rather than any genuine harm which has occurred because of any gaps in the law.
6. We have fundamental concerns about the issue raised by the New Zealand Bankers Association (NZBA), and in particular the claim that "instances of non-disclosure or wrong disclosure are unavoidable, simply due to the volume of lending and extensive disclosure". This is somewhat contradicted by their claim that the risks of liability may

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<sup>1</sup> Colmar Brunton (2009) *National Consumer Survey 2009* Ministry of Consumer Affairs.

cause them to adopt slower and more complex lending processes. This contradiction suggests that actually the legal minimum disclosure requirements can (and should be) met by the lenders adopting a business model which fulfils their legal obligations.

7. We also have serious concerns that in their letter the NZBA characterises the failures of disclosure by cashinaflash.co.nz as 'reasonably minor non-disclosure', when in fact it was a significant failure of disclosure relating to key information for consumers.
8. We consider that the proposals outlined significantly devalue the importance of disclosure being correct without any evidence that the status quo is causing harm.

### Importance of disclosure

9. New Zealand consumer law relies heavily (more heavily than most of our equivalent overseas jurisdictions) on disclosure as a key tool to protect consumer interests. This is predicated on the idea that if consumers have all the necessary information they will be able to make appropriate decisions for their circumstances. This approach has generally been preferred to the stricter regulatory approach taken in many other jurisdictions.
10. Although the Commerce Commission has recently stepped up its enforcement activity in the consumer credit space the vast majority of credit contracts and related disclosure occurs outside of the eyes of the regulator and it's left to the lender themselves to ensure that they are meeting their disclosure, and other lending, obligations.
11. Together these twin factors of heavily reliance on disclosure to protect consumer interests, and the fact that most disclosure occurs with little regulatory oversight means that it is crucial that there are sufficient legal incentives for lenders to comply fully with their disclosure obligations.
12. We are therefore reluctant to support any reduction in the incentives for disclosure to be given correctly.

### Options

13. Given that we do not accept the underlying rationale for this proposal which will reduce consumer protection we don't support any of the options provided.
14. If MBIE is convinced by the weight of **evidence** that there is a significant risk of disproportionate consequences for lenders as a result of the status quo then we would support an option which least reduces the incentives to comply fully with disclosure obligations.
15. Option B – relief for disproportionate consequences is the option which is most likely to meet this criterion. In particular we consider that any options must focus only on disproportionate consequences. Option B would appear to adequately guard against the risk of the most disproportionate consequences while retaining the most incentives to make disclosure correctly.



16. We don't consider that there is any case for removing section 22 from the ambit of section 99(1A) because whether or not any change has been agreed to the contract is immaterial to the need for disclosure.
17. Given the lack of evidence for harm being caused by the status quo we don't consider that if any changes are made that they should be made to apply retroactively.

## Conclusions

18. The proposals considered in this discussion paper would reduce the incentives for lenders to comply with their disclosure obligations, which will reduce consumer protection. Given the lack of evidence of harm caused by the status quo we do not support any change.

Thank you for this opportunity to comment. Please contact me if you have any questions, or want any clarification about our submission.

Yours sincerely

A handwritten signature in black ink, appearing to read "a Hubbard".

Dr Andrew Hubbard  
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CABNZ