



## COVERSHEET

<b>Minister</b>	Hon Dr Duncan Webb	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	Exemption for Temporary Credit to Consumers Affected by Upper North Island Flooding	<b>Date to be published</b>	20 March 2023

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
February 2023	Exemption for Temporary Credit to Consumers Affected by Upper North Island Flooding	Office of the Minister of Commerce and Consumer Affairs
8 February 2023	Exemption for temporary credit to consumers affected by upper North Island flooding  CAB-23-MIN-0017 Minute	Cabinet office
February 2023	Credit Contracts and Consumer Finance (Exemption for Emergency Relief) Amendment Regulations (No 2) 2023	Office of the Minister of Commerce and Consumer Affairs
20 February 2023	Credit Contracts and Consumer Finance (Exemption for Emergency Relief) Amendment Regulations (No 2) 2023  CAB-23-MIN-0042 Minute	Cabinet office

### Information redacted

**YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld under

- Confidential advice to Government
- Free and frank opinions
- Confidential information entrusted to Government.

## **In Confidence**

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet

## **Exemption for temporary credit to consumers affected by upper North Island flooding**

### **Proposal**

1. This paper seeks agreement to an exemption to the affordability assessment requirements under the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) for temporary credit to consumers affected by upper North Island flooding.

### **Relation to government priorities**

2. This proposal supports those persons affected by the upper North Island flooding by enabling lenders to provide limited finance without delay.

### **Background**

*The CCCFA regulates consumer lending*

3. The CCCFA regulates consumer lending and aims to protect the interests of borrowers. Key provisions of the CCCFA include:
  - 3.1. initial and ongoing disclosure requirements for consumer credit contracts;
  - 3.2. responsible lending obligations – including that lenders make reasonable inquiries so as to satisfy themselves that borrowers are likely to make the required payments without substantial hardship (**affordability assessments**);
  - 3.3. regulation of interest and fees; and
  - 3.4. changes to consumer credit contracts in cases of hardship.
4. The CCCFA contains regulation-making powers that can provide exemptions and from these requirements.

### **A temporary exemption to the CCCFA is needed to enable lenders to provide credit quickly to persons affected by flooding**

5. Lenders have raised concerns that their ability to quickly provide temporary lending to consumers affected by flooding is inhibited by the CCCFA requirement to undertake an affordability assessment. This process can be time consuming (potentially involving hours of work, and several days for decisions) and involves seeking detailed information from borrowers. This means temporary credit cannot be provided to many affected consumers quickly in the current circumstances for:
  - 5.1. replacing personal effects;

- 5.2. replacing vehicles;
  - 5.3. house repairs;
  - 5.4. paying for temporary accommodation; and
  - 5.5. otherwise addressing damage to property or temporary loss of income.
6. In many cases it is envisaged that the arrangement will give the borrower some breathing space and will be replaced by more permanent arrangements (such as an addition to mortgage debt) or repaid (for example from insurance proceeds) in a relatively short period.
  7. Importantly, lenders would not be exempt from other requirements in the Act, including the overarching duty to exercise the care, diligence, and skill of a responsible lender before entering into an agreement to provide credit or finance (s 9C(2)(ii)). Lenders would also still have to make reasonable inquiries, before entering into the agreement, that the credit or finance provided under the agreement will meet the borrower's requirements and objectives (s 9C(3)(i)).

### **Proposed exemption**

8. Officials have engaged with key stakeholders, including lenders, financial mentors and regulators on potential CCCFA exemptions. The Minister of Finance and I have also spoken to a number of lenders.
9. On the basis of feedback from stakeholders, I propose an exemption from the CCCFA requirement to conduct an affordability assessment before entering into or materially changing a credit contract (section 9C(3)(a)(ii)) where all of the following applies:
  - 9.1. the credit contract is a temporary overdraft<sup>1</sup> or home loan of up to \$10,000 per existing customer;
  - 9.2. if the contract is a revolving credit contract (i.e. overdraft or revolving home loan), the maximum term is 12 months;
  - 9.3. if the contract is not a revolving credit contract, the term is reasonable;
  - 9.4. the credit contract is provided for the purposes of borrowers addressing the impacts of upper North Island flooding in January and February 2023; and
  - 9.5. the credit contract is entered into before 31 March 2023.
10. This would enable banks and non-bank deposit takers such as building societies and credit unions to provide urgent relief to their customers and members. Some finance companies also provide home loans, and would be able to make use of the

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<sup>1</sup> These facilities provide the borrower with a temporary line of credit. By the end of the period, the borrower is required to have repaid any amount borrowed.

exemption. It would not be available to non-bank lenders who do not provide either overdrafts or home loans.

11. This exemption would be limited to temporary overdraft or home loans, and not available for other credit products. This is because:
  - 11.1. These credit contracts are an effective method for consumers to access emergency funds.
  - 11.2. All borrowers will have a transaction account with the ability to receive overdrafts.
  - 11.3. An overdraft provides the ability for consumers to make their own arrangements for repayment, such following receipt of an insurance pay-out. It can be refinanced into another form of credit (such as a personal loan or term loan), provided that an affordability assessment is undertaken in respect of the payments required.
  - 11.4. An addition to a home loan is likely to be the most affordable finance available to the borrower.
  - 11.5. There are greater risks from extending the exemption to a wider range of lending situations (such a personal loans which tend to be higher interest and do not have flexibility in repayments, or credit card accounts which are frequently very high interest).

#### *Conditions of exemption*

12. Providing an exemption creates a risk that borrowers are provided with unaffordable lending and results in financial hardship.
13. I propose to address this risk through additional safeguards. Conditions of exemption would ensure that the additional credit does not result in significant consumer detriment, namely:
  - 13.1. Before the credit contract is entered into, lenders must highlight to the borrower that hardship assistance is available at the end of the temporary period, should the borrower experience any financial difficulties or be at risk of hardship.
  - 13.2. In the event there is evidence that the borrower is experiencing financial difficulties or is at risk of hardship before the end of the temporary period, lenders must notify the borrower that hardship assistance is available.
  - 13.3. Lenders would be required to comply with relevant provisions of the Responsible Lending Code relating to identifying and responding to financial difficulties. This guidance is normally non-binding but would be mandatory where the exemption was relied upon.
  - 13.4. If hardship assistance is requested at any point after entering the contract, lenders must make reasonable inquiries to determine whether or not repayment of the facility is affordable.

13.5. If those inquiries show repayment is not affordable, the lender must provide relief in respect of the credit contract sufficient to avoid the borrower suffering substantial hardship. This may include:

13.5.1. refinancing the credit contract on affordable terms;

13.5.2. granting interest relief; and

13.5.3. reducing the debt owing.

*Statutory prerequisites*

14. Section 138(1A) of the CCCFA provides that the Minister may only recommend regulations under section 138(1)(ab) if:

14.1. the Minister has had regard to the purposes of the CCCFA set out in section 3;

14.2. the Minister is satisfied the exemption would not cause significant detriment to debtors under credit contracts, lessees under consumer leases, or occupiers under buy-back transactions; and

14.3. compliance with the relevant provision or provisions would, in the circumstances, require a creditor, lessor, or transferee or a class of creditors, lessors, or transferees to comply with requirements that are unduly onerous or burdensome.

15. I am satisfied these conditions will be met. I will give final consideration to these statutory prerequisites when the regulations are finalised.

*Timing and 28-day rule*

16. This legislative instrument is being made in response to an emergency. I consider it is appropriate for a 28-day rule waiver to be granted. This will assist with meeting the growing demand for lending from affected consumers.

17. Following Cabinet policy decisions, I intend that regulations will be made by the Governor-General on Monday 13 February and would come into force immediately on notification in the *Gazette*.

**Monitoring and future exemptions**

18. My officials will monitor the implementation and take-up of the exemption.

19. Constitutional conventions

**Financial Implications**

20. There are no financial implications from the proposals in this paper.

## Legislative Implications

21. The proposed exemption will be implemented through regulations made under the CCCFA.

## Impact Analysis

22. The Treasury's Regulatory Impact Analysis team has determined this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds it provides limited temporary exemptions or modifications to existing legislative requirements in a situation where a declared emergency has made compliance with existing legislative requirements impossible, impractical or unreasonably burdensome.

## Population Implications

23. No population implications have been identified in the time available.

## Human Rights

24. The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

## Consultation

25. The Department of Prime Minister and Cabinet and Treasury have been consulted on this Cabinet paper. The Reserve Bank and Commerce Commission have also been consulted.
26. Targeted engagement was carried out with the New Zealand Bankers' Association, Financial Services Federation, Nelson Building Society and FinCap on the proposals in this paper. I have also spoken directly with a number of CEOs of the main banks.

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Free and frank opinions

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30. [Redacted] Free and frank opinions  
[Redacted] Confidential advice to Government  
[Redacted]  
[Redacted]  
[Redacted] Free and frank opinions  
[Redacted]  
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### Communications

31. The Minister of Commerce and Consumer Affairs will issue a media release on the proposals in this paper.

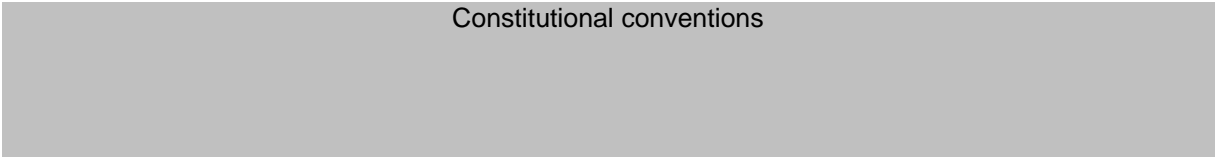
### Proactive Release

32. This paper will be published on MBIE’s web site, subject to withholdings as appropriate under the Official Information Act 1982.

### Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

1. **agree** to provide an exemption from section 9C(3)(a)(ii) of the CCCFA for credit contracts where:
  - 1.1. the credit contract is a temporary overdraft or home loan of up to \$10,000 supplied to existing customers;
  - 1.2. if the contract is an overdraft or another revolving credit contract, the maximum term is 12 months;
  - 1.3. if the contract is not a revolving credit contract, the term is reasonable;
  - 1.4. the credit contract is provided for the purposes of borrowers addressing the impacts of upper North Island flooding in January and February 2023; and
  - 1.5. the credit contract is entered into before 31 March 2023;
2. **agree** that this exemption be subject to the following conditions:
  - 2.1. before the credit contract is entered into, lenders must highlight to the borrower that assistance is available at the end of the temporary period, should the borrower experience any financial difficulties or be at risk of hardship
  - 2.2. after entering the contract, in the event there is evidence the borrower is experiencing financial difficulties or is at risk of hardship, lenders must notify to the borrower that hardship assistance is available;
  - 2.3. lenders must comply with relevant provisions of the Responsible Lending Code relating to identifying and responding to financial difficulties;

- 2.4. if hardship assistance is requested at any point after entering the contract, lenders must make reasonable inquiries to determine whether or not repayment of the credit contract is affordable; and
- 2.5. if those inquiries show repayment is not affordable, the lender must provide relief in respect of the credit contract sufficient to avoid the borrower suffering substantial hardship; and
3. **note** that section 138(1A) of the CCCFA provides that the responsible Minister may only recommend regulations under section 138(1)(ab) if:
  - 3.1. the Minister has had regard to the purposes of the CCCFA set out in section 3;
  - 3.2. the Minister is satisfied the exemption would not cause significant detriment to debtors under credit contracts, lessees under consumer leases, or occupiers under buy-back transactions; and
  - 3.3. compliance with the relevant provision or provisions would, in the circumstances, require a creditor, lessor, or transferee or a class of creditors, lessors, or transferees to comply with requirements that are unduly onerous or burdensome;
4. **note** the advice of the Minister for Commerce and Consumer Affairs that these conditions will be met;
5. **note** a waiver of the 28-day rule is sought:
  - 5.1. so the regulations can come into force as soon as possible;
  - 5.2. on the grounds that the regulations are being made in response to an emergency;
6. **agree** to waive the 28-day rule so that the regulations can come into force immediately on notification in the *Gazette*;
7.  Constitutional conventions

#### *Legislative implications*

8. **agree** to give effect to the above proposals through regulations under the CCCFA;
9. **invite** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
10. **authorise** the Minister of Finance and Minister of Commerce and Consumer Affairs to make additional policy decisions and minor or technical changes, consistent with the intent of this paper, on any issues that arise during drafting;



11. **authorise** the Minister of Finance and Minister of Commerce and Consumer Affairs to have Power to Act to jointly authorise submission of the regulations to Executive Council during the period from the meeting of Cabinet on 8 February 2023 until the next meeting on 13 February 2023.

Authorised for lodgement

Hon Dr Duncan Webb

Minister of Commerce and Consumer Affairs