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| Minister | Hon Dr Duncan Webb | Portfolio | Commerce and Consumer Affairs |
| Title of Cabinet paper | Credit Contracts and Consumer Finance Amendment Regulations 2023 | Date to be published | 6 April 2023 |

| List of documents that have been proactively released | | |
|--|---|---|
| Date | Title | Author |
| March 2023 | Credit Contracts and Consumer Finance Amendment Regulations 2023 | Office of the Minister of Commerce and Consumer Affairs |
| 30 March 2023 | Minute of Decision - Credit Contracts and Consumer Finance Amendment Regulations 2023 LEG-23-MIN-0025 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

- Constitutional conventions.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Legislation Committee

Credit Contracts and Consumer Finance Amendment Regulations 2023

Proposal

1. This paper seeks authorisation for submission to the Executive Council of the Credit Contracts and Consumer Finance Amendment Regulations 2023 to address issues identified during the investigation into the December 2021 credit reforms.

Policy

2. In January 2022, the Minister of Commerce and Consumer Affairs initiated an investigation into changes to the Credit Contracts and Consumer Finance Act 2003 and associated regulations that came into force on 1 December 2021 (collectively **the CCCFA changes**). The investigation found that some unintended consequences resulting from the CCCFA changes had emerged, including:
 - 2.1. more borrowers across all lending types who should pass the affordability test are subject to declines of or reductions in credit amount; and
 - 2.2. borrowers are subject to unnecessary or disproportionate inquiries that are perceived by them as being intrusive.
3. On 21 February 2022, the Cabinet Business Committee agreed to progress initial changes to the Credit Contracts and Consumer Finance Regulations 2004 (the **Regulations**) and the Responsible Lending Code (the **Code**) to address concerns heard during the initial round of stakeholder interviews [CBC-22-MIN-0012 refers]. These changes came into effect on 7 July 2022.
4. On 4 July 2022, following receipt of the final investigation report, the Cabinet Business Committee agreed to several minor changes to address some remaining issues with the Regulations whilst carefully ensuring undue risk to vulnerable borrowers is minimised [CBC-22-MIN-0038 refers]:
 - 4.1. adjusting the scope of expenses that need to be estimated by lenders to more explicitly exclude discretionary expenses
 - 4.2. reducing 'double counting' of expenses associated with revolving credit contracts such as credit cards and buy now pay later schemes
 - 4.3. expanding the exception in regulation 4AH to include refinancing of credit contracts that borrowers have with other lenders where this would be in the best interests of the borrower.
5. The attached Credit Contracts and Consumer Finance Amendment Regulations 2023 give effect to these decisions by:

- 5.1. limiting the scope of living expenses and other regular expenses that need to be estimated to essential and non-discretionary expenses;
- 5.2. disapplying regulation 4AL(2) to buy now pay later contracts (which provides a prescriptive methodology for how future expenses from revolving credit contracts must be estimated);
- 5.3. providing a new exception to affordability regulations for refinancing of existing credit contracts, provided that the annual interest rate or regular repayments are equal to or lower than the borrower's current credit contracts.

Wider context and future

6. This amendment is separate and distinct from the exemption regulations made in respect of the recent flood and weather events. Constitutional conventions

[Redacted text]

7. Constitutional conventions

[Redacted text]

Timing and 28-day rule

8. The Credit Contracts and Consumer Finance Amendment Regulations 2023 come into force on 27 April 2023.

Compliance

9. The Credit Contracts and Consumer Finance Amendment Regulations 2023 comply with:
 - 9.1. the principles of the Treaty of Waitangi;
 - 9.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 9.3. the principles and guidelines set out in the Privacy Act 2020;
 - 9.4. relevant international standards and obligations; and

- 9.5. the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
10. Section 138(1BA) of the Credit Contracts and Consumer Finance Act 2003 provides that the Minister of Commerce and Consumer Affairs may recommend regulations under section 138(1)(abd) only after consulting the persons or representatives of the persons who the Minister considers will be substantially affected by the regulations.
11. I am satisfied that these statutory conditions have been met.

Regulations Review Committee

12. There are no grounds for the Regulations Review Committee to draw the Credit Contracts and Consumer Finance Amendment Regulations 2023 to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

13. The Credit Contracts and Consumer Finance Amendment Regulations 2023 have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

14. An impact summary was prepared when policy decisions on the Credit Contracts and Consumer Finance Amendment Regulations 2023 were sought [CBC-22-MIN-0038].

Consultation

15. The following departments and agencies have been consulted on this paper: Department of the Prime Minister and Cabinet, Treasury, Ministry for Housing and Urban Development, Office of the Privacy Commissioner, Ministry for Pacific Peoples, Financial Markets Authority, Reserve Bank and Commerce Commission.
16. An exposure draft of the regulations was released for public consultation, and public feedback was taken into account in finalising the regulations.

Publicity

17. I will issue a press release to inform the public of the revised regulations.

Proactive Release

18. This paper will be published on the Ministry of Business, Innovation and Employment's website, subject to withholdings as appropriate under the Official Information Act 1982.

Recommendations

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

1. **note** that in January 2022, the Minister of Commerce and Consumer Affairs initiated an investigation into changes to the Credit Contracts and Consumer Finance Act 2003 and associated regulations that came into force on 1 December 2021;
 2. **note** that on 4 July 2022, the Cabinet Business Committee agreed to:
 - 2.1. adjust the scope of expenses that need to be estimated by lenders to more explicitly exclude discretionary expenses;
 - 2.2. amend the Regulations to reduce 'double counting' of expenses associated with revolving credit contracts such as credit cards and buy-now pay later schemes; and
 - 2.3. expand the exception in regulation 4AH to include refinancing of credit contracts that borrowers have with other lenders where this would be in the best interests of the borrower;
- [CBC-22-MIN-0038]
3. **note** that the Credit Contracts and Consumer Finance Amendment Regulations 2023 will give effect to the decisions referred to in paragraph 2 above;
 4. **authorise** the submission to the Executive Council of the Credit Contracts and Consumer Finance Amendment Regulations 2023;
 5. **note** that the Credit Contracts and Consumer Finance Amendment Regulations 2023 will come into force on 27 April 2023;
 6. **note** that section 138(1BA) of the Credit Contracts and Consumer Finance Act 2003 provides that the Minister may recommend regulations under section 138(1)(abd) only after consulting the persons or representatives of the persons who the Minister considers will be substantially affected by the regulations;
 7. **note** that the Minister of Commerce and Consumer Affairs advises that the statutory conditions referred to in recommendation 6 have been met.

Authorised for lodgement

Hon Dr Duncan Webb

Minister of Commerce and Consumer Affairs