



COVERSHEET

Minister	Hon Dr Duncan Webb	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Fit for purpose regulation of consumer credit	Date to be published	9 August 2023

List of documents that have been proactively released		
Date	Title	Author
2 August 2023	Fit for purpose regulation of consumer credit	Office of Minister of Commerce and Consumer Affairs
7 August 2023	Fit for purpose regulation of consumer credit CAB-23-MIN-0348.01 Minute	Cabinet Office
26 July 2023	Revised Regulatory Impact Statement: Applying the Credit Contracts and Consumer Finance Act in a proportionate way to buy now pay later lenders	MBIE

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 for the reason of Confidentiality.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Cabinet Economic Development Committee

Fit for purpose regulation of consumer credit

Proposal

- 1 This paper:
 - 1.1 reports on the impacts of recent changes to the Credit Contracts and Consumer Finance Regulations 2004 (the **Regulations**) and options for further review of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) and the Regulations;
 - 1.2 reports back on the impacts of the temporary emergency exemption for extreme weather events (the **emergency exemption**) introduced in February 2023, and seeks decisions on whether a permanent exemption is needed;
 - 1.3 seeks agreement to provide a full exemption from the CCCFA for voluntary targeted rate scheme loans administered by local authorities (which finance healthy home or sustainability improvements, usually for low-income households); and
 - 1.4 seeks further decisions, and modification of an earlier decision, about the requirements that should apply to buy now pay later loans when regulations are made bringing these loans within the CCCFA.

Relation to government priorities

- 2 The proposals in this paper seek to ensure that New Zealanders can access credit safely, responsibly, and efficiently, and support the Government's priorities to relieve pressure on households and businesses and provide regulatory certainty.

Executive Summary

- 3 The CCCFA has undergone several reforms over the past decade. The intent of these reforms has been to reduce the risk of financial hardship for borrowers by placing more obligations on lenders.
- 4 The most recent reforms, which fully came into effect in December 2021, included prescriptive affordability assessments as well as more stringent penalties.
- 5 A 2022 investigation into the 2021 reforms (the **investigation**) found that there were unintended impacts, with consumers being subject to unnecessary inquiries and access to credit unduly restricted.

- 6 Additional amendments to the Regulations in 2022 and 2023 to address these impacts went some way to address these issues. However, further changes to the settings under the CCCFA and Regulations may better achieve their purposes.
- 7 I have considered a number of options for further review of the CCCFA and associated regulations. I propose to reconsider the scope and operation of the legislation and associated regulations to ensure that the settings are better targeted to the risk profile of the lending. This work could be aligned with a statutory review of the high-cost consumer credit rules in Part 2 Subpart 6 of the CCCFA.
- 8 Additionally, following extreme weather events in the upper North Island earlier this year, the Government passed regulations to temporarily exempt some lenders from the requirements to carry out affordability and suitability checks when providing credit for people affected by these weather events. Following monitoring by my officials of the uptake and impacts of the exemption, I am now seeking agreement to a more carefully tailored permanent exemption for emergency events.
- 9 I also seek Cabinet decisions on exempting voluntary targeted rates scheme loans run by local authorities from the CCCFA.
- 10 Finally, I am seeking policy approvals to exempt buy now pay later (**BNPL**) lenders, when making regulations bringing them into the CCCFA, from:
- 10.1 affordability assessments, on the condition that they participate in comprehensive credit reporting;
 - 10.2 suitability requirements; and
 - 10.3 disclosure of the right to cancel, on condition that they disclose their (currently over-compliant) cancellation policies.

Overview

- 11 The Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) is a key piece of legislation in our consumer credit markets.
- 12 The CCCFA is one of several pieces of legislation that applies to lenders. In particular, banks are also subject to prudential regulation, and banks and other financial services are subject to conduct regulation designed to lead to positive consumer outcomes through the Financial Markets (Conduct of Institutions) Amendment Act 2022 (**CoFI**).
- 13 There are, in addition, indicators that market participants will continue to innovate with payment products such as buy now pay later (**BNPL**), which provides (in substance) a form of credit at the point of sale.
- 14 It is clear that the market for financial services, and credit in particular, will continue to evolve and it is my view that this is an area in which to achieve

legislative purposes it will be necessary to respond to market developments from time to time.

Impacts of recent changes to the affordability regulation and options for further review of the CCCFA

- 15 Since 2009, successive Governments have progressed reforms to strengthen the consumer protections in the CCCFA and tackle concerns about irresponsible and unaffordable consumer lending. This has resulted in substantial reforms commencing in 2015, including the introduction of responsible lending obligations. Following concerns about the effectiveness of these obligations, the Government commissioned a review of the CCCFA in 2018.
- 16 The most recent reforms to the CCCFA and Credit Contracts and Consumer Finance Regulations 2004 (the **Regulations**) commenced in 2019 and came into force by December 2021.
- 17 This most recent wide scale reform included the introduction of:
 - 17.1 prescriptive requirements for affordability and suitability assessments, including requirements to keep records of these assessments;
 - 17.2 directors and senior manager duties to exercise due diligence to ensure the lender complies with its duties and obligations under the CCCFA; and
 - 17.3 a new civil penalty and statutory damages regime for breaches of lender responsibilities.
- 18 Also introduced were interest and fee caps and other rules on high-cost consumer credit contracts (credit contracts charging 50 per cent interest or greater). These changes have successfully driven many high-cost lenders out of the market or lead to a reduction of interest rates. These rules are subject to statutory review under section 45L of the CCCFA which I also intend to initiate.

An investigation into the early implementation of the most recent reforms found that there were unintended impacts

- 19 Prescriptive affordability assessments and stringent penalties were met with widespread criticism. As a result, the Ministry of Business, Innovation and Employment, in consultation with Council of Financial Regulators agencies, carried out an investigation into their initial implementation (the **investigation**).
- 20 The investigation found that the changes were having two key unintended impacts:
 - 20.1 Borrowers across all lending types, who should pass the affordability test, being subject to declines or reductions in credit amount.

- 20.2 Borrowers being subject to unnecessary or disproportionate inquiries seen by them as intrusive.
- 21 These impacts were found to be the result of more restrictive and onerous lending practices than expected being adopted by financiers following the December 2021 changes. This was a consequence of the way a number of specific provisions in the regulations are designed and drafted, combined with interpretational approaches; and many lenders taking a naturally conservative approach to compliance given the CCCFA's strong liability regime. The prescriptive nature of the CCCFA changes and their application to almost all consumer lending also meant that in some cases low-risk lending has been impacted.
- 22 Following the investigation, Cabinet made two sets of changes to the Regulations and Responsible Lending Code to clarify how expenses are estimated, made changes to exceptions to the requirement to conduct a full income and expense assessment, and made changes to the requirement for a reasonable surplus [LEG-22-MIN-0087 and LEG-23-MIN-0025].
- 23 These changes were intended to reduce the unintended consequences of the prescriptive 2021 changes. Lenders report that the changes have provided some clarity and that changes to explicitly exclude discretionary expenses have helped limit invasive inquiries and improve lending outcomes for consumers. However, some key issues, including those identified in the investigation, appear to persist:
- 23.1 While there have been some improvements in customer satisfaction since the beginning of 2022, consumers still ultimately find the affordability assessment process time-intensive and invasive, particularly where there is an established history of borrowing with the lender.
- 23.2 Many lenders suggest the Regulations impose costs on them where a more streamlined or scaled approach would adequately protect consumers, creating undue restrictions on accessing credit.
- 23.3 The prescriptive nature of the Regulations precludes lenders from exercising discretion in a number of ways, including safely assisting some customers during an emergency.
- 23.4 The prescriptive requirements act as a barrier to digital innovation in the sector.
- 23.5 Some of the penalties and enforcement provisions are seen as especially disproportionate. Prescriptive verification requirements are thought to create risk of procedural breaches that could incur significant penalties, despite the breach not impacting affordability or consumer outcomes. Similarly, the prohibition against enforcing consumer credit contracts where the lender has failed to comply with initial and variation disclosure requirements is seen as a

disproportionate consequence in circumstances where the failure derives from procedural error.

- 23.6 The liability and penalties regime continues to drive conservatism in the development and administration of lending procedures and decisions.
- 24 With respect to intended impacts, financial mentors report they are observing less irresponsible lending causing harm in general. However, lenders have not observed a reduction in the number of borrowers in financial hardship.¹

I am of the view that the purpose and overall legislative framework of the CCCFA is appropriate, but that the overall balance in the detailed regulatory design needs to be examined

- 25 The CCCFA's primary legislative purpose is to protect the interests of consumers. Additional purposes are to promote informed decisions by consumers to access credit for purchase, and promote and facilitate fair, efficient, and transparent credit markets.
- 26 I am of the view that these purposes of the CCCFA are appropriate. They give rise to the following five aims:
- 26.1 protecting those who need it most;
 - 26.2 enabling efficient provision of appropriate finance to consumers;
 - 26.3 not imposing a disproportionate burden on those who are not vulnerable;
 - 26.4 enabling financiers to respond effectively to need; and
 - 26.5 ensuring a healthy, equitable and diverse market for lending.
- 27 I am of the view that the CCCFA is achieving its protective purposes relatively well, but improvements are needed to achieve the further purpose of "fair, efficient, and transparent markets for credit". In my view it is the more detailed legislative design, specific provisions, and the implementation of the CCCFA, that are not fully delivering these other outcomes.
- 28 I am aware that caution is needed in liberalising the rules aimed at protecting vulnerable customers and in any adjustments that are considered there may be trade-offs. Amendments to the CCCFA over the past decade² have generally prioritised protecting those who need it most – i.e. the reduction of

¹ I note that several of the December 2021 CCCFA changes intended to address the risks of changes to personal circumstances, including requiring lenders to ask about future income, and requirements to build in buffers and adjustments when assessing expenses. I further note that some lenders have reported increases in requests for statutory hardship assistance, but these are largely attributed to macro-economic factors such as increases in costs of living, rising interest rates and inflation.

² This includes amendments that came into effect in 2015 and 2021, as well as amendments to the regulations in 2020, 2022 and 2023.

consumer harm, often through prioritising responsible lending obligations – over the other four aims, to varying extents.

- 29 It is my view that there is scope to investigate more nuanced regulation which tailors the regulatory burden to the risk profile of the lending. This would be aimed at relieving what is seen as a disproportionate burden on lenders and consumers who can afford lending and ameliorating some frustrations such as a sense of intrusive and time-consuming inquiries. It may also be that an emphasis on avoiding consumer harm and taking a relatively broad-brush approach has led to the less efficient provision of finance and barriers to efficiency and innovation, which are also harmful in the long run.

I have identified the three following options for further review

- 30 I consider it important that the CCCFA and associated Regulations are fit-for-purpose. It is my view that improvements in efficiency, innovation and ease of access to credit can be achieved without generating harm to vulnerable customers.
- 31 I have identified a number of directions for future work to improve the CCCFA. I am seeking agreement to commence work exploring possible changes to the scope and operation of existing legislation.
- 32 The three possible options are as follows:
- 32.1 **Option 1 – Monitor status quo:** This involves maintaining the status quo for the time being, while monitoring the implementation of the CCCFA to look for opportunities for improvement. A full evaluation of the impacts of the December 2021 changes would be undertaken at a later date using a baseline established in 2020, including a repeat of the consumer credit survey. This approach allows the current regime to bed in, and for the Commerce Commission to continue taking enforcement action in relation to breaches, both of which could inform a later assessment. It also allows time to observe the impacts of related regulatory changes such as the conduct of financial institutions regulation (including licencing and fair conduct requirements) and open banking (through the consumer data right).³
- 32.2 **Option 2 – Investigate changes to the scope and operation of existing legislation and regulation:** This would involve investigating to whom requirements and protections need to apply, when they need to apply, and how they should apply. The aim would be to optimise the outcomes we have identified above by targeting consumer protections to where these are needed and enhancing efficiency and innovation in the market. This approach would be cognisant of changes in the market and the need to take them into account such as CoFI regulation (including licencing and fair conduct requirements) and open banking

³ The Financial Markets (Conduct of Institutions) Amendment Act 2022 will take effect on 1 March 2025.

(through the consumer data right), as well as outcomes from the Commerce Commission's market study into personal banking.

32.3 **Option 3 – Investigate long-term legislative and regulatory changes:** This would involve reviewing the overall design and objectives of the regime. This would essentially entail a first principles review of how to regulate consumer credit in New Zealand. This option could involve considering whether the current legislative design is the best way to regulate consumer credit or whether alternatives would be better, including consideration of a licencing regime or other approaches.

33 Each option could also be accompanied by non-legislative initiatives to enhance consumer information and awareness of the CCCFA, with a long-term view to improving consumer financial capability, awareness of consumer protections and ability to access support.

I propose to pursue work on option 2

34 I propose to pursue work on option 2, investigating changes to the scope and operation of existing regulation, as:

34.1 specific provisions and design characteristics of the regime continue to drive the issues identified above. This means issues are unlikely to be resolved through waiting for more recent amendments to bed in or for other regimes take effect;

34.2 this approach has the potential to address all five aims set out at paragraphs 25.1-25.5; and

34.3 work could be aligned with the statutory review of high-cost credit, reducing engagement fatigue for stakeholders and requiring less resource compared to option 3.

Next steps

35 Subject to Cabinet's approval, I intend to approve terms of reference for this review of the legislation. I am seeking delegated authority to approve these terms of reference, following consultation with the Minister of Finance, based on the issues discussed above (para 22), in light of the five aims above (para 25) and to ensure that settings are appropriately targeted to the risk profile of the lending. As a second step, I would seek Cabinet approval to release a discussion document on options for further reform in early-2024.

Report back on the impacts of the emergency exemption and options for a permanent exemption

A temporary emergency exemption was put in place in February 2023 to promote timely access to credit for consumers to address impacts of emergency events

- 36 In early 2023 Cabinet passed regulations to temporarily exempt lenders from certain obligations in the CCCFA to assist borrowers impacted by the Auckland floods and Cyclone Gabrielle (**the emergency exemption**) and invited me to report back on the effectiveness of this, and whether a permanent exemption was needed [CAB-23-MIN-0017].
- 37 The emergency exemption was introduced as the CCCFA requirement to undertake an affordability assessment can be time consuming (potentially involving hours of work and several days for decisions) and involves seeking detailed information from borrowers. This can preclude timely access to credit for consumers impacted by emergency events, to replace personal effects or vehicles, make house repairs, pay for temporary accommodation, address damage to property, or loss of income.

There was reasonable uptake of the exemption, but this was limited in part by the scope and design

- 38 My officials conducted targeted consultation with 10 lenders from across the lending industry, the Financial Services Federation, FinCap and the Commerce Commission.
- 39 Stakeholders report there was reasonable uptake by major banks, but smaller lenders utilised the emergency exemption to a far less significant extent. Feedback from lenders indicates there is consumer demand for credit following emergency events, as approximately 700 customers received exempt loans, and over \$600,000 of credit was utilised.
- 40 Lenders who did not utilise the emergency exemption, or only to a limited extent, did so due to difficulties with time taken to operationalise, and the scope (i.e. products offered, or geographical location of their market) of the emergency exemption. Officials also heard that most lenders used alternative measures, either alongside or in lieu of the emergency exemption, such as deferring repayment obligations, extending terms, providing interest holidays, or providing interest free lending not covered by the CCCFA.
- 41 However, lenders reported uptake was partially inhibited by lack of flexibility and lender discretion in determining what loan product was most suitable for the customer. This was particularly problematic for customers who did not have an existing home loan, as this meant borrowers were restricted to temporary overdrafts with a short repayment period and high repayments, where a longer-term personal loan might have been more beneficial.

While direct benefits to consumers have been difficult to quantify, exempt loans have not generated hardship

- 42 It has been difficult to quantify the benefits to consumers beyond stimulating cash flow at present (i.e. there has not been sufficient time to determine how consumers utilised credit received under the exemption). Intuitively it might be inferred that ensuring credit, where needed, could be obtained without time consuming and intrusive affordability testing would reduce slightly an already very stressful situation.
- 43 There is no evidence of hardship having arisen directly out of customers being granted exempt loans.⁴

Stakeholder views on a permanent exemption are mixed

- 44 Lenders widely agreed and advocated for a permanent exemption to address a key limitation of the current regime, i.e. establishing robust process for providing fast assistance to address the impacts of an emergency. However, there was some concern from financial mentors that this could cause or exacerbate financial hardship.

I consider there is merit in undertaking further work on a permanent exemption

- 45 Based on the utilisation and number of consumers who accessed credit under the exemption, and the increasing frequency and severity of climate related weather events, I consider there is demand from weather-affected consumers for a permanent exemption for emergency events. Further, there is appetite from lenders and insurance providers for a permanent exemption. Certainty for lenders is desirable.
- 46 Following the above consultation, I consider there are two options:
- 46.1 **Option 1:** Proceed with a narrow permanent exemption for a limited range of products and lending amounts, i.e. similar terms and conditions to the temporary emergency exemption. Limiting the product scope of the exemption (i.e. to home loans and overdrafts) would largely limit the use of the exemption to banks and their home loan customers.
- 46.2 **Option 2:** Develop a broader permanent exemption designed to be product agnostic, with additional conditions to protect consumers, including increased hardship protections. This option would be more accessible to a wider range of consumers and more widely utilised

⁴ Most lenders have not reported any instances of hardship, and two major banks are proactively identifying where borrowers may be unable to meet repayment obligations and writing off debt; financial mentors have not actively identified cases of hardship under regulation 18I; and the Commerce Commission has not investigated or taken enforcement action against any lenders for conduct in relation to regulation 18I, although noting that it can take several months for borrowers or financial mentors to raise issues.

across the industry. For example, finance companies would be able to offer exempt personal loans to their customers.

- 47 My preference is to proceed with option 2, as I expect that more consumers would have access to products and some consumers would receive more suitable lending if the exemption was product agnostic. This option is not without risk, and conditions will be important to reduce the likelihood of consumers getting into financial hardship.
- 48 I consider it valuable to have a stopgap in place to ensure consumers impacted by these events have access to cash to address their immediate needs.
- 49 I also expect this will complement other forms of support available to impacted communities (such as Mayoral relief funds and civil defence payments, and Ministry of Social Development payments or support) by providing interim cash flow for consumers who are waiting for insurance pay-outs to replace personal items.

A permanent exemption aligns with reform to make the CCCFA fit for purpose

- 50 Whilst my proposed changes to rebalance the settings of the CCCFA intend to address issues with delayed access to credit, a permanent emergency exemption remains necessary due to the unique circumstances of borrowers after emergency events. Most notably, consumers may require more back-end hardship protections where debt is unplanned than would be reasonable to impose in other circumstances.
- 51 As such, developing a permanent exemption aligns with my aim to enable lenders to provide efficient assistance to consumers in need whilst also ensuring borrowers are protected from the consequences of unaffordable lending.

Timing

- 52 While there is some urgency to this work, further consultation will be necessary to inform the detailed policy design and ensure an exemption targets a clear and principled need. I intend to seek policy decisions on a permanent exemption before the end of the year and make regulations in early 2024.

Agreement to provide a full exemption from the CCCFA for voluntary targeted rate scheme loans administered by local authorities

Local authorities are concerned about disproportionate compliance costs

- 53 Local authorities operate loan schemes for ratepayers, where repayments are made through schemes known as voluntary targeted rates (**VTR scheme loans**). VTR scheme loans aim to provide environmental and social benefits by enabling consumers to install heating and insulation, amongst other

things, in their home. There is a strong argument that these schemes are in fact credit arrangements rather than targeted rates.

54 Since 2015 local authorities have had an exemption from certain provisions of the CCCFA relating to continuing disclosure requirements, early repayment prohibitions, unreasonable fees, and unforeseen hardship. This is largely on the basis that these involve compliance costs that would be passed on to low-income consumers utilising the schemes.

55 However, local authorities have concerns that the additional CCCFA requirements introduced in December 2021 now impose prohibitive costs for local authorities attempting to administer these schemes. Authorities have requested an exemption from the CCCFA on the basis that:

55.1 VTR scheme loans are not-for-profit and relatively small scale compared to the revenue and activities carried out by commercial lenders, so costs of implementation are proportionately higher;

55.2 CCCFA obligations jar with the function and structure of local authorities, given their broader functions beyond providing consumer credit, and given councillors are democratically elected; and

55.3 the cost and difficulty implementing CCCFA requirements will preclude authorities from continuing to offer VTR scheme loans, which offer a number of environmental and social wellbeing benefits.

I propose to exempt local authorities' VTR scheme loans from the CCCFA

56 I agree with authorities' concerns and, given the extremely low risks these loans pose to consumers, propose a full exemption from the requirements of the CCCFA for VTR scheme loans, under section 138(1)(a) of that Act. The exemption will apply to VTR scheme loans currently captured by the CCCFA.

57 I am satisfied that this exemption will not pose material risks to consumers as:

57.1 there is an existing regulatory safety net of financial ombudsman schemes, which local authorities are required to belong to if they are administering credit

57.2 local authorities are not profit-making, reducing incentives to act unscrupulously

57.3 local authorities are a government entity, so are publicly accountable and can be expected to act responsibly

57.4 local authorities report extremely low levels of hardship in relation to VTR scheme loans.

58 I expect to return to Cabinet before the end of this year with regulations under the CCCFA to give effect to this decision.

Exemption from annual returns requirements if credit provided, on interim basis, by non-financial service business

- 59 Additionally, I have been made aware that the CCCFA's annual reporting requirements may be duplicated where lending is done by an entity whose principal business is the provision of non-financial goods and services (**the original dealer**) and then assigns loan to a finance provider (**the overarching lender**). This business practice is common in the motor vehicle industry where a motor vehicle dealer provides credit to a purchaser of a motor vehicle and then the loan is transferred to an overarching lender. To the extent that both the original dealer and the overarching lender fall under the CCCFA, both are required to provide an annual report to the Commerce Commission. Each annual report would include the same information about the same loans leading to unnecessary regulatory burden.
- 60 The CCCFA already exempts original dealers from several provisions on the condition that:
- 60.1 the overarching lender complies or ensures the original dealer complies with the lender responsibility principles;
 - 60.2 the overarching lender makes final lending decisions; and
 - 60.3 assigning the loan generally takes less than one working day of providing the credit.
- 61 I propose to extend this to exclude these dealers from the annual reporting requirements of the CCCFA, on the condition that as part of its annual report, the overarching lender provides a breakdown of loans by original dealer.
- 62 I consider this poses a low risk as overarching lenders will still have to report on this, and the condition should give the Commerce Commission access to the information they need.

Requirements that should apply to buy now pay later loans being brought within the CCCFA

Cabinet has agreed to regulate BNPL in the CCCFA

- 63 In October 2022, Cabinet agreed to apply the CCCFA to BNPL, but with an exemption from the requirement to conduct an affordability assessment for BNPL below a monetary threshold [GOV-22-MIN-0038]. These decisions will be given effect by amendments to the Credit Contracts and Consumer Finance Regulations 2004, for which I intend to seek approval soon.
- 64 As a condition of the exemption, Cabinet agreed that lenders would be required to obtain credit reporting information and provide credit reporting information back into the system. While this is not a replacement of an affordability assessment, it ensures that BNPL lenders would have more accurate information about a borrower's financial position.

- 65 Cabinet agreed to consult on two options for what affordability assessments would apply above the threshold: BNPL lenders comply with the detailed affordability processes prescribed in the Regulations or be subject to the lender responsibility principle to make reasonable inquiries into the affordability of the loan, but not the detailed regulations.
- 66 Additionally, Cabinet agreed to a further point of sale disclosure condition for the exemption i.e. default fees (for missed or late instalments) and the timing of instalments must be made clear to the consumer at the point of each purchase using BNPL, to provide greater clarity of financial obligations for BNPL users.
- 67 BNPL lenders, banks and other financial institutions, as well as financial mentors, charities and consumer advocates provided submissions on the draft regulations.
- 68 While submitters broadly agreed with regulating BNPL, submitters were polarised as to what extent the affordability assessment requirements under CCCFA should apply to BNPL. Financial mentors, charities and non-BNPL lenders noted that BNPL should be fully regulated under the CCCFA like other credit, while the BNPL industry submitted that many aspects of the CCCFA, particularly the affordability regulations, were disproportionate for small amounts of interest-free credit.
- 69 Following this feedback, I consider that some alterations to Cabinet's decisions are necessary to ensure the regulations are workable.

I propose to replace affordability assessments with credit checks on all BNPL loans

- 70 I propose to remove the threshold as this is seen as difficult to administer and would subject some BNPL loans to affordability assessments that are disproportionate to their relatively low risk.
- 71 Rather, I propose to exempt all BNPL loans from affordability assessments under the CCCFA on the condition that lenders first obtain a comprehensive credit report on the applicant when they sign up and provide lending information back into the credit reporting system. Additionally, I propose that lenders would have to get another comprehensive credit report before they increase a borrower's credit limit. They would also be required to have a credit policy which lays out how they take into account information from credit reports in lending decisions.
- 72 This option will reduce the risk of borrowers already in problem debt obtaining BNPL loans and would allow consumers to benefit from the CCCFA's other protections, while ensuring that compliance costs are proportionate.
- 73 I view this as a first step for the regulation of BNPL. If there is continued evidence of financial hardship caused by BNPL, affordability assessments could be required at a later date, particularly if there are changes to the CCCFA and/or the Consumer Data Right (**CDR**) is in place.

I propose to exempt BNPL loans from two other requirements of the CCCFA in order to ensure the regulations are workable

- 74 I am proposing exemptions from two further requirements:
- 74.1 the requirement to inquire into suitability of the loan; and
 - 74.2 the requirement to disclose to the borrower their right to cancel the contract within five days.
- 75 Firstly, the CCCFA and associated regulations requires lenders to make reasonable inquiries, before entering into an agreement or making a material change to it, to be satisfied that the credit provided will meet the borrower's requirements and objectives. This is about suitability of the loan, rather than affordability.
- 76 Suitability inquiries are unlikely to be useful for BNPL products. There is a low risk these products will be unsuitable, given the simplicity of the product, a tendency to be explicitly marketed based on their key features (e.g. interest free, pay in four payments) and there is no choice of features such as term of the loan.
- 77 While BNPL lenders could meet suitability requirements through their mobile apps, it may require a significant change in their processes for very little benefit to borrowers given the fixed nature of the product's terms and single offering of many lenders.
- 78 Secondly, the CCCFA gives borrowers the right to cancel the contract by giving notice within five days of the initial disclosures the lender is required to make. This right to cancel is one of the things the CCCFA requires lenders to initially disclose (i.e. before entering into the contract).
- 79 All BNPL lenders currently have more generous cancellation terms than the CCCFA requires. They allow borrowers to cancel at any time by simply repaying the debt.
- 80 Without an exemption, BNPL lenders would need to disclose to borrowers that they have the right to cancel the contract by giving notice within five days, when in fact they can cancel at any time.
- 81 To avoid confusion, I am proposing to require BNPL lenders to disclose their cancellation policy, rather than this lesser right to cancel. Their cancellation policy would still need to comply with the right to cancel as provided by the CCCFA at a minimum.

Cost-of-living implications

- 82 Proposals to reduce regulatory requirements will likely reduce compliance costs for lenders and may in time reduce costs for consumers. Conversely, proposals to increase regulatory requirements (i.e. BNPL proposals) may increase compliance costs by a small to moderate amount, and these costs

may be passed to consumers. I am advised that these proposals, when taken together, are expected to have a neutral impact on the cost of living.

Financial Implications

- 83 There are likely to be some minor financial implications from these policy decisions. Costs will be met from baseline funding.

Legislative Implications

- 84 The broader work on the CCCFA may be implemented via regulations or an amendment Bill.
- 85 Work to develop a permanent exemption for emergency events and an exemption for local authorities will be implemented via regulations under the CCCFA.

Impact Analysis

Regulatory Impact Statement

Exemption for local authorities from the CCCFA

- 86 The Treasury's Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Buy now pay later

- 87 MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE, which replaces an earlier Impact Statement concerning buy now pay later proposals. The panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Climate Implications of Policy Assessment

Exemption for local authorities from the CCCFA

- 88 The Climate Implications of Policy Assessment (**CIPA**) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as there is no direct impact on emissions.

Population Implications

Further reform of the CCCFA and permanent emergency weather exemption

- 89 The recommendations for this work do not seek any policy decisions or changes to legislation. I anticipate that an analysis of the impact on specific population groups will be undertaken when further actions are identified.

Exemption from the CCCFA for local authorities

- 90 I do not expect this proposal to have negative implications for any specific population group given the low risks associated with VTR scheme loans. This proposal is likely to have positive impacts for ratepayers who will be able to continue to access safe, low-cost credit to make improvements to their property, including for improving heating, electricity, and water supply.

BNPL

- 91 Submissions on an earlier discussion and responses to the accompanying survey suggest that the typical users of BNPL are women, people under 45, and individuals who are unable to access traditional credit products. Survey responses suggested those who suffered financial hardship were more likely to be Māori (15 per cent as opposed to 10 per cent of New Zealand Europeans).
- 92 These groups (women, younger people, individuals who are unable to access traditional credit products, and Māori) particularly stand to benefit from the proposed changes.

Human Rights

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

Consultation

- 94 A wide range of agencies and interest groups have been consulted on the proposals in this paper. The Treasury, Commerce Commission, Reserve Bank of New Zealand, Department of Prime Minister and Cabinet, and Ministry of Social Development were consulted, as well as the National Emergency Management Agency. We have also carried out both targeted and, where relevant, public consultation with interested parties, including banks and other lenders, BNPL lenders, local authorities, consumer advocates and financial mentors.
- 95 Feedback from these consultation processes has been incorporated into the proposals above.

Communications

- 96 I intend to announce Cabinet's decisions arising from the proposals in this paper by press release on the Beehive website at an appropriate time.

Proactive Release

- 97 I intend to proactively release a copy of this paper, subject to redactions as appropriate, within 30 business days of decisions being confirmed by Cabinet.

Recommendations

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

Fit for purpose regulation of consumer credit

- 1 **note** that two sets of changes were made to the Credit Contracts and Consumer Finance Regulations 2004 (the **Regulations**) and Responsible Lending Code, in July 2022 and May 2023, intended to improve the workability of the Regulations;
- 2 **note** that stakeholders have identified persistent issues with the regime, not addressed by changes recently made to address unintended impacts that were identified in a 2022 investigation into the 2021 reforms;
- 3 **note** that there is benefit in investigating the regulatory scope and operation of the Regulations to reduce regulatory burden, achieve greater efficiency, and improve access to credit;
- 4 **note** I have identified three options for next steps on the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**), including continuing with the status quo (Option 1), investigating the regulatory scope and operation of the legislation and regulations (Option 2), and investigating long-term legislative and regulatory changes to the overall design and objectives of the regime (Option 3);
- 5 **agree** to review the regulatory scope and operation of the existing legislation and regulations (Option 2);
- 6 **authorise** the Minister of Commerce and Consumer Affairs, following consultation with the Minister of Finance, to approve terms of reference for this review, which shall reflect:
 - 6.1 the persistent issues noted in recommendation [2] above, and
 - 6.2 an intention to investigate potential to better target settings to the risk profile of the lending, achieve greater efficiency, and improve access to credit;
- 7 **invite** the Minister of Commerce and Consumer Affairs to report back with a discussion document on options for improving the CCCFA, as part of this review, by early-2024;

Emergency exemptions

- 8 **note** that in February 2023 Cabinet agreed to introduce a limited, temporary emergency exemption from certain obligations under the CCCFA for borrowers impacted by extreme weather events [CAB-23-MIN-0017 and LEG-MIN-0025];

- 9 **note** that Cabinet invited me to report back to Cabinet on the implementation of the emergency exemption and whether a permanent exemption for emergency events was needed;
- 10 **note** that there appears to be consumer demand for a permanent exemption for emergency events;
- 11 **note** that it is too early to assess the impact that the emergency exemption has had on consumer interests but that it does not appear to be contributing to increased hardship;
- 12 **agree** in-principle to introduce a permanent CCCFA exemption by making regulations under section 138;
- 13 **invite** the Minister of Commerce and Consumer Affairs to seek policy decisions on the scope and trigger of a permanent exemption for emergency events by December 2023;

Exemption for local authority targeted rates schemes

- 14 **note** that several local authorities provide schemes whereby ratepayers borrow relatively small sums to for the installation of items such as insulation and heat pumps;
- 15 **note** that these schemes fall within the scope of the CCCFA, despite the CCCFA being designed to primarily catch commercial lending activity, and that several local authorities have requested an exemption from the CCCFA;
- 16 **agree** to exempt local authorities from the CCCFA;
- 17 **agree** to give effect to the decision in recommendation [16] above through making regulations under section 138 of the CCCFA;
- 18 **authorise** the Minister of Commerce and Consumer Affairs to issue drafting instructions to Parliamentary Counsel Office to give effect to the decision in recommendation [16] above;
- 19 **authorise** the Minister of Commerce and Consumer Affairs to make additional policy decisions and minor or technical changes to the policy decisions in this paper, consistent with the general policy intent, on issues that arise in drafting the regulations;

Exemption from annual returns requirements if credit provided, on interim basis, by non-financial service business

- 20 **note** that the CCCFA's annual reporting requirements may be duplicated where lending is done by an entity whose principal business is the provision of non-financial goods and services and then assigns loan to a finance provider;
- 21 **agree** to extend the exemption that currently exists where lending is done by an entity whose principal business is in the provision of non-financial goods and services from the annual reporting requirements of the CCCFA;

- 22 **agree** as a condition of the exemption in recommendation [21], the overarching lender provides a breakdown of loans by original dealer as part of its annual report;
- 23 **authorise** the Minister of Commerce and Consumer Affairs to issue drafting instructions to Parliamentary Counsel Office to give effect to the decision in recommendations [21] and [22] above;

High-cost consumer credit

- 24 **note** the Minister of Commerce and Consumer Affairs will soon be commencing the statutory review of Part 2 Subpart 6 of the CCCFA pursuant to section 45L of that Act;

Buy now pay later

- 25 **note** that on 27 October 2022 the Cabinet Government Administration and Expenditure Review Committee agreed that BNPL contracts be declared to be consumer credit contracts under the CCCFA, with obligations that vary based on the value of the loan [GOV-22-MIN-0038];
- 26 **note** that public consultation on an exposure draft of the Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2022 identified issues with the draft Regulations;
- 27 **agree** to recommend that Cabinet rescind the decision to introduce a threshold, and instead agree that all buy now pay later loans be exempt from the requirement to assess affordability, on the condition that they obtain comprehensive credit reporting information and have in credit policy in place;
- 28 **agree** that buy now pay later loans should be exempt from the requirement to inquire into the suitability of the loan;
- 29 **agree** that buy now pay later loans should be exempt from the requirement to disclose to the borrower their right to cancel the contract within five days, provided the lender instead discloses their cancellation policy (which complies with this right);
- 30 **note** that I plan shortly to seek approval for Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2023, which will give effect to the decisions referred to in recommendations [27] to [29] above.

Authorised for lodgement

Hon Dr Duncan Webb

Minister of Commerce and Consumer Affairs