



COVERSHEET

Minister	Hon Andrew Bayly	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Progressing financial services reform	Date to be published	22 April 2024

List of documents that have been proactively released		
Date	Title	Author
19 March 2024	Progressing financial services reform	Office of Minister of Commerce and Consumer Affairs
19 March 2024	Progressing financial services reform EXP-24-MIN-0010 Minute	Cabinet Office
19 March 2024	Regulatory Impact Statement: Reducing the burden of affordability requirements in consumer credit legislation	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 confidential advice to government, legal professional privilege, and matters still under active consideration.

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Office of the Minister of Commerce and Consumer Affairs

Cabinet Expenditure and Regulatory Review Committee

Progressing financial services reform

Proposal

- 1 This paper seeks approval to progress a package of reform to financial services regulation.

Relation to government priorities

- 2 The proposals in this paper respond to:
 - 2.1 the commitments to reform financial services regulation in the National Party's 100-point plan for *Rebuilding the Economy*
 - 2.2 the Government's commitment to cut red tape and provide regulatory clarity to make it easier to invest and grow New Zealand's capital markets
 - 2.3 the National and ACT Coalition Agreement to 'Rewrite the Credit Contracts and Consumer Finance Act 2003 to protect vulnerable consumers without unnecessarily limiting access to credit'.

Executive Summary

- 3 Earlier this year, Cabinet noted my intention to reform the regulatory landscape for financial services in two phases (CBC-24-MIN-0013 refers). This package of reform will remove undue compliance costs currently imposed on financial services and improve outcomes for consumers.
- 4 For phase 1, I propose a number of changes that can be made via regulations.
- 5 Firstly, I seek policy agreement to revoke the overly prescriptive affordability requirements in the Credit Contracts and Consumer Finance Act Regulations 2004 (the regulations) as fast as possible. Revoking the regulations is the most effective way to address immediate pain points affecting lenders and borrowers alike.
- 6 Lenders will still be required to ensure that lending is affordable but will not have to follow a prescriptive, one-size-fits-all process to do so. It strikes the right balance between giving lenders flexibility to lend to credit-worthy borrowers without excessive and time-consuming inquiries, while continuing to protect borrowers from the risk of irresponsible lending causing hardship.
- 7 I also seek policy decision to revoke now redundant regulations that were created to provide relief for financial difficulties caused by COVID-19.
- 8 In addition to the above, I seek:
 - 8.1 authorisation of submission of secondary legislation to the Executive Council to exempt certain lending from Contracts and Consumer Finance Act 2003 (CCCFA) requirements. This gives effect to previous Cabinet decisions to

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exempt local authorities from the CCCFA, and remove duplicative reporting requirements from certain non-financial services [CAB-23-MIN-0348.01 refers]

- 8.2 agreement to policy changes and authorisation of submission of secondary legislation to the Executive Council under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act). This seeks to improve the consistency of rules for approved financial dispute resolution schemes [CAB-22-MIN-0448 refers]. These regulations will immediately improve consumer access to dispute resolution while the work I intend to progress as part of phase 2 is underway. I also seek agreement to further policy decisions that are needed to ensure workability of these regulations.
- 9 For phase 2, I propose to progress legislative reform to simplify financial services regulation.
- 10 I seek agreement to progress the transfer of regulatory responsibility for the CCCFA from the Commerce Commission (the Commission) to the Financial Markets Authority (FMA). This is an important piece of this reform and will simplify settings for lenders, refining our 'twin peaks' approach to regulation for financial services. I indicated this was my intention in January. Cabinet's confirmation of this decision now will enable the Commission and the FMA to begin transferring functions while the work on other reforms to financial services legislation is underway.
- 11 I also seek agreement to explore:
- 11.1 legislative amendments to support the transfer of responsibility to the FMA, including extending some of the broader regulatory and enforcement tools available to the FMA under other financial markets legislation
 - 11.2 reforms to the CCCFA to address other known problems, such as the liability settings for directors and senior managers
 - 11.3 the effectiveness of the CCCFA's high-cost credit provisions, including whether the definition of high-cost credit should be revised from contracts with an annual interest rate of 50 per cent or more, to those with a lower rate of 30 per cent or more
 - 11.4 reforms to the Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI) and the conduct licensing framework in the Financial Markets Conduct Act 2013
 - 11.5 improvements to the effectiveness of the financial dispute resolution system, including consolidation of the four approved schemes.
- 12 I will come back to Cabinet to seek agreement to the release of discussion documents on the topics above in May. My intention is then to return to Cabinet in August to seek policy decisions on these matters. I aim to introduce a Bill to the House before the end of 2024.

For phase 1, I propose a number of changes that can be made via regulations

I seek policy agreement to revoke prescriptive requirements relating to affordability assessments and redundant Covid-19 exemptions from regulations under the CCCFA

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- 13 The CCCFA requires lenders to assess the affordability of loans to borrowers by making reasonable inquiries that the borrower will be able to make the repayments without suffering substantial hardship.
- 14 Following amendments to the CCCFA in 2019, regulations were made in 2021 to clarify expectations on lenders relating to affordability. They do this by prescribing minimum steps lenders need to follow to satisfy their obligation under the CCCFA to carry out 'reasonable inquiries' that a loan is likely to be affordable for the borrower (i.e. the borrower is likely to make repayments without suffering substantial hardship). These affordability regulations were part of a range of reforms aimed at better protecting borrowers from irresponsible lending.
- 15 However, in early 2022, an investigation undertaken by MBIE in collaboration with the Council of Financial Regulators found lending processes had become more restrictive and onerous than expected. All lenders indicated their loan application processing times increased by 50 per cent or more following the CCCFA changes. Individual banks estimated that 6–7 per cent of their home loan borrowers who would have previously qualified were now being turned down. Given new mortgage lending accounted for \$69 billion in 2022, this represents a significant decrease in mortgage lending. All borrowers, irrespective of their individual circumstance, were subject to intrusive inquiries, as lenders were largely unable to scale their inquiries to reflect the wide variation in risk presented by different circumstances.
- 16 Adjustments made to the affordability regulations under the previous Government failed to fully address these unintended impacts.
- 17 Therefore, I propose to revoke the substance of the affordability regulations. This will give lenders more discretion to adjust their inquiries based on the risk profile of lending. I expect this will enable lenders to reduce unnecessary costs and processing times and avoid some instances of borrowers being declined credit they can afford. This will also begin to address what I see as a significant issue, namely that some people who cannot access credit turn to alternative high-cost providers, some of which may be unregulated.
- 18 The proposal is not expected to have a material impact on house prices. Although there is some potential for a marginal increase in the success rate of mortgage applications by owner-occupiers, this is considered insignificant relative to other factors affecting the property market, including consumers' ability to afford mortgages.
- 19 Lenders will still be required by the CCCFA to make reasonable inquiries that the borrower will be able to make the repayments without suffering substantial hardship. Relative to other options I have considered, this option involves an elevated risk that some lenders may end up making insufficient inquiries into affordability, which could increase the risk of consumer harm. However, I believe the problems created by the affordability regulations outweigh this risk.
- 20 Furthermore, risk and uncertainty can be managed to some extent by effective regulatory oversight and enforcement, and the development of sound guidance in the Responsible Lending Code (the Code). The Code is non-binding guidance for lenders on how to implement the lender responsibility principles in the CCCFA, of which one is the requirement to assess affordability. Evidence of compliance with this Code is treated as evidence of compliance with those principles.
- 21 The process for developing changes to the Code is prescribed by the CCCFA and includes public consultation. I intend to prioritise making regulations giving effect to

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the decision to revoke relevant provisions in the affordability regulations. I will undertake targeted consultation on the workability of the regulations. I have also asked officials to progress work on the Code to ensure that changes needed Code are made as soon as possible.

- 22 I also propose to revoke now redundant regulations that were created to provide relief for financial difficulties caused by COVID-19.

I seek authorisation to submit secondary legislation to the Executive Council to exempt certain lending from CCCFA requirements

- 23 In August 2023, Cabinet agreed to progress two minor amendments to the CCCFA regulations [CAB-23-MIN-0348.01 refers] to:

23.1 fully exempt local authorities from the CCCFA:

23.1.1 This is intended to allow local authorities to administer voluntary targeted rates schemes (VTR schemes) which are paid back through rates (eg loans to ratepayers to install insulation or heat pumps). This lending is considered to have considerable consumer benefit and is low risk. Currently, the CCCFA provides a barrier to this type of lending.

23.2 extend the existing exemption that applies where lending is done by an entity whose principal business is the provision of non-financial goods and services to include the CCCFA's annual reporting requirements:

23.2.1 This is intended to exempt non-financial service providers (eg certain car dealers) who have assigned credit contracts to lenders (eg. a finance company) from also having to complete annual returns in relation to those credit contracts, which is only duplicating already available information.

- 24 These amendments remove unnecessary regulatory obligations on businesses that provide little benefit to consumers, therefore helping to simplify the regulatory landscape.

- 25 PCO has drafted the Credit Contracts and Consumer Finance Amendment Regulations 2024 to give effect to both of these decisions. I am seeking authorisation to submit these amendment regulations to the Executive Council.

I also propose that Cabinet approve regulations to align the rules of approved financial dispute resolution schemes

- 26 I seek policy changes and authorisation to submit the Financial Service Providers (Rules for Approved Dispute Resolution Schemes) Regulations 2024 to the Executive Council.

- 27 There are currently four approved schemes under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act), namely the Banking Ombudsman Scheme, Insurance and Financial Services Ombudsman, Financial Dispute Resolution Service Limited and Financial Services Complaints Limited.

- 28 In October 2022, the previous Government agreed to progress changes to the financial dispute resolution scheme system via regulations to promote greater

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consistency between the four schemes' rules and to promote greater equality of redress for consumers.

- 29 I think there is value in progressing these changes. They are widely supported by industry and the four schemes, and having these changes in place now will support consumer access to dispute resolution. Making these regulations to align aspects of scheme rules is the first step in improving the financial dispute resolution system for consumers. In phase 2 of these reforms, I will consider broader changes to the system.
- 30 The changes will align the rules of the schemes across the following areas:
- 30.1 set a higher and consistent financial lump sum compensation limit of \$500,000 plus GST for all schemes (currently schemes set their own limits, up to \$350,000), unless a higher limit is agreed otherwise by the parties. This will better reflect the current value of many financial products, which I am also seeking to reflect through adjustments to the weekly compensation limit as discussed in 31.3 below. This change is broadly supported by the schemes.
 - 30.2 set a consistent financial award of up to \$10,000 plus GST for non-financial harm and inconvenience suffered by a complainant throughout the complaints process
 - 30.3 set a consistent method for calculating interest awards
 - 30.4 set consistent timeframes for bringing a complaint to a scheme, being:
 - 30.4.1 two months (or any shorter period specified in scheme rules) for financial service providers to consider complaints, after which the consumer can access the scheme
 - 30.4.2 three months (with a possible extension of up to nine months in exceptional circumstances) for consumers to approach a scheme following a financial service provider's written decision issued within the two months mentioned above (subject to a provider giving a consumer written notice of this time period)
 - 30.4.3 a total six-year deadline for a consumer to make a complaint to a scheme, beginning on the date a consumer becomes aware (or should reasonably have become aware) of an issue. This aligns with the limitation periods for money claims under the Limitation Act 2010.
- 31 I am also seeking agreement to the following policy decisions that are reflected in the draft regulations:
- 31.1 Allow schemes to award compensation above the financial limits set by the regulations (for lump sum and weekly compensation) where both the financial provider and consumer agree.
 - 31.2 Recommend to Cabinet that it rescind its earlier decision that all schemes should consider complaints about current members only, regardless of when the alleged misconduct occurred [CAB-22-MIN-0448]. My officials have received legal advice that an amendment to the FSP Act would be needed to implement this decision. The schemes have also advised that they are willing

to make any necessary changes to their rules to ensure consistency in this area.

- 31.3 Recommend to Cabinet that it change its earlier decision to align the value of the weekly compensation limit for complaints related to regular payment products from \$1,500 to \$2,600 [CAB-22-MIN-0448]. This amount better reflects the value of these products (noting that a higher limit may be agreed otherwise by the parties and schemes are also able to set a higher limit via their rules).

For phase 2, I propose progressing legislative reform to simplify the financial services regulatory environment

The financial services regulatory environment is increasingly complex

- 32 Over recent years, there have been a succession of reforms that have often placed greater responsibility and regulatory burden on the financial sector to prioritise the interests of consumers. This has led to excessive layering of regulation and a loss of coherence across legislation.
- 33 The original intent of the 2008 reforms was that New Zealand adopt a ‘twin peaks’ financial system regulatory model under which the Reserve Bank of New Zealand (RBNZ) is the prudential regulator (responsible for soundness and stability) and the FMA is the sole conduct regulator (responsible for the behaviour of institutions). This model has become increasingly complex, imposing costs on firms. For example, RBNZ and FMA may both have interests in the activities of firms from independent prudential and conduct perspectives, and at times requirements overlap. Separately, the Commerce Commission has primary responsibility for the CCCFA. Having three regulators involved in financial services regulation makes our model more complex and may increase duplication of requirements on entities.
- 34 The introduction of CoFI in 2022 has compounded the issue by adding another layer of regulation and an additional licence that financial institutions are required to hold. I have heard that some financial institutions believe that in some areas the requirements are an overreach and do not allow for a proportionate approach to be taken.
- 35 To simplify the regulatory landscape, I propose to reinforce a ‘twin peaks’ model where the RBNZ is the prudential regulator and the FMA is the sole conduct regulator. My focus is on the conduct regime and how it interacts with the prudential regime.
- 36 I expect that addressing issues around the relationship between RBNZ and the FMA will largely be done at an operational level, and through the Government setting appropriate expectations for these regulators. For example, I will be setting expectations for the FMA through my upcoming letter of expectations to work with RBNZ to address areas of overlap with the prudential regime.

This complexity has informed my decision to transfer regulatory functions under the CCCFA to the FMA as part of phase 2

- 37 I indicated to Cabinet in January that it was my intention to transfer the regulatory functions under the CCCFA from the Commerce Commission to the FMA. Cabinet’s confirmation of this decision now will enable the Commerce Commission and the

FMA to start the process of transferring functions while the work on other reforms to financial services legislation in phase 2 is underway.

- 38 Under this model, the FMA will become the single regulator for financial markets conduct. This will simplify and streamline the regulatory landscape. As part of phase 2, I intend to consult on options for extending some of the broader regulatory and enforcement tools available to the FMA under other financial markets legislation to the CCCFA to ensure the FMA can carry out this role effectively. My view is that moving to a more risk-based approach will better support both the provision of credit and compliance by lenders.

I will also explore the three main issues I see with the CCCFA

- 39 I will explore three specific issues I see with the CCCFA:
- 39.1 concerns that certain aspects of the liability regime for directors and senior managers (such as restrictions on indemnities and insurance) are disproportionate and contribute to overly conservative lending practices
 - 39.2 the consequences prescribed by the 'prohibited enforcement' provisions in the CCCFA for incorrect disclosure by lenders, and whether these are disproportionate, for example, where the error was unlikely to cause any harm but technically affected a large number of borrowers
 - 39.3 technical concerns lenders have with certain disclosure requirements, such as a perceived lack of flexibility to make disclosures electronically where the borrower has provided an email address.
- 40 Amongst this ongoing regulation reform, consumer advocates have informed me that they are working with the New Zealand Banking Association to improve the provision of finance to consumers in hardship. I will continue to consult with these advocates so that my reforms support the work they have underway.

I will review the high-cost credit provisions in the CCCFA

- 41 In 2020, the Credit Contracts Legislation Amendment Act 2019 introduced provisions that apply to high-cost consumer credit contracts, defined as any contract with an annual interest rate of 50 per cent or more. This was to protect consumers from excessive interest and fees, and debts from defaults under high-interest loans. Among other things, these provisions place restrictions on the costs of borrowing and prohibit compound interest.
- 42 Section 45L of the CCCFA requires me, as responsible Minister, to review the effectiveness of the high-cost credit provisions as soon as practicable three years from commencement. This review must consider whether the interest rate that defines a high-cost consumer credit contract should be reduced to a lower rate. I am particularly interested in reducing this to 30 per cent. I am aware that some high-cost lenders avoided the impact of these restrictions by bringing their rates down to just below 50 per cent.

I will also review the effectiveness of financial dispute resolution

- 43 As noted previously, there are four financial dispute resolution schemes approved under the FSP Act. There are also two other providers involved in natural hazard insurance disputes (specifically the New Zealand Claims Resolution Service and a dispute resolution provider under the Natural Hazards Insurance Act). I believe this is

leading to an overly complex environment where there is low consumer awareness of dispute resolution options, overlap in jurisdiction and duplication of costs. All of this has the potential to undermine access to redress for consumers.

- 44 In addition to the regulatory changes proposed above, I also propose to consult on how we can improve the effectiveness of these arrangements. It is my initial view that it would be preferable to consolidate the schemes with rules that promote greater effectiveness and outcomes for consumers.

I will also consider regulation of financial institution conduct and conduct licensing

- 45 As noted above, the requirements for financial services conduct have become increasingly complex, and I have heard from stakeholders that the CoFI regime is adding to these issues. I therefore propose that as part of phase 2, I will consult on options to amend the CoFI regime to simplify and clarify legislative requirements and ensure that they are fit-for-purpose and proportionate.

- 46 I do not intend to propose amendments to the fundamental structure of the regime. The work will, however, consider amendments to the broader framework for market service licences under the Financial Markets Conduct Act to simplify and consolidate requirements for licensees. It is my view that there should only be a single, consolidated financial conduct licence, and obligations relating to different financial services should be harmonised as much as possible under that. It will also be necessary to consider any changes to ensure the FMA's toolkit for supervising licensees is fit-for-purpose.

- 47 I note the regime is currently due to commence on 31 March 2025. It will be important to consider and clarify the impact of this review on regime commencement to provide certainty for firms as soon as possible.

I will return to Cabinet to seek approval to release discussion documents

- 48 In May 2024, I will return to Cabinet to seek approval to release discussion documents on the phase 2 issues outlined above.
- 49 Following consultation and analysis of feedback, I intend to bring proposals to Cabinet in August 2024. These will likely result in recommendations to Cabinet to make legislative changes for the phase 2 reforms.

50 Confidential advice to Government

Risks and mitigations

- 51 The financial services regulatory landscape, in particular the CCCFA, has undergone fairly constant regulatory reform since 2019. These changes incur a compliance burden on industry participants, and the responsible regulator(s). I consider the benefits of my proposals to be necessary to provide regulatory clarity to industry and reduce the compliance burden with existing requirements.

- 52 In addition, I am scoping phase 2 of this reform package to focus on the areas where the greatest concerns have been raised. I consider this will mitigate the impact of these reforms on industry, to the extent possible.
- 53 I have heard concerns that revoking the affordability regulations could result in some lenders over-relaxing inquiries into affordability, increasing the risk of consumer harm caused by irresponsible lending. However, lenders will still be required by the CCCFA to make reasonable inquiries into whether the credit will meet the borrower's requirements and objectives, and that the borrower will be able to make the repayments without suffering substantial hardship. Lenders must also keep records to show that they have substantiated their inquiries.
- 54 As I have noted, one important way this risk can be managed is through the development of clear guidance in the Code on how lenders should fulfil their obligation to carry out 'reasonable inquiries' that a loan is likely to be affordable for the borrower. I have consulted with consumer advocacy groups, such as Consumer New Zealand, and will continue to engage with these groups in their capacity as members of the Code Advisory Group, and with the public, to ensure this is guidance is fit for purpose. I also consider that a key way of mitigating these claims is to strengthen the dispute resolution processes, as noted previously.

Cost-of-living Implications

- 55 The impact of the proposals in this paper on New Zealanders' cost-of-living will depend on the extent to which lenders make changes to their affordability processes because of the regulatory change.
- 56 My expectation is that, by improving access to credit, these changes are expected to help consumers deal with the cost-of-living.

Financial Implications

- 57 Currently, CCCFA functions at the Commerce Commission are funded from two Multi-Category Appropriation (MCA) categories in Vote Business, Science and Innovation for which I am responsible as the Minister of Commerce and Consumer Affairs:
- 57.1 the Enforcement of Consumer Regulation Non-Departmental Output Expense Category in the Commerce and Consumer Affairs: Enforcement of General Market Regulation MCA
- 57.2 the Commerce Commission Internally Sourced Litigation category in the Commerce Commission Litigation Funds MCA.

58 Confidential advice to Government

- 59 When I bring policy proposals to Cabinet in August 2024, I will propose legislative changes and will specify how the CCCFA regulatory function will be carried out by the FMA going forward. Along with these proposals, I will recommend fiscally neutral transfers of the amounts required for 2025/26 and outyears from the two existing Commerce Commission appropriations to the relevant Financial Markets Authority

appropriations¹ which are also in Vote Business, Science and Innovation, and for which I am also responsible for as Minister of Commerce and Consumer Affairs.

60 Confidential advice to Government
I will make specific recommendations for funding these transition costs when I come back to Cabinet in August 2024.

Legislative Implications

- 61 The proposal to revoke the CCCFA affordability regulations will be implemented by regulations. The Code is also secondary legislation, and the CCCFA empowers me as responsible Minister to amend the Code.
- 62 I intend to release drafts of these regulations and the Responsible Lending Code, to meet consultation requirements in the CCCFA.
- 63 The proposals to broaden existing exemptions for VTR schemes and annual reporting requirements for non-financial service providers will be implemented by regulations.
- 64 The proposals to align the rules of financial dispute resolution schemes will be implemented by regulations.
- 65 Further proposals discussed in this Cabinet paper will be implemented by a Bill and consequential regulations as needed later in the year.

Timing and the 28-day rule

- 66 Subject to Cabinet's agreement, I propose:
 - 66.1 the Financial Service Providers (Rules for Approved Dispute Resolution Schemes) Regulations 2024 be submitted to the Executive Council for signature on 25 March and are expected to be notified in the Gazette on 28 March and come into effect on 18 July
 - 66.2 the Credit Contracts and Consumer Finance Amendment Regulations 2024 be submitted to the Executive Council for signature on 25 March and are expected to be notified in the Gazette on 28 March and come into effect on 25 April.
- 67 The proposed timing complies with the 28-day rule.

Compliance

- 68 The *Credit Contracts and Consumer Finance Amendment Regulations 2024* and the *Financial Service Providers (Rules for Approved Dispute Resolution Schemes) Regulations 2024* comply with:

¹ The Services and Advice to Support Well-functioning Financial Markets MCA and the Commerce and Consumer Affairs: Financial Markets Authority Litigation Fund Non-Departmental Other Expenses appropriation.

- a. the principles of the Treaty of Waitangi;
- b. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- c. the principles and guidelines set out in the Privacy Act 2020;
- d. relevant international standards and obligations;
- e. the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

69 Statutory prerequisites for the making of the Financial Service Providers (Rules for Approved Dispute Resolution Schemes) Regulations 2024 have been met. Section 79(1C) of the FSP Act requires that, before I recommend the making of regulations under section 79(1)(cb) of the FSP Act, I must consult the FMA and any other persons that I consider are likely to be substantially affected by the regulations. I can confirm this requirement has been met.

70 Statutory prerequisites for the making of the Credit Contracts and Consumer Finance Amendment Regulations 2024 have been met. Section 138(1A) of the CCCFA requires that, before I recommend the making of regulations under section 138 (1)(a) to (aba), I must:

- 70.1 have had regard to the purposes of the CCCFA, which include to protect the interests of consumers, to promote confident and informed participation of consumers in markets for credit, and to provide remedies for consumers in relation to oppressive conduct
- 70.2 be satisfied that the exemptions provided under the regulations will not cause significant detriment to debtors under credit contracts, lessees under consumer leases, or occupiers under buy-back transactions
- 70.3 be satisfied that compliance with the provisions of the CCCFA relating to consumer credit contracts would, in the circumstances, require a creditor or classes of creditors to comply with requirements that are unduly onerous or burdensome.

71 I can confirm these requirements have been met.

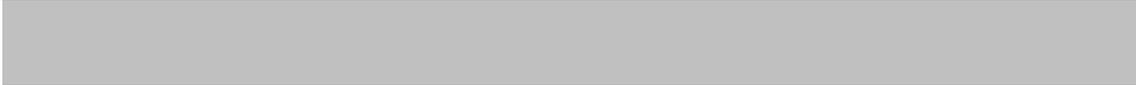
Regulations Review Committee

72 There are no grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

Crown Law advice

73 Legal professional privilege





Certification by Parliamentary Counsel

- 74 The Financial Service Providers (Rules for Approved Dispute Resolution Schemes) Regulations 2024 are certified in order for submission to Cabinet—
 - 74.1 if made on the Minister’s recommendation, after having consulted in accordance with section 79(1C) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008; and
 - 74.2 in reliance on the Crown Law advice dated 12 March 2024 referred to in paragraph 73.
- 75 The Credit Contracts and Consumer Finance Amendment Regulations 2024 have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet, subject to the regulations being made on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with section 138(1A) of the CCCFA.

Impact Analysis

- 76 Different impact analysis requirements apply to the proposals in this paper. The table below summarises the proposals and what impact analysis requirements are being met.

Nature of proposal	Whether Impact Analysis requirements apply
Phase one	
Revoke the CCCFA affordability regulations	The impact analysis requirements apply to this proposal. A Regulatory Impact Statement has been completed and is attached in the Appendix.
Revoke now redundant regulations that were created to provide relief for financial difficulties caused by COVID-19.	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.

<p>Policy decisions related to regulations to align the rules of financial dispute resolution schemes</p>	<p>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 been addressed by existing analysis [CAB-22-MIN-0448 and https://www.treasury.govt.nz/sites/default/files/2022-11/ria-mbie-ecjrfd-oct22.pdf refer].</p>
<p>Amendments CCCFA regulations to:</p> <ul style="list-style-type: none"> - fully exempt local authorities from the CCCFA - extend the existing exemption that applies where lending is done by an entity whose principal business is in the provision of non-financial goods and services to include the CCCFA's annual reporting requirements. 	<p>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.</p>
<p>Phase 2</p>	
<p>Transfer responsibility for the CCCFA from the Commerce Commission to the FMA</p>	<p>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.</p>
<p>Proposals to:</p> <ul style="list-style-type: none"> - consider regulation of financial institution conduct and conduct licensing - review high-cost credit provisions in the CCCFA - review three issues with the CCCFA - review the effectiveness of financial dispute resolution. 	<p>As requested by the Treasury, an MBIE QA panel will review the discussion document and determine whether it contains sufficient impact analysis to support Cabinet's decision to release it for consultation.</p>

Quality of the impact analysis

77 An internal quality assurance panel convened by the Ministry of Business, Innovation and Employment has reviewed the Regulatory Impact Assessment “Reducing the burden of affordability requirements in consumer credit legislation” and considers that the information and analysis summarised in the Regulatory Impact Assessment meets the Quality Assurance criteria.

Climate Implications of Policy Assessment

78 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that CIPA requirements do not apply to this proposal as it is not expected to result in any significant, direct emissions impacts.

Population Implications

- 79 39 per cent of consumers entered into a credit contract between 2020 and 2022. These consumers were more likely than the general population to be aged between 27 and 46, employed full-time, Māori and educated.
- 80 The risk that the proposal to remove affordability requirements increases the incidence of unaffordable lending, if realised, is likely to disproportionately affect certain population groups. These would be groups who are more likely to be seeking credit from less scrupulous lenders or who are more vulnerable, by being less well equipped to judge affordability of the credit themselves (due, for example, to low levels of financial literacy, a poor understanding of English, financial stress, or pressure from family members to obtain credit). Māori, Pacific peoples and immigrants are likely to be over-represented in these groups.
- 81 I would not expect the proposed transfer of functions to the Financial Markets Authority to have materially different impacts on different populations.

Human Rights

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

Use of External Resources

- 83 MBIE has not used any external resources in the development of policy advice relevant to this reform programme.

Consultation

- 84 The Treasury, Public Service Commission, Reserve Bank, Financial Markets Authority and the Commerce Commission were consulted on this Cabinet paper. The Department of Prime Minister and Cabinet was informed.

Consultation on the draft regulations that I intend to submit to the Executive Council

- 85 In relation to the Credit Contracts and Consumer Finance Amendment Regulations 2024, the Commerce Commission, alongside relevant Councils, finance companies, and a vehicle group were consulted on the draft regulations.
- 86 In relation to the Financial Service Providers (Rules for Approved Dispute Resolution Schemes) Regulations 2024, the FMA were consulted on the development of the policy and draft regulations. MBIE also undertook public consultation in 2021 as part of developing the policy and submissions were broadly in favour of the proposals.
- 87 MBIE officials undertook targeted consultation with the four approved financial dispute resolution schemes on the draft regulations to ensure the workability of the changes. Feedback has been taken into account in the final regulations.
- 88 In addition to the FMA, the Treasury, the Ministry of Justice and the Government Centre for Dispute Resolution have been consulted on these draft regulations.

Communications

- 89 Following Cabinet agreement, I intend to announce the decisions in this paper through a press release. I expect stakeholders to react largely positively to this

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announcement, in line with views expressed at the time of my earlier announcement about my financial services reforms in late January.

Proactive Release

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

Recommendations

The Minister of Commerce and Consumer recommends that the Committee:

Revoke prescriptive requirements relating to affordability assessments and redundant Covid-19 exemptions from regulations under the CCCFA

- 1 **agree** to remove the detailed requirements for assessing the affordability of lending to the borrower from the Credit Contracts and Consumer Finance Regulations 2004
- 2 **agree** to give effect to the decision in recommendation 1 above by revoking the substance of the provisions relating to affordability other than regulation 4AO from the regulations, using section 138 of the CCCFA
- 3 **authorise** the Minister of Commerce and Consumer Affairs (the Minister) to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decision in recommendation 2 above
- 4 **authorise** the Minister to make additional policy decisions and minor or technical changes to the policy decisions, consistent with the general policy intent, on issues that arise in drafting the regulations described in recommendation 2 above
- 5 **approve** the release of changes to the regulations relating to affordability for targeted consultation with affected parties as required by the CCCFA
- 6 **invite** the Minister to return to Cabinet Legislation Committee in May 2024 to make these regulations
- 7 **agree** to revoke redundant exemptions, namely Regulation 18D and Regulation 18E, created by the Credit Contracts and Consumer Finance (Exemptions for COVID-19) Amendment Regulations 2020 and the Credit Contracts and Consumer Finance (Exemptions for COVID-19) Amendment Regulations (No 2) 2020
- 8 **authorise** the Minister to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decision in recommendation 7 above
- 9 **note** that the Minister intends to issue amendments to the Responsible Lending Code, to facilitate clarity regarding how lenders are expected to comply with section 9C(3)(a)(ii) in the absence of the affordability regulations
- 10 **note** that the Minister intends to consult on the changes to the Responsible Lending Code (as required by the CCCFA)
- 11 **approve** the release of changes to the Responsible Lending Code once developed, for targeted consultation with affected parties as required by the CCCFA.

IN CONFIDENCE

I N C O N F I D E N C E

Authorise submission to the Executive Council of the Credit Contracts and Consumer Finance Amendment Regulations 2024, to exempt certain lending from CCCFA requirements

- 12 **note** that in December 2022, the Cabinet Economic Development Committee agreed to:
- 12.1 exempt voluntary targeted rates schemes operated by local authorities from the CCCFA, and
 - 12.2 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
- 13 **note** that the Credit Contracts and Consumer Finance Amendment Regulations 2024 will give effect to the decisions referred to in paragraph 12 above
- 14 **authorise** the submission to the Executive Council of the Credit Contracts and Consumer Finance Amendment Regulations 2024
- 15 **note** that the Credit Contracts and Consumer Finance Amendment Regulations 2024 will come into force on 25 April, which is 28 days after the date of notification in the *New Zealand Gazette*.

Agree to policy changes and to authorise submission to the Executive Council of the Financial Service Providers (Rules for Approved Dispute Resolution Schemes) Regulations 2024

- 16 **note** that in October 2022, Cabinet agreed to make regulations under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the Act) to align the rules of financial dispute resolution schemes [CAB-22-MIN-0448]
- 17 **agree** to the following policy decisions:
- 17.1 Allow schemes to award compensation above the financial limits set by the regulations (for lump sum and weekly compensation) where both the financial provider and consumer agree
 - 17.2 Recommend to Cabinet that it rescind its decision that all schemes should consider complaints about current members only, regardless of when the alleged misconduct occurred
 - 17.3 Recommend to Cabinet that it rescind its decision that a weekly compensation limit of \$1,500 for regular payment products should be set for all schemes, and instead agree that a weekly compensation limit of \$2,600 should be set, with schemes able to implement a higher limit via their rules
- 18 **note** that the Financial Service Providers (Rules for Approved Dispute Resolution Schemes) Regulations 2024 give effect to the policy decisions referred to in paragraph 16 as amended by the decisions at paragraph 17
- 19 **authorise** the submission to the Executive Council of the Financial Service Providers (Rules for Approved Dispute Resolution Schemes) Regulations 2024

IN CONFIDENCE

20 **note** that the Financial Service Providers (Rules for Approved Dispute Resolution Schemes) Regulations 2024 will come into force on 18 July 2024.

Agree to advance work on a wider package of legislative reform to simplify financial services regulation

21 **agree** to transfer all regulatory functions under the CCCFA from the Commerce Commission to the Financial Markets Authority

22 **agree** the scope of phase 2 for further reforms to financial services legislation includes:

22.1 reforms to relevant legislation that are necessary and desirable to support transfer of responsibility of the CCCFA to the FMA

22.2 broader reforms to the CCCFA to address known problems and areas of under-performance

22.2 the CCCFA's high-cost credit provisions, as part of the statutory review required by the CCCFA

22.3 reforms to the Financial Markets (Conduct of Institutions) Amendment Act 2022 and Financial Markets Conduct Act 2013

22.4 improving the effectiveness of dispute resolution

23 **invite** the Minister to return to Cabinet in May 2022 to seek approval to release discussion documents on the issues outlined in recommendation 22.

24 **invite** the Minister to return to Cabinet in August 2024 to seek policy decisions on the issues outlined in recommendation 22 above.

Financial implications

25 **note** if recommendation 21 is agreed and if invited to return to Cabinet in August 2024, the Minister of Commerce and Consumer Affairs will recommend fiscally neutral transfers within Vote Business, Science and Innovation for 2025/2026 and outyears to give effect to recommendation 21.

26 Confidential advice to Government

Authorised for lodgement

Hon Andrew Bayly

Minister of Commerce and Consumer Affairs

Appendix: Regulatory Impact Statement - Reducing the burden of affordability requirements in consumer credit legislation