



COVERSHEET

Minister	Hon Scott Simpson	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Financial Services Reforms: policy approvals and approval of the Credit Contracts and Consumer Finance Amendment Bill for introduction	Date to be published	14 April 2025

List of documents that have been proactively released

Date	Title	Author
March 2025	Financial Services Reforms: policy approvals and approval of the Credit Contracts and Consumer Finance Amendment Bill for introduction	Office of the Minister of Commerce and Consumer Affairs
27 March 2025	Financial Services Reforms: policy approvals and approval of the Credit Contracts and Consumer Finance Amendment Bill for introduction LEG-25-MIN-0041 Minute	Cabinet Office

Information redacted

YES

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

Some information has been withheld for the reasons of legal professional privilege and confidential advice to Government.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Policy Committee

Financial Services Reforms: policy approvals and approval of the Credit Contracts and Consumer Finance Amendment Bill for introduction

Proposal

1. This paper is one of two papers seeking to progress the Government's Financial Services Reforms. This paper seeks approval for:
 - 1.1. some additional policy changes to be included in the Credit Contracts and Consumer Finance Amendment Bill (the **Bill**), and
 - 1.2. introduction of the Bill, which gives effect to these policy changes, as well as policies earlier approved by Cabinet.

Executive Summary

2. I am seeking to introduce bills implementing a package of reforms to financial services regulation. This includes changes to consumer credit regulation agreed by Cabinet, which are being given effect by a Credit Contracts and Consumer Finance Amendment Bill (the **Bill**).
3. The Bill streamlines conduct regulation by transferring regulatory functions under the Credit Contracts and Finance Act 2003 (**CCCFA**) from the Commerce Commission (**the Commission**) to the Financial Markets Authority (**FMA**) and aligning the regulatory model with that used for other financial markets. This includes transitioning consumer credit to a licensing model and equipping the FMA with regulatory tools that will support it to regulate consumer credit effectively, in the interests of consumers, and without unnecessary regulatory burden on lenders.
4. The Bill includes some further changes for which I am seeking Cabinet approval, including a retrospective amendment relating to consequences for historical disclosure breaches by lenders.
5. The Minister of Commerce and Consumer Affairs at the time made Cabinet aware when seeking approval for the majority of consumer credit policy changes that he would be taking further advice on this historical issue. The proposed solution is to backdate reforms made in 2019 that ensure the courts have the flexibility they need to determine what consequences would be just and equitable in the circumstances of the disclosure breach.
6. This would apply equally to active class litigation against ANZ and ASB, which is likely to involve perceived interference with procedural rights of those borrowers. However, this is necessary to ensure consequences for all disclosure failures from that period can be decided appropriately and on the same basis.

Policy

Cabinet has agreed to a range of reforms to financial services regulation

7. In 2024, the Government made a series of policy decisions aimed at streamlining and improving the effectiveness of three types of financial services regulation:
 - consumer credit regulation (the subject of this paper);
 - financial services conduct regulation; and
 - financial dispute resolution schemes.
8. As part of the series of policy decisions, Cabinet agreed to transfer all regulatory functions under the CCCFA from the Commission to the FMA [EXP-24-MIN-0010 refers].
9. Following public consultation [CBC-24-MIN-0031 refers], Cabinet agreed to a range of reforms in September 2024, including to the CCCFA [ECO-24-MIN-0178 refers]. In November 2024, Cabinet agreed to further policy changes to consumer credit legislation [CAB-24-MIN-0445 refers].

Policy changes to consumer credit regulation provide a more effective regulatory model for the Financial Markets Authority

10. Policies so far agreed by Cabinet are largely focussed on ensuring the FMA will be well-equipped to regulate consumer credit effectively in the interests of consumers, while ensuring the regulatory burden on lenders is proportionate. They include:

Transferring responsibility to the FMA and streamlining regulation

- 10.1. transferring all regulatory functions under the CCCFA to the FMA;
- 10.2. replacing the current certification requirement for lenders and mobile traders with the market services licensing regime in the Financial Market Conduct Act 2013 (**FMC Act**), and deeming most existing entities to hold a relevant licence;
- 10.3. applying other aspects of the FMC Act to consumer credit regulation (e.g. stop order powers);
- 10.4. empowering the FMA to make adjustments or clarifications to the scope of CCCFA obligations through declarations and exemptions in particular circumstances;

Removing excessive penalties

- 10.5. removing the due diligence duty and attendant personal liability for senior managers and directors under the CCCFA (on the basis adequate accountability and oversight of compliance will be provided by the licensing regime); and

IN CONFIDENCE

- 10.6. limiting the effect of section 99(1A) of the CCCFA (that a borrower is not liable for the costs of borrowing in relation to a period of non-compliant disclosure) to disclosure breaches that a court finds have caused harm.
11. To give effect to these policies, the Bill amends the CCCFA, the Financial Markets Authority Act 2011, the FMC Act, the Financial Markets Conduct Regulations 2014 (**FMC Regs**), and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**), and makes other consequential amendments.
12. Industry has generally responded well to the consumer credit reforms that were announced following consultation. Other stakeholders also appear optimistic about the Government's intention to ensure the FMA is equipped to regulate consumer credit effectively. Concerns with particular proposals do not seem to be significant at this stage.

I am seeking further approvals consistent with the aims of consumer credit reforms...

Ensuring the FMA has effective regulatory tools: stop order and direction order powers

13. Cabinet agreed to CCCFA disclosure breaches being grounds for the FMA to issue a stop order. I am now seeking agreement to make stop order and also direction order powers available to the FMA for breach of any obligation under the CCCFA.
14. These are administrative powers the FMA has under the FMC Act to intervene where it has relatively serious concerns about a regulated party's conduct. They allow the FMA to respond proportionately to harm, do not rely on court proceedings, and provide consistency between how misconduct can be addressed under the CCCFA and FMC Act. The FMA might consider use of a direction order, for example, to prevent further immediate harm being caused by a lender whose disclosure statements contain misleading information about the interest rate applying to the loan.
15. Any breach of the CCCFA could have instances that justify use of these interventions, and I consider it best to afford the FMA flexibility to judge when intervention of this kind is appropriate.

Ensuring the courts have appropriate discretion over consequences for historical disclosure failures: retrospective change to section 99(1A) [contains legal advice]

16. I am seeking approval for an amendment with retrospective effect to address a legacy problem with section 99(1A) of the CCCFA. When seeking policy approvals for financial services reforms in August 2024, the Minister of Commerce and Consumer Affairs at the time notified Cabinet that he would be taking further advice on this issue.
17. Section 99(1A) provides that borrowers are not liable for the costs of borrowing during a period where a lender has breached certain disclosure requirements. The CCCFA has equivalent provisions for consumer leases and buy-back transactions for land.

IN CONFIDENCE

18. The proposed amendment would ensure the courts are empowered to reduce or extinguish the effect of these provisions where they consider it just and equitable to do so – in other words, if necessary to avoid consequences that would be grossly disproportionate in the circumstances. This discretion was provided in 2019, but was not applied retrospectively to the costs of borrowing pre-2019. This means the consequences for disclosure failures that pre-date the 2019 reforms are determined differently, and the court may be bound to require the lender to refund the full costs of borrowing to all affected borrowers in those cases.
19. There are still concerns about compliance issues lenders may have had before the 2019 reforms. Concerns about the potential consequences of the pre-2019 law on the consumer lending market have increased in recent years, because of active class litigation against ANZ and ASB. My officials are particularly concerned about the potential knock-on impact this could have on the position of smaller, domestic lenders.
20. Addressing these concerns through retrospective legislation is likely to attract criticism, Legal professional privilege
[REDACTED]
[REDACTED] and consistent with the objectives of these reforms (e.g. simplification) to apply that position equally to the active class litigation, rather than have a different law apply uniquely to that case.
21. Legal professional privilege
[REDACTED]
22. This amendment is different from the reforms Cabinet agreed in September 2024 to how consequences under section 99(1A) are determined (limiting them as noted in paragraph 10.6.). Those reforms tackle a different problem, which is not related to past conduct. They would therefore apply only prospectively (i.e. to agreements entered into after commencement).
23. The Bill includes this retrospective amendment, subject to Cabinet's approval, as the Minister obtained the Attorney-General's agreement to have it drafted in advance.

Less significant improvements to effectiveness and workability: minor and technical changes

24. On 28 August 2024, the Minister at the time indicated to Cabinet (via the Cabinet Economic Policy Committee) that he would consider Regulatory Systems Bill proposals for inclusion in this Bill. Cabinet authorised him to make additional policy decisions and minor or technical changes, consistent with the policy intent of the paper, on issues that arise during the drafting of the Bills and Regulations [ECO-24-MIN-0178 *refers*].
25. The amendments that are considered minor and technical have been included in the Bill (and are outlined in **Annex One**). They are mostly concerned with adjusting definitions and refining the scope of obligations in the CCCFA to better reflect the

IN CONFIDENCE

policy intent. I am seeking approval for these changes because they are not directly related to previous Cabinet decisions.

Impact Analysis

26. A Regulatory Impact Statement was prepared in accordance with the necessary requirements and was submitted at the time that Cabinet approval of the policy relating to the Bill was sought [ECO-24-MIN-0178 refers].
27. When further policy decisions were sought, it was determined these proposals are exempt from the requirement to provide a Regulatory Impact Statement on the grounds they have no, or only minor, impacts on businesses, individuals, and not-for-profit entities [ECO-24-MIN-0262 refers]. An exemption on the same grounds was also given for the minor and technical changes in Annex One.
28. A quality assurance panel with representatives from the Ministry of Business, Innovation and Employment has reviewed *Regulatory Impact Statement: Whether to apply legislation retrospectively to give courts discretion when considering consequences for disclosure failures by lenders*. The panel has determined that the RIS meets the quality assurance criteria.

Compliance

29. The Credit Contacts and Consumer Finance Amendment Bill complies with:
 - 29.1. the principles of the Treaty of Waitangi;
 - 29.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 29.3. the principles and guidelines set out in the Privacy Act 2020;
 - 29.4. relevant international standards and obligations; and
 - 29.5. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
30. A disclosure statement has been prepared and is attached to the paper.

Human rights implications

31. The Bill includes an amendment (discussed above) with retrospective effect, which would afford the courts discretion in determining consequences for certain disclosure failures. As this amendment would affect proceedings commenced before it takes effect, notably active representative proceedings, consideration has been given to implications for the right to natural justice, as well as certain legal principles and conventions relating to retrospectivity.

Consultation

Consultation on policy changes already considered by Cabinet and this paper

32. Following Cabinet approval in May 2024, the Ministry of Business, Innovation and Employment (**MBIE**) publicly consulted on options for reform over four weeks. MBIE considered 37 submissions from a range of stakeholders such as banks, other lenders, representatives of borrowers, and law firms.
33. MBIE consulted with the Commission, the FMA, the Treasury, the Reserve Bank of New Zealand, the Ministry of Justice, and the Ministry for Regulation during policy development and on this paper. The Department of the Prime Minister and Cabinet was informed when proposals were submitted to Cabinet [ECO-24-MIN-0262] and of this paper.

External consultation on further approvals in this paper

34. MBIE conducted targeted consultation with stakeholders on the minor and technical changes.
35. MBIE worked with banks to understand the historical problem with s99(1A) but was not able to consult on the proposed solution.

Binding on the Crown

36. The CCCFA binds the Crown. The Bill does not change this.

Creating new agencies or amending law relating to existing agencies

37. The Bill does not create any new agencies. It amends laws that determine the functions of existing Crown Entities, given the Bill transfers responsibility for regulation of consumer credit from the Commission to the FMA. It consequentially amends the Financial Markets Authority Act 2011, though not materially.

Allocation of decision-making powers

38. The Bill does not involve allocation of decision-making powers between the executive, the courts, and tribunals.

Associated regulations

39. Secondary legislation will be needed, and will commence at the same time as the relevant provisions of the Bill, to ensure those provisions can be given proper effect.
40. The exemptions in Regulations 27 and 28 of the Credit Contracts and Consumer Finance Regulations 2004 will be carried over to the Financial Markets Conduct Regulations 2014. Cabinet has already approved this change as a consequence of the move to the licensing regime [ECO-24-MIN-0178 refers].
41. Amendments to the Financial Markets Conduct (Fees) Regulations 2014 will also be required. This is to set a licensing fee for all providers of consumer credit contracts

IN CONFIDENCE

and mobile traders that enter the market after the licensing regime commences. The Bill already 'deems' existing providers to hold a licence at no cost.

42. These regulations will be drafted separately to the Bill, requiring Parliamentary Council Office and MBIE to allocate a low amount of resources to this. The drafting will be completed after introduction of the Bill.

Other instruments

43. Clause 46 of the Bill empowers the FMA to make declarations and exemptions that would be secondary legislation. The provision would enable the FMA to change or clarify the scope of the CCCFA's application, but are subject to constraints designed to ensure they are only used to resolve less significant issues and in a manner consistent with the Legislation Design and Advisory Committee guidelines.
44. The departmental disclosure statement referenced in the explanatory note to the Bill sets out the reasons for these powers.

Definition of Minister/department

45. The interpretation section 5 of the Bill borrows the original definition of "FMA" from the Financial Markets Authority Act 2011 for the purposes of transferring functions to the FMA.

Commencement of legislation

46. Some provisions of the Bill would come into force immediately. The provisions relating to or reliant on the transfer of functions to the FMA would come into force by Order in Council (with a backstop of six months after Royal assent). This flexibility is necessary to support agencies in planning for implementation. If the Bill is enacted by the end of October 2025, I intend to bring a commencement order to Cabinet bringing these provisions into force by year's end.

Parliamentary stages

47. I intend to introduce all three Bills on 31 March 2025. I intend to seek Business Committee agreement to associate these three Bills for First Reading to save House time.
48. I propose the Bills should be passed no later than October 2025. Confidential advice to Government
49. I propose the Bill be referred to the Finance and Expenditure committee for a period of five months.

Proactive Release

50. I propose to proactively release this paper on MBIE's website, subject to any redactions that may be required consistent with the Official Information Act 1982, within 30 business days of its consideration.

Recommendations

I recommend that the Cabinet Economic Policy Committee:

1. Confidential advice to Government
2. **note** that the Bill simplifies and streamlines regulation of financial services by aligning the regulator and model for regulation of consumer credit with that for other financial markets;
3. **note** that I will be returning to Cabinet while the Bill is before the House seeking approval for regulations relating to licensing fees and exemptions to be made;
4. **agree** to amend the Credit Contracts and Consumer Finance Act 2003 (the CCCFA) to apply sections 95A and 95B retrospectively, so that a court is able to provide relief from sections 99(1A), 101(2) and 102(2) regardless of when the disclosure failure occurred, and to actively apply this change to any relevant proceedings that have not been finally disposed of;
5. **agree** to the minor and technical changes included in the draft Bill (as set out in Annex one)
6. **agree** that, in addition to the situations earlier agreed by Cabinet, the FMA be empowered to make direction orders and stop orders as a possible response to breach of any obligation under the CCCFA;
7. **approve** the Credit Contracts and Consumer Finance Amendment Bill for introduction on 31 March 2025;
8. **agree** that the Government propose the Bill be:
 - 8.1. referred to the Finance and Expenditure committee for consideration;
 - 8.2. Confidential advice to Government

Authorised for lodgement

Hon Scott Simpson

Minister of Commerce and Consumer Affairs

IN CONFIDENCE

Annex One: Minor and technical changes

#	Category	The status quo	Proposed change
1	Technical change to a definition	Trustees of a trust and partners in a partnership are not excluded from the definition in section 5 of a “guarantor” in relation to a credit contract. However, these parties are excluded from the application of other provisions of the Credit Contracts and Consumer Act 2003 (the Act), such as the definition of “consumer credit contract” (where they are borrowers) and under lender responsibility principles (where they are guarantors).	Amend the requirements for guarantors (and definition in section 9B) so they consistently exclude trustees of a trust or persons acting as a partner under the Partnership Law Act 2019.
2		One of the types of repayment waiver offered by lenders (an insurance shortfall repayment waiver) does not appear to fall within the scope of the Act as it doesn’t meet the definition of either a “repayment waiver” or “credit-related insurance”. An insurance shortfall repayment waiver (offered by lenders) waives payments if there is a shortfall between the amount owing on the borrower’s credit contract and any amount paid out by the borrower’s comprehensive insurer if there is a total loss on the vehicle (effectively providing the same cover as guaranteed asset protection (GAP) insurance, which is offered by insurers).	Extend the definition of “repayment waiver” in section 5 of the Act to include an insurance shortfall repayment waiver.
3		Section 9C(8) defines “material changes” to consumer credit contracts for the purposes of section 9C(3)(a).	Clarify that some transactions that result in a mortgage amount being increased because of property-related payments the lender is required or entitled to make on the borrower’s behalf, are not “additional advances” requiring a suitability and affordability assessment (eg where a lender pays local government rate arrears).
4		While section 27 of the Act provides the right for consumers to cancel their credit contract within a prescribed period, there is no similar cancellation requirement for repayment waivers under the Act. Under section 9B(4), repayment waivers and extended warranties that are financed under a consumer credit contract are to be treated as forming part of the agreement for the purposes of the lender responsibility principles (Part 1A). However, this treatment does not extend to the rest of the Act, including section 27.	Amend section 27 of the Act to expressly provide for a consumer right to cancel a repayment waiver and extended warranty within five working days.
5		Section 132A(6) requires disclosure of certain information before debt collection begins. It excludes the sending of a “payment reminder” from counting as debt collection, and defines this as “a communication that is made within 5 months of a default in payment; only requests a payment that is overdue[...]”	Amend section 132A to exclude disclosure from being required where the lender is merely making the borrower aware they have exceeded a credit limit and/or requesting the limit be restored (on the same basis as the current exclusion of a notice that a payment is overdue).
6		In this section, a debt collector includes anyone engaging in an act to recover (or attempt to	Amend s132A(4) to provide additional

IN CONFIDENCE

IN CONFIDENCE

#	Category	The status quo	Proposed change
		recover) debt that is owing under a credit contract as a result of the borrower's breach of that contract. Theoretically, this could include parties, not acting for the lender, who contact the borrower about their debt, such as a guarantor or financial mentor. Section 132A(3) requires that disclosure must be made (again) within 10 working days by anyone who becomes a debt collector after debt collection starts.	exclusions from the definition of 'debt collector'. This exclusion should include some third parties such as financial mentors and guarantors, with the ability to extend this to other parties in future by regulations (for future-proofing purposes).
7	Clarification of policy intent	Section 22 requires information to be disclosed to borrowers about an agreed change to the loan agreement. The default position in that section is that disclosure must be made before the change to the agreement takes effect. However, section 22(3) enables disclosure to be made shortly after the fact in certain situations, including where the change would only reduce the borrower's obligations.	Clarify in section 22(3) that this includes other changes that are likely to the borrower's clear advantage, specifically: a temporary reduction (of no more than three months) in the amount of repayments required, such that any impact on the total interest payable is immaterial.
8		Section 132A provides that before debt collection starts, the debt collector must ensure that appropriate disclosure has been made to the borrower under the contract.	Exclude customers from debt collection disclosure requirements for actions taken under the Insolvency Act 2006, with the ability to exclude other cases by regulations (for future-proofing purposes).
9	Changes to practical application of provisions	Section 15(1) sets out contracts which are not consumer credit contracts regulated by the Act, including "a credit contract under which the debtor is a trustee acting in his or her capacity as a trustee of a family trust". A family trust is defined as "a trust that is established primarily to benefit either or both of the following: (a) a natural person for whom the settlor has natural love and affection; (b) an organisation or a trust whose income is exempt under section CB 4(1)(c) or (e) of the Income Tax Act 1994". This is a bespoke definition in the Act that requires lenders to investigate whether the terms of the trust are as described above.	Provide that the exclusion under section 15(1) applies to all express trusts within the meaning of the Trusts Act 2019, rather than just those currently described by the Act as a family trust.