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| Minister | Hon Dr David Clark | Portfolio | Commerce and Consumer Affairs |
| Title of Cabinet paper | Consumer Credit Reforms: Annual Returns and Transitional Arrangements | Date to be published | 24 August 2021 |

List of documents that have been proactively released

| Date | Title | Author |
|-------------|---|---|
| July 2021 | Consumer Credit Reforms: Annual Returns and Transitional Arrangements | Office of the Minister of Commerce and Consumer Affairs |
| 7 July 2021 | Consumer Credit Reforms: Annual Returns and Transitional Arrangements DEV-21-MIN-0154 Minute | Cabinet Office |

Information redacted

NO

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In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Development Committee

CONSUMER CREDIT REFORMS: ANNUAL RETURNS AND TRANSITIONAL ARRANGEMENTS

Proposal

- 1 This paper seeks approval on the final two policy issues relating to the implementation of the consumer credit reform, namely:
 - 1.1. prescribing the information that creditors must include in annual returns to the Commerce Commission; and
 - 1.2. providing transitional arrangements for consumer credit contracts entered into shortly after the new requirements come into force.

Background

- 2 The Credit Contracts Legislation Amendment Act 2019 (Amendment Act) strengthens protections for borrowers against irresponsible and high-cost lending, and against predatory behaviour by mobile traders. The Amendment Act amends the Credit Contracts and Consumer Finance Act 2003 (CCCFA).
- 3 A number of the measures relating to high-cost loans and mobile traders have already come into force, with the remainder of the reforms to come into force on 1 October 2021. These remaining provisions include requirements for lenders to conduct more detailed assessments of the affordability and suitability of consumer loans, and to provide an annual return to the Commerce Commission.

Annual returns

- 4 The Amendment Act introduces a requirement on creditors under consumer credit contracts to provide annual returns to the Commerce Commission. This requirement aims to support the Commerce Commission's monitoring and enforcement functions by ensuring that it has accurate information about the consumer credit market, and to inform future policy advice on the regulation of consumer credit contracts. The detailed requirements for these annual returns will be prescribed in regulations.
- 5 I propose that creditors be required to include the following information in their annual returns:
 - 5.1. The number of consumer credit contracts entered into or those that have been treated as consumer credit contracts.
 - 5.2. The number of material changes to consumer credit contracts.

- 5.3. The number of high-cost consumer credit contracts and related consumer credit contracts entered into.
 - 5.4. For each type of credit contract or change to a credit contract, described above, the total dollar amount to be advanced, or total credit limit, as applicable.
 - 5.5. For each type of credit contract or change to a credit contract, described above, the number of times that the creditor has relied on each exception from the need to carry out detailed inquiries into the borrower's income and expenses.¹
- 6 This information will help to provide an overview of the volume of credit being advanced to borrowers and the scale of the high cost lending market. It will also promote greater scrutiny over the use of exceptions from requirements to carry out detailed inquiries and help the Commission and the Government to determine whether they are being used in appropriate circumstances.
- 7 I propose that these annual returns be due with the Commerce Commission prior to 30 June annually, and relate to the previous financial year (i.e. 1 April to 31 March).
- 8 To give lenders sufficient time to develop systems for collection of the required information, I propose that the first annual return be due on 30 June 2024, relating to the period 1 April 2023 to 31 March 2024. I note that lenders currently have a very high system development workload from the Amendment Act and other regulatory changes. The proposed dates will provide sufficient time for lenders to focus on implementing the consumer protection measures and update their systems to meet reporting requirements with minimal distraction when those requirements come into force.

Transitional issue

- 9 The Amendment Act will require creditors under consumer credit contracts to carry out prescriptive inquiries to determine the affordability and suitability of a loan before entering into a consumer credit contract. These inquiries are more substantial than those currently required under the CCCFA and are intended to reduce the likelihood of consumers entering into consumer credit contracts that do not meet their needs, or are unaffordable. The new requirements are set out in the Credit Contracts and Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020 (the Regulations) which were made last year.
- 10 Lenders have raised a concern that the Amendment Act and Regulations do not adequately deal with situations where a lender completes inquiries into affordability and suitability before 1 October 2021, but the consumer credit contract is not entered

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The Credit Contracts and Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020 provide some exceptions from the requirement to carry out full inquiries into the affordability and suitability of consumer credit contracts. This includes when the lender knows that the borrower will rely wholly on means other than income to make payments under the contract.

into until after 1 October 2021. In some cases, several weeks or more can pass between the completion of affordability and suitability inquiries and the credit contract being entered into. Common examples of this include where a new credit card or home loan is applied for, or where material changes are made to existing contracts.

11 To provide clarity to lenders in these situations, I propose that an amendment be made to the Regulations. This will mean that lenders do not need to carry out the full affordability and suitability inquiries when the lender has substantially completed inquiries currently required under the CCCFA prior to 1 October, and before that date is satisfied that it is likely that:

11.1. the credit or finance provided under the agreement will meet the borrower's requirements and objectives; and

11.2. the borrower will make the payments under the agreement without suffering substantial hardship.

12 This will allow a lender to rely on the inquiries carried out shortly before the new requirements come into force if an application crosses over into the implementation period.

13 All other consumer protections will continue to apply. To manage any potential risk to borrowers, I propose that the lenders will only be able to rely on these earlier inquiries if the consumer credit contract is entered into before 1 April 2022.

Financial Implications

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

Legislative Implications

15 The proposals in this paper will require the making of regulations under the CCCFA.

Impact Analysis

16 Treasury's Regulatory Impact Analysis team has determined that the proposal to seek agreement for the content and timing of annual return requirements in the CCCFA 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.

Population Implications

17 There are no significant population implications from these proposals.

Consultation

18 Public consultation was carried out on the content of the annual returns. More recently, the Ministry of Business, Innovation and Employment (MBIE) carried out targeted consultation with Commerce Commission staff, New Zealand Bankers Association (NZBA) and the Financial Services Federation on the content of the

annual returns and the transitional issue. The Commerce Commission staff was consulted on the Cabinet paper.

- 19 Lenders expressed concern about their ability to implement the system changes necessary to collect the information required for the annual returns. In addition, the NZBA raised some concerns about the content of annual returns. Complying with the annual return requirement will come with some cost. However, I have proposed content that is intended to minimise cost to the extent possible, while still providing the information envisaged by the Amendment Act. I consider that it is vital that the Commerce Commission have an accurate understanding of the consumer credit market. This information will also prove useful in the development of future policy advice on the regulation of consumer credit contracts.

Communications

- 20 MBIE will notify key stakeholders of the policy decisions in this paper.

Proactive Release

- 21 I intend to release this paper proactively, subject to any redactions consistent with the Official Information Act 1982, within 30 days. MBIE will publish a copy of this paper on its website.

Recommendations

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

- 1 **note** that the Credit Contracts Legislation Amendment Act 2019 (Amendment Act) requires creditors under consumer credit contracts to provide annual returns to the Commerce Commission in the prescribed manner;
- 2 **agree** that the annual returns include the following information:
 - 2.1. the number of consumer credit contracts entered into;
 - 2.2. the number of material changes to consumer credit contracts;
 - 2.3. the number of high-cost consumer credit contracts and related consumer credit contracts entered into;
 - 2.4. for each type of credit contract or change to a credit contract, described above, the total dollar amount to be advanced, or total credit limit, as applicable; and
 - 2.5. for each type of credit contract or change to a credit contract, described above, the number of times that the creditor has relied on each exception from the need to carry out detailed inquiries into the borrower's income and expenses;

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

- 3 **agree** that annual returns be provided to the Commerce Commission by 30 June and relate to the 12 month period from the previous financial year (i.e. 1 April to 31 March);
- 4 **agree** that the due date for the first annual return is 30 June 2024;
- 5 **note** that the Amendment Act requires creditors to carry out prescribed inquiries to determine the affordability and suitability of consumer credit contracts from 1 October 2021;
- 6 **note** that in some situations creditors carry out inquiries into affordability and suitability several weeks prior to entering into a consumer credit contract;
- 7 **agree** to amend the Credit Contracts and Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020 so a creditor is not required to carry out full inquiries into affordability and suitability if the creditor has substantially completed inquiries prior to 1 October 2021 and is satisfied before 1 October 2021 that it is likely that:
- 7.1. the credit or finance provided under the agreement will meet the borrower's requirement and objectives; and
 - 7.2. the borrower will make the payments under the agreement without suffering substantial hardship;
- 8 **agree** that the creditors will only be able to rely on earlier inquiries for contracts entered into before 1 April 2022;
- 9 **authorise** the Minister of Commerce and Consumer Affairs to issue drafting instructions to Parliamentary Counsel Office to give effect to the above recommendations;
- 10 **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.

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs