



COVERSHEET

Minister	Hon Dr David Clark	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Investigation into the impacts of recent Credit Contracts and Consumer Finance Act 2003 changes: Initial findings and proposals	Date to be published	11 March 2022

List of documents that have been proactively released

Date	Title	Author
February 2022	Investigation into the impacts of recent Credit Contracts and Consumer Finance Act 2003 changes: Initial findings and proposals	Office of the Minister of Commerce and Consumer Affairs
21 February 2022	Investigation into the impacts of recent Credit Contracts and Consumer Finance Act 2003 changes: Initial findings and proposals CBC-22-MIN-0012	Cabinet Office

Information redacted

YES / NO [select one]

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Some information has been withheld for the reason of Confidential advice to Government.



Cabinet Business Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Investigation into the Impacts of Recent Credit Contracts and Consumer Finance Act 2003 Changes: Initial Findings and Proposals

Portfolio Commerce and Consumer Affairs

On 21 February 2022, the Cabinet Business Committee:

- 1 **noted** that, in January 2022, the Minister of Commerce and Consumer Affairs initiated an investigation into the impacts of the parts of the Credit Contracts Legislation Amendment Act 2019 (the Amendment Act) and Credit Contracts and Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020 (the Regulations) that came into force on 1 December 2021;
- 2 **noted** that the Terms of Reference were published on 31 January 2022 and state that final advice is expected in April 2022;
- 3 **noted** the initial findings of the investigation presented in this paper suggest that:
 - 3.1 the parts of the Amendment Act and Regulations that came into force on 1 December 2021 appear to be contributing to a drop in lending, including home lending and more significantly other personal lending (e.g. credit cards, car loans);
 - 3.2 some early impacts that appear to be consistent with the outcomes sought by these recent affordability and sustainability changes, there are a range of unintended consequences;
 - 3.3 there are continued concerns that the new prescriptive affordability and suitability assessments provided for in the Regulations apply to all lending types and consumers, with limited discretion and narrow exceptions;
 - 3.4 a range of more specific issues relating to particular parts of the Regulations and the Responsible Lending Code (the Code) are contributing to the unintended consequences;
- 4 **noted** that while final advice is not due until April 2022, the paper under CBC-22-SUB-0012 sets out a number of initial changes to address specific issues identified in relation to the Regulations and the Code;

5 **agreed** that the Regulations and the Code be amended to address some of the specific issues identified, as follows:

Initial proposals to address specific issues related to scope and treatment of expenses

5.1 amend the Regulations to exclude savings and investments from the definition of the listed outgoings;

5.2 amend the Regulations and the Code to:

5.2.1 clarify that when lenders ask borrowers about their likely living expenses, and these are benchmarked against statistical data about household expenses, there is no need to inquire into their current living expenses from recent bank transactions;

5.2.2 clarify that when lenders estimate expenses from recent bank transaction records, lenders can ask the borrower about how expenses are likely to change once the contract is entered into; and

5.2.3 clarify the requirement to obtain information in sufficient detail to minimise underestimation only relates to information received from borrowers (e.g. ensuring that expense categories on application forms are sufficiently detailed) rather than relating to information from bank transaction records etc;

Initial proposals to address specific issues related to surplus, adjustments, and buffers

5.3 amend the Code to further clarify when a ‘reasonable surplus’ is required and how it should be set;

Initial proposals to address specific issues related to exceptions

5.4 amend the Code to remove the current example for when affordability is ‘obvious’ and consider alternative guidance and examples in consultation with stakeholders;

6 **invited** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;

7 **authorised** the Minister of Commerce and Consumer Affairs to make decisions on minor or technical matters, consistent with the policy in the paper under CBC-22-SUB-0012, on any issues that arise during drafting;

8 **noted** that the Minister of Commerce and Consumer Affairs will instruct officials to undertake targeted consultation with lenders, financial mentors, and consumer advocates as part of the drafting of drafting instructions for the Regulations and amendments to the Code;

9 **noted** that under the Credit Contracts and Consumer Finance Act 2003, changes to the Code need to be publicly consulted;

10 **authorised** the Minister of Commerce and Consumer Affairs to consult publicly on an exposure draft of regulations in parallel to consultation on the Code;

11 **noted** that further work will need to be conducted as part of the investigation to fully understand and address the issues and unintended consequences, including clarifying with lenders how the legislative changes that came into force in December 2021 should be applied, and that the final advice is due in April 2022;

- 12 **invited** the Minister of Commerce and Consumer Affairs to report back on the final advice on the investigation in April 2022.

Jenny Vickers
Committee Secretary

Present:

Rt Hon Jacinda Ardern (Chair)
Hon Grant Robertson
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni
Hon Andrew Little
Hon David Parker
Hon Poto Williams
Hon Damien O'Connor
Hon Stuart Nash
Hon Kris Faafoi
Hon Michael Wood
Hon Dr David Clark

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet