



COVERSHEET

Minister	Hon Dr Duncan Webb	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Exemption for Temporary Credit to Consumers Affected by Upper North Island Flooding	Date to be published	20 March 2023

List of documents that have been proactively released

Date	Title	Author
February 2023	Exemption for Temporary Credit to Consumers Affected by Upper North Island Flooding	Office of the Minister of Commerce and Consumer Affairs
8 February 2023	Exemption for temporary credit to consumers affected by upper North Island flooding CAB-23-MIN-0017 Minute	Cabinet office
February 2023	Credit Contracts and Consumer Finance (Exemption for Emergency Relief) Amendment Regulations (No 2) 2023	Office of the Minister of Commerce and Consumer Affairs
20 February 2023	Credit Contracts and Consumer Finance (Exemption for Emergency Relief) Amendment Regulations (No 2) 2023 CAB-23-MIN-0042 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 under

- Confidential advice to Government
- Free and frank opinions
- Confidential information entrusted to Government.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet

Credit Contracts and Consumer Finance (Exemption for Emergency Relief) Amendment Regulations (No 2) 2023

Proposal

1. This paper seeks:
 - 1.1. agreement to extend the exemption for lending to consumers affected by recent flooding and weather-related damage to also cover consumers in the Gisborne / Tairāwhiti and Hawke's Bay regions and Tararua District (in addition to Auckland, Bay of Plenty, Northland and Waikato); and
 - 1.2. authorisation for submission to the Executive Council of the Credit Contracts and Consumer Finance (Exemption for Emergency Relief) Amendment Regulations (No 2) 2023.

Policy

2. On 8 February 2023, Cabinet agreed to provide an exemption from the affordability assessment requirements of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) for temporary overdrafts and home loan top-ups provided to borrowers for the purposes of addressing the impacts of upper North Island flooding in January and February 2023. Terms and conditions of the exemption included that:
 - 2.1. up to \$10,000 can be lent to existing customers;
 - 2.2. if the contract is an overdraft or another revolving credit contract, the maximum term is 12 months, or if not revolving, is a period that is reasonable;
 - 2.3. the credit contract is entered into before 31 March 2023;
 - 2.4. before the credit contract is entered into (or as soon as practicable after), lenders must highlight the availability of hardship assistance, and provide further notification if the lender is aware that the borrower is or reasonably expects to be experiencing financial difficulties or is at risk of hardship;
 - 2.5. lenders must comply with relevant provisions of the Responsible Lending Code relating to identifying and responding to financial difficulties;
 - 2.6. if hardship assistance is requested at any point after entering the contract, lenders must make reasonable inquiries to determine whether or not the borrower can repay the credit contract without substantial hardship; and

- 2.7. if those inquiries show that the borrower cannot repay without substantial hardship, the lender must provide relief in respect of the credit contract sufficient to avoid the borrower suffering substantial hardship (e.g. refinancing or reducing the debt).
3. On 13 February, the Credit Contracts and Consumer Finance (Exemption for Emergency Relief) Amendment Regulations 2023 added regulation 18I to the Credit Contracts and Consumer Finance Regulations 2004 (the **Regulations**) to give effect to this decision.
4. Regulation 18I covers the upper North Island, which it defines as comprising the Auckland, Bay of Plenty, Northland and Waikato regions. Given that the regulations essentially suspend legislation I did not consider it appropriate (or within ministerial discretion) to do so in respect of events which had not yet occurred – see para 14.2 below.
5. Since then, Cyclone Gabrielle has caused widespread flooding and damage in areas not covered by the original exemption, with states of emergency declared in the following additional areas: Gisborne / Tairāwhiti and Hawke’s Bay regions and Tararua District. Consumers in these areas are likely to have similar needs for urgent borrowing as those in the upper North Island affected by flooding in late January and early February.
6. I propose to extend the geographic coverage of the exemption to include all areas that have announced a state of emergency. I consider that the other terms and conditions of the existing exemption are appropriate for a wider exemption given the scale of the impact in these locations.
7. The attached regulations give effect to this change.
8. As with the existing exemption, it is envisaged that this extension will provide borrowers some breathing space and will be replaced by more permanent arrangements (such as an addition to mortgage debt) or repaid (for example from insurance proceeds) in a relatively short period.
9. Lenders would not be exempt from other requirements in the Act, including the overarching duty to exercise the care, diligence, and skill of a responsible lender before entering into an agreement to provide credit or finance (section 9C(2)(ii)). Lenders would also still have to make reasonable inquiries, before entering into the agreement, that the credit or finance provided under the agreement will meet the borrower’s requirements and objectives (section 9C(3)(i)).

10.

Constitutional conventions

Timing and 28-day rule

11. This legislative instrument is being made in response to an emergency. I consider it is appropriate for a 28-day rule waiver to be granted. This will assist with meeting the growing demand for lending from affected consumers.
12. Following Cabinet policy decisions, I intend that regulations will be made by the Governor-General on Monday 20 February and would come into force immediately on notification in the *Gazette*.

Compliance

13. The Credit Contracts and Consumer Finance (Exemption for Emergency Relief) Amendment Regulations (No 2) 2023 complies with:
 - 13.1. the principles of the Treaty of Waitangi;
 - 13.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 13.3. the principles and guidelines set out in the Privacy Act 2020;
 - 13.4. relevant international standards and obligations; and
 - 13.5. the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
14. Section 138(1A) of the CCCFA provides that the Minister may only recommend regulations under section 138(1)(ab) if:
 - 14.1. the Minister has had regard to the purposes of the CCCFA set out in section 3;
 - 14.2. the Minister is satisfied the exemption would not cause significant detriment to debtors under credit contracts, lessees under consumer leases, or occupiers under buy-back transactions; and
 - 14.3. compliance with the relevant provision or provisions would, in the circumstances, require a creditor, lessor, or transferee or a class of creditors, lessors, or transferees to comply with requirements that are unduly onerous or burdensome.
15. I am satisfied that these statutory conditions have been met.

Regulations Review Committee

16. There are no grounds for the Regulations Review Committee to draw the Credit Contracts and Consumer Finance (Exemption for Emergency Relief) Amendment Regulations (No 2) 2023 to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

17. The Credit Contracts and Consumer Finance (Exemption for Emergency Relief) Amendment Regulations (No 2) 2023 were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

Regulatory Impact Statement

18. The Treasury's Regulatory Impact Analysis team has determined that this proposal to extend regulation 18l of the Credit Contracts and Consumer Finance Regulations 2004 to include Tairāwhiti, Hawkes Bay and the Tararua District is exempt from the requirement to provide a Regulatory Impact Statement. This exemption is on the grounds that the proposal provides limited temporary exemptions or modifications to existing legislative requirements in a situation where a declared emergency has made compliance with existing legislative requirements impossible, impractical or unreasonably burdensome.

Climate Implications of Policy Assessment

19. The Climate Implications of Policy Assessment (**CIPA**) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Consultation

20. The Department of Prime Minister and Cabinet, Treasury, Commerce Commission and Reserve Bank were informed.

21. Confidentiality

22. I do not propose to extend the exemption further. The state of emergency declaration for specific areas provides a clear and principled way of targeting the exemption towards consumers who have been most impacted.

Publicity

23. My intention to seek Cabinet agreement to the extension of the exemption has already been signalled as part of announcing the exemption for the upper North Island flooding. I propose to issue a further press release following Cabinet's decision.

Proactive Release

24. This paper will be published on MBIE's web site, subject to withholdings as appropriate under the Official Information Act 1982.

Recommendations

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

1. **note** that on 13 February, regulation 18I of the Credit Contracts and Consumer Finance Regulations 2004 came into effect, which exempts certain temporary overdrafts and home loan top-ups from section 9C(3)(a)(ii) and 9C(4)(a) of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**), where lending is for the purpose of addressing the impacts of upper North Island flooding and other weather-related damage in January and February 2023;
2. **note** that the regulations apply to borrowers who suffered damage in the flooding in the upper North Island, namely Northland, Auckland, Waikato and Bay of Plenty.
3. **agree** to extend regulation 18I to the Gisborne / Tairāwhiti and Hawke's Bay regions and Tararua District on the same terms and conditions as the existing exemption;
4. **note** that the Credit Contracts and Consumer Finance (Exemption for Emergency Relief) Amendment Regulations (No 2) 2023 will give effect to the decision referred to in paragraph 2 above;
5. **authorise** the submission to the Executive Council of the Credit Contracts and Consumer Finance (Exemption for Emergency Relief) Amendment Regulations (No 2) 2023;
6. **note** that a waiver of the 28-day rule is sought:
 - 6.1. so that the Credit Contracts and Consumer Finance (Exemption for Emergency Relief) Amendment Regulations (No 2) 2023 can come into force as soon as possible;
 - 6.2. on the grounds that:
 - 6.2.1. the regulations are being made in response to an emergency; and
 - 6.2.2. it is necessary for the regulations to have the intended legal effect.
7. **agree** to waive the 28-day rule so that the regulations can come into force on the day after they are notified in the *Gazette*.
8. **note** that section 138(1A) of the CCCFA provides that the Minister may only recommend regulations under section 138(1)(ab) if:
 - 8.1. the Minister has had regard to the purposes of the CCCFA set out in section 3;

- 8.2. the Minister is satisfied the exemption would not cause significant detriment to debtors under credit contracts, lessees under consumer leases, or occupiers under buy-back transactions; and
 - 8.3. compliance with the relevant provision or provisions would, in the circumstances, require a creditor, lessor, or transferee or a class of creditors, lessors, or transferees to comply with requirements that are unduly onerous or burdensome.
9. **note** that the Minister of Commerce and Consumer Affairs advises that the statutory conditions referred to in recommendation 8 have been met.

Authorised for lodgement

Hon Dr Duncan Webb

Minister of Commerce and Consumer Affairs