



COVERSHEET

Minister	Hon Dr Duncan Webb	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Fit for purpose regulation of consumer credit	Date to be published	9 August 2023

List of documents that have been proactively released		
Date	Title	Author
2 August 2023	Fit for purpose regulation of consumer credit	Office of Minister of Commerce and Consumer Affairs
7 August 2023	Fit for purpose regulation of consumer credit CAB-23-MIN-0348.01	Cabinet Office
26 July 2023	Revised Regulatory Impact Statement: Applying the Credit Contracts and Consumer Finance Act in a proportionate way to buy now pay later lenders	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 Confidentiality.



Cabinet

Minute of Decision

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Fit for Purpose Regulation of Consumer Credit

Portfolio **Commerce and Consumer Affairs**

On 7 August 2023, following reference from the Cabinet Economic Development Committee (DEV), Cabinet:

- 1 **noted** that two sets of changes were made to the Credit Contracts and Consumer Finance Regulations 2004 (the Regulations) and Responsible Lending Code, in July 2022 and May 2023, which were intended to improve the workability of the Regulations;
- 2 **noted** that stakeholders have identified persistent issues with the regime, not addressed by changes recently made to address unintended impacts that were identified in a 2022 investigation into the 2021 reforms;
- 3 **noted** that there is benefit in investigating the regulatory scope and operation of the Regulations to reduce regulatory burden, achieve greater efficiency, and improve access to credit;
- 4 **noted** that the Minister of Commerce and Consumer Affairs (the Minister) has identified three options for next steps on the Credit Contracts and Consumer Finance Act 2003 (CCCFA), including:
 - 4.1 continuing with the status quo (Option 1);
 - 4.2 investigating the regulatory scope and operation of the legislation and regulations (Option 2); and
 - 4.3 investigating long-term legislative and regulatory changes to the overall design and objectives of the regime (Option 3);
- 5 **agreed** to review the regulatory scope and operation of the existing legislation and regulations (Option 2);
- 6 **invited** the Minister to report back to DEV to seek agreement to the terms of reference for the review, which shall reflect:
 - 6.1 the persistent issues noted in paragraph 2 above; and
 - 6.2 an intention to investigate the potential to better target settings to the risk profile of the lending, achieve greater efficiency, and improve access to credit;

- 7 **invited** the Minister to report back to DEV with a discussion document on options for improving the CCCFA, as part of this review, by early-2024;

Emergency exemptions

- 8 **noted** that in February 2023, Cabinet agreed to introduce a limited, temporary emergency exemption from certain obligations under the CCCFA for borrowers impacted by extreme weather events [CAB-23-MIN-0017, LEG-23-MIN-0025];
- 9 **noted** that Cabinet invited the Minister to report back on the implementation of the emergency exemption and whether a permanent exemption for emergency events was needed [CAB-23-MIN-0017];
- 10 **noted** that there appears to be consumer demand for a permanent exemption for emergency events;
- 11 **noted** that it is too early to assess the impact that the emergency exemption has had on consumer interests, but it does not appear to be contributing to increased hardship;
- 12 **agreed in-principle** to introduce a permanent CCCFA exemption by making regulations under section 138, **subject to** the report back in paragraph 13;
- 13 **invited** the Minister to seek policy decisions from DEV on the scope and trigger of a permanent exemption for emergency events by December 2023;

Exemption for local authority targeted rates schemes

- 14 **noted** that several local authorities provide schemes whereby ratepayers borrow relatively small sums for the installation of items such as insulation and heat pumps;
- 15 **noted** that these schemes fall within the scope of the CCCFA, despite the CCCFA being designed to primarily catch commercial lending activity, and that several local authorities have requested an exemption from the CCCFA;
- 16 **agreed** to fully exempt voluntary targeted rate scheme loans, administered by local authorities, from the CCCFA;
- 17 **agreed** to give effect to the decision in paragraph 16 above by making regulations under section 138 of the CCCFA;
- 18 **authorised** the Minister to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decision in paragraph 16 above;
- 19 **authorised** the Minister to make additional policy decisions and minor or technical changes to the policy decisions in the paper under DEV-23-SUB-0162, consistent with the general policy intent, on issues that arise in drafting the regulations;

Exemption from annual returns requirements if credit provided, on interim basis, by non-financial service business

- 20 **noted** that the CCCFA's annual reporting requirements may be duplicated where lending is done by an entity whose principal business is the provision of non-financial goods and services, and then assigning a loan to a finance provider;
- 21 **agreed** to 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;

- 22 **agreed** as a condition of the exemption in paragraph 21, that the overarching lender provides a breakdown of loans by the original dealer as part of its annual report;
- 23 **authorised** the Minister to issue drafting instructions to Parliamentary Counsel Office to give effect to the decision in paragraphs 21 and 22 above;

High-cost consumer credit

- 24 **noted** that the Minister will soon be commencing the statutory review of Part 2 Subpart 6 of the CCCFA pursuant to section 45L of that Act;

Buy now pay later (BNPL)

- 25 **noted** that in October 2022, the Cabinet Government Administration and Expenditure Review Committee agreed that BNPL contracts be declared to be consumer credit contracts under the CCCFA, with obligations that vary based on the value of the loan [GOV-22-MIN-0038];
- 26 **noted** that public consultation on an exposure draft of the Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2022 identified issues with the draft Regulations;
- 27 **rescinded** the decision to introduce a threshold, and instead:
- 27.1 **agreed** that all buy now pay later loans be exempt from the requirement to assess affordability, on the condition that they obtain comprehensive credit reporting information and have in credit policy in place;
- 28 **agreed** that BNPL loans should be exempt from the requirement to inquire into the suitability of the loan;
- 29 **agreed** that BNPL loans should be exempt from the requirement to disclose to the borrower their right to cancel the contract within five days, provided the lender instead discloses their cancellation policy (which complies with this right);
- 30 **noted** that the Minister intends to seek approval from the Cabinet Legislation Committee for the Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2023, which will give effect to the decisions referred to in paragraphs 27 to 29 above.

Rachel Hayward
Secretary of the Cabinet

Secretary's Note: This minute replaces DEV-23-MIN-0162. Cabinet agreed to the rescinding recommendation in paragraph 27.
