



COVERSHEET

Minister	Hon Andrew Bayly	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Financial Services Reforms – Approval to release of Discussion Documents	Date to be published	3 July 2024

List of documents to be proactively released

Date	Title	Author
May 2024	Financial Services Reforms: Approval to release Discussion Documents	Office of the Minister of Commerce and Consumer Affairs
May 2024	Overview of discussion documents	MBIE
13 May 2024	Financial Services Reforms: Release of Discussion Documents CBC-24-MIN-0031 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 reason of Confidential advice to Government.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Cabinet Business Committee

Financial Services Reforms: Approval to release discussion documents

Proposal

- 1 This paper seeks approval to release the following package of financial services reform discussion documents:
 - 1.1 *'Fit for purpose consumer credit legislation'*
 - 1.2 *'Fit for purpose financial services conduct regulation', and*
 - 1.3 *'Effective financial dispute resolution'.*

Relation to government priorities

- 2 The proposals in this paper respond to:
 - 2.1 the Coalition Agreement between the National Party and the ACT Party to 'Rewrite the Credit Contracts and Consumer Finance Act 2003 to protect vulnerable consumers without unnecessarily limiting access to credit'
 - 2.2 action point 14 of the Coalition Government's Action Plan for New Zealand (1 April to 30 June 2024) to 'Reform the CCCFA regime to improve access to credit for home buyers'
 - 2.3 the commitments to reform financial services regulation in the National Party's 100-point plan for rebuilding the economy, and
 - 2.4 the Government's commitment to cut red tape and provide regulatory clarity to make it easier to invest and grow New Zealand's capital markets.

Executive Summary

- 3 On 25 March 2024 Cabinet invited me to report back to the Cabinet Economic Policy Committee in May 2024 to seek approval to release discussion documents to consult on my financial services reform package (which, broadly speaking, seeks to simplify financial services regulation).
- 4 I now seek agreement to release the following package of discussion documents:

- 4.1 *'Fit for purpose consumer credit legislation'*, which discusses reforms to relevant legislation for transferring responsibility of the Credit Contracts and Consumer Finance Act 2003 (the CCCFA) to the Financial Markets Authority (FMA), broader reforms to the CCCFA, and high-cost credit provisions.
- 4.2 *'Fit for purpose financial services conduct regulation'*, which discusses reforms to financial markets conduct regulation and seeks feedback on proposed changes to the Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI) and Financial Markets Conduct Act 2013 (FMC Act).
- 4.3 *'Effective financial dispute resolution system'*, which discusses how financial dispute resolution schemes could be improved to become more effective and accessible for consumers.

Background

- 5 On 25 January 2024, Cabinet noted my intention to reform the regulatory landscape for financial markets in two phases [CBC-24-MIN-0013 refers]. Reform is needed because the succession of new rules and requirements over the past decade has led to a duplication of the roles of the Reserve Bank of New Zealand (RBNZ) and the FMA, unnecessary compliance burden for businesses, and overly prescriptive lending rules, among other things. I am interested in right-sizing regulation in this area to ensure outcomes for businesses and consumers are improved.
- 6 On 25 March 2024, Cabinet agreed to my proposals for phase one of this reform [EXP-24-MIN-0010 refers]. This involved revoking overly prescriptive affordability requirements, moving regulatory functions under the CCCFA from the Commerce Commission to the FMA, and more.
- 7 Cabinet also agreed to the scope of phase two of the reform and invited me to report back to the Cabinet Economic Policy Committee in May 2024 to seek approval to begin consulting on a number of issues.
- 8 I propose consulting on these issues through the three discussion documents tabled with this paper. This consultation will help us gather information about the costs and benefits of any changes to this legislation so we can achieve fit-for-purpose regulation.
- 9 These discussion documents and the options they propose are discussed in more detail below. They are attached in appendices and a summary of the options proposed by each of the discussion documents can be found in Appendix Four.

'Fit for purpose consumer credit legislation'

- 10 Stakeholders raised concerns with some of the requirements of the CCCFA, stating it is unduly burdensome and prevents lending to customers who should otherwise have access to credit. This document is split into three parts and addresses the concerns raised.

Part One: Legislative amendments to support the transfer of responsibility of the CCCFA to the FMA to enable the FMA to carry out its role effectively

- 11 To simplify and streamline the regulatory landscape, Cabinet decided to transfer regulatory responsibility for the CCCFA from the Commerce Commission to the FMA.
- 12 Part One considers how the CCCFA should align with other financial markets conduct regulation administered by the FMA. This involves considering:
- 12.1 the personal liability settings for directors and senior managers. The current settings have been criticised as resulting in overly conservative and risk adverse lending processes. The document proposes two options. Option one is to retain the due diligence duty (which says directors and senior managers must ensure the creditor complies with its duties and obligations) but remove restrictions on indemnities and insurance for liability. The other option considered is to remove the due diligence duty altogether for licensed lenders.
 - 12.2 the regulatory model. The CCCFA currently requires lenders to obtain fit and proper person certification from the Commerce Commission to operate in the market unless they already hold a licence from the Reserve Bank or the FMA. This certification process is different from the licensing regime used for many other financial services. The licencing regime has more comprehensive checks and eligibility criteria, and applies a more graduated set of regulatory tools, enabling a more proactive and risk-based regulatory approach. The document proposes transitioning to a market services licence regime to bring credit regulation in line with other financial services regulated by the FMA. The other option considered is to retain the current certification regime.

Part Two: Disclosure requirements

- 13 This part explores whether the current disclosure requirements under the CCCFA are fit for purpose. This includes considering:
- 13.1 what, when and how information must be disclosed. The document seeks feedback on how requirements can be simplified, and greater flexibility provided to lenders.
 - 13.2 options for penalties for incomplete disclosures by lenders. The document proposes to limit cases in which the lender has to refund the

costs of borrowing for any incomplete initial or variation disclosure to only material and misleading breaches.

Part Three: Review of the high-cost credit provisions

- 14 As mandated by section 45L of the CCCFA, this part reviews and reports on the operation and effectiveness of the high-cost credit provisions. It also discusses whether definition of high-cost consumer credit contracts should be expanded while amending some other high-cost credit provisions to create better outcomes for business and consumers.

'Fit for purpose financial services conduct regulation'

- 15 Conduct regulation for financial service providers has become increasingly complex over the past decade. This document explores how this regulation might be altered to become more coherent and streamlined by retaining the core structure of current conduct regulation but changing specific elements to provide clarity and flexibility. It is divided into two parts.

Part One: Options to reform CoFI

- 16 CoFI introduced new requirements for providers of financial services, aimed largely around ensuring they treat customers fairly. While I agree with the purpose and general approach of CoFI, I am interested in hearing from stakeholders on whether certain key aspects of the legislation could be improved.
- 17 This involves considering:
- 17.1 Minimum requirements for 'fair conduct programmes'. These are the core systems and processes institutions must have in place to ensure they are treating consumers fairly. In light of stakeholder concerns about prescription and compliance cost, the document proposes retaining the fundamental requirements but removing and simplifying some detail to make obligations less prescriptive and more flexible.
 - 17.2 The fair conduct principle. This defines what it means to treat consumers fairly. The document proposes that the current open definition of what fair treatment includes be maintained. A broad, flexible definition of fairness better promotes the conduct changes that the regime is intended to support and will better allow businesses to determine what is appropriate depending on context. While there is no case law on the fair conduct principle in New Zealand (as the legislation is not in effect yet), 'fairness' is not a new concept. For example, it applies as a duty in Australia to all financial service providers and has been interpreted by Australian courts as covering the ethical performance of functions in accordance with professional standards, to be assessed having regard to all relevant circumstances bearing upon the provision of the financial services in question.

Part Two: Options to enhance regulatory framework and powers

- 18 This part of the document explores options to adjust the broader regulatory framework to ensure that the FMA and the RBNZ work well together and to minimise compliance costs on institutions.
- 19 It seeks feedback on the following proposals:
- 19.1 amending the FMC Act to require the FMA to issue a single ‘conduct’ licence covering different market services (rather than separate licences for each service)
 - 19.2 enabling the FMA and the RBNZ to rely on an assessment by the other regulator where appropriate, eg fit and proper person requirements for licensing.
- 20 The document also seeks feedback on whether the FMA should be given additional powers which are standard practice for conduct regulators internationally and align with equivalent RBNZ powers. They are powers to:
- 20.1 approve changes in control/ownership of licensed firms (rather than relying on informal conversations or scrutiny after the fact)
 - 20.2 conduct on-site inspections without consent or notice in limited circumstances (eg where giving notice would defeat the purpose of the visit or where urgency is required to prevent potential consumer harm), and
 - 20.3 require firms to provide ‘expert person’ reports to assist information-gathering (eg where technical expertise is required to help the FMA interpret information or identify potential non-compliance).
- 21 These powers could ensure the FMA can engage proactively and respond proportionately to harm (without needing to resort to formal investigation and/or enforcement action). However, safeguards would need to be put in place to balance any proposed power with the rights and freedoms of regulated firms, and the discussion document seeks feedback on this. For example, the scope would likely be limited to accessing business premises at a ‘reasonable time’.

‘Effective financial dispute resolution’

- 22 Anyone providing financial services to retail clients must belong to an approved financial dispute resolution scheme. This provides an important avenue for consumers to seek redress. There are currently four approved schemes, each with limited oversight of their performance. This can create issues for consumers in terms of access. It can also make it more difficult for government to set standards for these schemes and monitor their performance.
- 23 This document discusses how the current model might be improved. These options include:

- 23.1 improving consumer awareness and access to the schemes, (through, for example, requiring a 'single front door' to access a scheme and strengthening the requirement on financial service providers to communicate with consumers about the availability of dispute resolution), and
- 23.2 enhancing the effectiveness of the schemes (through, for example, requiring schemes to report on performance targets, setting stronger terms of reference for independent reviews across all schemes, setting further regulation to provide for more consistency across the schemes' rules and/or further ability for the government to appoint scheme board members).

Cost-of-living Implications

- 24 This paper does not include any proposals that would directly impact on New Zealanders' cost-of-living. However, the CCCFA reform is likely to mean lenders can make changes to their affordability processes which may mean consumers which previously were unable to access credit could be given access. This could have a positive impact on some consumer's ability to weather the current cost-of-living crisis, by improving access to credit.

Financial Implications

- 25 The release of the attached discussion documents does not have any financial implications.
- 26 The options included in the discussion document will have financial implications if implemented. Confidential advice to Government

Legislative Implications

- 27 The release of the three discussion documents does not raise any legislative implications. However, most options discussed across the three discussion documents would require legislative or regulatory changes to be implemented.

Impact Analysis

Regulatory Impact Statement

- 28 Treasury granted Regulatory Impact Statement (RIS) exemptions for these three discussion documents on the basis they could each stand as an interim RIS. The exemptions were subject to an internal quality assurance panel at the Ministry of Business, Innovation and Employment confirming these documents are capable of functioning as an interim RIS.

- 29 The Ministry of Business, Innovation and Employment's Quality Assurance Panel has reviewed the three discussion documents Fit for purpose consumer credit legislation, Fit for purpose conduct regulation and Effective dispute resolution. The Panel confirms that the Discussion Documents can function as interim regulatory impact assessment statements. The Discussion Documents are likely to lead to effective consultation and support the delivery of Regulatory Impact Analysis to inform subsequent decisions.

Climate Implications of Policy Assessment

- 30 This paper does not seek policy decisions and therefore there are no climate implications.

Population Implications

- 31 This paper does not seek policy decisions and therefore there are no population implications.

Human Rights

- 32 This paper does not seek policy decisions and therefore there are no human rights implications.

Use of external Resources

- 33 No external resources such as contractors or consultants have been engaged and remunerated in relation to the proposals contained in this paper or the policy development process.

Consultation

- 34 I have consulted on these three discussion documents with the Treasury, the Commerce Commission, the FMA, the RBNZ and my fellow Ministers and coalition partners. Their feedback has been incorporated into the documents.
- 35 The Parliamentary Counsel Office has been consulted on the legislative implications of the policy proposals contained in the three discussion documents.

Communications

- 36 The release of the three discussion documents will be communicated through a press release. The consultation period is intended to be four weeks.

Proactive Release

- 37 I intend to proactively release this paper within 30 days of decisions being confirmed by Cabinet.

Recommendations

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

- 1 **note** Cabinet previously invited the Minister of Commerce and Consumer Affairs to report back to seek approval to consult on:
 - 1.1 reforms to relevant legislation that are necessary and desirable to support transfer of responsibility of the Credit Contracts and Consumer Finance Act 2003 (CCCFA) to the Financial Markets Authority;
 - 1.2 broader reforms to the CCCFA to address known problems and areas of under-performance;
 - 1.3 the CCCFA's high-cost credit provisions, as part of the statutory review required by the CCCFA;
 - 1.4 reforms to the Financial Markets (Conduct of Institutions) Amendment Act 2022 and Financial Markets Conduct Act 2013; and
 - 1.5 improving the effectiveness of dispute resolution;
- 2 **note** the Minister of Commerce and Consumer Affairs intends to consult on the issues raised in paragraph 1 through three discussion documents, each of which will focus on a separate topic area and set of stakeholders;
- 3 **note** the discussion document '*Fit for purpose consumer credit legislation*' discusses issues with the CCCFA regime and sets out options to resolve those issues, including in relation to:
 - 3.1 liability settings for directors and senior managers
 - 3.2 the regulatory model
 - 3.3 what and when information should be disclosed
 - 3.4 how much information must be disclosed
 - 3.5 penalties for incomplete disclosure, and
 - 3.6 high-cost credit;
- 4 **note** the discussion document '*Fit for purpose financial services conduct regulation*' discusses issues with the regulation of conduct and sets out options to resolve those issues, including in relation to:
 - 4.1 the minimum requirements for fair conduct programmes
 - 4.2 the fair conduct principle
 - 4.3 conduct licences issued by the Financial Markets Authority
 - 4.4 the ability of the Financial Markets Authority and the Reserve Bank of New Zealand to rely on an assessment by the other regulator, and
 - 4.5 the Financial Markets Authority's toolkit;

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- 5 **note** the discussion document '*Effective financial disputes resolution*' discusses issues with the provision of financial dispute resolution services in New Zealand and sets out options to improve the system in relation to:
 - 5.1 improving consumer awareness and access to the schemes
 - 5.2 improving scheme effectiveness, through measures which enhance accountability and consistency across schemes;
- 6 **approve** the release of the discussion documents referred to in paragraphs 3 through 5;
- 7 **approve** the release of minor accompanying documents which are intended to be published alongside the discussion documents referred to in paragraphs 3 through 5, such as summary or explanatory documents;
- 8 **authorise** the Minister of Commerce and Consumer Affairs to make minor and technical changes to the discussion papers referred to in paragraph 6 and any minor accompanying documents referred to in paragraph 7 prior to their release;

Confidential advice to Government

Authorised for lodgement

Hon Andrew Bayly

Minister of Commerce and Consumer Affairs

Appendices

Appendix 1: Discussion Document: Fit for purpose consumer credit legislation

Appendix 2: Discussion Document: Fit for purpose financial services conduct regulation

Appendix 3: Discussion Document: Effective financial disputes resolution

Appendix 4: Overview of discussion documents



The financial services reforms are aimed at:

- a. Simplifying and streamlining regulation of financial services
- b. Removing undue compliance costs for financial markets participants
- c. Ensure confident and informed participation of consumers and businesses in financial markets.

This will benefit both the sector and consumers by ensuring New Zealanders can safely and freely access the financial products and services they need.

Preferred options are indicated in **bold**
Options are mutually exclusive unless signalled otherwise

Part One – enabling the FMA to be an effective regulator for credit

A. Liability settings	A1: Retain due diligence duty but remove restrictions on indemnities and insurance	A2: Remove due diligence duty for licensed lenders	A3: Maintain status quo
B. Regulatory Approach	B1: Transition to a market services licences and apply all FMA core powers and licensing powers to consumer credit		B2: Maintain fit and proper person certification for directors and senior managers and add FMA core tools for enforcing regulatory perimeter e.g. stop orders

Part Two – disclosure requirements

C. Amend disclosure requirements	C1: Maintain status quo (disclose a lot of information)	C2: Take a more targeted approach to identifying relevant information that will help consumers’ decision-making	C3: Streamline and clarify information required to be disclosed without changing the approach	
D. How information must be disclosed	D1: Maintain status quo (in person, by post, by electronic methods specified by the borrower)		D2: Enable greater flexibility in disclosure methods, by lifting conditions for electronic disclosure	
E. Penalties for incomplete disclosure	E1: Limit section 99(1A) to breaches that are material or have potential to mislead	E2: Limit on total liability under section 99(1A)	E3: Repeal sections 99(1A), 95A and 95B	E4: Maintain status quo

Part Three – high-cost credit

F. Options to amend the high-cost credit provisions	F1: Expand the definition to contracts with an interest rate of 30% and above	F2: Expand the definition contracts with an interest rate of 45% and above	F3: Maintain status quo	F4: Other high-cost provisions (eg total cost of credit cap, daily rate of charge, repeat borrowing provisions)
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Part 1: Streamline CoFI Act requirements

A. Fair conduct programme – minimum requirements	A1: Remove/amend some minimum requirements for fair conduct programmes	A2: Remove all minimum requirements for fair conduct programmes	A3: Add additional minimum requirements, e.g. complaints process, fees and charges (could be applied together with options A1 or A4)	A4: Maintain status quo – no changes to minimum requirements
B. Fair conduct principle	B1: Maintain status quo – No changes to fair conduct principle		B2: Make the fair conduct principle definition exhaustive.	

Part 2: Streamline conduct regulation and strengthen “twin peaks” model

C. Single conduct licence	C1: FMA must issue a single conduct licence		Status quo – FMA may issue multiple licences for different services	
D. Allow FMA/RBNZ to use each other's assessments	D1: Amend legislation to enable the FMA/RBNZ to rely on assessment by the other regulator in some circumstances, e.g. fit and proper person test		Status quo – FMA/RBNZ may rely on assessments by other regulator in some circumstances but no explicit legislative provision	
E. Effective tools for the FMA	E1: Change in control – require licensed firms to obtain approval from the FMA before any change in control (ownership)	E2: Enable the FMA to conduct on-site inspections without notice in limited circumstances to verify <i>And/or</i> compliance with regulatory requirements	E3: Expert report power to allow FMA to require a diagnostic report completed by a qualified person <i>And/or</i> or entity	

DRS	A. Improve effectiveness of schemes	A1: Monitor the impact of new regulations which align the schemes’ rules <i>And/or</i>	A2: Provide greater support (eg a ‘single front door’, or strengthen communication requirement)* <i>And/or</i>	A3: Enhance oversight of scheme performance*
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