



## COVERSHEET

<b>Minister</b>	Hon Andrew Bayly	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	Financial services reforms: policy decisions	<b>Date to be published</b>	5 September 2024

<b>List of documents proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
28 August 2024	Cabinet Paper: Financial Services Reforms: policy decisions	Office of the Minister of Commerce and Consumer Affairs
28 August 2024	Cabinet Minute: ECO-24-MIN-0178 – Financial Services Reforms Policy Approvals	Cabinet Office
August 2024	Fit for purpose consumer credit law regulatory impact statement	MBIE
August 2024	Buy Now, Pay Later regulatory impact statement	MBIE
August 2024	Fit for purpose financial services conduct regulation regulatory impact statement	MBIE
July 2024	Submissions made on the Fit for purpose consumer credit law discussion document	Stakeholders
July 2024	Submissions made on the Fit for purpose conduct regulation discussion document	Stakeholders
July 2024	Submissions made on the Effective financial dispute resolution discussion document	Stakeholders

### **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 reasons of confidential advice to government and commercial information.



# Cabinet Economic Policy 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.*

### Financial Services Reforms: Policy Approvals

**Portfolio**                      **Commerce and Consumer Affairs**

On 28 August 2024, the Cabinet Economic Policy Committee:

#### Background

- 1        **noted** that in March 2024, the Cabinet Expenditure and Regulatory Review Committee agreed to a number of regulatory amendments to the financial services regime, comprising phase one of the proposed reforms [EXP-24-MIN-0010];
- 2        **noted** that in May 2024, the Cabinet Business Committee approved the release of discussion documents on phase two of the proposed reforms, and invited the Minister of Commerce and Consumer Affairs to report back in August 2024 on the outcome of the consultation and proposed policy changes [CBC-24-MIN-0031];

#### Consumer credit legislation

- 3        **agreed** to align consumer credit regulation with the financial markets conduct regime by:
  - 3.1        removing the certification regime under the Credit Contracts and Consumer Finance Act 2003 (CCCFA) and, in its place, applying the market services licence regime to providers of consumer credit contracts by adding it as a licensed market service under Part 6 of the Financial Markets Conduct Act 2013 (FMC Act);
  - 3.2        exempting entities currently exempted from certification under the Credit Contracts and Consumer Finance Regulations 2004 from needing to hold a market services licence;
  - 3.3        having the fair dealing and restricted communication provisions in Part 2 of the FMC Act apply to consumer credit (rather than the Fair Trading Act 1986), and CCCFA disclosure breaches being grounds for a stop order;
- 4        **agreed** to provide for the effective transfer of the regulator function to the Financial Markets Authority (FMA), including the ability for the FMA to continue proceedings, Confidential advice to Government

- 5 **agreed** to deem all creditors who are currently required to be certified, or are exempt from certification on the basis they are licensed by the FMA or Reserve Bank of New Zealand (Reserve Bank), to have a market service licence as would otherwise be required by the decision in paragraph 3.1 above;
- 6 **authorised** the Minister of Commerce and Consumer Affairs to approve other changes to the CCCFA, FMC Act, the Financial Markets Authority Act 2011 (FMA Act) and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act) that are necessary or desirable to reflect Cabinet's decision to transfer all regulatory functions under the CCCFA to the FMA;
- 7 **agreed** to remove the due diligence duty and attendant personal liability for all consumer credit providers (section 59B) on the basis that the duty duplicates equivalent obligations under the FMC Act, they will remain subject to personal liability where the individual is involved in the contravention, and these providers will be monitored by the FMA under the licensing regime;
- 8 **agreed** to limit the effect of section 99(1A) of the CCCFA (that a borrower is not liable for the costs of borrowing in relation to a period of non-compliant disclosure) to cases where a person, including the FMA, can show the borrower was harmed by the failure to make initial or agreed variation disclosure;
- 9 **agreed** to make regulations under section 138(1)(ab) of the CCCFA exempting Buy Now Pay Later lenders from having to comply with provisions in the CCCFA relating to unreasonable fees (such as sections 41 and 44A), with no conditions attached;
- 10 **agreed** to keep the current definition of a high-cost credit contract in section 45C of the CCCFA at an interest rate of 50 percent or more;
- 11 **noted** that the Minister of Commerce and Consumer Affairs intends to come back to Cabinet later in 2024 to seek additional policy decisions on consumer credit;

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### **Financial services conduct regulation**

- 13 **agreed** to amend the fair conduct programme minimum requirements in the FMC Act (as amended by the Financial Markets (Conduct of Institutions) Amendment Act 2022) to:
- 13.1 remove the requirement that fair conduct programmes include policies, processes, systems and controls for enabling the financial institution to meet all of its legal obligations to consumers;
  - 13.2 adjust the requirements relating to training, supervising and monitoring employees to reduce the level of prescription;
  - 13.3 remove the requirement to include methods for regularly reviewing and systematically identifying deficiencies in the effectiveness of the programme;
  - 13.4 insert requirements for fair conduct programmes to include policies, processes, systems and controls relating to applying, disclosing, and reviewing fees and charges, and recording and resolving consumer complaints;

- 14 **agreed** to amend the Financial Markets Conduct Regulations 2014 (FMC Regulations) to make equivalent changes to the minimum requirements for the fair conduct programmes of Lloyd's managing agents;
- 15 **agreed** to amend the FMC Act to:
- 15.1 require the FMA to issue a single licence covering the market services that a firm has been approved to provide under Part 6 rather than having the ability to issue separate licences;
- 15.2 provide that existing holders of licences for the provision of market services under Part 6 are deemed to hold a single licence;
- 16 **agreed** to amend the FMC Act to enable the FMA to rely on work done or assessments carried out by the Reserve Bank when performing its functions on matters relating to financial institutions where appropriate;
- 17 **agreed** to amend the FMA Act to provide that the FMA will have a power, at any reasonable time, to, without prior notice, enter and remain on the premises of a financial markets participant for the purpose of conducting an on-site inspection to carry out market conduct monitoring of the financial market participant's compliance with conduct obligations;
- 18 **agreed** to amend the FMC Act to require the proposed controller of a firm licensed under Part 6 of that Act to obtain regulatory approval from the FMA prior to the proposed change in ownership or control of the licensed firm taking effect;
- 19 **Confidential advice to Government**

### Technical amendments to the FMC Act, FMA Act, and FMC Regulations

- 20 **noted** that the paper under ECO-24-SUB-0178 provides an opportunity to reduce the regulatory burden and compliance cost on businesses by addressing a number of technical issues in the FMC Act, the FMA Act, and the FMC Regulations;
- 21 **agreed** to the minor policy changes set out in Appendix 1 to the paper under ECO-24-SUB-0178;
- 22 **noted** that the policy changes to FMC Regulations will be progressed separately through an Order in Council;

### Financial dispute resolution schemes

- 23 **agreed** to amend the FSP Act to:
- 23.1 require that independent reviews carried out by approved financial disputes resolution schemes be undertaken by a reviewer determined by the Minister responsible for the FSP Act;
- 23.2 provide the Minister responsible for the FSP Act with a power to set terms of reference for such reviews, and the form and manner of the resulting report;

23.3 provide the Minister responsible for the FSP Act with a power to direct the schemes to undertake the review at a particular time;

24 **noted** that the Minister of Commerce and Consumer Affairs will report back to Cabinet on issues relating to the governance arrangements of, and enhancing the reporting metrics used by, the financial dispute resolution schemes later in 2024;

25 **noted** that the Minister of Commerce and Consumer Affairs is investigating non-regulatory options for improving access and awareness of financial dispute resolution, including:

25.1 options for an online portal that directs consumers to the correct scheme;

25.2 advising the schemes of the Minister’s expectation they make improvements in this area, in line with schemes having to comply with a principle of accessibility under legislation;

26 **noted** that:

26.1 many stakeholders proposed consolidating or reducing the number of schemes;

26.2 this is a significant step, and the Minister of Commerce and Consumer Affairs would prefer that it be looked at in future, should any major issues appear with the current scheme model;

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**Financial implications**

29 **noted** that in March 2024, the Cabinet Expenditure and Regulatory Review Committee:

29.1 agreed to transfer all regulatory functions under the CCCFA from the Commerce Commission to the FMA;

29.2 noted the Minister of Commerce and Consumer Affairs will recommend fiscally neutral transfer within Vote Business, Science and Innovation for 2025/2026 and outyears to give effect to the transfer of those functions;

[EXP-24-MIN-0010]

30 **approved** the following fiscally neutral adjustments totalling \$28.410 million over the forecast period to provide for the transfer of all regulatory functions under the CCCFA from the Commerce Commission to the FMA, with no impact on the operating balance and net core Crown debt:

	\$m – increase / (decrease)				
<b>Vote Business, Science and Innovation</b> <b>Minister for Commerce and Consumer Affairs</b>	<b>2024/25</b>	<b>2025/26</b>	<b>2026/27</b>	<b>2027/28</b>	<b>2028/29 &amp; Outyears</b>
<b>Multi-Category Expenses and Capital Expenditure:</b> Commerce and Consumer Affairs: Enforcement of General Market Regulation (MCA) Non-Departmental Output Expenses: Enforcement of Consumer Regulation	-	(5.629)	(5.779)	(5.779)	(5.779)
<b>Multi-Category Expenses and Capital Expenditure:</b> Services and Advice to Support Well-functioning Financial Markets (MCA) Non-Departmental Output Expenses: Performance of Investigation and Enforcement Functions	-	6.514	6.664	6.664	6.664
<b>Multi-Category Expenses and Capital Expenditure:</b> Commerce and Consumer Affairs: Litigation Funds (MCA) Non-Departmental Other Expenses: Commerce Commission Internally-Sourced Litigation	-	(0.885)	(0.885)	(0.885)	(0.885)
<b>Multi-Category Expenses and Capital Expenditure:</b> Commerce and Consumer Affairs: Litigation Funds (MCA) Non-Departmental Other Expenses: Commerce Commission Externally-Sourced Litigation	-	(0.476)	(0.476)	(0.476)	(0.476)

<b>Non-Departmental Other Expenses:</b>					
Commerce and Consumer Affairs: Financial Markets Authority Litigation Funds	-	0.476	0.476	0.476	0.476

- 31 **noted** that the Commerce Commission incurred a CCCFA-specific deficit for the Fit and Proper Person certification system which was to be paid for by third- party fees, and that this is estimated to be \$0.564 million on 30 June 2025;
- 32 **noted** that the Commerce Commission will not be able to continue to collect Fit and Proper Person certification fees with which to pay down the \$0.564 million deficit once the CCCFA function transfers to the FMA and changes to a licensing scheme;
- 33 **noted** that the deficit can be paid from the Commerce Commission’s uncommitted cash reserves, which is currently estimated to be \$1.609 million;

**Further policy decisions**

- 34 **invited** the Minister of Commerce and Consumer Affairs to report back to Cabinet later in 2024 to seek any further policy decisions as needed;

**Legislative implications**

- 35 **authorised** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 36 **authorised** the Minister of Commerce and Consumer Affairs to make additional policy decisions and minor or technical changes, consistent with the policy intent of the paper under ECO-24-SUB-0178, on issues that arise during the drafting of the Bills and regulations.

Rachel Clarke  
Committee Secretary

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**Present:**

Hon David Seymour  
Hon Nicola Willis (Chair)  
Hon Brooke van Velden  
Hon Louise Upston  
Hon Matt Doocey  
Hon Simon Watts  
Hon Melissa Lee  
Hon Penny Simmonds  
Hon Nicola Grigg  
Hon Andrew Bayly  
Hon Andrew Hoggard  
Hon Mark Patterson  
Simon Court MP  
Jenny Marcroft MP

**Officials present from:**

Office of the Prime Minister  
Officials’ Committee for ECO