

Credit Contracts and Consumer Finance Amendment Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Credit Contracts and Consumer Finance Amendment Bill and recommends by majority that it be passed. We recommend all amendments unanimously.

Introduction

The Credit Contracts and Consumer Finance Amendment Bill is one of three bills that the Government is progressing as a package of reforms to financial services regulation. The other bills are the Financial Markets Conduct Amendment Bill and the Financial Service Providers (Registration and Dispute Resolution) Amendment Bill. The reforms aim to simplify and streamline regulation of financial services, remove undue compliance costs for financial markets participants, and improve outcomes for consumers.

The bill is an omnibus bill that would primarily amend the Credit Contracts and Consumer Finance Act 2003. It would also amend the Financial Markets Conduct Act 2013, the Financial Markets Authority Act 2011, the Financial Service Providers (Registration and Dispute Resolution) Act 2008, the Search and Surveillance Act 2012, and associated secondary legislation.

About the Credit Contracts and Consumer Finance Act

The Credit Contracts and Consumer Finance Act 2003 (CCCFA) aims to protect the interests of consumers when borrowing money, leasing certain goods, and selling land under a buy-back transaction. It does this in a number of ways, including through disclosure requirements, lender responsibility principles, hardship requirements, and rules relating to fees, interest, and repossession of secured property.

The Commerce Commission is currently responsible for enforcing the CCCFA.

About the bill

The bill would:

- transfer regulatory responsibility for credit contracts and consumer finance from the Commerce Commission to the Financial Markets Authority
- align certain aspects of the CCCFA with other financial markets legislation to support a consistent and proportionate regulatory system, including transitioning lenders from a certification to a licensing regime
- change consequences for lenders who fail to make certain required disclosures where the failure to disclose did not harm the borrower
- remove features of the CCCFA, such as the due diligence duty for directors and senior managers, that do not fit with the new regulatory approach
- make a retrospective change to deal with a historical issue (which is currently the subject of litigation) to ensure the courts are able to determine what amount of the costs of borrowing (if any) should be awarded to affected borrowers on the basis of what is just and equitable.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of good legislative design. We wish to bring the House's attention to an issue relating to clause 15 in proposed new Schedule 1AA, which we discuss in more detail later in this commentary.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Failure to make required disclosure

The CCCFA requires lenders to make certain disclosures to borrowers about a credit contract. There are two key disclosure requirements relevant to the consequences the bill would change: initial disclosure (required by section 17 of the CCCFA) and agreed variation disclosure (required by section 22 of the CCCFA). Initial disclosure provides borrowers with information such as the cost of the credit contract, the obligations the lender and borrower have under the credit contract, and the borrower's rights and ability to access a dispute resolution scheme when entering into a credit contract. Variation disclosure provides borrowers with information about the nature and impact of an agreed change to the contract.

Under the CCCFA, a borrower is not liable for the costs of borrowing in relation to a period during which the lender has failed to make a disclosure as required by section 17 or 22.

Court orders about costs of borrowing following failure to make disclosure

Clause 27 of the bill as introduced would insert new sections 94AA–94AC into the CCCFA. These new sections would replace section 99(1A) of the CCCFA.

Proposed new sections 94AA–94AC would allow the court, on application of a person or the FMA, in a proceeding under sections 93 and 94 of the CCCFA, to make an order that a borrower is not liable for all or part of the costs of borrowing. The order may relate to costs of borrowing accrued over any period during which the lender had failed to comply with their disclosure obligations. As introduced, the bill would require the court to first be satisfied of three things before it could make such an order:

- that the borrower had suffered loss or damage by the failure to make disclosure (section 93)
- that it is just and equitable to make the order (new section 93AA(2)(a))
- that “none of the other orders under section 94 that it proposes to make, or any combination of those orders, is sufficient to provide a just and equitable remedy for the breach” (new section 94AA(2)(b)).

The third requirement presents an unnecessary barrier to borrowers, or the FMA, obtaining this remedy. Accordingly, we recommend removing the third requirement, as set out in proposed new section 94AA(2)(b). It is our view that the second requirement is broad enough and that the court can already have regard to any matters it considers appropriate, such as the availability of other remedies.

Retrospective provision—disclosure failure between June 2015 and December 2019

Reforms made to the CCCFA in December 2019 gave the court explicit discretion to extinguish or reduce the effect of section 99(1A) on application by the lender if the court considers it “just and equitable” to do so in a proceeding taken under sections 95A or 95B of the CCCFA. These reforms reflected the view that full forfeiture of the costs of borrowing from the lender to all borrowers affected by a disclosure breach may be excessive, depending on the nature and circumstances of the breach.

Section 95A provides that the court may extinguish or reduce the effect of a failure to make disclosure under section 99(1A). Section 95B sets out the guidelines for doing so. This is intended to ensure that the courts can determine consequences for disclosure failures on the basis of what is just and equitable in the circumstances, irrespective of when the failure occurred.

Clause 47 of the bill as introduced would insert new clause 15 of Schedule 1AA. New clause 15 provides for sections 95A and 95B to apply to all agreements entered into on or after 6 June 2015. This has retrospective effect. This retrospective change would apply to existing proceedings, which—under new clause 15(4) of Schedule 1AA—would include the class action lawsuit *Simons & Ors v ANZ Bank New Zealand Limited and ASB Bank Limited CIV 2021-404-1190*. The plaintiffs are seeking

remedy from ANZ and ASB for alleged breaches of disclosure rules relating to their home loans. These provisions would come into force on the day after Royal assent.

We received submissions from 1,543 individuals or organisations opposing this retrospective change. They included submissions from members of the class action lawsuit, as well as legal professionals, academics, and experts in constitutional law submitting as concerned individuals. Almost all of them particularly oppose the application of the amendment to active litigation and recommend that the case be allowed to continue to run unaffected. We received submissions from 15 individuals and organisations in support of the retrospective changes.¹

Existing proceedings

During our consideration of the bill, we considered three possible options for how it deals with existing litigation:

- The first option would explicitly exclude the class action against ANZ and ASB from the effects of the retrospective provision.
- The second option would explicitly exclude all existing proceedings from the effects of the retrospective litigation.
- The third option would apply the retrospective clause to all existing proceedings, which is the approach taken in the bill as introduced.

Ultimately, we decided that the class action against ANZ and ASB should be explicitly excluded from the effects of the retrospective provision (the first option above). We heard from submitters that no proceedings have been brought against other lenders relying on the historical law at issue in the class action against ANZ and ASB, and we see no reason to expect such proceedings while the bill is before the House.

Schedule 1 of the bill as introduced would insert new clause 15 in Schedule 1AA of the Act, setting out how sections 95A and 95B would apply court powers to existing agreements that had been affected by a disclosure breach between June 2015 and December 2019.

New clause 15(3) would exclude certain things from being affected by this retrospective change. After new clause 15(3)(b), we recommend inserting:

- (c) the proceeding *Simons & Ors v ANZ Bank New Zealand Limited and ASB Bank Limited* CIV 2021-404-1190.

Consequently, we recommend amending clause 15(4)(b) to exclude this class action lawsuit from the definition of “existing proceeding”.

This change would exclude the proceeding from the bill’s new retrospective application of court powers in sections 95A and 95B of the CCCFA. New clause 15(1) would still apply to other existing proceedings that were started, but not settled, discon-

¹ See pp 7–10 of the Departmental Report.

tinued, or finally disposed of by a court of first instance, before the new provisions came into force.

During our consideration of this bill, media reports announced that ASB has agreed to pay \$135,625,000 to settle the class action against the bank for alleged breaches of the CCCFA.² We note that media reports state that the settlement is subject to approval by the High Court and that the process may take several months.

Our decision to carve out the existing proceedings against ANZ and ASB is not intended to have any effect on the ASB settlement. Clause 15(3)(a) already makes it clear that the provisions do not affect any settlement agreement. We have no intention and no desire to affect any settlements.

Ability for FMA to make interim orders pending exercise of its power

Under the Financial Markets Conduct Act, the FMA can make an interim order when considering the exercise of the designation power in respect of certain securities or services.³ This short, time-bound order prevents a specific product or service from launching while the regulator is actively considering making a declaration and working to get the relevant secondary legislation in place.

Aligning these powers with the CCCFA

The bill as introduced would transfer to the FMA existing powers under the CCCFA to make certain declarations, including to “call in” facilities or arrangements that are not technically consumer credit contracts. We support giving the FMA this decision-making role. We also consider it important to align settings for declarations made under the CCCFA with those in the Financial Markets Conduct Act. We recommend amending the bill to include an equivalent power for the FMA to make an interim order on substantially the same terms and constraints as under the Financial Markets Conduct Act.⁴ These constraints include:

- limits on the duration of the order—no later than 15 working days after the date of the order or 30 working days if the FMA considers it is not reasonably practicable to complete its consideration in that period
- a requirement that the FMA considers that an interim order is desirable in the public interest and is not broader than reasonably necessary
- requirements to notify affected parties.

To do this, we recommend inserting new section 138CA (see clause 46). This power to make an interim order could be used to prevent harm to consumers while the FMA

² ASB and plaintiffs to settle CCCFA class action, 7 October 2025.

³ The FMA’s designation power is set out in Subpart 3 of Part 9 of the Financial Markets Conduct Act.

⁴ Sections 565 and 566 of the Financial Markets Conduct Act.

was taking the steps necessary to consider making a declaration and working to get secondary legislation in place.

Failure to comply with an interim order

We also recommend making failure to comply with an interim order without a reasonable excuse an offence, as in proposed new section 138CA(7), inserted by clause 46. This includes a maximum fine of \$300,000. It is our view that an offence for non-compliance, equivalent to that proposed for stop orders and direction orders, is necessary to protect the integrity of the interim orders.

Delineation of mobile retail and mobile lending for licensing purposes

Section 388 of the Financial Markets Conduct Act sets out when a provider of market services needs to be licensed. Clause 53 of the bill as introduced would add “mobile trader” to this list. To minimise the burden on creditors and mobile traders who are already certified and some who are exempt from certification—such as those already licensed or registered by the FMA or the Reserve Bank of New Zealand—the bill would treat them as holding a licence for the relevant market service.

Two possible business models for mobile traders are recognised by the CCCFA:⁵

- One is where the mobile trader supplies goods under a credit sale. Under section 16A, these mobile traders are considered to be lenders, and their credit sales are regulated by the CCCFA as credit contracts. The bill as introduced would require this type of mobile trader to hold two types of licence: one for being a mobile trader, and another for being a creditor under a consumer credit contract.
- The other model involves one part of the business supplying goods that are to be financed by a credit contract provided by another part of the business (an “associated party”). The first party would be a mobile trader who is not affected by section 16A, and the second would be a traditional lender who is regulated by the CCCFA. The bill as introduced would require this type of mobile trader to hold a market services licence for the sale of consumer goods to an individual. The associated party would also be required to hold a market services licence.

We recommend targeting the requirement to hold a market services licence only at lending or credit sales by mobile traders (and not any associated party who is engaged only in the activity of providing consumer goods). To do this, we recommend deleting “(f) acting as a mobile trader” from clause 53.

We do not consider it appropriate to apply a licensing and supervision regime to a party that only provides goods to consumers when the protections of the CCCFA do

⁵ “Mobile trader” is defined in section 5 of the CCCFA.

not apply to them. We are not aware of any mobile traders operating under this model at present. For any that may exist in the future, there will always be a party who is a lender subject to the CCCFA's licensing regime. Given this, and because lenders are always responsible for the conduct of their agents, we do not think our proposed change would create any incentive for mobile traders to enter the market under this model.

New Zealand Labour Party and Green Party of Aotearoa New Zealand differing view

Labour Party and Green Party members support efforts to strengthen consumer protections and simplify enforcement under the Credit Contracts and Consumer Finance Act (CCCFA). This legislation should be an opportunity to improve disclosure rules so that consumers are treated with dignity, receive clear information about their borrowing, and are protected from confusing and unenforceable provisions that waste time and undermine trust in lenders.

However, as introduced, the bill includes a retrospective change that would extinguish the rights of borrowers to pursue claims for past disclosure breaches between 2015 and 2019. This change would apply to proceedings already before the courts, including the class action brought by mortgage holders against ANZ and ASB for admitted failures to comply with disclosure obligations.

Labour and Green members strongly oppose the retrospective provision. It applies to active proceedings. Retrospective lawmaking that affects ongoing litigation undermines the rule of law and the principle that legislation should not alter the legal consequences of past conduct. It sends a signal that large and powerful institutions can expect this National Government to rewrite the rules after the fact to limit their accountability.

The disclosure requirements at issue were introduced in 2015 by a National Government that described them as essential to protecting vulnerable consumers. Parliament made them strict to ensure that lenders respect their customers, act transparently, and treat borrowers as entitled to fair dealing and clear information about their obligations. When these protections are weakened retrospectively, it robs consumers not only of financial redress but most importantly of their dignity as equal parties before the law.

Hundreds of submitters opposed the retrospective clause, including legal academics, consumer advocates, and members of the public directly affected by the litigation. Their concern was simple and shared by Labour and Green MPs: if Parliament intervenes to protect the interests of banks at the expense of ordinary borrowers, public confidence in both the legal system and the fairness of our democracy will be eroded.

Labour and Green members remain hopeful that Government MPs will consider Labour's suggested amendments to remove retrospectivity. The effect would be to exclude existing proceedings from the bill. Such changes would preserve the integrity of the law and the dignity of consumers while allowing this legislation to achieve its wider purpose of improving protections for all borrowers.

Commencement date

Clause 2 of the bill as introduced provides that most provisions would come into force on a date or dates to be set by Order in Council. New clause 15 of Schedule 1AA would come into force on the day after Royal assent. Some other minor and technical amendments would come into force on the day after Royal assent or six months after Royal assent.

The original intention was to use the flexibility of the Order in Council process to choose a date or dates shortly after the bill is passed for it to come into force. The transfer of functions from the Commerce Commission to the Financial Markets Authority (FMA) is a significant operational undertaking. It includes staff transfers, ongoing litigation, and property and records, with each agency preparing to update their operating models. To provide more certainty for those affected, Labour and Green members recommend specifying in clause 2 a date for the relevant provisions in the bill to commence, rather than leaving this to Order in Council. We think this would allow the Commerce Commission and the FMA to better prepare for the changes needed to implement the transfer of functions. A nominated date would also assist consumers, industry, and other affected parties to prepare for these changes.

Some members recommend that the relevant provisions in the bill commence on 23 March 2026. This should allow enough lead-in time for relevant agencies to prepare for and implement the changes in the bill.

Appendix

Committee process

The Credit Contracts and Consumer Finance Amendment Bill was referred to this committee on 20 May 2025. The House instructed us to report the bill back no later than 20 October 2025.

We called for submissions on the bill on 21 May 2025 with a closing date of 23 June 2025. We received and considered submissions from 1,635 interested groups and individuals. We heard oral evidence from 35 submitters at hearings in Wellington and via videoconference. We wish to acknowledge the efforts of all submitters and thank them for their engagement.

Advice on the bill was provided by the Ministry of Business, Innovation and Employment and the Financial Markets Authority. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Cameron Brewer (Chairperson)

Jamie Arbuckle (until 13 August 2025)

Dan Bidois

Hon Barbara Edmonds

Ryan Hamilton

Mariameno Kapa-Kingi (from 4 June to 25 June 2025)

Nancy Lu

Hon Dr Deborah Russell

Todd Stephenson

Chlöe Swarbrick

Rawiri Waititi (excluding 4 June to 25 June 2025)

Dr David Wilson (from 13 August 2025)

Hon Dr Megan Woods

Arena Williams participated in our consideration of the bill.

Related resources

The documents we received as advice and evidence are available on the Parliament website.

**Credit Contracts and Consumer Finance Amendment
Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Scott Simpson

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Credit Contracts and Consumer Finance Amendment Act **2025**.

2 Commencement

- (1) This Act comes into force on a date or dates set by Order in Council. 5
- (2) Any part of the Act that has not come into force 6 months after Royal assent comes into force then.
- (3) However,—
 - (a) **sections 6(2), 8, 9(2), 11 to 14, 43, 47, and 48(3)** come into force on the day after Royal assent; and 10
 - (b) **section 6(3)** comes into force 6 months after Royal assent.
- (4) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Part 1

Amendments to Credit Contracts and Consumer Finance Act 2003

3 Principal Act

This Part amends the Credit Contracts and Consumer Finance Act 2003.

4 Section 3 amended (Purposes)

5

Repeal section 3(3)(i).

5 Section 4 amended (Overview)

(1) Replace section 4(d) with:

- (d) Part 4 provides for enforcement and liability matters, including—
- (i) statutory damages:
 - (ii) providing the FMA and the courts with certain powers in connection with breaches of this Act:
 - (iii) prohibitions on the enforcement of consumer credit contracts, guarantees, consumer leases, and buy-back transactions in certain situations:
 - (iv) offences:
 - (v) a reasonable mistake defence:
 - (vi) pecuniary penalties:

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Guidance note

~~See also~~ See also the Financial Markets Authority Act 2011, which provides for—

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- this Act to be financial markets legislation; and
- the FMA to perform or exercise various functions, powers, and duties in relation to this Act.

(2) Repeal section 4(ea).

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6 Section 5 amended (Interpretation)

(1) In section 5, repeal the definitions of **certified** and **family trust**.

(1A) In section 5, definition of **creditor**, replace paragraphs (c) and (d) with:

- (c) includes a person declared to be a creditor, or a person of a class of persons declared to be creditors, by regulations made under section 138(1)(abb)

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(2) In section 5, insert in their appropriate alphabetical order:

express trust has the same meaning as in section 12 of the Trusts Act 2019

FMA means the Financial Markets Authority established by Part 2 of the Financial Markets Authority Act 2011

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- (3) In section 5, replace the definition of **repayment waiver** with:
- repayment waiver** means an agreement between a creditor or lessor and a debtor or lessee under which the creditor or lessor, for an additional consideration, agrees to waive the creditor’s or lessor’s right to any amount payable under the credit contract or consumer lease in the event of any 1 or more of the following:
- (a) the unemployment of, sickness of, injury to, or the disability or death of the debtor or lessee:
 - (b) the amount payable under a contract of insurance on the total loss of the insured property is less than the unpaid balance of the credit contract, where the insured property is subject to a security interest that was taken in connection with the credit contract
- 6A Section 7 amended (Meaning of credit contract)**
- After section 7(2), insert:
- (3) A particular arrangement or facility, or an arrangement or a facility of a class, declared by the FMA under **section 138A(1)(a)** is not a credit contract if the person who relies on the declaration complies with the terms and conditions (if any) that apply to the declaration.
- 7 Section 9A amended (Outline of Part)**
- (1) Before section 9A(2)(a), insert:
- (aaa) the FMA to make stop orders or direction orders in respect of a breach of the principles (*see* **subpart 2A of Part 4**):
- (2) In section 9A(2)(a), delete “98A, 98B,”.
- 8 Section 9B amended (Interpretation)**
- (1) In section 9B(1), replace the definition of **relevant guarantee** with:
- relevant guarantee**—
- (a) means a guarantee given, or proposed to be given, by a natural person in respect of a consumer credit contract; but
 - (b) does not include a guarantee under which the guarantor is acting in their capacity as—
 - (i) a trustee of an express trust; or
 - (ii) a partner of a partnership under the Partnership Law Act 2019
- (2) In section 9B(2)(f), replace “lender” with “lender, and the lender knows, at the time the agreement is entered into, that the insurance will be financed under the agreement”.
- 9 Section 9C amended (Lender responsibility principles)**
- (1) In section 9C(3)(f), delete “subpart 5A of Part 6 of”.

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(1A) In section 9C(3)(f)(ii), delete “under the Fair Trading Act 1986”.	
(2) After section 9C(8), insert:	
(9) However, none <u>neither</u> of the following involves a material change for the purposes of subsection (3)(a):	
(a) a lender paying unpaid rates under section 62 of the Local Government (Rating) Act 2002 (and the treatment of an amount paid under section 62(3) of that Act):	5
(b) a lender paying or advancing an amount as referred to in section 87 of the Property Law Act 2007 (and interest accruing as referred to in section 87(2) of that Act).	10
10 Section 9CA amended (Records about inquiries made)	
Repeal section 9CA(8).	
10A Section 11 amended (Meaning of consumer credit contract)	
Replace section 11(1C) with:	
(1C) <u>An arrangement or a facility is also a consumer credit contract if it is of a class declared by the FMA under section 138A(1)(b).</u>	15
11 Section 15 amended (Certain contracts not consumer credit contracts)	
In section 15(1)(c), replace “a family trust” with “an express trust”.	
12 Section 21 amended (Continuing disclosure not required)	
After section 21(1), insert:	20
(1A) If, in connection with a consumer credit contract, the creditor maintains (at all reasonable times) a website that allows the debtor to access information about the unpaid balance after each transaction is credited or debited to the debtor’s account, the requirement in subsection (1)(b)(i) must be treated as satisfied to the extent that it relates to the information set out in section 19(1)(b).	25
(1A) <u>The requirement in subsection (1)(b)(i) must be treated as satisfied to the extent that it relates to the information set out in section 19(1)(b) if, in connection with a consumer credit contract, the creditor maintains (at all reasonable times) a website that does either or both of the following:</u>	
(a) <u>the website allows the debtor to access information about the unpaid balance after each transaction is credited or debited to the debtor’s account:</u>	30
(b) <u>the website allows the debtor to access information about the unpaid balance as at the end of each day in which a transaction is credited or debited to the debtor’s account.</u>	
(1B) In subsection (1A) , transaction means any advance, interest charge, amount paid or credited, fee, or charge referred to in section 19(1)(c), (d), (e), or (f).	35

13 Section 22 amended (Disclosure of agreed changes)

After section 22(3)(b), insert:

(ba) reduces the amount of each payment due under the contract for a period not exceeding 3 months, where—

- (i) the creditor considers on reasonable grounds that any consequential increase to the total amount of interest charges payable, and to the total number of payments, under the contract is immaterial; and
- (ii) the reduction is not made following an application under section 55; or

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14 New section 26AB inserted (Disclosure not required for guarantor who is trustee or partner)

After section 26A, insert:

26AB Disclosure not required for guarantor who is trustee or partner

Sections 24 to 26A do not require disclosure to be made to a guarantor who is—

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- (a) a trustee acting in their capacity as a trustee of an express trust; or
- (b) a person acting in their capacity as a partner of a partnership under the Partnership Law Act 2019.

15 Section 27 amended (Right to cancel consumer credit contract)

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After section 27(2), insert:

- (3) If a consumer credit contract involves a repayment waiver or an extended warranty, the waiver or warranty is to be treated as forming part of the contract for the purposes of this section and sections 28 to 31 (with the effect that a cancellation of the contract also operates as a cancellation of the waiver or warranty).
- (4) *See also section 27A*, which enables a debtor to cancel a repayment waiver or an extended warranty separately from the consumer credit contract.

25

16 New section 27A inserted (Right to cancel repayment waiver or extended warranty separately from consumer credit contract)

After section 27, insert:

30

27A Right to cancel repayment waiver or extended warranty separately from consumer credit contract

(1) This section—

- (a) applies if a consumer credit contract involves a repayment waiver or an extended warranty (or both); but
- (b) does not apply if—

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- (i) the creditor requires the debtor to obtain the repayment waiver or extended warranty (as the case may be); and
- (ii) that requirement is not unreasonable under section 69.
- (2) The debtor under the contract may cancel the repayment waiver or extended warranty (or both) by giving written notice of the cancellation to the creditor under the contract within 5 working days of the day that disclosure is made under section 17 (or at any time if that disclosure has not been made). 5
- (3) This section does not limit **section 27(3)**, which provides for a cancellation of a consumer credit contract under that section to also operate as a cancellation of a repayment waiver or an extended warranty. 10
- 17 Section 28 amended (Notice of cancellation, return of property, and payment of cash price)**
- Replace section 28(1) with:
- (1) Written notice of cancellation may be expressed in any way that shows the intention of the debtor to cancel or withdraw from the consumer credit contract, repayment waiver, or extended warranty. 15
- 18 Section 30 amended (Effect of cancellation)**
- After section 30(3), insert:
- (4) If a repayment waiver or an extended warranty is cancelled under section 27 or **27A**, the following rules apply: 20
- (a) the rights and obligations of the parties under the waiver or warranty cease; and
- (b) no debtor is liable to pay any amount for the waiver or warranty other than any reasonable expenses necessarily incurred by the creditor in connection with the waiver or warranty and its cancellation; and 25
- (c) if the debtor has already paid any amount for the waiver or warranty that the debtor is not liable to pay under **paragraph (b)**, the amount paid is due to the debtor under subsection (1)(c)(ii) or must otherwise be repaid to the debtor.
- 19 Section 41A amended (Records and reviews about how fees calculated)** 30
- Repeal section 41A(7).
- 19A Section 45C amended (Meaning of high-cost consumer credit contract)**
- In section 45C, definition of **high-cost consumer credit contract**, replace paragraph (d) with:
- (d) a contract of a class declared by the FMA under **section 138A(1)(c)** 35

19B Section 45E amended (Costs of borrowing must not exceed loan advance)

In section 45E(5), definition of **related consumer credit contract**, replace “declared by regulations to be a type of contract that is a related consumer credit contract” with “of a class declared by the FMA under **section 138A(1)(d)**”.

5

20 Subpart 9 of Part 2 repealed

Repeal subpart 9 of Part 2.

21 Section 83G amended (Creditor must serve repossession warning notice on debtor and other persons before taking possession of consumer goods)

(1) In section 83G(1)(b), after “contract”, insert “(other than a guarantor referred to in **subsection (7)**)”.

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(2) After section 83G(6), insert:

(7) For the purposes of subsection (1)(b), this subsection refers to a guarantor who is—

(a) a trustee acting in their capacity as a trustee of an express trust; or

15

(b) a person acting in their capacity as a partner of a partnership under the Partnership Law Act 2019.

22 Section 85 amended (Jurisdiction of High Court)

After section 85(a), insert:

(aa) appeals under **section 92K**:

20

23 Section 88 amended (Creditors, creditors’ agents, lessors, transferees, and buy-back promoters liable for statutory damages)

Repeal section 88(1)(d) and (1AA).

24 New subpart 2A of Part 4 inserted

After section 92, insert:

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Subpart 2A—FMA’s enforcement powers

92A Interpretation in this subpart

In this subpart,—

disclosure statement means—

(a) a disclosure statement under Part 2 or 3; or

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(b) a disclosure statement under section 132A; or

(c) a repossession warning notice or a post-repossession notice; or

(d) a notice under section 83L(2)(b)

distribute has the meaning set out in section 9B(1)

relevant CCCFA service means any of the following:

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10

(a) means a form of communication—

- 15
- 20

92B When FMA may make stop orders

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	(iv) does not comply with this Act or the regulations; or	
	(c) a disclosure statement given by a provider of a relevant CCCFA service—	
	(i) is false or misleading, or is likely to mislead or confuse, in a material particular; or	5
	(ii) contains any material misdescription, material error, or material matter that is not clearly legible; or	
	(iii) does not comply with this Act or the regulations.	
(2)	If the FMA is satisfied that a provision is likely to be breached by a person (A) in the future, the FMA may make a stop order—	10
	(a) whether or not A has previously breached the provision; and	
	(b) whether or not there is an imminent danger of substantial damage to any person if the provision is breached.	
	Compare: 2013 No 69 s 462	
92C	Terms of stop order	15
	A stop order may, in relation to the relevant CCCFA service referred to in section 92B(1) , do 1 or more of the following:	
	(a) prohibit the supply of relevant CCCFA services specified in the order from being made while the order is in force:	
	(b) prohibit the distribution of 1 or more of the following while the order is in force:	20
	(i) a disclosure statement:	
	(ii) a restricted communication referred to in section 92B(1)(b) :	
	(iii) any restricted communication that relates to the supply of relevant CCCFA services specified in the order.	25
	Compare: 2013 No 69 s 463	
92D	FMA may make interim stop order pending exercise of powers	
(1)	The FMA may make an interim order (an interim stop order) of the kind referred to in section 92C that is in force for the period referred to in subsection (2) if—	30
	(a) the FMA is considering, at any time, whether it may exercise a power under section 92B ; and	
	(b) the FMA considers that making an interim stop order is desirable in the public interest.	
(2)	An interim stop order is in force from the time at which it is made until the close of—	35
	(a) the date that is 15 working days after the day on which it is made; or	

	(b) a later date specified by the FMA by notice to the provider to which the order relates.	
(3)	For the purposes of subsection (2)(b) ,—	
	(a) the FMA may specify a later date if the FMA is of the opinion that it is not reasonably practicable for it to complete its consideration as referred to in subsection (1)(a) within the 15-working-day period referred to in subsection (2)(a) ; and	5
	(b) the later date must be a date that is no more than 30 working days after the day on which the interim stop order is made.	
(4)	The FMA—	10
	(a) may act under subsection (1) or (2)(b) without giving the provider to which the order relates an opportunity to make submissions to, or be heard before, the FMA in respect of the matter (and, accordingly, section 475 of the Financial Markets Conduct Act 2013 (as applied by section 92I) does not apply); but	15
	(b) must, after acting under subsection (1) or (2)(b) , give that provider or that person's representative an opportunity to make written submissions and to be heard on the matter.	
	Compare: 2013 No 69 s 465	
92E	Persons to whom stop orders and interim stop orders may apply	20
(1)	A stop order or an interim stop order of the kind referred to in—	
	(a) section 92C(a) may apply to any person specified in the order:	
	(b) section 92C(b) may apply to 1 or more providers or any associated persons of a provider.	
(2)	If a stop order or an interim stop order of the kind referred to in section 92C(b) extends to associated persons of the provider, the order may require—	25
	(a) all, or any specified class or classes, of the associated persons to comply with the order (including associated persons that may be incorporated or formed after the date of the order); and	
	(b) the provider to provide a copy of the order to all or any of those associated persons.	30
(3)	For the purposes of subsection (2) , the order is not required to refer to the associated persons by name.	
	Compare: 2013 No 69 s 466	
92F	Extended application of subpart	35
(1)	The FMA may make a stop order or an interim stop order in respect of a restricted communication that is distributed or to be distributed to a person outside New Zealand by a person resident, incorporated, registered, or carrying on business in New Zealand.	

- (2) In this section, **registered** means registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

Compare: 2013 No 69 s 467

Direction orders

92G When FMA may make direction orders 5

- (1) The FMA may make a direction order if it is satisfied that, by engaging in any conduct, a person (the **relevant person**) has breached, or is likely to breach,—
- (a) any of the provisions of section 9C, 9CA, 9J, or 9K or of Part 2, 3, or 3A; or
 - (b) a term or condition of an exemption or a declaration prescribed, granted, or made under Part 6. 10
- (2) If the FMA is satisfied that, by engaging in any conduct, the relevant person is likely to breach a provision referred to in **subsection (1)** in the future, the FMA may make a direction order—
- (a) whether or not the relevant person has previously breached the provision; and 15
 - (b) whether or not there is an imminent danger of substantial damage to any person if the provision is breached.

Compare: 2013 No 69 s 468

92H Terms of direction orders 20

A direction order may—

- (a) direct the relevant person to comply with the relevant provision referred to in **section 92G** (the **provision**):
- (b) set out any reasonable steps that the relevant person must take in order to comply with the provision or to avoid or mitigate any actual or potential adverse effects of a breach, including (without limitation)— 25
 - (i) disclosing, in accordance with the order, information for the purpose of securing compliance with the provision:
 - (ii) publishing, at the relevant person's own expense and in the manner and at the times specified in the order, corrective statements that are specified in, or are to be determined in accordance with, the order: 30
 - (iii) complying in accordance with the order with a prohibition or restriction on the making of any statement or the distribution of any document by, or on behalf of, the relevant person for the purpose of preventing a breach or further breach of the provision: 35
- (c) in the case of **section 92G(1)(b)**, prohibit the relevant person from relying on an exemption:

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(d) require the relevant person to report to the FMA within the time specified in the order stating how and when the order has been or will be implemented.	
Compare: 2013 No 69 s 469	
<i>General provisions</i>	5
92I Process for FMA’s orders	
Sections 475 to 478 of the Financial Markets Conduct Act 2013 apply with all necessary modifications to an order under this subpart.	
92J Consequences of failing to comply with FMA’s orders	
(1) If an order made by the FMA under this subpart applies to a person, the person must comply with the order (<i>see</i> sections 93 and 107A, which provide for the court to make an order in relation to a breach of this provision).	10
(2) A person who refuses or fails, without reasonable excuse, to comply with an order made by the FMA under this subpart commits an offence and is liable on conviction to a fine not exceeding \$300,000.	15
Compare: 2013 No 69 s 479	
<i>Appeal</i>	
92K Appeals against other decisions of FMA on questions of law only	
An aggrieved person that considers that a decision of the FMA under this subpart is wrong in law may appeal to the High Court against the decision on a question of law only.	20
25 Section 93 amended (Court’s general power to make orders)	
(1) In section 93, replace “or broker” with “broker, or mobile trader”.	
(2) In section 93(a), replace “3A, or 5A” with “or 3A or of section 92J ”.	
(3) In section 93(b) to (e), replace “or 9K” with “9K, or 92J ”.	25
26 Section 94 amended (Court orders)	
After section 94(1)(cc), insert:	
(cd) in the case of a breach of a provision referred to in section 94AA(1) , an order of the kind referred to in section 94AA(3) :	
27 New sections 94AA to 94AC inserted	30
After section 94, insert:	
94AA Court orders in relation to costs of borrowing, costs of lease, and costs of buy-back transaction	
(1) This section applies if the court finds, in a proceeding under section 93, that—	

- (a) a creditor has breached section 17 or 22; or
 - (b) a lessor has breached section 64 or 65; or
 - (c) a transferee has breached section 72 or 77.
- (2) The court may, in a proceeding under section 93, make an order referred to in **subsection (3)** if the court is satisfied, after having regard to the matters set out in **section 94AC**, that— it is just and equitable to make the order.
- (a) ~~it is just and equitable to make the order; and~~
 - (b) ~~none of the other orders under section 94 that it proposes to make, or any combination of those orders, is sufficient to provide a just and equitable remedy for the breach referred to in **subsection (1)**.~~
- (3) The kinds of orders that the court may make against the person who engaged in the conduct referred to in **subsection (1)** are as follows:
- (a) in the case of **subsection (1)(a)**, an order that the debtor and any other person are not liable for any or all of the costs of borrowing in relation to the consumer credit contract and the period that—
 - (i) starts on the date of the breach of section 17 or 22; and
 - (ii) ends at the close of the day (if any) on which the disclosure under section 17 or 22 is made:
 - (b) in the case of **subsection (1)(b)**, an order that the lessee and any other person are not liable for any or all of the costs of the lease in relation to the consumer lease and the period that—
 - (i) starts on the date of the breach of section 64 or 65; and
 - (ii) ends at the close of the day (if any) on which the disclosure under section 64 or 65 is made:
 - (c) in the case of **subsection (1)(c)**, an order that the occupier and any other person are not liable for any or all of the costs of the buy-back transaction in relation to the buy-back transaction and the period that—
 - (i) starts on the date of the breach of section 72 or 77; and
 - (ii) ends at the close of the day (if any) on which the disclosure under section 72 or 77 is made:
 - (d) any other order that the court thinks fit for the purpose of giving effect to an order under **paragraph (a), (b), or (c).**

94AB Costs of borrowing, lease, or buy-back transaction do not include fees or charges that are passed on

- (1) In **section 94AA(3)(a)**, the costs of borrowing—~~does~~ do not include fees or charges payable to another person, body, or agency as referred to in section 45 unless the other person, body, or agency is an associated person of the creditor.
- (2) In **section 94AA(3)(b)**, the costs of the lease—~~does~~ do not include fees or charges payable by a lessee for an amount payable, or to reimburse an amount

paid, by the lessor to another person, body, or agency unless the person, body, or agency is an associated person of the lessor.

- (3) In **section 94AA(3)(c)**, the costs of the buy-back transaction ~~does~~ do not include fees or charges payable to another person, body, or agency as referred to in section 81 unless that person, body, or agency is an associated person of the transferee. 5

94AC Court must have regard to certain matters under section 94AA

The matters the court must have regard to under **section 94AA(2)** are as follows:

- (a) the role that **section 94AA** has in providing incentives for compliance with this Act: 10
- (b) whether the person referred to in **section 94AA(1)** had an appropriate compliance programme:
- (c) the extent to which any person has been prejudiced by the breach or breaches: 15
- (d) any other matters as the court thinks fit.

28 Section 95A amended (Court may reduce effect of failure to make disclosure)

Before section 95A(1), insert:

- (1AA) This section and section 95B apply for the purposes of section 48 and for the purposes of sections 99(1A), 101(2), and 102(2) as in force before their repeal by the Credit Contracts and Consumer Finance Amendment Act **2025** (and a reference to those provisions is a reference to those provisions as in force before their repeal). 20

Guidance note 25

See **clauses 14 and 15** of Schedule 1AA. Those transitional provisions provide for—

- sections 99(1A), 101(2), and 102(2), as in force before their repeal, to continue to apply to existing agreements; and
- sections 95A and 95B to retrospectively apply to ~~all~~ most agreements entered into on or after 6 June 2015. 30

29 Section 96 amended (Injunctions)

- (1) In section 96(1)(a), replace “3A, and 5A” with “and 3A or of **section 92J**”.
- (2) In section 96(1)(b), replace “3A, or 5A” with “or 3A”.
- (3) In section 96(1)(b) to (f), replace “or 9K” with “9K, or **92J**”. 35

30 Section 98 amended (Interim injunction)

In section 98(4), replace “Commission’s” with “FMA’s”.

31	Sections 98A and 98B and cross-heading above section 98A repealed	
	Repeal sections 98A and 98B and the cross-heading above section 98A.	
32	Section 99 amended (Enforcement of consumer credit contract prohibited)	
	Repeal section 99(1A) to (1C).	
33	Section 101 amended (Enforcement of consumer lease prohibited)	5
	Repeal section 101(2) to (4).	
34	Section 102 amended (Enforcement of buy-back transaction prohibited)	
	Repeal section 102(2) to (4).	
35	Section 102A amended (Infringement offences)	10
	Repeal section 102A(7A).	
36	Section 103 amended (Other offences)	
(1)	In section 103(1), replace “, subpart 6A of Part 2, and section 59B” with “and subpart 6A of Part 2”.	
(2)	Repeal section 103(6).	
37	Section 107A amended (Pecuniary penalties)	15
(1)	Replace section 107A(1)(a)(vi) to (x) with:	
	(vi) section 92J (duty to comply with stop order or direction order); or	
(2)	Replace section 107A(2) with:	
(2)	In determining an appropriate pecuniary penalty that a person (A) must pay under this section, the court must have regard to all relevant matters, in particular,—	20
(a)	the purposes set out in section 3 and any other purpose set out in this Act that applies to the provision to which the proceeding relates; and	
(b)	any exemplary damages awarded under section 94(1)(c); and	
(c)	the nature and extent of A’s conduct; and	25
(d)	the nature and extent of any loss or damage suffered by any person because of A’s conduct; and	
(e)	any gains made or losses avoided by A; and	
(f)	the circumstances in which A’s conduct took place (including whether any contravention was intentional, inadvertent, or caused by negligence); and	30
(g)	whether A has previously been found by the court in proceedings under this Act, or any other legislation, to have engaged in any similar conduct; and	

- (h) the relationship of the parties to the transaction constituting the contravention.
- (2A) In this section, A's **conduct** means the conduct of A for which A is liable to the pecuniary penalty.
- (3) After section 107A(5), insert: 5
- (6) If the court orders that a person pay a pecuniary penalty, the court must also order that the penalty must be applied first to pay the FMA's actual costs in bringing the proceedings.

38 New subpart 5B of Part 4 inserted

After section 107E, insert: 10

Subpart 5B—Declarations of breach

107F When court may make declarations of breach

- (1) The court may, on the application of the FMA or any other person, make a declaration of breach if it is satisfied that a person—
- (a) has breached any of the provisions referred to in section 107A(1)(a); or 15
- (b) has attempted to breach such a provision; or
- (c) has aided, abetted, counselled, or procured any other person to breach such a provision; or
- (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to breach such a provision; or 20
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the breach by any other person of such a provision; or
- (f) has conspired with any other person to breach such a provision.
- (2) In this subpart, a person has an **involvement in-a the breach** if the person has acted as referred to in **subsection (1)(b) to (f)**. 25

107G Purpose and effect of declarations

- (1) The purpose of a declaration of breach is to enable an applicant for an order under subpart 3 to rely on the declaration in the proceedings for that order, and not be required to prove the breach or involvement in-a the breach.
- (2) Accordingly, a declaration of breach is conclusive evidence of the matters that must be stated in it under **section 107H**. 30

107H What declarations must state

A declaration of breach must state the following:

- (a) the provision to which the breach or involvement in-a the breach relates; and 35

	(b) the person who engaged in the breach or involvement in—a <u>the</u> breach; and (c) the conduct that constituted the breach or the involvement in the breach and, if a transaction constituted the breach, the transaction.	
39	Section 108 amended (Power to order certain persons not to act as creditors, lessors, transferees, or buy-back promoters) After section 108(1)(a)(va)(C), insert: (D) the Financial Markets Conduct Act 2013; or	5
40	Subpart 7 of Part 4 repealed Repeal subpart 7 of Part 4.	10
41	Subpart 8 of Part 4 replaced Replace subpart 8 of Part 4 with: Subpart 8—Miscellaneous	
111	State of mind of directors, employees, or agents attributed to body corporate or other principal (1) If, in a proceeding under this Act in respect of any conduct engaged in by a body corporate, being conduct in relation to which any provision of this Act applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, an employee, or an agent of the body corporate, acting within the scope of their actual or apparent authority, had that state of mind. (2) If, in a proceeding (other than a proceeding for an offence) under this Act in respect of any conduct engaged in by a person other than a body corporate, being conduct in relation to which any provision of this Act applies, it is necessary to establish the state of mind of the person, it is sufficient to show that an employee or agent of the person, acting within the scope of their actual or apparent authority, had that state of mind. (3) In this Act, state of mind, in relation to a person, includes the knowledge, intention, opinion, belief, or purpose of the person and the person's reasons for that intention, opinion, belief, or purpose. Compare: 1986 No 5 s 90(1), (3), (5); 2013 No 69 s 535	15 20 25 30
112	Conduct of directors, employees, or agents attributed to body corporate or other principal (1) Conduct engaged in on behalf of a body corporate by any of the following must be treated, for the purposes of this Act, as having been engaged in also by the body corporate:	35

- (a) a director, an employee, or an agent of the body corporate, acting within the scope of their actual or apparent authority:
- (b) any other person at the direction or with the consent or agreement (whether express or implied) of a director, an employee, or an agent of the body corporate, given within the scope of the actual or apparent authority of the director, employee, or agent. 5
- (2) Conduct engaged in on behalf of a person other than a body corporate (**A**) by any of the following must be treated, for the purposes of this Act, as having been engaged in also by **A**:
 - (a) an employee or agent of **A** acting within the scope of their actual or apparent authority: 10
 - (b) any other person at the direction or with the consent or agreement (whether express or implied) either of **A** or of an employee or agent of **A**, given within the scope of the actual or apparent authority of the employee or agent. 15

Compare: 1986 No 5 s 90(2), (4); 2013 No 69 s 536

113 Disposal of things seized

- (1) In any proceedings relating to any thing seized under a warrant, the court may order, either at the trial or hearing or on an application, that the thing be delivered to the person appearing to the court to be entitled to it, or that it be otherwise disposed of in any manner that the court thinks fit. 20
- (2) The FMA may, at any time, unless an order has been made under **subsection (1)**, return the thing to the person from whom it was seized, or apply to a District Court Judge for an order for its disposal.
- (3) On any application under **subsection (2)**, the District Court Judge may make any order that a court may make under **subsection (1)**. 25
- (4) If proceedings relating to the thing are not brought within a period of 3 months of its seizure, any person claiming to be entitled to the thing may, after the expiry of that period, apply to a District Court Judge for an order that it be delivered to the person. 30
- (5) On any application under **subsection (4)**, the District Court Judge may—
 - (a) adjourn the application, on any terms that the Judge thinks fit, for proceedings to be brought; or
 - (b) make any order that a court may make under **subsection (1)**.

114 Court order for disposal of things seized to be suspended on conviction 35

- (1) If any person is convicted in any proceedings for an offence relating to any-thing for which a warrant has been issued, and any order is made under **section 113**, the operation of the order is suspended,—

- | | | |
|-----|---|----|
| (a) | in any case, until the expiration of the time prescribed by the Criminal Procedure Act 2011 for the filing of a notice of appeal or an application for leave to appeal; and | |
| (b) | if a notice of appeal is filed within the time so prescribed, until the determination of the appeal; and | 5 |
| (c) | if application for leave to appeal is filed within the time so prescribed, until the application is determined and, if leave to appeal is granted, until the determination of the appeal. | |
| (2) | If the operation of any order is suspended until the determination of the appeal, the court determining the appeal may, by order, cancel or vary the order. | 10 |
- 42 Part 5A repealed**
Repeal Part 5A.
- 43 Section 132A amended (Disclosure about debt collection)**
- | | | |
|-----|---|----|
| (1) | Replace section 132A(4) with: | |
| (4) | In this section, unless the context otherwise requires,— | 15 |
| | debt collection— | |
| (a) | means an act to recover (or attempt to recover) any money that is owing by a debtor under a credit contract as a result of the debtor’s breach of the contract; but | |
| (b) | does not include— | 20 |
| | (i) making an application, or doing any other act, under the Insolvency Act 2006; or | |
| | (ii) any other act of a kind prescribed by the regulations | |
| | debt collector , in respect of a contract,— | |
| (a) | means a creditor or any other person engaging in debt collection in respect of the contract; but | 25 |
| (b) | does not include any of the following: | |
| | (i) a guarantor: | |
| | (ii) a person who provides a budgeting or financial advice service to the debtor: | 30 |
| | (iii) a person acting on behalf of the debtor: | |
| | (iv) a person of the kind prescribed by the regulations. | |
| (2) | In section 132A(5)(a), replace “either” with “1 or more”. | |
| (3) | In section 132A(5)(a)(i) and (ii), after “a payment reminder”, insert “, or a credit limit notice,”. | 35 |
| (4) | In section 132A(6), insert in its appropriate alphabetical order: | |

- credit limit notice** means a communication that—
- (a) ~~is made within 1 month of a debtor causing a credit limit under the contract to be exceeded; and~~
 - (b) ~~does only either or both of the following:~~
 - (i) ~~notifies the debtor that the credit limit has been exceeded;~~
 - (ii) ~~requests a payment so that the credit limit is no longer exceeded~~
- (4) In section 132A(6), insert in its appropriate alphabetical order:
- credit limit notice**—
- (a) means a communication that—
 - (i) is made within 6 months of a debtor causing a credit limit under the contract to be exceeded; and
 - (ii) does only either or both of the following (subject to **subsection (6A)**):
 - (A) notifies the debtor that the credit limit has been exceeded;
 - (B) requests a payment so that the credit limit is no longer exceeded; but
 - (b) excludes in-person visits to the debtor, the debtor's residence, or the debtor's place of work
- (5) In section 132A(6), definition of **payment reminder**, paragraph (a)(ii), after “overdue”, insert “(subject to **subsection (6A)**)”.
- (6) After section 132A(6), insert:
- (6A) A payment reminder and a credit limit notice may be included in the same communication (in which case the communication may include any information that is permitted in either of those notices).
- 44 Sections 137A to 137C and cross-heading above section 137A repealed**
- Repeal sections 137A to 137C and the cross-heading above section 137A.
- 45 Section 138 amended (Regulations)**
- (1AAA) In section 138(1), after “Order in Council,”, insert “on the recommendation of the Minister,”.
- (1) Replace section 138(1)(ab) and (aba) with:
- (ab) exempting any of the following from the application of any provision or provisions of this Act, and prescribing the terms and conditions (if any) of the exemption:
 - (i) any credit contract, consumer lease, buy-back transaction, or other agreement; or
 - (ii) any class of credit contracts, consumer leases, buy-back transactions, or other agreements:

- (aba) ~~exempting, for the purpose of this Act or of applying any provision or provisions of this Act, any person or class of persons from being any of the following, and prescribing the terms and conditions (if any) of the exemption:~~
- (i) ~~a creditor under a consumer credit contract or class of consumer credit contracts; or~~ 5
 - (ii) ~~a lessor under a consumer lease or class of consumer leases; or~~
 - (iii) ~~a transferee under a buy-back transaction or class of buy-back transactions; or~~
 - (iv) ~~a person of any other kind referred to in the definition of relevant CCCFA service in **section 92A**:~~ 10
- (aba) exempting any person or class of persons from compliance with any provision or provisions of this Act, and prescribing the terms and conditions (if any) of the exemption:
- (2) Repeal section 138(1)(da)(ii), (hb), and (jb) and (1BB). 15
- (2A) After section 138(1), insert:
- (1AA) The Minister must consult the FMA before making a recommendation under this section.
- (2B) In section 138(1A), replace “Regulations may be made under subsection (1)(a) to (aba) only on the recommendation of the Minister, and the Minister may make a recommendation only if he or she” with “The Minister must not recommend regulations under subsection (1)(a) to **(aba)** unless the Minister”. 20
- (3) Replace section 138(1A)(c) with:
- (c) is satisfied that the exemption is necessary or desirable to promote 1 or more of the purposes of this Act, including by doing either or both of the following: 25
 - (i) avoiding unnecessary compliance costs:
 - (ii) promoting innovation and flexibility in the markets for credit.
- (3A) In section 138(1B), delete “under subsection (1A)”.
- (4) After section 138(1B), insert: 30
- (1BAA) The breach of a term or condition of an exemption under subsection-(1)(a) to (1)(ab) and **(aba)** is a breach of the provision to which the exemption relates (unless the terms of the exemption otherwise provide).
- (5) Replace section 138(1BA) with:
- (1BA) The Minister must not recommend regulations under subsection (1)(abb), (abc), or (abd) unless the Minister has consulted the persons or representatives of the persons who the Minister considers will be substantially affected by the regulations. 35

- (6) In section 138(1C), replace “Regulations may be made under subsection (1)(da) only on the recommendation of the Minister, and the Minister may make a recommendation only if he or she” with “The Minister must not recommend regulations under subsection (1)(da) unless the Minister”.

46 New sections 138A to 138F and cross-headings inserted

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After section 138, insert:

Declarations

138A FMA’s declaration power

- (1) The FMA may—
- (a) declare that the following are not credit contracts:
 - (i) a particular arrangement or facility:
 - (ii) a class of arrangements or facilities:
 - (b) declare any class of arrangements or facilities to be consumer credit contracts:
 - (c) declare any class of consumer credit contracts to be high-cost consumer credit contracts ~~or related consumer credit contracts~~ for the purposes of subpart 6A of Part 2 (provisions relating to debtors under high-cost consumer credit contracts);
 - (d) declare any class of consumer credit contracts to be related consumer credit contracts for the purposes of subpart 6A of Part 2 (provisions relating to debtors under high-cost consumer credit contracts).
- (2) The FMA’s reasons for making a declaration (including why the declaration is appropriate) must be published together with the declaration.
- (3) If a declaration is made under **subsection (1)(b)–or, (c), or (d)**, this Act applies with any modifications specified in the declaration and with all other necessary modifications.
- (4) A declaration made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

138B Procedural requirements for declarations

- (1) The FMA must not make a declaration under **section 138A** unless the FMA—
- (a) is satisfied, in the case of **section 138A(1)(a)**, that the declaration—
 - (i) is necessary or desirable to promote certainty about whether this Act applies; and
 - (ii) is not inconsistent with the purposes of this Act set out in section 3; and
 - (b) is satisfied, in the case of **section 138A(1)(b)**, that—

- (i) the declaration is necessary or desirable in order to promote any of the purposes of this Act set out in section 3; and
 - (ii) an arrangement or a facility of the class to which the declaration relates has, or is intended to have, the effect of a person receiving a loan or goods or services with deferred payment; and
 - (c) is satisfied, in the case of **section 138A(1)(c) or (d)**, that the declaration—
 - (i) is necessary or desirable to promote certainty about whether subpart 6A of Part 2 applies; and
 - (ii) is not inconsistent with the purposes of that subpart; and
 - (d) has had regard to the economic substance of the arrangements or facilities to which the declaration relates; and
 - (e) has consulted the persons or representatives of the persons who the FMA considers will be substantially affected by the declaration.
- (2) A failure to comply with **subsection (1)(e)** does not affect the validity of the declaration.

138C General provisions about declarations

- (1) A declaration made under **section 138A** may be made subject to terms and conditions, including (without limitation) terms and conditions relating to—
 - (a) the circumstances in which the declaration applies, whether by reference to any persons, arrangements, or facilities, or any other circumstances;
 - (b) transitional matters.
- (2) Nothing in **section 138A, 138B**, or this section prevents the granting of an exemption under section 138 or **138D** that applies to a matter that is the subject of a declaration.
- (3) A declaration made under **section 138A** that something is a consumer credit contract prevails over a statement to the contrary in section 15.

138CA FMA may make interim orders pending exercise of powers

- (1) The FMA may make an interim order that no goods or services specified in the order may be supplied, while the interim order is in force, if—
 - (a) the supply of the goods or services involves an arrangement or a facility; and
 - (b) the FMA is considering, at any time, whether it may exercise a power under **section 138A** in respect of the arrangement or facility; and
 - (c) the FMA considers that making an interim order is desirable in the public interest; and

- (d) the FMA considers that the extent of the interim order is not broader than is reasonably necessary to address the matters that gave rise to the order.
- (2) An interim order—
- (a) must specify the supplier or suppliers of the goods or services to which the order applies; and 5
- (b) may require—
- (i) all, or any specified class or classes, of the associated persons of the supplier or suppliers to comply with the order (including associated persons that may be incorporated or formed after the date of the order); and 10
- (ii) a supplier to provide a copy of the order to all or any of those associated persons.
- (3) For the purposes of **subsection (2)**, the order is not required to refer to the associated persons by name. 15
- (4) The FMA—
- (a) may act under **subsection (1)** or **section 138CB(1)(b)** without giving the supplier to which the order relates an opportunity to make submissions to, or be heard before, the FMA in respect of the matter; but
- (b) must, after acting under **subsection (1)** or **section 138CB(1)(b)**, give that supplier or that person's representative an opportunity to make written submissions and be heard on the matter. 20
- (5) The FMA must, immediately after making the order, notify each supplier to which the order relates that the order has been made and the reasons for the order. 25
- (6) Section 478 of the Financial Markets Conduct Act 2013 applies with all necessary modifications to an order under this section.
- (7) A person who refuses or fails, without reasonable excuse, to comply with an order made by the FMA under this section commits an offence and is liable on conviction to a fine not exceeding \$300,000. 30

138CB Period in which interim order is in force

- (1) An interim order under **section 138CA** is in force from the time at which it is made until the close of—
- (a) the date that is 15 working days after the day on which it is made; or
- (b) a later date specified by the FMA by notice to the supplier to which the order relates. 35
- (2) For the purposes of **subsection (1)(b)**,—
- (a) the FMA may specify a later date if the FMA is of the opinion that it is not reasonably practicable for it to complete its consideration as referred

to in **section 138CA(1)(b)** within the 15-working-day period referred to in **subsection (1)(a)**:

- (b) the later date must be a date that is no more than 30 working days after the day on which the interim order is made.

Exemptions

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138D FMA's exemption power

- (1) The FMA may, on the terms and conditions (if any) that it thinks fit,—

- (a) exempt from the application of any provision or provisions of this Act—

(i) any credit contract, consumer lease, buy-back transaction, or other agreement; or

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(ii) any class of credit contracts, consumer leases, buy-back transactions, or other agreements:

- (b) ~~for the purpose of this Act or of applying any provision or provisions of this Act, exempt any person or class of persons from being—~~

(i) ~~a creditor under a consumer credit contract or class of consumer credit contracts; or~~

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(ii) ~~a lessor under a consumer lease or class of consumer leases; or~~

(iii) ~~a transferee under a buy-back transaction or class of buy-back transactions; or~~

(iv) ~~a person of any other kind referred to in the definition of relevant CCCFA service in **section 92A**.~~

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- (b) exempt any person or class of persons from compliance with any provision or provisions of this Act.

- (2) The FMA's reasons for granting an exemption (including why the exemption is appropriate) must be published together with the exemption.

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- (3) An exemption granted under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

138E Procedural requirements for exemptions

The FMA must not grant an exemption under **section 138D** unless the FMA—

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- (a) has had regard to the purposes of this Act set out in section 3; and

- (b) is satisfied that the exemption would not cause significant detriment to debtors under credit contracts, lessees under consumer leases, or occupiers under buy-back transactions; and

- (c) is satisfied that the exemption is necessary or desirable to promote 1 or more of the purposes of this Act, including by doing either or both of the following:

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- (i) avoiding unnecessary compliance costs:
- (ii) promoting innovation and flexibility in the markets for credit; and
- (d) is satisfied that the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption; and
- (e) has had regard to whether the matter to which the exemption relates would be more appropriately dealt with by way of regulations made under section 138(1)(a) to **(aba)**.

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138F General provisions about exemptions

- (1) An exemption granted under **section 138D** may continue in force for not more than 5 years (and at the close of the date that is 5 years after the exemption first comes into force, the exemption must be treated as having been revoked unless it is sooner revoked or expires).
- (2) The breach of a term or condition of an exemption granted under **section 138D** is a breach of the provision to which the exemption relates (unless the terms of the exemption otherwise provide).

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47 Schedule 1AA amended

- (1) In Schedule 1AA,—
 - (a) insert the cross-headings and clauses set out in **Schedule 1** of this Act as the last provisions in Schedule 1AA; and
 - (b) make all necessary consequential amendments.
- (2) In Schedule 1AA, clause 7, after “clauses 8 to 10”, insert “and **15**”.
- (3) In Schedule 1AA, replace clause 8(6) with:
- (6) The amendments made by section 35 of the 2019 Act apply to existing agreements in accordance with **clause 15**.

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25

48 Schedule 1 amended

- (1) In Schedule 1, paragraph (q)(ii), after “security interest”, insert “(including, to the extent that the property is consumer goods, information that specifically identifies* the consumer goods)”.
- (2) In Schedule 1, after paragraph (q), insert:
 - *For the purposes of determining whether consumer goods are specifically identified,—
 - (a) the goods are specifically identified if the disclosure contains an adequate description of the goods by item that enables the goods to be identified; and
 - (b) it is insufficient to merely describe the goods by kind.
- (3) In Schedule 1, paragraph (s), replace “section 27” with “sections 27 and **27A**”.

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49 Amendments to various references to Commission

In the provisions specified in **Schedule 2**, replace “Commission” with “FMA” in each place.

Part 2

Amendments to Financial Markets Conduct Act 2013

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50 Principal Act

This Part amends the Financial Markets Conduct Act 2013.

51 Section 6 amended (Interpretation)

- (1) In section 6(1), replace the definition of **client** with:

client, in relation to—

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- (a) a financial advice service or client money or property service, has the meaning set out in clause 2 of Schedule 5:
- (b) a service of acting as a creditor under a consumer credit contract, means a debtor under a consumer credit contract:
- (c) ~~a service of acting as a mobile trader, means a natural person to whom the goods are supplied (as referred to in the definition of mobile trader in section 5 of the Credit Contracts and Consumer Finance Act 2003)~~

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- (2) In section 6(1), replace the definition of **consumer credit contract** with:

consumer credit contract—

- (a) has the same meaning as in section 11 of the Credit Contracts and Consumer Finance Act 2003 (and for that purpose sections 12 to 15 and 16 and 16A of that Act apply); but
- (b) in subpart 6A of Part 6, has the meaning set out in section 446P

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- (2A) In section 6(1), insert in its appropriate alphabetical order:

creditor has the same meaning as in section 5 of the Credit Contracts and Consumer Finance Act 2003 (and for that purpose sections 16 and 16A of that Act apply)

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- (3) In section 6(1), definition of **financial advice product**, after paragraph (d), insert:

- (da) a buy-back transaction or consumer lease (within the meaning of section 5 of the Credit Contracts and Consumer Finance Act 2003); or

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- (4) In section 6(1), definition of **financial service**, replace paragraph (b) with:

(b) includes—

- (i) a market service; and
- (ii) a relevant CCCFA service (as defined in **section 92A** of the Credit Contracts and Consumer Finance Act 2003); but

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(5) In section 6(1), definition of market service , after paragraph (d), insert:	
(da) acting as a creditor under a consumer credit contract:	
(db) acting as a mobile trader:	
(6) In section 6(1), definition of market services licensee obligation , after paragraph (e), insert:	5
(f) in the case of a creditor under a consumer credit contract or a mobile trader , the Credit Contracts and Consumer Finance Act 2003	
(7) In section 6(1), insert in its appropriate alphabetical order:	
mobile trader has the same meaning as in section 5 of the Credit Contracts and Consumer Finance Act 2003	10
52 Section 387 amended (Territorial scope for licensing and other regulation of certain market services)	
(1) After section 387(1)(d), insert:	
(e) the service of acting as a mobile trader.	
(2) Before section 387(2), insert:	15
(1B) For the service of acting as a creditor under a consumer credit contract, this Part applies if the Credit Contracts and Consumer Finance Act 2003 applies to the contract under section 137 of that Act.	
53 Section 388 amended (When provider of market services needs to be licensed)	20
After section 388(d), insert:	
(e) acting as a creditor under a consumer credit contract;	
(f) acting as a mobile trader.	
54 Section 389 amended (Exemptions from need for market services licence)	
(1) After section 389(4), insert:	25
<i>Exemptions for creditor under consumer credit contract</i>	
(4A) A person is exempt from the licensing requirement under section 388(e) in respect of a service (unless a declaration applies under subpart 3 of Part 9) to the extent that the service is a prescribed exempt service.	
<i>Exemptions for mobile trader</i>	30
(4B) A person is exempt from the licensing requirement under section 388(f) in respect of a service (unless a declaration applies under subpart 3 of Part 9) to the extent that the service is a prescribed exempt service.	
(2) In section 389(5), replace “and (4)(a) and (b)” with “(4)(a) and (b), and (4A), and (4B) ”.	35

54A Section 446N repealed (FMA must obtain consent of Commerce Commission before commencing certain proceedings)

Repeal section 446N.

55 Section 446P amended (Other definitions used in subpart)

- (1) In section 446P(1), delete “and section 546”. 5
- (2) In section 446P(1), repeal the definition of **creditor**.

56 Section 451 amended (Meaning of FMC reporting entity)

Replace section 451(2)(a) with:

- (a) the licence only covers 1 or more of the following: 10
 - (i) acting as a provider of a financial advice service:
 - (ii) acting as a creditor under a consumer credit contract:
 - ~~(iii) acting as a mobile trader:~~
 - (iv) acting as an administrator of a financial benchmark; and

56A Section 506 amended (Only 1 pecuniary penalty may be imposed for same conduct)

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Repeal section 506(4).

57 Section 546 amended (Regulations for purposes of Part 6 (market services))

- (1) Replace section 546(1)(c) with: 20
 - (c) exempting (on terms and conditions, if any) services from the licensing requirement for the purposes of section 389(2)(b), (3)(b), (4)(b), **(4A), and (4B)**:
- (2) Repeal section 546(1)(ca) and (cc).
- (3) In section 546(2), delete “(ca), (cc),”.

58 Section 550 amended (Procedural requirements for regulations relating to exemptions, exclusions, and definitions) 25

In section 550(2)(d), replace “, (c), (ca), and (cc)” with “and **(c)**”.

59 Schedule 4 amended

- (1) In Schedule 4, clause 1(1), insert as the last paragraph: 30
 - (jk) **Part 10 12** provides for transitional provisions relating to the Credit Contracts and Consumer Finance Amendment Act **2025**.
- (2) In Schedule 4, clause 1(1), in the last paragraph (as inserted by **subsection (1)**), make any necessary consequential amendment.
- (3) In Schedule 4,—

- (a) insert the Part set out in **Schedule 3** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Part 3

Other amendments

Subpart 1—Amendments to Financial Markets Authority Act 2011 5

60 Principal Act

This subpart amends the Financial Markets Authority Act 2011.

61 Section 4 amended (Interpretation)

- (1) In section 4(1), definition of **financial markets participant**, after paragraph (b)(v), insert: 10

- (vi) a creditor under a consumer credit contract, a creditor's agent, a paid advisor or broker, a debt collector, a repossession agent, a repossession employee, a lessor under a consumer lease, a transferee under a buy-back transaction, a buy-back promoter, or a mobile trader (within the meaning of those terms in the Credit Contracts and Consumer Finance Act 2003) and any person who is treated as being one of those persons for the purposes of 1 or more provisions of that Act; and 15

- (2) In section 4(1), replace the definition of **financial service** with: 20

- financial service—**
- (a) has the same meaning as in section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008; and
 - (b) includes a financial service within the meaning of section 6(1) of the Financial Markets Conduct Act 2013

62 Schedule 1 amended 25

In Schedule 1, Part 1, insert in its appropriate alphabetical order:
Credit Contracts and Consumer Finance Act 2003

Subpart 2—Amendments to Financial Service Providers (Registration and Dispute Resolution) Act 2008

63 Principal Act 30

This subpart amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

64 Section 4 amended (Interpretation)

In section 4, definition of **credit contract**, replace paragraph (d) with:

- (d) does not include any of the following (unless paragraph (b) or (c) applies):
- (i) a contract specified in section 15(1)(a), (b), or (ca) of that Act; or
 - (ii) a contract under which—
 - (A) no interest charge (as defined in section 5 of that Act) is payable; and
 - (B) no credit fees (as defined in section 5 of that Act) are payable; and
 - (C) no security interest (as defined in section 5 of that Act) is or may be taken; or
 - (iii) an arrangement or a facility declared not to be a credit contract under Part 6 of that Act

- 65 Section 13 amended (Qualifications for registration as financial service provider)**
 Repeal section 13(2) and (3). 15
- 66 Section 23 and cross-heading repealed**
 Repeal section 23 and the cross-heading above section 23.
- 67 Section 27 amended (Contents of register)**
 Repeal section 27(1)(cb).
- 68 Section 67 amended (Duty to co-operate and communicate information in certain circumstances)** 20
 Repeal section 67(1)(e).
- 69 Section 67A repealed (Duty to communicate information about mobile traders)**
 Repeal section 67A. 25

Subpart 3—Consequential amendments

- 70 Consequential amendments**
- (1) Amend the Acts specified in **Part 1 of Schedule 4** as set out in that Part.
 - (2) Amend the secondary legislation specified in **Part 2 of Schedule 4** as set out in that Part. 30

Schedule 1

New cross-headings and clauses inserted into Schedule 1AA of Credit Contracts and Consumer Finance Act 2003

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	<i>Credit Contracts and Consumer Finance Amendment Act 2025</i>	5
13	Interpretation	
	In clauses 14 to 21 , unless the context otherwise requires,—	
	2025 Act means the Credit Contracts and Consumer Finance Amendment Act 2025	
	agreement means any credit contract, security agreement, lease, buy-back transaction, or other contract or arrangement to which the principal Act applies.	10
14	Application of amendments to existing agreements	
(1)	Except as provided for in subclauses (2) and (3) and clause 15 ,—	
(a)	an amendment to the principal Act in a provision of the 2025 Act does not apply to an agreement entered into before the commencement of the provision; and	15
(b)	the principal Act, as in force immediately before the commencement of that provision, continues to apply for the purposes of those agreements.	
	Example	
	Section 99(1A) to (1C) is repealed by section 32 of the 2025 Act . Section 99(1A) provided that a debtor was not liable for the costs of borrowing in relation to a period during which the creditor failed to comply with its disclosure obligations.	20
	The repeal of section 99(1A) does not apply to existing agreements. Instead, section 99(1A), as in force before its repeal, continues to apply to those agreements.	
	See, however, clause 15 . Clause 15 provides for sections 95A and 95B to apply to <u>all most</u> existing agreements to which section 99(1A) applies. Sections 95A and 95B allow the court to reduce the effect of section 99(1A).	25
(2)	The amendments referred to in subclause (1) apply in relation to existing agreements as follows:	
(a)	the amendments made by section 9(2) of the 2025 Act (lender responsibility principles) apply only to material changes made on or after the commencement of that provision:	30
(b)	the amendments made by section 12 of the 2025 Act (continuing disclosure statements) apply only to continuing disclosure statements that are, or are required to be, given or sent on or after the commencement of that provision:	35
(c)	the amendments made by section 13 of the 2025 Act (disclosure of agreed changes) apply only to disclosure statements that are, or are	

	required to be, given or sent on or after the commencement of that provision:	
	(d) the amendments made by the 2025 Act in connection with transferring any function of the Commission in relation to this Act to the FMA apply in relation to <u>all</u> existing agreements.	5
(3)	Nothing in this clause limits the FMA's functions, powers, or duties under this Act or any other legislation in relation to any existing agreement.	
15	Application of court powers in sections 95A and 95B to existing agreements	
(1)	Sections 95A and 95B apply to—	10
	(a) any agreement entered into on or after 6 June 2015 (and to which any provision of sections 99(1A), 101(2), or 102(2) applies); and	
	(b) any costs of borrowing, costs of a lease, or costs of a buy-back transaction under that agreement (as the case may be) in relation to any period on or after 6 June 2015.	15
(2)	Subclause (1) applies—	
	(a) despite any provision in this Act or any other legislation or other rule of law to the contrary (and, in particular, subclause (1) applies with retrospective effect despite section 12 of the Legislation Act 2019); and	
	(b) in relation to all existing proceedings; and	20
	(c) regardless of whether a failure to comply with any of sections 17, 22, 64, 65, 72, and 77 occurred before or after the commencement of this clause or the commencement of sections 95A and 95B; and	
	(d) regardless of any right, interest, title, immunity, duty, status, or capacity that exists before the commencement of this clause or the commencement of sections 95A and 95B.	25
(3)	However, <u>Despite subclauses (1) and (2), subclause (1)</u> does not affect any of the following:	
	(a) any settlement agreement entered into between 2 or more persons (including between the Commission and 1 or more other persons) in relation to a failure to comply or allegations of a failure to comply with any of sections 17, 22, 64, 65, 72, and 77 (and that settlement agreement continues to be binding on all of the parties to that settlement agreement):	30
	(b) any enforceable undertaking in relation to a failure or allegations of a failure of a kind referred to in paragraph (a) that is accepted by the Commission under section 74A of the Commerce Act 1986 (as applied by 113(aa) of this Act (as in force before its repeal by section 40 of the 2025 Act));:	35

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Schedule 1

- (c) the proceeding *Simons & Ors v ANZ Bank New Zealand Limited and ASB Bank Limited* CIV 2021-404-1190.
- (4) In this clause, **existing proceeding**—
- (a) means a proceeding that has not been settled, discontinued, or finally disposed of by the court of first instance before this clause comes into force that involves a failure to comply or allegations of a failure to comply with any of sections 17, 22, 64, 65, 72, and 77; ~~and but~~
- (b) ~~includes~~ does not include *Simons & Ors v ANZ Bank New Zealand Limited and ASB Bank Limited* CIV 2021-404-1190.
- 16 Consequences of transfers of functions under Act**
- (1) This clause applies to a function of the Commission in relation to ~~this~~ the principal Act that is transferred to the FMA as a consequence of the amendments made by the **2025** Act.
- (2) On and after the commencement of **section 62** of the **2025** Act (which provides for this Act to be financial markets legislation),—
- (a) all information that relates solely or principally to the function and that is transferred by the Commission to the FMA is held by the FMA; and
- (b) all rights, liabilities, entitlements, and engagements of the Commission in relation to the function become the rights, liabilities, entitlements, and engagements of the FMA; and
- (c) all directions to the Commission that relate to the function and that are in force immediately before the commencement of ~~this clause~~ **section 62** of the **2025** Act become directions to the FMA; and
- (d) anything done, or omitted to be done, or that is to be done, in relation to the function by, or in relation to, the Commission is to be treated as having been done, or having been omitted to be done, or to be done, by, or in relation to, the FMA; and
- (e) the commencement, continuation, or enforcement of a proceeding relating to the function by or against the Commission may instead be carried out by or against the FMA without amendment to the proceeding if the Commission and the FMA agree; and
- (f) a matter or thing relating to the function that would, but for this clause, have been completed by the Commission may be completed by the FMA.
- (3) On and after the commencement of **section 62** of the **2025** Act, property identified by the Commission as being owned by the Commission solely or principally for the purposes of the function and that should be transferred to the FMA is vested in the FMA.

- (4) The transfer of information from the Commission to the FMA under **subclause (2)(a)** does not constitute an action that is an interference with the privacy of an individual under section 69 of the Privacy Act 2020.
- 17 Restriction on compensation for technical redundancy**
- (1) An employee of the Commission is not entitled to receive any payment or other benefit on the ground that the position held by the employee in the Commission has ceased to exist if—
- (a) the position ceases to exist as a result of a transfer of a function from the Commission to the FMA as referred to in **clause 16**; and
- (b) in connection with that transfer of a function,—
- (i) the employee is offered equivalent employment in the FMA (whether or not the employee accepts the offer); or
- (ii) the employee is offered, and accepts, other employment in the FMA.
- (2) In **subclause (1), equivalent employment**, in relation to the employee's employment in the Commission, is employment in the FMA that is—
- (a) in substantially the same position; and
- (b) in the same general locality; and
- (c) on terms and conditions of employment that are no less favourable than those that applied to the employee immediately before the transfer of the function (including any service-related, redundancy, and superannuation conditions).
- (3) This clause overrides Part 6A of the Employment Relations Act 2000.
- 18 Employment of transferred employee to be treated as continuous employment**
- (1) The employment of a transferred employee by the FMA is to be treated as continuous employment for the purposes of any legislation.
- (2) In this clause, **transferred employee** means a person referred to in **clause 17** who has been offered and has accepted employment in the FMA.
- 19 Declaration of buy now, pay later contracts as consumer credit contracts continues in force**
- (1) Regulation 5B of the Credit Contracts and Consumer Finance Regulations 2004 continues in force as if the **2025** Act had not been enacted.
- (2) Regulations under section 137A of this Act (as in force immediately before the commencement of **section 44** of the **2025** Act) may be made under section 138 for the purpose of amending or revoking regulation 5B.

20	Credit Contracts and Consumer Finance (Crown Infrastructure Partners Limited Milldale Development) Declaration 2020 continues in force	
(1)	The Credit Contracts and Consumer Finance (Crown Infrastructure Partners Limited Milldale Development) Declaration 2020 (the 2020 declaration) continues in force as if the 2025 Act had not been enacted.	5
(2)	The Minister may make a declaration under section 137B of this Act (as in force immediately before the commencement of section 44) for the purpose of amending or revoking the 2020 declaration.	
(3)	A declaration made under this clause is secondary legislation (<i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).	10
21	Pending application for certification	
(1)	This clause applies if,—	
(a)	before the commencement of section 42 of the 2025 Act, a person has applied for certification under section 131F; but	
(b)	on the commencement of section 42 of the 2025 Act, the Commission has not yet made a decision referred to in section 131H.	15
(2)	The application must be treated as withdrawn (and, accordingly, the Commission is not required to consider the application further).	
(3)	The Commission need not refund any fee paid under this Act in relation to the application.	20

Schedule 2
Amendments to Credit Contracts and Consumer Finance Act 2003
relating to references to Commission

	s 49	
Section 9CA(3) and (7)		5
Section 41A(4) and (6)		
Section 45D(2)(d)		
Section 45J(6)(b)		
Section 90(1) and (4)		
Section 95(1) and (3)		10
Section 96(1) and (3)		
Section 98(3) and (4)		
Section 105C(1) and (2)		
Heading to section 105E and section 105E		
Section 107A(1)		15
Section 107B(b)		
Section 109		
Section 125(1) and (5)		
Section 138(1)(jd)(vi)		

Schedule 3
New Part ~~10~~ 12 inserted into Schedule 4 of Financial Markets
Conduct Act 2013

s 59

Part 10 <u>12</u>		5
Provisions relating to Credit Contracts and Consumer Finance Amendment Act 2025		
101 <u>110</u> Creditor may be treated as holding market services licence		
(1)	This clause applies to a person (C) that,—	
(a)	immediately before the commencement of this clause,—	10
(i)	holds a certification under Part 5A of the CCCFA that covers the service of being a creditor under a consumer credit contract; or	
(ii)	provides that service but does not hold that certification because the person is exempt under section 131C(1)(a) of the CCCFA; and	
(b)	on the commencement of this clause, is not exempt under this Act from the licensing requirement under section 388(e) .	15
(2)	C must be treated as holding a market services licence that covers the service of <u>being acting as</u> a creditor under a consumer credit contract.	
(3)	If C's certification under Part 5A of the CCCFA was subject to conditions referred to in section 131K of the CCCFA, the licence under subclause (2) must, in respect of the service of <u>being acting as</u> a creditor under a consumer credit contract, be treated as being subject to those conditions (and those conditions must be treated as being conditions of the licence for the purposes of this Act).	20
(4)	However, subclause (3) does not apply to the extent that the conditions referred to in section 131K of the CCCFA are inconsistent with any conditions referred to in section 402 of this Act.	25
(5)	If, immediately before the commencement of this clause, C's certification was suspended under section 131P of the CCCFA for a specified period or until a specified requirement is met, the licence under subclause (2) must be treated as suspended for that period or until that requirement is met.	30
(6)	In this Part, CCCFA means the Credit Contracts and Consumer Finance Act 2003.	
102 Mobile trader may be treated as holding market services licence		
(1)	This clause applies to a person (M) that,—	35
(a)	immediately before the commencement of this clause,—	

	(i) holds a certification under Part 5A of the CCCFA that covers the service of being a mobile trader; or	
	(ii) provides that service but does not hold that certification because the person is exempt under section 131C(1)(a) of the CCCFA; and	
	(b) on the commencement of this clause, is not exempt under this Act from the licensing requirement under section 388(f) .	5
(2)	M must be treated as holding a market services licence that covers the service of being a mobile trader.	
(3)	If M's certification under Part 5A of the CCCFA was subject to conditions referred to in section 131K of the CCCFA, the licence under subclause (2) must, in respect of the service of being a mobile trader, be treated as being subject to those conditions (and those conditions must be treated as being conditions of the licence for the purposes of this Act).	10
(4)	However, subclause (3) does not apply to the extent that the conditions referred to in section 131K of the CCCFA are inconsistent with any conditions referred to in section 402 of this Act.	15
(5)	If, immediately before the commencement of this clause, M's certification was suspended under section 131P of the CCCFA for a specified period or until a specified requirement is met, the licence under subclause (2) must be treated as suspended for that period or until that requirement is met.	20
103111	FMA may exercise powers in respect of licences	
	Nothing in clause 401 or 402 110 prevents the FMA from exercising any powers under this Act in respect of a licence referred to in <u>those provisions that clause</u> (for example, to vary, revoke, add to, or substitute any conditions or to suspend or cancel the licence).	25

Schedule 4 Consequential amendments

s 70

Part 1 Amendments to Acts

5

Fair Trading Act 1986 (1986 No 121)

In section 48P(6), definition of **financial service**, replace paragraph (b) with:

(b) includes a financial service within the meaning of section 6(1) of the Financial Markets Conduct Act 2013; but

Search and Surveillance Act 2012 (2012 No 24)

10

In the ~~Schedule~~ Schedule 2, repeal the item relating to the Credit Contracts and Consumer Finance Act 2003.

Part 2 Amendments to regulations

Credit Contracts and Consumer Finance Regulations 2004 (SR 2004/240)

15

In regulation 5B, replace “under section 137A(1)” with “for the purposes”.

In regulation 18K(4)(b)(iii), replace “Commission” with “FMA”.

In regulation 23(1)(f)(ii), replace “Commerce Commission” with “FMA”.

Revoke regulation 22 and the cross-heading above that regulation.

Revoke regulations 24 to ~~26~~ 29 and the cross-heading above regulation 24.

20

Financial Markets Conduct Regulations 2014 (LI 2014/326)

Revoke regulation 3(b).

In regulation 5(1), revoke the definition of **credit contract**.

Revoke regulation 14.

In the heading to regulation 229L, before “**credit**”, insert “**consumer**”.

25

Revoke regulation 253.

Financial Service Providers (Registration) Regulations 2020 (LI 2020/316)

In regulation 3, replace the definition of **consumer credit contract** with:

consumer credit contract—

(a) has the same meaning as in section 11 of the Credit Contracts and Consumer Finance Act 2003 (and for that purpose sections 12 to 15 ~~and~~ 16,

30

Financial Service Providers (Registration) Regulations 2020 (LI 2020/316)—*continued*

- ~~and 16A~~ of that Act apply ~~and section 16A of that Act must be disregarded~~); and
- (b) includes a contract that is declared to be a consumer credit contract under Part 6 of that Act

Revoke regulation 23(2)(c).

5

In Schedule 2, Part 2, replace the items relating to being a creditor under a credit contract and being a mobile trader with:

Being a creditor under a credit contract (section 5(1)(e) of the Act)	Whether the applicant provides, or intends to provide, the financial service in respect of either or both of the following: (a) consumer credit contracts: (b) non-consumer credit contracts. In the case of acting as a creditor under a consumer credit contract, whether 1 or more of the following apply: (a) the applicant holds, or intends to hold, a market services licence that covers the financial service: (b) the applicant is, or intends to be, authorised to provide the financial service as an authorised body under a market services licence: (c) the applicant is, or will be, required to be registered for the financial service but is, or will be, exempt under section 389(4A) of the FMC Act or exempt from section 388(e) of the FMC Act under an FMA exemption.
Being a mobile trader (within the meaning of section 5 of the Credit Contracts and Consumer Finance Act 2003)	Whether 1 or more of the following apply: (a) the applicant holds, or intends to hold, a market services licence that covers the financial service: (b) the applicant is, or intends to be, authorised to provide the financial service as an authorised body under a market services licence: (c) the applicant is, or will be, required to be registered for the financial service but is, or will be, exempt under section 389(4B) of the FMC Act or exempt from section 388(f) of the FMC Act under an FMA exemption.

In Schedule 3, revoke clause 4A(b) and (c).

Legislative history

31 March 2025
20 May 2025

Introduction (Bill 137–1)
First reading and referral to Finance and Expenditure Committee

**Credit Contracts and Consumer Finance Amendment
Bill**

Wellington, New Zealand:

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