

# Departmental Disclosure Statement

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Credit Contracts and Consumer Finance Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment (MBIE).

MBIE certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

5 March 2025

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## Part One: General Policy Statement

This is an omnibus Bill introduced in accordance with Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy is to increase the fairness, efficiency, and transparency of credit markets and support consumer participation in them.

The Bill simplifies and streamlines the effective regulation of financial services by aligning both the regulator and aspects of the regulatory model for consumer credit with that under the Financial Markets Conduct Act 2013, as well as making other improvements to ensure legislation is clear and proportionate.

The Bill achieves this by:

- transferring regulatory responsibility for credit contracts and consumer finance from the Commerce Commission to the Financial Markets Authority (the **FMA**); and
- making certain alignments between the Credit Contracts and Consumer Finance Act 2003 (the **CCCFA**) and other financial markets legislation to support a consistent and proportionate regulatory system, including transitioning lenders from a certification to a licensing regime (discussed further below); and
- removing features of the CCCFA (such as the due diligence duty for directors and senior managers) that are unnecessary because of, or do not fit as well with, the new regulatory approach (including the adoption of a licensing model); and
- limiting the situations in which a creditor's failure to make required initial or variation disclosure can mean that the debtor is not liable for the costs of borrowing (discussed further below).

This Bill amends the CCCFA, the Financial Markets Conduct Act 2013 (the **FMCA**), the Financial Markets Authority Act 2011, the Financial Service Providers (Registration and Dispute Resolution) Act 2008, and associated legislation.

The changes are expected to increase the effective regulation and efficient operation of markets for consumer credit, remove disproportionate duties and obligations, and improve consumer protection by providing the FMA with a range of regulatory tools and powers.

This Bill is part of a financial services reform package of 3 Bills that seek to streamline and ensure the effectiveness of financial services regulation. The objectives of the reforms are to:

- simplify and streamline regulation of financial services (including reducing duplication)
- remove undue compliance costs for financial markets participants
- improve outcomes for consumers.

The other 2 Bills are the Financial Service Providers (Registration and Dispute Resolution) Amendment Bill and the Financial Markets Conduct Amendment Bill.

### **Adoption of licensing model for creditors and mobile traders**

The Bill replaces the requirement on creditors and mobile traders to be certified (satisfying the Commerce Commission that the applicant's directors and senior managers are fit and proper persons to hold their respective positions) with a requirement to be licensed for those services under the FMCA. This improves consistency with the FMA's approach to regulating other

financial services, and affords the FMA licensing tools it can use to monitor and effectively regulate conduct in markets for consumer credit.

To minimise the burden on creditors and mobile traders who are already certified (or exempt from certification on the basis they are already licensed by the FMA or registered by the Reserve Bank of New Zealand), the Bill treats them as holding a licence for the relevant market service. Although this licence would be held by these entities from the commencement date without any licence application process, the FMA would be able to use licensing interventions as if it had actively issued the licence (for example, to impose new licence conditions).

The service of being a mobile trader remains distinct from that of being a creditor under a consumer credit contract for the purposes of both registration under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and the new licence requirement.

#### **Change in how consequences for failure to make required initial or agreed variation disclosure are determined in future**

Currently, the CCCFA contains provisions that provide redress to a debtor or other person affected by a failure (by a creditor, lessor or transferee) to make certain required disclosures (sections 99(1A), 101(2), and 102(2)). Relief is available to the creditor, lessor or transferee from the effect of those provisions under section 95A: in the case of a consumer credit contract, the creditor can seek an order from a court to extinguish or reduce the effect of section 99(1A). However, the outcome of an order is uncertain, and the creditor bears the burden of seeking the order or avoiding the need for it by settling out of court.

The Bill seeks to address that uncertainty and provide creditors, lessors and transferees with greater confidence the other party will remain liable for the costs of borrowing, costs of a lease, or costs of a buy-back transaction (as the case may be) over a period of non-compliance where their disclosure failure was not of a kind that caused loss or damage. It seeks to achieve this, while also retaining some of the incentives this form of redress provides to make disclosure as required and quickly correct any failure to do so, by:

- reversing the default position that the affected party is not liable for the costs of borrowing, the lease, or the transaction (as the case may be)
- empowering the court to make an order under section 94 for redress based on some or all of those costs if it finds the disclosure failure resulted in loss or damage and considers other orders insufficient.

#### **Change in how consequences for failure to make required initial or agreed variation disclosure are determined for period between June 2015 and December 2019**

The Bill also changes how this part of the law applies to disclosure failures that occurred before 20 December 2019 under contracts entered into after 6 June 2015 (**the relevant period**).

The reforms that took effect in December 2019 provided the court with explicit discretion to extinguish or vary the effect of sections 99(1A), 101(2), and 102(2) on application by the creditor, lessor, or transferee if it considers it 'just and equitable' to do so. However, because those reforms only applied to the costs of borrowing, costs of a lease, or costs of a buy-back transaction, accruing after their commencement (that is, prospectively), they are not available to a court applying sections 99(1A), 101(2), and 102(2) in respect of disclosure failures and related costs, over the relevant period.

The Bill retrospectively provides that sections 95A and 95B apply to disclosure failures during the relevant period. This is intended to ensure that the courts (section 95A provides that this is

on the application by the creditor, lessor, or transferee) can determine consequences for disclosure failures on the basis of what is just and equitable in the circumstances, irrespective of when the failure occurred.

This retrospective change applies to existing proceedings that have not been finally disposed of by a court of first instance before the change commences. This includes the current litigation *Simon & Ors v ANZ Bank New Zealand Limited and ASB Bank Limited* CIV 2021-404-1190.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>In 2022, MBIE investigated unintended impacts of reforms to the CCCF Act that took effect in December 2021. A copy of MBIE's report (published in June 2022) can be accessed here: <a href="https://www.mbie.govt.nz/dmsdocument/23262-early-implementation-and-impacts-of-1-december-2021-credit-law-changes">https://www.mbie.govt.nz/dmsdocument/23262-early-implementation-and-impacts-of-1-december-2021-credit-law-changes</a></p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>In August 2024, MBIE prepared a Regulatory Impact Statement to support the main policies implemented by this Bill. The statement can be accessed here: <a href="https://www.mbie.govt.nz/dmsdocument/29099-regulatory-impact-statement-fit-for-purpose-consumer-credit-law">https://www.mbie.govt.nz/dmsdocument/29099-regulatory-impact-statement-fit-for-purpose-consumer-credit-law</a></p> <p>In February 2025, MBIE prepared a Regulatory Impact Statement to support a proposal, included in the Bill, that backdates reforms made in 2019 to section 99(1A), which relate to consequences for lenders who failed to make certain disclosures as required by law. The statement can be accessed here: <a href="https://www.mbie.govt.nz/dmsdocument/30485-ris-retrospective-application-of-relief-from-section-99-1a">https://www.mbie.govt.nz/dmsdocument/30485-ris-retrospective-application-of-relief-from-section-99-1a</a></p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
<p>MBIE's Regulatory Impact Assessment Review Panel evaluated the statements (with the agreement of the RIA Team at the Treasury) and found that they met the quality assurance criteria.</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
The most up to date information on levels of compliance with the CCCF Act, including licence obligations, and the approach and activities of the regulator will be found on the Financial Markets Authority website: <a href="https://www.fma.govt.nz/">https://www.fma.govt.nz/</a>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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The Ministry for Foreign Affairs and Trade was consulted on the Bill and did not identify any inconsistencies with international obligations.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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MBIE undertook analysis of the policies against the principles of the Treaty of Waitangi early in policy development. Also, the public consultation process on possible reforms was an opportunity for interested parties to identify any questions of consistency with Treaty principles.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
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This advice will be accessible on the Ministry of Justice's webpage: <a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/</a>
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
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The Bill creates one new offence. New section 92J of the CCCF Act would make it an offence to refuse or fail, without reasonable excuse, to comply with a stop order or direction order that the Bill is empowering the FMA to make. This is consistent with the consequences of failing to comply with those orders under the Financial Markets Conduct Act 2013 (section 479). The maximum penalty would be a fine of \$300,000 (which is also consistent with the FMC Act).
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The Bill (at clause 37) also makes pecuniary penalties available for breach of a stop order or direction order. This is also for consistency with the Financial Markets Conduct Act (section 489). Guidance on factors relevant to determining an appropriate penalty are also amended to increase alignment with that in the Financial Markets Conduct Act.
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Another consequence of empowering the FMA to make stop and direction orders under the CCCF Act is that the court would have jurisdiction to hear appeals against these decisions by the FMA. That jurisdiction would be limited to appeals on questions of law, for consistency with the FMC Act.
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The Bill also (at clause 38) confirms the courts have jurisdiction to make declarations that a person has contravened the CCCF Act.
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<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
MBIE consulted the Ministry of Justice on a draft Bill and supported the Ministry to understand the rationale behind the provisions it took an interest in. The Ministry's feedback on reforms to section 99(1A) helped to inform the approach taken to drafting those reforms.	

### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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### External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
The policies agreed by Cabinet and given effect by this Bill were informed by public consultation on a discussion document setting out options for reform to the CCCF Act. This consultation process ran for four weeks, and resulted in 34 written submissions from a range of stakeholders and interested parties, including lenders, law firms, consumer advocates and financial dispute resolution schemes. The discussion document and submissions can be accessed on this webpage: <a href="#">Fit for purpose financial services reform   Ministry of Business, Innovation &amp; Employment</a>	

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
MBIE worked closely with the Commerce Commission and Financial Markets authority during the development of the Bill and undertook some limited targeted consultation as the need arose to inform some of the more technical matters addressed by the Bill.	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>YES</b>
<p>Schedule 1 to the Bill ensures the courts have discretion to extinguish or vary the effect of sections 99(1A), 101(2) and 102(2) in respect of conduct and cost of borrowings prior to December 2019 (when this discretion was first made explicitly available to costs of borrowings prospectively). These provisions determine the consequences for lenders, lessors and transferees (in respect of buy-back transactions for land) where they fail to make certain disclosures as required by the Act by stating that the affected party is not liable for the costs of the transaction for the period before the failure was corrected. Retrospectively empowering the courts to provide relief from the effect of these provisions is necessary to reduce the possibility of the pre-2019 law producing consequences for disclosure failures that are grossly disproportionate in the circumstances. The courts would be able, on application by the liable party, to extinguish or vary these consequences if they consider it 'just and equitable' to do so, having regard to the nature and circumstances of the disclosure failure. This responds to concern that excessive consequences could seriously affect the financial position of numerous lenders who play an important role in the supply of credit to consumers.</p>	

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>YES</b>
<p>The offence in new section 92J of the CCCFA places a burden on a person to raise evidence of a reasonable excuse for their refusal or failure to comply with a stop order or direction order.</p>	

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>YES</b>
<p>Clause 46 of the Bill inserts new provisions into the CCCF Act empowering the FMA to make declarations and exemptions that change or clarify the scope of the Act's application. These powers have the potential to significantly impact the rights, obligations or interests of parties. However, they are appropriately constrained by the Bill with safeguards to ensure that the FMA considers the purposes of the CCCF Act and impacts on those affected. These powers are discussed further in response to question 4.7.</p>	

## Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>The powers inserted by clause 46 of the Bill involve secondary legislation that cannot currently be made by the regulator. They include the power for the FMA to:</p> <ul style="list-style-type: none"> <li>• make declarations that determine parties' obligations, including what arrangements are not credit contracts, what arrangements are consumer credit contracts, and what arrangements are high-cost credit contracts</li> <li>• exempt contracts or arrangements from the application of provisions in the CCCF Act.</li> </ul> <p>These powers are subject to appropriate safeguards. For instance, some declarations are limited to the purpose of promoting certainty about whether the CCCF Act applies to certain contracts or arrangements and the FMA must be satisfied it is not using powers in a manner inconsistent with the purposes of the CCCF Act. In the case of exemptions, the FMA is also specially required to consider whether the matter would be more appropriately dealt with via the power to grant exemptions by regulations in section 138(1). This reflects that there will be a process whereby the FMA and other officials work together to manage the overlap between these exemption-making powers.</p> <p>Empowering the FMA to make declarations and exemptions by secondary legislation is considered desirable to increase alignment with other financial markets legislation and afford greater flexibility for the regulator to use its expertise to support parties in understanding and complying with the intended scope of their obligations under the CCCF Act.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Clause 46 of the Bill empowers the FMA to make declarations and exemptions that clarify or determine how the CCCF Act applies to certain arrangements, contracts or parties. The powers to make declarations are substantively the same as those already provided by sections 137A and 137B of the Act, but would replace them. The FMA's powers to grant exemptions are substantively the same as the regulation-making powers provided by section 138(1), which are being retained. This is intended to provide flexibility as to whether a given exemption is best granted by the FMA or prescribed by regulations, with an explicit requirement on the FMA to consider this question.</p> <p>To increase consistency in how the FMA exercises these powers across financial markets legislation, the language used to describe the purpose and limits on these exemption-making powers has been brought into closer alignment with that used in the FMC Act.</p> <p>This results in some minor differences between the existing power to grant exemptions by regulations under section 138 and the FMA's new exemption-making power, which the Bill resolves by amending the regulation-making power to make it consistent. These amendments are not intended to change the overall scope or effect of the existing regulation-making power.</p>	

## Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>The Bill empowers the FMA to make stop orders and direction orders, which are administrative enforcement tools it has under the FMC Act to respond to particular breaches of that Act. These tools are not found in other legislation. To improve the consistency of regulatory tools the FMA has available across the markets it regulates, and can use flexibly, the Bill makes these tools available as a possible response to any breach of the CCCFA.</p>	