

## Consumer credit law changes now before Parliament

### The Government has just introduced the Credit Contracts Legislation Amendment Bill to amend consumer credit laws.

When the proposed changes were announced last year they were announced as being aimed at loan sharks and mobile lenders, to protect vulnerable borrowers from harmful debt spirals. However, most of the proposed changes in the Bill apply to all consumer lending (including personal loans, credit cards, personal overdrafts, buy-back transactions and consumer hire purchase). If passed, they will be relevant to all creditors who lend or provide financial services to consumers.

The key proposed changes are a cap on the interest rate cap that can be charged on certain consumer loans, strengthened requirements to lend responsibly, potential personal liability for Directors and senior executives, and tougher penalties for breaking the law. Most of the proposed changes would come into force on 1 March 2020 and would increase compliance costs for lenders of consumer products, particularly for those lending to vulnerable borrowers.

#### Background and current law

In 2015, there were significant changes made to New Zealand's consumer credit law, including the introduction of responsible lending obligations and a "Responsible Lending Code", increased disclosure and registration requirements, a right for borrowers to make hardship applications and new rules regarding reasonable credit fees, interest and repossession of consumer goods.

In December 2017, the Minister of Commerce and Consumers Affairs requested a Government review of the 2015 amendments to determine whether they had led to better informed decision making by consumers and a reduction in irresponsible lending.

That review identified ongoing issues in credit markets contributed to by significant uncertainty amongst

lenders regarding how to comply with the responsible lending principles.

The responsible lending principles require lenders to exercise the care, diligence, and skill of a responsible lender in all its dealings with consumers during all stages of the lending process. This includes obligations to act reasonably and ethically at all times, to make enquiries and be satisfied that any credit products offered are affordable and will meet a consumer's requirements and objectives, and to assist consumers to reach informed decisions and be reasonably aware of the full implications of entering into credit transactions.

The responsible lending obligations were purposely designed to be very broad and non-prescriptive to provide flexibility, so that they could apply across a wide range of transactions and allow for changes in technology. However, it is clear from the Government's review that more certainty and prescription is required to increase compliance.

The proposed changes in the Bill are a direct result of that review and are designed to protect vulnerable consumers, prevent unscrupulous lending practices, and to make it easier for lenders to comply by being more prescriptive about lending requirements. They are summarised below.

#### Proposed changes

The Bill would amend the Credit Contracts and Consumer Finance Act 2003 (CCCFA). The proposed key changes are:

- **High cost loans:** There would be a limit on the total interest and fees payable on high-cost loans (which would be defined as loans with an annual interest rate of 50% or more). The proposed limit is 100% of the amount borrowed (i.e. the amount of the loan principal). For example, if a person borrows \$1,000, they will never have to pay the lender back more than \$2,000 in total, including all fees and interest.

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## Consumer credit changes now before Parliament (Continued)

- **Lender responsibilities:** The existing lender responsibilities would be strengthened by:
  - setting additional verification requirements. The current presumption that lenders can rely on information provided by borrowers and guarantors without verification would be removed;
  - adding a new obligation on lenders to keep records about inquiries made by them to comply with the lender responsibilities and to make these available to borrowers, their dispute resolution provider or the Commission on request; and
  - prescribing in new Regulations (to be set later) how affordability and suitability tests must be conducted and the specific inquiries that lenders must make to be satisfied that credit will meet a borrower's requirements and objectives and that the borrower will not suffer substantial hardship.
- **Certification:** All creditors and mobile traders offering consumer credit contracts, and their directors, controlling owners and senior managers would be required to meet a "fit and proper person" test and certification (including assessments of capability and good character). They would each be under a personal obligation to ensure the relevant lender complies with the CCCFA. The obligation would commence on 1 June 2020 but the requirement to be certified would not commence until 1 April 2021 (or, for existing creditors, their next annual confirmation date following 1 April 2021).
- **Credit fees:** Creditors would be required to keep records about how their fees have been calculated and to demonstrate that each fee was not unreasonable at the time it was set, and to make those records available on request.
- **Remedies:** There would be new civil pecuniary penalties, compliance orders and statutory damages

for breaches of lender responsibility principles and the existing enforcement provisions in the CCCFA will be strengthened. Compliance orders, civil pecuniary penalties and liability for statutory damages and compensation will also be available against directors and executives who fail to comply with their obligations. Lenders who have breached disclosure requirements will have a right to apply for relief from liability where that liability is disproportionate to the minor disclosure breach.

- **Advertising and disclosure:** There are new rules regarding disclosure and advertising, including an ability for new Regulations to set out additional advertising standards.
- **Regulations:** Regulations could be made to declare persons to be, or not to be, creditors and certain types of arrangements to be consumer credit contracts or high cost loans for the purposes of the CCCFA.

Other than the new rules for high-cost loans, those proposed changes would apply to all consumer lending, and will increase compliance costs for lenders of all consumer lending products. For all of these products, there are likely to be additional hurdles before credit can be given (additional verification that needs to be carried out and records to be kept to illustrate that "reasonable inquiries" have been undertaken). In addition, records are required to be kept which positively prove that fees charged are not unreasonable at the time they were set. Establishment fees might increase as a result of these changes and it could take longer to get finance approved depending on the affordability and suitability test requirements that are set in later Regulations.

### Want to know more?

If you have any questions about the proposed new changes, or the existing consumer credit law, please contact our specialist [banking and finance](#) team.