

From: Daryl Collins
Sent: Friday, 25 February 2022 8:49 am
To: [REDACTED]
Cc: Campbell Gibson <Campbell.Gibson@fma.govt.nz>
Subject: Response to your OIA request to CoFR agencies

Tēnā koe [REDACTED]

On behalf of the CoFR agencies (Commerce Commission; Financial Markets Authority, Reserve Bank of New Zealand, Treasury, and Ministry of Business, Innovation and Employment) we respond to your OIA request below.

We attach the information requested, namely:

- materials put before CoFR's members (either at meetings or circulated separately) related to the CCCFA; and
- CoFR meeting minutes which refer to or are related to the CCCFA.

We have reviewed all materials circulated to all CoFR members for consideration at CoFR meetings or separately, and all minutes of those meetings. We have also reviewed CoFR's banking forum calendar. We have compiled from this information relating to the CCCFA. The information is attached for you in three documents: (a) a compilation of information from meetings; (b) relevant information from the CoFR banking forum calendar; and (c) a letter from NZBA that was circulated separately to all CoFR members.

You will see we have withheld, by marked redaction, very limited information. The redacted information identifies individual employees of the New Zealand Bankers' Association, aside from their CE. This information is withheld on the basis of section 9(2)(a) of the OIA, namely to protect the privacy of individuals.

If you wish to discuss, or have questions about, the information provided or our decision under the OIA to withhold the limited extracts noted please contact us at daryl.collins@fma.govt.nz and we will be happy to assist further. We also note that you have a right, under section 28(3) of the OIA, to complain to the Ombudsman about a decision to withhold information. Information about how to make a complaint is available at www.ombudsman.parliament.nz or phone 0800 802 602.

We note, that in addition to the information considered at CoFR meetings or circulated to CoFR agencies, individual agencies engaged directly with MBIE on the CCCFA changes throughout the policy development and implementation stages.

Ngā mihi
Daryl Collins

CCCFA – CoFR timeline since 1 January 2019

I am interested to know what the Council of Financial Regulators (CoFR) has been provided with and discussed about the recent changes to the Credit Contracts and Consumer Finance Act (CCCFA), as well as what it discussed before the legislation was passed.

Accordingly, under the provisions of the Official Information Act, please provide me with:

- *any materials put before the CoFR's members (either at meetings or circulated separately) related to the CCCFA*
- *any meeting CoFR minutes which refer to or are related to the CCCFA.*

This request should cover the period since January 1, 2019. If this request covers a large amount of material, I would be happy to discuss the possibility of restricting the request.

CoFR meeting, 20 February 2019

Papers

Agency Update – MBIE

Credit Contracts and Consumer Finance Act

14. The Minister of Commerce and Consumer Affairs is expected to take a paper to LEG on 5 March seeking approval to introduce a Bill amending the Credit Contracts and Consumer Finance Act 2003, following a review and public consultation on the Act in 2018. The amendments will introduce interest and fee caps on high-cost loans, clearer responsible lending requirements, tougher penalties for breaking the law, more accountability for mobile traders and improvements to enforcement.

15. Policy decisions will also be sought around regulations needed to support the changes to the Act. The Bill will also provide the vehicle for addressing problems previously identified with section 99(1A) of the Credit Contracts and Consumer Finance Act 2003

Q1 2019 Environmental Scan

4. Drivers: Policy, Regulation & Technology

Other domestic regulatory and policy developments

Consultation on the Credit Contracts and Consumer Finance Act (2003) closed last year. MBIE is now working with PCO to draft new legislation and there will be opportunity for public consultation when the draft law is in Parliament.

Q1 2019 Risk Dashboard

Regulatory Framework/Regulatory Framework and gaps [red/amber]

A number of reviews of aspects of our financial system are underway that have the potential to reduce regulatory perimeter risks:

- Financial Services Legislation Amendment Bill
- Review of the Reserve Bank Act – Phase 2 consultation
- Review of insurance contract law
- Review of consumer credit regulation – consultation closed

CoFR meeting, 28 May 2019

Papers

Agenda item 4.2: Initial industry feedback on MBIE's proposals to regulate the conduct of financial institutions

On 27 April MBIE released a discussion paper outlining options to regulate the conduct of financial institutions. Submissions are due on 7 June.

MBIE has discussed the proposals with a number of industry players, including: 3 large banks, the Insurance Council of New Zealand's Conduct Committee, the Financial Services Council's Regulatory Committee and a number of financial advisers.

The industry appears broadly comfortable with the high level duties proposed. Some companies feel like the direction of the regime is the direction that they are already moving in and are quite unconcerned.

The industry appears most concerned about the implementation of the regime, including:

[...]

- Consistency with other regulation and regimes. There was overall relative comfort that the regime fits with the new financial advice laws but a few concerns that it will duplicate requirements under that regime. There was more concern about how the regime might interface with the Credit Contracts and Consumer Finance Act (CCCFA), with potential overlaps and different enforcement approaches by different regulators. There is general agreement there shouldn't be carve-outs in an entity-level regime.
 - MBIE comment: this interface with the CCCFA will need careful working through and agreement between the regulators (FMA and Commerce Commission) about how the respective laws will be enforced.

[...]

Agency Update – MBIE

Credit Contracts and Consumer Finance Act

1. The Credit Contracts Legislation Amendment Bill was introduced to Parliament in April and is now before the Finance and Expenditure Committee for consideration. The Bill strengthens requirements to lend responsibly, introduces a 'fit and proper person' test and new duties to ensure compliance for directors and executives, and provides new remedies and penalties for non-compliance.
2. A key element of the Bill is a cap on the total interest and fees on high-cost loans (loans with an annualised interest rate of over 50%) to 100% of the original loan principal. This cap aims to prevent small debts spiralling out of control, while still enabling access to small amount credit where this is affordable. Cabinet agreed to this policy in August 2018. A cap on the interest rate of high cost loans was not preferred, because of the concern that this could unduly limit access to small loans. MBIE anticipates that the merits of an interest rate cap will be debated in submissions to the select committee, which close on 14 June.
3. The Bill also creates new empowering provisions to make regulations setting out how lenders must assess the affordability and suitability of loans. The regulations will include

requirements to undertake a specified set of inquiries in order to estimate a borrower's likely future income and relevant expenses over a reasonably foreseeable time period. The draft regulations are being developed in consultation with industry stakeholders. MBIE intends to release an exposure draft of the regulations after the select committee report back in October.

4. The Bill will also provide the vehicle for addressing problems previously identified with section 99(1A) of the Credit Contracts and Consumer Finance Act 2003.

CoFR Banking Forum 5th June 2019 Minutes

6. NZBA's priorities

[...]

The CCCFA work and the MB executive conduct discussion paper are also important workstreams.

[...]

CoFR meeting, 12 August 2019

Papers

Agenda item 4 – Draft CoFR work plan

Outcome Area	Risks / Gaps	Proposed agency actions – plus agencies involved	Outcome measures	Timeline
Well-functioning markets				
Conduct in consumer financial services, including incentives	Financial service providers not doing enough to address the risks that their conduct poses to investors and consumers.	<p>Ongoing work programme arising out of Conduct and Culture reviews. (FMA, RBNZ)</p> <p>Financial Services Legislation Amendment Act. (MBIE, FMA)</p> <p>Development of a new regime regulating the conduct of financial institutions. (MBIE, FMA)</p> <p>Amendments to the Credit Contracts and Consumer Finance Act – e.g. cap on fees and interest charged. (MBIE, ComCom)</p>	<p>Access to high quality financial advice</p> <p>Ensure consumers are treated fairly at all points in time</p> <p>Protect vulnerable consumers)</p>	<p>Transitional licensing commences Nov 2019</p> <p>Initial Bill by end of 2019, second Bill to follow by mid-2020</p> <p>Currently at select committee</p>

Agency Update - MBIE

Credit Contracts and Consumer Finance Act

1. The Credit Contracts Legislation Amendment Bill was introduced to Parliament in April and is now before the Finance and Expenditure Committee for consideration. The Bill strengthens requirements to lend responsibly, introduces a 'fit and proper person' test and new duties to ensure compliance for directors and executives, and provides new remedies and penalties for non-compliance.
2. A key element of the Bill is a cap on the total interest and fees on high-cost loans (loans with an annualised interest rate of over 50%) to 100% of the original loan principal. This cap aims to prevent small debts spiralling out of control, while still enabling access to small amount credit where this is affordable. Cabinet agreed to this policy in August 2018. A cap on the interest rate of high cost loans was not preferred, because of the concern that this could unduly limit access to small loans. The merits of an interest rate cap were a key area for debate in submissions to the select committee.
3. The Bill also creates new empowering provisions to make regulations setting out how lenders must assess the affordability and suitability of loans. The regulations will include requirements to undertake a specified set of inquiries in order to estimate a borrower's likely future income and relevant expenses over a reasonably foreseeable time period. The draft regulations are being developed in consultation with industry stakeholders. MBIE intends to release an exposure draft of the regulations after the select committee report back in October.
4. The Bill also provides the vehicle for addressing problems previously identified with section 99(1A) of the Credit Contracts and Consumer Finance Act 2003.¹ The Bill will enable the court to reduce the effect of a creditor's failure to make initial or variation disclosure. The current rule is that the debtor is not liable for the costs of borrowing if the creditor does not disclose as required. The Bill allows the court to override that rule if it considers that it is just and equitable to do so.

Agency update – ComCom

Legislative change - CCCFA

8. The Commission will continue to contribute to policy development by providing expert advice to help ensure the legislation we implement is workable and effective. In 2019/20 we will work on a number of areas, including participating in the review of consumer credit law and implement changes passed into law.
9. The Commission has submitted to the Finance and Expenditure Select Committee in relation to the proposed CCCFA reform. The proposed reform introduces substantive changes to the CCCFA that include tougher enforcement, clearer responsible lending requirements, greater transparency and accumulation limits to stop debt spirals.
10. Most significantly for the Commission the Bill proposes that directors and senior managers providing financial services will be required to meet a fit and proper person test in order to be registered on the Financial Service Providers Register. Administration of the test will be undertaken by the Commission and will involve an assessment of an applicant's character and capability.
11. Staff have been working on the detailed system requirements for the fit and proper registry function and expect these to be signed off by our Commissioners this month. We have submitted to Select Committee on concerns we have around the date for the

commencement of the fit and proper person assessment, which is currently due to commence in June 2020.

Responsible lending banking project

13. The Commission is proposing to approach ten banks to seek a meeting with them to discuss how they are complying with their responsible lending obligations and potentially payment protection insurance add-ons under the CCCFA. In particular we are interested in understanding more about how loan affordability and suitability assessments are being conducted, including any changes made to their processes following the review of bank conduct and culture. Letters seeking meetings with the banks will be sent shortly. We are liaising with the FMA on these letters.

23 September 2019 – CoFR Banking Forum Minutes

4.3 MBIE

The CCCFA is being amended to include provisions relating to the protections of vulnerable customers and responsible lending standards. These amendments will be passed early 2020 and may require system changes from banks.

CoFR meeting, 15 October 2019

Papers

Agenda item 5: Update on the work of the Banking Forum

Meeting on 5 June

This meeting was attended by the NZBA (and for the first time, their new chief executive Roger Beaumont).

Like other meetings that the NZBA attends, the focus of the 5 June meeting was the "Regulatory Initiatives" table and the NZBA's own "Regulatory Radar". The NZBA noted that the level of aggregate expected engagement with banks as reflected in the "Regulatory Initiatives" table seemed broadly in line with their own thinking, and that there were a lot of substantial projects underway.

The NZBA also presented to the group on their priorities over the short to medium term. In this context they noted that:

- Immediate priorities for the NZBA and its members are the Reserve Bank's capital proposal, and MBIE's CCCFA and conduct of financial institutions work;

[...]

Agency Update - MBIE

Credit Contracts and Consumer Finance Act

1. The Credit Contracts Legislation Amendment Bill was introduced to Parliament in April and is now before the Finance and Expenditure Committee for consideration. The Bill strengthens requirements to lend responsibly, introduces a 'fit and proper person' test and new duties to ensure compliance for directors and executives, and provides new remedies and penalties for non-compliance.
2. A key element of the Bill is a cap on the total interest and fees on high-cost loans (loans with an annualised interest rate of over 50%) to 100% of the original loan principal. This cap aims to prevent small debts spiralling out of control, while still enabling access to small amount credit where this is affordable. Cabinet agreed to this policy in August 2018. In addition, the Government has signalled its intention to introduce an interest rate cap of 0.8% per day.
3. The Bill also creates new empowering provisions to make regulations setting out how lenders must assess the affordability and suitability of loans. The regulations will include requirements to undertake a specified set of inquiries in order to estimate a borrower's likely future income and relevant expenses over a reasonably foreseeable time period. The draft regulations are being developed in consultation with industry stakeholders. MBIE intends to release an exposure draft of the regulations after the select committee report back in mid-November.
4. The Bill also provides the vehicle for addressing problems previously identified with section 99(1A) of the Credit Contracts and Consumer Finance Act 2003.¹ The Bill will enable the court to reduce the effect of a creditor's failure to make initial or variation disclosure. The current rule is that the debtor is not liable for the costs of borrowing if the creditor does not disclose as required. The Bill allows the court to override that rule if it considers that it is just and equitable to do so.

Agency Update – ComCom

Legislative change - CCCFA

2. The Commission continues to contribute to policy development by providing expert advice to help ensure the legislation we implement is workable and effective. In 2019/20 we will work on a number of areas, including participating in the review of consumer credit law and implementing changes passed into law.
3. The Commission has submitted to the Finance and Expenditure Select Committee in relation to the proposed CCCFA reform. The proposed reform introduces substantive changes to the CCCFA that include tougher enforcement, clearer responsible lending requirements, greater transparency and accumulation and interest rate caps limits to stop debt spirals. We are hoping to continue discussions with MBIE about the design of interest rate caps.
4. We have contracted Making Strategy Happen to help us develop a credit strategy. This will ensure we are best placed to action the objectives of the reform of the CCCFA. We have engaged with a number of external stakeholders and gained valuable insights about how we can improve our strategic approach to our credit work. The strategy is currently going through final sign off.

Minutes

2. Banking Forum

[...]

5.3 Industry feedback has also emphasised the need for a coordinated approach to work on the new conduct regime. ComCom noted a one-off initiative seeking bank information on responsible lending following the Conduct and Culture review.

CoFR meeting, 26 February 2020

Papers

Financial Inclusion and Consumer Engagement Paper on financial inclusion (Attachment)

Name, Title, Organisation	What is the remit of your organisation on financial inclusion and consumer engagement?	What resources are dedicated to financial inclusion and consumer engagement (e.g. is there a team dedicated to this programme of work, how many people in this team, how does the team fit into the rest of the org structure i.e. reporting line)?	Please list any key or noteworthy financial inclusion projects delivered during the last 2-3 years by your organisation. Please explain what the goal was with the initiative/projects, who you were targeting, and whether you achieved those goals.	Please list any current or planned financial inclusion projects by your organisation	Please list any financial inclusion/engagement work or initiatives that you are aware of which is underway by other organisations or groups of organisations	Please provide any other information you think would be relevant for the workshop	Attachments
Monika Colek, Principal Policy Adviser, Competition and Consumer Policy, Ministry of Business, Innovation and Employment	<p>My team advises the Minister on consumer protection policy. Recently this has involved a program of legislative work to reform the CCCFA to address predatory lending and problem debt, both of which are inimical to financial inclusion.</p> <p>We don't have a role in consumer engagement operations.</p>	<p>2FTE now working on CCCFA reforms. 3 FTE working on SCAFI Strategy and Action Plan.</p>	<p>Legislative reform – CCLA Bill was assented December 2019</p> <p>System work – collaboration between Govt, Financial Services Industry and Community Sector re new products and services:</p> <p>My team, alongside Consumer Protection at MBIE and the building financial capability team at MSD & the Whanau Ora team at TPK have been leading development and implementation of the SCAFI Strategy and Action Plan (see attached for more info re goals etc).</p>	<p>Legislative reform: Working on CCCFA regulations on affordability and advertising of credit, due to be made April 2020</p> <p>New products and services: See above – we are still setting up the partnership and measurement framework.</p>	<p>Financial Markets team's work and the national strategy around financial capability (CFFC)</p>	<p>It would be good to understand what is meant by consumer engagement and financial inclusion at the workshop.</p> <p>Financial Inclusion is reasonably well defined via the FIAP work in Australia (https://goodshepherdmicrofinance.org.au/services/financial-inclusion-action-plans-flap/).</p> <p>Note that some in the NZ industry use it as an equivalent to "access to (any) credit" and banks use it to mean "access to bank credit rather than higher cost credit from finance companies & payday lenders". On these definitions, the CCCFA reforms will have reduced financial inclusion.</p> <p>Financial Wellbeing is another related concept and tends to be used more by industry lately – eg. see here: https://business.nab.com.au/nab-australian-wellbeing-report-q1-2019-34576/</p>	

Agency update – MBIE

Credit Contracts and Consumer Finance Act

6. The Credit Contracts Legislation Amendment Act received Royal Assent in December 2019. The Bill strengthens requirements to lend responsibly, introduces a 'fit and proper person' test and new duties to ensure compliance for directors and executives, and provides new remedies and penalties for non-compliance.
7. A key element of the Act are two caps:
 - a. a cap on the total interest and fees on high-cost loans (loans with an annualised interest rate of over 50%) to 100% of the original loan principal. This cap aims to prevent small debts spiralling out of control, while still enabling access to small amount credit where this is affordable.
 - b. a cost of credit cap, limiting interest and fees on high-cost loans to 0.8% per day.

8. The Act also created new empowering provisions to make regulations setting out how lenders must assess the affordability and suitability of loans, and standards for advertising credit, and requirements for disclosure prior to debt collection activity. Submissions on exposure drafts of the regulations closed on 5 February. Significant feedback was received on the proposed enquiries which must be made in order to assess affordability of loans. MBIE will consult further with stakeholders on the revised policy direction. The intention is to make the final regulations in April 2020, to provide a year's lead time before commencement.
9. MBIE understands that in mid-February, the Commerce Commission will consult on the proposed criteria for conducting 'fit and proper person' tests on directors and senior managers of consumer creditors.

Agency update – ComCom

Changes to the consumer credit contracts regime

14. The Credit Contracts Legislation Amendment Act 2019 (CCLAA) passed on 19 December 2019 and is being introduced in four stages. A summary of those changes by date is provided below. Some of the dates that the changes take effect are set but others will be confirmed later. Some obligations will take effect once Regulations have been passed.

Changes that came into force on 20 December 2019:

- Introduction of penalties and statutory damages for breaching Lender Responsibility Principles.
- Amendments to how disclosure can be provided.
- Changes to the ability to take repossession enforcement action where there is a complaint or hardship application.
- Expansion of enforcement response options for the Commission to include enforceable undertakings.
- Prohibition on the enforcement of guarantees in some situations.

Changes that came into force on 13 January 2020:

- Changes to the criteria for the application of repossession rules.
- Introduction of offences (including infringement offences) for failing to make prescribed information publicly available including online.

Changes to come into force on 1 June 2020:

- All mobile trader contracts where goods are not paid for in full at the time of purchase will now be subject to the CCCF Act.
- Introduction of rules that only apply to high-cost consumer credit contracts (HCCC):
 - Lenders are required to disclose additional key information.
 - Total cost cap – fees and interest under a HCCC will be limited to 100% of the principal.
 - Rate cap – maximum daily charge of interest and fees added to a HCCC will not be able to exceed 0.8% of the credit provided per day.
 - Restrictions on entering into HCCC in certain circumstances when the borrower already has or has had other HCCCs.
 - Lenders cannot charge compound interest.
 - Default fees exceeding \$30 considered unreasonable unless the lender can prove it is reasonable.

- Anti-avoidance provision to address anyone trying to circumvent provisions applying to HCCC.

The following changes are currently expected to come into force on 1 June 2020 (subject to the commencement order being finalised):

- Introduction of duties on directors and senior managers to exercise due diligence and penalties for failing to comply.
- Clarification of cancellation rules for goods sold on deferred payment.
- Amendments to initial disclosure requirements for credit agreements that are also layby sales.
- Expansion of remedies for CCCF Act breaches including compliance orders and corrective advertising.

Further changes are proposed to come into force on 1 April 2021 (subject to the commencement order being finalised)

15. Further changes are proposed, including stricter requirements on lenders in relation to affordability and suitability inquiries, and disclosure of information to borrowers. Most significantly for the Commission, the Act introduces the requirement that directors and senior managers providing financial services will be required to meet a fit and proper person test in order to be registered on the Financial Service Providers Register.
16. The Commission will release for consultation its criteria for assessing the fitness and propriety of individuals in early 2020. The criteria will cover both the capability (fitness) and character (propriety) of individuals. Guidance on the certification scheme and application process will be published mid-2020.

Ongoing credit work

New credit advocacy team

17. The Commission has established a dedicated advocacy team to support its credit work. The team is led by a Principal Credit Stakeholder Adviser and is based in Auckland. We have created this dedicated credit outreach team to focus resources on credit outreach and building strong relationships within the sector.

Responsible lending banking project

18. Commission staff have now met with ten banks on a voluntary basis to better understand how each bank is complying with the responsible lending obligations under the CCCFA, (i.e. to make reasonable inquiries before loans are entered; to be satisfied that the loan is likely to be suitable; and affordable to the borrower). The team is reviewing material provided to it and intends to provide feedback to each of the banks about their processes.

23 June 2020 CoFR Banking Forum – Minutes

4. Bank system, staff and financial capacity

[...]

The NZBA is currently focusing on the FSLA and CCCFA regulations. These affect how banks will develop their systems and so must be completed before several other pieces of work can begin.

[...]

CoFR meeting, 2 July 2020

Papers

Agenda item 2: Principles for reintroduction of regulation and its phasing

Table of regulatory initiatives

2B Table of regulatory initiatives - updated June 2020

Initiative	New Timetable	Lead agency / Links	Update / Next Steps
Credit Contracts regime – deferral of commencement	<p>Commencement of new part 5A of the CCLAA relating to fit and proper person certification will be delayed from 1 September 2020 to no earlier than 1 March 2021.</p> <p>Commencement of the new regulations and other remaining provisions of the CCLAA will be delayed from 1 April 2021 to no earlier than 1 October 2021.</p> <p>These dates will be reviewed every three months and any changes will be advised.</p> <p>No change to the start date for provisions of the CCLAA relating to mobile traders and high-cost loans. These will come into force on 1 June 2020.</p>	<p>Ministry of Business, Innovation and Employment (MBIE)</p> <p>https://www.mbie.govt.nz/business-and-employment/consumer-protection/review-of-consumer-credit-law/changes-to-consumer-credit-law-2020/</p>	
Credit Contracts regime - exemptions	Credit Contracts and Consumer Finance (Exemptions for Covid-19) Amendment Regulations 2020 made on 1 April 2020.	<p>Ministry of Business, Innovation and Employment (MBIE)</p> <p>Regulations at:</p> <p>http://www.legislation.govt.nz/regulation/public/2020/0055/latest/LMS330467.html</p>	

14 August 2020 – CoFR Banking Forum Minutes

4. Review of the banking forum forward calendar

[...]

MBIE

[...]

■ – The Credit Contracts Legislation Amendment Bill item should be moved into the implementation tab because most components of the Bill are currently being implemented. It might be preferable to separate this Bill into its separate elements; only one part of the Bill is currently under consultation.

[...]

5. Impact of regulatory initiatives on specific bank functions

[...]

■ – The greatest difficulties for Banks arise where multiple pieces of legislation are pursued simultaneously. Capacity bottlenecks, like senior management availability can make it difficult for banks to produce high quality input. Such issues were caused by the overlap between the Financial Services Legislation Amendment Act and the Credit Contracts Legislation Amendment Act.

[...]

CoFR meeting, 25 August 2020

Papers

Agency update – ComCom

CCCFA work programme

14. We continue our programme of work implementing the reforms to the CCCFA. In 2020/21, this will involve continuing to prepare for the Fit & Proper person register which will come into effect mid 2021; educating lenders and consumers about new credit laws; liaising with MBIE regarding the development of CCCFA regulations; and deepening our understanding of current levels of consumer credit offerings and compliance with the rules.

15. Our enforcement focus will be on the “cost cap” provisions for high cost short term lenders and on any illegitimate practices in debt collection. We will complete our research project into motor vehicle financing and add-ons.

Update on high-cost lending rules

16. We have been monitoring the responses of 30 lenders (39 trading entities) to the new rules. Of the 30 lenders monitored, we found that six have stopped lending, 12 have continued offering high-cost loans and 12 are offering loans at interest rates of less than 49.99% (five of these 12 were previously high-cost lenders). No lenders are currently advertising interest rates that exceed the rate cap. Our next steps will be to request borrower files from remaining high-cost lenders to understand compliance in more detail, including how the five lenders who reduced their rates are making up for lost revenue .

Responsible lending

17. The Commission currently has two court cases involving potential breaches of the responsible lending provisions of the Credit Contracts and Consumer Finance Act 2003 (CCCF Act) before the Courts: Moola Limited and Ace Marketing Limited and we have reached a resolution in relation to two cases recently (see below).

18. In June the Commission reached a settlement with high-cost short-term lender Ferratum New Zealand Limited (Ferratum). Ferratum admitted breaching responsible lending provisions of the CCCF Act between June 2015 and October 2018. Ferratum has also repaid the cost of borrowing for 46 named borrowers, totalling \$88,173.00. The High Court has made declarations that Ferratum breached the Act.

19. In July the Commission reached a settlement agreement with Australian high-cost short-term lender Quadsaa Pty Limited (trading as Pretty Penny and PPL). We filed proceedings against Pretty Penny for alleged breaches of a number of the responsible lending provisions of the CCCF Act. Pretty Penny is no longer lending in New Zealand and has agreed to write off all outstanding loan balances when it deregisters from New Zealand and will refund the full cost of borrowing to 21 borrowers named in the Commissions statement of claim filed against it in the High Court in August 2019.

Agency update – MBIE

Consumer credit reforms

15. The Credit Contracts Legislation Amendment Act 2019 started to come into force from 1 May 2020. There are now limits on fees charged on high-cost loans, including a total cost of credit cap (100 per cent of the amount borrowed) and an interest rate cap (0.8 per cent per day). The bulk of the Amendment Act reforms will commence on 1 October 2021, including additional record keeping and certification requirements.

16. Regulations were made in August which provide the detail of new advertising standards and disclosure requirements that will come into force in October 2021. MBIE is continuing to develop the second tranche of regulations that detail affordability and suitability requirements which should be finalised later this year.

17. MBIE is also progressing a third tranche of implementation regulations which include certification fees and other technical matters. It is intended that policy decisions will be sought by the end of 2020.

CoFR meeting, 13 October 2020

Papers

Timetable of regulatory initiatives – forward plan

Group	Q4 2020	Q1 2021	Q2 2021	Q3 2021	Q4 2021
Credit providers		<p>Expiry of temporary measure:</p> <ul style="list-style-type: none"> Addendum to Responsible Lending Code – expires 31 Mar 2021 (extended from 30 Nov 2020) <p>Consultation starts:</p> <ul style="list-style-type: none"> Further amendments to the Responsible Lending Code 	<p>Commencement:</p> <ul style="list-style-type: none"> Fit and proper certification: applications open – 1 June 2021 (ComCom) 		<p>Commencement:</p> <ul style="list-style-type: none"> New requirements under the CCLAA – 1 Oct 2021 New duties on directors and senior managers – 1 Oct 2021 Directors and senior managers to be certified by 1 Oct 2021

Agency update – ComCom

Credit work programme

19. We continue our programme of work implementing the reforms to the CCCF Act. In addition to work outlined below, we continue to liaise with MBIE regarding the development of CCCF Act regulations and prepare a range of guidance for the sector.

Fit & Proper persons register

20. Work is on track for our Fit and Proper Persons register (start date June 2021) and a programme of education for the sector will be delivered next year. This register will link to the Financial Services Providers Register and we continue to work closely with MBIE in relation to the register and are engaging with others (such as the Reserve Bank) regarding informational synergies.

Intelligence

21. BERL has prepared a report on the consumer credit sector for the Commission. CoFR members were interviewed, along with about 18 other lenders, industry representatives, Government agencies, credit-scoring agencies, and consumer advocates. The report includes a study of consumer responses drawn from a moderated (online) focus group, and an econometric forecast of total demand for consumer credit. The economic and financial effects of COVID-19 are taken into account.
22. The aim is that this work will be able to inform the Commission's approach to consumer credit regulation over the medium-term. The Commission will share the final report with CoFR members.

Education

23. The Commission's lender seminar series has now been changed to an online forum in October, with sessions being made available on the Commission's website following the event. It aims to connect with lenders on compliance issues, current trends and harms in consumer lending, and to educate on changes to the CCCF Act.
24. Consumer advocate training sessions with financial mentors, micro-lending providers and other advocates working with consumers will now also be online. The purpose of these sessions will be to increase the sectors understanding of the CCCF Act changes, and to encourage effective monitoring of issues and harms.

Compliance and enforcement

25. Our enforcement focus is on the “cost cap” provisions for high cost short term lenders, disclosure and responsible lending practices of mobile traders, and on any illegitimate practices in debt collection. We also expect to complete our research project into motor vehicle financing and add-ons products.
26. We have continued monitoring lender responses to the introduction of the high cost lender rules which came into effect on 1 May and 1 June 2020. We have been monitoring both high cost lenders (14 lenders under 16 entities) as well as lenders who are charging just under the high cost loan interest rate limit to avoid the new rules. In particular, we are checking the fees they are charging as a number of these appear to have increased.
27. We are initiating work to check that mobile traders are complying with recent legislative changes which require that all mobile traders now comply with disclosure obligations, irrespective of their business model and that they are conducting appropriate responsible lending affordability assessments.
28. We continue to receive a range of self-disclosures from banks regarding their compliance with CCCFA requirements. Kiwibank reported to the Commission in August 2019 that it failed to have in place robust home loan variation disclosure policies, procedures and systems for certain types of home loan variations in the period before April 2019. Kiwibank entered into a settlement with the Commission on 27 August 2020, admitting that it had failed to act with the care and due diligence and skill of a responsible lender and agreed to make remediation payments to over 48,000 borrowers, totalling \$5.2 million.
29. The Commission still has two court cases involving potential breaches of the responsible lending provisions of the Credit Contracts and Consumer Finance Act 2003 (CCCF Act) before the Courts: Moola.Co.NZ Limited and Ace Marketing Limited. It has an ongoing fees case in relation to Harmoney.

Agency Update – MBIE

Consumer credit reforms

13. The Credit Contracts Legislation Amendment Act 2019 started to come into force from 1 May 2020. There are now limits on fees charged on high-cost loans, including a total cost of credit cap (100 per cent of the amount borrowed) and an interest rate cap (0.8 per cent per day). The bulk of the Amendment Act reforms will commence on 1 October 2021, including additional record keeping and certification requirements.
14. Regulations were made in August which provide the detail of new advertising standards and disclosure requirements that will come into force in October 2021. MBIE is continuing to develop the second tranche of regulations that detail affordability and suitability requirements which should be finalised later this year. MBIE is also updating the Responsible Lending Code in parallel. A consultation draft of the updated Code will be published in November 2020.
15. MBIE is also progressing a third tranche of implementation regulations which include certification fees and other technical matters. It is intended that policy decisions will be sought by the end of 2020.

30 November 2020 – CoFR Banking Forum Minutes

NZBA in attendance

10:30am

6. Identifying efficiencies for sequencing regulatory initiatives

[...]

■ – the CCFA and the FSLAA are rated as low by MBIE. Industry considers this to be a high impost item.

TS – These work programmes are split between MBIE and ComCom. For MBIE this work involves some low level engagement from industry; for ComCom this work is rated as very high to medium high.

CoFR Conduct and Governance workstream meeting, 1 December 2020

Minutes

Executive Accountability/Directors duties:

The lender duties in the CCCFA are seen as a useful starting point in framing positive duties and the team are currently working through formulation.

12 February 2021 – CoFR Banking Forum Minutes

NZBA in attendance – 3.00pm

6. Identifying efficiencies for sequencing regulator initiatives

[...]

■ – The biggest angst is from those that are in implementation and trying to manage those engagements (including things like legal work) while proactively responding constructively to consultation. For instance the responsible lending code – published yesterday but members have just reviewed the code recently. Putting best efforts into providing the best responses to everything and has not seemed to let on yet.

[...]

CoFR meeting, 3 March 2021

Minutes

Buy Now, Pay Later

[...]

ComCom noted that BNPL products could be called into the CCCFA regime as consumer credit contracts by regulations. The group discussed whether if this was done, BNPL *providers* might fall under RBNZ legislation as deposit takers. MBIE were also separately considering the issue of high fees charged to merchants.

10 May 2021 – CoFR Banking Forum Minutes

NZBA in attendance – 1.30pm

[...]

7. Update from the industry

[...]

■ – Thought from the industry is focused on overlap. Say the calendar works well but the impact shown on the calendar remains high perpetually is it actually helpful?

Two main points:

- Push and pull of lending.
Expectations on banks for good customer outcomes etc. can be skewed by responsible lending obligations which are onerous or stringent. Question of customers' interests versus interests of the financial system.
- Slowly expanding obligations of senior managers (due diligence obligations). Banks want certainty of regulations/regulators. Most obvious is fair dealer provisions and FTA. Can see it expanding CCCFA due diligence obligation with similar obligation under Deposit Takers Act and more. Regime could fall under multiple regulators. Interested in this issue but haven't quite got to the so what.

TF - Are you reflecting conversations with colleagues – is it a general discussion?

■ – Yes. We had a small working group for banks after last Forum. If it is hard for big banks, it is near impossible for small banks.

CoFR meeting, 31 August 2021

Minutes

Agenda Item 1: COVID-19

It was discussed that some parts of the industry were concerned about implementing forthcoming changes to CCCFA that are due to become operational on 1 October. Lockdown has compounded these concerns – that trained staff and IT will not be ready by enforcement date. ComCom advised the ‘fit and proper certification’ can go ahead from 1 October but noted banks are not part of the certification regime. MBIE signalled they would raise the enforcement of the ‘affordability assurance test’ element with Ministers.

19 August 2021 – CoFR Banking Forum Minutes

4. Review of Regulatory Initiatives Calendar

[...]

LU – The CCCFA changes are coming fast and lender seminars have been rescheduled. Timeframe unlikely to be substantially altered as engagements become virtual. Should lockdown extend, will be communicating more with banks and determine the discussions with the market.

[...]

NZBA in attendance – 11.45am

6. Review of the Regulatory Initiatives Calendar

The NZBA noted that the calendar remains really helpful. The below questions were briefly outlined at the meeting, though time limitations meant they were not fully discussed.

[...]

- ComCom: Further guidance on breach reporting under CCCFA? Any further updates.
 - MA – No obligation around breach reporting but will be the director’s and senior management’s duties. Planning to form some remediation guidelines (commission wide at some point) and setting out expectations around reporting to use. No date set currently.

CoFR Delegates meeting, 6 September 2021

Minutes

ComCom briefed that on CCCFA, Ministers have signed up to a delay, details are being prepared for public release, so this should be treated as confidential. Otherwise, they had not heard anything from lenders on a need for exemptions.

12th October 2021 - email from RBNZ to CoFR members circulating the NZBA letter.

Dear all,

Please see attached a letter from the New Zealand Bankers Association setting out their concerns about the potential unintended consequences of the responsible lending and affordability provisions arising from the Credit Contracts and Consumer Finance Act. In short, NZBA are concerned that the new rules will reduce access to credit (including mortgage finance) for customers in vulnerable circumstances.

The NZBA say they are also sharing the paper with MBIE and the Commerce Commission, but we wanted to make sure that all CoFR members were aware of it. We are suggesting this topic is considered as part of the inclusion work - a meeting of the revived inclusion group is planned for the next few weeks.

On the substance, it should be noted that these impacts were not completely unforeseen. The Regulatory Impact Statement for the amendment legislation provided the following summary of the likely risks and unintended impacts

- **Reduced access to credit**, where this was previously granted in unaffordable or unsuitable circumstances. Moderate to low impact. Mitigated by continuing availability of support from Ministry of Social Development (Work and Income), Whanau Ora and charities. In addition, independent work is underway to increase access to microfinance and other safe forms of credit for vulnerable consumers. However, this support will not necessarily be available or accessible to all families in need, so there may continue to be service gaps for some vulnerable consumers. The Ministry for Social Development is currently developing a strategy on increasing access to safe credit, with a view to being ready to trial interventions in Q4 2019.
- **Increased cost of credit**, where costs of compliance are passed on to consumers. Low impact. Additional compliance costs largely flow from proposals that look to strengthen the overall implementation of the intent of the CCCFA, rather than completely new proposals that are a significant departure from existing regulation.
- **More 'black market' lending**. Low impact. The proposals are geared to support compliance with the existing framework of obligations. Creditors who are wilfully non-compliant with new requirements are unlikely to have been complying with existing legal obligations.

The Cabinet paper also noted:

7 one consequence may be a tightening of access to credit, particularly Where this was previously being granted in breach of affordability or suitability requirements. Alternative avenues will not necessarily be available or accessible to all families, so there may continue to be service gaps for some consumers. In recognition of this concern I have initiated cross-agency work with the financial services and community sectors on expanding access to microfinance and inclusive banking products. Further, the Ministry of Social Development (MSD) is currently developing a strategy on increasing access to safe credit, with a view to being ready to trial interventions in Quarter 4 of 2019.

The Safer Credit and Financial Inclusion (SCAFI) strategy is now being informed by the National Strategy for Financial Capability.

James

James Sergeant

Senior Adviser, Corporate Relations

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22nd October 2021 – Minutes of CoFR financial inclusion group

ComCom (Mark)

- Most of the Commission's current initiatives revolve around changes to the credit laws that come into effect on 1 December. The new prescriptive regulations regarding suitability and affordability may mean that people won't get access to credit that may have in the past. Concern about reduced access to credit for some types of borrowers has been raised in letter from the NZ Bankers' Association to RBNZ.
- The Commission has gone a little further with its activities regarding law reform, than what's been done in the past - a lot more material has been produced and external consultants have been involved in assisting with presentations and how the Commission communicates. Information provided to lenders has gone beyond what has typically been done in the past in terms of forming views and to assist lenders to implement the new laws. The Commission has also consulted on guidance which isn't something that has been done in the past.
- In the consumer advisory sector, the Red Flags tool has been updated which helps to educate the sector on credit laws. The Commission is proposing to do some comms work with direct to consumers in order to educate them about how the borrower experience will be changing.

26th October 2021

Dear all,

Earlier today, we provided the following response to NZBA's letter:

From: James Sergeant
Sent: Tuesday, 26 October 2021 10:57 AM
To: Roger.Beaumont@nzba.org.nz
Cc: [REDACTED]; Simone Robbers
<Simone.Robbers@rbnz.govt.nz>; louise.unger@comcom.govt.nz
Subject: CCCFA - Unintended Consequences

Dear Roger,

Thank you for your letter to Simone of 8 October, setting out your assessment so far of the impacts of the CCCFA reforms. We have shared the letter with the other members of the Council of Financial Regulators.

It is very helpful to get this level of detail and understand how you see the CCCFA having an impact on the availability of credit. We agree that it would be worth having a further discussion involving the Reserve Bank and the Commerce Commission six months after the regime comes into force, which can draw on your members' experience. It may be sensible to involve other CoFR agencies as well, but we can consider that nearer the time.

We note your view that the Reserve Bank should consider the CCCFA's impact on home lending when making macroprudential decisions, particularly in relation to the potential application of debt-to-income (DTI) limits. Although the objectives of macroprudential policy and responsible lending regulations differ, we acknowledge that both types of policies may affect credit availability to households and we need to consider the overall impact of these policies.

We expect to publish an initial consultation on debt serviceability restrictions in November, and would welcome the opportunity to engage with the NZBA and its members on issues related to application of these tools. No decision has been taken on whether to implement DTI limits or other debt serviceability restrictions, and we will consider the views of all stakeholders carefully as part of the consultation process.

With many thanks again for your contribution.

Nga mihi,

James Sergeant

Senior Adviser, Corporate Relations

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CoFR meeting, 30 November 2021

Papers

Agenda item 4a: Update on CoFR Priority Areas (Financial Inclusion)

NZBA letter about consequences of credit law reforms

1. On 8 October 2021 the New Zealand Bankers' Association wrote to the Reserve Bank about what it sees as the potential unintended consequences of the changes to consumer credit laws coming into effect on 1 December 2021. In particular, the NZBA expressed concerns that the new prescriptive responsible lending suitability and affordability assessment requirements may mean reduced access to credit for some customer segments, including first time home buyers and those seeking access to emergency credit. The letter was shared with other CoFR members.
2. These consequences were not entirely unexpected or unintended. For example, the Cabinet paper noted that the new regime may lead to 'a tightening of access to credit,

particularly where this was previously being granted in breach of affordability or suitability requirements.’

3. The Reserve Bank responded to the NZBA on 26 October and agreed that it would be worth engaging:

- On the interaction between the CCCFA consequences with debt serviceability restrictions, once its upcoming consultation on a framework has been published; and
- (With other CoFR agencies) on the impact of the CCCFA six months after the new regime comes into force.

4. The Reserve Bank and the Commerce Commission discussed the issues on 5 November. Simone Robbers from RBNZ and Louise Unger from the Commerce Commission will provide CoFR Heads with a verbal update about this matter to support the text above and to provide some more context for a discussion by Heads, including how CoFR agencies should engage with NZBA on this topic going forward.

Agenda item 4a: Attachment A

Financial inclusion – CoFR activities table - November 2021

<p>Educating public about credit law changes</p> <p>Campaign to educate the general borrowing public about credit law changes coming into effect on 1 December 2021.</p> <p>In particular that changes to responsible lending obligations may mean that the loan application process takes more time, and that lenders will be asking borrowers more questions about their circumstances, income and expenses and asking for more documents all as part of checking that loans are suitable and affordable.</p>	ComCom	<p>Will assist potential borrowers to understand that changes to loan application processes are as a result of law changes to provide increased protection to borrowers (and not something to do with a particular borrower’s personal circumstances).</p> <p>Lenders are also keen for borrowers to be educated about law changes to improve the customer experience.</p>	<p>Details and timing are TBC (tentative Dec 2021 – March 2022).</p>
<p>Educating consumer advisers about credit law changes - materials</p> <p>Updating of “Red Flags” educational materials following changes to Credit Contracts and Consumer Finance Act (CCCFA) due to come into force on 1 December 2021</p> <p>Provides a user-friendly guide to different CCCFA topics and matters consumer advisers should look out for (e.g. responsible lending, fees, disclosure, high-cost loans).</p>	ComCom	<p>Benefit to consumer advisory sector (e.g. financial mentors and Citizens Advice Bureau). It is intended to empower advisers to better:</p> <ul style="list-style-type: none"> • identify unlawful conduct and assist their clients to resolve problems with lenders. • identify and report potential non-compliance to the Commission <p>Will also assist consumers advisers to educate consumers about their rights as borrowers</p>	<p>Launched 6 October 2021.</p> <p>https://comcom.govt.nz/business/resources-for-consumer-organisations/red-flags</p>

<p>Educating consumer advisers about credit law changes - webinars</p> <p>Webinars with consumer advisory sector about changes to CCCFA coming into effect on 1 December 2021 (particularly around changes to suitability and affordability responsible lending obligation, disclosure, and advertising).</p>	ComCom	Benefits as above.	October 2021 (held online due to COVID-19).
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Agenda Item 4b: Update on CoFR Priority Areas (Conduct and Governance)

The FMA is continuing work to update its conduct guidance and intends to consult on changes in the first half of 2022. FMA engagement with ComCom will pick up to examine the overlap between CoFI and the CCCFA.

Draft Minutes

4. Updates on CoFR priority areas

Financial inclusion

The CCCFA law changes were coming into force on 1 December. Some stakeholders had expressed concern about the unintended consequences of the reforms, particularly for vulnerable customers. The group noted that some of the effects had been intended, and it would also be important to distinguish between transition costs and true unintended consequences. The group agreed that banks and other lending institutions should be encouraged to collect data on this. The group agreed that CoFR agencies should engage with lenders sooner rather than later to discuss what sorts of data would be useful to collect and what criteria would be used to assess the impacts in terms of financial inclusion. ComCom estimated that there were 4-500 lenders that would need certification under the new legislation. This excluded banks, NBDTs or other organisations regulated by the RBNZ or FMA.

- **ACTION: Financial inclusion:** noted industry concerns regarding potential unintended consequences from the CCCFA and agreed that the impacts should be monitored over the coming months. This meant that CoFR needed to carefully define now the data to be collected.

8 October 2021

Simone Robbers
Assistant Governor – GM Governance, Strategy & Corporate Relations
Reserve Bank of New Zealand

By email: Simone.Robbers@rbnz.govt.nz

Dear Simone

Potential Unintended Consequences of CCCFA Responsible Lending and Affordability Reforms – October 2021

At the NZBA Council meeting on 13 September 2021, the Reserve Bank asked that we outline the potential unintended consequences on customers in vulnerable circumstances of the CCCFA reform's new suitability and affordability rules. We understand the Reserve Bank may share this paper with the Council of Financial Regulators and we're also sharing this paper with MBIE and the Commerce Commission. We note it is up to each bank to implement the CCCFA changes as they see fit in accordance with the law, but believe there may be some common consequences regardless of approach taken.

In our view, the primary unforeseen impacts on customers in vulnerable circumstances (which for this purpose, can include customers with reliable income streams but who are surplus poor) may include:

- Increased barriers to home ownership, ranging from complexity in the loan application process to a higher likelihood of loan decline due to the new 'reasonable surplus' requirement; and
- A more limited ability to access lending from banks who will no longer have any discretion to override the rules, meaning genuine emergency short-term lending or debt consolidation (which leads to better customer outcomes but is still a serviceability fail) cannot occur.


The Appendix to this note provides further detail on each of the above, along with some additional detail the RBNZ may find interesting. We understand that the CCCFA is outside the Reserve Bank's direct remit, but think that the Reserve Bank should consider the CCCFA's impacts on home lending when making other macro-prudential decisions, including the potential application of debt-to-income (DTI) limits.

We would welcome the opportunity to further discuss these issues with the Reserve Bank, particularly when the Reserve Bank is making decisions on DTI limits. We also suggest a further discussion once the CCCFA regime comes into effect and there is more evidence available on the impact of the changes. We would be happy to collate some data and meet

with the Reserve Bank and Commerce Commission 6 months after the regime comes into force. At this time, we may also have some suggested amendments or exemptions to mitigate the unintended impacts of the regime on customers in vulnerable circumstances.

We note that we remain supportive of the intent of the CCCFA changes, but want to ensure that customers in vulnerable circumstances do not end up worse off as a result of unintended consequences. We think further engagement down the track once we have had a chance to assess the impacts of the regime is the most appropriate way forward.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Beaumont', enclosed within a hand-drawn oval.

Roger Beaumont
Chief Executive

Appendix: further detail on unintended consequences of the CCCFA changes

Extent of impact will be known after implementation — and may be influenced by other reforms

As the reform's impact will only become fully clear after implementation, we've outlined members' best understanding of the likely consequences. Our members will monitor and seek to manage customer outcomes and, after implementation, members will share details and insights on how the changes are working in practice.

However, members remain concerned the CCCFA's prescriptive rules, combined with significant penalties, may ultimately drive more conservative lending behaviour that could limit access to credit.

We understand and support the Reserve Bank's expectations around the need for credit decisions to be made in line with a risk appetite that is consistent over time and through economic cycles. However, the CCCFA's penalties are not commensurate to behaviour or harm. Together with inflexible prescription, those penalties may lead to conservative lending practices and a tightening of credit access which may disproportionately impact our most vulnerable.

We also suggest that the impacts of the CCCFA reforms on home lending are considered when assessing the approach to other macro-prudential changes, including upcoming LVR speed limit changes and the potential application of DTI limits. The added complexity and cumulative effect of the reforms on lending assessments may further restrict access to credit, particularly among first home buyers. As noted above, we suggest exploring this aspect further when consultation on DTI begins in October.

Processes will take longer

The new suitability and affordability rules will mean the home loan application process will take longer for customers.

The impact will differ between lenders, depending on their size and nature of operations. Estimates are the home loan application process may take between 14% and ~40% longer and the average wait time for a home loan decision may also increase. The new rules require lenders to collect more information about customers' circumstances, and may also need to be more iterative, involving more follow-up questions of customers.

While still being under significant debate, proposed Australian reforms¹ reflected concerns that similar prescription led to slower processes and conservative lending behaviour, ultimately reducing access to credit. We expect we may see similar outcomes. We are also concerned that the longer lending process conversations may deter customers from having wider conversations about their needs and goals which could lead to better customer outcomes.

Most customers, regardless of lending risk, will need to complete comprehensive suitability and affordability assessments. Although there is a regulatory exception for 'obvious affordability' (Regulation 4AG), limited guidance on the intended scope suggests a very high

¹ National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020.

bar. The proposed reporting on use (expected in further Regulations due soon and not limited to high-cost lenders) also strongly suggests lenders should use the exception sparingly or expect scrutiny. As such, lenders' ability to provide quick access to credit, particularly low amounts, to meet a specific short-term customer need will be more difficult, and customers may seek more credit than may be needed to avoid re-applying in future.

While the CCCFA doesn't apply to business lending, small business owners and the self-employed may also be unintentionally impacted by slower provision of credit, consumer or business. The new affordability rules present challenges in separating and verifying personal income and expenses, or lending, from business income, expenses, and lending. Lenders will need to carefully manage the impact of these changes. Implementation costs have been significant, and lenders will also need to increase resourcing, which is proving challenging in the current environment.

Processes will be more complex and may create barriers to access

Customers will find the process different to what they may have previously experienced when borrowing money. Customers will need to provide more in-depth information to explain and verify their financial position, regardless of the lending size or whether the customer has an existing relationship with the lender.

The new Regulations create a 'one size fits all' model. Lenders will have less flexibility to make judgmental credit decisions and consider wider elements where affordability may be more marginal, like relationship and credit history or the underlying need for credit. Any inflexibility means lenders may find it difficult, to provide appropriate and urgent economic support to customers, including in times of regional or national emergency.

Changes may impact certain customer groups

The more complex processes and greater prescription may impact certain customer groups more than others. For example, first home buyers, individuals seeking Kāinga Ora loans or unconventional lending arrangements, people returning from overseas or recent immigrants, or people about to go on or returning from parental leave, or those nearing retirement.

Vulnerable customer groups, including those with lower financial capability, may find engaging with lenders more difficult and intensive. The added complexity, increased time in the lending process, and the need for more documentation may create unintended barriers to lending access and potentially create customer vulnerabilities where none existed previously.

The prescriptive and conservative nature of the affordability reforms may also have a negative impact for lower income earners. Māori and Pasifika are disproportionately represented in lower income brackets, along with solo parents, recent migrants, those with disabilities, and those with no qualifications. We expect low income earners, with lower uncommitted monthly income, may experience higher home loan decline rates than previously, given the need to ensure a 'reasonable surplus' in addition to comprehensive income and expenses validation. This was the experience in the UK following the Mortgage Market Review, where an unintended outcome was that regulatory affordability requirements created hurdles for some groups, including single income households, to achieve to home ownership.²

² See section 6.2 of the joint report from "The Changing Shape Of The UK Mortgage Market Emerging Themes" by UK Finance and Hometrack, part of Zoopla dated December 2019.

Those customers may struggle to obtain credit elsewhere

Customers declined under stricter rules or deterred by the complexity, may seek higher-cost lending (particularly for small amount or short term lending) from unregulated providers of 'credit-like' products (e.g. Buy Now Pay Later³) or from non-compliant lenders. We also understand the experience in the United Kingdom following the Mortgage Market Review was that customers turned to other sources of credit, like family or social support services, which may create other pressures.

Unfortunately, cross-agency work MBIE expected to address service gaps that may arise from the CCCFA reforms does not appear to be progressing quickly. And not-for-profit agencies who may have otherwise bridged those gaps and provided lending for marginalised customers may struggle to meet the CCCFA's increased requirements. The nature of compliance required and risk of significant penalties, including personal liability for directors and senior managers, may deter or inhibit those services. We note, for example, The Salvation Army has recently stopped its 'Good Shop' service, which had been an alternative to truck shops.

So, the detailed analysis of customers' financial positions under the reform, may unintentionally restrict access to credit for certain customer groups, potentially widening the wealth gap and resulting in poorer outcomes for economically disadvantaged groups. Where customers' financial circumstances negatively change⁴ we're also concerned this may inhibit their ability to change lenders easily. Research in the UK suggests this can have a serious and detrimental effect on customers.

Again, member banks will carefully monitor and respond to any potential customer impacts.

³ Finder NZ recently published a [Report on the state of Buy Now Pay Later in New Zealand](#). The report has found an exponential growth in the use of BNPL products in NZ which provide access to credit without any affordability assessment making it easier for problem borrowers to get into debt through BNPL services than through traditional credit cards or loans.

⁴ [UK Mortgage Prisoners. Report to the Financial Conduct Authority \(FCA\). 6 January 2020.](#)

CoRR Banking Forum - Regulatory Initiatives
 Initiatives relating to the CCCFA

The information below is a summary of regulatory initiatives of the indicated Agency. The priority and timing expectations are a dynamic nature and subject to change. The summary indicates high risk initiatives of the week based on Agency reports from banks on each of these initiatives, in each of the periods indicated. Consistency in the expected level of engagement (e.g. if it is high between a low vs. a high level) these decisions are left to each Agency's discretion.

Q4 2019

Agency	Description of Engagement	Type of Engagement	Status	Submitted by	Date	Fourth Quarter 2019			First Quarter 2020			Second Quarter 2020		Third Quarter 2020		Fourth Quarter 2020		First Quarter 2021		Second Quarter 2021		Third Quarter 2021	
						Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar
MBIE	Credit Control Legislation Amendment B II	Consultation	Confirmed			Med/High	Med/High	Med/High	Med/Low	Med/Low	Med/Low	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.

Q3 2020
 Engagement from banks

Agency	Description of Engagement	Type of Engagement	Status	Submitted by	Date	Third Quarter 2020			Fourth Quarter 2020			First Quarter 2021		Second Quarter 2021		Third Quarter 2021		Fourth Quarter 2021		First Quarter 2022		Second Quarter 2022	
						Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
MBIE	Credit Control Legislation Amendment B II	Consultation	Confirmed			Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	-	-	-	-	-	-	

Q3 2020
 Policy Implementation

Type of Engagement	Agency	Description of Engagement	Status	Priority	Timing of engagement with industry	Third Quarter 2020			Fourth Quarter 2020			First Quarter 2021		Second Quarter 2021		Third Quarter 2021		Fourth Quarter 2021		First Quarter 2022		Second Quarter 2022	
						July	August	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
Implementation	MBIE	Credit Control Legislation Amendment B II	Confirmed			Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.							
Other	ComCom	Guidance on CCCFA changes	Tentative			Low	Low	Low	Low	Low	Low												

Q4 2020

Type of Engagement	Agency	Description of Engagement	Status	Priority	Timing of engagement with industry	Fourth Quarter 2020			First Quarter 2021			Second Quarter 2021		Third Quarter 2021		Fourth Quarter 2021		First Quarter 2022		Second Quarter 2022	
						Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan
Implementation	MBIE	Credit Control Legislation Amendment B II	Confirmed			Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.	Low/Med.						

Q1 2021
 Policy Implementation

Type of Engagement	Agency	Description of Engagement	Status	Priority	Timing of engagement with industry	First Quarter 2021			Second Quarter 2021			Third Quarter 2021		Fourth Quarter 2021		First Quarter 2022		Second Quarter 2022		
						Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar
Other	ComCom	Changes to CCCFA	Confirmed			High	High	High	High	High	High	High	High	Med/High	Med/High					

Q3 2021
 Policy Implementation

Type of Engagement	Agency	Description of Engagement	Status	Priority	Timing of engagement with industry	Second Quarter 2021			Third Quarter 2021			Fourth Quarter 2021		First Quarter 2022		Second Quarter 2022	
						Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar
Other	ComCom	Changes to CCCFA	Confirmed			High	High	High	High	High	High	Med/High	Med/High				

Q3 2021
 Policy Implementation

Type of Engagement	Agency	Description of Engagement	Status	Priority	Timing of engagement with industry	Third Quarter 2021			Fourth Quarter 2021			First Quarter 2022		Second Quarter 2022		
						Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	
Other	ComCom	Changes to CCCFA	Confirmed			High	High	High	Med/High	Med/High	Med/High	Med/High			Med/Low	Med/Low

Q4 2021
 Policy Implementation

Type of Engagement	Agency	Description of Engagement	Status	Priority	Timing of engagement with industry	Fourth Quarter 2021			First Quarter 2022			Second Quarter 2022		Third Quarter 2022		
						Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
Other	ComCom	Changes to CCCFA	Confirmed			Med/High	High	High	Med/High	Med/High	Med/High	Med/High			Med/Low	Med/Low

