



COVERSHEET

Minister	Hon Andrew Bayly	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Financial Services Reforms: Further Decisions	Date to be published	24 January 2025

List of documents that have been proactively released

Date	Title	Author
October 2024	Financial Services Reforms: Further Decisions	Office of the Minister of Commerce and Consumer Affairs
13 November 2024	Financial Services Reforms: Further decisions ECO-24-MIN-0262 Minute	Cabinet Office

Information redacted

YES

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Some information has been withheld for the reason of Confidential advice to Government.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Cabinet Economic Policy Committee

Financial Service Reforms – Further Decisions

Proposal

- 1 This paper seeks further policy decisions to streamline and improve the effectiveness of financial services regulation.

Relation to government priorities

- 2 The proposals in this paper relate to:
 - 2.1 the Coalition Agreement between the National Party and the ACT Party to 'Rewrite the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) to protect vulnerable consumers without unnecessarily limiting access to credit'; and
 - 2.2 the commitments to reform financial services regulation in the National Party's 100-point plan for rebuilding the economy.

Background

- 3 On 2 September 2024, Cabinet agreed to policy changes to consumer credit legislation, financial services conduct regulation, and financial dispute resolution schemes [CAB-24-MIN-0334 refers]. These reforms are to streamline and improve the effectiveness of financial services regulation.
- 4 Cabinet also invited me to report back to seek any further policy decisions as needed.
- 5 I am now seeking Cabinet agreement to:
 - 5.1 enable the Financial Markets Authority (**FMA**) to make CCCFA declarations and exemptions to reduce unnecessary compliance costs and streamline bureaucratic processes; and
 - 5.2 a regulation-making power in the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**the FSP Act**) to enable the Minister of Commerce and Consumer Affairs to set skill, experience and independence requirements for financial dispute resolution scheme governance boards.

Declaration-making and exemption-granting under the CCCFA

I propose that the FMA have declaration and exemption powers to reduce unnecessary bureaucracy and compliance costs

- 6 In March, Cabinet agreed to transfer all regulatory functions under the CCCFA from the Commerce Commission to the FMA [CAB-24-MIN-0101 refers].
- 7 Under financial markets legislation, the FMA is able to make 'declarations'. A declaration brings a person or thing into the scope of an Act where the Act does or would not otherwise apply. The CCCFA does not include a declaration-making capability for the regulator. Currently declarations under the CCCFA need to go through either Cabinet or the responsible Minister (as regulations).
- 8 Often declarations are relatively technical in nature and straightforward in applying the intent of an Act to a situation not specifically covered by the Act. Accordingly, I consider it appropriate to transfer this responsibility to the FMA. This will:
 - 8.1 better align the CCCFA with other regulatory legislation enforced by the FMA;
 - 8.2 enable the FMA to respond to market developments in a timely manner;
 - 8.3 streamline bureaucratic processes; and
 - 8.4 free up valuable Cabinet and Ministerial time.
- 9 It is also possible to make a declaration by regulations that extends the application of the CCCFA to a new form of credit. As these declarations involve a substantive policy change, it would not be appropriate for the FMA to make these. Under my proposal, changes of this kind would require primary legislation, as has been used in the past (for example, to extend the CCCFA to mobile truck shops), and as is the case in Australia.
- 10 Under financial markets legislation, the FMA is also able to grant 'exemptions'. An exemption excuses a person or a type of arrangement from meeting certain requirements under an Act. The CCCFA does not include an exemption-granting capability for the regulator, and so all exemptions need to go through Cabinet as regulations. Cabinet has previously exempted lenders from regulatory requirements during emergency situations as well as certain low-risk consumer loans from excessive requirements.
- 11 Exemptions are generally granted where the costs of complying with a requirement are particularly onerous and the exemption would not cause significant detriment to borrowers. Given these are often relatively straightforward, I consider it appropriate for the regulator to be able to make exemptions in most situations. Cabinet would maintain responsibility for more substantive exemptions which involve a policy change.

- 12 Providing the FMA an exemption-granting capability will:
- 12.1 better align the CCCFA with other regulatory legislation enforced by the FMA; and
 - 12.2 improve the timeliness of granting exemptions in response to market developments, thereby reducing inappropriate compliance costs.
- 13 Exemptions and declarations made by the FMA will be secondary legislation. They will be published on the FMA's website, presented to the House and disallowable.

Financial Dispute Resolution Scheme governance

I propose a regulation-making power to set skills, experience and independence requirements for Financial Dispute Resolution Scheme governance boards

- 14 Strengthening the financial dispute resolution scheme framework is a key component of the package of CCCFA reforms Cabinet agreed to in September [CAB-24-MIN-0334 refers]. Consultation on the reforms revealed significant concerns regarding the independence of the financial dispute resolution schemes.
- 15 There are currently four approved Financial Dispute Resolution Schemes under the FSP Act. Three of the schemes are governed by boards with high industry representation and there is a public perception these boards lack sufficient independence, favouring industry interests over consumer outcomes. Further, there have been instances of board members being appointed without the right skills and expertise for these governance roles. This undermines consumer trust and confidence in the schemes and risks deterring consumers from using the schemes where appropriate.
- 16 Accordingly, I propose amending the FSP Act to enable the Minister of Commerce and Consumer Affairs, following consultation with affected parties and the FMA, to make regulations setting skills, experience and independence requirements for approved financial dispute resolution scheme boards. This will enable Government intervention should there be a need to ensure the schemes are operated in an impartial and independent manner.
- 17 I propose a regulation-making power rather than setting requirements directly through the FSP Act, as the schemes report they are already making changes to address concerns regarding independence. I would use the regulation-making power should the schemes not make sufficient changes to improve consumer confidence in the independence of the scheme governance arrangements. It will also allow the Government to address any future issues with ineffective or biased governance of the schemes.

I have asked the financial dispute resolution schemes to improve their performance reporting metrics

- 18 In September, Cabinet also noted that I would report back on enhancing the reporting metrics used by the financial dispute resolution scheme providers [CAB-24-MIN-0334 refers].
- 19 I am concerned that the key performance indicators (KPIs) the schemes self-report are not fit-for-purpose and do not focus enough on delivering better outcomes for consumers. Also, the schemes each report on different KPIs, so there is no meaningful way to compare performance across the different schemes.
- 20 I have also asked the schemes to improve the quality of their KPIs and to come back to me with a proposed set of standardised KPIs against which each of the schemes will report against. The scheme providers are voluntarily undertaking this work. However, the FSP Act includes a regulation-making power to prescribe the contents of scheme annual reports, which could include KPIs. I intend to use this regulation-making power to enforce consistent and meaningful KPIs for the schemes should they fail to make satisfactory and timely improvements in this area.
- 21 In September, Cabinet agreed to amend the FSP Act to enable the Minister responsible to require the schemes to undertake an independent review at any given time, approve the reviewer and set the terms of reference for the review. Once these amendments are made, these tools will enable me to drive improvements in the schemes' performance.

Cost-of-living Implications

- 22 The policy proposals in this paper do not have cost-of-living implications.

Financial Implications

- 23 The policy proposals in this paper do not have financial implications.

Legislative Implications

- 24 The proposals in this paper will be implemented through Bills Cabinet has authorised Parliamentary Counsel Office be instructed to draft [CAB-24-MIN-0334 refers]:
- 24.1 The proposals for CCCFA require amendments to the CCCFA and the Financial Markets Conduct Act 2013 Confidential advice to Government
- 24.2 The regulation-making power for setting financial dispute resolution scheme governance requirements requires amendments to the FSP Act Confidential advice to Government
- 25 The Leader of the House advises these Bills may be introduced in early 2025.

Impact Analysis

Regulatory Impact Statement

- 26 The Ministry for Regulation has determined these proposals are exempt from the requirement to provide a Regulatory Impact Statement on the grounds they have no, or only minor, impacts on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment

- 27 The policy proposals in this paper do not have any climate implications.

Population Implications

- 28 There are no population implications arising from this paper.

Human Rights

- 29 There are no human rights implications arising from this paper.

Use of external Resources

- 30 No external resources have been used in the policy development process or resulting proposals in this paper.

Consultation

- 31 The Commerce Commission, the FMA, the Treasury, the Reserve Bank of New Zealand and the Ministry for Regulation have been consulted on this paper. The Department of Prime Minister and Cabinet have been informed.

Communications

- 32 I do not intend to make any announcements regarding the proposals in this paper.

Proactive Release

- 33 I intend to proactively release this paper in full within 30 business days of decisions being confirmed by Cabinet.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

- 1 **note** that, on 2 September 2024, Cabinet [CAB-24-MIN-0334 refers]:
- 1.1 agreed to key policy changes to consumer credit legislation, financial services conduct regulation, and financial dispute resolution schemes;

- 1.2 noted that I would report back on financial dispute resolution scheme governance arrangements and reporting metrics; and
- 1.3 invited me to report back to seek additional policy decisions;

Further consumer credit proposals

- 2 **agree** that powers to make declarations under the Credit Contracts and Consumer Finance Act 2003 be transferred to the Financial Markets Authority, with appropriate safeguards;
- 3 **agree** that more substantive declarations applying the Credit Contracts and Consumer Finance Act 2003 to new forms of credit be made by Parliament through primary legislation;
- 4 **agree** that the Financial Markets Authority be able to grant exemptions from compliance with particular Credit Contracts and Consumer Finance Act 2003 obligations, with appropriate safeguards;

Financial dispute resolution scheme proposals

- 5 **agree** to amend the Financial Service Providers (Registration and Dispute Resolution) Act 2008 to provide for a regulation-making power to prescribe skills, experience and independence requirements for financial dispute resolution scheme governance boards;

Legislative implications

- 6 **authorise** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above recommendations.

Authorised for lodgement

Hon Andrew Bayly

Minister of Commerce and Consumer Affairs