

Credit Contracts and Consumer Finance Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill is the result of a review that identified ongoing issues in the credit market and significant harm to vulnerable consumers from problem debt. The issues identified included the excessive cost of some consumer credit agreements; continued irresponsible lending and other non-compliance, including by mobile traders; unreasonable fees; and irresponsible debt collection practices.

The Bill addresses these issues by strengthening requirements to lend responsibly, especially in relation to requirements regarding how affordability and suitability tests should be conducted, limiting the accumulation of interest and fees on high-cost loans, and providing new remedies and penalties for non-compliance.

These changes support the primary purpose of the Credit Contracts and Consumer Finance Act 2003 (the **Credit Contracts Act**), which is “to protect the interests of consumers in connection with credit contracts, consumer leases, and buy-back transactions of land”. The other purposes of that Act include promoting confident and informed consumer participation in credit markets and providing consumer protection.

Key changes that the Bill will introduce to the Credit Contracts Act include the following:

- a limit on the accumulation of interest and fees on high-cost loans to 100% of the original loan principal, over the life of the loan. This will apply only to loans with an annualised interest rate of 50% or more:
- all directors and top executives of lenders offering consumer credit contracts will be required to meet a “fit and proper person” test in order for the lender to register on the Financial Service Providers Register. This requirement will also apply to mobile traders. Directors and top executives of lenders will have new duties to ensure that lenders comply with the Credit Contracts Act:

- enforcement provisions will be strengthened, including by providing civil pecuniary penalties and statutory damages for breaches of lender responsibility principles:
- regulation-making powers will provide for greater prescription about how assessments of affordability and suitability must be conducted. The presumption that lenders can rely on information provided by borrowers and guarantors without objective verification will be removed:
- debt collectors will be required to disclose key information about the debt to the debtor, at the commencement of debt collection action.

As a package, the changes are intended to reduce problem debt and resulting consumer harms (such as financial hardship and mental and physical health issues).

The Bill also enables lenders who have breached disclosure requirements to apply to a court for relief from liability under section 99(1A) of the Act. This provides an avenue for lenders to obtain relief from potentially large and disproportionate liabilities resulting from minor disclosure breaches.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2019&no=124>

Regulatory impact assessments

The Ministry of Business, Innovation, and Employment produced regulatory impact assessments in May 2017 and September 2018 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact assessments can be found at—

- <https://www.mbie.govt.nz/assets/60329c3fed/regulatory-impact-statement-section-99-1A.pdf>
- <https://www.mbie.govt.nz/assets/c09d5636b6/coversheet-consumer-credit-regulation-review.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 deals with commencement. Most of the Bill is to come into force on 1 March 2020. Some of the Bill is to come into force later, as mentioned in the explanation of the relevant clauses.

Part 1

Amendments to Credit Contracts and Consumer Finance Act 2003

Part 1 amends the Credit Contracts and Consumer Finance Act 2003.

Amendments relating to Part 1 of Credit Contracts Act: preliminary provisions

The main amendments to this Part are in *clause 6*, which deals with interpretation. It inserts a new definition of mobile trader (relevant for the new certification requirement in *new Part 5A*). It also enables regulations to be made to declare persons to be, or not to be, creditors.

Amendments relating to Part 1A of Credit Contracts Act: lender responsibilities

The main amendments to this Part are set out below.

Clause 9 excludes from the definition of relevant guarantee a guarantee under which the guarantor is a trustee acting in his or her capacity as a trustee of a family trust. This means that the lender responsibilities will not apply to this sort of guarantee. This matches the existing exclusion for credit contracts under which the debtor is a trustee acting in his or her capacity as a trustee of a family trust.

Clause 10 amends the lender responsibility principles that must be complied with by creditors under certain credit contracts and transferees under buy-back transactions. The clause proposes new requirements in 3 areas.

First, lenders will be required to ensure that any advertising complies with advertising standards to be set in regulations. This requirement strengthens the current principles, which are that lenders must exercise the care, diligence, and skill of a responsible lender in advertisements and ensure that any advertising is not misleading, deceptive, or confusing to borrowers. The latter is part of the principle that lenders must assist borrowers to reach an informed decision as to whether to enter into the agreement and to be reasonably aware of the full implications of entering into the agreement.

Secondly, the clause strengthens the current principle that lenders must make reasonable inquiries, before entering into an agreement with a borrower, so as to be satisfied that it is likely that the credit will meet the borrower's requirements and objectives and that the borrower will make the payments under the agreement without suffering substantial hardship. Similar requirements apply before a relevant guarantee is given and before a relevant insurance contract is entered into. The clause requires lenders to comply with new regulations to be made that specify the inquiries that must be made and the way in which the results of inquiries must be taken into account.

Thirdly, it removes the current rule in section 9C(7) that the lender may rely on information provided by the borrower or guarantor (unless the lender has reasonable grounds to believe the information is not reliable). Lenders will need to verify information provided by borrowers in a wider range of circumstances. This includes, in appropriate circumstances, inquiries to determine whether it is likely that the bor-

rower will suffer financial hardship as a result of making payments under the agreement.

Failure to comply with the new regulations about advertising and inquiries will be a breach of the principles and will carry the same consequences as failure to comply with the other lender responsibility principles. *See* section 9A(2) of the Credit Contracts Act for a outline.

In addition, the Bill introduces new remedies as follows:

- statutory damages, for certain failures to comply with the principles (*see clause 24*);
- compliance orders, for any failure to comply (*see clause 31*).

Clause 11 requires lenders—

- to keep records about the inquiries that they have made under section 9C. Those records must demonstrate how the lender has satisfied itself as to the relevant matters;
- to make the records available to the Commission, the borrower, the guarantor, or the relevant dispute resolution scheme on request.

The Bill introduces new remedies for a breach of these new duties as follows:

- compliance orders, for any failure to comply (*see clause 31*);
- civil pecuniary penalties (*see clause 36*).

Amendments relating to Part 2 of Credit Contracts Act: consumer credit contracts

The main amendments to this Part are set out below.

Clause 13 enables regulations to be made to declare certain types of credit arrangements to be consumer credit contracts.

Clause 14, which commences on 1 September 2020, requires creditors who advertise in a particular language to make initial disclosure of the key information concerning the credit contract in that advertising language in certain circumstances (*new section 17A*).

A failure to disclose in the advertising language is an offence (*see* section 103). For the relationship with other requirements, *see* the following example:

Example

LoanCo advertises in Samoan. LoanCo mostly makes initial disclosure of the key information about the contract in English. LoanCo suspects that the debtor does not have a sufficient understanding of English to be reasonably aware of the implications of the contract, but has a better understanding of Samoan.

Loan Co must make initial disclosure in Samoan, and is not required to (but may also) make initial disclosure in English.

If LoanCo makes a complete initial disclosure in English, but not in Samoan, LoanCo breaches *new section 17A*, commits an offence (*see* section 103), and may be liable for

statutory damages (see section 88). LoanCo may also be in breach of the lender responsibility principles. However, LoanCo is not in breach of section 17, because initial disclosure was made in English. Therefore, the additional consequences of breaching section 17 (in particular, loss of costs of borrowing under section 99(1A)) will not apply.

If LoanCo does not disclose the information in any language (eg, neither Samoan nor English), there may be a breach of both section 17 and *new section 17A*.

If LoanCo partially discloses in Samoan but 1 or more disclosures required by Schedule 1 are missing or incorrect (and does not disclose in English), there may be a breach of both section 17 and the *new section 17A*. In that case, the infringement offence provisions may also apply (see section 102A). LoanCo may be liable for statutory damages and be prevented from recovering costs of borrowing by section 99(1A).

Clauses 15 to 17 make 3 changes in relation to variation and guarantee disclosure. First, they allow decreases to a credit limit to be disclosed in the same way as increases. Secondly, they provide that certain flexibility about when and how disclosure has to be made does not apply to high-cost consumer credit contracts. Thirdly, they provide that certain disclosure need not to be made to a particular debtor or guarantor if the creditor cannot reasonably locate them.

Clause 20 provides further options for making disclosure statements available in electronic form.

Clause 21 strengthens the current rule in section 41, which is that a consumer credit contract must not provide for a credit fee or a default fee that is unreasonable, by requiring creditors under consumer credit contracts to do extra things as follows:

- to keep records about how the creditor calculated each credit fee and default fee. Those records must demonstrate that each credit fee and default fee is not unreasonable at the time at which the fee is set;
- to make the records available on request to the Commission or the relevant dispute resolution scheme.

Failure to comply with the new requirements proposed by *clause 21* will carry some of the same consequences as failure to comply with existing section 41 (eg, see sections 93 (court's general power to make orders) and 96 (injunctions)). In addition, the Bill introduces new remedies for failures to comply, as follows:

- compliance orders (see *clause 31*);
- civil pecuniary penalties (see *clause 36*).

Clause 22 inserts a new requirement for high-cost consumer credit contracts. The costs of borrowing must not exceed the first loan advance. This applies if the contract provides for an annual interest rate of 50% or more. The effect is that, if, for example, the first advance to a person is \$1,000, the maximum amount that can be charged under this contract, including all interest, fees, and default fees, is \$2,000 (that is, \$1,000 principal plus a maximum of \$1,000 of interest charges and fees).

The remedies for failure to comply include—

- statutory damages (see *clause 24*);
- compliance orders (see *clause 31*);

- civil pecuniary penalties (*see clause 36*).

Clause 23 inserts a new requirement that every director and senior manager of a creditor under a consumer credit contract must exercise due diligence to ensure that the creditor complies with its duties and obligations under the Credit Contracts Act.

The remedies for failure to comply include—

- compliance orders (*see clause 31*);
- civil pecuniary penalties (*see clause 36*);
- liability for statutory damages and compensation (*see clause 40*).

Amendments relating to Part 4 of Credit Contracts Act: enforcement and remedies

The main amendments to this Part are set out below.

Clause 24 extends the list of breaches for which the debtor under a consumer credit contract is entitled to recover statutory damages from the creditor.

Clause 25 provides that the amount of statutory damages, in the case of a breach of section 9C(3)(a) (failure to make reasonable inquiries before entering into agreement), is an amount equal to the interest and fees that have already become payable under the agreement at the time that the amount of damages is determined.

Clause 28 enables the court to provide for the affordable repayment of outstanding debt and other orders for breach of some of the lender responsibility principles or of the new requirement that the costs of borrowing must not exceed the first loan advance in high-cost consumer credit contracts.

Clause 29, which commences on the day after Royal assent, enables 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. This clause allows the court to override that rule.

Clause 31 enables a court to make new compliance orders (eg, by directing a person to comply with the Act). This new power supplements existing court powers to grant injunctions, etc.

Clause 32 creates infringement offences for breaches of the new rules requiring disclosure in the advertising language and disclosure before debt collection starts.

Clause 33 relates to other offences. Currently, it is an offence to breach many of the provisions of the Credit Contracts Act, including the current disclosure requirements. This clause creates corresponding offences for breaches of the 2 new disclosure rules—disclosure in the advertising language and disclosure before debt collection starts. The clause also carves out from the existing list of offence provisions certain new obligations to which the new civil pecuniary penalties provisions attach.

Clause 34 applies the current reasonable mistake defence to the new civil pecuniary penalties regime. The defence applies if the person proves that the breach was due to a reasonable mistake or due to events outside of the person's control, that the breach was remedied (to the extent that it could be remedied) as soon as practicable after the

breach was discovered by the person or brought to the person's notice, and that the person has compensated or offered to compensate any person who has suffered loss or damage by that breach.

Clause 36 inserts new provisions to allow for civil pecuniary penalties to be awarded to the Crown for certain breaches. These provisions are similar to pecuniary penalty regimes already available to the Commerce Commission under other Acts that it administers.

Clause 37 widens the grounds on which the District Court may prohibit or restrict people from acting as creditors, lessors, transferees, or buy-back promoters.

Clause 39, which commences on the day after Royal assent, enables the Commission to accept written undertakings, based on the Commission's current powers under the Commerce Act 1986.

Clause 40 provides that directors and senior managers may be liable for statutory damages or compensation in certain circumstances.

Amendments relating to new Part 5A of Credit Contracts Act: certification and fit and proper person requirements

Clause 41 inserts new certification and fit and proper person requirements for creditors, mobile traders, and their controlling owners, directors, and senior managers. The actual requirement to be certified commences on 1 April 2021, but the provisions allowing for certification commence on 1 June 2020. *See* the later explanation as to the effect of requiring certification.

Amendments relating to Part 6 of Credit Contracts Act: miscellaneous provisions

Part 6 applies to credit contracts (not just consumer credit contracts). The main amendments to this Part are set out below.

Clause 42 requires debt collectors under credit contracts to make disclosure to debtors of key information to be set out in regulations before debt collection starts under the contract. The consequences of failure to comply will follow those for existing disclosure requirements (including offences and infringement offences).

Clause 43 allows various regulations to be made.

Clause 44 enacts transitional provisions relating to the amendments in *Part 1* of the Bill.

Clause 45 requires new statements to be included in the key information disclosed to debtors at the time a consumer credit contract is entered into. These relate to—

- high-cost consumer credit contracts. It is intended that regulations will be made to prescribe similar disclosures for other types of disclosure;
- the cancellation rights for layby sales agreements.

Other clauses make less significant amendments to the principal Act, including minor and technical changes.

Part 2

Amendments to other Acts and legislative instruments

Subpart 1 of Part 2, which commences on 1 September 2020, amends the Fair Trading Act 1986 (the **FTA**) in relation to layby sales agreements. Layby sales are regulated under subpart 1 of Part 4A of the FTA. A layby sale agreement that is also a consumer credit contract is subject to overlapping and potentially conflicting disclosure requirements and cancellation rights under both the FTA and the Credit Contracts Act. Currently, section 36B(4) of the FTA says that a layby sale agreement is not a credit contract for the purposes of the Credit Contracts Act if no interest charges, and no credit fees, are payable under the agreement.

Clause 47 removes that carve-out, which means that layby sales agreements will now also be “credit contracts” and “consumer credit contracts” if they meet the definitions of those terms.

Clause 48 makes a layby sale agreement that is also a consumer credit contract subject to the disclosure requirements under subpart 2 of Part 2 of the Credit Contracts Act (and not sections 36C and 36D of the FTA). Those types of agreements will be subject to cancellation rights under sections 36F to 36H of the FTA (and not subpart 3 of Part 2 of the Credit Contracts Act—*see clause 18*).

Subpart 2 of Part 2, which commences on 1 April 2021, amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **FSP Act**). The FSP Act already applies to creditors. A person to whom the FSP Act applies must not be in the business of providing a financial service unless that person is registered for that service and a member of an approved dispute resolution scheme. It is a purpose of the FSP Act to prohibit certain people from being involved in the management or direction of registered financial service providers. The existing FSP Act delivers this by 2 means as follows:

- by requiring most other financial service providers to be licensed before they can be registered under the FSP Act. This applies, for example, to banks and financial advisers, but not to creditors;
- by providing for disqualifications from registration. One disqualifier is that a person is subject to an order of the District Court prohibiting or restricting a person from acting as a creditor (*see* section 108 of the Credit Contracts Act). These orders can currently be made only if a person has been convicted of a crime of dishonesty or if a Credit Contracts Act-related contravention has happened and if, in the opinion of the District Court, the person is not a fit and proper person to enter into consumer credit contracts as a creditor. (*Clause 37* is also widening the grounds for making these orders.)

This Bill amends the FSP Act in 2 main respects.

First, it extends the FSP Act so that it applies to mobile traders (*see clause 6* for the definition).

Secondly, it requires most creditors and mobile traders to be certified under the Credit Contracts Act before they can be registered under the FSP Act. The Commission will issue certifications if satisfied that the controlling owners, directors, and senior managers are fit and proper persons to hold their respective positions. Creditors are exempt from the certification requirement if they are already required to be licensed under another licensing statute (eg, banks and non-bank deposit takers will be exempt). The introduction of certification will mean that—

- every creditor under consumer credit contracts and mobile trader will need to satisfy the Commission that they meet the fit and proper persons test;
- the Commission will not need to seek District Court orders to prohibit those who it considers are not fit and proper persons (but may still do so);
- debtors under consumer credit contracts will be entitled to recover statutory damages if the certification requirement is breached (*see clause 24*);
- the Crown will be entitled to pecuniary penalties if the certification requirement is breached (*see new section 107A*).

These changes take effect in stages (*see clause 2* and the transitional provisions being inserted by *clause 57*). The new certification provisions apply from 1 June 2020, so that applications for certification can be processed from then onwards. After 1 April 2021,—

- creditors and mobile traders cannot become registered unless they have first been certified under the Credit Contracts Act; and
- mobile traders cannot be mobile traders unless they have first been registered under the FSP Act and become members of a dispute resolution scheme.

Creditors that are already registered under FSP before 1 April 2021 have until their next annual confirmation date to become certified (*see section 28* of the FSP Act).

Subpart 3 of Part 2 amends legislative instruments.

Clause 59 amends the Credit Contracts and Consumer Finance Regulations 2004 to provide for the calculation of the weighted average annual interest rate for the purposes of *new section 45A* (costs of borrowing must not exceed loan advance) of the Credit Contracts Act.

Hon Kris Faafoi

Credit Contracts and Consumer Finance Amendment Bill

Government Bill

Contents

		Page
1	Title	5
2	Commencement	5
Part 1		
Amendments to Credit Contracts and Consumer Finance Act 2003		
3	Amendments to Credit Contracts and Consumer Finance Act 2003	6
4	Section 3 amended (Purposes)	6
5	Section 4 amended (Overview)	6
6	Section 5 amended (Interpretation)	6
7	New section 8C inserted (Status of examples)	7
	8C Status of examples	7
8	Section 9A amended (Outline of Part)	7
9	Section 9B amended (Interpretation)	7
10	Section 9C amended (Lender responsibility principles)	8
11	New section 9CA inserted (Records about inquiries made)	8
	9CA Records about inquiries made	8
12	Section 9F amended (Content of Responsible Lending Code)	9
13	Section 11 amended (Meaning of consumer credit contract)	9
14	New section 17A inserted (When creditor advertises in another language)	9
	17A When creditor advertises in another language	9
15	Section 22 amended (Disclosure of agreed changes)	10
16	Section 23 amended (Disclosure of changes following exercise of power)	10
17	Section 26 amended (Disclosure of changes to guarantors)	10

**Credit Contracts and Consumer Finance Amendment
Bill**

18	Section 29 amended (Right of cancellation does not apply in certain situations)	10
19	Section 32 amended (Disclosure standards)	11
20	Section 35 amended (How disclosure is made)	11
21	New section 41A inserted (Records about how fees calculated)	11
	41A Records about how fees calculated	12
22	New subpart 6A of Part 2 inserted	12
	Subpart 6A—Other provisions relating to consumer credit contracts	
	45A Costs of borrowing must not exceed loan advance	12
23	New subpart 9 of Part 2 inserted	14
	Subpart 9—Duty of directors and senior managers of creditors under consumer credit contracts	
	59B Duty of directors and senior managers of creditors	14
24	Section 88 amended (Creditors, creditors’ agents, lessors, transferees, and buy-back promoters liable for statutory damages)	14
25	Section 89 amended (Amount of statutory damages)	15
26	Section 92 amended (Guidelines for reducing statutory damages)	15
27	Section 93 amended (Court’s general power to make orders)	15
28	Section 94 amended (Court orders)	15
29	New sections 95A and 95B inserted	16
	95A Court may reduce effect of failure to make initial or variation disclosure	16
	95B Guidelines for reducing effect of failure to make initial or variation disclosure	16
30	Section 96 amended (Injunctions)	16
31	New section 98A and cross-heading inserted	16
	<i>Compliance orders</i>	
	98A Compliance orders	17
32	Section 102A amended (Infringement offences)	17
33	Section 103 amended (Other offences)	17
34	Section 106 amended (Reasonable mistake defence)	18
35	Section 107 amended (Relevance of compliance programme)	18
36	New subpart 5A of Part 4 inserted	18
	Subpart 5A—Pecuniary penalties	
	107A Pecuniary penalties	18
	107B Proceedings for pecuniary penalties	19
	107C Relationship between pecuniary penalties and criminal liability	19
	107D Restriction on indemnities	20
	107E Restriction on insurance	20

**Credit Contracts and Consumer Finance Amendment
Bill**

37	Section 108 amended (Power to order certain persons not to act as creditors, lessors, transferees, or buy-back promoters)	20
38	Section 111 amended (Role and functions of Commission under this Act)	21
39	Section 113 amended (Application of Commerce Act 1986)	21
40	New subpart 8 of Part 4 inserted	21
Subpart 8—Miscellaneous		
	116A Directors and senior managers may also be liable for statutory damages or compensation	21
41	New Part 5A inserted	21
Part 5A		
Certification and fit and proper person requirements		
	131A Interpretation for this Part	22
<i>Requirement for certification</i>		
	131B When person needs to be certified	22
	131C Exemptions from need for certification	22
	131D Prohibitions on holding out that person is certified	22
<i>Issue of certifications</i>		
	131E Commission may issue certification	23
	131F Application for certification	23
	131G When certification must be issued	23
	131H Procedural requirements	23
	131I Notice of decision	24
	131J Commission must send certification details to Registrar	24
<i>Conditions of certification</i>		
	131K Conditions of certification	24
	131L When Commission may impose conditions	25
	131M Certified person may apply for variation of conditions	25
	131N Procedure for variation of conditions	25
<i>Expiry, suspension, or cancellation of certifications</i>		
	131O Duration of certification	26
	131P When Commission may suspend or cancel certification	26
	131Q Procedural requirements on suspension or cancellation of certification	26
<i>Changes relating to certified persons</i>		
	131R Duty to notify changes	27
<i>Other provisions about certifications</i>		
	131S Appeals against certification decisions	27
42	New section 132A inserted (Disclosure before debt collection starts)	27

**Credit Contracts and Consumer Finance Amendment
Bill**

	132A Disclosure before debt collection starts	27
43	Section 138 amended (Regulations)	29
44	Schedule 1AA amended	31
45	Schedule 1 amended	31

Part 2

Amendments to other Acts and legislative instruments

Subpart 1—Amendments to Fair Trading Act 1986

46	Amendments to Fair Trading Act 1986	32
47	Section 36B amended (Meaning of layby sale agreement)	32
48	Section 36C amended (Disclosure requirements relating to layby sale agreement)	32

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

49	Amendments to Financial Service Providers (Registration and Dispute Resolution) Act 2008	32
50	Section 4 amended (Interpretation)	32
51	Section 5 amended (Meaning of financial service)	32
52	Section 13 amended (Qualifications for registration as financial service provider)	33
53	Section 18 amended (Deregistration of financial service provider)	33
54	New section 23 and cross-heading inserted	33

Information-sharing provisions

	23 Information-sharing provisions between Registrar and Commission	33
55	Section 27 amended (Contents of register)	33
56	Section 67 amended (Duty to co-operate and communicate information in certain circumstances)	33
57	Schedule 1AA amended	33

Subpart 3—Amendments to legislative instruments

58	Amendment to Financial Service Providers (Registration) Regulations 2010	34
59	Amendment to Credit Contracts and Consumer Finance Regulations 2004	34

High-cost consumer credit contracts

	6A High-cost consumer credit contracts for which costs of borrowing must not exceed loan advances	34
--	---	----

Schedule 1

Amendments to Schedule 1AA of Credit Contracts and Consumer Finance Act 2003

36

Schedule 2
**New Part 2 of Schedule 1AA of Financial Service Providers
(Registration and Dispute Resolution) Act 2008 inserted**

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Credit Contracts and Consumer Finance Amendment Act **2019**.

2 Commencement

- (1) This Act comes into force on **1 March 2020**, except as provided in **subsections (2) to (5)**. 5
- (2) The following provisions come into force on the day after the date on which this Act receives the Royal assent:
- (a) **section 29** (new **sections 95A and 95B** inserted):
 - (b) **section 39** (section 113 amended (application of Commerce Act 1986)): 10
 - (c) **section 43** (section 138 amended (regulations)).
- (3) **Section 41** (new **Part 5A** inserted (certification and fit and proper person requirements)) comes into force on **1 June 2020**, except to the extent that it inserts new **sections 131B and 131C** (which relate to when a provider of services needs to be certified and exemptions). 15
- (4) The following provisions come into force on **1 September 2020**:
- (a) **section 14** (new **section 17A** inserted (when creditor advertises in another language)):
 - (b) **section 18** (section 29 amended (right of cancellation does not apply in certain situations)): 20
 - (c) **section 19** (section 32 amended (disclosure standards)):
 - (d) **subpart 1 of Part 2** (amendments to Fair Trading Act 1986).
- (5) The following provisions come into force on **1 April 2021**:
- (a) **section 41** to the extent that it inserts new **sections 131B and 131C** (which relate to when a provider of services needs to be certified and exemptions): 25
 - (b) **subpart 2 of Part 2** (amendments to Financial Service Providers (Registration and Dispute Resolution) Act 2008).

Part 1
Amendments to Credit Contracts and Consumer Finance Act 2003

3 Amendments to Credit Contracts and Consumer Finance Act 2003

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

4 Section 3 amended (Purposes)

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After section 3(3)(h), insert:

- (i) requires creditors under consumer credit contracts and mobile traders to be certified; and
- (j) provides for the disclosure of adequate information to debtors under credit contracts before debt collection starts.

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5 Section 4 amended (Overview)

(1) In section 4(d), after “a defence,”, insert “enforceable undertakings, pecuniary penalties,”.

(2) After section 4(e), insert:

- (ea) **Part 5A** requires creditors under consumer credit contracts and mobile traders to be certified:

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(3) In section 4(f), after “relating to”, insert “disclosure before debt collection starts,”.

6 Section 5 amended (Interpretation)

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

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certified means certified under **Part 5A**

director has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

layby sale agreement has the same meaning as in section 36B of the Fair Trading Act 1986

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mobile trader means a person who carries on a business of offering or agreeing to supply, in person and outside of fixed premises, consumer goods to a natural person—

- (a) under a credit sale (regardless of whether the contract is a consumer credit contract); or
- (b) where all or a part of the supply of the consumer goods is to be financed by a consumer credit contract under which a creditor is an associated person of that person—

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(whether or not the business is the provider’s only business or the provider’s principal business)

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	mobile trader service means the financial service of being a mobile trader under section 5(1) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008	
	senior manager has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013	5
	weighted average annual interest rate has the meaning given in the regulations	
(2)	In section 5, definition of credit fees , after paragraph (b)(v), insert: (vi) cancellation charges as referred to in section 36F of the Fair Trading Act 1986	10
(3)	In section 5, replace the definition of creditor with: creditor — (a) means a person who provides, or may provide, credit under a credit contract; and (b) if the rights of that person are transferred by assignment or by operation of law, includes the person for the time being entitled to those rights; and (c) includes a person declared by regulations to be a creditor; but (d) does not include a person exempted by regulations from being a creditor	15
7	New section 8C inserted (Status of examples) After section 8B, insert:	20
8C	Status of examples (1) An example used in this Act is only illustrative of the provision to which it relates. It does not limit the provision. (2) If an example and the provision to which it relates are inconsistent, the provision prevails.	25
8	Section 9A amended (Outline of Part) (1) In section 9A(2)(a), replace “and 96(1)(aa)” with “96(1)(aa), 98A , and 107A ”. (2) After section 9A(2)(a), insert: (aa) the debtor to be entitled to recover statutory damages if the creditor breaches certain of the principles (<i>see</i> section 88):	30
(3)	In section 9A(2)(d), delete “, more than once,”.	
9	Section 9B amended (Interpretation) In section 9B(1), replace the definition of relevant guarantee with: relevant guarantee — (a) means a guarantee given, or proposed to be given, in respect of—	35

- (i) a consumer credit contract; or
- (ii) a credit contract to which Part 3A applies; but
- (b) does not include a guarantee under which the guarantor is a trustee acting in their capacity as a trustee of a family trust

10 Section 9C amended (Lender responsibility principles) 5

(1) Replace section 9C(3)(b)(i) with:

- (i) any advertising complies with the advertising standards set in the regulations and is not, or is not likely to be, misleading, deceptive, or confusing to borrowers; and

(2) After section 9C(5), insert: 10

(5A) In subsections (3)(a), (4)(a), and (5)(a), the requirement to make **reasonable inquiries** includes a requirement to comply with regulations made under **section 138(1)(abe)** that specify inquiries that must be made and the way in which the results of inquiries must be taken into account.

(3) Repeal section 9C(7). 15

11 New section 9CA inserted (Records about inquiries made)

After section 9C, insert:

9CA Records about inquiries made

(1) The lender must keep records about the inquiries made by the lender under section 9C (including the results of those inquiries). 20

(2) Those records must demonstrate how the lender has satisfied itself as to the matters in section 9C(3)(a), (4)(a), and (5)(a).

(3) The lender must make those records available to the Commission, on request by the Commission.

(4) The lender must make available to a person responsible for an approved dispute resolution scheme, on request by that person, the records that relate to an agreement or a relevant insurance contract that is the subject of a dispute under that scheme. 25

(5) The lender must make available to a borrower, on request by that borrower and free of charge, the records about the inquiries made by the lender under section 9C(3)(a) and (5)(a) that relate to an agreement or a relevant insurance contract to which the borrower is a party. 30

(6) The lender must make available to a guarantor, on request by that guarantor and free of charge, the records about the inquiries made by the lender under section 9C(4)(a) that relate to a relevant guarantee to which the guarantor is a party. 35

(7) The lender must provide the records within 20 working days of the date on which the request is received by the lender.

- (8) The Commission does not need to use its powers under section 98 of the Commerce Act 1986 to make a request under **subsection (3)**.
- (9) The lender must keep the records for a period of at least 7 years after the date on which the inquiry was made.

12 Section 9F amended (Content of Responsible Lending Code) 5

- (1) In section 9F(1)(b)(i), after “agreements”, insert “complies with the advertising standards set in the regulations and”.
- (2) In section 9F(1)(b)(ii), after “those paragraphs”, insert “and to comply with the regulations relating to those requirements”.
- (3) In section 9F(1)(b)(iii), replace “(including where the borrower’s or guarantor’s first language is not English)” with “(including where the borrower or guarantor does not have a good understanding of the language mostly used by the creditor)”.

13 Section 11 amended (Meaning of consumer credit contract) 15

After section 11(1B), insert:

- (1C) An arrangement or a facility is also a consumer credit contract if regulations declare it to be a consumer credit contract.

14 New section 17A inserted (When creditor advertises in another language)

After section 17, insert:

17A When creditor advertises in another language 20

- (1) This section applies if—
 - (a) a creditor is required by section 17 to make a disclosure in respect of a consumer credit contract and the creditor mostly uses a language (**language 1**) in its disclosure statements required by section 17(1); and
 - (b) the creditor distributes any advertising, or provides other information to a debtor, about the consumer credit contract in another language (**the advertising language**) within the period of 12 months immediately before the contract was entered into; and
 - (c) the creditor suspects, or ought reasonably to suspect, that a debtor does not have a sufficient understanding of language 1 to be reasonably aware of the implications of the contract, but has a better understanding of the advertising language.
- (2) The creditor must ensure that disclosure is made in the advertising language of as much of the key information set out in Schedule 1 as is applicable to the contract to the debtor under the contract before the contract is entered into. 35

- (3) This section does not limit section 17 or the requirements under Part 1A (for example, under sections 9C and 9F(1)(b)(iii) where the borrower does not have a good understanding of the language mostly used by the creditor).

Example

LoanCo advertises credit contracts in Samoan. LoanCo enters into a contract with Mr A. LoanCo mostly makes initial disclosure of the key information about the contract (**Schedule 1 disclosure**) in English. LoanCo suspects that Mr A does not have a sufficient understanding of English to be reasonably aware of the implications of the contract, but has a better understanding of Samoan.

LoanCo must make Schedule 1 disclosure in Samoan. If it is complete and correct, it satisfies the requirement in both section 17(1) and this section. If some or all of the Schedule 1 disclosure is missing or incorrect, it is a breach of both this section and section 17.

If LoanCo makes complete Schedule 1 disclosure in English, but not in Samoan, it is a breach of this section but not of section 17.

Section 17(2) also requires LoanCo to send Mr A a copy of all of the terms of the contract, but this can be done in English or Samoan.

15 Section 22 amended (Disclosure of agreed changes)

- (1) In section 22(3)(d), after “increases”, insert “or decreases”.
- (2) After section 22(4), insert:
- (5) Subsection (4) does not apply to a high-cost consumer credit contract within the meaning of **section 45A**.

16 Section 23 amended (Disclosure of changes following exercise of power)

After section 23(6), insert:

- (7) Subsection (6) does not apply to a high-cost consumer credit contract within the meaning of **section 45A**.
- (8) Disclosure under this section is not required in relation to a particular debtor if the creditor cannot reasonably locate the debtor.

17 Section 26 amended (Disclosure of changes to guarantors)

After section 26(4), insert:

- (5) Subsection (4) does not apply to a high-cost consumer credit contract within the meaning of **section 45A**.
- (6) Disclosure under this section is not required in relation to a particular guarantor if the creditor cannot reasonably locate the guarantor.

18 Section 29 amended (Right of cancellation does not apply in certain situations)

After section 29(2), insert:

- (3) Section 27 does not apply to a layby sale agreement.

19 Section 32 amended (Disclosure standards)

- (1) In section 32(4), after “giving”, insert “or making available”.
- (2) After section 32(5), insert:
- (6) *See also section 17A* (when creditor advertises in another language).

20 Section 35 amended (How disclosure is made)

5

- (1) Replace section 35(1)(c) with:
 - (c) sending the disclosure statement to the information system specified by the person for that purpose; or
 - (d) sending an electronic communication to the information system specified by the person for that purpose that allows the disclosure statement to be accessed; or
 - (e) otherwise making the disclosure statement available in electronic form, and sending an electronic communication to the information system specified by the person notifying the person how to access the disclosure statement.
- (2) After section 35(1), insert:
- (1A) However, **subsection (1)(d) and (e)** is subject to the conditions that—
 - (a) the statement must be readily accessible at that time the electronic communication is sent, and at all reasonable times over the life of the contract, in accordance with the communication; and
 - (b) that statement can, at that time the electronic communication is sent, and at all reasonable times over the life of the contract, be stored in a permanent and legible form (for example, saved to an electronic file and printed).
- (3) In section 35(2), replace “the place of residence referred to in subsection (1)(b)” with “the place of residence or address referred to in subsection (1)(b), or the information system referred to in **subsection (1)(c)**”.
- (4) Replace section 35(5) and (6) with:
- (5) For all other purposes, the disclosure is to be treated as having been made to a person—
 - (a) on the day on which the statement is posted to the person; or
 - (b) on the day on which the disclosure statement is sent to the information system specified by the person; or
 - (c) if **subsection (1)(d) or (e)** applies, on the day on which the electronic communication referred to in that paragraph is sent to the person.

21 New section 41A inserted (Records about how fees calculated)

After section 41, insert:

41A Records about how fees calculated

- (1) The creditor under a consumer credit contract must keep records about how the creditor calculated each credit fee and default fee for the purpose of section 41.
- (2) Those calculations must demonstrate that each credit fee and default fee is not unreasonable at the time at which the fee was set. 5
- (3) The creditor must make those records available to the Commission, on request by the Commission.
- (4) The creditor must make available to a dispute resolution scheme, on request by that scheme, the records that relate to a contract that is the subject of a dispute under that scheme. 10
- (5) The creditor must provide the records within 20 working days of the date on which the request is received by the creditor.
- (6) The Commission does not need to use its powers under section 98 of the Commerce Act 1986 to make a request under **subsection (3)**.
- (7) The creditor must keep the records for a period of at least 7 years after the date on which the fee is set. 15

22 New subpart 6A of Part 2 inserted

After section 45, insert:

Subpart 6A—Other provisions relating to consumer credit contracts

- 45A Costs of borrowing must not exceed loan advance** 20
- (1) The maximum costs of borrowing that are recoverable under a high-cost consumer credit contract and all related consumer credit contracts is an amount equal to the first advance.
 - (2) A consumer credit contract must not provide for an amount to be recoverable that will result in that maximum amount being exceeded or that is capable of resulting in that maximum amount being exceeded. 25
 - (3) The creditor must not enter into a contract that contravenes **subsection (2)**.
 - (4) The creditor is not entitled to receive a payment, or debit a fee or charge to the debtor's account, that results in that maximum amount being exceeded.
 - (5) Section 48 applies if the debtor makes a payment to a creditor that results in that maximum amount being exceeded. 30
 - (6) In this section, unless the context otherwise requires,—
first advance means,—
 - (a) in respect of a high-cost consumer credit contract that has no related consumer credit contracts, the first advance under that high-cost consumer credit contract: 35

- (b) in respect of a high-cost consumer credit contract that has 1 or more related consumer credit contracts, the first advance under the earliest high-cost consumer credit contract in the series

high-cost consumer credit contract—

- (a) means a consumer credit contract— 5
- (i) that provides for an annual interest rate of 50% or more; or
 - (ii) under which the weighted average annual interest rate applied to the unpaid balance is, or is likely to be, 50% or more on any day during the life of the contract; and
- (b) includes a contract declared by regulations to be a type of contract that is a high-cost consumer credit contract 10

related consumer credit contract, in respect of a high-cost consumer credit contract (**contract A**), means all other consumer credit contracts where—

- (a) a debtor is the same person as a debtor under contract A; and
- (b) a creditor is the same person as, or an associated person of, a creditor under contract A; and 15
- (c) the consumer credit contracts (including contract A) are part of a series of consumer credit contracts—
 - (i) that starts with a high-cost consumer credit contract; and
 - (ii) where there has been an unpaid balance on any 1 or more of the consumer credit contracts at all times between the date on which the earliest high-cost consumer credit contract was entered into and the date on which the latest consumer credit contract was entered into,— 20

and includes a contract declared by regulations to be a type of contract that is a related consumer credit contract. 25

Example

On 2 February, Ms D borrows \$100 from CreditorCo under a consumer credit contract that has an annual interest rate of 500% pa and a term of 6 weeks. The maximum amount of interest, credit fees, and default fees that Ms D will have to pay under that contract and any contract that replaces that contract is \$100. 30

On 2 March, Ms D has paid \$92, consisting of \$32 in interest and fees and \$60 of the principal. Her unpaid balance is \$40.

Ms D refinances by entering into a further high-cost consumer credit contract with CreditorCo to repay the remaining \$40, and will receive a further advance of \$50, ie, \$90 in total. The first advance of \$100 caps the maximum costs of borrowing. The maximum amount in interest, credit fees, and default fees that Ms D will have to pay under the new contract is $\$100 - \$32 = \$68$ (ie, the amount in interest and fees charged on the first contract (\$32) is subtracted from the first advance of \$100 to give a remaining cap of \$68). 35 40

CreditorCo is not entitled to receive more than \$68. If Ms D does pay \$120 (instead of \$68), CreditorCo must refund \$52 to Ms D, or give Ms D a credit for \$52 against other money owing (see section 48).

23 New subpart 9 of Part 2 inserted

After section 59A, insert:

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**Subpart 9—Duty of directors and senior managers of creditors under
consumer credit contracts**

59B Duty of directors and senior managers of creditors

- (1) Every director and senior manager of a creditor under a consumer credit contract must exercise due diligence to ensure that the creditor complies with its duties and obligations under this Act. 10
- (2) For the purposes of **subsection (1)**, the director or senior manager must exercise the care, diligence, and skill that a reasonable director or senior manager (as the case may be) would exercise in the same circumstances, taking into account (without limitation)— 15
- (a) the nature of the business or undertaking; and
 - (b) the position of the director or senior manager and the nature of the responsibilities undertaken by the director or senior manager.
- (3) In this section, **due diligence** includes taking reasonable steps to ensure that the creditor— 20
- (a) requires its employees and agents to follow procedures, or has implemented automated procedures, that are designed to ensure compliance with this Act and the regulations; and
 - (b) has in place methods for systematically identifying deficiencies in the effectiveness of the procedures for compliance; and 25
 - (c) promptly remedies any deficiencies discovered.

Compare: 2015 No 70 s 44

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

- (1) Replace section 88(1) with: 30
- (1) The debtor under a consumer credit contract is entitled to recover from the creditor under the contract the amount of the statutory damages set out in section 89 if the creditor breaches, in connection with the contract, any of the following provisions:
- (a) section 9C(1) with respect to the lender responsibility principles in section 9C(3)(a) to (e) or (5): 35
 - (b) sections 17 to 24, 32 to 40, and 70:

(c)	section 45A (costs of borrowing must not exceed loan advance):	
(d)	section 131B (when person needs to be certified):	
(e)	section 132A (disclosure before debt collection starts).	
(1AA)	In the case of a breach of section 131B (when person needs to be certified), references in this Part to—	5
(a)	the creditor include references to a mobile trader:	
(b)	the debtor under a consumer credit contract include references to a person to whom a mobile trader service is provided.	
(2)	In section 88(2), replace “24 to 26” with “9C(4)(a) to (d), 24 to 26,”.	
25	Section 89 amended (Amount of statutory damages)	10
	Before section 89(1)(a), insert:	
(aaa)	in the case of a breach of section 9C(3)(a) (failure to make reasonable inquiries before entering into an agreement), an amount equal to the interest charges, credit fees, and default fees that have become payable under the agreement; and	15
26	Section 92 amended (Guidelines for reducing statutory damages)	
	In section 92(b), replace “has” with “had”.	
27	Section 93 amended (Court’s general power to make orders)	
	In section 93(a), replace “or 3A” with “, 3A, or 5A ”.	
28	Section 94 amended (Court orders)	20
(1)	After section 94(1)(c), insert:	
(caa)	in the case of a breach of section 9C(3)(a) to (e) or (5) (lender responsibility principles) or 45A (costs of borrowing must not exceed loan advance),—	
(i)	an order that allows for the affordable repayment of any unpaid debt, including the amount and timing of payments:	25
(ii)	an order that prohibits the creditor from charging additional interest, fees, or other charges under the contract:	
(iii)	any other order that the court thinks necessary to remedy the breach (which may include any of the orders referred to in section 127(2) as if the court were reopening the consumer credit contract):	30
(2)	After section 94(2), insert:	
(3)	In determining an order under subsection (1)(c), the court must have regard to whether a penalty has been imposed against the person in relation to the same conduct under section 107A .	35

29 New sections 95A and 95B inserted

After section 95, insert:

95A Court may reduce effect of failure to make initial or variation disclosure

- (1) The court may, on the application of a creditor under a class of consumer credit contracts, order that the effect under section 48 or 99(1A) of a failure to make initial disclosure under section 17, or variation disclosure under section 22, be extinguished or reduced to an amount specified by the court if the court considers that it is just and equitable that an order be made. 5
- (2) The order may be made on the terms and conditions that the court thinks fit.

95B Guidelines for reducing effect of failure to make initial or variation disclosure 10

In deciding whether to make an order under **section 95A** and the terms and conditions applying to the order, the court must have regard to the following matters:

- (a) the role that section 99(1A) has in providing incentives for compliance with this Act: 15
- (b) whether the creditor had an appropriate compliance programme:
- (c) the extent of, and the reasons for, the breach or breaches:
- (d) the extent to which any person has been prejudiced by the breach or breaches: 20
- (e) whether the breach was due to a reasonable mistake or due to events outside the creditor's control:
- (f) whether the breach was remedied (to the extent that it could be remedied) as soon as practicable after the breach was discovered by the person or brought to the creditor's notice: 25
- (g) the extent to which the creditor has compensated or offered to compensate any person who has suffered loss or damage by that breach:
- (h) any other matters as the court thinks fit.

30 Section 96 amended (Injunctions)

- (1) In section 96(1)(a), replace “and 3A” with “3A, and **5A**”. 30
- (2) In section 96(1)(b), replace “or 3A” with “3A, or **5A**”.

31 New section 98A and cross-heading inserted

After section 98, insert:

Compliance orders

98A Compliance orders

- (1) The court may, on the application of the Commission, make an order to do 1 or more of the things in **subsection (2)** if, in the opinion of the court, a person has engaged in conduct, or is likely to engage in conduct, that constitutes, or would constitute, any of the things referred to in section 96 (a **breach**). 5
- (2) An order may—
 - (a) direct a person to comply with a provision referred to in section 96:
 - (b) require a person to remedy or mitigate any adverse effect arising from the breach: 10
 - (c) require a person to do something that, in the opinion of the court, is necessary or desirable in order to comply with that provision or to avoid, remedy, or mitigate any actual or likely adverse effect arising from the breach.
- (3) A compliance order may be made on any terms and conditions as the court thinks fit. 15

Compare: 2003 No 114 s 110A; 2013 No 69 s 469

32 Section 102A amended (Infringement offences)

- (1) In section 102A(1)(a)(i), after “or section 19(1) requires”, insert “, or regulations prescribing key information that must be disclosed under **section 132A** require,”. 20
- (2) In section 102A(11), replace the definition of **disclosure section** with:
disclosure section means any of sections 17, **17A**, 18, 25, 64, 70, 72, and **132A**

33 Section 103 amended (Other offences) 25

- (1) In section 103(1), after “to 74”, insert “(except **sections 41A, 45A, and 59B**)”.
- (2) In section 103(1), replace “and 83ZN” with “, 83ZN, and **132A**”.
- (3) After section 103(5), insert:
- (6) Every person commits an offence who, with respect to a document required by or for the purposes of **Part 5A**, makes, or authorises the making of, a statement in the document that is false or misleading in a material particular if the person knows it to be false or misleading and is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$200,000; and
 - (b) in the case of a body corporate, to a fine not exceeding \$600,000. 35

34 Section 106 amended (Reasonable mistake defence)

In section 106(1), replace “or a prosecution under section 103(1)” with “a prosecution under section 103(1), or proceedings for pecuniary penalties under **subpart 5A**”.

35 Section 107 amended (Relevance of compliance programme)

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In section 107, replace “has” with “had”.

36 New subpart 5A of Part 4 inserted

After section 107, insert:

Subpart 5A—Pecuniary penalties

107A Pecuniary penalties

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(1) The court may, on the application of the Commission, order a person to pay to the Crown the pecuniary penalty that the court determines to be appropriate if the court is satisfied that the person—

(a) has contravened any of the following provisions:

(i) section 9C(1) (lender responsibility principles), except to the extent that provision relates to section 9C(3)(f): 15

(ii) **section 9CA** (failure to keep records about reasonable inquiries and provide records on request):

(iii) **section 41A** (failure to keep records about credit fee or default fee and provide records on request): 20

(iv) **section 45A** (costs of borrowing must not exceed loan advance):

(v) **section 59B(1)** (duty of directors and senior managers of creditors):

(vi) **section 131B** (when person needs to be certified):

(vii) **section 131D** (prohibitions on holding out that person is certified): 25

(viii) **section 131R** (duty to notify changes):

(ix) an order made under **section 98A** (compliance orders); or

(b) has attempted to contravene such a provision; or

(c) has aided, abetted, counselled, or procured any other person to contravene such a provision; or 30

(d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene such a provision; or

(e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of such a provision; or 35

(f) has conspired with any other person to contravene such a provision.

- (2) In determining an appropriate penalty under this section, the court must have regard to all relevant matters, in particular,—
- (a) any exemplary damages awarded under section 94(1)(c); and
 - (b) the nature and extent of the contravention; and
 - (c) the nature and extent of any loss or damage suffered by any person because of the contravention; and
 - (d) any gains made or losses avoided by the person in contravention; and
 - (e) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence).
- (3) The amount of any pecuniary penalty must not, in respect of each act or omission, exceed,—
- (a) in the case of an individual, \$200,000; or
 - (b) in any other case, \$600,000.
- (4) Proceedings under this section may be commenced within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.
- (5) Where conduct by any person constitutes a contravention of 2 or more provisions referred to in **subsection (1)(a)**, proceedings may be instituted under this Act against that person in relation to the contravention of any 1 or more of the provisions; but no person is liable to more than 1 pecuniary penalty under this section in respect of the same conduct.

Compare: 1986 No 5 s 80

107B Proceedings for pecuniary penalties

- In any proceedings under this subpart for a pecuniary penalty,—
- (a) the standard of proof is the standard of proof that applies in civil proceedings; and
 - (b) the Commission may, by order of the court, obtain discovery and administer interrogatories.

Compare: 1986 No 5 s 79A

107C Relationship between pecuniary penalties and criminal liability

- (1) Once criminal proceedings against a person for an offence under this or any other Act are determined, the High Court may not order the person to pay a pecuniary penalty under this subpart in respect of the conduct, events, transactions, or other matters that were the subject of the criminal proceedings.
- (2) Once civil proceedings against a person for a pecuniary penalty under this subpart are determined, the person may not be convicted of an offence under this or any other Act in respect of the conduct, events, transactions, or other matters that were the subject of the civil proceedings.

- (3) Any uncompleted proceedings for an order under this Act that a person pay a pecuniary penalty must be stayed if criminal proceedings are started or have already been started against the person for the same act or omission, or substantially the same act or omission, in respect of which the pecuniary penalty order is sought.

5

Compare: 1986 No 5 s 79B

107D Restriction on indemnities

- (1) A body corporate must not indemnify any director, employee, or agent, or former director, employee, or agent, of the body corporate or of any related body corporate in respect of the person's liability to pay pecuniary penalties imposed under this Act or costs incurred in defending any proceedings in which pecuniary penalties are imposed under this Act.

10

- (2) An indemnity given in contravention of **subsection (1)** is void.

- (3) In this section and **section 107E**, **indemnify** includes relieve or excuse from liability, whether before or after the liability arises, and **indemnity** has a corresponding meaning.

15

Compare: 1986 No 5 s 80A

107E Restriction on insurance

- (1) No person may enter into an insurance policy or a contract of insurance that indemnifies or purports to indemnify a person for the person's liability to pay pecuniary penalties imposed under this Act or costs incurred in defending any proceedings in which pecuniary penalties are imposed under this Act.

20

- (2) Any contract that does so is void.

Compare: 2015 No 70 s 29

37 Section 108 amended (Power to order certain persons not to act as creditors, lessors, transferees, or buy-back promoters)

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- (1) In section 108(1)(a)(v), delete “, more than once,”.

- (2) After section 108(1)(a)(v), insert:

(va) has failed to comply with any of the provisions of any of the following Acts or of any equivalent overseas legislation:

30

(i) the Fair Trading Act 1986:

(ii) the Financial Service Providers (Registration and Dispute Resolution) Act 2008:

(iii) the Secondhand Dealers and Pawnbrokers Act 2004; or

- (3) In section 108(1)(a)(vi), replace “to (v)” with “to **(va)**”.

35

- (4) Repeal section 108(1A).

38 Section 111 amended (Role and functions of Commission under this Act)

After section 111(2)(c), insert:

(ca) exercise the powers in **Part 5A** (certification); and

39 Section 113 amended (Application of Commerce Act 1986)

After section 113(a), insert:

(aa) sections 74A to 74C (enforceable undertakings):

5

40 New subpart 8 of Part 4 inserted

After section 116, insert:

Subpart 8—Miscellaneous

116A Directors and senior managers may also be liable for statutory damages or compensation

10

(1) This section applies if, in a proceeding under subpart 2 or 3, the court is satisfied that there has been—

(a) a breach of any provision of this Act in respect of which the debtor is entitled to recover from the creditor an amount of statutory damages under section 88; or

15

(b) a breach referred to in section 93.

(2) If the court is satisfied that a director or senior manager has breached **section 59B** in respect of the matter, the court may order that the director or manager is liable to pay statutory damages under section 90 in respect of the matter or to pay an amount under section 94 (as the case may be).

20

(3) *See* section 106, which provides a defence to a claim for statutory damages under section 88.

(4) *See* also **section 107A(1)(v)** (civil pecuniary penalties).

(5) The liability of the director or manager is a joint and several liability with that of the creditor or any other person against whom an order under section 90 or 94 is made.

25

(6) If this section applies, a director or senior manager may apply to the court under section 91 and the court must take directors and senior managers into account under section 92(e).

30

Compare: 2013 No 69 s 534

41 New Part 5A inserted

After section 131, insert:

Part 5A

Certification and fit and proper person requirements

131A Interpretation for this Part

In this Part, unless the context otherwise requires,—

controlling owner has the same meaning as in section 4 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 5

licensed provider has the same meaning as in section 4 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008

Registrar has the same meaning as in section 4 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008. 10

Requirement for certification

131B When person needs to be certified

(1) A person must not provide any of the following services without holding a certification that covers that service:

(a) being a creditor under a consumer credit contract: 15

(b) being a mobile trader.

(2) **Subsection (1)** applies unless an exemption applies under **section 131C**.

Compare: 2013 No 69 s 388

131C Exemptions from need for certification

(1) A person is exempt from the certification requirement under **section 131B** to the extent that the person— 20

(a) is a licensed provider that is licensed, registered, authorised, or otherwise approved to provide a licensed service by a licensing authority listed in Schedule 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008; or 25

(b) is a prescribed exempt person.

(2) A person is also exempt from the certification requirement in respect of a service to the extent that a service is a prescribed exempt service.

Compare: 2013 No 69 s 389

131D Prohibitions on holding out that person is certified 30

A person must not hold out that the person is certified under this Part if that is not the case.

Compare: 2013 No 69 s 391

Issue of certifications

131E Commission may issue certification

The Commission may issue a certification in accordance with this Part.

Compare: 2013 No 69 s 394

131F Application for certification

5

- (1) A person may apply for certification in the manner that is specified by the Commission.
- (2) The application may be for a certification in respect of being a creditor under a consumer credit contract, or being a mobile trader, or both.
- (3) An applicant must provide to the Commission the information that is required by the Commission to assist it in determining the application.
- (4) An applicant may request that 1 or more conditions be imposed on their certification.

10

Compare: 2013 No 69 s 395

131G When certification must be issued

15

- (1) The Commission must, after receiving an application under **section 131F**, issue a certification if the Commission is satisfied that the applicant's controlling owners, directors, senior managers, and proposed directors and senior managers, are fit and proper persons to hold their respective positions.
- (2) *See section 131L* for the Commission's power to impose conditions when it issues a certification.

20

Compare: 2013 No 69 s 396

131H Procedural requirements

- (1) This section applies to a decision of the Commission as to whether to issue certification under **section 131G** or to impose conditions under **section 131L(1)(a)**.
- (2) The Commission must have regard to the prescribed matters (if any) before making a decision.
- (3) The Commission must make the decision in the prescribed manner (if any).
- (4) **Subsections (5) and (6)** apply if the Commission proposes to—
 - (a) refuse to issue a certification; or
 - (b) impose a condition when the applicant has not requested a condition; or
 - (c) impose a condition that is materially more restrictive than that requested in the application.
- (5) The Commission must give the applicant no less than 10 working days' written notice of the following matters before it exercises the power:

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- (a) that the Commission may refuse to issue the certification or impose the condition; and
- (b) the reasons why it may exercise that power.
- (6) The Commission must give the applicant or the applicant’s representative an opportunity to make written submissions on the matter within that notice period. 5
- (7) In this section, **applicant** means—
 - (a) the person applying for certification (for example, the entity that will provide the service); and
 - (b) any controlling owner, director, senior manager, or proposed director or senior manager who the Commission is not satisfied is a fit and proper person to hold their respective position. 10

Compare: 2013 No 69 ss 319, 397

131I Notice of decision

- (1) The Commission must give written notice of a decision referred to in **section 131H** to— 15
 - (a) the applicant; and
 - (b) every other prescribed person.
- (2) If the Commission refuses to issue a certification or imposes a condition referred to in **section 131H(4)**, the written notice must include a statement of the Commission’s reasons for exercising the power. 20

Compare: 2013 No 69 s 398

131J Commission must send certification details to Registrar

- (1) The Commission must send the details specified in **subsection (2)** to the Registrar. 25
- (2) The details, for each certification, are—
 - (a) the name of the certified person; and
 - (b) any conditions of the certification; and
 - (c) any other prescribed information.
- (3) The Commission may publicly notify any details about a certification as it thinks fit. 30

Compare: 2013 No 69 s 401

Conditions of certification

131K Conditions of certification

- (1) The certification is subject to the conditions imposed by the Commission under **section 131L** and any conditions imposed by regulations (if any). 35

- (2) The certified person must comply with the conditions imposed on the person's certification.

Compare: 2013 No 69 s 402

131L When Commission may impose conditions

- (1) The Commission may, by written notice to the applicant or certified person,— 5
- (a) impose conditions on a certification when the certification is issued; and
 - (b) vary, revoke, add to, or substitute any conditions of certification imposed under this section at any time after the certification is issued.
- (2) A condition referred to in **subsection (1)** may only—
- (a) relate to the requirements referred to in **section 131G** (for example, to ensure that those requirements continue to be satisfied and to require verification that those requirements continue to be satisfied); or 10
 - (b) specify a date of expiry of the certification.
- (3) This section is subject to any regulations made under **section 138(1)(hb)**. 15

Compare: 2013 No 69 s 403

131M Certified person may apply for variation of conditions

- (1) A certified person may apply, in the manner that is specified by the Commission, for the Commission to exercise a power under **section 131L(1)(b)**.
- (2) A certified person must provide to the Commission the information that is required by the Commission to assist it in determining the application. 20

Compare: 2013 No 69 s 404

131N Procedure for variation of conditions

The Commission must not exercise a power under **section 131L(1)(b)** (except on an application under **section 131M**), or refuse an application for a variation under **section 131M**, unless— 25

- (a) the Commission gives the certified person no less than 10 working days' written notice of the following matters before it exercises the power:
 - (i) that the Commission may exercise the power; and
 - (ii) the reasons why it may exercise the power; and
- (b) the Commission gives the certified person or their representative an opportunity to make written submissions on the matter within that notice period. 30

Compare: 2013 No 69 s 405

Expiry, suspension, or cancellation of certifications

131O Duration of certification

- (1) A certification continues in force (unless it is cancelled before then) until the earlier of the following dates (the **termination date**):
- (a) the date that is 3 years after the date on which it is issued: 5
 - (b) its expiry date (if any).
- (2) **Subsection (3)** applies if—
- (a) a certified person applies for a new certification no later than 2 months before the termination date of an existing certification that the new certification is intended to supersede; and 10
 - (b) the application is not disposed of before the termination date.
- (3) The existing certification continues in force until the application is disposed of.
Compare: 2013 No 69 s 407

131P When Commission may suspend or cancel certification

- The Commission may suspend (for a specified period or until a specified requirement is met) or cancel a certification— 15
- (a) if the certified person, by written notice, requests the Commission to do so; or
 - (b) if the certified person does not meet, or no longer meets, the requirements referred to in **section 131G**; or 20
 - (c) if the Commission is satisfied that the certified person is incapacitated, has ceased to exist, or has become subject to an insolvency event within the meaning of section 6(4) of the Financial Markets Conduct Act 2013; or
 - (d) if the Commission is satisfied that the certified person has materially 25
contravened a condition of the certification.
- Compare: 2013 No 69 s 408

131Q Procedural requirements on suspension or cancellation of certification

- (1) The Commission must not suspend or cancel a certification unless—
- (a) the Commission gives the certified person no less than 10 working days' 30
written notice of the following matters before it exercises the power:
 - (i) that the Commission may suspend or cancel the certification; and
 - (ii) the reasons why it may exercise that power; and
 - (b) the Commission gives the certified person or their representative an 35
opportunity to make written submissions on the matter within that notice period.

- (2) In this section, **certified person** includes any controlling owner, director, or senior manager, or proposed director or senior manager, who the Commission is not satisfied is a fit and proper person to hold their respective position and who is the reason why the Commission proposes to suspend or cancel the certification.

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Compare: 2013 No 69 s 397

Changes relating to certified persons

131R Duty to notify changes

- (1) A certified person must notify the Commission about any prescribed change in circumstances (for example, a change in controlling owners, directors, or senior managers) relating to a certified person.
- (2) The time within which a person must notify the Commission under **subsection (1)** is 10 working days from the date on which the person comes to know about the change.
- (3) A certified person must provide to the Commission the information that is required by the Commission to assist it in determining whether the certified person continues to meet, or no longer meets, the requirements referred to in **section 131G**.

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Compare: 2008 No 97 s 17

Other provisions about certifications

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131S Appeals against certification decisions

A person may appeal to the District Court against a decision of the Commission under this Part to—

- (a) refuse to issue a certification to the person; or
- (b) impose conditions on the person's certification or proposed certification or vary, revoke, add to, or substitute any conditions on the person's certification; or
- (c) refuse an application to vary the conditions of the person's certification; or
- (d) suspend or cancel the person's certification.

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Compare: 2013 No 69 s 531

42 New section 132A inserted (Disclosure before debt collection starts)

After section 132, insert:

132A Disclosure before debt collection starts

- (1) This section applies to any credit contract under which—
- (a) the debtor is a natural person; and

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**Credit Contracts and Consumer Finance Amendment
Bill**

Part 1 cl 42

- (b) debt collection is, or is to be, carried out in the course of a business.
- (2) Every debt collector under the credit contract must ensure that disclosure of as much of the key information set out in the regulations as is applicable to the contract is made to every debtor under the contract before debt collection starts under the contract. 5
- (3) In this section, unless the context otherwise requires,—
- debt collection—**
- (a) means actions to recover (or attempt to recover) any money that is owing by a debtor under a credit contract in breach of the contract; and
- (b) includes any action taken with a view to collection of that money by a person other than the creditor to whom it is owed or, where it has been assigned, to whom it was originally owed; but 10
- (c) excludes the sending of a payment reminder by the creditor to whom that money is owed or, where it has been assigned, to whom that money was originally owed 15
- debt collector** means a creditor or any other person engaging in debt collection
- payment reminder—**
- (a) means a communication that—
- (i) is made by the creditor who made the advance; and
- (ii) is made within 6 months of a default in payment; and 20
- (iii) only requests payments that are overdue; but
- (b) excludes—
- (i) a notice demanding payment of any amount in addition to the overdue payments (for example, a notice demanding that the unpaid balance be repaid in full): 25
- (ii) in-person visits to the debtor, the debtor’s residence, or the debtor’s place of work:
- (iii) communications with any person other than the debtor (other than inadvertent communications in the course of attempting to contact the debtor): 30
- (iv) requesting the debtor to consent to deductions from wages (under section 5 of the Wages Protection Act 1983), from a benefit (as defined in Schedule 2 of the Social Security Act 2018), or from a student allowance established by regulations made under section 303 of the Education Act 1989: 35
- (v) filing enforcement proceedings or lodging a claim with a dispute tribunal.
- (4) Subpart 4 of Part 2 applies with necessary modifications.

43 Section 138 amended (Regulations)

- (1) After section 138(1)(ab), insert:
- (aba) exempting any person or class of persons from being a creditor under a consumer credit contract or class of consumer credit contracts for the purpose of the application of any provision or provisions of this Act, and prescribing the terms and conditions (if any) of the exemption: 5
 - (abb) declaring any arrangement or facility, or class of arrangements or facilities, that has, or is intended to have, the effect of a person receiving a loan, or goods or services with deferred payment, to be consumer credit contracts: 10
 - (abc) declaring any person or class of persons to be creditors under a consumer credit contract:
 - (abd) setting advertising standards for the purposes of **section 9C(3)(b)(i)** (lender responsibility principles):
 - (abe) prescribing, for the purpose of **section 9C(5A)**, inquiries that must be made, and the way in which the results of the inquiries must be taken into account, before entering into an agreement, guarantee, or insurance contract: 15
- (2) After section 138(1)(f), insert:
- (fa) declaring any consumer credit contract, or class of consumer credit contracts, to be high-cost consumer credit contracts or related consumer credit contracts for the purposes of **section 45A** (costs of borrowing must not exceed loan advance): 20
 - (fb) providing for the calculation of the weighted average annual interest rate for a given day for the purposes of **section 45A**: 25
- (3) After section 138(1)(ha), insert:
- (hb) prescribing matters relating to **Part 5A** (certification and fit and proper person requirements), including—
 - (i) persons who, or services that, are exempt for the purpose of **section 131C**: 30
 - (ii) matters that the Commission must have regard to for the purpose of **section 131H(1)**:
 - (iii) conditions that certifications are subject to, the kinds of conditions that the Commission may impose on those certifications, or matters to which conditions imposed by the Commission may relate, for the purposes of **sections 131K and 131L**: 35
 - (iv) persons for the purpose of **section 131I** (notice of decisions):
 - (v) information for the purpose of **section 131J(2)(c)** (Commission must send certification details to Registrar):
 - (vi) changes in circumstances for the purpose of **section 131R(1)**: 40

**Credit Contracts and Consumer Finance Amendment
Bill**

Part 1 cl 43

- (vii) requiring the payment to the Commission of fees and charges in connection with applications and notices under **Part 5A** and the amounts of those fees and charges or the manner in which those fees and charges are to be calculated:
- (4) After section 138(1)(ja), insert: 5
- (jb) prescribing key information that must be disclosed under **section 132A** (disclosure before debt collection starts):
- (jc) prescribing, for the purposes of any provision of this Act that requires a thing to be done in a prescribed manner (or for the purposes of any other regulations empowered to prescribe the manner in which something must be done), the manner in which the thing must be done, including prescribing— 10
- (i) by whom, when, where, and how the thing must be done:
- (ii) the form that must be used in connection with doing the thing:
- (iii) what information or other evidence or documents must be provided in connection with the thing: 15
- (iv) requirements with which information, evidence, or documents that are provided in connection with the thing must comply:
- (v) that fees or charges must be paid in connection with doing the thing: 20
- (vi) that the Commission may determine or prescribe any of the matters under **subparagraphs (i) to (iv)**:
- (5) In section 138(1A), replace “or (ab)” with “to **(aba)**”.
- (6) In section 138(1A)(c)(i), after “subsection (1)(a)”, insert “or **(aba)**”.
- (7) In section 138(1B), replace “or (ab)” with “to **(aba)**”. 25
- (8) After section 138(1B), insert:
- (1BA) Regulations may be made under **subsection (1)(abb)** (declaring any arrangement or facility to be consumer credit contracts) only on the recommendation of the Minister, and the Minister may make a recommendation only if the Minister— 30
- (a) is satisfied that the regulations are necessary or desirable in order to promote the purposes of the Act set out in section 3; and
- (b) has had regard to the economic substance of the relevant arrangement or facility; and
- (c) has consulted the persons or representatives of the persons who the Minister considers will be substantially affected by the regulations. 35
- (1BC) Regulations may be made under **subsection (1)(abc)** (declaring any person or class of persons to be creditors) or **(abd)** (advertising standards) or **(abe)** (inquiries) only on the recommendation of the Minister, and the Minister may

make a recommendation only after consulting the persons or representatives of the persons who the Minister considers will be substantially affected by the regulations.

(1BD) A failure to consult as required by this section does not affect the validity of any regulation.

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44 Schedule 1AA amended

In Schedule 1AA, after clause 3, insert the cross-heading and clauses set out in **Schedule 1** of this Act.

45 Schedule 1 amended

(1) In Schedule 1, after paragraph (n), insert:

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(na) if the contract is a high-cost consumer credit contract or a related consumer credit contract, a statement of the effect of **section 45A**, which must include the maximum costs of borrowing, how the costs are calculated, and the total amount that is recoverable:

Example

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On 1 February 2023, Ms D borrows \$100 from CreditorCo. By 1 March 2023, Ms D has paid \$32 in interest and fees and \$60 of the principal. Ms D refinances by entering into a further high-cost consumer credit contract with CreditorCo to repay the remaining \$40, and will receive a further advance of \$160, ie, \$200 in total. CreditorCo includes the following in the initial disclosure statement:

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“The maximum amount of interest charges, credit fees, or default fees that you can be charged under this contract is \$68. No other amount of interest charges, credit fees, or default fees may be charged or debited to your account.

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“The maximum amount is calculated as follows:

your first advance under this contract or a related contract – previous interest and fees charged on related contracts

“Your first advance was \$100 under the contract dated 1 February 2023.

“Your previous interest and fees were \$32, paid under that contract.

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“The total amount that you can be required to pay under this contract is \$268. This is the \$200 advanced to you plus the \$68 maximum amount.”

(2) In Schedule 1, after paragraph (s), insert:

(saa) if the consumer credit contract is also a layby sale agreement,—

(i) a statement of the debtor’s cancellation rights under section 36F(1) of the Fair Trading Act 1986; and

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(ii) whether or not a cancellation charge under section 36F(3) of that Act will be imposed; and

- (iii) if a cancellation charge will be imposed, the amount of the charge (if a fixed charge will be imposed) or a clear description of how the charge will be calculated:
- (3) In Schedule 1, after paragraph (ua), insert:
- (uaa) a statement that the scheme will not charge a fee to any complainant to investigate or resolve a complaint, if the consumer credit contract is a high-cost consumer credit contract or a related consumer credit contract: 5

Part 2

Amendments to other Acts and legislative instruments

- Subpart 1—Amendments to Fair Trading Act 1986 10
- 46 Amendments to Fair Trading Act 1986**
This subpart amends the Fair Trading Act 1986.
- 47 Section 36B amended (Meaning of layby sale agreement)**
Repeal section 36B(4) and (5).
- 48 Section 36C amended (Disclosure requirements relating to layby sale agreement)** 15
After section 36C(2), insert:
- (3) This section and section 36D do not apply to a layby sale agreement that is a consumer credit contract to which subpart 2 of Part 2 of the Credit Contracts and Consumer Finance Act 2003 applies (which relates to required disclosure). 20
- Subpart 2—Amendments to Financial Service Providers (Registration and Dispute Resolution) Act 2008
- 49 Amendments to Financial Service Providers (Registration and Dispute Resolution) Act 2008**
This subpart amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008. 25
- 50 Section 4 amended (Interpretation)**
In section 4, insert in its appropriate alphabetical order:
mobile trader has the same meaning as in section 5 of the Credit Contracts and Consumer Finance Act 2003 30
- 51 Section 5 amended (Meaning of financial service)**
After section 5(1)(e), insert:
(ea) being a mobile trader:

- 52 Section 13 amended (Qualifications for registration as financial service provider)**
- In section 13, insert as subsections (2) and (3):
- (2) However, **subsection (3)** applies to a person to whom **section 131B** of the Credit Contracts and Consumer Finance Act 2003 applies (which relates to when a person needs to be certified). 5
 - (3) The person is not qualified to be registered as a financial service provider for the service of being a creditor under a credit contract or a mobile trader unless the person is certified under **Part 5A** of that Act.
- 53 Section 18 amended (Deregistration of financial service provider)** 10
- After section 18(1B), insert:
- (1C) The Registrar must deregister a financial service provider in respect of a particular service after a notice period in accordance with sections 19 and 20 if the Registrar is satisfied that the provider is disqualified from being registered in respect of that service. 15
- 54 New section 23 and cross-heading inserted**
- After section 22, insert:
- Information-sharing provisions*
- 23 Information-sharing provisions between Registrar and Commission**
- Sections 17(1)(b), 18(2), 19(1), 21(b), and 22(3)(b) apply as if the Commerce Commission were identified in Schedule 2 as a body that is a licensing authority in respect of creditors and mobile traders. 20
- 55 Section 27 amended (Contents of register)**
- After section 27(1)(c), insert:
- (ca) in relation to a person that is certified under **Part 5A** of the Credit Contracts and Consumer Finance Act 2003,— 25
 - (i) whether the person is a creditor or a mobile trader:
 - (ii) the name and business address of the Commerce Commission, as the certifying authority:
- 56 Section 67 amended (Duty to co-operate and communicate information in certain circumstances)** 30
- In section 67(1)(ca), after “creditors”, insert “or about mobile traders”.
- 57 Schedule 1AA amended**
- In Schedule 1AA, after clause 2, insert the **Part 2** set out in **Schedule 2** of this Act. 35

Subpart 3—Amendments to legislative instruments

58	Amendment to Financial Service Providers (Registration) Regulations 2010	
(1)	This section amends the Financial Service Providers (Registration) Regulations 2010.	5
(2)	In Schedule 2, after clause 4, insert:	
4A	If the registered financial service provider is a creditor or a mobile trader,—	
	(a) whether that person is a creditor under consumer credit contracts:	
	(b) whether that person is certified under Part 5A of the Credit Contracts and Consumer Finance Act 2003 and, if so,—	10
	(i) the termination date of that certification:	
	(ii) any conditions of certification:	
	(iii) whether the certification is suspended:	
	(c) whether an exemption from certification applies.	
59	Amendment to Credit Contracts and Consumer Finance Regulations 2004	15
(1)	This section amends the Credit Contracts and Consumer Finance Regulations 2004.	
(2)	After regulation 6, insert:	
	<i>High-cost consumer credit contracts</i>	
6A	High-cost consumer credit contracts for which costs of borrowing must not exceed loan advances	20
	For the purposes of section 45A of the Act, the weighted average annual interest rate must be calculated as follows:	
	weighted average annual interest rate = $R \sum_{n=1} [(r_n \times U_n) \div U]$	
	where—	25
	R is the number of annual interest rates applying on a day	
	r_n is each annual interest rate	
	U_n is the unpaid balance to which r_n applies	
	U is the total unpaid balance.	
	Example 1	30
	Ms C has a credit card that says that the first \$1,000 was charged at an interest rate of 20%, and the rest of the unpaid balance (say, the next \$2,000) was charged at an annual interest rate of 30%.	

$$R = 2$$

$$r_1 = 20\%; r_2 = 30\%$$

$$U_1 = \$1,000; U_2 = \$2,000$$

$$U = \$3,000$$

This gives a weighted average annual interest rate that day of 26.7%. The contract is not a high-cost consumer credit contract. 5

Example 2

An interest rate of 40% applies to the first \$1,000 of the unpaid balance, and another 45% applies to the entire unpaid balance of \$3,000.

$$R = 2$$

$$r_1 = 40\%; r_2 = 45\%$$

$$U_1 = \$1,000; U_2 = \$3,000$$

$$U = \$3,000$$

This gives a weighted average annual interest rate that day of 58.3%—so it will be a high-cost consumer credit contract, even though each individual annual interest rate is below 50%. 15

Schedule 1
**Amendments to Schedule 1AA of Credit Contracts and Consumer
Finance Act 2003**

s 44

	<i>Credit Contracts and Consumer Finance Amendment Act 2019</i>	5
5	Application of amendments to existing agreements	
(1)	In this clause, unless the context otherwise requires,— 2019 Act means the Credit Contracts and Consumer Finance Amendment Act 2019 commencement , in relation to any provision of the 2019 Act, means the com- mencement of that provision principal Act means the Credit Contracts and Consumer Finance Act 2003 as if the 2019 Act had not been brought into force.	10
(2)	Except as provided for in subclause (3) , the amendments to the principal Act in the 2019 Act do not apply to existing agreements.	15
(3)	The amendments referred to in subclause (2) apply in relation to existing agreements as follows:	
(a)	the amendments made by sections 15 and 16 of the 2019 Act (vari- ation disclosure) apply only to variations that take effect after com- mencement:	20
(b)	the amendments made by section 21 of the 2019 Act (records about how fees calculated) apply to each credit fee and default fee that is cal- culated for the purpose of section 41 of the principal Act after com- mencement:	
(c)	the amendments made by section 22 of the 2019 Act (costs of borrow- ing must not exceed loan advance) apply to an existing agreement only as follows:	25
(i)	section 45A applies to restrict maximum costs of borrowing under an existing agreement only if an existing agreement is varied with effect after commencement; and	30
(ii)	the rules in that section for calculating the first advance and whether a contract is a related contract apply equally to all agree- ments (including those entered into before commencement):	
(d)	the amendments made by section 23 of the 2019 Act (duty of directors and senior managers of creditors) apply to obligations of the creditor in respect of existing agreements that arise for performance after com- mencement, or continue to require performance after commencement:	35

(e) the amendments made by sections 24 to 28 of the 2019 Act apply in respect of existing agreements only to breaches of obligations that occur after commencement:	
(f) the amendments made by section 29 of the 2019 Act apply to existing agreements on or after the commencement in so far as section 95A (court may reduce effect of failure to make initial or variation disclosure) applies to the costs of borrowing in relation to any period after commencement:	5
(g) the amendments made by sections 30 to 36 of the 2019 Act apply in respect of existing agreements only to breaches of obligations that occur after commencement:	10
(h) the amendments made by section 39 of the 2019 Act (enforceable undertakings) apply to breaches of obligations in respect of existing agreements whether those breaches occurred or occur before, on, or after commencement:	15
(i) section 131B (when person needs to be certified) of the principal Act (as inserted by section 41 of the 2019 Act) applies only in respect of creditors or mobile traders who enter into a new credit contract, or agree a variation to an existing credit contract, after commencement:	
(j) the amendments made by section 42 of the 2019 Act (disclosure before debt collection starts) apply to all existing agreements to the extent that debt collection starts after commencement.	20
(4) In this clause, existing agreement means any credit contract, security agreement, lease, buy-back transaction, or other contract or arrangement—	
(a) to which the principal Act applies; and	25
(b) that was entered into before this clause came into force.	
(5) In other respects, the principal Act continues to apply for the purposes of existing agreements, and for the completion of a matter or thing or the bringing or completion of proceedings that relate to existing agreements, as if the 2019 Act had not been passed.	30
Example 1	
Before commencement, Ms D borrows \$100 from CreditorCo under a consumer credit contract that has an annual interest rate of 500% pa and a term of 6 weeks. Section 45A does not limit the amount that can be recovered under that contract.	
As at commencement, Ms D has repaid \$92, consisting of \$32 in interest and fees and \$60 of the principal. Her unpaid balance is \$40.	35
After commencement, Ms D refinances by entering into a further high-cost consumer credit contract with CreditorCo to repay the remaining \$40, and will receive a further advance of \$50, ie, \$90 in total.	
The first advance of \$100 in the pre-commencement contract caps the maximum costs of borrowing under the new contract. The maximum amount in interest, credit fees, and default fees that Ms D will have to pay under the new contract is \$100 -	40

**Credit Contracts and Consumer Finance Amendment
Bill**

Schedule 1

\$32 = \$68 (ie, the amount in interest and fees charged on the first contract (\$32) is subtracted from the first advance of \$100 to give a remaining cap of \$68).

Example 2

LoanCo and Ms S enter into a consumer credit agreement on **1 July 2019** (before the 2019 Act receives Royal assent). 5

LoanCo fails to make initial disclosure. LoanCo can rely after Royal assent on **section 95A** (court may reduce effect of failure to make initial disclosure) in respect of that failure before Royal assent, but only in respect of costs of borrowing in relation to the period after Royal assent.

LoanCo and Ms S vary the agreement on **1 October 2020** (after the 2019 Act receives Royal assent). 10

When so varying the agreement, LoanCo must comply with the lender responsibility principles as amended by the 2019 Act. If LoanCo fails to comply, Ms S may seek statutory damages as provided by the amendments made by **section 24** of the 2019 Act, and LoanCo may be liable for civil pecuniary penalties as provided in **Part 5A** (as inserted by **section 36** of the 2019 Act). 15

LoanCo starts debt collection on 1 November 2020. **Section 132A** will apply to the debt collector because debt collection starts after that section comes into force on **1 March 2020**.

6 Creditors registered as financial service providers before 1 April 2021 20

(1) This clause applies to every creditor that is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 as at the close of **31 March 2021** and that is required to be certified under **Part 5A** of this Act.

(2) **Section 131B** does not apply until the first due date on or after **1 April 2021** on which the person must supply to the Registrar its annual confirmation of details under section 28 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008. 25

Schedule 2
New Part 2 of Schedule 1AA of Financial Service Providers
(Registration and Dispute Resolution) Act 2008 inserted

s 57

Part 2
Provision relating to Credit Contracts and Consumer Finance
Amendment Act 2019

5

3 Creditors registered as financial service providers before 1 April 2021

- (1) This clause applies to every creditor that is registered under this Act as at the close of **31 March 2021** and that is required to be certified under **Part 5A** of the Credit Contracts and Consumer Finance Act 2003. 10
- (2) The date on and from which the person must be certified is the first due date on or after **1 April 2021** on which the person must supply to the Registrar its annual confirmation of details under section 28 of this Act.
- (3) After that date, section 18(1)(a) (which relates to deregistration) applies if the person is not certified. 15