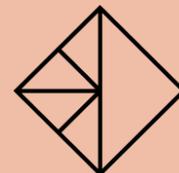


Changes to consumer credit and financial services regulations announced



In response to the COVID-19 crisis, New Zealand's financial market regulators have recently implemented a number of changes to consumer credit and financial services legislation. Broadly, the changes are intended to aid the financial services sector in helping clients through this time, and to facilitate a six-month payment holiday scheme, as it relates to borrowers under consumer credit contracts (**Contracts**) with registered banks (**Banks**).

This update focuses on amendments to the Credit Contracts and Consumer Finance Regulations 2004 (**CCCFA Regulations**) and the deferral of the commencement of certain recent changes to the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) as introduced under the Credit Contracts Legislation Amendment Act 2019 (**CCLAA**).

We also discuss deferral of the Financial Services Legislation Amendment Act 2019 (**FSLAA**) and other recent developments to financial services regulation.

New: Credit Contracts and Consumer Finance (Exemptions for COVID-19) Amendment Regulations 2020

The Credit Contracts and Consumer Finance (Exemptions for COVID-19) Amendment Regulations 2020 (**Amendment Regulations**) came into force on 1 April 2020, amending the CCCFA Regulations. The Amendment Regulations provide exemptions for Banks from certain timing, procedural and affordability assessment requirements under the CCCFA.

In relation to a variation to an existing Contract (or a Contract entered into in replacement of that existing Contract), a Bank is exempt from complying with the following:

The 'responsible lending principle' requiring the Bank to be satisfied that it is likely that the borrower will continue to make (or will make, in the case of a replacement Contract) the payments under the Contract without suffering substantial hardship.

The timeframes for initial disclosure, variation disclosure and guarantor disclosure, and the timeframes for giving or sending terms, provided that the Bank does make the relevant disclosure and give or send the terms as soon as reasonably practicable.



Evelyn Jones

Partner

D +64 9 905 1775

M +64 21 868 021

E evelyn.jones@laneneave.co.nz



Jacob Nutt

Associate

D +64 9 905 1763

M +64 21 0215 2262

E jacob.nutt@laneneave.co.nz



Stephanie Bode

Solicitor

D +64 9 905 1764

E stephanie.bode@laneneave.co.nz



The prescriptive timing requirements in relation to hardship applications under section 57A(1) of the CCCFA, provided that as soon as reasonably practicable after receiving the hardship application, the Bank gives notice to the borrower of its decision in relation to the hardship application and its reasons for not agreeing to change the Contract in accordance with the hardship application (if applicable).

The above exemptions only apply where the borrower is experiencing (or reasonably expects to experience) financial difficulties due to the economic or health effects of COVID-19, and only apply to variations of existing Contracts and replacement Contracts entered into on or before close of business on 31 October 2020. The exemptions extend to securitisation and covered bond arrangements or similar arrangements managed by a Bank.

Of note, all other responsible lending principles remain in force, and the remedies available to borrowers for oppressive conduct by lenders continue to apply. For additional information, the Commerce Commission has released guidance for all lenders operating during the COVID-19 pandemic (Guidelines) – please refer to the link [here](#).

Please note that the exemptions only apply to Banks, and have not been extended to non-bank lenders.

Delayed Commencement: Credit Contracts Legislation Amendment Act and Regulations

The CCLAA was passed in 2019 following the Ministry of Business, Innovation and Employment's (MBIE) review into New Zealand's consumer credit regulations, further tightening New Zealand's consumer credit law. For more information about the content of the CCLAA, refer to our earlier articles by clicking the links below:

www.laneneave.co.nz/banking-and-finance-cccfa-and-fslaa-update/

www.laneneave.co.nz/banking-and-finance-consumer-credit-law-update/

As a result of the COVID-19 pandemic, the commencement dates of certain provisions of the CCLAA have been delayed by six months, namely commencement of:

Part 5A of the CCLAA (which relates to the “fit and proper person” certification will be delayed from 1 September 2020 to **no earlier than 1 March 2021**); and

all other remaining provisions of the CCLAA and associated regulations will be delayed from 1 April 2021 to no earlier than 1 October 2021, other than those provisions relating to mobile traders and high-cost loans, which will come into force on **1 June 2020** as originally contemplated.



MBIE has advised that these dates will be reviewed every three months. We will provide any changes to these dates as and when available.

Delayed Commencement: Financial Services Legislation Amendment Act

The FSLAA introduces a new regulatory regime for financial advice (as previously described in our earlier articles, linked above).

MBIE has confirmed that the commencement date of the FSLAA will be delayed from 29 June 2020 to early 2021 (with the final date yet to be advised, but expected to be March 2021 at the earliest).

This means that the transitional licence application window has been extended until the same date in early 2021 (to be advised), at which point full licence applications can also be made. Until commencement of the FSLAA, the current regime will continue in full force.

Extension: FMA audited financial reporting deadline

The Financial Markets Authority (**FMA**) has confirmed that all reporting entities under the Financial Markets Conduct Act 2013 with balance dates up to and including 31 July 2020 will have an additional two months to provide audited financial statements, if their ability to produce financial statements is legitimately impacted by COVID-19.

This is a further expansion of the extension by the FMA, which previously only applied to reporting entities with balance dates up to and including 31 May 2020, with the FMA signalling that it will continue to monitor the situation in relation to later balance dates.

Extension: Timeframe submissions on Financial Markets (Conduct of Institutions) Amendment Bill

The Financial Markets (Conduct of Institutions) Amendment Bill (**FM CIA Bill**) amends the Financial Markets Conduct Act 2013 to ensure that certain financial institutions (including Banks, insurers, non-bank deposit takers) and their intermediaries comply with a principle of fair conduct and associated duties and regulations.

The FM CIA Bill is currently at the Select Committee stage in Parliament. Public submissions were due to close on 26 March 2020 but this has now been extended to **30 April 2020**.

If you have any queries in relation to the above changes, compliance generally, or would like assistance with making submissions, we will be happy to assist.

