

Consumer relief and lender guidance in light of COVID-19

Lender update – April 2020

Parliament has recently implemented exemption regulations to provide for consumer mortgage relief in certain situations

The Credit Contracts and Consumer Finance (Exemptions for COVID-19) Amendment Regulations 2020 (**Amendment Regulations**) were passed by Parliament on 31 March 2020 and came into force on 1 April 2020.

The Amendment Regulations amend the Credit Contracts and Consumer Finance Regulations 2004 and provide exemptions from certain requirements under the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) where a borrower has been impacted by the effects of COVID-19.

The amendments provide exemptions for registered banks (but not other non-bank lenders) from certain timing, procedural and affordability assessment requirements under the CCCFA.

In order for the exemptions to apply to a consumer credit contract:

- the creditor (lender) must be a registered bank;
- the borrower must be experiencing, or reasonably expect to experience, financial difficulties due to the economic or health effects of COVID-19; and
- the contract must be either an existing contract that is varied (or proposed to be varied) or a replacement contract that is entered into (or proposed to be entered into), in either case for the purpose of reducing those difficulties.

The changes exempt registered banks from:

- certain lender responsibility requirements to the extent that such requirements may require the bank to be satisfied (and in the case of replacement

contracts, make enquiries) that it is likely that the borrower will be in a position to make, or continue to make, payments under the agreement without substantial hardship;

- certain timeframes for making disclosure and giving or sending terms, provided that the bank must make the disclosure or give or send the terms, as soon as reasonably practicable. These exemptions specifically relate to statutory timeframes for initial disclosure (section 17), disclosure of agreed changes (sections 22(4) and (6)) and disclosure of changes to guarantors (section 26); and
- prescribed timing requirements in relation to hardship applications under section 57A of the CCCFA, provided that a bank must, as soon as reasonably practicable after receiving an application for a change to a consumer credit contract on the grounds of unforeseen hardship:
 - decide whether to change the contract in accordance with the application; and
 - give the borrower written notice of the decision and, if the change is declined, set out the bank's reasons for that decision and a clear summary of the borrower's rights under sections 58 of the Act,

as would otherwise be required under section 57A regardless of the changes.

The exemptions only apply to variations of existing contracts or replacement contracts entered into on or before 31 October 2020 (so only have effect for a limited 6 month period, in light of the current COVID-19 pandemic).

Guidance for lenders

Although the exemption relief provisions only apply to registered banks, the Commerce Commission has released guidance which applies to all consumer lenders operating during the COVID-19 pandemic

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(including banks, in situations where the exemptions do not apply, and non-bank lenders).

This guidance aims to assist lenders to comply with the requirements of the CCCFA during the pandemic and reinforces that the lender responsibility principles continue to apply, including in relation to affordability and suitability requirements.

The guidance also contains information to assist lenders in responding to borrowers under financial stress, and encourages lenders to work with borrowers to provide relief from financial stress and to process applications for variations and communicate decisions with borrowers as quickly as possible.

A copy of the Commerce Commission guidance can be found [here](#).

Increased timeframes for enforcement

The Government has announced that it will introduce legislation to temporarily extend the timeframes to cancel a lease, or exercise powers under a mortgage, during the COVID-19 pandemic.

While legislation has yet to be introduced to Parliament, the Government has proposed:

- the statutory cancellation period for leases for non-payment of rent will be extended from 10 working days to 30 working days; and
- mortgagors will need to be given 40 working days to remedy a mortgage default in the case of property (rather than the usual 20 working days period) and 20 working days to remedy a mortgage default in the case of goods (increased from the existing 10 working day requirement). These changes will relate to both residential and commercial mortgages (although it is expected that residential customers will, at least initially, rely on the mortgage deferral payments being offered by retail banks).

These changes are expected to be temporary and expire on the date six months after the Epidemic Preparedness (COVID-19) Notice 2020 ends.

Deferral of other consumer credit legislation and financial services legislation changes

As a result of COVID-19, the Ministry of Business, Innovation and Employment (**MBIE**) has announced that the commencement of certain provisions of the Credit Contracts Legislation Amendment Act 2019 (**Amendment Act**) have been delayed. A summary of the changes under the Amendment Act can be found [here](#).

The majority of the changes have now been delayed by at least 6 months, as follows:

- the new fit and proper person certification regime will be delayed from 1 September 2020 to no earlier than 1 March 2021; and
- the commencement of the new regulations and other remaining provisions of the Amendment Act will be delayed from 1 April 2021 until no earlier than 1 October 2021.

MBIE advises that the commencement dates will be reviewed and updated as required.

There is no change to the commencement provisions of the Amendment Act relating to mobile traders and high cost loans, which will continue to come into force on 1 June 2020.

These changes are intended to assist lenders to focus their efforts more effectively on continuing to act smoothly and to provide credit and other support to individuals and businesses.

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Deferral of commencement of new financial adviser regime

MBIE has also announced that the implementation of the new financial advice regime under the Financial Services Legislation Amendment Act 2019 has been delayed from 29 June 2020 until March 2021 at the earliest.

Again, the delay is to allow the sector to better focus on helping clients at the current time.

The new code of professional conduct for financial advice services will come into force on the delayed commencement date, and the transitional licensing window for financial advisers will be extended until the same date.

The disclosure regulations associated with the new regime have also been delayed, so that the relevant commencement dates can be updated once available.

The existing regime under the Financial Advisers Act 2008 will continue to apply in the meantime until the new regime commences.

Other initiatives

A number of other Government initiatives have also been announced as a result of the COVID-19 crisis, including:

- **Extended deadlines for financial reporting:** Extended filing deadlines for FMCA reporting entities, NXZ listed issuers and auditors with balance dates from 31 December 2019 to 31 July 2020, granting those entities a further two months during which to provide audited financial statements.
- **Business finance guarantee scheme:** A Business Finance Guarantee Scheme (**Scheme**) under which a total of \$6.25 billion in new lending is to be made available to COVID-19 affected businesses. The Scheme will provide individual loans of up to \$500,000 to eligible businesses. To be eligible to

apply, businesses must be New Zealand based with an annual turnover of between \$250,000 and \$80 million. Under the Scheme, banks will make new lending available to eligible businesses, with such loans supported by a guarantee in a risk sharing agreement with the Government. The Government will cover 80% of the risk, with banks covering the remaining 20%.

Loan terms are limited to a maximum term of three years, and subject to such other terms as determined by the relevant bank in each case. Such lending will be subject to normal credit assessment processes. The Scheme expressly excludes funding for certain activities including agriculture, property development and property investment. Banks involved in the Scheme include ANZ, ASB, BNZ, Heartland, HSBC, Kiwibank, SBS, TSB and Westpac.

- **Mortgage deferrals will not affect consumer credit ratings:** Registered banks have enabled the deferral of mortgage repayments for up to six months for customers who have been financially affected by COVID-19. The New Zealand Bankers' Association has announced that persons who have benefited from such mortgage deferrals will not have their credit rating affected as a result of the deferral, provided they were not in arrears before the pandemic. Banks have agreed this initiative with credit reporting agencies, which is intended to provide certainty and relief for affected customers.

Want to know more?

If you have any questions about consumer credit or lending more generally, please contact our specialist [banking and finance team](#) or your usual Anderson Lloyd adviser.