

Progress of the Credit Contracts Legislation Amendment Bill

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The [final report of the Finance and Expenditure Committee](#) (the F&E Committee) on the Credit Contracts Legislation Amendment Bill (CCLAB) was released on 11 November 2019. The CCLAB had its second reading on 19 and 21 November.

Submissions are currently being sought on the latest Exposure Draft of the Credit Contracts and Consumer Finance Amendment Regulations 2020 (the Amendment Regulations). Submissions are due by 5 February 2020.

The CCLAB and Amendment Regulations amend the Credit Contracts and Consumer Finance Act 2003 (the CCCFA) and its Regulations. The changes will also necessitate amendments to the Responsible Lending Code which is promulgated under the CCCFA. The overall purpose of the CCLAB is to make certain amendments to reduce irresponsible and predatory lending to consumers (a number of examples of which are discussed in the second reading).

The main changes the CCLAB and Amendment Regulations introduce are:

- In relation to high-cost loans:
 - the introduction of a cap on the rate of interest and fees (0.8% per day and a cap of total interest and fees to 100% of the amount first borrowed). This interest rate cap was a late inclusion by the F&E Committee and is the subject of much concern/debate within the industry. Both caps will be reviewed after three years
 - limits on default fees
 - new prohibitions on 'lender-hopping' to prevent borrowers from repeatedly refinancing high-cost loans
- New prescriptive requirements for lenders to:
 - assess the likelihood that the credit will:
 - meet the borrower's requirements and objectives
 - result in substantial hardship for the borrower, which includes the lender assessing the borrower's likely income and expenses. This now also extends to situations where a lender makes certain 'material changes' (as defined in the CCLAB) to an existing consumer credit contract
 - keep records that substantiate that loans are affordable and suitable
 - keep records demonstrating that fees are not unreasonable (there is now also a requirement for fees to be reset if there has been a change in the lender's business that means that previously reasonable fees are no longer reasonable)
 - ensure advertising complies with certain advertising standards
 - make disclosure about dispute resolution schemes and financial mentoring services (the Ministry of Social Development's *MoneyTalks* hotline) in the event of hardship applications, arrears, complaints and where credit is declined
- New requirements for directors and senior managers of creditors (and mobile traders), to meet a 'fit and proper' test (the F&E Committee has removed this requirement in relation to 'controlling owners'). We are expecting further consultation on the certification criteria and applicable fees
- New duty requirements on directors and senior managers ([see our previous article on the proposed due diligence duties](#))
- Tougher penalties for irresponsible lending behavior
- New disclosure requirements at the commencement of debt collection
- New requirements for consumer credit providers to give statistical information about their business to the Commerce Commission on an annual basis (ie an annual return). The Commerce Commission is seeking submissions on the content of this report.

Notably, the proposed commencement date for the majority of the CCLAB and Amendment Regulations has been pushed back. The provisions relating to high-cost loans, the treatment of mobile traders as creditors and the new due diligence duties imposed on directors and senior managers are still scheduled to commence in June 2020. The changes will not have retrospective effect but will apply to any existing consumer credit contracts which are varied after this date. The remainder of the CCLAB is now scheduled to commence on 1 April 2021. Applications for certifications of directors and senior managers as 'fit and proper'

persons, will open on 1 September 2020.

If you are a lender and would like to discuss any of the changes being proposed by the CCLAB and Amendment Regulations and/or you would like to make a submission on the Amendment Regulations, please give our team a call.

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