

12 June 2025

Committee Secretariat
Finance and Expenditure Select Committee
Parliament Buildings
Wellington

SUBMISSION on Credit Contracts and Consumer Finance Amendment Bill

1. Introduction

Thank you for the opportunity to make a submission on the Credit Contracts and Consumer Finance Amendment Bill (the Bill). This submission is from Consumer NZ, an independent, non-profit organisation dedicated to championing and empowering consumers in Aotearoa. Consumer NZ has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

Contact: Aneleise Gawn
Consumer NZ
Private Bag 6996
Wellington 6141
Phone: 04 384 7963
Email: aneleise@consumer.org.nz

2. General comments on the Bill

While we support changes aimed at improving credit laws in Aotearoa we have concerns about some provisions of the Bill. We also think the Bill needs to be amended to include provisions to address issues faced by consumers taking on car finance.

Our concerns and suggestions are outlined below.

3. Existing clauses in the Bill

Clause 5

We support the Financial Markets Authority (FMA) taking over regulatory responsibility from the Commerce Commission, provided the FMA is well-resourced and maintains a strong consumer protection focus. We also support the inclusion of new powers for the FMA in the Bill.

Clause 12

We do not support this clause as it states continuing disclosure may not be required if the creditor maintains a website that allows the debtor to access information about the unpaid balance after each transaction. Not all consumers have access to the internet or are technologically savvy, so we suggest this clause is deleted.

Clause 20

We are concerned about the removal of the due diligence duty for directors and senior managers under clause 20. This duty provides a critical mechanism for holding individuals accountable for irresponsible lending practices. We are concerned that its removal may undermine the deterrence of poor conduct at a leadership level so encourage the Committee to reconsider its removal.

Clause 28

To maintain legal certainty, we believe legislation should only be introduced retrospectively where there is a strong public interest case to support it. Based on the evidence available and the constraints acknowledged in the official analysis, we are not convinced there is a strong public interest case in this situation. On the face of it, the government's decision to include this provision in the Bill appears to only directly benefit ASB and ANZ.

We understand there is an apparent anomaly in the law between 2015 and 2019 and this is central to the class action against ASB and ANZ. Whether exploiting that anomaly is fair to the defendant banks is up for discussion, but we urge the Committee to keep in mind the consumer protection purpose of the Credit Contracts and Consumer Finance Act (CCCFA) and remember we are talking about allegations that major financial institutions have systematically failed to meet their legal obligations to consumers.

It is hard to avoid the conclusion that by including this amendment the government has bought arguments that the banking sector has been pushing for some time. Not only is this amendment potentially detrimental to the hundreds of thousands of bank customers involved in the ongoing class-action, it establishes a precedent that degrades trust in democratic and legal processes in New Zealand.

We therefore urge the Committee to reconsider the retrospectivity of these provisions in the Bill.

Clause 46

We support the FMA having the power to make declarations and grant exemptions under this clause.

Consumer NZ and FinCap have received funding from the Borrin Foundation to consider whether the September 2024 amendments to the CCCFA are sufficient to prevent financial hardship. If this research finds the exemptions from affordability and suitability assessments for Buy Now Pay Later are not working, the FMA needs to be able to act quickly to make the necessary changes.

We have also previously raised concerns about the fact the sale of high-cost phones to consumers (payable in instalments) by telecommunications companies is not captured by the CCCFA. The FMA needs the power to address this issue as well.

Clauses 52 to 54

We support the move from certification to licensing as this aligns credit regulation with other financial market services and, if implemented well, could raise standards.

However, we note the transition from a certification to a licensing regime is a significant shift in the regulatory framework, so it is critical the FMA is adequately resourced to undertake this role.

4. Additional provisions needed in the Bill

Flex commissions

We urge the Committee to include a ban on flex commissions in the Bill. These commissions, commonly used in car financing, allow car dealers to charge a commission on top of the lender's interest rate. In effect, they incentivise dealers to prioritise their profits over their customer's interests. They obscure the true cost of credit and lead to consumers paying higher

interest rates than are necessary. These commissions undermine informed consumer choice, contrary to the intentions of the CCCFA.

In our view, flex commissions are likely to disproportionately affect vulnerable consumers. They were banned in Australia in 2018 and the UK in 2021. We'd like to see a similar rules in New Zealand.

Loan add-ons

The Commerce Commission's *Motor vehicle financing and add-ons review*¹ found that add-ons with significant sales commissions are often sold with vehicle loans. Many of these add-ons offer poor value and increase consumer costs. In 2021, the Commission raised concerns about the lack of transparency, informed consent and suitability of these products, particularly when commissions incentivise sales over consumer interests. However, these issues have not yet been adequately addressed.

In the UK, the Financial Conduct Authority has banned the practice of 'opt-out' selling for loan add-ons. This means consumers can no longer automatically be signed up for add-on products, such as payment protection insurance, GAP insurance and extended warranties. Instead, consumers must actively opt-in to purchasing these products.

In Australia, there is a mandatory four-day pause between the sale of the principal product or service and when the consumer can be offered or sold any add-on insurance products. This aims to prevent pressure selling and give consumers time to consider the value and necessity of the add-on.

We consider similar protections should be considered for New Zealanders. A ban on bundling add-ons into the financing deal could also be considered. In our view, 'cooling-off periods' are not sufficient to protect consumers.

Immobilising devices

Immobilising devices are used by car finance companies to disable cars remotely if the purchaser falls behind in repayments under a car loan.

¹ <https://comcom.govt.nz/news-and-media/media-releases/2021/commission-releases-report-on-motor-vehicle-financing-and-add-on-products>

Some consumers pay for these devices without even being aware of what they are, how they can be used to control their vehicles, or how much they are paying for them. In 2023, we wrote about Jimmy who signed up for a \$30,000 Go Car Finance deal for a car worth \$7000. Included in the deal was an immobilising device that Jimmy wasn't even aware he was paying for.²

Using these devices, lenders can disable vehicles for small overdue amounts and can even do so if there's been an administrative error on their part. This can result in a purchaser no longer being able to access their only mode of transportation. In many cases, the harm to the consumer will exceed the value of any missed payment.

We therefore urge the Committee to include a ban on immobilising devices in the Bill for cars purchased on credit.

Review

Finally, we urge the Committee to consider requiring a review of the CCCFA in four years' time to ensure it is achieving its purpose and not having any unintended consequences.

Thank you for the opportunity to provide comment.

ENDS

² <https://www.consumer.org.nz/articles/consumer-nz-warning-about-dodgy-car-finance-deals>