

# DRAFT FOR CONSULTATION

## **Credit Contract and Consumer Finance (Reasonable Inquiries by Regulated Financial Institutions) Amendment Bill**

Member's Bill

### **Explanatory note**

#### **General policy statement**

This Bill amends the Credit Contracts and Consumer Finance Act 2003 (**CCCFA 2003**) in order to undo the adverse impact that recent amendments to that Act are having on mortgage lending, particularly to the provision of mortgages to first-home buyers.

The Credit Contracts Legislation Amendment Bill 2019 was intended to strengthen requirements to lend responsibly and reduce the prevalence of predatory lending practices that could harm consumers. It was not intended to reduce mortgage lending from regulated financial institutions or to force them to engage in forensic auditing of potential borrowers' spending habits. This Bill amends the regulation-making powers of the CCCFA 2003 to allow for different sets of regulations to be issued for regulated financial institutions than other types of lender.

The passage of this Bill is intended to signal Parliament's intent that regulated lenders should be treated differently than other types of lenders who are not regulated by the Reserve Bank of New Zealand and who may have a higher risk profile in relation to the content of the regulations that specify what inquiries lenders must make when approving loans. This would, for example, allow for less prescriptive requirements for regulated financial institutions with regard to what constitutes a reasonable inquiry into a borrowers' ability to repay a loan, while retaining more specific requirements for unregulated lenders.

The difference in treatment is justified in that there is a clear, categorical difference between regulated financial institutions issuing long-term mortgages at low interest rates and who are intended to be subject to fair conduct programmes under the Finan-

cial Markets (Conduct of Institutions) Bill currently before Parliament, and other types of higher-risk, shorter-term loans issued by unregulated lenders.

### **Clause by clause analysis**

*Clause 1* is the title clause.

*Clause 2* is the commencement clause and provides for this Bill to come into force on the day after Royal assent.

*Clause 3* identifies the Credit Contracts and Consumer Finance Act 2003 (the **principal Act**) as the Act being amended by the Bill.

*Clause 4* inserts a new definition of **regulated financial institution** into the principal Act.

*Clause 5* amends the regulation-making power in section 138 of the principal Act to require that regulations made to specify what inquiries must be made by lenders so as to comply with the lender responsibility principles must differentiate between regulated financial institutions and other lenders.

*Andrew Bayly*

# **Credit Contract and Consumer Finance (Reasonable Inquiries by Registered Banks) Amendment Bill**

Member's Bill

## **Contents**

	Page
1 Title	1
2 Commencement	1
3 Principal Act	1
4 Section 5 (Interpretation)	1
5 Section 138 amended (Regulations)	2

### **The Parliament of New Zealand enacts as follows:**

#### **1 Title**

This Act is the Credit Contract and Consumer Finance (Reasonable Inquiries by Regulated Financial Institutions) Amendment Act **2022**.

#### **2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

#### **3 Principal Act**

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

#### **4 Section 5 (Interpretation)**

In section 5, insert in its appropriate alphabetical order:

**Regulated financial institution** means—

- (a) a registered bank (within the meaning of section 2(1) of the Reserve Bank of New Zealand 1989); or

- (b) a non-bank deposit taker (as that term is defined in section 5 of the Non-bank Deposit Takers Act 2013).

**5 Section 138 amended (Regulations)**

After section 138(4), insert:

- (4A) Regulations made under subsection (1)(abd) (prescribing, for the purposes of section 9C, the inquiries that must be made before entering into an agreement, the processes to follow when making inquiries, and the way in which they are taken into account), must contain separate and different provisions in relation to the class of lenders consisting of regulated financial institutions that take account of the scale and risk profile of that class of lenders.