

Credit Contracts and Financial Services Law Reform Bill

Government Bill

Explanatory note

General policy statement

The Credit Contracts and Financial Services Law Reform Bill reforms the entire suite of legislation that governs consumer credit contracts, from before their inception until their termination or enforcement. The Bill amends the Credit Contracts and Consumer Finance Act 2003 (the **CCCFA**), and repeals the Credit (Repossession) Act 1997 and incorporates its provisions within an expanded CCCFA. Repossession agents will be required to be registered under the Private Security Personnel and Private Investigators Act 2010. A small amendment is made to the Personal Property Securities Act 1999, and the Bill also amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **FSPA**) to promote cost-effective financial dispute resolution and protect the integrity of the financial service provider registration regime.

The background to the Bill and some of the main changes are discussed below.

The policy objective of the Bill is to revise and update the law that governs consumer credit and broader financial markets so that it—

- ensures that creditors lend to consumers and manage consumer credit contracts responsibly; and

- provides improved protection for vulnerable consumers, including from unscrupulous lenders; and
- provides for consumer credit law to be dealt with holistically in 1 Act, and is consistent with other financial sector legislation; and
- promotes and facilitates the development of fair, efficient, and transparent financial markets.

The Bill replaces the current CCCFA purpose clause. It elevates consumer protection to be the primary purpose of the Act with the following as additional purposes:

- promoting confident and informed participation in markets for credit by consumers; and
- promoting fair, efficient, and transparent credit markets; and
- protecting the interests of consumers entering credit contracts and consumer leases when those transactions are entered into and for their duration, including in relation to the ongoing management and enforcement of those agreements.

The Bill amends the CCCFA to strengthen protection for consumers. In particular, it introduces the principle of responsible lending. This is consistent with other financial sector reforms that improve protection for investors. The responsible lending principle is also consistent with the improvements being made to other consumer laws through the Consumer Law Reform Bill, and with aspects of Australia's National Consumer Credit Protection Act 2009.

The lender responsibility principles in the Bill are that lenders to consumers will—

- exercise the care, diligence, and skill of a responsible lender in respect of credit advertising, and before and after providing consumer credit; and
- comply with the lender responsibilities specified in the Bill.

The lender responsibilities in the Bill are that the lender will, in relation to an agreement with a borrower,—

- make reasonable inquiries to be satisfied that the credit will meet the needs of the borrower and be repaid without the borrower suffering substantial hardship; and
- assist the borrower to make an informed decision about whether to enter into the agreement; and

- assist the borrower to make informed decisions in all subsequent dealings; and
- assist guarantors to make an informed decision about whether to enter into the guarantee; and
- treat borrowers and their property reasonably and with respect, including in repossession processes; and
- ensure that the terms of the agreement and the exercise of powers by the creditor are not oppressive; and
- meet all their legal obligations to the borrower.

These principles will be elaborated upon, and guidance on their implementation will be provided, through a Responsible Lending Code (the **Code**). The Code will be notified in the *Gazette* by the Minister of Consumer Affairs, following consultation with interested parties. The Code will not include rules that are binding on lenders, but compliance with the Code will be evidence that lenders have complied with the lender responsibility principles in the Bill. A code issued by the Minister is more appropriate than regulations in these circumstances.

The CCCFA already includes the power for the court to ban creditors that breach the Act, and that power is being expanded to apply to creditors that breach the lender responsibility principles more than twice. A breach of the lender responsibility principles will also be an indicator that the conduct of the creditor has been oppressive for the purposes of the existing remedy in the CCCFA, in which case the credit contract may be reopened by the court.

The principle that borrowers should have sufficient information to make informed decisions will also be reinforced by having lenders make the standard terms and costs of borrowing freely and publicly available on their Internet sites and at their business premises. This will provide better information to the market and enable borrowers to shop around more effectively than they can at present. The Bill also provides that initial disclosure will have to be made before a credit contract is made, rather than within 5 working days, as is currently the case. Details of any credit-related insurance or extended warranty will also have to be provided before the contract is signed.

The cooling-off period available to borrowers after disclosure is made will be increased from 3 working days to 5 working days, in line with cooling-off periods in other consumer laws. Certain

exceptions to when disclosure is required during the life of the contract, including when some changes are made, will be removed. In addition, the overall regime for disclosure when variations are made unilaterally or by agreement has been rationalised. A new requirement will also be added to disclose when a creditor's rights under a consumer credit contract are transferred to another party. Finally, a power will be added to enable the form that disclosure must take to be defined in regulations.

The current provisions in the CCCFA prohibiting unreasonable credit fees, allowing borrowers to apply to the lender for relief in the event of unforeseen hardship, and allowing the courts to reopen oppressive credit contracts have not provided the desired level of protection for borrowers. The Bill clarifies the tests in these areas, and provides for explicit processes and time frames for consumers to apply for relief in situations of unforeseen hardship.

In relation to unreasonable fees (which are prohibited under the CCCFA), more explicit tests for different kinds of credit fees are included. These fees include establishment, prepayment, default, and third-party fees. The Bill also corrects an ambiguity in relation to default interest charges by stating that default interest may be charged only on the amount in default, and not the entire amount of the loan. The process by which debtors in financial difficulty can apply for relief on the grounds of unforeseen hardship will be clarified. The Bill allows consumers to apply for relief in cases of hardship up to 2 months after they default on payments, or up to 2 weeks after the creditor notifies them of a default. Currently, debtors must apply for hardship relief before their loans are in default, which makes the potential relief inaccessible for many borrowers. The Bill also imposes time obligations for the consideration of applications and requires that lenders provide reasons when they reject an application.

The Bill will make a number of substantive changes to the law governing repossession of consumer goods. These changes reflect the recommendations of the Law Commission in its Review of the Credit (Repossession) Act 1997 (*Law Commission Report 124, April 2012*). The Credit (Repossession) Act 1997 is being repealed and amalgamated in the CCCFA. The changes in the Bill include clarifying the process that a creditor must follow before it can repossess consumer goods, and during the course of the repossession and sale of the goods. This includes clearly setting out the information that must be

provided to the debtor: on default, prior to repossession commencing, after repossession has occurred, and after sale of the goods.

Significantly, the Bill adds a licensing requirement for individuals acting as repossession agents, and sets out the negative licensing criteria for licence applications under the Private Security Personnel and Private Investigators Act 2010. The Bill also clarifies that a debtor's liability to the creditor is "frozen" when repossessed goods are sold, meaning that no further fees or interest can be charged. The Bill also adds provisions governing the use of disabling devices by creditors, specifying that they may only be used where the debtor is in default and appropriate notice has been given.

The Bill amends the existing remedy that the CCCFA provides where a creditor has behaved oppressively in relation to a loan contract. Additional criteria are added to aid a court in deciding whether oppression has occurred. This is designed both to clarify a difficult area of statutory interpretation and to make the remedy more accessible to consumers who have been wronged.

The existing regulation-making power to exempt certain types of contracts from the requirements of the CCCFA will be broadened to allow partial exemptions only from certain provisions of the CCCFA. This will be particularly relevant to targeted rates arrangements used by local authorities to fund transactions like home insulation initiatives.

The way the newly expanded CCCFA will be enforced is also clarified. Some causes of action will be removed, with more options afforded to courts to provide parties with remedies. Various limitation periods in the CCCFA are extended from 1 year to 3 years. The Bill also prevents creditors who are not registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 from charging interest or fees.

The Bill also includes a small amendment to the Personal Property Securities Act 1999 to remove the opportunity for secured creditors to use powers of attorney to extend the coverage of their security over future property a borrower might acquire.

Finally, the Bill amends the FSPA. The Bill amends the purpose section of the FSPA, to complement other reforms being progressed in the financial markets, and seeks to protect the integrity of the financial service providers registration regime. The Bill also removes the

requirement for the government-established reserve scheme, to promote cost-effective financial dispute resolution. The reserve scheme is no longer required because approved dispute resolution schemes between them now cover all types of financial service providers. The Bill also addresses issues relating to overseas-based entities registering in New Zealand solely for reputational reasons. The Registrar of Financial Service Providers and the Financial Markets Authority will be given additional powers to assess whether a financial service provider should be declined for registration or deregistered. Disqualification criteria for registration purposes will also now include conviction for certain offences in other countries.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced regulatory impact statements to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of these regulatory impact statements can be found at—

- <http://www.consumeraffairs.govt.nz/legislation-policy/policy-development/credit-review>; and
- <http://www.med.govt.nz/business/business-law/current-business-law-work/financial-service-provider-registration-changes/FSPA-registration-amendments-RIS.pdf>.

Clause by clause analysis

Clause 1 is the Title clause. It is intended that the Bill will eventually be split into 2 Bills: a Credit Contracts and Consumer Finance Amendment Bill (comprising *Part 1* and *Schedules 1 to 3*) and a Financial Service Providers (Registration and Dispute Resolution) Amendment Bill (comprising *Part 2* and *Schedule 4*).

Clause 2 is the commencement clause. *Part 1* comes into force 6 months after the Act receives the Royal assent. *Part 2* comes into force on 1 July 2014.

Part 1

Amendments to Credit Contracts and Consumer Finance Act 2003

Clause 3 provides that *Part 1* amends the Credit Contracts and Consumer Finance Act 2003 (the CCCFA).

Clause 4 inserts a *new section 3*. *New section 3* sets out both the purposes of the CCCFA (as amended) and how the CCCFA will achieve those purposes. The primary purpose of the CCCFA is to protect the interests of consumers in connection with credit contracts, consumer leases, and buy-back transactions of land. The CCCFA also aims to promote confident and informed consumer participation in markets for credit, and fair, efficient, and transparent credit markets.

Clause 5 amends section 4, the overview section, to include a description of *new Part 1A* (as inserted by *clause 9*) and *new Part 3A* (as inserted by *clause 43*).

Clause 6 amends section 5, the interpretation section, to include new definitions, including definitions of credit fees, costs of borrowing, lender responsibility principles, Minister, Ministry, prescribed, and Responsible Lending Code (the **Code**).

Clause 7 inserts a *new section 5A*, which refers to *new Schedule 1AA* (see *clauses 66 and 67*). *New Schedule 1AA* contains application, savings, and transitional provisions relating to amendments made to the CCCFA after 1 January 2013.

Clause 8 inserts a *new section 7A*, which provides that a credit contract may provide for a security interest over security goods that are specifically identified in the contract. However, a security interest may not be taken in respect of consumer goods that are essential items (for example, beds and bedding and cooking equipment), travel or identity documents, bank cards, or consumer goods prescribed by regulations. There are also restrictions in relation to creditors holding keys, or other access devices, that relate to consumer goods that are the subject of credit contracts.

Clause 9 inserts a *new Part 1A*, which deals with lender responsibilities. *New Part 1A* comprises *new sections 9A to 9J*, which have the following effect:

- *new section 9A* is the interpretation section for the purposes of *new Part 1A*, and includes definitions of agreement, borrower, and lender:

- *new section 9B* sets out the lender responsibility principles, which are set out in *new section 9B(2) and (3)*. The obligation on lenders to comply with these principles is contained in *new section 9B(1)*:
- *new section 9C* sets out the purpose of the Code (which is prepared under *new section 9E*). The purpose of the Code is to elaborate, and provide guidance, on the lender responsibilities set out in *new section 9B(2)*:
- *new section 9D* provides for the matters that may be included in the Code. *New section 9D(2)* enables different provisions to be included in the Code to deal with particular, or particular classes of, agreements, borrowers, or lenders:
- *new section 9E* provides that the Minister is responsible for preparing the Code, which must be published not later than 2 years after *new section 9E* comes into force. *New section 9E(2)* specifies the process to be followed in developing the Code:
- *new section 9F* provides that the Code comes into force by notice in the *Gazette*, and the Code must be available, at all reasonable times after publication in the *Gazette*, on an Internet site maintained by the Ministry. The Code and the associated *Gazette* notice are each regulations for the purposes of the Regulations (Disallowance) Act 1989, but are not regulations for the purposes of the Acts and Regulations Publication Act 1989:
- *new section 9G* makes provision for amendments to the Code. For the purposes of amendments to the Code, *new sections 9E and 9F* apply with any necessary modification:
- *new section 9H* imposes requirements on lenders to publish information about their standard terms:
- *new section 9I* requires lenders to publicly disclose the costs of borrowing in relation to every type of agreement that they offer:
- *new section 9J* makes special provision in relation to repayment waivers and extended warranties. For the purposes of *new sections 9H and 9I*, such arrangements must be treated as if they were agreements (as defined in *new section 9A*).

Clause 10 amends section 10 to provide that Part 2 of the CCCFA does not apply in relation to goods that have been pawned in accordance with the Secondhand Dealers and Pawnbrokers Act 2004, provided that the goods are dealt with by the pawnbroker in the ordinary course of business and the pawnbroker's only right of recourse in respect of the pledger's default is under section 63 of that Act (pawnbroker's right to sell the goods and retain the redemption price of those goods).

Clause 11 amends section 11 by replacing subsection (1)(b) with a *new subsection (1)(b)*. *New subsection (1)(b)* emphasises the creditor's reasons for providing the credit, rather than the current emphasis on the debtor's reasons for entering into the contract. *Clause 11* also amends section 11 by inserting a *new subsection (1A)*, which expands on what is meant by a predominant purpose for the purposes of *new subsection (1)(b)*.

Clause 12 amends section 15 to ensure that the language in relation to contracts is consistent throughout the CCCFA. The amendment refers to the contract being entered into, instead of the contract being made. Corresponding changes are also made elsewhere in the Bill.

Clause 13 amends section 17 by replacing subsection (1) with a *new subsection (1)*, which requires initial disclosure of key information to be made by the creditor before the relevant contract is entered into.

Clause 14 repeals section 21(1)(a), which provides an exception to the continuing disclosure requirements under section 18.

Clause 15 amends section 22(3) and inserts a *new section 22(4)*. The amendments to section 22(3) enable disclosure of agreed changes to be made in accordance with *new section 22(4)*, provided that the changes are listed in section 22(3). *New section 22(4)* provides that the creditor may choose to make disclosure either within 5 working days of the change being made or (if the creditor is required to make continuing disclosure under section 18) at the same time as the continuing disclosure is made.

Clause 16 amends section 23 by inserting a *new subsection (1)(d)* (which adds a requirement for a creditor to disclose the amount of any credit limit under a consumer credit contract with a debtor that is varied in accordance with the creditor's powers under the contract) and by varying the disclosure provisions to align with those in section 22 (as amended by *clause 15*).

Clause 17 amends section 24(2) by replacing subsection (2)(g) with a *new subsection (2)(g)* (which enables a debtor to request, in writing, disclosure by the creditor of any information required to be included in a continuing disclosure statement: *see* section 19) and *new subsection (2A)*. *New subsection (2A)* enables debtors and guarantors to request that the creditor provides them with any of the information listed in that subsection.

Clause 18 amends section 25 by replacing subsection (2) with a *new subsection (2)*. *New subsection (2)* requires that disclosure relating to a guarantee must be made before the relevant contract is entered into. Section 25(3) is also amended to ensure that the language relating to entering into a contract is consistent throughout the CCCFA.

Clause 19 inserts a *new section 26A*, which requires a creditor to disclose the information specified in that section to the debtor when the creditor transfers the consumer credit contract to another creditor (referred to in that section as the new creditor).

Clause 20 amends section 27(1) by extending the time during which a debtor under a consumer credit contract may cancel the contract. The time is extended from 3 to 5 working days.

Clause 21 replaces section 30 with a *new section 30*. *New section 30* sets out the effects of cancellation of a consumer credit contract under section 27(1)(b).

Clause 22 amends section 32(1) by inserting a *new paragraph (ba)*, which requires disclosure to be in a form prescribed by regulations (if any).

Clause 23 amends section 40(2)(a) to limit the time during which default interest charges may be imposed, and the amount on which default interest may be charged, under a consumer credit contract.

Clauses 24 to 26 update the law relating to unreasonable fees in relation to consumer credit contracts, replacing sections 41, 43, and 44 with *new sections 41, 43, 44, and 44A*. These changes reflect the other changes made by this Bill in relation to consumer protection.

Clause 27 replaces section 45(5) with *new section 45(5) and (6)*, which permits a creditor to receive a reasonable commission in connection with any credit-related insurance or extended warranty taken out by the debtor, except where the debtor is required, whether directly or indirectly, to obtain the insurance or warranty from a particular provider.

Clause 28 replaces section 51(1) with a *new section 51(1)*, which includes a reference to *new section 52A* (as inserted by *clause 30*), and to more precisely refer to the reasonable estimate of the creditor's loss from the prepayment referred to in section 54.

Clause 29 amends section 52(1) to clarify that it applies to rebates of insurance.

Clause 30 inserts a *new section 52A*, which makes specific provision for rebate of repayment waivers, including their calculation.

Clause 31 amends section 55 by requiring an application under that section (that is, an application by the debtor to the creditor in relation to the debtor suffering unforeseen hardship) to be in writing and to set out the reasons for the application (*see new subsection (1A)*) and by limiting the number of applications that a debtor may make, subject to agreement by the creditor or materially different grounds for the application (*see new subsection (1B)*).

Clause 32 amends section 57 to set out the situations in which an application under section 55 (which relates to unforeseen hardship) may not be made.

Clause 33 inserts a *new section 57A*. *New section 57A* imposes obligations and restrictions on a creditor receiving an application from a debtor under section 55 (which deals with applications for changes to the terms of consumer credit contracts on the grounds of unforeseen hardship). The creditor must acknowledge the application within 5 working days and, within 20 working days, decide whether to grant the application, notify the debtor of the decision, and (if the application is declined) notify the debtor of the reasons and of the debtor's rights under section 58 (right to apply to the court for a change to the terms).

Clause 34 amends section 58 by replacing subsection (1) with a *new subsection (1)*. *New subsection (1)* enables a debtor to apply to the court to change the terms of a consumer credit contract if the creditor fails to comply with the timing requirements in *new section 57A* or if the creditor does not agree to the change. In the existing subsection (1), the only ground for applying to the court is if the creditor does not agree to the change.

Clause 35 repeals section 66, which sets out the situations in which variation disclosure is not required. The effect is that variation disclosure is not required in every case.

Clause 36 amends section 67 by inserting a *new subsection (2)(ba)*. *New subsection (2)(ba)* adds a requirement for the lessor under a consumer lease to provide the lessee, on request, with a copy of the lessor's standard terms (which are also required to be made publicly available under *new section 9H* (see *clause 9*)).

Clause 37 amends section 69 by repealing subsection (3). Section 69(3) deals with the orders that the court may make in relation to unreasonable requirements imposed by a creditor or lessor in relation to credit-related insurance, repayment waivers, or extended warranties in connection with a consumer credit contract or a consumer lease. The powers of the court to make such orders will now be included in Part 4 of the CCCFA, which deals with enforcement and remedies generally.

Clause 38 amends section 70 to require creditors and lessors to disclose the terms of credit-related insurance, repayment waivers, or extended warranties arranged by the creditor or lessor in connection with a consumer credit contract or consumer lease (as the case may be) before the insurance, waiver, or warranty is arranged. The current section 70 allows disclosure within 15 working days of the insurance, waiver, or warranty being arranged.

Clause 39 repeals section 78. Section 78 provides that section 77 (which imposes disclosure of full particulars of a change to a buy-back transaction) does not apply to a change that reduces the occupier's obligations under the transaction. The effect of the repeal of section 78 is that disclosure under section 77 will be required in all cases.

Clause 40 amends section 79(2) by inserting a *new paragraph (ba)*. Section 79(2) sets out the matters that an occupier under a buy-back transaction may request the transferee to disclose under subsection (1), and *new paragraph (ba)* adds that a request for disclosure may include a request for a copy of the transferee's standard terms (if any), as required under *section 9H* (see *clause 9*).

Clause 41 repeals section 80(2) to (4). These provisions relate to the orders that a court may make in relation to buy-back transactions, and are no longer required because the court's powers under the CCCFA are to be consolidated in Part 4 of the CCCFA.

Clause 42 repeals section 82(2) to (4). These provisions relate to the orders that a court may make in relation to buy-back transactions and

are no longer required because the court's powers under the CCCFA are to be consolidated in Part 4 of the CCCFA.

Clause 43 inserts a *new Part 3A*, which deals with repossession of consumer goods that are the subject of a credit contract. *New Part 3A* comprises *new sections 83A to 83ZH*, which update the provisions of the Credit (Repossession) Act 1997. The Credit (Repossession) Act 1997 is to be repealed by this Bill (*see clause 70 and Schedule 3*). *New sections 83A to 83ZH* have the following effect:

- *new section 83A* is an outline of *new Part 3A*:
- *new section 83B* provides that *new Part 3A* applies only where a credit contract expressly provides that a creditor has a right to repossess consumer goods, enter premises for the purpose of repossessing consumer goods, or enter premises for the purpose of repossessing consumer goods when the occupier is not present. Further conditions apply in relation to the identification of the consumer goods and the date of their acquisition:
- *new section 83C* sets out the circumstances in which a creditor may repossess consumer goods. In summary, the debtor must be in default under the contract or the goods must be at risk (at risk is defined in *new section 83C(2)*), the creditor must have complied with the requirements of *new Part 3A* before repossessing the goods, and the creditor must comply with the lender responsibility principles set out in *new Part 1A* (*see clause 9*):
- *new section 83D* requires a creditor to serve a repossession warning notice on the debtor and other specified persons before repossessing consumer goods:
- *new section 83E* enables the debtor to voluntarily return the consumer goods (other than consumer goods that are, or include, an accession) to the creditor following receipt of a repossession warning notice. Accession is defined in *new section 83E(4)* as having the same meaning as in section 16 of the Personal Property Securities Act 1999 (that is, goods that are installed in, or affixed to, other goods):
- *new section 83F* provides that sections 125 to 131 of the Personal Property Securities Act 1999 apply in relation to the repossession of accessions. Those provisions include, for example, a requirement that the person repossessing the acces-

sions does not damage the goods to which the accessions are attached, a right to reimbursement where the goods are damaged, and a right of the person entitled to reimbursement to refuse permission for the secured party to remove the accessions:

- *new section 83G* deals with the effect that a debtor's complaint, or an application on the grounds of unforeseen hardship, has on the repossession process. In that case, the creditor must not begin enforcement action or, if enforcement action has commenced, continue with that action, until the complaint is resolved (which may involve referral to the dispute resolution scheme of which the creditor is a member). Enforcement action is defined in *new section 83G(6)* as giving a repossession warning notice or a repossession notice or the repossession process:
- *new section 83H* deals with the use of disabling devices (as defined in *new section 83H(4)*). In summary, a disabling device must not be activated (as defined in *new section 83H(4)*) unless the debtor is in default under the credit contract and the creditor has given the debtor notice that the disabling device is to be activated and the steps that the debtor may take to prevent the device being activated:
- *new section 83I* provides that a creditor must not repossess consumer goods unless either the debtor has had the opportunity to remedy the default and has failed to do so within the time allowed, or the debtor has voluntarily returned the goods or reinstated the agreement. *New section 83I* also prohibits a creditor from holding keys or other devices that allow access to the consumer goods unless the consumer goods have been repossessed in accordance with the CCCFA:
- *new section 83J* sets out the documents that must be produced when a creditor exercises a right of entry to premises. If the occupier of the premises is not present when the creditor enters the premises, the creditor must leave a notice, in a prominent place, that specifies that the premises have been entered, the date of entry, an inventory of the consumer goods repossessed, and a copy of the documents required to be produced under *new section 83J(1)*:

- *new section 83K* provides that a creditor must act in accordance with the lender responsibility principles when exercising the right to enter premises:
- *new section 83L* prohibits a creditor from entering premises if a complaint has been made and not been resolved or an application on the grounds of unforeseen hardship has been made and not decided (*see new section 83G*):
- *new section 83M* restricts the times during which a creditor may exercise a right to enter residential premises. Unless the debtor agrees, in writing and before the entry takes place, to the contrary, the right may not be exercised other than between the hours of 6 am and 9 pm:
- *new section 83N* imposes registration and licensing requirements on creditors and their agents:
- *new section 83O* defines auction for the purposes of *subpart 5 of new Part 3A*:
- *new section 83P* requires a creditor to serve a post-repossession notice on a debtor within 7 days of a repossession. If a creditor fails to comply with the notice requirements, the creditor must bear the costs of the repossession:
- *new section 83Q* provides that a creditor must not sell repossessed goods until after the expiry of 15 days from the date of service of the post-repossession notice required under *new section 83P*. However, there are exceptions to this general rule, including where the debtor consents to an earlier sale:
- *new section 83R* provides that, if a creditor fails to comply with *new section 83Q*, the liability of the debtor is limited to the advance under the credit contract and any other obligations that must be met under the contract and, if the debtor has already paid money to the creditor, the creditor must repay that money:
- *new section 83S* provides that the creditor must (subject to the exceptions in *new section 83S(2)*) offer repossessed consumer goods for sale as soon as is reasonably practicable after the expiry of 15 days after the service of the post-repossession notice:
- *new section 83T* sets out the rules that apply to the sale of repossessed consumer goods by a creditor. The sale must be

commercially reasonable and the creditor must use all reasonable efforts to obtain the best possible price for the goods. The creditor must also give the debtor reasonable notice of the proposed sale and, if the sale is by auction or tender, the debtor is entitled to bid or tender for the goods:

- *new section 83U* enables a debtor to obtain a valuation of the consumer goods. The valuation is to determine the value of the goods as at the time of repossession, and is at the debtor's expense. *New section 83U(2)* sets out the rules relating to valuations:
- *new section 83V* provides the debtor with a right to reinstate the agreement that relates to repossessed consumer goods. Reinstatement may take place at any time between the repossession and the sale (or agreement to sell) the goods. The requirements that a debtor must satisfy in order to reinstate the agreement are to pay to the creditor the amount required to reinstate the agreement (amount required to reinstate the agreement is defined in *new section 83V(2)*) and remedy any default that is capable of being remedied:
- *new section 83W* sets out the consequences of a debtor exercising the right to reinstate an agreement under *new section 83V*. The consequences are that the creditor must return the consumer goods to the debtor, and the debtor then holds the goods under the credit contract as if the default had not occurred and as if the goods had not been repossessed:
- *new section 83X* provides an opportunity for a debtor to introduce a buyer at any time between the repossession and the sale (or agreement to sell) the goods. The right may be exercised by the debtor giving written notice to the creditor. The notice must be signed by, or on behalf of, the debtor:
- *new section 83Y* provides the debtor with a right to settle the debtor's obligations under the agreement that relates to repossessed consumer goods. Settlement may take place at any time between the repossession and the sale of (or agreement to sell) the goods. The requirements that a debtor must satisfy in order to settle the agreement are to pay to the creditor the amount required to settle the agreement (amount required to settle the agreement is defined in *new section 83Y(2)*) and to meet any other obligations required under the agreement:

- *new section 83Z* enables a debtor to require the sale of repossessed consumer goods that have not been sold within 6 weeks from the date of repossession. *New section 83Z(3)* sets out the rules applying to a sale required under *new section 83Z(1)*:
- *new section 83ZA* provides that a purchaser, for value and in good faith, of repossessed consumer goods takes those goods free from the interests of the debtor and any interests subordinate to those of the debtor and the creditor:
- *new section 83ZB* provides that, if consumer goods have been sold under *new section 83T or 83Z*, all security interests in the consumer goods that are subordinate to those of the creditor are extinguished. The effect of this provision is to ensure that the purchaser of the goods takes those goods free of any security interests that existed over those goods:
- *new section 83ZC* requires that, when consumer goods are sold under *new section 83T or 83Z*, the creditor must provide the debtor and other interested persons with a statement of account. The statement of account must include the amount that the goods sold for, the incidental costs and expenses of the sale, the amount required to settle the agreement under *new section 83Y*, and the balance owed by the creditor to the debtor or by the debtor to the creditor, as the case may be:
- *new section 83ZD* deals with the distribution of any surplus, following a sale of consumer goods under *new section 83T or 83Z*, to satisfy the claims of any person in relation to the goods. Persons who registered a financing statement in respect of the goods must be paid first, followed by any other person who has given the creditor notice that the person claims an interest in the goods and, finally, the debtor:
- *new section 83ZE* allows the creditor to pay any surplus remaining after the sale of consumer goods under *new section 83T or 83Z* into court. The creditor may make such a payment where there is a question as to who is entitled to receive the surplus under *new section 83ZD*. Any surplus paid into court may be paid out only on an application by a person claiming to be entitled to the surplus:

- *new section 83ZF* provides that the persons entitled to the surplus in accordance with *new section 83ZD* may recover that surplus from the creditor:
- *new section 83ZG* limits the amount that a creditor is entitled to recover from a debtor where the net proceeds of the sale of consumer goods are insufficient to settle the agreement under *new section 83Y(2)*. *New section 83ZG(2)* provides that the amount that the creditor may recover is limited to the difference between the amount required to settle the agreement as at the date of the sale and the net proceeds of the sale:
- *new section 83ZH* deals with the service of notices under *new Part 3A*. A notice may be served by delivering it to the relevant person, by leaving it at that person's usual or last-known address, or by posting it in a letter addressed to the person.

Clause 44 amends section 86 by replacing section 86(2)(b) with a *new section 86(2)(b)*. The effect of this amendment is to enable an application for an order under the CCCFA to be made to the District Court if the relief claimed does not exceed \$200,000. Previously, section 86(2)(b) provided that the jurisdiction of the District Court was based on the value of the relevant agreement, rather than the value of the relief claimed.

Clause 45 amends section 87 by deleting references to sections that have been amended by this Bill and that are no longer relevant, because of the amendments to section 93 (*see clause 49*), which extend the court's general power to make orders. The Disputes Tribunal has a corresponding power (under section 87(1)) to make those orders if the amount claimed is within the Tribunal's jurisdiction. Section 87(2) is repealed because it is no longer required.

Clause 46 amends section 88 by inserting a *new section 88(1A)*. *New section 88(1A)* extends the liability for statutory damages to creditors in breach of *new Part 3A*.

Clause 47 amends section 89 by inserting references to other credit contracts. The effect of these amendments is to apply the statutory damages calculation provisions to all credit contracts. Previously, section 89 applied only to consumer credit contracts.

Clause 48 amends section 90 by replacing section 90(3). *New section 90(3)* provides that an application for an order enforcing payment of statutory damages awarded under section 88 may be made at any

time within 3 years after the relevant contravention was discovered or ought reasonably to have been discovered. In the current section 90(3), the time for making an application under section 90 is 3 years from the time when the matter giving rise to the application occurred, which means that a person's knowledge of, or reasonable ability to discover, the contravention is irrelevant.

Clause 49 amends section 93 by replacing section 93(a) with a *new section 93(aa) and (a)*, which extends the court's jurisdiction to make an order under section 94 to any breach of *new Part 1A* (that is, a failure to comply with the Code), or Part 2, 3, or *new 3A*. In the current section 93(a), the court's jurisdiction is limited to sections 17 to 82.

Clause 50 amends section 94(1) by inserting *new paragraphs (aa) to (aac)*. *New paragraphs (aa) to (aac)* deal with orders currently provided for in sections 41, 69, 80, and 82. The Bill will repeal the parts of those provisions that deal with these orders, with the result that all orders will in future be made under section 94.

Clause 51 inserts a *new section 94A*, which deals with applications for orders that a court may make in relation to resposessions, and matters relating to resposessions, that are in contravention of *new Part 3A*.

Clause 52 replaces section 95(2) with a *new section 95(2)*, which provides that an application for an order under section 93 may be made at any time within 3 years after the relevant loss or damage was discovered or ought reasonably to have been discovered. In the current section 95(2), the time for making an application under section 93 is 3 years from the time when the matter giving rise to the application occurred, which means that a person's knowledge of, or reasonable ability to discover, the contravention is irrelevant.

Clause 53 replaces section 96(1)(a) with a *new section 96(1)(a)*. *New section 96(1)(a)* extends the ability of the court to grant injunctions in respect of a breach of any of Parts 2 and 3 and *new Part 3A*. The current section 96(1)(a) is limited to breaches of sections 17 to 82.

Clause 54 amends section 99 by inserting *new subsection (1)(ba) and (bb)* (which extends the matters that cannot be dealt with by the creditor or any other person (except the debtor) under a consumer credit contract unless disclosure has been made under section 17 or 22) and by inserting *new subsections (1A) and (1B)* (which limit the

costs of borrowing under the contract during the period during which disclosure has not been made under sections 17 and 22, to fees passed on to a third party that is not an associated person of the creditor).

Clause 55 inserts *new sections 99A and 99B*, which impose prohibitions on the enforcement of rights to repossess goods under *new Part 3A* if the notice requirements in *new section 83D or 83P* have not been complied with (*new section 99A*) or the creditor is required to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and is not registered under that Act (*new section 99B*).

Clause 56 amends section 101 in a manner similar to the amendments made to sections 99 and 102 (*see clauses 54 and 57*). However, the amendments to section 101 relate to disclosure in respect of consumer leases.

Clause 57 amends section 102 in a manner similar to the amendments made to sections 99 and 101 (*see clauses 54 and 56*). However, the amendments to section 102 relate to disclosure in respect of buy-back transactions.

Clause 58 amends section 103 by inserting a *new subsection (1A)* (which makes it an offence to obstruct a creditor exercising repossession powers under *new Part 3A*), and by including references to provisions in *new Part 3A* that are to be offences under the CCCFA.

Clause 59 replaces section 105 with a *new section 105*. *New section 105* provides that proceedings under section 103 (the offence provision) may be commenced at any time within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered. In the current section 105, proceedings must be commenced within 3 years from the time when the matter giving rise to the contravention occurred, which means that a person's knowledge of, or reasonable ability to discover, the contravention is irrelevant.

Clause 60 amends section 108 by replacing subsection (1)(a)(v) with a *new subsection (1)(a)(v)* (which makes clear that a failure to comply with the CCCFA includes a failure to comply with the lender responsibility principles in *new section 9B(2)*) and inserting a *new subsection (1A)* (which sets out the situations in which matters referred to in subsection (1) must be disregarded). Subsection (1) sets out the situations in which a District Court may make an order pro-

hibiting, or restricting, a person from doing any of the things set out in subsection (2) (which broadly deals with activities relating to persons supplying credit, leases, and buy-back transactions).

Clause 61 amends section 111 by inserting a *new subsection (2)(ab)*. *New subsection (2)(ab)* adds, as a function of the Commerce Commission, the monitoring of the conduct of creditors in the exercise of their rights under *new Part 3A* and under the relevant credit contract. The effect of this amendment includes enabling the Commerce Commission to take enforcement action in relation to breaches of the matters in *new subsection (2)(ab)*.

Clause 62 amends section 119 by inserting a *new subsection (4)*, which makes clear that, for the purposes of section 119, another contract or arrangement includes a guarantee.

Clause 63 replaces section 124 with a *new section 124*. Like the existing section 124, *new section 124* deals with guidelines for the court in deciding whether to reopen agreements (credit contracts, consumer leases, and buy-back transactions) under section 120. *New section 124* extends the list of matters that the court must have regard to in deciding whether to reopen an agreement (*see new section 124(1)(a) to (o)*). *New section 124(2)* defines credit provider and indebted person for the purposes of *new section 124(1)*.

Clause 64 amends section 135 by inserting a *new subsection (1A)*, which provides that section 56 of the Sale of Goods Act 1908 (which deals with the contractual exclusion of implied terms and conditions from an agreement) must be read subject to the provisions of section 135 (which prohibits contracting out of the provisions of the Credit Contracts and Consumer Finance Act 2003). The effect of *new section 135(1A)* is to make clear the relationship between the 2 Acts (that is, that the CCCFA prevails over the contracting-out provisions in section 56 of the Sale of Goods Act 1908).

Clause 65 amends section 138(1) by inserting *new paragraphs (ab) and (da) to (dc)*, which provide for regulations to be made that exempt any agreement from the application of the CCCFA (including any terms and conditions that apply to the exemption) and that deal with disclosure matters. *New subsection (1A)* enables regulations to impose different disclosure requirements on different types or classes of disclosure, lender, or transaction.

Clauses 66 and 67 and Schedule 1 deal with transitional matters, setting out, in *new section 141A* and *new Schedule 1AA*, how and when certain amendments apply in relation to circumstances that exist before the amendments made by this Act come into force.

Clause 68 amends *Schedule 1* to increase the amount of information required to be disclosed by lenders to borrowers.

Clause 69 and Schedule 2 insert *new Schedules 3A and 3B*, which set out the key information required to be included in a repossession warning notice (*see new section 83D*) and a post-repossession notice (*see new section 83P*) respectively.

Clause 70 and Schedule 3 deal with consequential amendments to, and repeals of, other enactments.

Part 2

Amendments to Financial Service Providers (Registration and Dispute Resolution) Act 2008

Clause 71 provides that *Part 2* of the Bill amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the FSPA).

Clause 72 inserts a *new section 2A*. *New section 2A* sets out the purposes of the FSPA, namely—

- to promote the confident and informed participation of businesses, investors, and consumers in the financial markets; and
- to promote and facilitate the development of fair, efficient, and transparent financial markets.

Clause 73 amends *section 3*. *Section 3* provides an overview of the FSPA and the amendments align the overview with the amendments made to the FSPA elsewhere in this Part.

Clause 74 amends *section 4* by repealing paragraph (b)(ii) of the definition of credit contract. The effect of this amendment is that credit contracts that were previously excluded for the purposes of the FSPA (that is, contracts to be treated as credit sales and consumer credit contracts under *section 16* of the CCCFA) are now included in the FSPA definition of credit contract, so the provisions of the FSPA will apply in relation to those types of contracts. *Clause 74* also inserts a

definition of FMA, which means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011.

Clause 75 amends section 11 by replacing subsection (1) with a *new subsection (1)*. *New subsection (1)* adds a requirement that a person must, as well as being registered under Part 2 of the FSPA, be a member of an approved dispute resolution scheme (if required under section 48). The heading to section 11 is also amended to reflect this change.

Clause 76 amends section 12 by replacing subsection (1) with a *new subsection (1)*. *New subsection (1)* makes similar changes to those made to section 11 (*see clause 75*). The heading to section 12 is also amended to reflect this change.

Clause 77 amends section 13 by repealing paragraph (b). Paragraph (b) currently requires a person to be a member of an approved dispute resolution scheme before the person is qualified to be registered as a financial service provider, but it is more appropriate for a person to be registered before that person joins a dispute resolution scheme. The amendments to sections 11 and 12 (*see clauses 75 and 76*) ensure that the requirement on a person to be a member of an approved dispute resolution scheme is retained. The repeal of section 13(b) also removes a reference to the reserve scheme, which reflects the policy that the reserve scheme will no longer be a feature of the FSPA. Similar amendments are made throughout this Part to remove references to the reserve scheme (*see, in particular, clause 101*, which repeals subpart 3 of Part 3, which currently provides for the reserve scheme).

Clause 78 amends section 14 by inserting a *new subsection 14(2)(ea)*. The effect of this amendment is to add to the list of disqualified persons a person who has, within the past 5 years, been convicted of an offence in a country other than New Zealand that is similar to the offences specified in subsection 14(2)(e). Under the current section 14, a person convicted overseas would not be included as a disqualified person, despite having been convicted of an offence that, had the conviction occurred in New Zealand, would have led to the person being disqualified.

Clause 79 amends section 15 by repealing subsection (1)(a)(ii). This provision required an applicant for registration as a financial service provider to provide details of the approved dispute resolution scheme of which the applicant is a member. Given that, because of the amendments made elsewhere in this Part, registration will in fu-

ture precede membership of an approved dispute resolution scheme, section 15(1)(a)(ii) is no longer required.

Clause 80 inserts a *new section 15A*, which enables the Registrar of Financial Service Providers (the **Registrar**) to refer applications for registration under section 15 to the Financial Markets Authority (the **FMA**) for consideration. The FMA is not required to consider the application but, if it does, it must consider specified matters (*see new section 15A(2)*) and, if it is of the view that the application should be declined, must (after providing the applicant with an opportunity to provide submissions on the FMA's intended direction) direct the Registrar not to register the applicant.

Clause 81 amends section 16 by adding *new subsection (1)(aa) and (ab)*, which requires the Registrar to notify the applicant for registration that the application has been successful and to require the applicant to provide details of the approved dispute resolution scheme of which the provider is a member. *Clause 81* also amends section 16(2) to take account of the ability of the FMA to direct the Registrar not to register an applicant (*see clause 80 and new section 15A*).

Clause 82 amends section 17 to clarify and extend the persons responsible for notifying the Registrar, and the circumstances in which notification to the Registrar is required, in relation to a change in circumstances of a financial service provider. In particular, the amendments deal with situations where a provider is no longer a member of an approved dispute resolution scheme, including where the scheme has been discontinued.

Clause 83 amends section 18 by inserting a *new subsection (1)(aa)*, which adds, as a ground for deregistration of a financial service provider, any failure to notify the Registrar of the matters required under *new section 16(1)(ab)* (*see clause 81*). *Clause 83* also inserts a *new section 18(1A)*, which enables the Registrar to refer consideration of deregistration to the FMA.

Clause 84 inserts a *new section 18A*, which deals with what the FMA may, and must, do in relation to a referral by the Registrar under *new section 18(1A)* (*see clause 83*). *New section 18A* is in similar terms to *new section 15A* (*see clause 80*), including an ability to direct the Registrar to deregister a financial service provider.

Clause 85 amends section 26 by deleting a reference to the reserve scheme.

Clause 86 amends section 27 by inserting *new subsections (2) to (4)*, which enable the Registrar to insert notes of warning in the register of financial service providers and to remove them if the reasons for inserting them no longer apply. Notes of warning may be inserted if the Registrar considers it to be appropriate. *New subsection (4)* protects the Registrar from civil proceedings in relation to notes of warning, provided the Registrar acted in good faith in the performance or intended performance of his or her functions under *new subsections (2) and (3)*.

Clause 87 amends section 34 by repealing subsection (4)(d). That provision is no longer required as it refers to information sharing with the person responsible for the reserve scheme which, as a result of other amendments in this Part, will no longer exist (*see clause 101*).

Clause 88 amends section 37 to extend both the Registrar's inspection powers and the purposes for which those powers may be used. The new powers relate to the ability of the Registrar to ensure that information provided to the Registrar is correct (*see new section 37(2)(aa) to (ac)*), and the purposes of exercising the powers (including the existing powers under section 37) are extended to ascertaining whether a person is ordinarily resident in New Zealand, has a place of business in New Zealand, or is in the business of providing a financial service (*see new section 37(1)(ca) to (cc)*).

Clause 89 amends section 42 to extend the right of a financial service provider to appeal to the High Court against a decision of the Registrar, to a right to appeal against a direction by the FMA. This amendment relates to the powers available to the FMA under *new sections 15A and 18A* (*see clauses 80 and 84*).

Clause 90 amends section 48 by removing references to the reserve scheme.

Clause 91 amends section 49F by removing a reference to the reserve scheme.

Clause 92 amends section 49G by removing a reference to the reserve scheme.

Clause 93 amends section 50 by inserting *new subsections (2) and (3)*. *New subsection (2)* requires that references in the FSPA to an approved dispute resolution scheme must, for the purposes of the interim dispute resolution scheme, be read as references to the interim dispute resolution scheme. *New subsection (3)* provides that nothing

in sections 51 to 61 of the FSPA (which deal with approval, and withdrawal of approval, of approved dispute resolution schemes) applies to the interim dispute resolution scheme. This is because the interim dispute resolution scheme is dealt with separately, by way of Order in Council (*see new section 79AA*, as inserted by *clause 106*).

Clause 94 amends section 52 by inserting a *new subsection (1)(da)*. *New subsection (1)(da)* adds, as a consideration to which the Minister must have regard (in relation to an application for approval of a dispute resolution scheme under section 51), consideration of whether the scheme will accept all types of financial service providers as members and, if not, whether there are other approved schemes that cover all types of financial service providers. This amendment is to ensure that generally, in the absence of a reserve scheme, all financial service providers will be able to become members of an approved dispute resolution scheme.

Clause 95 amends section 56 by inserting a *new subsection (3A)*, which makes withdrawal of approval of an approved dispute resolution scheme at the request of the person responsible for the scheme conditional on that person giving the Minister 3 months' notice (or any lesser, agreed, period) of the date on which the withdrawal of approval is to take place, and informing the Minister of the arrangements in place to transfer, or facilitate the transfer, of members to other dispute resolution schemes.

Clause 96 amends section 57 by inserting a *new subsection (2)(ba)*, which adds to the matters that must be set out in the Minister's notice of intention to withdraw approval of an approved dispute resolution scheme (as provided for by section 56), information about the proposed method for transferring members of the scheme to other schemes. *Clause 96* also inserts a *new section 57(4)*, which enables the Minister to require the person responsible for the scheme to provide information to its members, including information about the transfer of those members to other schemes and about the members' ongoing obligations under the FSPA.

Clause 97 replaces section 61 with a *new section 61*. *New section 61* sets out the effects of withdrawal of approval of an approved dispute resolution scheme on former members of that scheme. Under the current section 61, members would automatically become members of the reserve scheme. However, as the reserve scheme is being removed by amendments under this Part, *new section 61* provides that

members cease to be members of the scheme that has had its approval withdrawn and the onus is on those former members to ensure that they comply with their obligations under section 17 (duty to notify changes relating to financial service provider) and section 48 (financial service provider must be member of dispute resolution scheme).

Clause 98 amends section 63 to make adjustments to the matters that the rules of an approved dispute resolution scheme must provide for. The changes relate to the removal of the reserve scheme, and limit the situations in which a prospective member may be refused membership, to ensure that financial service providers are not left in a position of being unable to join any approved dispute resolution scheme.

Clause 99 amends section 66(1) to require (rather than enable) the Minister to notify the person responsible for an approved dispute resolution scheme as to whether a change of the scheme's rules has been approved following the person's notification (under section 65) and replaces subsection (3) with a *new subsection (3)*. *New subsection (3)* repeats the requirement that the Minister must notify the applicant as to whether the change of rules has been approved, but enables that time to be extended if the Minister seeks further information from the person responsible for the scheme or notifies that person that more time is required to consider the proposed rule changes.

Clause 100 amends section 67 by removing a reference to the reserve scheme.

Clause 101 repeals subpart 3 of Part 3. Subpart 3 of Part 3 currently deals with matters relating to the reserve scheme and, because the reserve scheme will no longer be part of the FSPA regime, the subpart is no longer required.

Clause 102 amends the cross-heading above section 78 to remove a reference to the reserve scheme.

Clause 103 amends section 78 to remove references to the reserve scheme and, as a result, to simplify, and combine, the drafting of subsection (1)(a) and (2) in a *new subsection (1)(a)*.

Clause 104 amends section 78A to remove references to the reserve scheme.

Clause 105 amends section 79 by inserting a *new subsection (1)(aa)*, which enables the Governor-General, on the recommendation of the Minister, to make regulations providing for the rules of the interim dispute resolution scheme (*see new section 79AA*, as inserted by

clause 106). Before making a recommendation in relation to *new subsection (1)(aa)*, the Minister must comply with the requirements set out in *new subsection (1B)*.

Clause 106 inserts a *new section 79AA*. *New section 79AA* provides that the Governor-General may, on the recommendation of the Minister and by Order in Council, appoint a dispute resolution scheme to fulfil the functions of the interim dispute resolution scheme. Before making a recommendation, the Minister must comply with the requirements of *new section 79(1B)* (*see clause 105*).

Clause 107 amends section 79A by removing a reference to the reserve scheme.

Clause 108 and *Schedule 4* deal with a consequential amendment to another Act.

Hon Craig Foss

Credit Contracts and Financial Services Law Reform Bill

Government Bill

Contents

		Page
1	Title	9
2	Commencement	9
Part 1		
Amendments to Credit Contracts and Consumer Finance Act 2003		
Subpart 1—Amendments to Credit Contracts and Consumer Finance Act 2003		
3	Principal Act	9
4	Section 3 replaced (Purposes)	9
	3 Purposes	9
5	Section 4 amended (Overview)	11
6	Section 5 amended (Interpretation)	11
7	New section 5A inserted (Provisions affecting application of amendments to this Act)	14
	5A Provisions affecting application of amendments to this Act	14
8	New section 7A inserted (Credit contract may provide for security interest)	15
	7A Credit contract may provide for security interest	15
9	New Part 1A inserted	15

**Credit Contracts and Financial Services
Law Reform Bill**

**Part 1A
Lender responsibilities**

Interpretation

9A	Interpretation	16
----	----------------	----

Principles

9B	Lender responsibility principles	16
----	----------------------------------	----

Responsible Lending Code

9C	Purpose of Responsible Lending Code	18
9D	Content of Responsible Lending Code	19

*How Responsible Lending Code made and
administered*

9E	Preparation of Responsible Lending Code	20
9F	Responsible Lending Code comes into force by notice in <i>Gazette</i>	20
9G	Amendment of Responsible Lending Code	21

*Publication of standard terms and disclosure of
costs of borrowing*

9H	Publication of standard terms	21
9I	Publication of costs of borrowing	21
9J	Application of sections 9H and 9I to repayment waiver or extended warranty	22

10	Section 10 amended (When this Part applies)	22
11	Section 11 amended (Meaning of consumer credit contract)	22
12	Section 15 amended (Certain contracts not consumer credit contracts)	23
13	Section 17 amended (Initial disclosure)	23
14	Section 21 amended (Continuing disclosure not required)	23
15	Section 22 amended (Disclosure of agreed changes)	23
16	Section 23 amended (Disclosure of changes following exercise of power)	24
17	Section 24 amended (Request disclosure)	24
18	Section 25 amended (Disclosure of guarantee)	25
19	New section 26A inserted (Disclosure of transfer of consumer credit contract)	25
20	26A Disclosure of transfer of consumer credit contract	25
20	Section 27 amended (Right to cancel consumer credit contract)	26
21	Section 30 replaced (Effect of cancellation)	26

**Credit Contracts and Financial Services
Law Reform Bill**

30	Effect of cancellation	26
22	Section 32 amended (Disclosure standards)	26
23	Section 40 amended (Default interest charges)	27
24	Section 41 replaced (Unreasonable credit fee or default fee)	27
41	Unreasonable credit fee or default fee	27
25	Section 43 replaced (Prepayment fees)	27
43	Prepayment fees	27
26	Section 44 replaced (Other credit fees and default fee)	28
44	Credit fees other than establishment fees and prepayment fees	28
44A	Default fees	28
27	Section 45 amended (Fees or charges passed on by creditor)	29
28	Section 51 amended (Amount required for full prepayment)	29
29	Section 52 amended (Rebate of insurance)	29
30	New section 52A inserted (Rebate of repayment waiver)	29
52A	Rebate of repayment waiver	30
31	Section 55 amended (Changes on grounds of unforeseen hardship)	30
32	Section 57 amended (Application may not be made in certain circumstances)	30
33	New section 57A inserted (Obligations of creditor in relation to application)	31
57A	Obligations of creditor in relation to application	31
34	Section 58 amended (Changes by court)	32
35	Section 66 repealed (Variation disclosure not required)	32
36	Section 67 amended (Request disclosure for consumer leases)	32
37	Section 69 amended (Restrictions on credit-related insurance, repayment waivers, and extended warranties)	33
38	Section 70 amended (Disclosure of credit-related insurance, repayment waiver, or extended warranty)	33
39	Section 78 repealed (Variation disclosure not required)	33
40	Section 79 amended (Request disclosure for buy-back transactions)	33
41	Section 80 amended (Unreasonable buy-back fees or buy-back default fees)	33
42	Section 82 amended (Unreasonable fees payable to buy-back promoter or associated person)	33
43	New Part 3A inserted	33

**Credit Contracts and Financial Services
Law Reform Bill**

Part 3A

**Repossession of consumer goods under credit
contract**

	Subpart 1—Preliminary provisions	
83A	Outline of Part	34
83B	Application of Part	34
	Subpart 2—Rules that apply before repossession	
83C	Circumstances in which creditor can repossess consumer goods	35
83D	Creditor must serve repossession warning notice on debtor and other persons before taking possession of consumer goods	36
83E	Debtor may voluntarily return consumer goods	37
83F	Application of Personal Property Securities Act 1999	37
83G	Effect of debtor’s complaint or application on grounds of unforeseen hardship on creditor’s rights to enforce credit contract	37
	Subpart 3—Disabling devices	
83H	Use of disabling device	38
	Subpart 4—Rules that apply at time of repossession	
83I	Creditor must allow debtor time to remedy default	40
83J	Documents to be produced on entry	40
83K	Creditor must exercise right to enter premises in accordance with lender responsibility principles	42
83L	Creditor must not enter premises if complaint not resolved or unforeseen hardship application not decided	42
83M	Creditor must not enter residential premises at certain times	42
83N	Restrictions applying in relation to persons repossessing consumer goods	43
	Subpart 5—Rules that apply after repossession of consumer goods	
83O	Interpretation	44
83P	Notice to be given to debtor, guarantor, and other creditors after repossession of consumer goods	44
83Q	Creditor must not sell consumer goods until 15 days after post-repossession notice	44

**Credit Contracts and Financial Services
Law Reform Bill**

	83R Consequences of selling within 15 days of post-repossession notice	45
	83S Creditor must offer consumer goods for sale	45
	83T Rules relating to sale by creditor	46
	83U Debtor may obtain valuation of consumer goods before sale	47
	83V Debtor's right to reinstate agreement	47
	83W Consequences of reinstating agreement	48
	83X Debtor's right to introduce buyer	48
	83Y Debtor's right to settle agreement	49
	83Z Debtor's right to force sale	50
	83ZA Disposal of consumer goods to purchaser for value and in good faith	50
	83ZB Extinguishment of subordinate security interests on sale	51
	83ZC Creditor to give statement of account to debtor, guarantor, and other interested persons	51
	83ZD Distribution of surplus	51
	83ZE Surplus may be paid into court	52
	83ZF Debtor's, etc, right to recover surplus	52
	83ZG Limit on creditor's right to recover from debtor	52
	Subpart 6—Miscellaneous provisions	
	83ZH Service of notices	53
44	Section 86 amended (Jurisdiction of District Courts)	54
45	Section 87 amended (Jurisdiction of Disputes Tribunals)	54
46	Section 88 amended (Creditors, lessors, transferees, and buy-back promoters liable for statutory damages)	54
47	Section 89 amended (Amount of statutory damages)	55
48	Section 90 amended (Enforcement of statutory damages)	55
49	Section 93 amended (Court's general power to make orders)	55
50	Section 94 amended (Court orders)	55
51	New section 94A inserted (Court orders in relation to repossessions)	56
	94A Court orders in relation to repossessions	56
52	Section 95 amended (Miscellaneous provisions concerning court's general power to make orders)	57
53	Section 96 amended (Injunctions)	57
54	Section 99 amended (Enforcement of consumer credit contract prohibited)	57
55	New sections 99A and 99B inserted	58

**Credit Contracts and Financial Services
Law Reform Bill**

	99A	Enforcement of rights of repossession, etc, prohibited	58
	99B	Enforcement prohibited if creditor unregistered	58
56		Section 101 amended (Enforcement of consumer lease prohibited)	59
57		Section 102 amended (Enforcement of buy-back transaction prohibited)	60
58		Section 103 amended (Offences)	60
59		Section 105 replaced (When proceedings may be commenced)	60
	105	When proceedings may be commenced	61
60		Section 108 amended (Power to order certain persons not to act as creditors, lessors, transferees, or buy-back promoters)	61
61		Section 111 amended (Role and functions of Commission under this Act)	61
62		Section 119 amended (Collateral contracts and linked transactions)	62
63		Section 124 replaced (Guidelines for reopening credit contracts, consumer leases, and buy-back transactions)	62
	124	Guidelines for reopening credit contracts, consumer leases, and buy-back transactions	62
64		Section 135 amended (No contracting out)	64
65		Section 138 amended (Regulations)	64
66		New section 141A inserted (Application, savings, and transitional provisions relating to amendments to Act)	65
	141A	Application, savings, and transitional provisions relating to amendments to Act	65
67		New Schedule 1AA inserted	65
68		Schedule 1 amended	65
69		New Schedule 3A and Schedule 3B inserted	66
		Subpart 2—Consequential amendments to, or repeals of, other Acts	
70		Consequential amendments to, or repeals of, other Acts	66
		Part 2	
		Amendments to Financial Service Providers (Registration and Dispute Resolution) Act 2008	
		Subpart 1—Amendments to Financial Service Providers (Registration and Dispute Resolution) Act 2008	
71		Principal Act	66
72		New section 2A inserted (Purposes of this Act)	67

**Credit Contracts and Financial Services
Law Reform Bill**

2A	Purposes of this Act	67
73	Section 3 amended (Overview)	67
74	Section 4 amended (Interpretation)	67
75	Section 11 amended (No being in business of providing financial service unless registered)	67
76	Section 12 amended (No holding out that in business of providing financial service unless registered)	68
77	Section 13 amended (Qualifications for registration as financial service provider)	68
78	Section 14 amended (Disqualified person)	68
79	Section 15 amended (Application to be registered as financial service provider)	68
80	New section 15A inserted (Registrar may refer application to FMA)	68
	15A Registrar may refer application to FMA	69
81	Section 16 amended (Registration of financial service provider)	70
82	Section 17 amended (Duty to notify changes relating to financial service provider)	70
83	Section 18 amended (Deregistration of financial service provider)	71
84	New section 18A inserted (Consideration of deregistration of financial service provider by FMA)	71
	18A Consideration of deregistration of financial service provider by FMA	71
85	Section 26 amended (Purposes of register)	73
86	Section 27 amended (Contents of register)	73
87	Section 34 amended (Sharing information with other persons or bodies)	73
88	Section 37 amended (Registrar's inspection powers)	73
89	Section 42 amended (Appeals from Registrar's decisions)	74
90	Section 48 amended (Financial service provider must be member of dispute resolution scheme)	74
91	Section 49F amended (Members of dispute resolution scheme must comply with rules and binding resolutions)	74
92	Section 49G amended (Offence to fail to comply with District Court order)	74
93	Section 50 amended (Meaning of approved dispute resolution scheme)	75
94	Section 52 amended (Mandatory considerations for approval)	75
95	Section 56 amended (Withdrawal of approval)	75

**Credit Contracts and Financial Services
Law Reform Bill**

96	Section 57 amended (Notice of intention to withdraw approval)	75
97	Section 61 replaced (Effect of withdrawal of approval on members of dispute resolution scheme)	76
	61 Effect of withdrawal of approval on members of dispute resolution scheme	76
98	Section 63 amended (Rules about approved dispute resolution scheme)	77
99	Section 66 amended (Minister's consideration of change of rules)	77
100	Section 67 amended (Duty to co-operate and communicate information in certain circumstances)	78
101	Subpart 3 of Part 3 repealed	78
102	Cross-heading above section 78 amended	78
103	Section 78 amended (Publication of details relating to approved dispute resolution schemes and reserve scheme)	78
104	Section 78A amended (Levy)	79
105	Section 79 amended (Regulations under this Part)	79
106	New section 79AA inserted (Appointment of interim dispute resolution scheme)	80
	79AA Appointment of interim dispute resolution scheme	80
107	Section 79A amended (Pecuniary order for contravening wholesale certification requirement)	80
	Subpart 2—Consequential amendment to other Act	
108	Consequential amendment to other Act	80
	Schedule 1	81
	New Schedule 1AA inserted	
	Schedule 2	83
	New Schedule 3A and Schedule 3B inserted	
	Schedule 3	87
	Consequential amendments to, or repeals of, other Acts	
	Schedule 4	91
	Consequential amendment to other Act	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Credit Contracts and Financial Services Law Reform Act **2013**.

2 Commencement

5

- (1) **Part 2** and **Schedule 4** come into force on 1 July 2014.
- (2) The rest of this Act comes into force on the day that is 6 months after the date on which it receives the Royal assent.

Part 1

**Amendments to Credit Contracts and
Consumer Finance Act 2003**

10

Subpart 1—Amendments to Credit Contracts
and Consumer Finance Act 2003

3 Principal Act

This Part amends the Credit Contracts and Consumer Finance Act 2003 (the **principal Act**). 15

4 Section 3 replaced (Purposes)

Replace section 3 with:

“3 Purposes

“(1) The primary purpose of this Act is to protect the interests of consumers in connection with credit contracts, consumer leases, and buy-back transactions of land. 20

“(2) It is also the purpose of this Act—

“(a) to promote the confident and informed participation in markets for credit by consumers; and 25

“(b) to promote and facilitate fair, efficient, and transparent markets for credit; and

“(c) to protect the interests of consumers under credit contracts, and lessees under consumer leases, both when those agreements are entered into and for their duration; and 30

“(d) to provide remedies for debtors (including consumers) in relation to—

- “(i) oppressive credit contracts, consumer leases, and buy-back transactions of land; and
- “(ii) oppressive conduct by creditors under credit contracts, lessors under consumer leases, and transferees under buy-back transactions of land. 5
- “(3) To achieve the purposes referred to in **subsections (1) and (2)**, this Act—
- “(a) requires creditors under consumer credit contracts, lessors under consumer leases, and transferees under buy-back transactions to be responsible lenders, both 10 when they provide credit and for the duration of the agreement; and
- “(b) provides for the disclosure of adequate information to consumers under consumer credit contracts and consumer leases (both before entry into, and before vari- 15 ation of, such agreements)—
- “(i) to enable consumers to distinguish between competing credit arrangements; and
- “(ii) to enable consumers to be informed of the terms of consumer credit contracts or consumer leases 20 before they become irrevocably committed to them; and
- “(iii) to enable consumers to monitor the performance of consumer credit contracts; and
- “(c) provides rules about interest charges, fees, and pay- 25 ments in relation to consumer credit contracts; and
- “(d) enables consumers to seek reasonable changes to consumer credit contracts on the grounds of unforeseen hardship; and
- “(e) provides for the disclosure of adequate information to 30 consumers under consumer leases to—
- “(i) enable consumers to be informed of the terms of the leases before they become irrevocably committed to them; and
- “(ii) make clear to the consumer that consumer leases 35 are not consumer credit contracts; and
- “(f) provides for the disclosure of adequate information to consumers under buy-back transactions of land and for independent legal advice to those consumers—

- “(i) to inform consumers of the terms, the effects, and the implications of those transactions before they become irrevocably committed to them; and
- “(ii) to enable consumers to monitor the performance of those transactions; and 5
- “(g) provides rules about fees in relation to buy-back transactions of land; and
- “(h) provides, in relation to credit contracts that include a security interest,—
 - “(i) rules that apply in relation to the creditor’s rights to repossess consumer goods; and 10
 - “(ii) corresponding rights for consumers and third parties that are affected by the exercise of the creditor’s rights; and
- “(i) applies, as appropriate, the requirements, disclosure obligations, rules, and remedies specified in **paragraphs (a) to (h)** to guarantors.” 15

5 Section 4 amended (Overview)

- (1) After section 4(a), insert:
 - “(ab) **Part 1A** contains provisions relating to lenders’ responsibilities, including provisions for the development of a Responsible Lending Code and requirements to publish information about standard terms and the costs of borrowing.”. 20
- (2) After section 4(c), insert: 25
 - “(ca) **Part 3A** contains provisions relating to repossession of consumer goods under credit contracts:”.

6 Section 5 amended (Interpretation)

- (1) In section 5, replace the definition of **advance** with:
 - “**advance** means— 30
 - “(a) money provided to the debtor or to another person to the order of the debtor:
 - “(b) a pre-existing monetary obligation of the debtor that is paid, discharged, or consolidated by the creditor:
 - “(c) the cash price of any property or services that are— 35
 - “(i) purchased by the debtor from the creditor; or

- “(ii) included in an agreement between the debtor and the creditor under which the creditor is either required to purchase the property or services from the debtor or has an option to make such a purchase: 5
- “(d) in the case of the use of a credit card to purchase property or services from a person who is not the creditor or to obtain money, the agreed price of the property or services or the monetary amount, as the case may be: 10
- “(e) in relation to a guarantor, the amount of the guarantor’s liability to the creditor under the guarantee”. 10
- (2) In section 5, replace the definition of **credit fees** with:
- “**credit fees** means fees or charges payable by the debtor under a credit contract, or payable by the debtor to, or for the benefit of, the creditor in connection with a credit contract (including any insurance premiums payable if the creditor requires the debtor to obtain insurance cover from a particular insurer), and— 15
- “(a) includes— 20
- “(i) establishment fees: 20
- “(ii) prepayment fees (whether in relation to part prepayments or full prepayments):
- “(iii) fees and charges passed on by the creditor to an associated person; but
- “(b) does not include— 25
- “(i) interest charges:
- “(ii) charges for an optional service:
- “(iii) default fees or default interest charges:
- “(iv) government charges, duties, taxes, or levies:
- “(v) fees and charges passed on to a person, a body, or an agency that is not an associated person”. 30
- (3) In section 5, replace the definition of **guarantor** with:
- “**guarantee** means a guarantee, indemnity, or liability given or undertaken by a guarantor
- “**guarantor**, in relation to a credit contract,— 35
- “(a) means a natural person who—
- “(i) guarantees the performance of a debtor’s obligations under the contract; or

- “(ii) indemnifies a creditor against any loss that the creditor may incur in connection with the contract; or
- “(iii) assumes liability for performing the obligations of a debtor under the contract; but 5
- “(b) does not include such a person to the extent that the person indemnifies a creditor against any loss that the creditor may incur in connection with the contract under a contract of insurance”.
- (4) In section 5, definition of **security interest**, delete “, consumer lease,”. 10
- (5) In section 5, insert in their appropriate alphabetical order:
- “**consumer goods** means goods that are used or acquired for use primarily for personal, domestic, or household purposes
- “**costs of borrowing**, in relation to a credit contract, means 15
any or all of the following costs:
- “(a) a credit fee:
- “(b) a default fee:
- “(c) interest (including default interest charges)
- “**creditor’s agent** means a person authorised by a creditor to 20
repossess consumer goods on behalf of the creditor, and includes such a person who is an employee of the creditor
- “**default** means 1 or more breaches of a credit contract by the debtor sufficient, according to the terms of the agreement, to give rise to the creditor’s right to repossess the consumer goods 25
- “**lender responsibility principles** means the principles set out in **section 9B(2)**
- “**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of 30
this Act
- “**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act
- “**post-repossession notice** means a notice under **section 83P** 35
- “**prescribed** means prescribed by regulations made under this Act

“**purchase money security interest** has the same meaning as in section 16(1) of the Personal Property Securities Act 1999

“**repossession** means the exercise, or purported exercise, of the creditor’s rights under a credit contract relating to consumer goods to take possession of those goods, including keys and access devices relating to those goods, whether or not the creditor was previously in actual possession of those goods; and **repossess** has a corresponding meaning 5

“**repossession warning notice** means a notice under **section 83D** 10

“**residential premises** means a building, or part of a building, that is a house, flat, townhouse, home unit, or similar dwelling erected, or currently used, primarily and principally as a residence, and includes any land, improvements, or appurtenances belonging to the dwelling or usually enjoyed with it 15

“**Responsible Lending Code** or **Code** means the Code prepared under **section 9E** and brought into force under **section 9F**

“**standard terms**—

“(a) means terms that are intended to be contained in an agreement that— 20

“(i) has been printed or otherwise prepared by, or on behalf of, the lender; and

“(ii) is used by the lender in concluding, or as a basis for concluding, such an agreement; and 25

“(b) includes terms in repayment waivers and extended warranties that are related to such agreements”.

7 New section 5A inserted (Provisions affecting application of amendments to this Act)

After section 5, insert: 30

“**5A Provisions affecting application of amendments to this Act Schedule 1AA** contains application, savings, and transitional provisions relating to amendments made to this Act after 1 January 2013 (*see section 141A*).”

8 New section 7A inserted (Credit contract may provide for security interest)

After section 7, insert:

“7A Credit contract may provide for security interest

“(1) A credit contract may provide for a security interest over consumer goods that are specifically identified in the contract. 5

“(2) However, despite **subsection (1)**, a credit contract may not provide for a security interest over—

“(a) consumer goods (other than consumer goods that are subject to a purchase money security) of the following kind: 10

“(i) beds and bedding:

“(ii) cooking equipment, including cooking stoves:

“(iii) medical equipment:

“(iv) portable heaters: 15

“(v) washing machines:

“(vi) refrigerators:

“(b) documents of the following kind:

“(i) travel documents:

“(ii) identification documents: 20

“(iii) bank cards:

“(c) any other consumer goods, or documents, prescribed by regulations made under this Act.

“(3) In relation to keys or other devices that enable access to the consumer goods,— 25

“(a) a credit contract may not provide for those keys or other devices to be held by, or on behalf of, the creditor prior to repossession of those consumer goods; and

“(b) neither a creditor nor a creditor’s agent may hold such keys or other access devices unless the relevant consumer goods have been repossessed in accordance with this Act.” 30

9 New Part 1A inserted

After section 9, insert:

“Part 1A
“Lender responsibilities
“Interpretation

“9A Interpretation	
In this Part, unless the context otherwise requires,—	5
“agreement—	
“(a) means—	
“(i) a consumer credit contract:	
“(ii) a buy-back transaction of land:	
“(iii) a credit contract to which Part 3A applies:	10
“(iv) a guarantee in respect of a consumer credit contract, or a credit contract, where the contract provides for security over consumer goods that are the subject of that contract; and	
“(b) includes an agreement for credit-related insurance	15
“borrower means any person who has entered into, or is seeking to enter into, an agreement with a lender	
“lender means—	
“(a) a creditor:	
“(b) a lessor:	20
“(c) a transferee:	
“(d) an insurer in a credit-related insurance agreement.	

“Principles

“9B Lender responsibility principles	
“(1) Every lender must comply with the lender responsibility principles.	25
“(2) The lender responsibility principles are that every lender must, at all times,—	
“(a) exercise the care, diligence, and skill of a responsible lender—	30
“(i) in any advertisement for providing credit; and	
“(ii) before entering into an agreement to provide credit; and	
“(iii) in all subsequent dealings with the borrower; and	
“(b) comply with all the lender responsibilities specified in subsection (3).	35

- “(3) The lender responsibilities are that lenders will, in relation to an agreement with a borrower,—
- “(a) make reasonable inquiries, before entering into the agreement, so as to be satisfied that—
 - “(i) the credit or insurance provided under the agree- 5
ment can be expected to meet the borrower’s re-
quirements and objectives; and
 - “(ii) the borrower can be expected to make the pay-
ments under the agreement without suffering
substantial hardship; and 10
 - “(b) assist the borrower to reach an informed decision as
to whether or not to enter into the agreement and to
be aware of the full implications of entering into the
agreement by ensuring that—
 - “(i) any advertising is not, or is not likely to be, mis- 15
leading, deceptive, or confusing to borrowers;
and
 - “(ii) the terms of the agreement are expressed in a
clear, concise, and intelligible manner; and
 - “(iii) any information provided to borrowers is not pre- 20
sented in a manner that is, or would be likely to
be, misleading, deceptive, or confusing; and
 - “(c) assist the borrower to reach informed decisions in all
subsequent dealings in relation to the agreement by en-
suring that— 25
 - “(i) any variation to the agreement is expressed in a
clear, concise, and intelligible manner; and
 - “(ii) any information provided after the agreement has
been entered into is not presented in a manner
that is, or would be likely to be, misleading, de- 30
ceptive, or confusing; and
 - “(d) assist a guarantor under an agreement to reach an in-
formed decision as to whether or not to enter into a guar-
antee, and to be aware of the full implications of enter-
ing into the guarantee, by ensuring that— 35
 - “(i) the terms of the guarantee are expressed in a
clear, concise and intelligible manner; and

- “(ii) any information provided to guarantors is not presented in a manner that is or would be likely to be misleading, deceptive or confusing; and
- “(e) treat borrowers and their property reasonably and with respect, including— 5
- “(i) when problems arise:
- “(ii) when borrowers suffer unforeseen hardship (*see* section 55):
- “(iii) during the repossession process (including by ensuring that goods and property are not damaged during the process and that repossessed goods are adequately stored and protected); and 10
- “(f) ensure that the terms of the agreement, the circumstances in which the agreement is entered into, and the exercise of the lender’s rights or powers under the agreement are not oppressive to the borrower; and 15
- “(g) meet all their legal obligations to borrowers, including under this Act, the Fair Trading Act 1986, the Consumer Guarantees Act 1993, the Financial Service Providers (Registration and Dispute Resolution) Act 2008, and the Financial Advisers Act 2008, which include— 20
- “(i) obligations in relation to disclosure, credit fees, unforeseen hardship applications, and credit repossession under this Act; and
- “(ii) prohibitions on false or misleading representations and unfair contract terms under the Fair Trading Act 1986; and 25
- “(iii) the guarantee that credit and any other services will be provided with reasonable care and skill as a service under the Consumer Guarantees Act 1993. 30
- “(4) For the purposes of the inquiries required under **subsection (3)(a)**, the lender may rely on information provided by the borrower unless the lender has reasonable grounds to believe the information is not reliable. 35

“Responsible Lending Code

“9C **Purpose of Responsible Lending Code**

- “(1) The purpose of the Responsible Lending Code is to—

- “(a) elaborate on the lender responsibility principles specified in **section 9B(2)**; and
 - “(b) offer guidance on how those principles may be implemented by lenders.
- “(2) In any proceedings relating to this Act, evidence of a lender’s compliance with the provisions of the Responsible Lending Code is to be treated as evidence of compliance with the lender responsibility principles. 5
- “9D Content of Responsible Lending Code**
- “(1) In order to achieve its purpose, the Responsible Lending Code may set out any, or all, of the following: 10
- “(a) the nature and extent of inquiries a lender should make before entering into an agreement:
 - “(b) the processes, practices, or procedures that a lender should follow— 15
 - “(i) to verify information provided by a borrower:
 - “(ii) to assess whether the relevant agreement is suitable for, and otherwise meets the requirements of, the borrower:
 - “(iii) to ensure that advertisements for agreements, products, or services are not misleading, deceptive, or confusing: 20
 - “(iv) to ensure that fees are not unreasonable:
 - “(v) to ensure that borrowers and guarantors have sufficient information to enable them to make informed decisions: 25
 - “(c) the processes, practices, or procedures that a lender should follow for the purposes of **Part 3A**:
 - “(d) any other matter that promotes the lender responsibility principles (set out in **section 9B(2)**) and that is not inconsistent with any other enactment. 30
- “(2) The Code may also contain different provisions in relation to particular—
- “(a) lenders or classes of lenders:
 - “(b) borrowers or classes of borrowers: 35
 - “(c) agreements or classes of agreements.

*“How Responsible Lending Code made and administered***“9E Preparation of Responsible Lending Code**

- “(1) The Minister must—
- “(a) prepare the Responsible Lending Code; and 5
 - “(b) ensure that the Code is published not later than 2 years after this section comes into force.
- “(2) The Minister may use any process that the Minister considers appropriate to develop the Code, but must—
- “(a) publish a draft Code and release it to the public: 10
 - “(b) consult persons, or representatives of such persons, that the Minister considers will be substantially affected by the Code:
 - “(c) consider comments received on the draft Code:
 - “(d) prepare a revised Code in response to comments received: 15
 - “(e) consult the Minister of Commerce and the Minister of Finance:
 - “(f) consider comments received from those Ministers:
 - “(g) prepare the final Code. 20

“9F Responsible Lending Code comes into force by notice in Gazette

- “(1) After the Minister has prepared the final version of the Code, as provided for in **section 9E(2)**, the Minister must give notice in the *Gazette* of the date or dates on which the provisions of the Code come into force. 25
- “(2) The notice may state different dates for different provisions, but no date may be before the 28th day after the date on which the notice is published in the *Gazette*.
- “(3) Each provision in the Code comes into force on the date stated in the notice that applies to the provision. 30
- “(4) The Code and the notice are each regulations for the purposes of the Regulations (Disallowance) Act 1989, but are not regulations for the purposes of the Acts and Regulations Publication Act 1989. 35

“(5) The Ministry must ensure that the Code is available at all reasonable times on an Internet site maintained by or on behalf of the Ministry.

“**9G Amendment of Responsible Lending Code**

“(1) The Minister may, at any time, amend or replace the Responsible Lending Code. 5

“(2) **Sections 9E and 9F** apply, with any necessary modifications, to any amendment to, or replacement of, the Code.

“(3) However, in the case of a minor amendment that does not materially affect the Code, the Minister need not comply with **section 9E(2)**. 10

*“Publication of standard terms and disclosure
of costs of borrowing*

“**9H Publication of standard terms**

“(1) Every lender who, in relation to an agreement, uses standard terms must ensure that information about those terms is publicly available. 15

“(2) Without limiting **subsection (1)**,—

“(a) if the lender has an Internet site, the lender must display prominently and clearly a copy of the standard terms on that site; and 20

“(b) if the lender operates from business premises, the lender must display prominently and clearly a copy of the standard terms in a publicly accessible area of those premises. 25

“(3) The lender must, at the request of any person, supply a copy of its standard terms, free of charge, to that person.

“(4) The information referred to in **subsection (1)** may be prescribed.

“**9I Publication of costs of borrowing**

30

“(1) Every lender must ensure that information about all the costs of borrowing in relation to every type of agreement offered by that lender to a borrower is publicly available.

“(2) Without limiting **subsection (1)**,—

- “(a) if the lender has an Internet site, the lender must display prominently and clearly the lender’s fees and annual rates of interest in relation to every type of agreement referred to in **subsection (1)** on that site; and
- “(b) if the lender operates from business premises, the lender must display prominently and clearly those fees and rates of interest in a publicly accessible area of those premises. 5
- “(3) The publication required under this section must—
 - “(a) contain the prescribed information; and 10
 - “(b) be in the prescribed form.

- “**9J Application of sections 9H and 9I to repayment waiver or extended warranty**
Sections 9H and 9I also apply in relation to repayment waivers and extended warranties and, in such cases, a waiver or warranty is to be treated as if it were an agreement.” 15

- 10 Section 10 amended (When this Part applies)**
After section 10, insert as subsections (2) and (3):
 - “(2) However, this Part does not apply in relation to goods that have been pawned in accordance with the Secondhand Dealers and Pawnbrokers Act 2004 if—
 - “(a) the goods are dealt with by a pawnbroker in the ordinary course of the pawnbroker’s business; and
 - “(b) in the case that the pledger is in default of his or her obligations under the transaction, the pawnbroker’s only right of recourse is under section 63 of the Secondhand Dealers and Pawnbrokers Act 2004. 25
 - “(3) In **subsection (2)**, **pawnbroker** and **transaction** have the same meanings as in section 4 of the Secondhand Dealers and Pawnbrokers Act 2004.” 30

- 11 Section 11 amended (Meaning of consumer credit contract)**
 - (1) Replace section 11(1)(b) with:

“(b) the credit is provided, or intended to be provided, wholly or predominantly for personal, domestic, or household purposes; and”.

(2) After section 11(1), insert:

“(1A) For the purposes of **subsection (1)(b)**, credit is provided for a **predominant purpose** if—

“(a) the purpose is one for which more than 50% of the credit is to be used; or

“(b) in the case of the credit being used to obtain goods or services for different purposes, the purpose is the purpose for which the goods or services are to be most used.”

12 Section 15 amended (Certain contracts not consumer credit contracts)

In section 15(1)(a), replace “the day the contract is made” with “the day the contract is entered into”.

13 Section 17 amended (Initial disclosure)

(1) Replace section 17(1) with:

“(1) Every creditor under a consumer credit contract must ensure that disclosure of as much of the key information set out in Schedule 1 as is applicable to the contract is made to every debtor under the contract before the contract is entered into.”

(2) In section 17(2)(a) and (b), replace “the contract is made” with “the contract is entered into”.

14 Section 21 amended (Continuing disclosure not required)

Repeal section 21(1)(a).

15 Section 22 amended (Disclosure of agreed changes)

(1) In section 22(3), replace “Disclosure is not required under this section in relation to a change that—” with “Despite subsection (2), disclosure may, instead of being made in accordance with that subsection, be made in accordance with **subsection (4)**, but only if the change is one that—”.

(2) Replace section 22(3)(d) with:

- “(d) increases any credit limit under the consumer credit contract.”
- (3) After section 22(3), insert:
- “(4) The disclosure referred to in subsection (3) may be made, at the creditor’s discretion, either— 5
 - “(a) within 5 working days of the change being made; or
 - “(b) if the creditor is required to make continuing disclosure under section 18, at the same time as the creditor provides the debtor with the next continuing disclosure statement (as required under that section) after the change has been made.” 10

16 Section 23 amended (Disclosure of changes following exercise of power)

- (1) After section 23(1)(c), insert:
 - “(d) the amount of a credit limit under the contract.” 15
- (2) In section 23(5), replace “Disclosure is not required under this section in relation to—” with “Despite subsection (2), disclosure may, instead of being made in accordance with that subsection, be made in accordance with **subsection (6)**, but only in relation to—” 20
- (3) Repeal section 23(5)(a)(iii).
- (4) After section 23(5), insert:
- “(6) The disclosure referred to in subsection (5) may be made, at the creditor’s discretion,—
 - “(a) within 5 working days of the change being made; or 25
 - “(b) if the creditor is required to make continuing disclosure under section 18, at the same time as the creditor provides the debtor with the next continuing disclosure statement (as required under that section) after the change has been made.” 30

17 Section 24 amended (Request disclosure)

- (1) Replace section 24(2)(g) with:
 - “(g) a statement containing as much of the information specified in section 19 as is applicable to the consumer credit contract.” 35
- (2) After section 24(2), insert:

- “(2A) Every debtor or guarantor under a consumer credit contract may also request in writing that the creditor provides them with a copy of—
- “(a) any disclosure statement that was provided, or that should have been provided, before the date on which the request is made: 5
 - “(b) the creditor’s standard terms:
 - “(c) the contract between the debtor and the creditor.”
- 18 Section 25 amended (Disclosure of guarantee)**
- (1) Replace section 25(2) with: 10
 - “(2) The copy of the terms of the guarantee must be given or sent, and disclosure of the key information concerning each consumer credit contract that the creditor and the debtor enter into and to which the guarantee applies at the time the guarantee is given must be made, before the contract is entered into.” 15
 - (2) In section 25(3), replace “the day on which the contract is made” with “the day on which the contract is entered into”.
- 19 New section 26A inserted (Disclosure of transfer of consumer credit contract)**
- After section 26, insert: 20
- “26A Disclosure of transfer of consumer credit contract**
- “(1) Every creditor who transfers (whether by assignment, sale, or other form of disposal) a consumer credit contract to another creditor (the **new creditor**) must ensure that the disclosure of the following information is made to every debtor and guarantor under the contract: 25
 - “(a) the name, address, and other contact details of the new creditor:
 - “(b) the date on which the contract was, or is to be, transferred to the new creditor: 30
 - “(c) the impact (if any) of the transfer on the debtor:
 - “(d) that the transfer does not affect the terms of the contract that the debtor entered into.
 - “(2) Disclosure under this section must be made within 5 working days of the day on which the transfer takes effect.” 35

- 20 Section 27 amended (Right to cancel consumer credit contract)**
In section 27(1), replace “3 working days of” with “5 working days after” in each place.
- 21 Section 30 replaced (Effect of cancellation)** 5
Replace section 30 with:
- “30 Effect of cancellation**
If a consumer credit contract is cancelled under section 27(1)(b), the following rules apply:
- “(a) the rights and obligations of the parties under the contract cease; and 10
- “(b) the creditor must, as soon as is reasonably practicable,—
- “(i) return any property that the creditor has received under the contract to the party from whom it was received; and 15
- “(ii) release every security interest taken in connection with the contract, other than any part of a security interest that—
- “(A) relates to obligations of the debtor or guarantor that are not directly related to the contract; and 20
- “(B) is capable of being enforced despite **paragraph (a)**; and
- “(c) the creditor must calculate— 25
- “(i) the amounts due to the creditor, including interest, reasonable credit fees (*see section 41*), and any costs incurred by the creditor in repairing any damage to the goods; and
- “(ii) the amounts due to the debtor, including any advance paid by the debtor to the creditor; and 30
- “(d) the difference between the amounts calculated in accordance with **paragraph (c)** must be paid by the creditor to the debtor, or by the debtor to the creditor, as the case may be.” 35
- 22 Section 32 amended (Disclosure standards)**
After section 32(1)(b), insert:

“(ba) be made in the form prescribed by regulations (if any);
and”.

23 Section 40 amended (Default interest charges)

In section 40(2)(a), replace “and while the default continues”
with “, but only in respect of the amount of the default, and 5
only while the default continues”.

**24 Section 41 replaced (Unreasonable credit fee or default
fee)**

Replace section 41 with:

“41 Unreasonable credit fee or default fee 10

A consumer credit contract must not provide for a credit fee
or a default fee that is unreasonable.”

25 Section 43 replaced (Prepayment fees)

Replace section 43 with:

“43 Prepayment fees 15

“(1) In determining whether a prepayment fee payable is unreason-
able, the court must,—

“(a) if the fee relates to a part prepayment, have regard to
whether the fee exceeds a reasonable estimate of the
creditor’s loss arising from the part prepayment; and 20

“(b) if the fee relates to a full prepayment, have regard to
whether the fee exceeds a reasonable estimate of the
creditor’s loss arising from the full prepayment, as cal-
culated in accordance with section 54.

“(2) For the purposes of this section, a **prepayment fee** is a fee that 25
relates only to—

“(a) the early repayment of an amount provided under a
credit contract for a fixed-rate loan; and

“(b) the portion of the loan that is fixed; and

“(c) the part of the credit provider’s loss— 30

“(i) that arises from the early repayment; and

“(ii) that is a result of differences in interest rates.

“(3) A prepayment fee may also include the creditor’s average rea-
sonable administration costs.

“(4) In this section,— 35

“**fixed-rate loan** means a credit contract under which an annual percentage rate is fixed, for an agreed term, for the whole or a part of the amount due under the credit contract

“**reasonable administration costs** means costs that do not exceed a reasonable estimate of the average reasonable administration cost to the creditor of processing a part, or full, prepayment.” 5

26 Section 44 replaced (Other credit fees and default fee)

Replace section 44 with:

“44 Credit fees other than establishment fees and prepayment fees 10

“(1) In determining whether a credit fee is unreasonable, the court must have regard to—

“(a) the matters giving rise to the fee; and

“(b) the amount of the fee; and 15

“(c) whether the amount of the fee exceeds a reasonable estimate of the creditor’s reasonable average costs that relate directly to—

“(i) the matters giving rise to the fee; and

“(ii) the relevant class of contract. 20

“(2) **Subsection (1)** does not apply if the credit fee is—

“(a) an establishment fee (*see* section 42); or

“(b) a fee payable on a full or part prepayment of a consumer credit contract (*see* **section 43**).

“44A Default fees 25

In determining whether a default fee is unreasonable, the court must have regard to—

“(a) the nature of the default; and

“(b) the amount of the fee; and

“(c) whether that amount exceeds a reasonable estimate of the creditor’s reasonable average costs (including the creditor’s reasonable administration costs and any financial loss suffered by the creditor) that relate directly to the type of default involved.” 30

27 Section 45 amended (Fees or charges passed on by creditor)

Replace section 45(5) with:

“(5) Nothing in this section prevents a reasonable commission from being paid, or payable, to a creditor in connection with any credit-related insurance or extended warranty taken out by the debtor. 5

“(6) However, despite **subsection (5)**, a creditor must not charge a commission if the creditor—

“(a) requires the debtor to obtain the insurance or warranty from a particular provider; or 10

“(b) has in place any arrangement that has the effect of requiring the debtor to obtain the insurance or warranty from a particular provider.”

28 Section 51 amended (Amount required for full prepayment) 15

Replace section 51(1) with:

“(1) The amount required for the full prepayment of the consumer credit contract must be no more than the sum of the following less the amount referred to in section 52 (in the case of a rebate of insurance) or **section 52A** (in the case of a repayment waiver): 20

“(a) the unpaid balance at the time of the full prepayment; and

“(b) a reasonable estimate of the creditor’s loss arising from the full prepayment, as calculated in accordance with section 54.” 25

29 Section 52 amended (Rebate of insurance)

In section 52(1), replace “The amount to be deducted” with “In the case of a rebate of insurance, the amount to be deducted”. 30

30 New section 52A inserted (Rebate of repayment waiver)

After section 52, insert:

“52A Rebate of repayment waiver

“(1) In the case of a repayment waiver, the amount to be deducted under section 51 is an amount equal to a proportionate rebate of the additional consideration paid for that waiver.

“(2) The rebate must be calculated using the procedure (if any) prescribed for the purposes of this section.” 5

31 Section 55 amended (Changes on grounds of unforeseen hardship)

After section 55(1), insert:

“(1A) An application under subsection (1) must— 10

“(a) be in writing; and

“(b) set out the reasons that have caused the unforeseen hardship.

“(1B) A debtor who makes an application under this section is not entitled to make another application unless— 15

“(a) the application is made not less than 4 months after a previous application; or

“(b) in the case of an application that is made within 4 months after a previous application,—

“(i) the creditor agrees to consider the application; or 20

“(ii) the reasons for the debtor seeking the change under section 56 are materially different to the reasons given in the previous application.”

32 Section 57 amended (Application may not be made in certain circumstances) 25

(1) Replace section 57(1)(a) with:

“(a) the debtor is in default of his or her obligation to make payments and—

“(i) has been in default for 2 weeks or more after receiving a repossession warning notice (*see section 83D*) or a notice under section 119 of the Property Law Act 2007; or 30

“(ii) if a notice referred to in **subparagraph (i)** has not been served, has failed to make 4 or more consecutive periodic payments by or on the due dates; or 35

- “(iii) if the situations referred to in **subparagraphs (i) and (ii)** do not apply, has been in default for 2 months or more.”
- (2) Repeal section 57(1)(b).
- (3) After section 57(2), insert: 5
- “(3) Nothing in subsection (1) prevents a debtor from making an application if the creditor, at the creditor’s discretion, agrees that an application may be made.”
- 33 New section 57A inserted (Obligations of creditor in relation to application)** 10
- After section 57, insert:
- “57A Obligations of creditor in relation to application**
- “(1) On receipt of an application by a debtor under section 55, the creditor must do the following:
- “(a) within 5 working days after receiving the application, acknowledge receipt: 15
- “(b) within 10 working days after receiving the application, request any further information from the debtor (but only if that further information is necessary to decide the application): 20
- “(c) within 20 working days after receiving the application,—
- “(i) in light of the lender responsibility principles (*see section 9B*), decide whether to grant the application; and 25
- “(ii) provide written notification to the debtor of that decision; and
- “(iii) if the creditor declines the application, provide written notice to the debtor setting out—
- “(A) the creditor’s reasons for declining the application; and 30
- “(B) a clear summary of the debtor’s rights under section 58.
- “(2) However, if the creditor has requested further information in accordance with **subsection (1)(b)**, the time during which the creditor must comply with **subsection (1)(c)** is the earlier of— 35

- “(a) 10 working days after receiving the further information;
and
- “(b) 20 working days after making the request under **sub-section (1)(b)**.
- “(3) A creditor must not— 5
 - “(a) charge any fee or default interest charge in relation to an application (whatever the outcome of the application) if that fee or charge would not, in the absence of the application, be otherwise payable:
 - “(b) commence, or continue, any enforcement action (*see* **section 83G(6)**), unless the enforcement action is repossessing goods that are at risk (*see* **section 83C(2)**).
- “(4) However, if the application is successful, nothing in **subsection (3)(a)** prevents a creditor from charging a credit fee that reflects the costs incurred by the creditor in documenting the changes to the credit contract.” 15

- 34 Section 58 amended (Changes by court)**
Replace section 58(1) with:
 - “(1) A debtor may apply to the court to change the terms of a contract if— 20
 - “(a) the creditor fails, within the time specified in **section 57A(1)(c)**, to notify the debtor of its decision on the application; or
 - “(b) the creditor does not agree to change the consumer credit contract in accordance with the application.” 25

- 35 Section 66 repealed (Variation disclosure not required)**
Repeal section 66.

- 36 Section 67 amended (Request disclosure for consumer leases)**
After section 67(2)(b), insert: 30
 - “(ba) a copy of the lessor’s standard terms (if any), as required under **section 9H**.”

-
- 37 Section 69 amended (Restrictions on credit-related insurance, repayment waivers, and extended warranties)**
Repeal section 69(3).
- 38 Section 70 amended (Disclosure of credit-related insurance, repayment waiver, or extended warranty)** 5
(1) In section 70(1), replace “within 15 working days of the day on which the credit-related insurance is arranged” with “before the date on which the credit-related insurance is arranged”.
(2) In section 70(2), replace “within 15 working days of the day on which the repayment waiver or extended warranty is arranged” with “before the date on which the repayment waiver or extended warranty is arranged”. 10
- 39 Section 78 repealed (Variation disclosure not required)**
Repeal section 78.
- 40 Section 79 amended (Request disclosure for buy-back transactions)** 15
After section 79(2)(b), insert:
“(ba) a copy of the transferee’s standard terms (if any), as required under **section 9H**.”.
- 41 Section 80 amended (Unreasonable buy-back fees or buy-back default fees)** 20
Repeal section 80(2) to (4).
- 42 Section 82 amended (Unreasonable fees payable to buy-back promoter or associated person)**
Repeal section 82(2) to (4). 25
- 43 New Part 3A inserted**
After section 83, insert:

“Part 3A**“Repossession of consumer goods under
credit contract****“Subpart 1—Preliminary provisions**

“83A Outline of Part	5
This Part sets out—	
“(a) the rules that apply—	
“(i) before a creditor or creditor’s agent may repos- sess consumer goods (which includes repossess- ing keys or other access devices in relation to consumer goods); and	10
“(ii) at the time of repossession and	
“(iii) following the repossession; and	
“(b) the rights and responsibilities of debtors and creditors in relation to consumer goods that have been, or are liable to be, repossessed.	15
 “83B Application of Part	
“(1) This Part applies where a credit contract expressly provides that a creditor has a right to do 1 or more of the following:	
“(a) repossess consumer goods over which there is a security interest:	20
“(b) enter premises for the purpose of repossessing con- sumer goods:	
“(c) enter premises for the purpose of repossessing con- sumer goods when an occupier is not present.	25
“(2) The consumer goods referred to in subsection (1) must be—	
“(a) specifically identified in the credit contract (including goods that are subject to a purchase money security in- terest); or	
“(b) acquired by the debtor after the credit contract has been entered into, but only if,—	30
“(i) in relation to the after-acquired consumer goods,—	
“(A) the goods have been specifically identified in the credit contract; and	35
“(B) the parties to the contract have, before the creditor exercises any of the rights referred	

- to in **subsection (1)**, agreed to change the contract; and
- “(C) in the case of a consumer credit contract, there has been disclosure of the full particulars of the change as required by section 22; or 5
- “(ii) the debtor has acquired the goods as a replacement for the goods that were specified in that credit contract.
- “(3) Where a credit contract creates or provides for a security interest in both consumer goods and other goods, this Part applies only in relation to the consumer goods. 10
- “Compare: 1997 No 85 ss 5, 6
- “Subpart 2—Rules that apply before repossession 15
- “**83C Circumstances in which creditor can repossess consumer goods**
- “(1) Neither a creditor nor a creditor’s agent may repossess consumer goods, unless—
- “(a) either— 20
- “(i) the debtor is in default under the credit contract; or
- “(ii) the goods are at risk; and
- “(b) the creditor has, before taking possession of the goods, fully complied with requirements imposed on the creditor under this Part; and 25
- “(c) the creditor complies with the lender responsibility principles set out in **Part 1A**.
- “(2) In this section and **section 83D**, consumer goods are **at risk** if the creditor believes, on reasonable grounds, that those goods 30 have been, or will be, destroyed, damaged, endangered, disassembled, removed, concealed, sold, or otherwise disposed of contrary to the provisions of the relevant credit contract.
- “(3) However, consumer goods are not at risk merely because another creditor has, in relation to those consumer goods, given 35 the debtor a repossession warning notice.

“(4) In any case where it is necessary to decide whether the goods were, or are, at risk, the creditor has the onus of proving that the grounds relied on were, or are, reasonable.

“Compare: 1997 No 85 s 7

“**83D Creditor must serve repossession warning notice on debtor and other persons before taking possession of consumer goods** 5

“(1) Every creditor intending to repossess consumer goods must, before repossessing those goods, provide a notice (a **repossession warning notice**) to— 10

“(a) the debtor; and

“(b) every guarantor of the debtor under the relevant contract; and

“(c) if **section 83F** applies, each of the persons referred to in section 129(1) of the Personal Property Securities Act 1999; and 15

“(d) every secured creditor with an interest in those goods (*see section 83ZD(1)(a) and (b)*).

“(2) However, **subsection (1)** does not apply if the goods are at risk (*see section 83C(2)*). 20

“(3) The repossession warning notice must—

“(a) be in writing; and

“(b) contain as much of the key information set out in **Schedule 3A** as is applicable to the contract; and

“(c) include any additional prescribed information; and 25

“(d) be in the prescribed form (if any); and

“(e) be given to the debtor at least 15 days before repossession occurs; and

“(f) if the default is capable of being remedied, give the debtor at least 15 days to remedy the default. 30

“(4) A repossession warning notice expires 28 days after it has been served on the debtor and, after that time,—

“(a) the notice is of no effect; and

“(b) the creditor has no right to repossess the goods.

“(5) To avoid doubt, nothing in **subsection (4)** prevents a creditor from serving a further repossession warning notice that complies with this section. 35

“Compare: 1997 No 85 ss 8, 9

“83E Debtor may voluntarily return consumer goods

- “(1) A debtor may, following receipt of a repossession warning notice, voluntarily return the consumer goods to the creditor.
- “(2) However, a debtor may not voluntarily return consumer goods that are, or include, accessions. 5
- “(3) If consumer goods are voluntarily returned in accordance with **subsection (1)**, **subpart 5** applies as if the voluntary return were a repossession under **subpart 3**.
- “(4) In this section and in **section 83F**, **accessions** has the meaning given to it in section 16 of the Personal Property Securities Act 1999. 10

“83F Application of Personal Property Securities Act 1999

Every creditor intending to repossess an accession (as provided for under section 109 of the Personal Property Securities Act 1999) must, in addition to complying with **this Part**, 15
comply with sections 125 to 131 of that Act.

“83G Effect of debtor’s complaint or application on grounds of unforeseen hardship on creditor’s rights to enforce credit contract

- “(1) Neither a creditor nor a creditor’s agent may take any enforcement action in relation to consumer goods (whether under this Part or in accordance with a credit contract) if the debtor has made— 20
- “(a) a complaint to the creditor in relation to the enforcement action and that complaint has not been resolved; or 25
- “(b) an application to the creditor under section 55 and that application has not been decided.
- “(2) If the creditor or creditor’s agent has commenced the enforcement action, no further action may be taken in relation to that enforcement action until the complaint has been resolved or 30
the application decided.
- “(3) However, despite **subsections (1) and (2)**, if the relevant consumer goods are at risk (*see* **section 83C(2)**), the debtor may repossess the goods but must not take any further enforcement action. 35

- “(4) If the creditor and debtor are unable to resolve the complaint, the debtor may, within 14 days of receiving written notice of the creditor’s decision on the complaint, refer the complaint to the dispute resolution scheme of which the creditor is a member. 5
- “(5) For the purposes of this section, a complaint is resolved when—
- “(a) the creditor and debtor have reached agreement and settled the complaint; or
 - “(b) the complaint has been— 10
 - “(i) referred to the dispute resolution scheme of which the creditor is a member; and
 - “(ii) resolved in accordance with the scheme’s rules; or
 - “(c) if the creditor has provided the debtor with the written 15 notice referred to in **subsection (4)**,—
 - “(i) 14 days have elapsed since the debtor was provided with the notice; and
 - “(ii) the debtor has not, within that period, referred the complaint to the dispute resolution service. 20
- “(6) In this section, **enforcement action** means—
- “(a) giving a repossession warning notice (and includes the content of that notice):
 - “(b) giving a repossession notice (and includes the content of that notice): 25
 - “(c) the repossession process.
- “(7) To avoid doubt, the creditor or the creditor’s agent may, subject to this Part and to any terms on which the complaint was resolved, take, or continue, the enforcement action referred to in **subsection (1)** from the time that the complaint has been 30 resolved or (in the case of an unsuccessful application under section 55) the application has been decided.

“Subpart 3—Disabling devices

“**83H Use of disabling device**

- “(1) This section applies where a credit contract expressly provides 35 that the creditor—
- “(a) has a security interest over consumer goods—

- “(i) that are specifically identified in that contract;
and
 - “(ii) to which a disabling device is connected; and
 - “(b) has a right to activate the disabling device.
- “(2) Neither a creditor nor a creditor’s agent may activate a disabling device unless—
- “(a) the debtor is in default under the credit contract; and
 - “(b) the creditor or the creditor’s agent has given the debtor reasonable notice, in advance of the activation,—
- “(i) that the disabling device is to be activated; and
 - “(ii) about what action the debtor may take to prevent the disabling device being activated.
- “(3) A disabling device must not be connected to, or used in connection with, any consumer goods described in **section 7A(2)(a)**.
- “(4) In this section,—
- “**activated**, in relation to a disabling device, means that the disabling function of the device has been switched on, with the result that—
- “(a) the debtor is prevented from using the consumer goods;
or
 - “(b) the debtor’s use of the consumer goods is limited; or
 - “(c) the creditor is able to locate the consumer goods; or
 - “(d) the creditor is able to achieve a direct or indirect benefit in relation to the relevant credit contract
- “**disabling device** means a device that is attached to consumer goods, the functions of which, when activated, include—
- “(a) warning the debtor that repayments on the consumer goods are due, or overdue;
 - “(b) preventing the consumer goods from being used;
 - “(c) limiting the debtor’s use of the consumer goods;
 - “(d) enabling the creditor to locate the consumer goods;
 - “(e) achieving any other similar outcome that is of direct or indirect benefit to the creditor in relation to the relevant credit contract.

“Subpart 4—Rules that apply at time of
repossession

“**83I Creditor must allow debtor time to remedy default**

- “(1) Neither a creditor nor a creditor’s agent may repossess consumer goods in respect of which a repossession warning notice has been served— 5
- “(a) unless the period for remedying the default specified in the notice has expired and the debtor has failed to remedy the default; or
- “(b) if the debtor has— 10
- “(i) voluntarily returned the goods; or
- “(ii) reinstated the agreement by—
- “(A) paying to the creditor the amount required to reinstate the agreement; or
- “(B) where the agreement secures the performance of an obligation other than the payment of money, performing any accrued obligations. 15
- “(2) Neither a creditor nor a creditor’s agent may hold keys or other devices that enable access to the consumer goods unless the relevant consumer goods have been repossessed in accordance with this Act. 20
- “(3) However, **subsection (1)** does not apply if the goods are at risk (*see* **section 83C(2)**).
- “(4) In this section,— 25
- “**accrued obligations** has the same meaning as in **section 83V(2)**
- “**amount required to reinstate the agreement** has the same meaning as in **section 83V(2)**, except that **paragraph (b)** of that definition does not apply. 30
- “Compare: 1997 No 85 s 10

“**83J Documents to be produced on entry**

- “(1) Every creditor or creditor’s agent who exercises a right of entry of premises must, on first entering the premises if anyone is present, and, if requested, at any subsequent time, produce the following documents: 35

- “(a) a copy of the repossession warning notice (unless one was not required under **section 83D(2)**); and
 - “(b) a copy of the credit contract; and
 - “(c) the creditor’s or creditor’s agent’s licence, as the case may be; and 5
 - “(d) a document setting out the debtor’s name, the address from which the goods will be repossessed, the creditor’s or creditor’s agent’s licence number (as the case may be), and the reason why the goods are being repossessed; and 10
 - “(e) a document outlining the requirements—
 - “(i) that a creditor or creditor’s agent must fulfil in order to repossess goods; and
 - “(ii) the debtor’s rights if he or she believes that the creditor or creditor’s agent has not met those requirements; and 15
 - “(f) a written statement that specifies that the premises have been entered and the date of entry, and an inventory of consumer goods to be taken; and
 - “(g) a written statement setting out where the goods will be stored, the creditor’s contact details, and the debtor’s rights under **this Part** following the repossession of goods, including the right to make a complaint about the creditor’s or creditor’s agent’s conduct; and 20
 - “(h) in the case of a creditor’s agent, evidence reasonably capable of establishing the person’s authority to repossess the consumer goods on behalf of the creditor; and 25
 - “(i) in the case of an entry outside the hours specified in **section 83M**, the debtor’s written consent to the exercise of the right of entry. 30
- “(2) If the occupier of the premises is not present when the creditor or creditor’s agent enters the premises, the creditor or creditor’s agent must, before leaving the premises, leave a written statement (as required under **subsection (1)(f)**) in a prominent place, along with a copy of each of the other documents referred to in **subsection (1)**. 35

“Compare: 1997 No 85 ss 17, 18

“83K Creditor must exercise right to enter premises in accordance with lender responsibility principles

A creditor must, in exercising the right to enter premises, act in accordance with the lender responsibility principles (*see section 9B*).

5

“Compare: 1997 No 85 s 14

“83L Creditor must not enter premises if complaint not resolved or unforeseen hardship application not decided

Neither a creditor nor a creditor’s agent may exercise a right to repossess consumer goods or enter premises if the debtor has made a complaint to the creditor and that complaint has not been resolved or an application has been made to the creditor under section 55 and that application has not been decided (*see section 83G*).

10

“83M Creditor must not enter residential premises at certain times

15

“(1) Neither a creditor nor a creditor’s agent may exercise a right to enter residential premises other than between the hours of 6 am and 9 pm.

“(2) A creditor or a creditor’s agent who has entered residential premises between the hours of 6 am and 9 pm for the purpose of repossessing consumer goods must not remain at those premises after 9 pm.

20

“(3) However, nothing in **subsection (1) or (2)** prevents a debtor from agreeing, in writing, to permit the creditor or creditor’s agent to enter the premises and repossess consumer goods outside the period between the hours of 6 am and 9 pm, provided that the consent is not sought or given—

25

“(a) before the debtor is in default under the credit contract; or

30

“(b) when the creditor is at the premises to repossess the consumer goods; or

“(c) outside the period between the hours of 6 am and 9 pm.

“Compare: 1997 No 85 s 15

“83N Restrictions applying in relation to persons repossessing consumer goods

“(1) No creditor who is required to be registered under Part 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 may— 5

“(a) exercise any rights in relation to repossessing consumer goods (including entering residential premises) unless that creditor is registered:

“(b) authorise, allow, or permit a repossession agent or repossession employee to repossess consumer goods (including entering residential premises) unless that person is licensed or holds a certificate of approval. 10

“(2) No repossession agent or repossession employee may exercise any rights in relation to repossessing consumer goods (including entering residential premises) unless that person is— 15

“(a) specifically authorised to do so by the creditor; and

“(b) licensed or holds a certificate of approval.

“(3) In this section,—

“**certificate of approval** means a certificate issued under section 54 of the Private Security Personnel and Private Investigators Act 2010 20

“**licensed** means licensed in accordance with Part 2 of the Private Security Personnel and Private Investigators Act 2010

“**registered** means registered in accordance with Part 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 25

“**repossession agent** has the same meaning as in **section 8A** of the Private Security Personnel and Private Investigators Act 2010

“**repossession employee** has the same meaning as in **section 16A** of the Private Security Personnel and Private Investigators Act 2010. 30

“Compare: 1997 No 85 s 16

“Subpart 5—Rules that apply after
repossession of consumer goods

“**83O Interpretation**

In this subpart, unless the context otherwise requires, **auction** means a process in which goods are offered for sale by auction or by any other bidding process in which the most recent bid made for the goods is disclosed to other participants and potential participants. 5

“**83P Notice to be given to debtor, guarantor, and other creditors after repossession of consumer goods** 10

“(1) A creditor must serve a post-repossession notice on the debtor and every other person referred to in **section 83D(1)** within 7 days of the repossession.

“(2) The post-repossession notice must—

“(a) be in writing; and 15

“(b) contain as much of the key information set out in **Schedule 3A** as is applicable to the relevant contract; and

“(c) include any additional prescribed information; and

“(d) be in the prescribed form (if any). 20

“(3) If a post-repossession notice is not served as required by this subpart,—

“(a) the costs of repossessing the consumer goods must be borne by the creditor; and

“(b) the creditor is not entitled to recover those costs from the debtor or the guarantor. 25

“Compare: 1997 No 85 ss 20, 21, 22

“**83Q Creditor must not sell consumer goods until 15 days after post-repossession notice**

“(1) Where a creditor has repossessed any consumer goods, the creditor must not sell, offer for sale, or dispose of the consumer goods until after the expiry of 15 days from the date of service of the post-repossession notice on the debtor. 30

“(2) However, **subsection (1)** does not apply if—

- “(a) the sale, offer, or disposal was with the written consent of the debtor, and that consent was given after the consumer goods had been taken; or
- “(b) the debtor requires the creditor to offer the goods for sale within the 15 days; or 5
- “(c) the disposal was temporary and for the purposes of storage or repair of the goods.
- “(3) Where **subsection (2)(b)** applies, the creditor must offer the goods for sale as soon as is reasonably practicable after being required to do so by the debtor. 10
- “Compare: 1997 No 85 s 23
- “83R Consequences of selling within 15 days of post-repossession notice**
- “(1) If the creditor contravenes **section 83Q(1)**, the liability of the debtor is limited to— 15
- “(a) the advance under the credit contract; and
- “(b) if the agreement secures the performance of some obligation other than the payment of money, the performance of that obligation.
- “(2) The creditor must repay any money already paid to the creditor by any person on account of, or in satisfaction of, any liability not referred to in **subsection (1)**. 20
- “(3) Except as provided for in **subsection (1)**, the debtor’s liability to the creditor is extinguished. 25
- “Compare: 1997 No 85 s 24
- “83S Creditor must offer consumer goods for sale**
- “(1) The creditor must offer the consumer goods for sale as soon as is reasonably practicable after the expiration of 15 days from the date of service of the post-repossession notice on the debtor. 30
- “(2) This section does not apply if—
- “(a) the debtor has made a complaint in relation to the enforcement action (in which case **section 83G** applies); or
- “(b) the debtor reinstates the agreement under **section 83V**; 35
- or

“(c) the debtor introduces a buyer under **section 83X** and the buyer completes the purchase of the consumer goods; or

“(d) the debtor settles the agreement under **section 83Y**.

“Compare: 1997 No 85 s 25

5

“**83T Rules relating to sale by creditor**

“(1) When selling repossessed consumer goods (which may be by any method that meets the requirements of this subsection), the creditor must—

“(a) ensure that every aspect of the sale, including the manner, time, place, and terms, is commercially reasonable; and 10

“(b) use all reasonable efforts to obtain the best possible price for the goods.

“(2) The creditor must give the debtor and every other person referred to in **section 83D(1)** reasonable notice of the proposed sale (including the method of sale and the time, place, and any reserve price placed on the goods, as applicable to the method of sale). 15

“(3) If the sale is by auction or tender, the creditor, the debtor, and every other person referred to in **section 83D(1)** are each entitled to bid or to submit tenders, as the case may be, and if the creditor is the successful bidder or tenderer, the consumer goods, for the purposes of this subpart, are deemed to have been sold for the amount of the creditor’s bid or tender. 20 25

“(4) The onus of proving that the consumer goods have been sold in accordance with this section is on the creditor.

“(5) **Subsection (1)** does not apply if—

“(a) the debtor introduces a buyer under **section 83X** and the buyer completes the purchase of the consumer goods; or 30

“(b) the debtor forces sale under **section 83Z**.

“Compare: 1997 No 85 s 26

“83U Debtor may obtain valuation of consumer goods before sale

- “(1) The debtor is entitled to obtain, at the debtor’s expense, 1 valuation of the consumer goods as at the time of repossession.
- “(2) The rules relating to valuations are as follows: 5
- “(a) the valuation may take place at any time after the creditor repossesses the consumer goods, but before the creditor sells or agrees to sell the consumer goods in accordance with this subpart:
- “(b) the debtor must request access to the consumer goods 10 by giving reasonable notice to the creditor:
- “(c) the creditor must permit the debtor’s valuer such access to the consumer goods as is reasonably necessary to enable the valuation of the consumer goods to take place:
- “(d) the debtor’s valuer must carry out the valuation at a 15 reasonable time:
- “(e) the debtor’s valuer has no right to remove the consumer goods unless the creditor gives consent to the removal:
- “(f) the debtor may accompany his or her valuer when the valuation takes place. 20

“Compare: 1997 No 85 s 27

“83V Debtor’s right to reinstate agreement

- “(1) The debtor may, at any time after the creditor has repossessed the consumer goods and at any time before the creditor sells or agrees to sell the consumer goods in accordance with this subpart, reinstate the agreement by— 25
- “(a) paying to the creditor the amount required to reinstate the agreement; or
- “(b) where the agreement secures the performance of an obligation other than the payment of money, performing 30 any accrued obligations.
- “(2) In this section,—
- “**accrued obligations** means any obligations that have fallen due for performance under the credit contract and that have not been performed 35

“**amount required to reinstate the agreement** means the aggregate of—

- “(a) any amounts that have fallen due for payment under the credit contract and that have not been paid, including, without limitation, interest and other charges, but excluding, where the agreement provides that the total advance falls due for payment immediately on the debtor’s default, that part of the advance that would not have fallen due but for that provision; and 5
- “(b) the reasonable costs and expenses of the creditor of and incidental to repossessing, holding, storing, repairing, maintaining, valuing, and preparing for the sale of the consumer goods and of returning them to the order of the debtor; and 10
- “(c) the costs reasonably and actually incurred by the creditor in doing anything necessary to remedy any default by the debtor. 15

“Compare: 1997 No 85 s 28

“**83W Consequences of reinstating agreement**

Where the right to reinstate the agreement is exercised under **section 83V**,— 20

- “(a) upon receipt of the amount required to reinstate the agreement (*see* **section 83V(2)**), the creditor must immediately return the consumer goods to the debtor; and
- “(b) the debtor is deemed to receive and hold the returned consumer goods under the terms of the credit contract as if the default had not occurred and the creditor had not repossessed the consumer goods. 25

“Compare: 1997 No 85 s 29

“**83X Debtor’s right to introduce buyer** 30

- “(1) The debtor may, at any time after the creditor has repossessed the consumer goods and at any time before the creditor sells or agrees to sell the consumer goods in accordance with this subpart, require the creditor to sell the consumer goods to any person, introduced by the debtor, who or that is prepared to purchase the consumer goods for cash at a price not less than 35

the estimated value of the consumer goods set out in the post-repossession notice served on the debtor.

“(2) This right may be exercised by giving to the creditor a notice in writing signed by the debtor or the debtor’s agent.

“Compare: 1997 No 85 s 30

5

“**83Y Debtor’s right to settle agreement**

“(1) The debtor may, at any time after the creditor has repossessed the consumer goods and at any time before the creditor sells or agrees to sell the consumer goods in accordance with this subpart, settle the debtor’s obligations under the credit contract—

10

“(a) by paying to the creditor the amount required to settle the agreement; or

“(b) where the agreement secures the performance of an obligation other than the payment of money, by performing that obligation.

15

“(2) In this section, the **amount required to settle the agreement** means the balance of the advance outstanding, together with any interest and charges payable under the agreement, and includes—

“(a) the reasonable costs and expenses of the creditor of, and incidental to, repossessing, holding, storing, repairing, maintaining, valuing, and preparing the sale of the consumer goods and of returning them to the order of the debtor; and

20

“(b) the costs reasonably and actually incurred by the creditor in doing anything necessary to remedy any default by the debtor.

25

“(3) Where the right to settle the agreement is exercised,—

“(a) upon receipt of that amount, or confirmation of the performance of that obligation, the creditor must immediately return the consumer goods to the debtor; and

30

“(b) the agreement terminates, with the rights and obligations of the parties to it satisfied.

“Compare: 1997 No 85 s 31

“83Z Debtor’s right to force sale

- “(1) If the consumer goods have not been sold within 6 weeks, the debtor may require the creditor to put the consumer goods up for sale by auction.
- “(2) The period of 6 weeks commences with the date on which the creditor repossesses the consumer goods. 5
- “(3) The following rules apply to a sale required under **subsection (1)**:
- “(a) the debtor must require the sale by notice in writing to the creditor, signed by the debtor or the debtor’s agent; 10
and
 - “(b) the auction must be held within 2 months after the date that notice is given; and
 - “(c) the creditor must give the debtor and every other person referred to in **section 83D(1)** reasonable notice of— 15
 - “(i) the time and place of the auction; or
 - “(ii) if the auction is via the Internet, the times at which the auction will begin and end (including the circumstances (if any) in which the auction may end before the end time given in the notice); 20
and
 - “(d) the creditor and the debtor are each entitled to bid at the auction; and
 - “(e) there must be no reserve price. 25
- “Compare: 1997 No 85 s 32

“83ZA Disposal of consumer goods to purchaser for value and in good faith

- “(1) A purchaser for value and in good faith who takes possession of consumer goods sold by a creditor takes the consumer goods free from the following interests: 30
- “(a) the interest of the debtor:
 - “(b) any interest subordinate to that of the debtor:
 - “(c) any interest subordinate to that of the creditor.
- “(2) **Subsection (1)** applies whether or not registrations relating to security interests that are subordinate to the security interest of the creditor selling the consumer goods have been removed from the register. 35
- “Compare: 1997 No 85 s 32A

“83ZB Extinguishment of subordinate security interests on sale

If consumer goods have been sold under **section 83T or 83Z**, all security interests in the consumer goods and their proceeds that are subordinate to the security interest of the creditor who sold the consumer goods are extinguished on the sale of the consumer goods. 5

“Compare: 1997 No 85 s 32B

“83ZC Creditor to give statement of account to debtor, guarantor, and other interested persons

Where consumer goods are sold pursuant to **section 83T or 83Z**, the creditor must, within 7 days after the sale of the consumer goods, give the debtor and every other person referred to in **section 83D(1)** a statement of account in writing, showing— 10

“(a) the amount of the gross proceeds of sale: 15

“(b) the amount of the costs and expenses of and incidental to the sale:

“(c) the amount required to settle the agreement under **section 83Y** as at the date of the sale:

“(d) the balance owing by the creditor to the debtor, or by the debtor to the creditor, as the case may be. 20

“Compare: 1997 No 85 s 33

“83ZD Distribution of surplus

“(1) If a creditor has sold consumer goods under **section 83T or section 83Z**, the creditor must pay the following persons the amount of any surplus by satisfying the claims of those persons in the following order: 25

“(a) any person who has registered a financing statement in the name of the debtor over the consumer goods that were sold where— 30

“(i) the registration was effective immediately before the consumer goods were sold; and

“(ii) the security interest relating to that registration was subordinate to the security interest of the creditor who sold the consumer goods: 35

“(b) any other person who has given the creditor notice that that person claims an interest in the consumer goods that

were sold and in respect of which the creditor is satisfied that that person has a legally enforceable interest in the consumer goods:

“(c) the debtor.

“(2) The security interests to which **subsection (1)(a)** applies must be paid in the order of their priority as determined by Part 7 or 8 of the Personal Property Securities Act 1999. 5

“(3) **Subsection (1)** applies despite the extinguishment of a security interest under **section 83ZB**.

“Compare: 1997 No 85 s 34

10

“**83ZE Surplus may be paid into court**

“(1) The creditor may pay the surplus into court if there is a question as to who is entitled to receive payment under **section 83ZD**.

“(2) The surplus may be paid out only on an application by a person claiming an entitlement to the surplus. 15

“Compare: 1997 No 85 s 34A

“**83ZF Debtor’s, etc, right to recover surplus**

The persons referred to in **section 83ZD** are entitled to recover the amount of any surplus from the creditor. 20

“Compare: 1997 No 85 s 34B

“**83ZG Limit on creditor’s right to recover from debtor**

“(1) This section applies if—

“(a) consumer goods (or, where multiple goods are subject to the credit contract, any 1 or more of those goods) are sold under this subpart; and 25

“(b) the net proceeds of sale are less than the amount required to settle the agreement under **section 83Y(2)**.

“(2) If this section applies, the debtor’s liability to the creditor under the credit contract is limited to the difference between the amount required to settle the agreement as at the date of the sale and the net proceeds of the sale. 30

“(3) To avoid doubt,—

- “(a) after the sale, the creditor is not entitled to, and must not claim, any amounts in addition to the amount specified in **subsection (2)**, including—
- “(i) any further interest payments that would, had the sale not taken place, have been payable in respect of the agreement interest; or
 - “(ii) any interest under the Judicature Act 1908; or
 - “(iii) any other payments that are in addition to the amount required to settle the agreement under **section 83Y(2)**; and
- “(b) where the sale is of 1 or more goods (but not all the goods) that are subject to the same credit contract, the debtor’s liability to the creditor under the agreement is the amount referred to in **subsection (2)**; and
- “(c) no interest payments or other payments accrue in respect of any unsold goods (whether or not they have been offered for sale and whether or not they are retained by the debtor) after the date of the sale.

“Compare: 1997 No 85 s 35

“Subpart 6—Miscellaneous provisions 20

“**83ZH Service of notices**

- “(1) Any notice or other document required or authorised by this Part to be served on or given to any person must be in writing and is sufficiently served or given if—
- “(a) it is delivered to that person; or
 - “(b) it is left at that person’s usual or last known place of abode or business or at an address specified for that purpose in an agreement; or
 - “(c) it is posted in a letter addressed to that person by name at that place of abode or business or address.
- “(2) If the person is absent from New Zealand, the notice or other document may be served on or given to the person’s agent in New Zealand.
- “(3) If the person is deceased, the notice or other document may be served on or given to the person’s personal representatives.
- “(4) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has

no personal representatives, the notice or other document must be served or given in such manner as may be directed by an order of the court.

“(5) If any such notice or other document is sent to any person by registered letter, it is deemed to have been delivered to the person on the fourth day after the day on which it was posted, and in proving the delivery it is sufficient to prove that the letter was properly addressed and posted. 5

“(6) Notwithstanding anything in the foregoing provisions of this section, the court may in any case make an order directing the manner in which any notice or other document is to be served or given, or make an order dispensing with the service or giving thereof. 10

“(7) This section does not apply to notices or other documents served or given in any proceedings in any court. 15
“Compare: 1997 No 85 s 38”.

44 Section 86 amended (Jurisdiction of District Courts)

Replace section 86(2)(b) with:

“(b) in the case of an application for an order under any of the provisions of this Act, the relief claimed does not exceed \$200,000; or” 20

45 Section 87 amended (Jurisdiction of Disputes Tribunals)

(1) In section 87(1), replace “sections 41, 69, 80, 82, 90, 93, 120, and 122” with “sections 90, 93, **94A**, 120, and 122”.

(2) Repeal section 87(2). 25

46 Section 88 amended (Creditors, lessors, transferees, and buy-back promoters liable for statutory damages)

(1) In the heading to section 88, after “Creditors,” insert “creditors’ agents,”.

(2) After section 88(1), insert: 30

“(1A) The debtor under a credit contract is entitled to recover from the creditor under the agreement, or the creditor’s agent, the amount of the statutory damages set out in section 89 if the creditor, or the creditor’s agent, breaches, in connection with the agreement, any of the provisions of **Part 3A**.” 35

- (3) In section 88(6), after “consumer credit contract,”, insert “credit contract.”

47 Section 89 amended (Amount of statutory damages)

- (1) In section 89(1)(d)(iii), after “consumer credit contract”, insert “or other credit contract”. 5
- (2) In section 89(4), after “consumer credit contract,”, insert “other credit contract.”

48 Section 90 amended (Enforcement of statutory damages)

Replace section 90(3) with:

- “(3) An application under this section may be made at any time within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.” 10

49 Section 93 amended (Court’s general power to make orders)

- (1) In section 93, after “conduct of any creditor,”, insert “creditor’s agent,”. 15
- (2) Replace section 93(a) with:
- “(aa) a failure to comply with the responsible lending principles (including a failure to comply with the Responsible Lending Code (*see Part 1A*)): 20
- “(a) a breach of any of the provisions of Part 2, 3, or **3A**.”

50 Section 94 amended (Court orders)

Before section 94(1)(a), insert:

- “(aa) an order that—
- “(i) a fee imposed in contravention of sections 41, 69, 80, and 82, and any interest paid or payable in relation to that fee, must be reduced by a specified amount, in which case—
- “(A) only the reduced fee or interest is payable to the creditor; or 30
- “(B) if the fee or interest has been debited under the consumer contract, the creditor must refund the amount by which the fee or interest was reduced; or

- “(ii) no credit fee or default fee may be imposed or debited (in which case no fee, and no interest on that fee, is payable to the creditor); or
- “(iii) if the court makes an order under **subparagraph (ii)** and the fee or interest has already been paid or debited, the creditor must,—
- “(A) if the fee or interest has been paid, refund the amount of that fee and any interest paid in relation to that fee:
- “(B) if the fee or interest has been debited, reverse that transaction:
- “(aab) in the case of a breach of section 69(1), an order that—
- “(i) the insurance, repayment waiver, or extended warranty be annulled on any terms and conditions that the court thinks fit:
- “(ii) all or part of the premium or any other amount payable in relation to the insurance, repayment waiver, or extended warranty be reimbursed to the debtor or lessee by the creditor or lessor:
- “(aac) any other order that the court thinks fit for the purpose of giving effect to an order under **paragraph (aa) or (ab)**.”.
- 51 New section 94A inserted (Court orders in relation to repossessions)**
- After section 94, insert:
- “94A Court orders in relation to repossessions**
- “(1) The court may make all or any of the orders referred to in this section if the court finds that a person (whether or not that person is a party to any proceedings) has suffered loss or damage by the conduct of any creditor that constitutes, or would constitute, a breach of any of the provisions of **Part 3A**.
- “(2) In any proceedings relating to a breach of **Part 3A**, the court must have regard to the following matters:
- “(a) the conduct of the parties:
- “(b) the nature of the default:
- “(c) any other matters the court considers appropriate.
- “(3) The court may make an order—

- “(a) on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise as the court, in the circumstances of each case, thinks fit; and
- “(b) in the case of an application relating to a repossession, of compensation for non-financial loss, stress, humiliation, and inconvenience; and 5
- “(c) regardless of whether the order involves a variation in the terms of the credit contract.
- “(4) In any legal proceedings in relation to a credit contract after the creditor has repossessed the consumer goods, the court before 10 which such proceedings are brought may, subject to the jurisdiction of the particular court, vary or discharge any judgment or order of any other court against the debtor for recovery of money so far as is necessary to give effect to the provisions of **sections 83ZD and 83ZG**. 15
- “Compare: 1997 No 85 ss 12, 13, 36”.
- 52 Section 95 amended (Miscellaneous provisions concerning court’s general power to make orders)**
- (1) In section 95(1),—
- (a) after “93”, insert “or **94A**”; and 20
- (b) after “transaction”, insert “, as the case may be”.
- (2) Replace section 95(2) with:
- “(2) An application for an order under section 93 or **94A** may be made at any time within 3 years after the date on which the loss or damage was discovered or ought reasonably to have been 25 discovered.”
- (3) In section 95(3), after “93”, insert “or **94A**”.
- (4) In section 95(4), after “93”, insert “or **94A**”.
- 53 Section 96 amended (Injunctions)**
- Replace section 96(1)(a) with: 30
- “(a) a breach of any of the provisions of Parts 2, 3, and **3A**.”.
- 54 Section 99 amended (Enforcement of consumer credit contract prohibited)**
- (1) After section 99(1)(b), insert:

- “(ba) enforce any right in relation to the costs of borrowing;
or
“(bb) require the debtor or any other person to make early
repayment of money due under that contract on the basis
of a failure by the debtor or other person to pay the costs 5
of borrowing; or”.
- (2) After section 99(1), insert:
- “(1A) Neither the debtor nor any other person is liable for the costs
of borrowing in relation to any period during which the cred-
itor has failed to comply with section 17 or 22. 10
- “(1B) However, **subsection (1A)** does not apply in relation to fees
passed on to a third party (*see* section 45) unless that third party
is an associated person.”
- 55 New sections 99A and 99B inserted**
- After section 99, insert: 15
- “99A Enforcement of rights of repossession, etc, prohibited**
If the notice requirements under **section 83D or 83P**, as the
case may be, have not been complied with, no person may, be-
fore a notice is given, enforce any rights that person otherwise
has under **Part 3A**. 20
- “99B Enforcement prohibited if creditor unregistered**
- “(1) If a creditor who is required to be registered under Part 2 of the
Financial Service Providers (Registration and Dispute Reso-
lution) Act 2008 is not registered under that Act,—
- “(a) neither the creditor nor any other person may, in relation 25
to a credit contract,—
- “(i) enforce any right in relation to the costs of bor-
rowing; or
- “(ii) require the debtor or any other person to make
early repayment of money due under that contract 30
on the basis of a failure by the debtor or other
person to pay the costs of borrowing; and
- “(b) neither the debtor nor any other person is liable for
the costs of borrowing in relation to any period during
which the creditor is unregistered. 35

- “(2) However, **subsection (1)(b)** does not apply in relation to fees passed on to a third party (*see* section 45) unless that third party is an associated person.
- “(3) On becoming registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008, the creditor may enforce the creditor’s rights in relation to the costs of borrowing, but only—
- “(a) if the creditor has given written notice to the debtor, containing the information specified in **subsection (4)**; and
 - “(b) in relation to costs of borrowing directly attributable to periods after such notice has been given to the debtor.
- “(4) The notice required under **subsection (3)(a)** must clearly inform the debtor—
- “(a) that the creditor is now registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008; and
 - “(b) of the date on which the creditor became registered; and
 - “(c) that the debtor is, from the date on which the notice was given, liable for the costs of borrowing; and
 - “(d) that the debtor has no liability for the costs of borrowing that would otherwise have accrued before the date on which the notice was given.”
- 56 Section 101 amended (Enforcement of consumer lease prohibited)**
- (1) After section 101(b), insert:
- “(ba) enforce any right in relation to the costs of the lease; or
 - “(bb) require the lessee or any other person to make early repayment of money due under the lease on the basis of a failure by the lessee or other person to pay the costs of the lease; or”.
- (2) In section 101, insert as subsections (1A) and (1B):
- “(1A) Neither the lessee nor any other person is liable for the costs of the lease in relation to any period during which the lessor has failed to comply with section 64 or 65.

“(1B) However, **subsection (1A)** does not apply in relation to fees passed on to a third party unless that third party is an associated person.”

57 Section 102 amended (Enforcement of buy-back transaction prohibited) 5

(1) After section 102(b), insert:

“(ba) enforce any right in relation to the costs of the buy-back transaction; or

“(bb) require the occupier or any other person to make early repayment of money due under the lease on the basis of a failure by the occupier or other person to pay the costs of the buy-back transaction; or” 10

(2) In section 102, insert as subsections (1A) and (1B):

“(1A) Neither the occupier nor any other person is liable for the costs of the buy-back transaction in relation to any period during which the creditor has failed to comply with section 72 or 77. 15

“(1B) However, **subsection (1A)** does not apply in relation to fees passed on to a third party unless that third party is an associated person.”

58 Section 103 amended (Offences) 20

(1) In section 103, before subsection (1), insert:

“(1A) Every person who wilfully and forcibly obstructs a creditor or a creditor’s agent who is lawfully exercising any power to repossess consumer goods in accordance with **Part 3A** commits an offence and is liable on conviction to a fine not exceeding \$10,000.” 25

(2) In section 103(1),— .

(a) after “creditor,”, insert “creditor’s agent,”;

(b) replace “sections 17 to 69, 71 to 74,” with “sections 17 to 74, **83C, 83D, 83J, 83M, 83N,** and **83X** ”. 30

(3) In section 103, in the compare note, after “s 40(1)”, insert “; 1997 No 85 s 19” .

59 Section 105 replaced (When proceedings may be commenced) 35

Replace section 105 with:

“105 When proceedings may be commenced

Despite section 14 of the Summary Proceedings Act 1957, proceedings under section 103 may be commenced at any time within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered. 5
“Compare: 1986 No 121 s 40(3)”.

60 Section 108 amended (Power to order certain persons not to act as creditors, lessors, transferees, or buy-back promoters)

(1) Replace section 108(1)(a)(v) with: 10

“(v) has failed, more than once, to comply with any of the provisions of—

“(A) this Act (including, to avoid doubt, the lender responsibility principles (*see section 9B(2)*): 15

“(B) the Credit Contracts Act 1981; or”.

(2) After section 108(1), insert:

“(1A) However,—

“(a) a conviction that would otherwise fall within subsection (1)(a)(i) must be disregarded for the purposes of this section if— 20

“(i) the conviction was for minor offending; and

“(ii) the convicted person has no other convictions for offences against this Act involving dishonesty:

“(b) a reopening that would otherwise fall within subsection (1)(a)(iv) must be disregarded for the purposes of this section if— 25

“(i) the matter that gave rise to the reopening was minor misconduct; and

“(ii) the buy-back promoter has not been connected with any other reopening of a buy-back transaction under section 120.” 30

61 Section 111 amended (Role and functions of Commission under this Act)

(1) After section 111(2)(a), insert: 35

- “(ab) monitor the conduct of creditors and creditors’ agents in the exercise of their rights under **Part 3A** and under the relevant credit contract; and”.
- (2) In section 111(2)(d), after “creditors,”, insert “debtors,”.
- 62 Section 119 amended (Collateral contracts and linked transactions)** 5
After section 119(3), insert:
“(4) To avoid doubt, for the purposes of this section, **another contract or arrangement** includes a guarantee.”
- 63 Section 124 replaced (Guidelines for reopening credit contracts, consumer leases, and buy-back transactions)** 10
Replace section 124 with:
“**124 Guidelines for reopening credit contracts, consumer leases, and buy-back transactions**
“(1) In deciding whether section 120 applies and whether to reopen 15
a credit contract, consumer lease, or buy-back transaction (an **arrangement**), a court must, to the extent that the following matters are applicable in the particular circumstances, have regard to:
“(a) all the circumstances relating to the making of the ar- 20
rangement, or the exercise of any right or power conferred by the arrangement, or the inducement to enter into the arrangement; and
“(b) whether the creditor has, in relation to any aspect of the arrangement (including the creditor’s conduct in enter- 25
ing into the arrangement), complied with the lender responsibility principles (*see* **section 9B(2)**); and
“(c) the relative bargaining power of the parties; and
“(d) whether, taking account of the particular indebted person’s characteristics (for example, his or her age or 30
physical or mental condition), that person, or the person’s representative, was reasonably able to protect the indebted person’s interests; and
“(e) whether, before entering into the arrangement, the in- 35
debted person obtained legal or other professional advice in relation to that arrangement; and

- “(f) whether the credit provider, or any person acting in the interests of that provider, subjected the indebted person to unfair pressure or tactics or otherwise unfairly influenced the indebted person to enter into the arrangement and, if so, the nature and extent of that unfair conduct; 5
and
- “(g) the terms of comparable arrangements offered by other creditors, including—
 - “(i) the costs of borrowing under those arrangements; 10
and
 - “(ii) whether the arrangement under consideration imposes significantly more onerous terms on the indebted person than would be imposed under those comparable arrangements; and
- “(h) the amount payable by the indebted person; and 15
- “(i) the amount of any payment required as a condition of the full repayment under the arrangement, including the credit provider’s expenses and the likelihood that the amount repaid could be reinvested on similar terms; and
- “(j) the form of the arrangement, including whether it is expressed in plain language, is legible, and is clearly presented; and 20
- “(k) whether the terms of the arrangement—
 - “(i) allow the indebted person to be reasonably able to comply with his or her obligations under the arrangement; and 25
 - “(ii) are reasonably necessary to protect the interests of the credit provider; and
- “(l) the length of time the indebted person has had to remedy any default; and 30
- “(m) if the credit provider has refused to release, or has agreed to release subject to conditions, a security interest relating to the arrangement, the obligations secured by the security interest and the extent of security that remains after the release or conditional release; and 35
- “(n) whether action by the credit provider in relation to the enforcement of, or recovery under, the arrangement was reasonable in the circumstances; and
- “(o) any other matters that the court thinks fit.

- “(2) In **subsection (1)**,—
“**credit provider** means, as the case may be,—
“(a) the creditor in a credit contract:
“(b) the lessor of a consumer lease:
“(c) the transferee in a buy-back transaction 5
“**indebted person** means, as the case may be,—
“(a) a debtor under a credit contract:
“(b) a lessee under a consumer lease:
“(c) an occupier under a buy-back transaction.”
- 64 Section 135 amended (No contracting out) 10**
After section 135(1), insert:
“(1A) Section 56 of the Sale of Goods Act 1908 must be read as subject to this section.”
- 65 Section 138 amended (Regulations) 15**
(1) After section 138(1)(a), insert:
“(ab) exempting any agreement or class of agreement from the application of this Act, and prescribing the terms and conditions (if any) of the exemption.”.
(2) After section 138(1)(d), insert:
“(da) prescribing the particular matters required to meet all or any of the requirements under this Act for publication, disclosure, notice, or other provision of information: 20
“(db) prescribing the form of statements that must be used to meet all or any of the requirements under this Act for publication, disclosure, notice, or other provision of information: 25
“(dc) prescribing how the information to be disclosed must be presented, including, but not limited to, requirements as to the precise manner of disclosure.”.
(3) In section 138(1)(h), after “section 52” insert “or **52A**”. 30
(4) After section 138(1), insert:
“(1A) For the purposes of **subsection (1)(da) to (dc)**, regulations may prescribe different requirements for different types or classes of disclosure, lender, or transaction.”

- 66 New section 141A inserted (Application, savings, and transitional provisions relating to amendments to Act)**
After section 141, insert:
- “141A Application, savings, and transitional provisions relating to amendments to Act** 5
The application, savings, and transitional provisions set out in **Schedule 1AA**, which relate to amendments made to this Act after 1 January 2013, have effect for the purposes of this Act.”
- 67 New Schedule 1AA inserted**
Before Schedule 1, insert the **Schedule 1AA** set out in **Schedule 1** of this Act. 10
- 68 Schedule 1 amended**
- (1) In Schedule 1, replace paragraph (q) with:
- “(q) a description of any security interest that is or may be taken in connection with the contract, including a clear explanation of— 15
- “(i) the nature of the security interest; and
 - “(ii) the property that is, or is proposed to be, subject to the security interest; and
 - “(iii) the extent to which the debtor’s obligations to the creditor are secured by the security interest, including whether, if the creditor’s rights under the security were to be exercised, the debtor would remain indebted to the creditor; and 20
 - “(iv) what the consequences would be if the debtor were to give a security interest, particularly if the debtor were to be in breach of the contract, including whether the property that would be subject to the security interest would be liable to repossession: 25
- “*Disabling devices* 30
- “(qa) whether a disabling device is to be attached to the consumer goods and, if so, a clear description of—
- “(i) how the device functions; and
 - “(ii) when the device might be activated; and
 - “(iii) how, if the consumer goods are required in an emergency situation, the debtor may obtain the use of the goods.”. 35

- (2) In Schedule 1, replace paragraph (s) with:
“(s) a statement of the debtor’s cancellation rights under section 27:
 “Debtor’s right to apply for relief on grounds of hardship
“(sa) a statement of the debtor’s right under section 55, and advice 5
 as to how such an application may be made.”.
- (3) In Schedule 1, after paragraph (u), insert:
 “Dispute resolution
“(ua) the name and contact details of the dispute resolution scheme 10
 of which the creditor is a member (unless the Financial Service Providers (Registration and Dispute Resolution) Act 2008 does not require the creditor to be a member of such a scheme):”.

- 69 New Schedule 3A and Schedule 3B inserted**
After Schedule 3, insert the **Schedule 3A** and **Schedule 3B** 15
set out in **Schedule 2** of this Act.

Subpart 2—Consequential amendments to,
or repeals of, other Acts

- 70 Consequential amendments to, or repeals of, other Acts**
Amend or repeal the Acts specified in **Schedule 3** as set out 20
in that schedule.

Part 2
**Amendments to Financial Service
Providers (Registration and Dispute
Resolution) Act 2008** 25

Subpart 1—Amendments to Financial
Service Providers (Registration and Dispute
Resolution) Act 2008

- 71 Principal Act**
This Part amends the Financial Service Providers (Registra- 30
tion and Dispute Resolution) Act 2008 (the **principal Act**).

- 72 New section 2A inserted (Purposes of this Act)**
After the Part 1 heading, insert:
- “2A Purposes of this Act**
The purposes of this Act are—
- “(a) to promote the confident and informed participation of businesses, investors, and consumers in the financial markets; and
 - “(b) to promote and facilitate the development of fair, efficient, and transparent financial markets.”
- 73 Section 3 amended (Overview)** 10
- (1) In section 3(2), replace “In order to be registered,” with “Within 5 working days of being registered,”.
 - (2) In section 3(3), replace “why the approval might be withdrawn, and how a dispute resolution scheme may be appointed as the reserve scheme” with “and why the approval might be withdrawn”.
 - (3) Repeal section 3(4).
- 74 Section 4 amended (Interpretation)**
- (1) In section 4, definition of **credit contract**, repeal paragraph (b)(ii). 20
 - (2) In section 4, insert in its appropriate alphabetical order:
“**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011”.
- 75 Section 11 amended (No being in business of providing financial service unless registered)** 25
- (1) In the heading to section 11, after “**registered**”, insert “**and member of approved dispute resolution scheme**”.
 - (2) Replace section 11(1) with:
“(1) A person to whom this Act applies must not be in the business of providing a financial service unless that person— 30
 - “(a) is registered for that service under this Part; and
 - “(b) is, if required by section 48, a member of an approved dispute resolution scheme.”

- 76 Section 12 amended (No holding out that in business of providing financial service unless registered)**
- (1) In the heading to section 12, after “**registered**”, insert “**and member of approved dispute resolution scheme**”.
- (2) Replace section 12(1) with: 5
- “(1) A person to whom this Act applies must not—
- “(a) hold out that the person is registered under this Act unless that person—
- “(i) is registered under this Part; and
- “(ii) is, if required by section 48, a member of an approved dispute resolution scheme; or 10
- “(b) hold out that the person is registered in respect of a particular service or entitled, qualified, able, or willing to be in the business of providing a financial service unless that person— 15
- “(i) is registered for that service under this Part; and
- “(ii) is, if required by section 48, a member of an approved dispute resolution scheme.”
- 77 Section 13 amended (Qualifications for registration as financial service provider)** 20
- Repeal section 13(b).
- 78 Section 14 amended (Disqualified person)**
- (1) After section 14(2)(e), insert:
- “(ea) a person who has been convicted within the last 5 years, in a country other than New Zealand, of an offence that is comparable to an offence specified in paragraph (e):” 25
- (2) In section 14(2)(f), after “financing of terrorism”, insert “, whether in New Zealand or elsewhere”.
- 79 Section 15 amended (Application to be registered as financial service provider)** 30
- Repeal section 15(1)(a)(ii).
- 80 New section 15A inserted (Registrar may refer application to FMA)**
- After section 15, insert:

“15A Registrar may refer application to FMA

- “(1) On receipt of an application under section 15, the Registrar may, if the Registrar considers it necessary or desirable, refer the application to the FMA and the FMA may, but is not required to, consider the application. 5
- “(2) If the FMA decides to consider the application,—
- “(a) it must take account of the purposes of this Act and of this Part (*see sections 2A and 9*); and
 - “(b) it may take account of any other matters the FMA considers to be relevant, including— 10
 - “(i) whether the applicant provides, or intends to provide, financial services to any person in New Zealand; and
 - “(ii) whether the applicant provides, or intends to provide, financial services to any person from a place of business in New Zealand. 15
- “(3) If, in the FMA’s view, the applicant should not be registered under section 16(1), the FMA must—
- “(a) comply with **subsection (4)**; and
 - “(b) if, having considered any submission received under **subsection (4)**, the FMA remains of the view that the applicant should not be registered, direct the Registrar to reject the application in accordance with section 16(2); and 20
 - “(c) give its reasons for that direction. 25
- “(4) Before giving a direction under **subsection (3)(b)**, the FMA must—
- “(a) give the applicant—
 - “(i) written notice of its intention to give the direction; and 30
 - “(ii) the reasons why it intends to give that direction; and
 - “(iii) a date (being not less than 10 working days after the date of the notice referred to in **subparagraph (i)**) by which the applicant may make written submissions to the FMA in relation to its proposed direction; and 35
 - “(b) consider any submissions received in accordance with **paragraph (a)(iii)**.

“(5) The Registrar must comply with a direction given under **sub-section (3)(b)**.

“(6) A provider who is not satisfied with a direction given under this section may appeal to the High Court under section 42(1)(a).”

5

81 Section 16 amended (Registration of financial service provider)

(1) Repeal section 16(1)(a)(ii).

(2) After section 16(1)(a)(iv), insert:

“(aa) notify the provider of the Registrar’s decision; and 10

“(ab) require the provider to notify the Registrar, within 5 working days of receiving notification under **paragraph (aa)**, of the name and business address, and of the provider’s membership number in the approved dispute resolution scheme of which the provider is a member; and”.

15

(3) In section 16(2),—

(a) after “financial service provider,” insert “or if directed by the FMA to reject the application,”;

(b) after “decision”, insert “or the FMA’s direction, as the case may be”.

20

82 Section 17 amended (Duty to notify changes relating to financial service provider)

(1) Replace section 17(1)(a)(iii) with:

“(iii) the provider knows that any details on the register are no longer accurate, including information relating to the scheme of which the provider is currently a member:”.

25

(2) Replace section 17(1)(c) with:

“(c) the person responsible for an approved dispute resolution scheme of which a financial service provider was a member, if the person knows that the provider is no longer a member of that scheme, in which case the person responsible must also notify the Registrar of the following matters:

30

35

- “(i) whether that provider’s membership was terminated under **section 63(ba)**; and
- “(ii) whether any remedial action imposed on that provider by the scheme has not been carried out; and 5
- “(iii) whether there is any unresolved complaint about that provider.”
- (3) After section 17(1), insert:
- “(1A) To avoid doubt, the notification obligations in **subsection (1)(a)(iii) and (c)** apply in relation to an approved dispute resolution scheme or a reserve scheme that has been discontinued (whether as a result of approval being withdrawn or for any other reason).” 10
- (4) In section 17(2), after “change”, insert “or, in the case of an approved dispute resolution scheme or a reserve scheme that has been discontinued, within 10 days of that discontinuance”. 15
- 83 Section 18 amended (Deregistration of financial service provider)**
- (1) After section 18(1)(a), insert:
- “(aa) has failed to notify the Registrar of the name, business address, and membership number, as required by **section 16(1)(ab)**; or” 20
- (2) After section 18(1), insert:
- “(1A) The Registrar may, if the Registrar considers it necessary or desirable, refer the consideration of whether a financial service provider should be deregistered to the FMA for the FMA’s direction, in which case **section 18A** applies.” 25
- 84 New section 18A inserted (Consideration of deregistration of financial service provider by FMA)**
- After section 18, insert: 30
- “18A Consideration of deregistration of financial service provider by FMA**
- “(1) If the Registrar refers a matter to the FMA under **section 18(1A)**, the FMA may, but is not required to, consider the referral. 35
- “(2) If the FMA decides to consider the referral,—

- “(a) it must take account of—
- “(i) the matters referred to in section 18(1); and
- “(ii) the purposes of this Act and of this Part (*see sections 2A and 9*); and
- “(b) it may take account of any other matters the FMA considers to be relevant. 5
- “(3) If, having considered the referral, the FMA decides to issue a direction to the Registrar under this section to deregister the financial service provider, the FMA must—
- “(a) give the financial service provider— 10
- “(i) written notice of its intention to give the direction; and
- “(ii) the reasons why it intends to give the direction; and
- “(iii) a date (being not less than 20 working days after the date of the notice referred to in **subparagraph (i)**) by which the applicant may make written submissions to the FMA in relation to its proposed direction; and 15
- “(b) consider any submissions received in accordance with **paragraph (a)(iii)**; and 20
- “(c) either—
- “(i) if the FMA remains of the view that the financial service provider should be deregistered, direct the Registrar to deregister the provider in accordance with section 18; or 25
- “(ii) if the FMA decides that the provider should not be deregistered, advise the Registrar accordingly; and
- “(d) give its reasons for the direction or advice, as the case may be. 30
- “(4) The Registrar must comply with a direction given under **subsection (3)(c)(i)**.
- “(5) A provider who is not satisfied with a direction given under this section may appeal to the High Court under section 42(1)(a). 35
- “(6) Despite section 18(3), sections 19 and 20 do not apply if a financial service provider is deregistered as a result of a direction given under **subsection (3)(c)(i)**.”

- 85 Section 26 amended (Purposes of register)**
In section 26(a)(ii)(B), delete “or the reserve scheme”.
- 86 Section 27 amended (Contents of register)**
- (1) In section 27(b), delete “or the reserve scheme”.
- (2) In section 27, insert as subsections (2) to (4): 5
- “(2) In addition to the information referred to in subsection (1), the Registrar may, if the Registrar thinks it is appropriate, insert a note of warning in the register in relation to a registered person if—
- “(a) a request for information has been made by the Registrar under this Act in relation to that person; or 10
- “(b) if the Registrar or the FMA is considering any matters relating to the deregistration of that person under this Act.
- “(3) The Registrar must remove a note of warning inserted under **subsection (2)** if the Registrar is satisfied that the reasons for inserting it no longer apply. 15
- “(4) Civil proceedings may not be brought against the Registrar in respect of things done in good faith in the performance or intended performance of the Registrar’s functions under **subsection (2) or (3)**.” 20
- 87 Section 34 amended (Sharing information with other persons or bodies)**
Repeal section 34(4)(d).
- 88 Section 37 amended (Registrar’s inspection powers)** 25
- (1) After section 37(1)(c), insert:
- “(ca) is ordinarily resident in New Zealand; or
- “(cb) has a place of business in New Zealand or
- “(cc) is in the business of providing a financial service; or”.
- (2) After section 37(2)(a), insert: 30
- “(aa) ascertaining whether information provided to the Registrar is correct:
- “(ab) requiring a person, in relation to information provided to the Registrar, to—
- “(i) confirm that the information is correct; or 35

- “(ii) correct the information:
 - “(ac) specifying—
 - “(i) a particular form in which the confirmation or correction referred to in **paragraph (ab)** must be provided; and 5
 - “(ii) a date by which the confirmation or correction must be provided; and
 - “(iii) whether the confirmation or correction must be verified by the production of original documents or certified copies of original documents or by a statutory declaration.” 10
 - (3) In section 37(6), after “subsection (2)(a)”, insert “to **(ab)** (including compliance with the specifications in **subsection (2)(ac)**)”.
- 89 Section 42 amended (Appeals from Registrar’s decisions) 15**
 - (1) In the heading to section 42, after “**decisions**”, insert “**and FMA directions**”.
 - (2) In section 42(1), after “decisions of the Registrar”, insert “, or directions by the FMA to the Registrar in relation to the decisions referred to in paragraphs (a) and (b),” 20
- 90 Section 48 amended (Financial service provider must be member of dispute resolution scheme)**
 - (1) In section 48(1), replace “either an approved dispute resolution scheme, or the reserve scheme,” with “an approved dispute resolution scheme” 25
 - (2) In section 48(2), delete “or the reserve scheme”.
- 91 Section 49F amended (Members of dispute resolution scheme must comply with rules and binding resolutions)**

In section 49F(1), delete “or the reserve scheme”.
- 92 Section 49G amended (Offence to fail to comply with District Court order) 30**

In section 49G(1), delete “or the reserve scheme”.

93 Section 50 amended (Meaning of approved dispute resolution scheme)

In section 50, insert as subsection (2):

“(2) If an interim dispute resolution scheme is appointed under **section 79AA**, references in this Act to an approved dispute resolution scheme are, in relation to the interim dispute resolution scheme, to be read as references to the interim dispute resolution scheme. 5

“(3) However, nothing in sections 51 to 61 applies in relation to the interim dispute resolution scheme.” 10

94 Section 52 amended (Mandatory considerations for approval)

After section 52(1)(d), insert:

“(da) whether the scheme will accept all types of financial service providers as members and, if not, whether there are other approved schemes that cover all types of financial service providers.” 15

95 Section 56 amended (Withdrawal of approval)

After section 56(3), insert:

“(3A) However, despite subsection (3), the Minister is not required to withdraw approval unless the person responsible for the scheme has, at the time of the request,— 20

“(a) given the Minister—

“(i) 3 months’ notice of the date on which the proposed withdrawal of approval is to take place; or 25

“(ii) any lesser notice period agreed to by the Minister; and

“(b) informed the Minister of the arrangements that it has made to transfer, or to facilitate the transfer of, members of the existing scheme to another approved dispute resolution scheme or schemes.” 30

96 Section 57 amended (Notice of intention to withdraw approval)

(1) After section 57(2)(b), insert:

- “(ba) the proposed method for transferring members of the scheme to another approved dispute resolution scheme or schemes; and”.
- (2) After section 57(3), insert:
- “(4) The Minister’s notice may also require the person responsible for the scheme to— 5
- “(a) notify members of the scheme of the proposed method for transferring those members to another approved dispute resolution scheme or schemes; and
- “(b) make clear to those members that, instead of being transferred to another scheme in accordance with the proposed method of transfer, the members may apply to join any other approved dispute resolution scheme; and 10
- “(c) remind each of its members of the member’s obligation— 15
- “(i) to continue to be a member of an approved dispute resolution scheme, as required by section 48; and
- “(ii) to notify the Registrar that the member has transferred to another approved dispute resolution scheme, and details of that scheme, as required by section 17.” 20
- 97 Section 61 replaced (Effect of withdrawal of approval on members of dispute resolution scheme) 25**
- Replace section 61 with:
- “61 Effect of withdrawal of approval on members of dispute resolution scheme**
- When a dispute resolution scheme’s approval is withdrawn, members of the scheme— 30
- “(a) cease to be members of that scheme; and
- “(b) must ensure that,—
- “(i) the members’ obligations under section 17 are complied with; and
- “(ii) the members continue to comply with section 48.” 35

98 Section 63 amended (Rules about approved dispute resolution scheme)

- (1) In section 63(a), delete “(all providers of that type must be eligible)”.
- (2) After section 63(a), insert: 5
“(aa) that the types of financial service providers referred to in paragraph (a) must be accepted as members of the scheme, unless—
“(i) refused membership for a reason set out in **paragraph (ba)**; or 10
“(ii) a provider is not eligible for registration under this Act.”.
- (3) After section 63(b), insert:
“(ba) that membership may be refused or terminated because of an applicant’s, or member’s,— 15
“(i) material or persistent breach of a scheme’s rules:
“(ii) failure to take remedial action imposed on that provider by a scheme (whether or not that scheme still exists):
“(iii) failure to pay a scheme’s membership fee: 20
“(iv) failure to continue to be a type of financial service provider that may be a member of the scheme.”.
- (4) Replace section 63(g) with:
“(g) the types of complaints that the scheme is able to deal with (which must include complaints relating to repos- 25
sessions under **Part 3A** of the Credit Contracts and Consumer Finance Act 2003):”.
- (5) In section 63(i), after “compensate”, insert “including, in the case of a complaint relating to a repossession under **Part 3A** of the Credit Contracts and Consumer Finance Act 2003, com- 30
pensation for non-financial loss, stress, humiliation, and inconvenience,”.
- (6) Repeal section 63(k).

99 Section 66 amended (Minister’s consideration of change of rules)

- (1) In section 66(1), replace “the Minister may” with “the Minister must”. 35

- (2) Replace section 66(3) with:
- “(3) The Minister must comply with subsection (1) within 45 working days of the notification of the change of rules unless the Minister, within those 45 working days,—
- “(a) requests further information from the person responsible for the scheme (in which case, the Minister must comply with subsection (1) within 45 working days after receipt of that further information); or
- “(b) advises the person responsible for the scheme that a period of more than 45 working days is required to consider the change (in which case, the Minister must specify the time within which he or she will comply with subsection (1)).”
- 100 Section 67 amended (Duty to co-operate and communicate information in certain circumstances)** 15
In section 67(a), delete “and with the reserve scheme”.
- 101 Subpart 3 of Part 3 repealed**
Repeal subpart 3 of Part 3.
- 102 Cross-heading above section 78 amended** 20
In the cross-heading above section 78, delete “*and reserve scheme*”.
- 103 Section 78 amended (Publication of details relating to approved dispute resolution schemes and reserve scheme)**
- (1) In the heading to section 78, delete “**and reserve scheme**”.
- (2) Replace section 78(1)(a) with: 25
- “(a) must ensure that the names of approved dispute resolution schemes and the name and business address of the person responsible for each scheme are available for inspection by the public, free of charge, at the head office of the Ministry (during ordinary office hours), and 30
on an Internet site that is publicly available (at all reasonable times):”.
- (3) Repeal section 78(2).

104 Section 78A amended (Levy)

- (1) Replace section 78A(2) with:
“(2) The purpose of the levy is to meet, in whole or in part, the costs of the Ministry’s functions under this Part (including the costs of collecting the levy).” 5
(2) Repeal section 78A(4)(a).

105 Section 79 amended (Regulations under this Part)

- (1) In section 79(1)(a), replace “either an approved dispute resolution scheme or the reserve scheme,” with “an approved dispute resolution scheme”. 10
(2) After section 79(1)(a), insert:
“(aa) providing rules for an interim dispute resolution scheme:”.
(3) After section 79(1A), insert:
“(1B) The Minister must not recommend the making of regulations 15
under **subsection (1)(aa)** unless the Minister—
“(a) is satisfied that—
“(i) members of an approved dispute resolution scheme that has ceased to be an approved scheme would be, or are, unable to reasonably become 20
members of another approved dispute resolution scheme; and
“(ii) the interim scheme will be consistent with the purpose of Part 3 (*see* section 47); and
“(iii) the interim scheme will be capable of providing 25
the scheme for the purpose of Part 3; and
“(iv) the rules of the interim scheme will comply with section 63; and
“(b) has consulted the FMA and any other persons that the Minister considers are likely to be substantially affected 30
by the establishment of an interim dispute resolution scheme.
“(1C) However, a failure to consult with the persons referred to in **subsection (1B)(b)** does not affect the validity of the regulations.” 35

106 New section 79AA inserted (Appointment of interim dispute resolution scheme)

After section 79, insert:

“79AA Appointment of interim dispute resolution scheme

“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister,— 5

“(a) appoint a dispute resolution scheme to fulfil the functions of the interim dispute resolution scheme (with or without conditions) for a term recommended by the Minister: 10

“(b) revoke an appointment made under **paragraph (a)**.

“(2) The Minister may recommend an Order in Council for the purpose described in **subsection (1)(a)** only after complying with **section 79(1B)**.

“(3) The Minister may recommend an Order in Council for the purpose described in **subsection (1)(b)** if the Minister is satisfied that the scheme is no longer required.” 15

107 Section 79A amended (Pecuniary order for contravening wholesale certification requirement)

In section 79A(3)(b), delete “or the reserve scheme”. 20

Subpart 2—Consequential amendment to other Act

108 Consequential amendment to other Act

Amend the Act specified in **Schedule 4** as set out in that schedule. 25

Schedule 1

s 67

New Schedule 1AA inserted

Schedule 1AA

ss 5A, 141A

**Application, savings, and transitional
provisions relating to amendments made
to this Act after 1 January 2013** 5

1 Interpretation

In this schedule,—

2013 Act means the Credit Contracts and Consumer Finance
Amendment Act **2013** 10

principal Act means the Credit Contracts and Consumer Fi-
nance Act 2003

2 Application of amendments to existing agreements

(1) Except as provided for in **subclause (2)**,—

(a) the amendments to the principal Act in **Part 1** of the 15
2013 Act do not apply to existing agreements; and

(b) the principal Act and the Credit (Repossession) Act
1997, as they were immediately before the commence-
ment of the 2013 Act, continue to apply for the purposes
of those agreements. 20

(2) The amendments referred to in **subclause (1)** apply in rela-
tion to existing agreements as follows:

(a) the amendments relating to request disclosure apply
only in relation to requests made on or after the com-
mencement of the 2013 Act: 25

(b) the amendments relating to disclosure of contract vari-
ations apply only to variations made on or after the com-
mencement of the 2013 Act:

(c) the amendments relating to hardship applications apply
only to applications made on or after the commence-
ment of the 2013 Act: 30

(d) **Part 3A** of the principal Act (as inserted by **section
43** of the 2013 Act) applies only in relation to reposses-
sions commenced on or after the commencement of the
2013 Act: 35

Schedule 1AA—*continued*

- (e) the lender responsibility principles (*see* **section 9B(2)** of the principal Act, as inserted by **section 9** of the 2013 Act) apply only to a variation of a contract where the variation is made on or after the commencement of the 2013 Act: 5
 - (f) the amendments made by **sections 24 to 27** of the 2013 Act (fees) apply only to fees incurred on or after the commencement of the 2013 Act.
 - (3) For the purposes of **subclause (2)(d)**, a repossession is commenced when a repossession warning notice is served (*see* **section 83D** of the principal Act, as inserted by **section 43** of the 2013 Act). 10
 - (4) In this clause, **existing agreement** means any arrangement—
 - (a) to which the principal Act (as it was before the 2013 Act came into force) applies; and 15
 - (b) that was entered into before the 2013 Act came into force.
-

Schedule 2

s 69

**New Schedule 3A and Schedule 3B
inserted**

Schedule 3A

s 83D(3)(b)

**Key information concerning repossession
warning notice**

5

The following information is the key information concerning a consumer credit contract as is applicable:

- (a) the full name and address of the debtor and address from which goods will be repossessed: 10
- (b) the full name and contact details of the creditor:
- (c) the nature and amount of default under a specified credit contract:
- (d) a statement informing the debtor that the debtor can reinstate or settle the agreement: 15
- (e) information about reinstatement of the agreement, including—
 - (i) the amount of arrears of instalments, including interest and other charges; and
 - (ii) the actions that the debtor must take to remedy breaches of agreement: 20
- (f) information about settlement of the agreement, including—
 - (i) the balance of the advance outstanding, together with interest and charges payable under the agreement; and
 - (ii) the obligations that the debtor must perform:
- (g) information about how, where, and by when the debtor must make payments, and how the debtor may contact the creditor: 25
- (h) a statement setting out that if the agreement is not reinstated or settled, the goods specified in the notice will be repossessed:
- (i) sufficient information to enable the identification of the goods to be repossessed: 30
- (j) a statement informing the debtor that the debtor has the right to voluntarily return the goods specified in the warning notice, and that the process and rules after the return of those goods will be in accordance with the process and rules that apply after a repossession: 35
- (k) a checklist of the conditions that must be met before a creditor has the right to repossess goods, or has the authority to enter premises to repossess those goods, including,—

Schedule 3A—*continued*

- (i) in relation to a right to repossess goods,—
 - (A) that there is a credit contract that provides that the creditor has a security interest in the goods to be repossessed; and
 - (B) that credit contract— 5
 - specifically identifies those goods; and
 - gives the creditor the right to enter the debtor’s premises and to repossess those goods; and
 - (C) that the debtor is in default; and 10
 - (D) that a repossession warning notice must have been given to the debtor at least 15 days prior to the repossession, and confirmation that such a notice has been given:
- (ii) in relation to an authority to enter premises to repossess goods,— 15
 - (A) that the person carrying out the repossession is certified and, if a creditor’s agent is undertaking the repossession, that person has the authority to repossess the goods on behalf of the creditor; and 20
 - (B) if the person carrying out the repossession is entering premises outside the hours between 6 am and 9 pm, the creditor has the prior written consent of the debtor to do so:
- (l) details about the debtor’s right to seek relief in circumstances of hardship: 25
- (m) details about what the debtor needs to do if he or she disputes some aspect of the proposed repossession, including—
 - (i) details about the dispute resolution process; and
 - (ii) that, if a complaint has been made, repossession may not proceed until that complaint has been resolved; and 30
 - (iii) the contact details of the dispute resolution scheme of which the creditor is a member:
- (n) where a repossession warning notice is sent to a guarantor, advice to the guarantor that— 35
 - (i) the notice is being sent to the guarantor in his or her capacity as guarantor of the named debtor; and

Schedule 3A—*continued*

- (ii) the guarantor has rights in relation to the proposed repossession, details of those rights, and what the guarantor may do to protect his or her position.

Schedule 3B	s 83P(2)(b)
Key information concerning post-repossession notice	5

The following information is the key information concerning a consumer credit contract as is applicable:

- (a) the full name and address of the debtor:
- (b) the full name and contact details of the creditor: 10
- (c) the date of the repossession:
- (d) a list of the goods repossessed:
- (e) the creditor's estimate of the value of the goods repossessed:
- (f) a statement informing the debtor that the debtor may reinstate or settle the agreement, and what the debtor must do to reinstate or settle the agreement, including— 15
 - (i) in relation to the reinstatement of the agreement,—
 - (A) the creditor's estimate of the total amount required to be paid to reinstate the agreement; and
 - (B) details of how this total is reached, including the amount of arrears in payments of the instalments due (including interest and other charges), and a breakdown of the costs of the actions that the debtor must take to remedy the breach of the agreement: 20
 - (ii) in relation to the settlement of the agreement,—
 - (A) the creditor's estimate of the total amount required to be paid to settle that agreement and the amounts that may comprise this total: 25
 - (B) details of how this total is reached, including the balance of the advance outstanding (together with interest and charges payable under the agreement), and a breakdown of the costs of— 30
 - repossession:

Schedule 3B—*continued*

- holding, storage, repairs, or maintenance of the goods:
- valuing and preparing the goods for sale:
- redelivery of the goods:
- remedying breaches of the agreement; and 5
- (C) the obligations that the debtor must fulfil to settle the agreement:
- (g) a statement setting out that, if the agreement is not reinstated or settled,—
 - (i) the repossessed goods will be sold; and 10
 - (ii) in that case, the debtor will be—
 - (A) liable for the difference between the debtor’s liability and the net proceeds of the sale of the goods; or
 - (B) if the net proceeds of the sale of the goods are more than enough to cover the liability, entitled to a refund: 15
- (h) details about the debtor’s right to seek relief in circumstances of hardship; and
- (i) details about what the debtor needs to do if he or she disputes some aspect of the proposed repossession, including— 20
 - (i) details about the dispute resolution process; and
 - (ii) that, if a complaint has been made, repossession may not proceed until that complaint has been resolved; and
 - (iii) the contact details of the dispute resolution scheme of which the creditor is a member: 25
- (j) where a post-repossession notice is sent to a guarantor, advice to the guarantor that—
 - (i) the notice is being sent to the guarantor in his or her capacity as guarantor of the named debtor; and 30
 - (ii) the guarantor has rights in relation to the repossession, details of those rights, and what the guarantor may do to protect his or her position.

Schedule 3

s 70

**Consequential amendments to, or repeals
of, other Acts**

Credit (Repossession) Act 1997 (1997 No 85)

Repeal. 5

Disputes Tribunals Act 1988 (1988 No 110)

In Schedule 1, Part 2, repeal the item relating to the Credit (Repossession) Act 1997.

Electronic Transactions Act 2002 (2002 No 35)

In the Schedule, Part 2, replace the item relating to the Credit (Repossession) Act 1997 with: 10

“**Credit Contracts and Consumer Finance Act 2003 (2003 No 52)**
“**Section 83J**”.

Income Tax Act 2007 (2007 No 97)

In section FA15(4)(a), replace “section 31(2)(c) and (d) of the Credit (Repossession) Act 1997” with “**section 83Y(2)** of the Credit Contracts and Consumer Finance Act 2003”. 15

Insolvency Act 2006 (2006 No 55)

In section 129, replace “**cash price, consumer goods, creditor, debtor, and post-possession notice** have the same meanings as in section 2(1) of the Credit (Repossession) Act 1997” with “**cash price, consumer goods, creditor, debtor, and post-repossession notice** have the same meanings as in section 5 of the Credit Contracts and Consumer Finance Act 2003”. 20

In section 131(1)(a), replace “section 30 of the Credit (Repossession) Act 1997” with “**section 83X** of the Credit Contracts and Consumer Finance Act 2003”. 25

In section 131(1)(b), replace “section 25 of the Credit (Repossession) Act 1997” with “**section 83S** of the Credit Contracts and Consumer Finance Act 2003”. 30

In section 131(1)(b), replace “section 31” with “**section 83Y**”.

In section 131(2), replace “Credit (Repossession) Act 1997” with “**Part 3A** of the Credit Contracts and Consumer Finance Act 2003”.

Insolvency Act 2006 (2006 No 55)—*continued*

In section 132(2), replace “section 35 of the Credit (Repossession) Act 1997” with “**section 83ZG** of the Credit Contracts and Consumer Finance Act 2003”.

In section 132(3)(a)(ii), replace “section 33 of the Credit (Repossession) Act 1997” with “**section 83ZC** of the Credit Contracts and Consumer Finance Act 2003”. 5

In section 132(3)(a)(ii), replace “sections 20 to 36 of the Credit (Repossession) Act 1997” with “**subpart 5 of Part 3A** of the Credit Contracts and Consumer Finance Act 2003”.

Personal Property Securities Act 1999 (1999 No 126) 10

In section 44, before the example, insert as subsection (2):

“(2) However, in relation to an appropriation of after-acquired property that is consumer goods, such appropriation—

“(a) must be made by the debtor, either personally or by the debtor’s agent; and 15

“(b) cannot be made by the creditor acting as the debtor’s attorney or agent.”

Replace section 105 with:

“105 Application of this Part

“(1) Except as provided for in **subsection (2)**, this Part applies to all security interests. 20

“(2) This Part does not apply to the following security interests:

“(a) security interests created or provided for by—

“(i) a transfer of an account receivable or chattel paper; or 25

“(ii) a lease for a term of more than 1 year that does not secure payment or performance of an obligation; or

“(iii) a commercial consignment that does not secure payment or performance of an obligation: 30

“(b) security interests in consumer goods to which the Credit Contracts and Consumer Finance Act 2003 applies, other than security interests in relation to accessions (*see section 83F* of that Act).”

**Private Security Personnel and Private Investigators Act 2010
(2010 No 115)**

In section 4, insert in their appropriate alphabetical order:

“**consumer goods** has the same meaning as in section 5 of the Credit
Contracts and Consumer Finance Act 2003 5

“**creditor** has the same meaning as in section 5 of the Credit Con-
tracts and Consumer Finance Act 2003

“**repossession agent** has the meaning given to it in **section 8A**

“**repossession employee** has the meaning given to it in **section
16A**” . 10

New section 8A: insert after section 8:

“**8A Meaning of repossession agent**

In this Act, **repossession agent** means a person who for valu-
able consideration, either by himself or herself or in partner-
ship with any other person, carries on a business of repossess- 15
ing consumer goods on behalf of a creditor.”

New section 16A: insert after section 16:

“**16A Meaning of repossession employee**

In this Act, **repossession employee**—

“(a) means an individual who in the course of his or her em- 20
ployment, or engagement as a contractor, by a reposses-
sion agent or a creditor repossesses, or holds himself or
herself out as being authorised to repossess, consumer
goods; and

“(b) includes a creditor who carries out a repossession him- 25
self or herself, regardless of whether the creditor is, in
fact, an employee.”

In section 20(1), before “17”, insert “16A,” in each place.

After section 23(1)(d), insert:

“(da) a repossession agent.”. 30

After section 44(1)(d), insert:

“(da) a repossession employee.”.

After section 45(1), insert:

“(1A) No person, not being the holder of a licence, may employ,
engage as a contractor, or permit to act as a repossession em- 35
ployee any individual who does not hold a certificate of ap-
proval as a repossession employee.”

**Private Security Personnel and Private Investigators Act 2010
(2010 No 115)**—*continued*

In section 69, after “engages any”, insert “repossession employee or”.

In section 70, after “engages any”, insert “repossession employee or” in each place.

In section 110(1)(a), replace “a property guard,” with “a repossession agent, property guard,”. 5

In section 110(1)(b), replace “a property guard employee,” with “a repossession employee, property guard employee,”.

In section 114(1)(k), after “or engage”, insert “repossession employees or”. 10

In the heading to section 126, replace “**personal guard or crowd controller**” with “**repossession agent, personal guard, or crowd controller**”.

In section 126, before subsection (1), insert:

“(1A) A person who is a repossession agent within the meaning of **section 8A** is not required to hold a licence under this Act in respect of that class of business until the specified date.” 15

After section 126(2), insert:

“(2A) A person who performs the work of a repossession employee described in **section 16A** is not required to hold a certificate of approval under this Act in respect of that class of work until the specified date.” 20

Property Law Act 2007 (2007 No 91)

In section 77, replace “the Credit (Repossession) Act 1997” with “**Part 3A** of the Credit Contracts and Consumer Finance Act 2003”. 25

Schedule 4

s 108

Consequential amendment to other Act

Securities Trustees and Statutory Supervisors Act 2011

In section 16(2)(c)(ii), delete “and (b)”.