

26 February 2024

Attention: [REDACTED]
Dolbak Finance Limited
49 O'Rorke Road
Penrose
Auckland 1061

By email only: [REDACTED]

Dear [REDACTED]

Outcome of Commerce Commission's Credit Contracts and Consumer Finance Act 2003 investigation: Warning

1. The Commerce Commission (Commission) has concluded its investigation into Dolbak Finance Limited (Dolbak) under the Credit Contracts and Consumer Finance Act 2003 (CCCF Act).
2. The Commission has determined that, in the circumstances of this case, it is appropriate to issue Dolbak with a warning instead of filing court proceedings.¹ We note that a warning is not a final finding of non-compliance. Only the Courts can decide whether a breach of the law has occurred.²

Summary of the investigation

3. On 17 February 2022, the Commission received a complaint from [REDACTED] about how Dolbak conducted the required affordability assessments when providing further credit advances to a particular customer (Customer A). The Commission then opened an investigation and has considered whether Dolbak had complied with the affordability assessment, record keeping and disclosure of agreed changes requirements in the CCCF Act.
4. While investigating Customer A's complaint, the Commission has also considered whether the standard form variation disclosure provided by Dolbak to 163 customers

¹ Please refer to the Commission's published *Enforcement Response Guidelines*, available [here](#).

² The potential penalties for each of the likely breaches are set out at **Annexure A**.

(including Customer A) between 1 December 2021 and November 2022 complied with the CCCF Act requirements for the disclosure of agreed changes.

5. Dolbak has provided information in response to requests from the Commission and participated in a voluntary interview with Commission investigators. The information provided by Dolbak has been considered in determining the outcome of this investigation.

Findings

6. Following our investigation, the Commission considers that Dolbak is likely to have breached the following CCCF Act requirements:³
 - 6.1 section 9C(3)(a)(ii): responsible lending obligations (the maximum pecuniary penalty being a fine not exceeding \$600,000) - Dolbak did not conduct a satisfactory affordability assessment when advancing additional credit to Customer A on 28 July 2020, 10 December 2020, 25 June 2021, and 18 January 2022
 - 6.1.1 regulation 4AG of the Credit Contracts and Consumer Finance Regulations 2004 allows a lender to effectively forgo an affordability assessment if it is obvious in the circumstances of the particular case that the borrower will make the payments under the agreement without suffering substantial hardship, so as to make the inquiries required by regulation 4AF disproportionate;
 - 6.1.2 Dolbak relied on this exception as it considered it was obvious when further advances to an existing customer was affordable, if the borrower had a good past payment history and there was no change to the regular loan payment amount and frequency. The additional advance instead increased the duration of the loan;
 - 6.1.3 our view is that Dolbak was not able to rely on section 4AG of the Regulations, as in line with the Responsible Lending Code, regulation 4AG sets a higher threshold than the process adopted by Dolbak, and we consider that past repayment history is not determinative of affordability;
 - 6.2 section 9CA(1): record keeping obligations (the maximum pecuniary penalty for a being a fine not exceeding \$600,000) – in relation to Customer A, Dolbak did not keep adequate records of the affordability assessments performed when additional credit was advanced to Customer A; and
 - 6.3 section 22(1): disclosure of agreed changes (the maximum penalty being a fine not exceeding \$600,000). Between 1 December 2021 and November 2022, the standard form disclosure of agreed changes provided by Dolbak to 163 customers did not contain a number of key provisions required by the

³ The applicable law that has likely been breached is set out at **Annexure A**.

CCCF Act – including the increased term of the loan, payment amounts and number of payments, amount of interest payable and method of calculating interest payable.

Warning

7. After considering the factors set out in our *Enforcement Response Guidelines*, the Commission has decided it is appropriate to conclude our investigation into Dolbak by issuing this warning letter. When making our decision, the Commission has taken the following key factors into account:
 - 7.1 in November 2022, after attending a Commission lender seminar, Dolbak corrected its affordability assessment procedures to ensure compliance with the CCCF Act;
 - 7.2 Dolbak has voluntarily remediated the full cost of borrowing of \$75,767 to all 163 affected customers (\$12,620 was transferred directly to the bank accounts of the customers that are no longer clients of Dolbak, the remaining \$63,147 was written off the existing customers' loans). Dolbak also sent an apology letter to the affected customers; and
 - 7.3 Dolbak's loan book has been sold to another company with a view that Dolbak's ledger will run down over the next 36 months and Dolbak will cease to exist as a lender afterwards.
8. The Commission hereby warns Dolbak for the likely breaches identified above in paragraph [6]. We will not be bringing any further legal action in relation to this matter. With this said, legal action remains available to the Commission in the future if the conduct continues or is repeated.
9. This warning letter is public information and will be published on the Commission's case register on our website. It may be drawn to the attention of the Court in any subsequent proceedings brought by the Commission against Dolbak. We may also make public comment about our investigation and conclusions, including issuing a media release or making comment to media.
10. This warning letter will be available to the Commission's Credit Certification team for their consideration.⁴ It will form part of the information that the Commission's certification team considers, should in future Dolbak make another application in for fit and proper person certification under section 131F of the CCCF Act.
11. Finally, our decision to issue this warning letter does not preclude any other person or entity from taking private action through the Courts.

⁴ More information on the role of our Credit Certification team is available [here](#).

Further information

12. We have published a series of fact sheets and other resources to help businesses comply with the CCCF Act and the other legislation we enforce. These are available on our website at www.comcom.govt.nz.
13. You can also view the CCCF Act and other legislation at www.legislation.co.nz.
14. Thank you for your assistance with this investigation. Please contact [REDACTED] [REDACTED], by email at [REDACTED] if you have any questions about this letter.

Ngā mihi nui,

[REDACTED]

[REDACTED]
Commerce Commission

Annexure A: Applicable Law and maximum penalties

Application of the CCCF Act

The CCCF Act protects consumers when they borrow money or buy goods on credit. It sets out the rules that must be followed by creditors when they provide loans to consumers in New Zealand.

The following provisions of the CCCF Act are relevant to the Commission's investigation into Dolbak, as covered in the warning letter.

Records about inquiries made

Section 9CA(1) states:

(1) The lender must keep records about the inquiries made by the lender under section 9C (including the results of those inquiries).

Maximum pecuniary penalty: The amount of any pecuniary penalty must not, in respect of each act or omission, exceed, —

- (a) *in the case of an individual, \$200,000; or*
- (b) *in any other case, \$600,000.*

Lender responsibility principles

Section 9C(3)(a)(ii) states:

(3) The lender responsibilities are that a lender must, in relation to an agreement with a borrower, —

(a) make reasonable inquiries, before entering into the agreement, and before making a material change referred to in subsection (8), so as to be satisfied that it is likely that—

...

(ii) the borrower will make the payments under the agreement without suffering substantial hardship...

Maximum pecuniary penalty: The amount of any pecuniary penalty must not, in respect of each act or omission, exceed, —

- (c) *in the case of an individual, \$200,000; or*
- (d) *in any other case, \$600,000.*

Disclosure of agreed changes

Section 22(1)(a) states:

(1) Every creditor under a consumer credit contract must ensure that disclosure of the following information is made to every debtor under the contract if the parties to the contract agree to change the contract:

Every creditor under a consumer credit contract must ensure that disclosure of the following information is made to every debtor under the contract if the parties to the contract agree to change the contract:

(a) full particulars of the change:

(b) any other information prescribed by regulations to be information that must be disclosed under this section.

Maximum penalty:

(a) in the case of an individual, a fine not exceeding \$200,000; and

(b) in the case of a body corporate, a fine not exceeding \$600,000.