



FINANCIAL SERVICES FEDERATION

6 May 2021

DRS Review, Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment (MBIE)
PO Box 2526
Wellington 6140
New Zealand

By email to: DRSReview@mbie.govt.nz

Dear Madam/Sir

Re: Review of the Approved Financial Dispute Resolution Schemes Rules

Thank you for the opportunity for the Financial Services Federation (FSF) to comment on the Review of the Approved Financial Dispute Resolution Scheme Rules. The FSF is grateful to the Ministry of Business, Innovation & Employment (MBIE) for their efforts to progress consumer finance in a direction that is more equitable and consistent; this Discussion document being an exemplary illustration of such efforts.

By way of background, the FSF is the industry body representing responsible non-bank lenders, fleet and asset leasing providers and credit-related insurance providers. We have over 60 members and affiliates providing these products to more than 1.5 million New Zealand consumers and business. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A. Data relating to the extent to which FSF members (excluding Affiliate members) contribute to New Zealand consumers, society and business is attached as Appendix B.

The nature of those who we represent, warrants a submission on this consultation. Our members belong to various Approved Dispute Resolution Schemes, predominantly the Insurance and Financial Services Ombudsman Scheme (IFSO) and Financial Services Complaints Limited (FSCL). Amendments to such schemes are consequently of particular interest to our members.

The submission below takes a generally positive stance on the objectives and goals for this Review. The FSF echoes statements that there is no evidence to suggest that the four-scheme model may not be working as intended or not delivering the right consumer outcomes. However, the FSF recognises the opportunity for the realignment of the rules to promote access to fairer and more effective redress.

Although the opportunity for the facilitation of redress presents itself in this review, the FSF does question whether the degree of changes proposed in this Discussion Document are justified by the potential and current threats of consumer harm. This will be particularly important to understand and determine before finalising the options for reform on each topic.

The submission below does not contain any confidential information.

Question 1: What is FSF's feedback on the proposed objective and criteria for the review? What is the FSF's feedback on the proposed weighting of the criteria?

The FSF does not disagree with the proposed objectives and criteria for the review. The FSF is in agreement that the principles in the Act should lead regulation, however, would like to encourage the inclusion of research, evidence, and substantive justification as to the need for amendment to the jurisdictional rules.

The FSF is pleased to see that the review does not wholly focus on high level principles or rationale and incorporates some evidence and relevant factual information. The FSF endorses reviews that take such an approach, those which are focussed on substantiated information, as opposed to reviews which are based on high level thinking, and we therefore would encourage such further information to be acquired in the progress of this review.

The proposed weighting of the criteria also seems logical and straightforward. The FSF does not have any opposition to giving the more relevant principles more weight in addressing the problems identified and assessing options for reform.

Financial cap

Question 2: Is the FSF aware of any instances of consumer harm due to the issues outlined?

The FSF is unaware of any instances where consumer harm has occurred as a result of the problems with the current schemes.

Question 3: Does the FSF have any feedback on the problems outlined?

The FSF recognises the potential for consumer harm to occur within the current four-scheme model and their varied financial caps. The FSF particularly acknowledges the exponential growth in the prices of financial products (with particular concern to housing prices), the material differences in financial caps between schemes, and their potential to impact consumer equity and access to redress.

Adjusting the financial cap to be consistent and reflective of today's financial products seems to be the sensible and logical approach to take, and the FSF does not have any objection to this.

Question 4: Do you have any feedback on Option one?

The FSF agrees that the current financial caps are not reflective of the financial products on offer today, as stated in Question 3.

The FSF sees no argument against a consistent financial cap applied across all approved dispute resolution schemes.

Question 5: are there any costs or benefits of Option one?

The FSF acknowledges the cost and benefits outlined in the Discussion Document to be helpful, however, queries the accuracy of the forecast increase in caseload as a result of an increase in the financial cap.

The FSF does not believe that a consumer suffering a loss that may be more than the current \$200,000.00 cap would not proceed with any action because of this financial cap. It is hard to envisage that a consumer who may be on the cusp of a loss totalling over \$200,000.00 would halt their intention of lodging a dispute purely because the potential amount may not be representative of their true loss. Although the financial cap may be unjust and unrepresentative, \$200,000.00 is nonetheless a significant amount and this cap should not be overestimated as a cause for consumers to not pursue a dispute.

The FSF believes the main benefit to an increase to the financial cap, would be its consistency and better representation of today's financial product market.

Question 6: Do you have any feedback on Option two?

It is reasonable to cap the amount a consumer may receive for losses at an amount not extraordinarily large, to prevent misuse and damage to entities' financial stability and capability to proceed with business, potentially impacting the larger economy. However, in cases where a weekly payment is more appropriate and representative of the losses suffered, or the losses suffered exceeds the financial cap, then the FSF agrees that an avenue for payments totalling an amount larger than the financial cap is necessary.

Although the FSF is in general agreement with the principle of a weekly payment alternative, we seek clarification as to what Question 6 is actually asking. Is MBIE asking for submitters' views on the possibility of replacing the lump sum financial cap in its entirety with a weekly payment alternative across all schemes? Or is the question asking whether a weekly payment alternative should be available across all schemes, as an alternative option to the lump sum financial cap?

The FSF would not see any benefits of a weekly payment alternative replacing a lump sum financial cap in its entirety. This is not mutually beneficial for either the consumer or the financial service provider, as it may not be reflective of the nature of loss suffered and would be more burdensome to both the consumer and service provider to facilitate.

In the case where MBIE is posing the latter question, which seems to be a more reasonable interpretation, the FSF agrees that if the weekly payment alternative is available to one scheme, then it should be available to all schemes.

Question 7: Do you agree that a weekly payment alternative should be introduced for all schemes? Why/why not?

In order to answer this question, the FSF would benefit from further evidence and information as to the utility of the weekly payment alternative, the potential uptake, and the preference of consumers and financial services providers for it. The value of the weekly payment alternative has not been established and this should be done before deciding on its implementation across all schemes.

However, in principle, as the FSF has highlighted in answers to previous questions, amendments or avenues of redress made to one scheme should generally be implemented across all schemes, as this is the only way to promote jurisdictional equity. And in order to properly accommodate the review's objective of consistency, the FSF would assume that a weekly payment scheme would need to be implemented by all approved dispute resolution schemes in order to meet the goals and objectives of the review.

Further clarifying whether it is something that is considered valuable is important to establish before making further decision around its incorporation into all schemes.

Question 8: Is \$1,500 an appropriate weekly payment alternative? Why/why not?

As previously stated, the FSF believes that further evidence that a weekly payment alternative is required should be considered before deciding on whether such an amount is appropriate.

One would argue that if the financial cap is increased (the main rationale being the increase in price of financial products now versus when the schemes were introduced) then proportionality would suggest that the weekly average should be increased in proportion to the increase of the financial cap.

The new financial cap proposed, of \$350,000, is an increase by 75%. Applying this increase to the weekly payment alternative would increase the weekly payment from \$1,500 to \$2,625 in which case \$1,500 would not be an appropriate weekly payment so the ability to implement a weekly payment amount up to the level that would meet the new financial cap would appear to the FSF to be sensible.

Question 9: Are there any costs or benefits of Option two?

A cost of Option two would be the potential it could create to slow down or overload the dispute resolution system.

A weekly payment alternative, particularly for smaller sums, may seem more enticing and accessible in its application. Perhaps MBIE should have the same concerns regarding the slowing down of the dispute resolution scheme system with an increase to a weekly payment alternative, as they did for such a cost when MBIE considered the options of increasing the financial cap limit on across all dispute resolution schemes.

Despite our initial agreement with Option two, a weekly payment alternative will not be appropriate for all circumstances and consumers. For losses that are so large that a weekly payment alternative will stretch over indefinite amounts of time, that is not appropriate, and not mutually beneficial for the consumer, nor the scheme or financial service provider. Caution needs to be taken when considering circumstances, and the amount of discretion schemes have, in which a weekly payment alternative should be awarded.

Question 10: Do you have any feedback on the problems outlined?

The FSF does not have any feedback on the problems outlined.

Question 11: If a consistent special inconvenience award was to be introduced, in what circumstances should it be awarded? Should this be discretionary, or strictly prescribed?

Consistency would suggest that this should be prescribed. However, it is often hard to exhaustively list all circumstances in which such a special inconvenience award should be awarded. Dispute Resolution Schemes will need some guidance on when it is appropriate to make such an award, and when it is not appropriate.

Perhaps, a middle ground is possible and is something that should be considered by MBIE including a set of high-level principles and thinking that will guide dispute resolution schemes in their process of issuance of the awards.

Question 12: If an interest award was to be introduced how should it be calculated?

The FSF is not able to comment on this.

Question 13: What are the benefits and costs of the options?

The first option proposed under this question allows for much discretion to be used and much flexibility in its award. Although, this appears prima facie to be the most favourable, the FSF has concerns in regard to the regulation and fairness in distribution of the award.

Secondly, with the implementation of an interest award and how it is calculated to compensate for unreasonable delays, the FSF see this option as being logical and equitable. And the FSF sees no costs on which to comment, aside from the novelty of this proposition and, therefore, the fact that any unintended consequences will not be foreshadowed until well into its implementation. The incentive to resolve dispute resolutions in a reasonably swift manner is a larger benefit to the scheme model.

Timing of membership & jurisdiction

Question 14: Is the FSF aware of any specific situations where providers have switched between schemes resulting in the situation described above? If so, what happened?

The FSF is not aware of such specific situations.

Question 15: Do you agree with the potential problems that may occur as a result of inconsistent scheme rules about the timing of membership/jurisdiction?

The FSF agrees with the potentiality of problems in regard to inconsistent scheme rules about the timing of membership and jurisdiction. However, the FSF echoes the conclusions drawn in the previous review completed by MBIE in 2016, where there was no evidence to suggest that financial service providers were “shopping around” for the least consumer friendly schemes. No further evidence has been presented that this is the case in the years since then to the FSF’s knowledge.

The problems articulated above are agreed on as being logical and plausible. However, their potentiality should not be overestimated. FSF members are responsible and ethical lenders who would not shop around for the least consumer friendly scheme membership as they maintain customer focused service and always endeavour to resolve disputes internally, immediately and equitably which is a mutually beneficial outcome for both the consumer and the financial service provider.

The potential issues articulated in the discussion document in reference to this topic, should be further examined and analysed, in order to determine the frequency of such incidents and what actual effect this is having on consumers. Previous analysis and reviews all suggest that there is no evidence of these potential problems. Therefore, the establishment of the problem should take place before an attempt is made to rectify it.

Question 16: Do you have any feedback on Option one?

The FSF agrees with Option one and its implementation would make little difference to our members.

Question 17: Are there any other costs or benefits of Option one?

There are no other benefits that the FSF can provide of relevance to our members. However, the FSF does question whether there is a possibility that one scheme may be overloaded with investigations and others left with a drier caseload.

In the case that all options, on all topics, raised in this discussion document are not implemented, with the result that some schemes could still be viewed as less consumer friendly, therefore leaving the ability for financial service providers to “shop around” for schemes (as MBIE believes currently does happen), MBIE should consider whether these favourable schemes and their caseloads may then be negatively impacted as a result of the establishment of this Option.

However, from the perspective of the schemes, Option one does seem to the FSF to require the schemes to perform greater due diligence on perspective members to ensure that they are not bringing potential complaints with them from the period before they joined.

Question 18: Do you have any feedback on Option two?

The FSF sees Option two to be far more complex to implement than Option one. Bearing in mind the objectives and goals of the review, addressing the accessibility of redress for consumers, accessibility would be better promoted when consumers are not confused about the process that is required of them, and they are clear on which schemes and which processes to go through when required.

If a consumer is unsure as to which scheme they should access, then they are less likely to attempt to access the dispute resolution scheme.

The FSF also acknowledges the potential to slow down efficiency with the implementation of Option two.

Also, from the perspective of the schemes themselves, Option two would require a scheme to consider a complaint from a non-financial participant in their scheme which seems to the FSF to be extremely unfair to the schemes concerned.

Question 19: Are there any other costs or benefits of Option two?

Generally, the costs of implementation of Option two are more likely to outweigh the benefits, as MBIE themselves has identified in the discussion document. However, it would alleviate the concern schemes may have raised by the FSF in the answer to question 17 above, that under Option one, schemes may be taking on a new member that is bringing the “baggage” of unresolved complaints with them.

Applicable time periods (limits) for bringing a claim:

Question 20: Do you have any feedback on the problems outlined?

The FSF agrees with the problems outlined in the Discussion Paper and therefore suggests that in order to promote consistency across the schemes, and therefore the objectives of this review, it would seem most sensible to implement the same time periods across all dispute resolution schemes.

Question 21: Is the FSF aware of instances of consumer harm from the problems outlined?

The FSF is not aware of any instances of consumer harm as a result of the differences in time periods between the schemes, however the FSF does support consistency in time periods across all four schemes as per the answer to the previous question.

Question 22: Do you have any feedback on Option one?

The FSF's members value the time period available for consumers to approach financial service providers for internal dispute resolution. This ensures that financial service providers have the opportunity to take accountability and resolve the matter with the consumer themselves, which is an avenue for resolution that is mutually beneficial for consumers and the service providers, not to mention more time efficient.

As previously mentioned, FSF members endeavour to resolve disputes internally in a timely manner in all possible cases as doing so decreases the amount of time it takes for consumers and service providers to resolve the issue through internal dispute resolution.

However, the FSF supports the concept of maintaining consistency across all four schemes as much as possible and therefore supports Option one.

Question 23: Are there any other costs of benefits of Option one?

The FSF agrees that it is possible that a smaller window of time imposed on all schemes could limit the opportunity the service providers have themselves to rectify the situation and resolve the dispute within their system, which is likely to be the most beneficial option for both the entity and the consumer. However, as stated in the previous question, the FSF does support the maintenance of consistency across all the schemes and believes that this should also apply to the timing rules.

Question 24: Do you have any feedback on Option two?

For the reasons provided in the two previous questions, FSF supports Option two as a reasonable option to consider. Giving consumers more time to access the scheme promotes accessibility of redress.

Question 25: Are there any other costs or benefits of Option two?

Hearing claims beyond the initial period is great in the facilitation of access to redress, however, MBIE will have to consider whether this would slow down the schemes' systems as a causative result of the implementation of this Option, as it provides more opportunity for consumers to bring disputes to schemes.

Question 26: Do you have any feedback on Option three?

The FSF supports the concept of schemes having the ability to use their discretion beyond the initial timeframe in special circumstances where they believe it is appropriate to do so.

Question 27: Are there any other costs or benefits of Option three?

Answered as above.

Question 28: Of the four schemes, which way of outlining time period III is preferable? Why/why not?

The FSF believes the IFSO's outline of time period III to be most preferable. Of the four schemes, three (being BOS, IFSO, and FSCL) take on similar formats in their outline. The FDRS outline appears to be dissimilar to the other outlines and is less likely to be the interpretation of a lay person.

Of the three schemes that do adopt a similar format, BOS and FSCL have adopted the terms "became (or should have become) aware of action" which have room for a more subjective interpretation. IFSO have rather used "subject to a formal complaint" in their defined outline. Because of the lay language and its comparative objectiveness, the IFSO outline of time period III is preferred.

Question 29: Are there any other costs or benefits of Option?

There are no costs or benefits to comment on.

Concluding remarks

The FSF recognises and acknowledges MBIE's recent efforts to provide for more equitable and transparent financial services.

The FSF has no real disagreement with any of the proposed options for reform, as mentioned throughout the submission. However, the FSF maintains some concerns that amendments to regulation are being made with no evidence as to actual harm being done to consumers and the market. Further analysis and collation of evidence should rectify the

gaps in information present in the discussion document and provide MBIE with a better outlook on which issues are real.

Thank you again for the opportunity to provide the FSF's view on the Review of the Approved Financial Dispute Resolution Scheme Rules. We look forward to the opportunity of submitting on further rounds of consultation.

Please do not hesitate to contact me if you wish to discuss the submission any further.

Yours sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a vertical stroke, positioned to the left of the name.

Diana Yeritsyan
Legal and Policy Manager

Appendix A – FSF Membership List February 2021

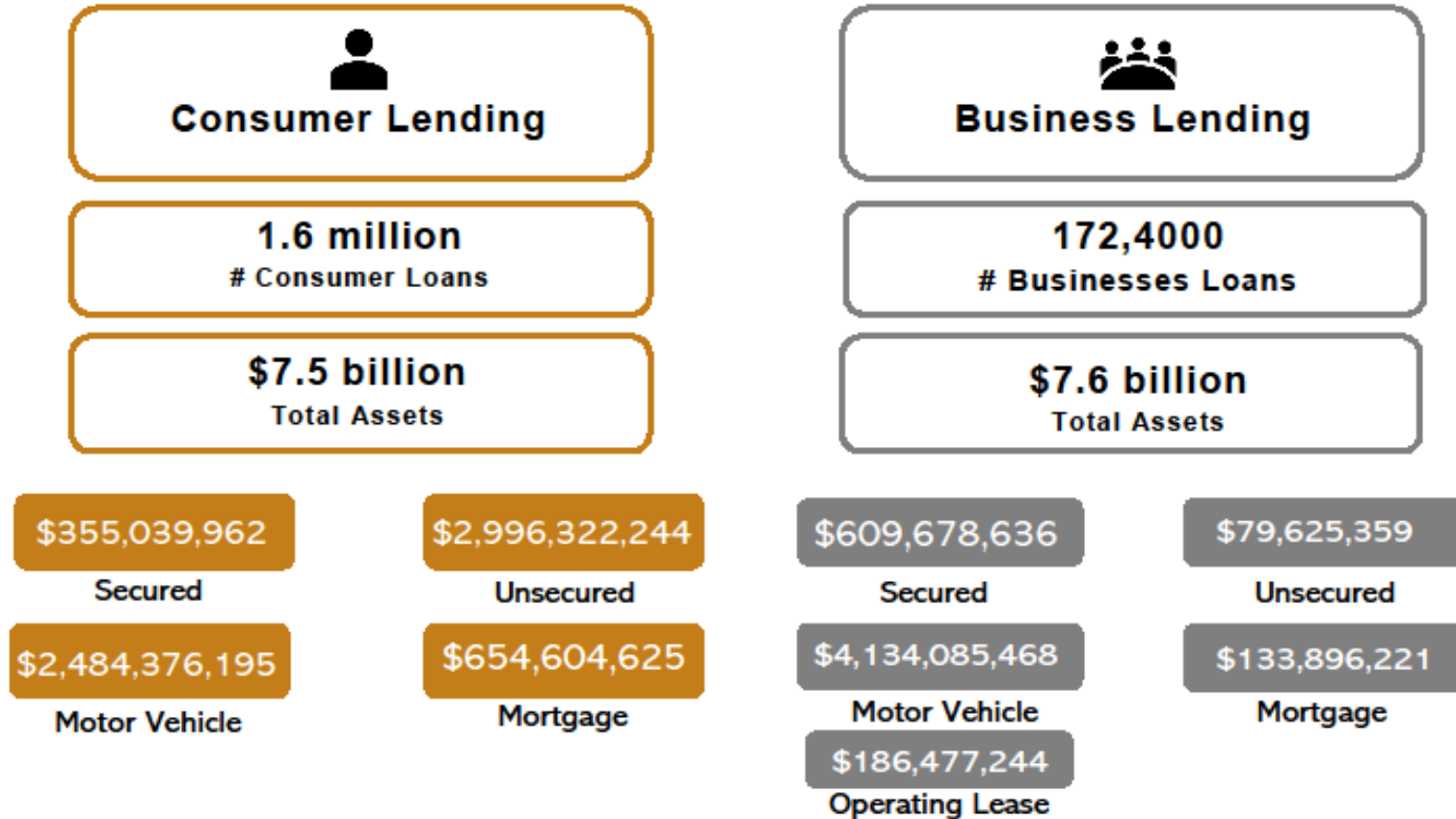
Non-Bank Deposit Takers Leasing Providers	Vehicle Lenders	Finance Company Diversified Lenders	Finance Company Diversified Lenders	Credit-related Insurance Providers	Affiliate Members
<u>Rated</u> Asset Finance (B) <u>Non-Rated</u> Mutual Credit Finance Gold Band Finance ➤ Loan Co <u>Leasing Providers</u> Custom Fleet Fleet Partners NZ Ltd Lease Plan ORIX NZ SG Fleet	AA Finance Limited Auto Finance Direct Limited BMW Financial Services ➤ Mini ➤ Alpha Financial Services Community Financial Services European Financial Services Go Car Finance Ltd Honda Financial Services Mercedes-Benz Financial Motor Trade Finance Nissan Financial Services NZ Ltd ➤ Mitsubishi Motors Financial Services ➤ Skyline Car Finance Onyx Finance Limited Toyota Finance NZ Yamaha Motor Finance	Avanti Finance ➤ Branded Financial Caterpillar Financial Services NZ Ltd CentraCorp Finance 2000 Finance Now ➤ The Warehouse Financial Services ➤ Southsure Assurance Future Finance Geneva Finance Home Direct Humm Group Instant Finance ➤ Fair City ➤ My Finance John Deere Financial Latitude Financial Metro Finance Pepper NZ Limited Personal Loan Corporation Pioneer Finance Prospa NZ Ltd South Pacific Loans	Speirs Finance Group ➤ Speirs Finance ➤ Speirs Corporate & Leasing ➤ Yogo Fleet Thorn Group Financial Services Ltd Turners Automotive Group ➤ Autosure UDC Finance Limited <u>Credit Reporting & Debt Collection Agencies</u> Baycorp (NZ) ➤ Credit Corp Centrix Collection House Equifax (prev Veda) Illion (prev Dun & Bradstreet (NZ) Limited Intercoll Quadrant Group (NZ) Limited	Protecta Insurance Provident Insurance Corporation Ltd	255 Finance Limited Buddle Findlay Chapman Tripp Experian EY FinTech NZ Finzsoft GreenMount Advisory Happy Prime Consultancy Limited HPD Software Ltd KPMG LexisNexis PWC Simpson Western Total: 65 members

Appendix B



FINANCIAL SERVICES FEDERATION

The Financial Services Federation (FSF) is the association for responsible finance and leasing companies operating in New Zealand. This infographic is a snapshot of our 40 lending members, the membership list can be found at our website www.fsf.org.nz.



FSF lending members data survey period as at 29 February 2020 . Data collected and aggregated by KPMG. Values in NZ\$.