FINANCIAL SERVICES FEDERATION

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Financial Markets team
Building, Resources and Markets
Ministry of Business, Innovation and Employment

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Discussion paper: Financial institution licensing fees under new conduct regime

The Financial Services Federation (FSF) is grateful to the Ministry of Business, Innovation and Employment (MBIE) for the opportunity to comment on the discussion paper: Financial institution licensing fees under new conduct regime.

By way of background, the FSF is the industry body representing the responsible and ethical finance, leasing and credit-related insurance providers of New Zealand. We now have nearly 90 members and affiliates providing these products to more than 1.7 million New Zealand consumers and businesses. The latest list of our members is attached as Appendix A and data relating to the extent to which FSF members contribute to New Zealand consumers, society and business is attached as Appendix B.

You will see from the attached membership list, that a large proportion of FSF members are Non-Deposit-Taking Lending Institutions (NDLIs) who are not within the scope of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI Act). However, the FSF does have several Non-Bank Deposit Takers (NBDTs) and credit-related insurance providers as members, and it is on their behalf that this submission is being made.

Introductory comments:

The FSF has been strongly and consistently opposed to the entire CoFI Act since it was first mooted. It has always been the FSF's view that sufficient other mechanisms and licenses existed or were in the process of being enacted or implemented that would regulate the conduct of financial institutions and that any conditions relating to conduct could be incorporated into one of the existing licenses already held by financial institutions without requiring a separate conducting licensing regime. That position has not changed.

The FSF particularly disagrees with the application of the CoFI Act to NBDTs and small credit-related insurance providers such as those members represented by the FSF. As the FSF has repeatedly pointed out to Government and officials, no evidence exists to demonstrate that such small financial entities actually cause poor customer outcomes or exhibit poor conduct such as to justify the application of the conduct regime to them.

To the contrary. In the case of FSF's NBDT members, they either exist for the benefit of their customers (in the case of the CUBS) or they are small niche operators providing alternative deposit and lending options to a loyal and local customer base (in the case of the NBDTs who are not CUBS).

In fact, there is ample evidence to suggest that fair customer outcomes are exactly what they do provide. Data gathered from FSF's NBDT members by KPMG in November 2021 and attached here as Appendix C shows that in the 12 months to 30 September 2021, FSF's NBDT members had only 22 complaints referred to external dispute resolution, of which only 1 was upheld. This is compared to the 50,523 complaints received about banks by the Banking Ombudsman Scheme for only the first 6 months of the same year.

With respect to credit-related insurance providers, the Commerce Commission published a report in November 2021 entitled "Motor vehicle financing and add-ons review paper" which was based on data provided voluntarily to them by motor vehicle finance and credit-related insurance providers, most of whom were members of the FSF. This data was provided in 2020 prior to the changes to the Credit Contracts and Consumer Finance Act 2003 that came into effect from 1 December 2021 and was largely out of date by the time the report was released some 12-18 months after the data was provided to the Commission.

Notwithstanding the above, the Commission's report did not identify any systemic issues with respect to the sale of credit-related insurance products. Whilst it did identify that some areas such as disclosure could be improved upon, by the time the report was released, these issues had already been addressed by providers.

It should also be noted that, unlike other types of insurers, credit-related insurance providers and their products are also legislated by the Credit Contracts and Consumer Finance Act 2003 (CCCFA). As part of the review of this legislative regime, the way in which credit-related insurance products are provided was also reviewed and changes made to the Act, regulations and the Responsible Lending Code (RLC). These changes came into force with the rest of the revised CCCFA regime from 1 December 2021.

The FSF has also firmly pointed to the fact that there already exists a huge amount of other legislation and licensing regimes applying to the financial services sector outside of the CoFI regime that have either only recently been implemented, are undergoing review, or are still going through the process towards enactment, all of which have the aim of ensuring better outcomes for customers.

These other substantial pieces of legislation include:

- The Financial Services Legislation Amendment Act, which brought into scope all financial advisers rather than distinguishing between authorised and registered advisers, and which has also brought in a licensing regime for advisers.
- The substantial changes to the CCCFA commencing from 1 December 2021.
- The Reserve Bank Act review.
- The Deposit Takers Bill currently before Select Committee (including the introduction of a depositors' insurance scheme).

- The Insurance Prudential Supervision Act review (including the possible introduction of policyholder security).
- The reform of New Zealand's Insurance Contract Law.

All of these are designed to increase protections to consumers among their other significant purposes.

You can therefore understand that FSF members are extremely unhappy about having to pay a license fee for a license they inherently do not believe is necessary and levies to a regulator to enforce a regime in which they strongly do not believe.

The FSF will now turn its attention to answering the questions raised in the discussion paper.

1. **Do you agree with these objectives for setting the financial institution licensing fees? Are there other objectives which should be considered in setting these fees?**

It is very difficult for the FSF to agree with the objectives for setting the financial institution licensing fees when they are being set for a licensing regime which the FSF strongly opposes and does not see the need for.

Also, the FSF sees to see how the proposed fees as set out in the Discussion paper take any account of the need for proportionality with respect to the size of the financial institutions that are being licensed. The entire FSF membership represents $8.1 billion in lending to consumers as of 28 February 2022 (this includes all the NDLIs that are members as well as the NBDTs). By contrast, Reserve Bank of New Zealand figures show that they represent $336,389 billion in consumer lending.

It does not appear to the FSF that any form of proportionality has been applied in the setting of the proposed licensing fees and the FSF therefore requests that officials go back to the drawing board and seriously rethink what they are proposing, particularly with respect to the significantly smaller entities that are caught in this wholly unnecessary regime.

With respect to the objectives themselves, whilst they appear to be reasonable objectives, the FSF does not believe that they have been achieved, particularly when it comes to the objective of limiting uncertainty to prospective applicants as to the likely total amount of fees they will be required to pay.

If one considers the circumstances that may increase the complexity of an application and therefore the cost to entities applying for a license, many of the circumstances outlined in the discussion paper will apply to FSF's affected members by default because of the lack of understanding the FMA has of these entities due to the lack of an existing relationship between them. This lack of understanding will almost certainly mean that circumstances (e), (f) and (g) as outlined on page 10 of the Discussion paper will apply to NBDTs and credit-related insurance providers and this will almost certainly increase the cost to these entities of obtaining a license.

The lack of understanding most particularly applies to smaller entities such as FSF's NBDT and credit-related provider members with whom the FMA currently has virtually no relationship at all. The FSF is therefore also concerned that, because of their closer existing relationship with the regulator, the larger entities will have the ability to direct the regulator to benefit themselves to the detriment of smaller entities. This must be avoided at all costs to preserve the competitive aspect NBDTs and other smaller entities provide to the market.

The FSF also notes that these circumstances allow for a large among of subjectivity in determining when they will apply and the FSF therefore requests that the parameters as to when such extra time or more complex consultation is required, be more clearly defined.

2. Do you have any comments on the assessment of the proposed financial institution licensing fee as set out above?

The key issues the FSF identify is the lack of clarity as to exactly how much financial institutions will have to pay in order to obtain a license when so many of the circumstances that may increase the complexity of assessing the application will apply to NBDTs and credit-related insurance providers; the extent of the levies that affected entities will be required to pay to fund the enforcement of the regime; and the lack of any demonstrated proportionality with respect to either of these that sufficiently takes into account the significantly smaller (and much less likely to cause consumer harm) entities the FSF represents as compared to registered banks and the large insurers.

The first of these points has already been addressed in the answer provided to question 1 above. The levies to the FMA for enforcing the conduct regime which were announced in May of this year, and which will apply through to financial year 2025/26 are most certainly not proportionate on the basis of the way in which they will be applied to smaller entities.

These smaller entities are already competing against the larger financial institutions, they will bear the cost of a depositor protection scheme in the case of NBDTs and increased complexity of insurance prudential standards and an entirely new insurance contract legislative regime in the case of credit-related insurance providers. Both NBDTs and credit-related insurance providers have had to bear the significant cost of complying with the CCCFA regime that came into force from 1 December, and which required review only weeks into its existence.

Whatever the license fee and the levies imposed to enforce the conduct regime actually are, they are an extra compliance cost that will impact small organisations to a far greater extent than they will the larger entities who are arguably those at which this regime is targeted. Almost certainly these costs will be passed on to consumers in order for the entities to be able to continue to run their businesses which could ultimately make them less competitive against the larger institutions.

Again, the FSF strongly suggests that officials go back to their drawing boards and reconsider a more reasonable and fairer cost structure for smaller entities.

3. **Do you have any comments on the analysis of these alternative options? Are there other options or variations on the above options, that should be considered?**

With respect to the alternative options for setting financial institution license fees that have been considered and which are summarised in the Discussion paper, the FSF has the following to say.

Flat application fee for all financial institutions with no additional hourly rate:
Whilst the FSF is clearly very unhappy with the circumstances that could possibly impact on the time taken to assess a license application and the probability that this will adversely impact those smaller entities with whom the FMA currently does not have a strong relationship, the FSF absolutely would not support a flat application fee for all financial institutions on the basis that this does not provide in any way for the required proportionality that recognises the extreme power and size imbalance between the largest financial institutions and the smallest.

Setting different licence classes:
The FSF can see many problems also arising from this option. For example, the three separate licence classes it proposes for banks, insurers and NBDTs, do not consider the relative size of small credit-related insurance providers versus large life or fire and general insurers and therefore credit-related insurers would be disproportionately disadvantaged by this option.

Nor does it consider the fact that the distinction between banks and NBDTs will cease to exist once the Deposit Takers Bill currently with Select Committee, is passed and therefore NBDTs would likely be treated in the same way as banks under this option. Once again, there is a lack of sufficient proportionality to recognise the relative sizes of the financial institutions in the scope of the regime.

Crown funding:
Of any of the options proposed, including the proposed license fees as set out in the Discussion paper, this is the one which is most preferred by the FSF. Given that the FSF is not at all convinced of the need for the conduct license in the first place, and particularly not for the small NBDTs and credit-related insurance providers we represent, the FSF believes it is entirely reasonable that the Government should meet the cost of its administration.

The FSF certainly does not see any public benefit arising from the application of the regime to its members. In fact, quite the contrary as the cost of having to be part of the regime will be passed on to consumers and this will disproportionately affect the customers of FSF members versus customers of other licensed entities.

Once again, the FSF is grateful for the opportunity to respond to this Discussion paper. If there is anything further you wish to discuss, please do not hesitate to contact me.

Lyn McMorran
EXECUTIVE DIRECTOR

FINANCIAL SERVICES FEDERATION

Appendix A - FSF Membership List as at October 2022

Non-Bank Deposit Takers, Specialist Housing Lenders, Leasing Providers	Vehicle Lenders	Finance Companies/ Diversified Lenders	Finance Companies/ Diversified Lenders, Insurance Premium Funders	Credit-related Insurance Providers, Affiliate Members	Affiliate Members incl Credit Reporting, Debt Collection Agencies
XCEDA (B) Finance Direct Limited ➢ Lending Crowd Gold Band Finance ➢ Loan Co Mutual Credit Finance Credit Unions/Building Societies First Credit Union Nelson Building Society Police and Families Credit Union Specialist Housing Lenders Basecorp Finance Limited Liberty Financial Limited Pepper NZ Limited Resimac NZ Limited Leasing Providers Custom Fleet Euro Rate Leasing Limited Fleet Partners NZ Ltd ORIX New Zealand SG Fleet	AA Finance Limited Auto Finance Direct Limited BMW Financial Services ➢ Mini ➢ Alphera Financial Services Community Financial Services Go Car Finance Ltd Honda Financial Services Kubota New Zealand Ltd Mercedes-Benz Financial Motor Trade Finance Nissan Financial Services NZ Ltd ➢ Mitsubishi Motors Financial Services ➢ Skyline Car Finance Onyx Finance Limited Scania Finance NZ Limited Toyota Finance NZ ➢ Mazda Finance Yamaha Motor Finance	Avanti Finance ➢ Branded Financial Basalt Group Blackbird Finance Caterpillar Financial Services NZ Ltd Centracorp Finance 2000 Finance Now ➢ The Warehouse Financial Services ➢ SBS Insurance Future Finance Geneva Finance Harmoney Humm Group Instant Finance ➢ Fair City ➢ My Finance John Deere Financial Latitude Financial Lifestyle Money NZ Ltd Limelight Group Mainland Finance Limited Metro Finance	Nectar NZ Limited NZ Finance Ltd Personal Loan Corporation Pioneer Finance Prospa NZ Ltd Smith's City Finance Ltd Speirs Finance Group ➢ Speirs Finance ➢ Speirs Corporate & Leasing ➢ Yoogo Fleet Turners Automotive Group ➢ Autosure ➢ East Coast Credit ➢ Oxford Finance UDC Finance Limited Insurance Premium Funders Elantis Premium Funding NZ Ltd Financial Synergy Limited Hunter Premium Funding IQumulate Premium Funding Rothbury Instalment Services	Credit-related Insurance Providers Protecta Insurance Provident Insurance Corporation Ltd Affiliate Members Buddle Findlay Chapman Tripp Credisense Ltd Credit Sense Pty ltd Experian Experieco Limited EY FinTech NZ Finzsoft Happy Prime Consultancy Limited Lendscape Ltd KPMG LexisNexis Motor Trade Association PWC Simpson Western	Verifier Australia Credit Reporting, Debt Collection Agencies, Baycorp (NZ) ➢ Credit Corp Centrix Collection House Debt Managers Debtworks (NZ) Limited Equifax (prev Veda) Illion (prev Dun & Bradstreet (NZ) Limited Quadrant Group (NZ) Limited IDCARE Ltd Total 89 members

FINANCIAL SERVICES FEDERATION (FSF)

THE NON-BANK FINANCE INDUSTRY SECTOR - 2022

48%

NON-BANK BANK

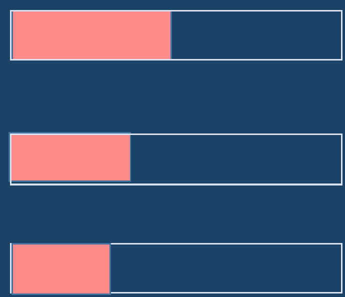
of personal consumer loans are financed by the **non-bank sector** represented by FSF members.

Setting industry standards for responsible lending, promoting compliance and consumer awareness.

Percent of Loan Requests Approved

46%

Percent of Loan Book in Arrears



2016	5.8%
2021	4.4%
2022	**3.7%**

KEY FACTS: THE NON-BANK FINANCE INDUSTRY SECTOR

FSF Members (as at 28 Feb 2022)

Number of Members	57
Number of Employees	3,561
Applications Processed	1,085,739
Loan Requests Approved	495,434
Percent of Loan Book in Arrears	3.7%

Bank Sector (as at 28 Feb 2022)

Value of Mortgage Loans	$329B
Value of Consumer Loans	$7.6B
Value of Business Loans	$118B

Non-Bank Sector Share (as at 28 Feb 2022)

% of Total Mortgage Loans	0.4%
% of Total Consumer Loans	47.7%
% of Total Business Loans	5.9%

Insurance Credit Related (as at 28 Feb 2022)

Number of Employees	237
Number of Policies	311,409
Gross Claims (annual)	$27.2M
Days to Approved Claim	20 days

Consumer Loans (as at 28 Feb 2022)

Total Value of Loans	$8.1B
Number of Customers	1,699,683
Number of Loans	1,584,984
Monthly Instalments:	$330M

Average Value of Loan:

Mortgage	$171,932
Vehicle Loan	$12,393
Unsecured	$2,467
Other Security	$5,754
Lease Finance	$2,804

Average Monthly Instalment:

Mortgage	$257
Vehicle Loan	$463
Unsecured	$144
Other Security	$302
Lease Finance	$241

Business Loans (as at 28 Feb 2022)

Total Value of Loans	$7.3B
Number of Customers	136,830
Number of Loans	264,827
Monthly Instalments:	$590M

Average Value of Loan:

Mortgage	$443,784
Vehicle Loan	$28,869
Unsecured	$7,443
Other Security	$32,374
Lease Finance	$24,921

Average Monthly Instalment:

Mortgage	$2,281
Vehicle Loan	$1,064
Unsecured	$799
Other Security	$11,044
Lease Finance	$939

Non-Bank Deposit Takers – Data

Appendix C

Data point	Customer type	Credit Unions / Building Societies	Non-Bank Deposit Takers	Total
Number of customers	Business	4,173	449	**4,622**
Number of customers	Consumer	86,866	2,403	**89,269**
Total Liabilities	Business	$276,247,554	$7,194,209	**$283,441,763**
Total Liabilities	Consumer	$1,169,490,504	$117,467,320	**$1,286,957,824**
Total Assets	Business	$453,954,837	$108,220,610	**$562,175,448**
Total Assets	Consumer	$823,761,745	$27,948,680	**$851,710,425**
Number of complaints	All	340	5	**345**
Number of complaints to external dispute resolution	All	22	0	**22**
Number of complaints investigated by external dispute resolution	All	3	0	**3**
Number of complaints upheld by external dispute resolution	All	1	0	**1**
Number of branches	All	22	7	**29**

Note: Where the business/consumer split wasn't available we have estimated the split based on the rest of the market. We estimate that the impact of this is minimal.