



## FINANCIAL SERVICES FEDERATION

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30 September 2014

By email: [namingpolicy@privacy.org.nz](mailto:namingpolicy@privacy.org.nz)

### **Giving better effect to the Privacy Act: New Privacy Commissioner “Naming Policy”**

Thank you for the opportunity for the Financial Services Federation (“FSF”) to submit on the policy the Privacy Commissioner intends to adopt to guide the practice of the Office of the Privacy Commissioner (“OPC”) in naming agencies to give effect to the purposes of the Privacy Act 1993.

By way of background, the FSF is the industry body for the responsible and ethical finance and leasing providers of New Zealand. The FSF has over forty members and associates providing first-class financing, leasing, investment, banking and insurance products and services to over 1 million New Zealand consumers and businesses. The FSF’s affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A.

The FSF has several concerns about the proposed policy and suggests that the OPC should reconsider its intention to implement it from 1 November 2014. These concerns include:

- The FSF believes that it is premature for the OPC to adopt new powers when the intention to repeal and re-enact the existing Privacy Act of 1993 has been signalled by the Government. Following its recent re-election it is unlikely that the Government will deviate from its intention to undertake the process of targeted consultation before introducing a Bill to Parliament. The FSF strongly suggests the OPC should await the outcome of this consultation process and the resulting new legislation before adopting any further powers under the current Act.
- The FSF has concerns that agencies named under the proposed policy have no recourse to appeal that decision. Given that the current Act does not provide any ability to appeal adverse findings by the OPC following an investigation, the FSF would again suggest that the OPC should wait for the new legislation to be enacted following an appropriate consultation process before adopting any new policies.

### **Questions posed in the Discussion Document:**

The Discussion Document poses some specific questions which are answered as follows bearing in mind the FSF’s specific concerns about the proposed policy as outlined above:

- 1. From your experience, do you foresee any problems with the proposed policy? If so, please highlight the relevant part of the policy and explain why you take this view.**

As previously stated, the FSF believes it is inappropriate timing for the OPC to be introducing the proposed policy when a full consultation process is imminent which will involve repeal of the Privacy Act 1993 and its replacement with a new and more up-to-date piece of legislation. The lack of a mechanism for an agency the OPC intends to name is also reason, in the FSF’s opinion, to delay the implementation of such a policy until such time as the relevant legislation has been properly reviewed.

**2. Are there any issues that are inadequately covered by the policy and, if so, how do you believe they should be addressed?**

As previously stated, the lack of an appeal mechanism allowing an agency to appeal the OPC's decision to name them is a glaring omission from the proposed policy. For this reason and the fact that the current legislation is due for repeal and re-enactment, it is the FSF's belief that the policy should not be implemented.

**3. Do you think any part of the policy is unclear? If so, do you have any suggestions to improve the expression?**

As previously stated, for the reasons given above, the FSF does not believe the policy should be implemented.

**4. From your experience, do you foresee any problems with the proposed policy? If so, please highlight the relevant part and explain why you take this view.**

As previously stated, the FSF believes that it is premature for the OPC to attempt to provide itself with new powers through the proposed policy when the Privacy Act itself is up for a wide-ranging review. The FSF therefore suggests that the OPC await the outcome of the legislative process including the opportunity for wider consultation and the ability for appropriate checks and balances to be built into the legislation, including allowance for an appeals process.

Thank you again for the opportunity to comment on the proposed policy. If there is anything further the FSF can do to assist, please do not hesitate to contact us.

Yours Sincerely



Lyn McMorran  
**EXECUTIVE DIRECTOR**

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**A National Federation of Financial Institutions**

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**APPENDIX A**  
**Membership List as at 1 September 2014**

Debenture Issuers - (NBDT) Non-Bank Deposit Takers	Vehicle Lenders	Finance Company Diversified Lenders	Credit Reporting	Insurance	Affiliate Members
<p><b><u>Rated</u></b></p> <ul style="list-style-type: none"> <li>• Asset Finance (B)</li> <li>• Avanti Finance (BB)</li> <li>• Fisher &amp; Paykel Finance (BB+)</li> <li>• Medical Securities (A-)</li> </ul> <p><b><u>Non-Rated</u></b></p> <ul style="list-style-type: none"> <li>• Mutual Credit Finance</li> <li>• Prometheus Finance</li> </ul>	<ul style="list-style-type: none"> <li>• BMW Financial Services</li> <li>• Branded Financial Services</li> <li>• Community Financial Services Limited</li> <li>• European Financial Services</li> <li>• Fleet Partners NZ Ltd</li> <li>• Mercedes-Benz Financial Services</li> <li>• Motor Trade Finances</li> <li>• Nissan Financial Services NZ Pty Ltd</li> <li>• ORIX NZ</li> <li>• SG Fleet</li> <li>• Toyota Finance NZ</li> <li>• Yamaha Motor Finance</li> </ul>	<ul style="list-style-type: none"> <li>• Advaro Ltd</li> <li>• Centracorp Finance 2000</li> <li>• Dorchester Finance</li> <li>• Finance Now</li> <li>• Future Finance</li> <li>• GE Capital</li> <li>• Home Direct</li> <li>• Instant Finance</li> <li>• John Deere Financial</li> <li>• Oxford Finance Ltd</li> <li>• DTR Thorn Rentals</li> <li>• South Pacific Loans</li> <li>• The Warehouse Financial Services Group</li> </ul>	<ul style="list-style-type: none"> <li>• VEDA Advantage</li> </ul> <p><b><u>Debt Collection Agency</u></b></p> <ul style="list-style-type: none"> <li>• Baycorp (NZ)</li> </ul>	<ul style="list-style-type: none"> <li>• Autosure</li> <li>• Protecta Insurance</li> <li>• Provident Insurance Corporation Ltd</li> </ul> <p><b><u>Associate Members</u></b></p> <ul style="list-style-type: none"> <li>• Southsure Assurance</li> </ul>	<ul style="list-style-type: none"> <li>• American Express International (NZ) Ltd</li> <li>• Buddle Findlay</li> <li>• Chapman Tripp</li> <li>• Deloitte</li> <li>• Ernst &amp; Young</li> <li>• Finzsoft</li> <li>• KPMG</li> <li>• PriceWaterhouseCoopers</li> <li>• SimpsonWestern</li> </ul>