



FINANCIAL SERVICES FEDERATION

Committee Secretariat
Economic Development, Science and Innovation Select Committee
Parliament Buildings
Wellington

Financial Services Legislation Amendment Bill

Thank you for the opportunity to comment on the Financial Services Legislation Amendment Bill (“the Bill”). By way of background, the Financial Services Federation (“FSF”) is the industry body for the responsible and ethical finance and leasing providers of New Zealand. We have nearly sixty members and associates providing financing, leasing, and credit-related insurance products to more than 2 million New Zealanders. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A.

Overall the FSF is very comfortable with the way in which the Bill has been written. The chief concerns for FSF members with regard to the current Financial Advisers Act (“FAA”) are:

1. The lack of clarity as to whether providers of consumer credit contracts and credit-related insurance are actually covered by the provisions of the FAA due to the broadness of the definition of financial advice and the fact that consumer credit is described as a category 2 product. This has driven the belief of responsible consumer credit contract and credit-related insurance providers that, in order to discharge their responsible lending obligations to borrowers under the Credit Contracts and Consumer Finance Act (“CCCFA”), there was a certain level of “advice” required to be given in the process, which lead FSF members to make the choice to comply with the provisions of the FAA.

FSF members are therefore either Qualifying Financial Entities or they have registered their customer facing staff as RFA’s. The FSF is aware, however, that this course of action has not been taken by all consumer credit contract and credit-related insurance providers – many of whom have taken no action at all to comply with the FAA as it currently stands. They have taken the view that they just present the loan product and provide no “advice” around its suitability or otherwise for the individual borrower. The FSF is not aware of any such provider having received any penalty from regulators as a consequence of this stance.

2. The regulatory overlap that exists between the current FAA and the CCCFA for consumer credit contract and credit-related insurance providers. As previously stated in (1) above,

the FSF believes that, if these products are being provided responsibly (as is required by the Lender Responsibility Principles of the CCCFA), there is a certain amount of “advice” that must be provided to borrowers. This includes obligations to ensure that the product being offered meets the borrower’s goals and objectives, that the credit being provided is affordable to the borrower without causing substantial hardship and that the provider assists the borrower to reach an informed decision to enter into the credit agreement and to be reasonably aware of the full implications of doing so.

The FSF strongly believes that all necessary consumer protections for the way in which “advice” is provided by consumer credit contract and credit-related insurance providers exist in the CCCFA and therefore there is no need for such providers to be covered also by the provisions of the FAA.

The FSF is therefore extremely grateful to officials responsible for drafting the Bill for having listened to these concerns and acting upon them. On the basis therefore that the remainder of the Bill and its provisions is irrelevant to the FSF and its members, the FSF has very little to say in response to the Bill other than the following comments in relation to those clauses of the Bill that have provided the clarity for consumer credit contract and credit-related insurance providers that the FSF sought.

The key changes to the existing FAA contained in the Bill are found in the new Schedule 5, in particular in Part 2(10) of the new Schedule being inserted.

With regard to Part 2(10), the clarification in the Bill which states that financial advice is not regulated financial advice if the advice is given by a lender to a borrower, and in relation to a consumer credit contract or relevant insurance contract for the purpose of complying with the lender’s lender responsibilities of the CCCFA, is very welcome to members of the FSF in clearing up the anomalies mentioned in 1 and 2 above.

The only suggestion the FSF makes in order to provide absolute clarity is that the wording in Part 2 (10) could make clear that it is not regulated financial advice if the advice is given by a lender to a borrower, and in relation to a consumer credit contract or *credit-related insurance*.

This wording would be consistent with the wording used in the CCCFA to describe these products and the FSF further suggests that the definitions of these types of product in the CCCFA should also be referenced in the Bill so there is no room for doubt as to what types of product are excluded from the definition of financial advice.

The definition of consumer credit contract (S11 of CCCFA) is as follows:

“11 Meaning of consumer credit contract

(1) A credit contract is a **consumer credit contract** if—

(a) the debtor is a natural person; and

(b) the credit is to be used, or is intended to be used, wholly or predominantly for personal,

- domestic, or household purposes; and*
- (c) 1 or more of the following applies:*
- (i) interest charges are or may be payable under the contract:*
 - (ii) credit fees are or may be payable under the contract:*
 - (iii) a security interest is or may be taken under the contract; and*
- (d) when the contract is entered into, 1 or more of the following applies:*
- (i) the creditor, or one of the creditors, carries on a business of providing credit (whether or not the business is the creditor's only business or the creditor's principal business):*
 - (ii) the creditor, or one of the creditors, makes a practice of providing credit in the course of a business carried on by the creditor:*
 - (iii) the creditor, or one of the creditors, makes a practice of entering into credit contracts in the creditor's own name as creditor on behalf of, or as trustee or nominee for, any other person:*
 - (iv) the contract results from an introduction of one party to another party by a paid adviser or broker.*
- (1A) For the purposes of subsection (1)(b), the predominant purpose for which the credit is to be used is—*
- (a) the purpose for which more than 50% of the credit is intended to be used; or*
 - (b) if the credit is intended to be used to obtain goods or services for use for different purposes, the purpose for which the goods or services are intended to be most used.*
- (1B) The reference to intention in subsections (1)(b) and (1A) is a reference to the debtor's intention.*
- (2) This section is subject to [sections 14 and 15](#)."*

The definition of credit-related insurance (as described in Part 1 S5 Interpretation of the CCCFA) is:

“credit-related insurance means, in connection with a credit contract or consumer lease,—

- (a) insurance over secured property or leased goods; or*
- (b) insurance that provides cover for the shortfall that occurs if secured property or leased goods are totally or substantially destroyed and the insurance proceeds from another insurance contract are insufficient to pay any outstanding obligations of the debtor under the credit contract or the lessee under the consumer lease; or*
- (c) consumer credit insurance”*

Consumer credit insurance is described in Part 1 S5 Interpretation of the CCCFA) as:

“insurance cover in the event of the insured's disability or death or the insured contracting a sickness, sustaining an injury, or becoming unemployed, if the liability of the insurer is to be determined by reference to the liability of the insured under a credit contract or a consumer lease.”

We hope that the above is helpful to the Select Committee and would welcome the opportunity to discuss this submission further if this would be of further assistance.

Thank you again for the opportunity to submit on the Bill.

A handwritten signature in blue ink, appearing to read "L. McMorran".

Lyn McMorran
EXECUTIVE DIRECTOR