



FINANCIAL SERVICES FEDERATION

1 August 2019

The Committee Secretariat
Primary Production Committee
Parliament Buildings
Wellington

By email to: pp@parliament.govt.nz

Farm Debt Mediation Bill (No 2)

Introduction:

The Financial Services Federation (“FSF”) is grateful for the opportunity to be able to submit on the Farm Debt Mediation Bill (No 2) – (“the Bill”).

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 have nearly sixty members and affiliates providing these products to more than 1.5 million New Zealand consumers and businesses. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A.

You will see from that list that, with the exception of John Deere Financial, none of the FSF’s members are specifically involved in the provision of credit to the farming or agricultural sector. However, many of our members will have relationships with people working in the sector through the provision of credit facilities to them and it is on this basis that the FSF submits on the Bill via the following comments.

Support in principle:

The FSF is supportive in principle of the purpose and intent of the Bill and what it is trying to achieve as described in the General Policy Statement made in the Explanatory Note to the Bill. It seems entirely reasonable to the FSF to establish a farm debt mediation scheme that will require creditors with security interests in farm property to offer mediation to farmers before taking an enforcement action in relation to that debt. The 2 key objectives described in the General Policy Statement to help achieve fair, equitable, and timely resolution of farm debt issues are also entirely acceptable to the FSF and the FSF is very supportive of the intent to help

farmers (and creditors) to avoid challenging and drawn-out processes to achieve fair debt resolution.

Reservations:

The FSF submits that the Bill would have the full support of the FSF and its members (rather than in principle support) if the following clarifications were to be included in it:

- That it be made clear in the Bill that any finance provided under a consumer credit contract (as defined in the Credit Contracts and Consumer Finance Act 2003 – “CCCFA”) is excluded from the scope of the farm debt mediation scheme for the reasons provided further in this submission;
- That the farm debt mediation scheme should only be accessed when the debt is of a size to make entering into such mediation worthwhile for both parties (as opposed to pursuing the resolution of the debt through existing channels) – again for the reasons provided further in this submission.

Rationale for excluding debt provided under a consumer credit contract:

The FSF submits that it is not always clear whether credit is being provided to a farmer or a farming business or that the security for the debt is farm property. A farmer applying for credit in his or her own name may not be easily identifiable as being a farmer, nor is it immediately obvious that a motor vehicle being purchased under finance, for example, is intended for use on a farm.

The FSF therefore submits that to clarify what is debt that should be covered by the scheme being established under the Bill, it would be helpful to exclude all credit provided under a consumer credit contract.

The CCCFA defines a consumer credit contract as follows (s 11):

- “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 on behalf of, or as a 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."*

The FSF believes that this definition should be carried across into the Bill with the clarification that all debt that has been provided which meets the definition of a consumer credit contract is excluded from the scope of the Bill and therefore the mediation scheme.

Credit provided under a consumer credit contract is, by this definition, being provided for personal, domestic, or household purposes or to obtain goods or services primarily for these purposes so is therefore not farm debt in the FSF's view.

The definition of "farm debt" in the Overview of the farm debt mediation scheme in the Bill states that the mediation scheme will apply in relation to loans that are secured against farm property, such as farm land, farm machinery, livestock, and harvested crops and wool. This seems to the FSF to be unnecessarily wide in that farm machinery, for instance, could include vehicles used either by the farmer in his or her personal capacity or on the farm and which could have been financed by way of a consumer credit contract. By excluding debt provided by way of a consumer credit contract as the FSF is suggesting, it will be made clearer exactly what debt secured against farm machinery is in the scope of the Bill and what is not.

The definition of "farm debt" in s6 Interpretation of the Bill provides 3 examples of what would be considered to be farm property over which a creditor might hold security. The third of these examples states that:

"A farmer owns 2 vehicles. One is used on the farm, and is farm property. The other is used for personal purposes, and is not farm property."

The FSF believes that this example clearly demonstrates the dilemma of what is and is not farm debt. Although it states that one vehicle is used on the farm so is farm property and the other is used for personal purposes, so is not farm property, the FSF believes it is likely that the two vehicles are kept on the farm premises and that each are used for mixed purposes from time to time. Rather than define what is farm debt by the purpose of the secured property, greater clarity would be provided to all parties if the definition excluded all property purchased under a consumer credit contract.

The FSF further points out that all credit contract providers are required under the Financial Services Providers (Registration and Disputes Resolution) Act 2008 (“FSPRA”) to belong to an independent disputes resolution service – of which there are four registered in New Zealand. Consumers who have a dispute or complaint about their credit contract provider can make a complaint to the disputes resolution service to which the provider belongs, the complaint is then investigated by the service and a binding decision is made to which the provider must adhere (this may include some form of redress to the borrower). The cost of taking the complaint and having it investigated is borne by the credit provider.

This therefore provides the appropriate protection under the law for any farmers or farm businesses that may have a dispute with a credit provider that has provided them with finance under a consumer credit contract that has been used to purchase a vehicle or other item of equipment or appliance that is being used wholly or partly in the course of the farm business.

Rationale for applying a minimum level of debt before the scheme could be accessed:

As previously mentioned, there are four registered disputes resolution services to which registered financial services providers must belong and which make determinations on complaints referred to them by consumers. These are:

- The Banking Ombudsman Scheme (“BOS”);
- The Insurance and Financial Services Ombudsman Scheme (“IFSO”);
- Financial Services Complaints Service Limited (“FSCL”);
- Financial Dispute Resolution Service (“FDRS”).

Registered banks and their subsidiaries belong to the BOS, other financial services providers have the choice of belonging to any one of the other three disputes resolution services.

Each service has their own Terms of Reference which allows them to make judgments for financial compensation to consumers (if their complaint is upheld) to cover their direct loss and direct incidental expenses up to a certain maximum threshold. This threshold is currently \$350,000 in the case of the BOS and \$200,000 for each of the other three schemes although the FSF understands that this may be raised to \$350,000 at some stage in the near future.

Given that farmers can make complaints to the disputes resolution service to which their credit provider belongs, and given that the Bill provides that the parties to the mediation must meet their own costs and related expenses of the mediator but that a farmer must not be required to pay more than half of these costs, it would seem sensible to the FSF that a minimum threshold should be applied under which it is not viable for mediation to be entered into under the farm debt mediation scheme. The FSF submits that this minimum threshold should be \$350,000 in line with what is likely to be the maximum threshold for the existing disputes resolution schemes.

Other than these suggestions for clarity of the Bill's scope, the FSF has no further comments to make on the Bill and once again is grateful for the opportunity to make this submission.

If you require any further information from the FSF, please do not hesitate to make direct contact.

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

Lyn McMorran
EXECUTIVE DIRECTOR

Appendix A
FSF Membership List as at 31 May 2019

Debenture Issuers - (NBDT) Non-Bank Deposit Takers	Vehicle Lenders	Finance Company Diversified Lenders	Finance Company Diversified Lenders	Insurance	Affiliate Members
<p><u>Rated</u> Asset Finance (B)</p> <p><u>Non-Rated</u> Mutual Credit Finance Gold Band Finance ➤ Loan Co</p>	<p>BMW Financial Services ➤ Mini ➤ Alpha Financial Services</p> <p>Branded Financial Services</p> <p>Community Financial Services</p> <p>European Financial Services</p> <p>Go Car Finance Ltd</p> <p>Honda Financial Services</p> <p>Mercedes-Benz Financial</p> <p>Motor Trade Finance</p> <p>Nissan Financial Services NZ Ltd ➤ Mitsubishi Motors Financial Services ➤ Skyline Car Finance</p> <p>Onyx Finance Limited</p> <p>Toyota Finance NZ</p> <p>Yamaha Motor Finance</p> <p><u>Leasing Providers</u> Custom Fleet</p> <p>Fleet Partners NZ Ltd</p> <p>ORIX NZ</p> <p>SG Fleet</p> <p>Lease Plan</p>	<p>L & F Ltd ➤ Speirs Finance ➤ YooGo</p> <p>Avanti Finance</p> <p>Caterpillar Financial Services NZ Ltd</p> <p>CentraCorp Finance 2000</p> <p>Finance Now ➤ The Warehouse Financial Services</p> <p>Flexi Cards</p> <p>Future Finance</p> <p>Geneva Finance</p> <p>Home Direct</p> <p>Instant Finance ➤ Fair City ➤ My Finance</p> <p>John Deere Financial</p> <p>Latitude Financial</p> <p>Pioneer Finance</p> <p>South Pacific Loans</p> <p>Thorn Group Financial Services Ltd</p> <p>Turners Automotive Group</p>	<p>Prospera NZ Ltd</p> <p>Personal Loan Corporation</p> <p>Metro Finance</p> <p><u>Credit Reporting</u></p> <p>Equifax (prev Veda)</p> <p>Centrix</p> <p><u>Debt Collection Agencies</u></p> <p>Baycorp (NZ)</p> <p>Illion (prev Dun & Bradstreet (NZ) Limited)</p> <p>Experian</p> <p>Intercoll</p> <p>Receivables Management</p>	<p>Autosure</p> <p>Protecta Insurance</p> <p>Provident Insurance Corporation Ltd</p> <p>Southsure Assurance</p>	<p>AML Solutions</p> <p>Buddle Findlay</p> <p>Chapman Tripp</p> <p>EY</p> <p>Finzsoft</p> <p>KPMG</p> <p>Paul Davies Law Ltd</p> <p>PWC</p> <p>Simpson Western</p> <p>FinTech NZ</p> <p>HPD Software Ltd</p> <p>Total : 61 members</p>