



FINANCIAL SERVICES FEDERATION

2 September 2020

Competition and Consumer Policy; Building, Resources and Markets
Ministry of Business, Innovation & Employment

The Financial Services Federation would like to begin by saying that we appreciate the opportunity to engage in targeted consultation and to provide this submission to the Ministry of Business, Innovation and Employment on the proposed technical amendments to the Credit Contracts and Consumer Finance Act 2003.

The FSF supports the principles behind all of the proposed changes, however, we would like to note that the language of the proposed changes lacks specificity that renders it difficult to comment on. The language used in the final drafting for any of these proposed changes will determine how effective the changes are and presents a risk of unintended consequences resulting.

1. Section 9B(2)(f) – interpretation of insurance arranged by the lender

We consider that a level of involvement should be required before a lender can be said to have arranged consumer credit insurance and therefore agree with the proposed amendment to section 9B(2)(f) to only apply where the insurance is financed with the lenders' knowledge. This would better align with the other s9B(2) criteria, which require the lender to be actively involved in the arranging of the insurance and can therefore justifiably be held responsible for that arrangement.

As is identified in the consultation document, an anomaly currently exists whereby a lender may be liable for insurance that was purchased by the borrower but which was not in fact arranged by the lender and of which the lender has no knowledge. This anomaly is of great concern to us and we support the changes proposed to remove it.

We also consider that the proposed changes would help to better align the law with chapter 9.9 of the Responsible Lending Code, which puts responsibilities on lenders who arrange insurance *“unless the relevant insurance contract is one that is financed by the lender but which is entered into independently by the borrower with an insurer that does not have a relationship with the lender, and without the lender’s facilitation.”*

The FSF also believes that the proposed changes also align with the proposed regulation 4AB(2)(a) and (b) in exposure draft #3 of the Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2020 which says that regulation 4AB does not apply if an extended warranty or insurance purchased after the agreement is entered into using money provided under the agreement, without the knowledge of the lender.

2. Section 21 – continuing disclosure



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The FSF endorses any changes that allow for creditors to flexibly undertake business in ways that allow for business efficiency and good customer outcomes so the FSF supports the proposed change to S21 to allow for disclosure of running balances.

3. Schedule 1 – security of interest

As the CCCFA requires consumer goods to be specifically identified in other provisions of the legislation, it would be an improvement in the interests of consistency to amend Schedule 1 to also require that collateral that is a consumer good be specifically identified in line with section 83F(2).

Thank you again for the opportunity to provide the FSF's views on these proposed amendments. Please do not hesitate to contact me if you require anything further.

A handwritten signature in blue ink that reads 'Bethany Bray'.

Bethany Bray
LEGAL COUNSEL AND POLICY MANAGER