FINANCIAL SERVICES FEDERATION

15 January 2021

Competition and Consumer Policy Team
Ministry of Business, Innovation and Employment
By email to: consumer@mbie.govt.nz

Updated draft Responsible Lending Code 2020

The Financial Services Federation (FSF) is grateful for the opportunity to submit on the updated draft Responsible Lending Code 2020 released in December of last year.

Executive Summary

Many parts of the draft Code have changed significantly in this draft as compared to the current Code under which lenders are now working. The FSF necessarily has a significant amount of feedback to make in this submission and therefore this Executive Summary extracts the key points the FSF wishes to make with respect to the draft Code. These are expanded upon further within the body of this submission:

- The changes to the CCCFA, the introduction of new regulations in support of that Act and the updated Responsible Lending Code has introduced a very prescriptive regime compared to what was once more principles based.

- The FSF is supportive of some of the changes this review has brought in, particularly the introduction of a definition in law of what constitutes a high-cost lender and the introduction of restrictions on the amount that lenders can charge in interest and fees.

- The FSF does not believe, however, that beyond what is mentioned in the previous bullet point, there was any need for any further reform to the responsible lending obligations of consumer credit providers. Rather, the fact of there still being harm caused to consumers by irresponsible lending practices, is the fault of a lack of enforcement of existing law to prevent such behaviour.

- The FSF condemns any harm being done to consumers through irresponsible lending behaviour but it is a fact that this happens in only a very small proportion of cases and the vast majority of the hundreds of thousands of consumer credit contracts written each year are lent responsibly to borrowers who also act responsibly.

- A more prescriptive lending regime will restrict access to credit for all consumers as lenders seek to ensure they have ticked all the boxes.

- The FSF is becoming increasingly concerned that Government is continuing a trend started during Alert Level 4 in April last year where registered banks were provided with more regulatory support to assist their customers than was made available to other lenders. The changes to the CCCFA perpetuate this advantageous treatment because banks will find these easier to implement than other lenders due to the transactional information they hold about their customers that is not so readily available to non-bank lenders. This also does not meet the objective of regulation promoting fair and efficient financial markets.

- The timeframe for lenders to implement this prescriptive regime by 1 October 2021 is unworkable. Until such time as this Code is finalised, lenders are still not in possession of the full requirements of the regime and can therefore not plan how they will ensure compliance with it.

- The FSF is extremely concerned at the Government's failure to understand the resources required for significant systems changes such as will be required for lenders to be compliant with this regime (including human resources, time and funding). This is in spite of the FSF having repeatedly voiced concerns that such changes require a project plan once the necessary changes to existing processes are identified, IT expertise to make and test the changes, professional advice as to what is required to be compliant, staff and intermediary training etc. and cannot happen overnight.

- The penalties for not being fully compliant come 1 October are significant and it is unfair that lenders who are willingly compliant may be subject to these because they are unable to meet the impossible deadline that has been set for them.

- The FSF believes that either the deadline needs to be pushed out by at least 6 months, or the regime should be implemented on a staged basis over a period of at least 6 months from 1 October, or the Commerce Commission should be instructed to take a lenient approach to lenders that are genuinely trying to be compliant and are obviously taking steps to do so for at least the first 6 months of the new regime.

- The FSF is disappointed that no consideration appears to have been given to the tension between the Government's desire for access to credit as a means to aid the post-COVID economic recovery which is being promoted through initiatives like the Business Finance Guarantee Scheme and the Funding for Lending programme and a more rigid and prescriptive lending regime. This is particularly so given the Australian Government's announcement of their intention to pare back their responsible lending regime in order to promote access to credit to help fuel their economic recovery.

- The FSF believes therefore that extreme care needs to be used with the words "will", "must", "should" and "may" throughout the Code and it should be made clear in the Glossary in Chapter 15 as to what is expected of lenders where these words are used.

- The record-keeping requirements for lenders expressed throughout the draft Code are very onerous. Apart from lenders' capacity to retain these records for the required period, the FSF is concerned about the tension between these record-keeping requirements and the need for lenders to also be compliant with the principles of the Privacy Act 2020, particularly Principles 1 and 6 which relate to the contents of the records being kept and how these must be stored.

- The FSF seeks clarity in the final version of the Code that the requirements around advertising of fees associated with a loan relate only to mandatory fees (e.g. establishment and account maintenance fees) not those which are events-based (e.g. default or variation fees).

- There is inconsistency throughout the draft Code as to the terms used in relation to financial advisers, brokers, agents, intermediaries etc. The FSF suggests that a consistent approach be taken with respect to this nomenclature and that what is meant by each term used should be made clear in the Glossary in Chapter 15.

- Paragraph 5.1 of the draft Code now requires lenders to be "confident" that the scope and methods of inquiry are reasonable etc which is a higher standard than has been applied in previous versions of the Code and draft Code. The FSF believes the standard should be for lenders to be "satisfied" with their inquiries and therefore this should be changed in the final Code version.

- The FSF has some significant concerns with the drafting of paragraph 5.19 of the draft Code. There are a number of repetitions of the same requirements of lenders under this paragraph which are worded slightly differently but which essentially require the same thing of lenders and also some contradictions between what is stated in this paragraph and subsequent ones. The FSF believes this particular paragraph would benefit from some significant re-drafting.

- The FSF believes that Chapter 12 should be renamed "Repayment difficulties and other problems" as per the November draft of this chapter to more accurately reflect the range of issues borrowers may face post-COVID.

- A considerable number of the changes to Chapter 12 in this version of the draft Code compared to the version of this Chapter released in November last year have been made in response to FSF's submission on the November draft and these have significantly improved the effectiveness of the Chapter overall.

- Notwithstanding the above, Chapter 12 is the most significantly changed compared to the same Chapter in the current Code. The FSF therefore strongly submits that implementation of the requirements of new Chapter 12 should be delayed for at least 6 months from 1 October 2021 to provide lenders with sufficient time to become compliant with its requirements.

- The FSF is not comfortable with the change to the definition of a vulnerable consumer in Chapter 15 of the draft Code for the reasons provided further in this submission.

Introductory Comments:

Before proceeding with specific feedback on the contents of the draft Code, the FSF has the following more general points to make:

The problem being addressed:

The sweeping changes to the CCCFA enacted in December last year, the introduction of prescriptive regulations with respect to many aspects of the responsible lending process and the update of the Responsible Lending Code have brought in a very prescriptive regime compared to the previous one that was more principles-based.

The FSF has been fully supportive of some of the changes that have been made as a result. Introducing a definition into law of “high-cost credit” and restricting the level and amount of interest and fees that can be charged by providers of this type of credit are necessary steps to protecting consumers, particularly those whose circumstances make them more vulnerable.

However, the FSF has always strongly believed that, if there were circumstances where consumers were being preyed upon by unscrupulous lenders, the existing law which makes it illegal already to lend to a borrower who could not afford to repay the loan without substantial hardship should have been enforced against such credit providers.

Without robust enforcement, there is little point in enacting new legislation to prohibit behaviour that is already against the law. So, where harm is being caused to consumers, particularly those who are more vulnerable, the law should be used against such lenders to prohibit such behaviour or to put them out of business.

The FSF also believes that, whilst the harm caused to consumers through irresponsible lending practices is something about which all FSF members are extremely concerned, it is a fact that this happens in only a very small proportion of cases when compared to the hundreds of thousands of consumer credit contracts that are written each year.

This is borne out by the fact that of the 1.6 million consumer loans in the portfolios of FSF’s consumer lending members, 99.6% of these were repaid without the consumer requiring the assistance of a hardship process.

This is further reinforced by the fact that the Commerce Commission’s recently released Complaints Snapshot for 2019/20 shows that, of the total 9,892 complaints received by the Commission in that year, only 138 (or 1.4%) related to consumer credit which was the least of all the Commission’s complaints categories.

The FSF also refers to the Non-bank Financial Institutions Performance Survey for 2020 prepared by KPMG and released last month. This survey of 25 of the largest non-bank lenders reveals that, even in spite of the financial stress caused by the effects of COVID-19, arrears and defaults remain at an all-time low and account for an average of 1.3% of these

lenders' total loan books. The survey report states that this is due to responsible lending practices at the outset as well as responsible borrowing behaviour on the part of borrowers.

It must be remembered that lenders do not set out to lend to consumers who cannot afford to repay the loan without substantial hardship. To provide credit without ensuring that the loan can be repaid is not a sustainable business model.

The vast majority of lenders behave responsibly and ethically towards their customers not just because it is required of them by law but because it is the right thing to do. As a demonstration of this, over many months last year FSF members provided assistance to tens of thousands of their customers who were experiencing financial stress due to COVID-19 by varying loan contracts to allow for extended and deferred payment terms without the benefit of the regulatory safeguard that was provided to the banks to do the same.

The prescriptive requirements of the new regime will necessarily make access to credit more difficult for every consumer not just those who are particularly vulnerable. The FSF does not believe that this is either in the interests of the majority of consumers or indeed what they want. The FSF does agree however that all borrowers should have the same clear, enforceable protections, regardless of the lender they are borrowing from, but without enforcement efforts targeted towards those lenders who do cause harm to consumers, the FSF believes that lenders and consumers will be put to a lot of cost in time and money in order to be compliant and the irresponsible players will continue to get away with their unethical behaviour.

On the basis of the above points, the FSF strongly submits that what is needed is more enforcement of the law rather than more law and therefore the Responsible Lending Code should be taking a much more light-handed and less prescriptive approach than is shown in this current iteration.

Banks versus other lenders:

The FSF is becoming increasingly concerned that the Government is tending towards a situation where registered banks are receiving more advantageous treatment in terms of legislative requirements than what is being applied to other lenders.

A startling example of this advantageous treatment occurred at the beginning of lockdown during Alert Level 4 in early April when the banks were granted an exemption in regulation from the requirements of the CCCFA to allow them to offer mortgage repayment deferral options to their customers. This did not apply to non-bank lenders all of whom were swamped with enquiries for similar relief from their customer base and who provided it anywhere without the same regulatory safeguard enjoyed by the banks because it was the right thing to do under the circumstances.

The FSF is concerned that the sweeping changes to the CCCFA regime of which the draft Responsible Lending Code is the latest piece of the puzzle will once again skew the playing field towards banks and away from non-bank lenders. The FSF believes that the banks will find the implementation of these changes easier to apply and less involved than will non-bank lenders because they already have access to their customer's transactional

information which will not become easily accessible to other lenders until the introduction of some form of customer data right – which the FSF believes to be some time away yet.

Given that the Code allows for some leeway in the way lenders may treat existing customers as opposed to new ones, the advantage that banks have over other lenders because of this access to their customers' transactional information is significant in the FSF's view.

The FSF understands that financial regulation in New Zealand aims to promote fair and efficient markets and having a significant segment of the market materially disadvantaged compared to another one does not meet that objective.

Timing of implementation:

The FSF has appealed over and over again for more time for lenders to implement the changes required of them through the amendments to the CCCFA, the accompanying regulations and the updated Responsible Lending Code on the basis that the current implementation date of 1 October 2021 is unworkable.

Whilst these appeals have not been taken into consideration to date, the FSF believes it is in the interests of both lenders and consumers to take this opportunity to once more make our case for a more common-sense approach to the implementation of the sweeping and prescriptive changes that are being imposed upon them.

The FSF acknowledges the genuine attempts of the Government and officials to consult on all aspects of the changes to the regime – from the consultation with respect to the amended CCCFA, through to the regulations and now to the Code. The FSF does feel that members have in the main had the opportunity to consider and respond to various elements of the regime as it has been worked through.

However, in spite of the fact that the consultation with respect to the regulations and the Code has now been going on for months, the process has felt rushed at times and the provision of certainty to lenders as to what it is with which they will be required to comply, has necessarily been delayed by the effects of COVID-19 and the postponement of the General Election.

There have been times when the opportunity to respond to consultation has been extremely short meaning that the FSF and its members have had to drop everything else going on in their businesses in order to respond. In many cases this has resulted in a need to keep the group of members involved in the response to the consultation to a smaller number rather than opening it up to the wider membership in order to be able to develop a position and make a response.

There have also been occasions when the consultation was limited by legal privilege and therefore the FSF was prevented from being able to share the consultation with the wider membership to get a broader point of view on the consequences of the proposals.

This has resulted in the requirements of the entire regime being delivered in a very piecemeal fashion which is not helpful to lenders when they are trying to determine the

overall picture of what they will need to do to be compliant. There is now going to be only 7 months until 1 October 2021 for lenders to implement the necessary changes to their systems, documentation and processes from the time that the Code is finalised, and lenders will have their first opportunity to have one view of every component part of the new regime.

Until there is a final regime for lenders to comply with, lenders cannot start to scope the project to implement what is required of them at the IT level and at the process and operational level including changes to documentation. They cannot seek professional advice as to what they must do in their own businesses to be compliant and then ensure that all their staff and intermediaries are trained in the new processes to know what they need to know.

Ensuring smarter implementation done once and done well, over hasty implementation where quality could be compromised, will benefit lenders, their customers, and government in the long term.

A further issue with respect to the implementation of all the changes is the fact that it has been a tough year for everyone in business. For the majority of lenders, their new lending pipeline dried up completely or at least significantly throughout Alert levels 4 and 3. It has come back to something like pre-COVID levels since Alert levels 2 and 1 (apart from in Auckland during the second lockdown).

Certainly, all lenders have felt a loss in revenue as a result of the COVID-19 pandemic (the KPMG Financial Institutions Survey reports this as an average of 7.8% decline in Net Profit After Tax). But it must be noted that the responses to the survey are based on the companies' audited financial statements for the last full financial year so it may well be that some companies with balance dates earlier in the year will be yet to report the net effect on their income from COVID.

The changes required to lenders' systems and processes are necessarily going to be very costly. As yet, without the certainty around what it is lenders are being required to comply with, it is impossible for them to set budgets for the projects and advice they will require to complete this project nor to determine what other resources may be required. Lenders do know the cost will be significant, but the tight timeframe will not allow them to spread these costs and that will make it difficult for them to source the necessary funding for the project.

Finally, whilst FSF members have been kept informed along the way as the regime has been developed because of the level of engagement FSF has had with officials – albeit in a piecemeal way that has left them trying to fit the puzzle pieces together - the FSF wonders what engagement has been had with those lenders that are not registered banks, non-bank deposit takers or FSF members to ensure that they are aware of the complex and prescriptive regime to which they are now going to be subject.

The FSF believes that there are about 2,000 lenders registered on the Financial Services Providers Register. The banks, NBDTs and FSF members make up about 100 of these so

there is a large number of lenders – mostly very small – who may not have had access to all the information and all the pieces of the compliance puzzle that banks, NBDTs and FSF members have had which is yet another reason to consider providing all lenders with an adequate timeframe with which to become compliant.

It must be remembered that there are now significant penalties on directors and senior managers of credit providers allowed for in the CCCFA for not being fully compliant come 1 October, so lenders are rightfully worried, and they therefore believe that something has to give: either the start date for implementation is extended to a more realistic date or there is a staged implementation process for the obligations on lenders.

Alternatively, the Commerce Commission should be instructed to take a more lenient enforcement position for the first six months of the new regime where they see that a lender is making a genuine effort to be fully compliant but has been unable to meet the 1 October deadline because of this unrealistic timeframe.

Comparison with the Australian regime:
The FSF is disappointed that no consideration appears to have been given to what is happening in Australia with respect to the paring back of responsible lending requirements of lenders. It is often the case that New Zealand looks to its nearest neighbour when setting legislation, but it seems that this time the precedent being set in Australia is being completely ignored.

Whilst the FSF is in no way suggesting that lenders should not be required to make reasonable enquiries to ensure that the credit they are providing is affordable without causing significant hardship, the key to ensuring that all lenders do so lies in enforcement of the regime not more prescription (as has been said already).

Access to credit is going to be a vital component of the post-COVID economic recovery for both nations and the New Zealand Government is certainly promoting that through sound initiatives such as the Business Finance Guarantee Scheme and the Funding for Lending programme. But no consideration appears to have been given to the clear tension between such initiatives and the implementation of a highly prescriptive lending regime. There is absolutely no doubt in the minds of FSF members that access to credit will be severely inhibited by the implementation of this prescriptive regime.

It is also a fact that the impact of COVID-19 on New Zealand and indeed the rest of the world is not yet over. The possibility of further outbreaks and the resultant need for lockdowns similar to that experienced last year is extremely high. With or without further lockdowns, however, the economic impact of COVID will continue to be felt for some time to come.

With that in mind, the FSF believes that the focus for Government and lenders should not be on more compliance but on doing everything that can be done to assist consumers to gain access to credit.

The FSF believes that now is the time to pause and reflect on whether the direction New Zealand is heading is the most appropriate for the country and its economy, or whether we should be considering a change in direction such as has been announced and is progressing in Australia. The FSF does not believe that doing so will come at the cost of borrowers being pulled into loans that are likely to put them into substantial hardship – particularly not if the reasonableness of the enquiries made by the lender is properly scrutinised by the regulator and enforcement action taken by them if that is found not to be the case.

Suggestion for improvement:
The draft Code constantly refers back to parts of the Act or to specific regulations. To assist lenders to operationalise the requirements of the Act, the regulations and the Code it would be very helpful if the final version of the Code could include a link back to the relevant section of the Act or the regulation, so it is easier for lenders to move from one document to the other. With so many changes to the responsible lending obligations and so many new requirements for lenders to comply with, a single point that links everything together is essential.

The FSF has the following specific feedback to make with respect to the contents of the draft Code. Where no comment has been provided, it can be taken that the FSF has no comment to make and therefore no concern with the wording of that particular part of the Code. Where the FSF has identified typographical errors in the body of the Code, these have been pointed out in Appendix A to this submission.

Chapter 1: Introduction
The FSF notes that the status of the Code has not changed as a result of the changes to the CCCFA regime – that is that it is not binding and nor is it a "safe harbour", however evidence of a lender's compliance with the provisions of the Code will be treated as evidence of compliance with the lender responsibility principles. Because of this many lenders take what is provided as guidance in the Code as being what is required of them in order to be fully compliant with their legal obligations. The penalties under the changed regime are significant for non-compliance so, now more than ever, lenders will take the guidance provided in the Code extremely seriously.

The FSF believes therefore that extreme care needs to be used with the words "will", "must", "should" and "may" throughout the Code and it should be made clear in the Glossary in Chapter 15 as to what is expected of lenders where these words are used.
The FSF submits that the words "*the lender **will***" or "*the lender **must***" should only be used in the Code in circumstances where what is being said is something that is required of the lender in the legislation or regulations. When the words "*the lender **should***" are used, this should only be in situations where the guidance provided in the Code is the preferred option for the way in which lenders should act. When the words the "*the lender **may***" are used, it should be made clear in the Glossary that this means that the lender could do what is suggested but is not required to, nor is it the preferred action for them to take if it is not relevant to or appropriate for their customers' circumstances or their business.

Chapter 2: Obligations that apply before and throughout the agreement.

The FSF is concerned about the training requirements for the staff and agents of credit providers that will come from the proposed amendments in the draft Code. Training all relevant and affected people requires significant time, cost, and planning and for this to be completed in time for the implementation date is far from realistic as has been stated already in this submission.

The FSF is pleased to see the inclusion of the statement: "*The guidance in this Code is not intended to require lenders to provide financial advice under the Financial Markets Conduct Act 2013 in order to comply with that guidance."* in the new Commentary at the introduction to Chapter 2. It has been of significant concern to FSF members that the prescriptive requirements of the new CCCFA regime will require them to provide more advice to customers that could see them being inadvertently caught up in the financial advice regime also.

The FSF submits on the issue of record keeping as outlined in Chapter 2, a requirement also found throughout the entire draft Code. The requirement of record keeping is a common theme throughout this version of the Code; however, its frequency does not aid in its clarity. Record keeping differs substantially between lenders, as does their sophistication and resource availability. When one lender may be able to store all relevant information on 'the Cloud', another may be solely reliant on paper. The various implementations of the record keeping process among lenders elevates the importance for clarity and conciseness in its prescriptions to lenders. FSF is therefore concerned about the ambiguities surrounding record keeping, considering it's a theme of importance throughout the Code.

The draft Code has not set out what form record keeping should take. At the minimum, FSF members would like to know the contents of what is required in the record keeping process. Such direction would go hand-in-hand with the Privacy Act principles, particularly with Principle 1 and 6, as these largely dictate the contents of the records collected and kept. Therefore, FSF asks for further clarity and guidance as to what process record keeping requires, and the contents required for retention.

In addition to the record keeping requirements is the further expansive and sweeping requirements for inquiry into a borrower's affordability. As outlined in the prior case law of the former Privacy Act, the information collected needs to be direct to the question. Despite precedents, arguments can be made that the need for compliance with such extensive requirements into borrower's ability to repay without substantial hardship may conflict with the principles of the Privacy Act in particular Principle 6. This supports FSF's urges for further clarity in regard to the retention and collection of information.

The FSF has concerns that paragraph 2.12 may also be in contradiction with the Privacy Act. The wording of this paragraph reads that whilst the privacy waiver is pending the appropriate checks, the lender should nonetheless accept this waiver and work with the borrower's representative. There is a strikingly obvious issue present, if the waiver is found to be inappropriate or unreliable after such checks, then information has already been released to the borrower's representative. FSF asks for clarity on this issue, and whether

‘pending’ is an appropriate status to have on a waiver whilst collaboration with the borrower’s representative is initiated.

The FSF notes the inclusion in paragraph 2.11 of the wording that says that: “*a lender may refuse to work with a representative if the lender reasonably believes that the representatives is not acting in the interests of the borrower”* and is strongly supportive of this.

Chapter 3: Advertising

The FSF’s understanding of the position in the draft Code with respect to the advertising of fees is that mandatory fees (as defined in Regulation 4AAAR (5)) are to be disclosed in advertisements but not event-based fees and seeks clarification in the Code that this interpretation is correct.

The FSF notes that the main objectives of the laws relating to credit advertising (in particular the Fair Trading Act 1986), is to ensure the advertisement is not (and is not likely to be) misleading or deceptive, discloses key information and generally that it is not confusing. Advertising non-mandatory fees such as default or variation fees (“event-based” fees) would make no sense in terms of achieving those objectives.

Chapter 4: Inquiries into and assessment of borrowers’ requirements and objectives

The FSF notes that paragraph 4.5 is the first place in the draft Code that addresses the issue of lenders dealing with financial advisers or other intermediaries. The FSF notes that there is a lack of consistency in the terms used to apply to these intermediaries with them variously being described as “financial advisers”, “brokers”, “intermediaries” or “agents” throughout the Code.

The FSF suggests that in order to provide some consistency in these terms, those intermediaries who are subject to the financial advice requirements of the updated Financial Markets Conduct Act come March 2021 should be described as “financial advisers” and “other intermediaries” should be the term used to describe relationships lenders have with intermediaries who are not subject to the financial advice regime. A summary of this could helpfully be provided in the Glossary in Chapter 15.

The FSF also notes that paragraph 4.6 of the draft Code is a new addition since the draft version of the Code issued in November last year on which the FSF has also submitted. The FSF is concerned about this addition from the perspective that it may restrict or delay consumer access to credit products, particularly in the online context. For example, where a customer applies online to a lender for a credit card, the requirement for the lender to discuss available products with the borrower would be seen by the borrower to be unnecessary and overly intrusive and time-wasting.

Whilst it is also noted that the paragraph says that the lender “*may determine the borrower’s and objectives through the following steps*”, a clarification that the lender is required to follow only those steps that are appropriate to the circumstance would be helpful.

The FSF is pleased to see that paragraph 4.11 of the November version of the Code with respect to the bundling of products, has been removed as per our submission on that version.

Chapter 5: Inquiries into and assessment of substantial hardship (borrowers)

FSF members report that the inclusion of the two diagrams at the beginning of this chapter is helpful.

The FSF notes with concern that paragraph 5.1 now requires that "*A lender should be* ***confident*** *…*" when the standard throughout the rest of this and previous versions of the Code (including the draft version issued in November) have required the lender to be "satisfied". The FSF believes that being confident implies a higher standard for lenders than being satisfied and that this is placing too much of an imposition on lenders. The FSF strongly believes that to be confident implies that the lender needs to be absolutely certain with respect to the scope and methods of their inquiry which is not possible. This change of wording will seriously restrict consumer access to credit and the FSF strongly submits that it be changed back to the word "satisfied" in the final Code version.

Paragraph 5.2 states that "*it may be reasonable for the lender to make inquiries into* ***other matters*** …" but does not state what these "other matters" might potentially be which the FSF does not believe to be helpful. The FSF suggests that paragraph 5.2 should be deleted in the final Code version.

Paragraph 5.5b refers again to "brokers". As per the comment with respect to paragraph 4.5 above, the FSF suggests that this should be worded to read: "financial advisers and other intermediaries".

With respect to paragraphs 5.6-5.12, the FSF believes that the drafting of these is an improvement on the drafting of paragraphs 5.3-5.8 of the November draft Code version and is pleased to note that some of the suggestions with respect to this drafting made by the FSF in the submission on this version have been taken up.

The requirement for a reasonable buffer also does not take into account any changes to discretionary spending that a borrower may choose to stop to make the repayments on the loan more affordable. It also does not consider that borrowers must take some responsibility for the information they disclose to lenders.

However, the FSF is concerned that paragraph 5.10 implies that lenders "*should take account of the risk that interest rates may rise*" as well as or on top of the requirement of paragraph 5.6 that "*Lenders should incorporate surpluses, buffers or adjustments as part of their expense assessments to reduce the risk that the borrower may suffer substantial hardship as a result of income being overstated, expenses being understated or the borrower needing to incur other expenses.*"

The FSF believes that, paragraph 5.6 could be amended to include provision within such surpluses, buffers or adjustments to also allow for an interest rate which could vary under the agreement where applicable. On that basis, paragraph 5.10 could be deleted or at the

very least re-written to make clear that the sensitised interest rate can be included in any buffer that the lender has already developed rather than implying that two separate buffers need to be applied as the paragraphs are currently worded.

The FSF notes that paragraph 5.13 provides much needed clarity as to the way in which lenders may assess the borrower's ability to repay the credit over a longer term if this option exists as compared to the November draft Code version.

The FSF finds paragraphs 5.14-5.18 with respect to the assessment of joint expenses to be helpful.

With respect to paragraphs 5.19-5.23 and the records lenders are required to keep relating to their inquiries and assessments into whether the borrower can meet the repayments under the credit contract without substantial hardship, the FSF refers back to the comments made under chapter 2 in relation to record-keeping requirements. The concerns the FSF outlines there about the application of the Privacy Act to the keeping of all the records required under the Code and the huge amount of extra space the keeping of these records will require (either physically or on lenders' servers), apply particularly to the record keeping requirements of this chapter.

The FSF has some significant concerns with respect to the requirements of paragraph 5.19 which has undergone some considerable changes to that of the November draft and not in a helpful way, in the FSF's view. These concerns are as follows:

- The requirement in paragraph 5.19.b for lenders to keep a record of the reliable evidence for that likely income. If a lender's credit policy requires that a payslip(s) be obtained from the borrower to verify income and that policy is adhered to, the FSF does not see any reason why the lender should then be required to record that a payslip was obtained when the payslip is already on file. The requirement for record-keeping in this case should be only that the lender should record what verification was made where the lender deviated from the credit policy.

- The FSF suggests that paragraph 5.19.e could usefully be deleted. This did not appear in the November draft Code version and the FSF wonders as to the reason for its inclusion now when it essentially repeats what is required of lenders in paragraph 5.19.d.

- Likewise, paragraph 5.19.h essentially repeats what is required in 5.19.f and could also usefully be deleted.

- The FSF notes that paragraph 5.19.i is a new addition to this version of the draft Code and is concerned as to why its inclusion is considered necessary. The regulations allow for lenders to use benchmarkable expenses as a means to determine household expenditure and Regulation 4AN sets out the requirements for lenders to do so which includes using such statistical information only if it meets the requirements of Regulation 4AN(2). Having satisfied themselves of that and having kept a record of how the lender has done this to comply with this regulation, the FSF can see no reason why the lender should be required to keep a list of the relevant expenses that were

benchmarked, and the benchmark amount applied for each individual borrower. On this basis, the FSF suggests that paragraph 5.19.i should be deleted.

Indeed, paragraph 5.19.i appears to the FSF to contradict what is being said in paragraph 5.23 which states: *"Nothing in the requirements in section 9CA require a lender to disclose or explain to a borrower: … b. commercially sensitive information about how buffers or adjustments are applied to specific income or specific relevant expenses; c. commercially sensitive information about how benchmarks are derived; or d. which specific expenses were assessed against a benchmark, reasonable cost estimate, or reasonable minimum cost of living, or the extent to which those expenses were adjusted."* This is further reason, in the FSF's view, why paragraph 5.19.i should be deleted.

- The FSF believes that the same applies to paragraph 5.19.l regarding the amount of buffer applied to income or a relevant expense. Once lenders have implemented appropriate buffers in accordance with paragraphs 5.6-5.12, the FSF believes that they will have fulfilled their obligations with respect to the buffer or adjustment applied. The requirement should therefore be that records are only required to be kept where the buffer or adjustment applied is less than the usual buffer the lender would use in similar circumstances and the reasons for that.

Finally, with respect to this chapter in particular, the FSF again reiterates the fact that implementing the significant changes required of lenders and their systems and processes in order to be fully compliant by 1 October 2021 is impossible and again stresses that consideration must be given to either delaying the implementation date or taking a staged approach to implementation beyond that date to give lenders sufficient time to be able to comply.

Chapter 6: Inquiries into and assessment of substantial hardship (guarantors)

The FSF notes that improvement has been made to paragraph 6.4 of the draft Code compared to the draft version on which FSF submitted in November. The additional wording in this clause reflects the FSF's suggestion in that submission.

Paragraphs 6.15 – 6.17 have been amended significantly and in a way that has improved the way in which they read as compared to the November Code version. Rather than the previous reference to paragraphs earlier in the guidance, the draft Code restates the guidance in the relevant paragraph and in the correct context of guarantors. This is most helpful, as many lenders have commented on how less efficient operationally it can be when relevant guidance is referenced as paragraph numbers, as opposed to being restated in the relevant context.

Generally, the amendments to chapter 6 were found to be well crafted and beneficial. However, once again the FSF would like to address the inconsistent terminology used in 6.17 where the terms "brokers or other intermediaries" are used as opposed to the terms "financial advisers and other intermediaries". As already stated with respect to paragraph 4.5, the FSF recommends the consistent use of the terms "financial advisers and other intermediaries" to distinguish between those intermediaries who are subject to the financial

advice regime and those who are not. Application of regulation is more efficiently complied with when the interpretation of many terms is not required, and consistent terminology is adopted.

Chapter 7: Assisting borrowers to make an informed decision

The FSF notes that Chapter 7 often uses references to earlier guidance in Chapter 3. Whilst the continuity of guidance is appreciated, it could prove to be less operationally efficient for lenders. Having to refer to the earlier sections by way of reference impacts the operational side of compliance with the regulations (unless a link back to the relevant section, regulation or statute is provided as per the suggestion in the introduction to this submission). Chapter 6 in paragraphs 6.15 – 6.17 has restated the guidance in the relevant context of that section, and the FSF would like to see this approach implemented consistently across all chapters of the Code.

The addition of paragraphs 7.15 and 7.16 and the example following 7.16 is helpful to lenders wishing to offer consumers the ability to apply for credit online and is something that has been requested in many previous FSF submissions on changes to the CCCFA regime. In spite of this, however, whilst the guidance in the Code is intended to be technology neutral, in reality the new requirements of the CCCFA regime will make online provision of credit more difficult without some level of human intervention in the process.

The FSF submits that the addition of 7.17 into the draft Code is beneficial as it clarifies the obligations on lenders in regard to communication with borrowers. In light of the expansive requirements for inquiries imposed on lenders in the Regulations, it is reassuring that there is no responsibility on lenders to routinely inquire into the borrower's possible vulnerability unless suspected.

Chapter 9: Credit-related insurance and repayment waivers

As stated previously, the FSF has concerns with respect to the overall onerousness of all the requirements for compliance of the draft Code on lenders. The onus on lenders is huge, and the penalties for non-compliance are substantial, and each paragraph within this chapter is placing yet another responsibility on the lender, rather than recognising that both the lender and the borrower contribute to the success of the operation of the credit contract.

The FSF believes strongly that appropriately sold credit-related insurance policies and repayment waivers that are reasonably priced for the cover provided under them and under which it is more than likely that the borrower can claim if required (unless there are issues with the disclosure provided at application by the borrower), are an essential part of responsible lending.

Credit-related insurance policies and repayment waivers protect either the asset being purchased under the loan or the borrower's ability to meet their commitment to the loan should something go wrong during the term of the loan. This is, in the FSF's view, highly preferable to the borrower losing the asset or having an unmanageable debt to repay if their circumstances change.

The FSF has long believed that, if there any concerns with respect to the sale of these products such as that the borrower would not be able to claim under the policy conditions if it came to that, or that the premiums are excessive in comparison to the loan amount, then the CCCFA as amended in 2015 and the current Responsible Lending Code provide sufficient prohibition to such behaviour and the key to ensuring that the products are not being sold irresponsibly lies in enforcement of the provisions of the Act and the current Code. Without that enforcement, the FSF has no confidence that the new Act, regulations and draft Code will achieve the consumer protections they are designed for.

Chapter 10: Fees

The FSF notes the inclusion in Chapter 10 of the draft Code of new paragraph 10.1.b requiring lenders to identify the tasks undertaken in order to establish the credit contract or that class of consumer credit contract and calculate the costs of undertaking each of those tasks. This is in addition to the existing requirements of paragraph 10.1 in the current Code which requires the lender to assess the reasonable costs likely to be incurred by the lender in connection with the application for credit, processing and considering that application, documenting the contract, and advancing the credit; to take into account past experience in relation to the level of reasonable costs incurred for those activities applied on a forward looking basis; and to ensure that establishment fees only seek to recover those likely reasonable costs.

Given the existing requirements of paragraph 10.1 of the current Code, the FSF is unsure as to the need for the addition of new paragraph 10.1.b as it appears to the FSF that the assessment of the reasonable costs likely to be incurred by the lender would incorporate identifying the tasks undertaken in order to establish the credit contract. The FSF therefore suggests that paragraph 10.1.b could usefully be deleted.

Further, the FSF notes that lenders are already legally required to have cost accounting support for their fee structure, but it is up to the lender to determine the appropriate approach to setting their fees within the bounds of the law and it is therefore not the responsibility of the Code to instruct lenders as to what that approach should be.

The FSF notes the removal of paragraph 10.3.c.i and ii from the draft Code with respect to the setting of credit fees other than an establishment fee or a prepayment fee and concurs that this removal is an improvement from the current Code. The same applies to the removal of 10.7.a. and b.

The FSF notes the inclusion in the draft Code of new paragraph 10.9 under “Fees Generally” which states that lenders should ensure that costs recovered relate to the specific credit contract or that class of credit contract and then specifies that costs should be close and relevant to the steps in the lending process to which the fee relates. The FSF believes that this paragraph should be moved to the commentary at the beginning of the chapter as the Supreme Court in its judgment in the Commerce Commission v Sportzone/MTF [2016] case introduced the concept of the close relevancy test which does not appear in legislation.

Chapter 11: Subsequent Dealings

The FSF notes that in this chapter, the use of the term "repayment difficulties" appears for the first time, as opposed to "unforeseen hardship". This terminology is used throughout Chapter 12 as well. The FSF endorses this change in terminology. It encompasses a much larger array of issues that a borrower may have, as opposed to just the hardship process which is defined by statute.

It also addresses some of the issues that have arisen for consumers as a result of the COVID-19 disruption and furthers the availability of financial assistance in the post-COVID-19 economic recovery, where a broader recognition of financial difficulties is necessary to enable borrowers to qualify for further financial support.

Paragraph 11.4 of the draft Code has also replaced the term "default" with "repayment difficulties" and the FSF also endorses this change in terminology for the reasons explained above. Also, because default does not always occur as a result of repayment difficulties but could relate to a range of circumstances where the borrower is in breach of a condition of the credit contract.

The amendment to the use of words "repayment difficulties" is also of significant note as it no longer solely refers to the statutory hardship process, but other grounds for repayment difficulties, and the need to act in the interests of both borrowers and lenders.

Chapter 12: Default and other problems

Chapter 12 and its substantial restructuring is mostly endorsed by the FSF and the FSF believes that this version of the chapter is an improvement on that of the draft chapter on which the FSF submitted in November. As stated previously, the additional flexibility in the Code to address the issues in the post-COVID-19 economy and enable borrowers to qualify for more financial assistance, is addressed in the change of terminology and the restructuring of this chapter.

On this basis then, the FSF was surprised to see that the title of the chapter has reverted back to "Default and other problems" as opposed to the title of "Repayment difficulties and other problems" which appeared in the November draft. The FSF would prefer to see the November draft title being adopted in the final version of the Code as it encompasses the range of issues borrowers may face post-COVID and the range of assistance lenders might provide to alleviate these.

It also reflects what the FSF has said in response to Chapter 11 above with respect to the fact that "default" is not always just related to repayment difficulties but could relate to a range of circumstances where the borrower is in breach of a condition of the credit contract.

The FSF provides the following feedback to the changes made to this chapter since the November draft and will then answer the questions posed in the Commentary Document accompanying the draft Code if they have not already been addressed.

The FSF is pleased to see that the Commentary accompanying this chapter acknowledges that "*Some lenders are subject to regulatory or contractual requirements which may limit*

the range of relief which can be offered." This is in line with the FSF's submission on the November draft of this chapter which pointed out that it is not just banks and NBDTs that are subject to covenants or conditions with respect to their funding obligations.

The FSF notes the insertion of new paragraph 12.4 with respect to the extent to which lenders should go to contact the borrower. The FSF is not sure of the rationale behind the inclusion of this paragraph and wonders whether it is entirely necessary given that the lender is already required to comply with responsible lending principles at all times and must only exercise its rights against the borrower or guarantor, or both, reasonably and in an ethical manner.

Further, the requirement in this paragraph for lenders, where possible, to offer options for the borrower to respond to messages from the lender should be free of charge may not be possible particularly where the borrower is using a mobile phone to contact the lender. On the basis of this and the point made in the previous paragraph, the FSF submits that this paragraph could usefully be deleted.

The FSF is pleased to see improvements to paragraph 12.9 on that of the November draft in line with the submission made on that version. The FSF was concerned with respect to that draft that the lender was being required to encourage the borrower to have early, open and honest communication with the lender when the borrower is experiencing repayment difficulties when this is something over which the lender has no control. The change to paragraph 12.9 recognises this and some changes to paragraph 12.10 also reinforce that lenders will do what they can to resolve issues for borrowers but that this is not always possible.

The FSF is pleased to see that paragraph 12.12 has been moved up in the order of inquiries to be made if actual or potential repayment difficulties are identified in line with the submission made on the November draft.

The FSF notes the inclusion of new paragraph 12.13.a.vii in the draft Code but is comfortable with that inclusion. The FSF also notes the inclusion of commentary in the draft Code under the section titled "*Types of repayment relief"* and finds this to be a helpful inclusion as is the example following paragraph 12.17 in the section titled "*Relief without variation to contract".*

The FSF is also very relieved to see reference to the need for lenders to develop an "arrears management plan" dropped from the requirements under the section titled "*Types of repayment relief"* in this version of the draft Code as compared to the November version. The FSF had significant concerns about this requirement which seemed to be veering dangerously close to a requirement for a financial plan or financial advice.

The FSF is concerned about the requirement of paragraph 12.21.c that says that a written application for relief under the statutory hardship process must be authorised by the borrower if it has been completed on behalf of the borrow by an authorised agent. Apart from the fact that obtaining such authorization may be problematic for the lender if it is not received in writing or the lender does not have the technology available to record customer

calls, anyone acting as an agent on behalf of the borrower would have been required to provide the lender with an appropriate privacy waiver in order to be able to do so. On that basis, the FSF submits that paragraph 12.21.c could usefully be deleted.

Paragraph 12.23.c requires any variation to be “fair and reasonable for both the borrower and lender”. The FSF is pleased to see that this paragraph recognises that the variation needs to be fair and reasonable for both parties to the loan contract which is in line with the FSF’s suggestions in the submission on the November draft of this Chapter.

Similarly, paragraph 12.25.b is now better worded than it was in the November draft with the inclusion of the words “*would enable the borrower to meet their obligations …”* as opposed to the wording in the November draft that said: “*would still fail to enable the borrower to meet their obligations …”.*

The FSF is somewhat concerned about the inclusion of paragraph 12.25.d, where it says that a lender should consider the suggestions of a financial mentor authorised by the borrower to liaise with the lender about the borrower’s finances. In the experience of FSF members, the involvement of a financial mentor in a borrower’s finances is often a positive experience for both the borrower and the lender but this is not always the case when a financial mentor’s suggestions are not realistic or are in conflict with the lender’s own regulatory or contractual requirements. However, as this is written as an obligation the lender “should” comply with, as opposed to “must” comply, it is noted that it is not an absolute requirement for the lender to accept the suggestions of a financial mentor. The FSF would be extremely concerned if this was to become the case.

The FSF believes that paragraph 12.26 of the draft Code that says, “*Where more than one relief option is available, lenders should provide borrowers with information on the options.”* is now worded better than it was in the November version which required lenders to *“assist borrowers to make an informed decision”.*

Likewise, paragraph 12.32 of the draft Code is better worded and therefore more easily complied with than the monitoring requirements of lenders contained in the November version.

The same applies to paragraph 12.34 of the draft Code with respect to suspending active pursuit of recovery which now requires lenders to “*consider*” suspending such active pursuit as opposed to the absolute requirement that lenders should suspend such activity of the November version. This at least allows that lenders may actively pursue recovery if they feel that it is required in cases where the secured asset might be at risk for example.

The FSF is pleased to see the change to paragraph 12.41.e of the draft Code as compared to the November version which allows lenders to suggest that borrowers make loan repayments direct from their benefit or other income where they have: “*first determined that the repayments are at a level which enables the borrower in their current circumstances to reasonably expect to be able to discharge their obligations while also meeting necessities and other financial commitments.”* and sees this wording as a significant improvement, in line with the FSF’s submission on the November version.

The example provided following paragraph 12.41 of specific practices in which lenders should not indulge is a significant improvement on that of the current Code and the draft November version. The example in those versions is one to which FSF has strongly objected in previous submissions. This is based on the fact that responsible lenders would not indulge in such behaviour, and FSF members found it offensive to suggest that they would.

The FSF is pleased to see some changes in the draft Code to paragraph 12.44 with respect to persistent debt. This recognises what the FSF said in the submission on the November draft that borrowers making only the minimum required payment on their credit card, for example, is not necessarily an indicator that the borrower is in persistent debt and reflects the fact that it is perfectly reasonable under the credit contract for the borrower to make only the minimum payment and is therefore often the borrower's choice to do so.

In spite of these changes, however, the FSF is still concerned that the requirements of paragraphs 12.44 and 12.45 are veering towards expectations of lenders that do not appear in the CCCFA or the regulations and are almost legislation by Code. The purpose of the Code is to provide guidance to lenders as to how they might meet their obligations under the CCCFA and accompanying regulations. Introducing obligations on lenders that are not in the law or the regulations is putting more pressure on lenders to implement systems to identify persistent debt that is not legally required of them.

Indeed, implementing such systems would be a very large piece of systems work which is not something that lenders have the capacity or resources to do particularly with the current major calls on their resources that the CCCFA changes require. The FSF therefore submits that, on this basis, paragraphs 12.44 and 12.45 should either be deleted, or it should be made clear that their requirements apply only to high-cost loan contracts.

Finally, FSF is pleased to see the majority of changes proposed to this chapter reflect fairer and more reasonable requirements on lenders and borrowers. The commentary provided in this chapter also recognises the fact that lenders are not able to help all borrowers with difficulties. This is evident throughout the chapter as the requirement is that lenders "should consider" various aspects as opposed to being "required" to consider them, giving lenders more discretion when enacting a variation which may not be beneficial for the borrower objectively despite potential desperation.

With respect to the specific questions raised in the Commentary Document accompanying the draft Code, the FSF has the following to say (where the question may not already have been answered in the preceding comments with respect to this chapter):

Question 1: What is the current practice of lenders, in relation to informing guarantors about variations, and how are privacy considerations managed?

FSF members report that their current practice in relation to informing guarantors about variations requires guarantors to sign the varied contract to acknowledge the variation together with the borrower. The guarantor is entitled to receive information with respect to any changes to the loan as a party to the loan contract and therefore the borrower has provided their authorisation for this to happen when they proposed that the person

concerned act as their guarantor. Lenders are also required to be compliant with the provisions of the Privacy Act 2020 and take care to ensure that they do so. On this basis, the FSF does not see any issues with the management of privacy considerations.

Question 2: In your view, how should the Code address the issue of informing the guarantor in these circumstances (if at all)?
Please refer to the answer provided to question 1 above.

Question 3: In your view, does the proposed addition appropriately balance the considerations in these situations? If not, please explain your reasoning.
The FSF refers to the submission above with respect to paragraph 12.41.e of the draft Code. The way in which this is now worded acknowledges that essential living costs (housing, food, health) should have priority over loan repayments, and recognise these as basic human needs. However, this proposed wording recognises the repayment difficulties that many are having during this economic downturn, and also the fact that unemployment rates have increased and therefore the dependence on benefits.

On this basis, therefore, the FSF is pleased to see the rewording of paragraph 12.41.e of the draft Code as compared to the November version in line with the FSF's submission on that version that suggesting that borrowers might make loan repayments direct from their benefit or other income and that this may be to the borrower's advantage.

As stated in the FSF's submission on the November version, this is because WINZ will fund certain essential products for their customers which are paid for under redirection of benefit direct to lenders. Also, because where a customer is facing repayment problems WINZ will often offer assistance in bringing repayments up to date by redirection of benefit and because the wording of this paragraph in the November version could have removed lenders' ability to refer clients to WINZ to seek financial assistance creating a negative outcome for the client and lender.

Question 4: In your view, when should the new Chapter 12 (as updated in light of submissions) come into force, to ensure lenders and borrowers have clear guidance around the management of repayment difficulties, and to allow lenders sufficient time for implementation?
The FSF has submitted on the need for an extension to the timeframe for implementation many a time and the FSF has expressed disappointment in the Government's inflexibility and lack of understanding of the significant issues for all lenders to be able to comply with the complex requirements of the new responsible lending regime within the timeframe for implementation of these by 1 October 2021.

Chapter 12 has undergone the most significant changes of all the chapters in the revised Code and will therefore be amongst the most complex of the new requirements for lenders to implement. Given what is expected of lenders in terms of their compliance obligations for all the other changes to the CCCFA, the new regulations and the revised Code, the FSF would be fully supportive of any suggestion of as much of a delay in the implementation of the new Chapter 12 as possible. The FSF submits that a further six months from 1 October to bring in the requirements of Chapter 12 would seem reasonable.

Question 5: In your view, are there any elements of Chapter 12 which should come in more urgently than others?

The FSF believes that no elements of Chapter 12 should come in more urgently than others. The timeframe for implementation of all the new responsible lending obligations is already far too burdensome and unrealistic as it is. Implementing some elements of Chapter 12 more urgently contradicts the FSF's constant pleas and requests for the reconsideration and extension of the current implementation date set.

As noted above, Chapter 12 has the most significant changes to its content of any of the Code's chapters. Implementation of these changes requires extensive and time-consuming software development and testing, P.O.S changes, procedural and policy changes, human resource training, and a whole host of other aspects of the operation of lenders. The FSF requests as much time as possible in the implementation of Chapter 12 to ensure that lenders have a realistic time frame in which they can actually meet their obligations and responsibilities. Rushing in this Chapter of the Code will not allow for lenders to appropriately meet obligations, and effectively comply with the Regulations required.

Chapter 15: Glossary

The FSF notes the addition to the definition of *vulnerable consumer* in the glossary of the wording: *"In general, a vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care."* with some significant concern.

It is arguable that if a firm is not acting with appropriate levels of care, all consumers dealing with such a firm would be susceptible to detriment and therefore all the resources of the regulator should be brought to bear against such firms to enforce the law against them.

However, where a firm **is** acting with appropriate levels of care, the FSF questions how such a firm is expected to recognize that a consumer is especially susceptible to detriment. Further, when reading this definition, it is not clear as to what is meant by *susceptible* and the FSF seeks clarification as to the grounds on which lenders would determine susceptibility. Classifying an especially susceptible vulnerable consumer is of the utmost importance in order for consistency across all lenders and co-operates with the prohibition of discrimination as emphasised in Chapter 2 of this draft Code.

As stated in this submission's comments on Chapter 1 of the draft Code, the FSF believes that extreme care needs to be used with the words "will", "must", "should" and "may" throughout the Code and it should be made clear in the Glossary as to what is expected of lenders where these words are used.

That is that the words "*the lender **will***" or "*the lender **must**"* should only be used in the Code in circumstances where what is being said is something that is required of the lender in the legislation or regulations. When the words "*the lender **should**"* are used, this should only be in situations where the guidance provided in the Code is the preferred option for the way in which lenders should act. When the words the "*the lender **may***" are used, it should be made clear in the Glossary that this means that the lender could do what is suggested but is not

required to, nor is it the preferred action for them to take if it is not relevant to or appropriate for their customers’ circumstances or their business.

The FSF suggests that definitions of the terms “financial adviser” and “other intermediaries” should be included in the Glossary to provide clarity that the term “financial adviser” means those intermediaries who are subject to the financial adviser regime of the Financial Markets Conduct Act 2013 and “other intermediaries” means those intermediaries who are not as per the suggestion made in the FSF’s comments on paragraph 4.5 earlier in this submission.

Once again, the FSF is grateful for the opportunity to submit on the draft Code. If there are any further matters you wish to discuss with the FSF and its members, please do not hesitate to contact me.

Lyn McMorran
EXCECUTIVE DIRECTOR

Appendix A

The following minor typographical errors have been identified by the FSF in the body of the draft Code:

Paragraph 2.7.a appears twice. The second point in this paragraph should be renumbered as 2.7.b.

In what should now be paragraph 2.7.b the Privacy Act is referred to as "the Privacy Act 1993". This should be updated to read "the Privacy Act 2020".

In paragraph 4.7, the word "certainty" should be deleted the second time it appears in the second sentence. I.e., the sentence should read "*For example, a borrower entering into a home loan may specify that they want certainty of the amount of their payments for a period (which would require a fixed interest rate loan), but ~~certainty~~ also flexibility …".*

In paragraph 4.10, the word "to" should be deleted in the first sentence. I.e., the sentence should read "*Lenders should also undertake further inquiries ~~to~~ about the borrower's requirements and objectives, if all of the following apply:"*

Then paragraph 4.10.a goes on to say: *"the information material to the assessment"* which makes no sense. The FSF suspects it is meant to say: *"the information **is** material to the assessment"* but, if this is the case, this is not particularly helpful as what is considered to be "material" is not discussed.

Paragraph 4.12 is missing the word "and" in the first sentence when referring to the "*borrower's requirements **and** objectives".*