



FINANCIAL SERVICES FEDERATION

29 January 2021

Chairperson
Justice Select Committee
New Zealand Parliament
Wellington

Dear Chairperson

Thank you for your letter to the Financial Services Federation (FSF) of 23 December 2020 inviting the FSF to submit to the Justice Committee on the District Court (Protection of Judgment Debtors with Disabilities) Amendment Bill on behalf of our members. We appreciate your having brought this Bill to our attention.

By way of background, the FSF is the industry body representing responsible non-bank lenders, fleet leasing providers and credit-related insurance providers. The FSF has more than 60 corporate members including finance companies providing credit responsibly to over 1.5 million New Zealand consumers and businesses and Affiliate members such as legal and accounting firms, fin-tech software providers, credit reporting agencies and debt collection agencies. A list of the current FSF membership is attached for your information as Appendix A.

The FSF is supportive of the intent of the Bill being to protect judgment debtors with disabilities from having goods seized where the item proposed to be seized is necessary for the debtor's care, support or independence. On the face of it, this would seem to provide an important protection for a vulnerable segment of New Zealand society rather than leave it to the good judgement of bailiffs to act fairly and reasonably as is the current case.

However, the FSF can foresee some difficulties and unintended consequences for lenders and for consumers with disabilities were this Bill to proceed into law.

Before addressing these, however, the FSF is interested to understand what the extent of the problem being addressed actually is and whether there is any evidence to support the fact that judgment debtors with disabilities are being treated unfairly or that harm is being caused to such people as a result of the seizure of property that enables their independence. Certainly, FSF members are not aware of such a problem existing amongst their customer bases.

The FSF has developed a warm relationship with FinCap the umbrella group for New Zealand's financial mentor network through a Memorandum of Understanding signed between our two organisations nearly two years ago. One of the key reasons for this relationship is to enable a regular communications platform for FinCap to

share with us the key issues their mentors are seeing within their communities. The repossession of goods from judgment debtors with disabilities has never come up in those discussions as being an issue that they are aware of or concerned about.

Repossession of property is a very rare occurrence and one which lenders work hard with the borrower or their representative to avoid as it is an absolute last resort. FSF members would far prefer to work with the debtor or their agent to determine a mutually satisfactory solution that does not involve seizure of any goods and this may include waiver of interest or fees or debt write-off, at the discretion of the lender.

The first of the FSF's concerns for lenders with respect to this Bill is that it is not always obvious to a lender that the customer with whom they are dealing is one with a disability or that the asset being purchased under the credit agreement is one which is required to promote his or her inclusion and participation in society, and independence.

The expectation of consumers in 2020 is that they can transact with goods and services providers online to the greatest possible extent, so it is becoming increasingly less frequent that lenders actually meet with their borrowers face to face making it even more difficult to identify that the customer is one with a disability.

Certainly, the FSF does not believe that it would be within the provisions of the Human Rights Act 1993 for lenders to ask customers whether or not they have a disability nor whether the asset being purchased under the credit contract is one that is necessary for the borrower's care, support, or independence.

Even assuming that a lender was able to identify that a customer had a disability at the time when they first applied for credit, flagging the customer's lending file as being a person with a disability would also certainly appear to the FSF to be in breach of the Human Rights Act 1993.

Further, the FSF is concerned that the Bill is drafted in such a way that there is a real risk that any asset in any household holding a mobility card could become subject to the provisions of this legislation, not just those that are necessary for the judgment debtor's care, support, or independence in which case lenders would be put in the position of being unable to realise on any secured asset which they have financed for a person with a disability.

If the ability for lenders to realise on security is removed or reduced, the FSF would be concerned that lenders would have to regard financing of assets for persons with disabilities as being unsecured lending. Unsecured lending incurs higher interest rates for the borrower because of its higher inherent risk to the lender, and this could potentially have the unintended consequence of either increasing the cost of lending to persons with disabilities or even potentially removing access to finance for this group as many lenders do not provide unsecured lending products.

On the basis of all the points above, the FSF submits that a small change to the drafting of the requirements of the Bill as follows would be very helpful:

“After section 167(2)(a)(ii), insert:

*(iii) in the case of the judgment debtor with a disability, any item **that they have identified to the lender at the time of entering into the credit contract as being necessary** for his or her care or support, independence, or to promote his or her inclusion and participation in society ...”*

And with section 1682A:

*“A vehicle **that has been identified to the lender at the time of entering into the credit contract as being** needed by a judgment debtor with a disability for his or her care or support, independence, or to promote his or her inclusion and participation in society, must not be immobilised under subsection (1).”*

Once again, the FSF is grateful to the Select Committee for the opportunity to make a submission on this Bill and would be very happy to speak to any points on which the Committee requires clarification.

Yours sincerely



Lyn McMorran
EXECUTIVE DIRECTOR

FSF Membership List as at 30 November 2020
Appendix A

Non-Bank Deposit Takers Leasing Providers	Vehicle Lenders	Finance Company Diversified Lenders	Finance Company Diversified Lenders	Credit-related Insurance Providers	Affiliate Members
<u>Rated</u> Asset Finance (B)	AA Finance Limited	Avanti Finance	Speirs Finance Group	Protecta Insurance	255 Finance Limited
<u>Non-Rated</u> Mutual Credit Finance Gold Band Finance ➤ Loan Co	Auto Finance Direct Limited BMW Financial Services ➤ Mini ➤ Alphera Financial Services Community Financial Services European Financial Services Go Car Finance Ltd Honda Financial Services Mercedes-Benz Financial Motor Trade Finance Nissan Financial Services NZ Ltd ➤ Mitsubishi Motors Financial Services ➤ Skyline Car Finance Onyx Finance Limited Toyota Finance NZ Yamaha Motor Finance	➤ Branded Financial Caterpillar Financial Services NZ Ltd CentraCorp Finance 2000 Finance Now ➤ The Warehouse Financial Services ➤ Southsure Assurance Flexi Group (NZ) Limited Future Finance Geneva Finance Home Direct Instant Finance ➤ Fair City ➤ My Finance John Deere Financial Latitude Financial Metro Finance Pepper NZ Limited Personal Loan Corporation Pioneer Finance Prospa NZ Ltd South Pacific Loans	➤ Speirs Finance ➤ Speirs Corporate & Leasing ➤ Yogo Fleet Thorn Group Financial Services Ltd Turners Automotive Group ➤ Autosure UDC Finance Limited <u>Credit Reporting & Debt Collection Agencies</u> Baycorp (NZ) ➤ Credit Corp Centrix Collection House Equifax (prev Veda) Illion (prev Dun & Bradstreet (NZ) Limited Intercoll Quadrant Group (NZ) Limited	Provident Insurance Corporation Ltd	Buddle Findlay Chapman Tripp Experian EY FinTech NZ Happy Prime Consultancy Limited HPD Software Ltd KPMG LexisNexis PWC Simpson Western Total: 63 members
<u>Leasing Providers</u> Custom Fleet Fleet Partners NZ Ltd Lease Plan ORIX NZ SG Fleet					