



FINANCIAL SERVICES FEDERATION

25 November 2021

Committee Chair
Economic Development, Science, and Innovation Committee,
Parliament Buildings,
Wellington

Dear Committee Chair

Re: Retail Payment System Bill

The Financial Services Federation (“FSF”) is grateful for the opportunity to provide this submission to the Economic Development, Science, and Innovation Committee on the Retail Payment System Bill (“Bill”) on behalf of FSF’s members.

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 over 85 members and affiliates providing these products to more than 1.7 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. Data relating to the extent to which FSF members (excluding Affiliate members) contribute to New Zealand consumers, society, and business is attached as Appendix B.

The FSF membership notably contains four entities who are card issuers, and they therefore have a keen interest in the regulation of merchant service fees. The FSF’s card issuer members issue credit cards only, so they differ from the larger card schemes which issue both debit and credit options and which therefore generate higher revenue from merchant service fees. It is on this basis that the FSF makes the following submission.

The submission will begin with general comments before turning to the Bill and its aspects.

General comments

The FSF has submitted on consultation regarding regulating to reduce merchant service fees earlier in the year, we also participated in the targeted consultation on this review facilitated through the Ministry of Business, Innovation, and Employment.

As a result of the Cabinet papers, policy decisions released, and the Bill itself, the FSF suspects that there is not much appetite for any amendments to the Bill and the Minister is unlikely to consider alternative ways in which to deal with the retail payments system. The FSF, alongside other submitters, have previously voiced concern regarding the blanket cap

on interchange fees, and how such a policy disproportionately affects smaller card issuers, not just the Visa and Mastercard schemes themselves. However, after both rounds of previous consultation, opinions against the regulation of interchange fees have not been considered nor acknowledged. Much of the FSF's stances will be spoken to again below.

In short, the FSF supports the efforts of the relevant ministries in their attempt to support small businesses ("SMEs"). The FSF is acutely aware of the impacts small businesses are having to face with recent alert level restrictions, a recession and currently high inflation, increased costs and particularly, much regulatory burden imposed on these SMEs as the Government increases regulation and resulting compliance costs. However, the FSF questions the efficacy of this Bill in achieving its objective of lessening the onus imposed on merchants and consumers.

It was estimated that a 20% reduction of credit card interchange and a 30% reduction in online fees would equate to savings for consumers and merchants of fees about \$74 million. When dividing this number by the number of SME merchants in Aotearoa, this would amount to a saving of approximately \$130 each. When comparing the compliance costs imposed on businesses as a result of further Government decisions just this year alone, such as increased sick leave, an extra public holiday next year, etc, the estimated savings from regulating merchant service fees do not go far towards making up for such costs as SMEs struggle to ensure they can keep their doors open.

Further to this, the interchange reductions, while prima facie, being of benefit to the merchants and consumers, are likely to cause the interest rates on such products to increase. This is because, unlike in overseas jurisdictions, New Zealand issuers cannot charge fees to make revenue and therefore the interchange fee is disproportionality important to domestic issuers. Once revenue is lost from one source of the product, it's naïve to assume that it will not be replaced from another. Costs move and shift around, and it is likely that increased interest rates will have negative impacts for consumers.

The FSF does not believe that this proposal to regulate interchange fees will not do enough to relieve the pressures currently faced by businesses and consumers as a result of the restrictions imposed on them and the issues the Minister has addressed as objectives – consumer costs and business costs – are not appropriately addressed with this Bill. More resources should be diverted to policy which will impact the cost of operating and living in Aotearoa before interchange fees are regulated. Otherwise, the high cost of operating in Aotearoa remains the same, and, consequently, will continue to negatively impact merchants and consumers and their respective costs.

Competition

Transaction costs for the networks of Visa and Mastercard have recently fallen by almost 18%, and over the last two years, providers have reduced merchant fees for the COVID-19 period in recognition of the impact of this pandemic. Both examples demonstrate that there is more competition in the market than what was thought from the initial research into this policy matter.

The FSF believes that this Bill will negatively impact competition in the sector. A sector that is constantly evolving requires investment, as opposed to restrictive regulations. Many submissions, in the previous rounds of consultation on this same subject, have stated that the Government should not intervene by way of regulation. The market forces have been, and will continue to, drive competition. If the profits available within the payment system can be reduced by regulation, the ability to develop new services that will benefit merchants and consumers will be impacted adversely.

Enforcement

As stated by the Minister, the Commerce Commission has broad ranging powers. The FSF queries the need for other such general powers that this Bill is proposing. Particularly, the suggested ability to impose information disclosure requirements to improve the transparency of fees, and whether this is extending to give regulators undue power. The current proposition of interchange fee caps would appear to be noncontentious in their application and enforcement; either the requirement is met, or it is not.

It would be at the discretion of the Commerce Commission to ensure enforcement is proceeded with where the caps are not met, but the FSF sees no rationale for providing any more extensive power to the regulator than required.

In relation to this, *section 38 (b)* of the Bill raises concerns as to how sweeping such powers are. The FSF suggest that this section be rephrased to be more contextual to participants, as opposed to allowing interpretation to read for any entity. This would make the section more aligned to the contexts of the sections before and after it. The FSF also queries the necessity for this section, as it is more or less a generalised paraphrase of *section 38 (1)(a) and 38 (1)(c)*. The FSF would see it to be most wise to remove the section in its entirety rather than imposing such unnecessary power to investigate whatever the Commerce Commission wishes to.

There are also questions surrounding how the Bill will interact with the Financial Markets Infrastructures Act 2021 (“Act”), and whether some entities might be caught by both regimes, with overlapping obligations monitored by different entities. The FSF urges caution to ensure regulatory overlap is minimised, as is required for efficient and well-written legislation. With this in mind, regulators should also consider whether the Act has more appropriate routes for regulating merchant fees without compromising competition.

Institutional arrangements

The FSF remains in support of previous submissions which have requested the regulator, the Commerce Commission, to provide a holistic view of the payments system to ensure the regulator has access to expert and advisory groups in developing and carrying out the enforcement of regulation.

Of particular importance to the FSF would be representation of the non-bank card issuing sector to be included in any advisory group on this matter, as such smaller card issuers are disproportionately affected as participants in the networks and regulation in these networks

is constructed with a heavy hand and a lack of proportionality for smaller participants and operators. The FSF have had prior discussion with the Ministry of Business, Innovation, & Employment about the importance of small card issuers having their voices heard, and we hope this acknowledgement and agreement will continue into the later stages of implementation of the Bill.

The criteria for issuing network standards, as in *section 18* of the Bill, will most effectively be met with such an established advisory group with which the Commerce Commission must consider the submissions received about the proposed standard, as outlined in *section 19(1)(c)* of the Bill.

The FSF remains concerned as to whether consideration or inclusion of submissions will be met, as required by *section 18* and *19* of this Bill. This is justified by previous rounds of consultations, as major themes in submissions were not acknowledged nor reported to in the drafting of this Bill or accompanying policy. To address the lack of previous acknowledgement of submitters' concerns and to ensure the criteria and process for issuing network standards is met, an advisory group will be the best option in addressing both the legislative requirements and the industry's concerns.

Thank you again for the opportunity to participate on this targeted consultation and provide the perspective of the non-bank card issuers.

Please do not hesitate to contact me if you wish to speak to any of the points made.

Yours sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above the typed name.

Diana Yeritsyan
Legal and Policy Manager
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Appendix A

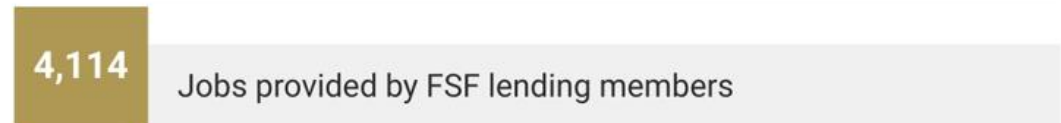
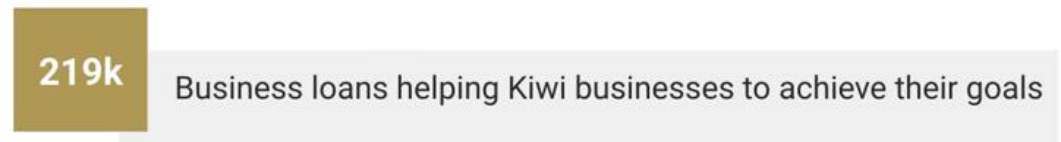
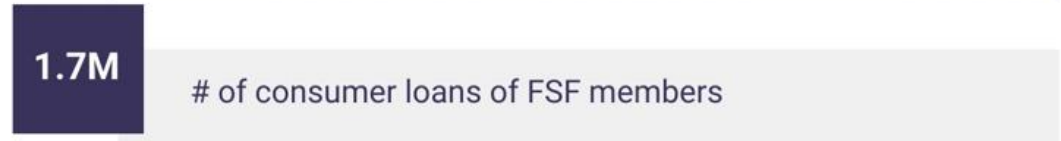
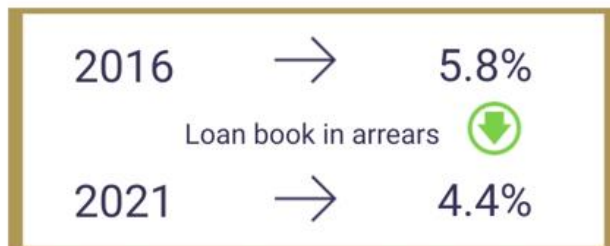
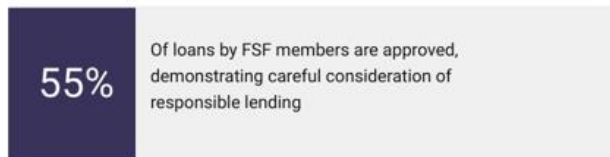
FSF Membership List as at November 2021

Non-Bank Deposit Takers, Insurance Premium Funders,	Vehicle Lenders	Finance Companies/ Diversified Lenders	Finance Companies/ Diversified Lenders, Leasing Providers	Credit Reporting, Debt Collection Agencies, Insurance Providers	Affiliate Members
<p>XCEDA (B)</p> <p>Finance Direct Limited ➤ Lending Crowd</p> <p>Gold Band Finance ➤ Loan Co</p> <p>Mutual Credit Finance</p> <p><u>Credit Unions/Building Societies</u></p> <p>First Credit Union</p> <p>Nelson Building Society</p> <p>Police and Families Credit Union</p> <p>Westforce Credit Union</p> <p><u>Insurance Premium Funders</u></p> <p>Elantis Premium Funding NZ Ltd</p> <p>Financial Synergy Limited</p> <p>Hunter Premium Funding</p> <p>IQumulate Premium Funding</p> <p>Rothbury Instalment Services</p>	<p>AA Finance Limited</p> <p>Auto Finance Direct Limited</p> <p>BMW Financial Services ➤ Mini ➤ Alpha 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>Kubota New Zealand Ltd</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>Avanti Finance ➤ Branded Financial</p> <p>Basalt Group</p> <p>Basecorp Finance Ltd</p> <p>Blackbird Finance</p> <p>Caterpillar Financial Services NZ Ltd</p> <p>Centracorp Finance 2000</p> <p>Finance Now ➤ The Warehouse Financial Services ➤ Southsure Assurance</p> <p>Humm Group</p> <p>Future Finance</p> <p>Geneva Finance</p> <p>Harmony</p> <p>Instant Finance ➤ Fair City ➤ My Finance</p> <p>John Deere Financial</p> <p>Latitude Financial</p> <p>Lifestyle Loans NZ Ltd</p> <p>Metro Finance</p> <p>NZ Finance Ltd</p>	<p>Pepper NZ Limited</p> <p>Personal Loan Corporation</p> <p>Pioneer Finance</p> <p>Prosopa NZ Ltd</p> <p>Smith's City Finance Ltd</p> <p>Speirs Finance Group ➤ Speirs Finance ➤ Speirs Corporate & Leasing ➤ Yogo Fleet</p> <p>Thorn Group Financial Services Ltd</p> <p>Turners Automotive Group ➤ Autosure ➤ East Coast Credit ➤ Oxford Finance</p> <p>UDC Finance Limited</p> <p><u>Leasing Providers</u></p> <p>Custom Fleet</p> <p>Fleet Partners NZ Ltd</p> <p>ORIX New Zealand</p> <p>SG Fleet</p>	<p>Baycorp (NZ) ➤ Credit Corp</p> <p>Centrix</p> <p>Collection House</p> <p>Debtworks (NZ) Limited</p> <p>Equifax (prey Veda)</p> <p>Illion (prey Dun & Bradstreet (NZ) Limited)</p> <p>Intercoll</p> <p>Quadrant Group (NZ) Limited</p> <p><u>Credit-related Insurance Providers</u></p> <p>Protecta Insurance</p> <p>Provident Insurance Corporation Ltd</p>	<p>Buddle Findlay</p> <p>Chapman Tripp</p> <p>Credisense Ltd</p> <p>Credit Sense Pty Ltd</p> <p>Experian</p> <p>EY</p> <p>FinTech NZ</p> <p>Finzsoft</p> <p>Green Mount Advisory</p> <p>Happy Prime Consultancy Limited</p> <p>HPD Software Ltd</p> <p>KPMG</p> <p>LexisNexis</p> <p>PWC</p> <p>Simpson Western</p> <p>Verifier Australia</p> <p>Total 83 members</p>



FINANCIAL SERVICES FEDERATION

The Financial Services Federation (FSF) is the non-profit industry association for responsible and ethical finance, leasing and credit-related insurance providers operating in Aotearoa New Zealand.



Data collected and aggregated by KPMG in FSF's annual member data survey as at February 2021. Values in NZ\$.