



## FINANCIAL SERVICES FEDERATION

19 August 2020

Codes Reissue Submissions,  
Office of the Privacy Commissioner,  
PO Box 466  
AUCKLAND 1140

By email to: [privacy.code@privacy.org.nz](mailto:privacy.code@privacy.org.nz)

### **Information Paper: Revocation and Replacement of the Credit Reporting Privacy Code under the Privacy Act 2020**

The Financial Services Federation (“FSF”) is grateful to the Commission for the opportunity to provide this submission on the revocation and replacement of the Credit Reporting Privacy Code (“the Code”) under the Privacy Act (“the Act”) on behalf of its 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 sixty members and affiliates providing these products to more than 1.5 million New Zealand consumers and businesses. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A. 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 would first like to set out that it is grateful for the opportunity to engage in consultation on the revocation and replacement of the Credit Reporting Privacy Code under the Privacy Act 2020. As can be seen from Appendix A, the FSF has a number of credit reporting and debt collection agency members, alongside credit providing members, all of whom stand to be affected by the proposed repeal and revocation of the Code whether that is directly or indirectly.

However, the FSF is pleased to note that it does not consider any of the changes to the Code pose a risk to the operations of credit reporters or credit providers. Rather, the minor changes made to the drafting of the Code serve as a great improvement. In particular, the removal of

section notes and square brackets relating to previous amendments increases the legibility of the Code considerably. The FSF values clear and coherent regulation, that allows for both individuals and organisations to understand their rights and obligations, and considers this Code is a good example of such regulation.

The FSF will discuss the questions for submitters set out in the Information Paper in further detail below.

1. *Would you find it helpful to add a new subclause, which expressly provides that a term or expression defined in the Privacy Act and used but not defined in this code has the same meaning as the Act?*

The FSF considers it would be helpful to add a new subclause, which expressly provides for this, as it would add further value to the legibility of the Code and maintain consistency with the 2004 version of the Code. While the FSF sees value in removing the majority of the notes in the 2004 version of the Code, as this note allowed for ease of comprehension and interpretation of the Code, there remains value in expressly communicating that there are terms that are defined in the Act which are present in the Code but which are not defined there. While the FSF understands that the Act and the Code are intended to be read alongside one another, expressly setting out the way in which the Code is to be read would clarify this.

2. *Do you think the addition of new subrule 1(3) to the code is required in the credit reporting context?*

In the FSF's opinion, the addition of new subrule 1(3) demonstrates clear value to the Code by maintaining consistency across primary and subordinate legislation. As this reflects the principles within the Act, even if the principle is comparatively more relevant in other contexts, the addition of the new subrule ought to also be clearly set out in the credit reporting context.

3. *Would you prefer express reference to section 54 (now section 30 of the 2020 Act) to be retained in rule 2, even though it has been removed from information privacy principle 2?*

As the Act no longer contains a subpart which expressly deals with exemptions from information privacy principles ("IPP"), the FSF can see value in retaining express reference to the Commissioner to authorise the collection, use, storage, or disclosure of personal information that would otherwise be in breach of the IPP's.

4. *Do you think this addition to the code by way of updating the wording of rule 4 to reflect the Act is required?*

The FSF considers that, in line with the updated Act, it is relevant to emphasise the fact that an individual's youth is a factor in determining whether credit information is collected in such a way that is fair and not unreasonably intrusive in the circumstances.

This seems to attempt to address any situations where vulnerable persons may be taken advantage of, in which case this ought to be made clearer, as currently the rule suggests that only a person's age may be considered a relevant factor, despite other factors such as mental illness or intellectual disability presenting as equally weighty. The factor of age appears to colour the circumstances in which the collection of personal information is being collected may be considered fair or unreasonably intrusive.

However, the FSF appreciates that this Information Paper seeks consultation on the drafting of the Code, not on the policy changes already established by way of the Royal Assent of the new Act. As such, the FSF supports the addition in rule 4 as it appropriately reflects and communicates the provisions and principles contained in the Act.

*5. Would you prefer express reference to section 54 (now section 30 of the 2020 Act) to be retained in rule 10, even though it has been removed from information privacy principle 10?*

As the FSF set out above in answer to question 3, as the Act no longer contains a subpart which expressly deals with exemptions from information privacy principles ("IPP"), the FSF can see value in retaining express reference to the Commissioner to authorise the collection, use, storage, or disclosure of personal information that would otherwise be in breach of the IPP's.

*6. Would you prefer express reference to section 54 (now section 30 of the 2020 Act) to be retained in rule 11, even though it has been removed from information privacy principle 11?*

As the FSF set out above in answer to question 3, as the Act no longer contains a subpart which expressly deals with exemptions from information privacy principles ("IPP"), the FSF can see value in retaining express reference to the Commissioner to authorise the collection, use, storage, or disclosure of personal information that would otherwise be in breach of the IPP's.

*7. Do you agree with the way in which we have implemented new information privacy principle 12 into the code?*

In reading subrule 12(2) and referencing it against information privacy principle 12 as it is set out in the Act, the FSF surmises that there is an essential word missing, without which the subrule is difficult to comprehend. The FSF considers that the subrule ought to read: "...subrule (1) does not apply if the credit information **[is]** to be disclosed to B in reliance on rule..."

Aside from this, the FSF considers that as it is currently drafted, information privacy principle 12 is effectively implemented in rule 10 of the Code.

*8. Do you agree that the application of rule 13 to credit reporters should reflect section 26 of the Privacy Act 2020?*

As credit reporters may hold or access information from before 1 July 1993, the FSF agrees that the section 26 restricted application of information privacy principle 13 to unique identifiers assigned before 1 July 1993 ought to be reflected in rule 13 of the Code.

Thank you again for the opportunity to provide the FSF's views on the Information Paper proposing the revocation and replacement of the Credit Reporting Privacy Code under the Privacy Act 2020. Please do not hesitate to contact me if you require anything further.

Bethany Bray  
LEGAL COUNSEL AND POLICY MANAGER

FSF Membership List as at 1 February 2020

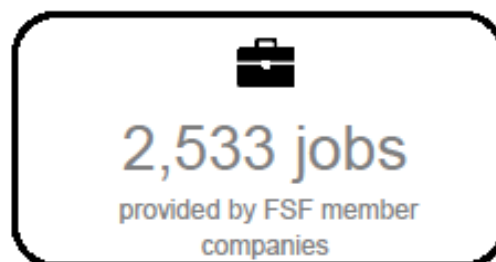
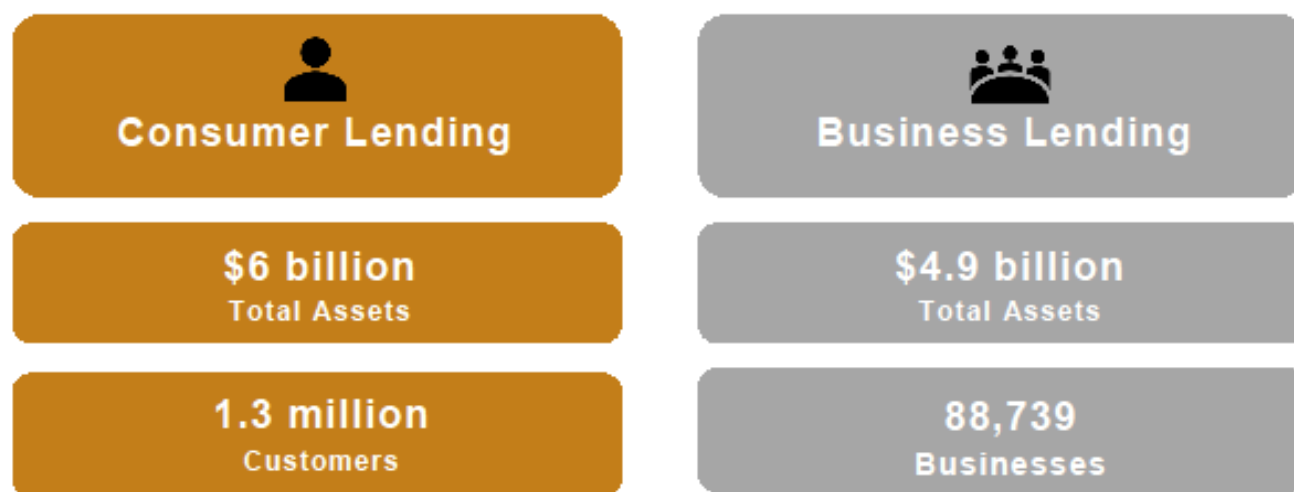
**Appendix A**

Non-Bank Deposit Takers (NBDTs)	Vehicle Lenders	Finance Company Diversified Lenders	Finance Company Diversified Lenders	Credit-Related Insurance	Affiliate Members
<p><b><u>Rated</u></b> Asset Finance (B)</p> <p><b><u>Non-Rated</u></b> Gold Band Finance ➤ Loan Co Mutual Credit Finance</p>	<p>AA Finance Limited</p> <p>BMW Financial Services ➤ Mini ➤ Alphaera Financial Services</p> <p>Community Financial Services</p> <p>European Financial Services</p> <p>Go Car Finance Ltd</p> <p>Honda Financial Services</p> <p>Mercedes-Benz Financial</p> <p>Motor Trade Finance</p> <p>Nissan Financial Services NZ Ltd ➤ Mitsubishi Motors Financial Services ➤ Skyline Car Finance</p> <p>Onyx Finance Limited</p> <p>Toyota Finance NZ</p> <p>Yamaha Motor Finance</p> <p><b><u>Leasing Providers</u></b> Custom Fleet</p> <p>Fleet Partners NZ Ltd</p> <p>Lease Plan</p> <p>ORIX NZ</p> <p>SG Fleet</p>	<p>L &amp; F Ltd ➤ Speirs Finance ➤ YooGo</p> <p>Avanti Finance ➤ Branded Financial</p> <p>Caterpillar Financial Services NZ Ltd</p> <p>CentraCorp Finance 2000</p> <p>Finance Now ➤ The Warehouse Financial Services</p> <p>FlexiGroup (NZ) Limited</p> <p>Future Finance</p> <p>Geneva Finance</p> <p>Home Direct</p> <p>Instant Finance ➤ Fair City ➤ My Finance</p> <p>John Deere Financial</p> <p>Latitude Financial</p> <p>Metro Finance</p> <p>Pepper NZ Limited</p> <p>Personal Loan Corporation</p> <p>Pioneer Finance</p>	<p>Prosopa NZ Ltd</p> <p>South Pacific Loans</p> <p>Thorn Group Financial Services Ltd</p> <p>Turners Automotive Group</p> <p><b><u>Credit Reporting and Debt Collection Agencies</u></b></p> <p>Baycorp (NZ)</p> <p>Centrix</p> <p>Equifax (prev. Veda)</p> <p>Illion (prev. Dun &amp; Bradstreet (NZ) Limited)</p> <p>Intercoll</p> <p>Receivables Management</p>	<p>Autosure</p> <p>Protecta Insurance</p> <p>Provident Insurance Corporation Ltd</p> <p>Southsure Assurance</p>	<p>Buddle Findlay</p> <p>Chapman Tripp</p> <p>Experian</p> <p>EY</p> <p>FinTech NZ</p> <p>Happy Prime Consultancy Limited</p> <p>HPD Software Ltd</p> <p>KPMG</p> <p>PWC</p> <p>Simpson Western</p> <p>Total : 60 members</p>



FINANCIAL SERVICES FEDERATION

The Financial Services Federation (FSF) is the association for responsible finance and leasing companies operating in New Zealand. This infographic is a snapshot of our 61 members, the membership list can be found at our website: [www.fsf.org.nz](http://www.fsf.org.nz)



FSF lending members data survey period as at 31 July 2019 . Data collected and aggregated by KPMG