



FINANCIAL SERVICES FEDERATION

2 June 2023

Committee Secretariat
Justice Committee
Parliament Buildings
Wellington

By email to: ju@parliament.govt.nz

Dear Madam/Sir,

Re: Land Transport (Road Safety) Amendment Bill

The Financial Services Federation (“FSF”) is grateful to the Justice Select Committee (“the Committee”) for the opportunity to respond on behalf of our members to the proposed Land Transport (Road Safety) Amendment Bill (“the Bill”) which recently passed its first reading under urgency.

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 90 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 is incredibly disappointed with the content of the Bill and concerned about the drafting. Many of its members provide finance for the purchase of motor vehicles, this ranges right across the spectrum from used vehicles to high end new vehicles. The provisions in the Bill around extending the impoundment term and creating the penalty of forfeiture of the vehicle for drivers that flee from the police have caused our members concern as there is no consideration in the Bill of what processes need to be followed if the vehicle concerned is under finance. There are also minimal protections for the rightful owner in situations where the vehicle has been stolen.

The FSF was also extremely frustrated to see that this Bill is being pushed through under urgency with little regard as to how it will affect related parties. It is concerning that due to this process the consultation timeframe was significantly shortened to allow for the Bill to be pushed through prior to the election.

Introductory Comments

The FSF stands strongly opposed to the provisions in the Bill referring to the extension of the period of impoundment for a vehicle that flees police and the creation of the penalty of forfeiture. These provisions are ill thought out and will have severe consequences on finance providers. The FSF has previously been consulted about the Bill and each time we expressed our concerns about the disproportionate impact that increasing the length of time a car can be impounded will have on finance providers.

In 2022 there were 9,765 incidences of drivers fleeing police. The FSF agrees that this is a clear problem that needs to be addressed but submits that the Bill in its current form lacks the correct safeguards to be able to do so in a way that does not disproportionately impact finance providers and other innocent parties such as the rightful owner of a stolen vehicle. The content of the Bill is ultimately a direct attack on the property rights of finance and leasing providers. While the FSF agrees with the sentiment behind the Bill and understands the need to ensure New Zealand's roads are safe there does need to be more thought put into how this Bill will interact with secured third parties before it is enacted.

In the Regulatory Impact Statement (RIS) for the amendment dated October 2022 finance is mentioned 20 times. Each of those mentions refers to the high risk of the registered person defaulting on payments for each individual option that was identified. It seems like a clear oversight that any mention of finance has been omitted from the Bill in its current form. The RIS also specifies multiple times that "further consideration would need to be given as to whether a company with a security interest could apply to the court to repossess the vehicle to recover finance costs". It is very disappointing to see that this was not incorporated into the Bill in any form. While the FSF would prefer that finance providers do not have to apply to the court in order to gain access to the vehicle as this is a costly exercise, there does need to be some right for finance providers set out in the legislation so that they are not substantially disadvantaged by the actions of the fleeing driver.

The key point of our submission is that we believe the Bill should specifically account for finance providers in order to protect their security interests over impounded vehicles. The Bill in its current form is inadequate in this regard. We also identify a high number of issues in the Bill, this is a result of the legislation being rushed and ill thought out. While we acknowledge that six-month impoundment and forfeiture are discretionary, we do not believe this is sufficient to protect finance providers interests.

The FSF also submits that finance providers with a secured interest over the impounded vehicle that is registered on the Personal Property Securities Register (PPSR) should be notified immediately that the vehicle is impounded and given the option to repossess the vehicle at any point during the six months' impoundment in order to protect their position and avoid the costs of mounting storage fees eroding the value of their secured asset. By allowing six month impoundment of the assets of finance providers and leasing companies the Bill is effectively negating the providers registered security interest on the PPSR. It is tremendously disproportionate that there are such clear rules around the processes for registering and perfecting a PPSR security if that registration is just going to be disregarded.

Impoundment Period

An immediate issue that the FSF sees with the Bill is that there is no provision for finance providers if a vehicle under finance has been impounded. There are a number of other issues that come under this heading however it is important to note that if a vehicle has been impounded for six months (which is a significant period of time) then it is highly unlikely that the registered owners will continue to make payments on outstanding finance, this will effectively lead to a need for the vehicle to be repossessed. Currently there is no reference to finance providers in the amendment Bill, and we believe this will have unintended consequences that negatively affect providers who provide motor vehicle finance.

Presently if a finance provider needs to apply to the courts to take possession of a vehicle the court allows the vehicle to be released to the finance company on the proviso that the vehicle is not redeemed by the client and is instead sold or disposed of by auction. An option which would provide for finance in the Bill could be to release the vehicle to the finance provider under the same conditions mentioned above. This would ensure that finance providers are not disproportionately affected by the actions of the driver and would help solve the issue with storage which is discussed later in this submission. This could be initiated through a PPSR search on the vehicle to identify if there are any registered parties that need to be notified that the vehicle is going to be impounded, giving this party the option to take action before storage/ towage fees being to accumulate.

Another issue with the drafting of the Bill in its current form is that while there is a safeguard for stolen vehicles it does not go far enough. It comes down to the discretion of the police officer and the court. Discretion with no guidance is not a strong enough safeguard for other entities' assets. The FSF submits that if this is to be a discretionary power then there should be some guidance that sets out the factors an enforcement officer needs to take account of, especially if the vehicle is under finance.

FSF members already report that they have difficulties with towage/ storage companies. In particular with storage/ towing companies registering a security over vehicles that have been abandoned after being impounded and trying to get the financier's security removed. This becomes a lengthy and costly process for financiers as they have to apply to the court in order to have their security maintained on the PPSR register. The FSF submits that longer impoundment periods will exacerbate this issue as more cars will be defaulted on and abandoned due to the registered owner's inability to continue to make payments on the vehicle and pay the storage fees.

A related issue that will be exacerbated is that police are often slow to inform the finance provider when a vehicle has been impounded. This means the vehicle could be sitting in a storage yard for weeks before a financier becomes aware of the situation. The industry's expectation is that as soon as a vehicle is impounded the police should check the PPSR and notify any registered security holders that the vehicle has been impounded. If the financier needs to initiate steps to repossess the vehicle it is also the industry's expectation that the police/storage yard will release the vehicle to the financier regardless of the period of impoundment. This should be explicitly provided for in the Bill. It is imperative that finance providers are informed as soon as the vehicle is impounded so that they can take steps to recover their asset.

Further to the above, if a registered owner has a vehicle impounded it is likely they will go out and purchase a new vehicle on finance relatively quickly (before arrears show on their credit score from the impounded vehicle). A possible way to mitigate this would be to introduce a way to note this on the motor check and the PPSR record for the impounded vehicle communicating the message that the vehicle has currently been impounded. A second option would be to introduce a warning such as the Ministry of Justice's "fees outstanding" warning.

A further issue that we anticipate is the availability of the actual storage itself. Particularly as to whether there will be enough safe and secure storage available for the additional vehicles. If for example 9000 cars are impounded for six months after fleeing police, where are they expected to be stored? From a financier's perspective, it is incredibly important that the asset is stored safely and securely. There is already a shortage of space available for storage of vehicles and they are increasingly being targeted for burglaries. Based on this it seems unlikely that six month impoundment will be able to be practically implemented without creating further issues.

Costs of Impoundment

Another issue that concerns the FSF and its members is the prospect of high fees for a six-month impoundment and the question of who will bear that cost. Many of our members have found themselves in the unfair situation of having to pay impoundment/storage fees for a vehicle that has been impounded and defaulted on. With the current 28-day impoundment period the costs are already high, impounding a vehicle for six months will create excessively high fees which will be prohibitive to getting a vehicle released from impoundment for many registered owners. Once again this will lead to higher rates of impounded vehicles getting abandoned and finance providers needing to repossess vehicles to recoup costs. It would be highly unfair to require a finance provider to pay the storage and towage fees in order to get their asset returned to them.

From a consumer perspective there also needs to be more safeguards. As mentioned above the costs of a six-month impoundment will be highly prohibitive to a consumer getting their vehicle returned to them. Particularly if the vehicle is on finance. As already mentioned, this makes it significantly more likely that the registered owner will default on payments, not only putting the finance provider in a difficult position but also having a negative impact on their own credit score and prohibiting them from obtaining credit in the future.

Forfeiture

The Bill assumes that forfeiture of a vehicle if convicted of fleeing police is an appropriate deterrent for drivers. The FSF agrees with this sentiment if it is properly fleshed out in the amendment, which it is not in its current form. The forfeiture provision in the Bill does not account for when a vehicle has outstanding finance attached to it. This is concerning as if a car with finance attached to it is forfeited it will then be a loss that the finance provider has to bear through no fault of their own. While the Bill does specify that this is a discretionary power there needs to be a specific carve out for cars with finance owing against them. For example, the legislation should specify that if the car has outstanding finance against it, it

must be returned to the finance provider, or the crown must reimburse the finance provider for the amount outstanding from the proceeds of the sale of the vehicle.

We submit that when a vehicle has been ordered to be forfeited to the crown where a financier has a registered interest over it (as per the PPSR) the financier should absolutely not be penalised for the actions of the registered owner/driver. Doing so would be an unintended consequence of the legislation and grossly unfair on finance providers. Due to this the FSF's preference is option one mentioned above, whereby the legislation provides that if a car has outstanding finance, it *must* be returned to the financier rather than forfeited to the crown.

In its current form the Bill also provides a mechanism for storage yards to apply to be reimbursed for the storage fees for an abandoned/forfeited vehicle from the crown. The FSF submits this should also be extended to include finance providers to save them from further loss through no fault of their own. If the crown is going to offer assistance to towage and storage companies who are disproportionately affected, then it follows that the same support should be given to finance providers who are also disproportionately affected as a result of the same actions.

Definition of Finance in the Bill

The FSF acknowledges that there is currently no definition of finance in the Bill but submits that finance should be defined for the purpose of the above issues. In particular the FSF stresses that the definition of finance must ensure leasing is captured alongside lending. If a vehicle is being leased by a finance provider, then it is effectively owned by the leasing provider and must be returned to the provider rather than impounded.

In summary the FSF is grateful to the Committee for the chance to respond to the Bill on behalf of our members and wishes to emphasise that the Bill in its current form will have adverse effects on motor vehicle finance providers. Finance needs to be specifically referred to in the relevant sections in order to protect finance providers' registered security interests over their assets. Also, the legislation should be better equipped to deal with situations where the vehicle has been stolen. Due to the reasons above the FSF vehemently opposes the content of the Bill and believes it will cause many unintended consequences for the entire motor vehicle finance sector.

Please do not hesitate to reach out if you wish for us to speak further on any of the points made in this submission.

Yours sincerely,



Katie Rawlinson
Legal and Policy Manager
Financial Services Federation

Appendix A



FSF Membership List as at April 2023

Non-Bank Deposit Takers, Specialist Housing Lenders, Leasing Providers	Vehicle Lenders	Finance Companies/ Diversified Lenders	Finance Companies/ Diversified Lenders, Insurance Premium Funders	Affiliate Members	Affiliated members cont'd. and Credit-related Insurance Providers
<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><u>Specialist Housing Lenders</u></p> <p>Basecorp Finance Limited</p> <p>Liberty Financial Limited</p> <p>Pepper NZ Limited</p> <p>Resimac NZ Limited</p> <p><u>Leasing Providers</u></p> <p>Custom Fleet</p> <p>Euro Rate Leasing Limited</p> <p>Fleet Partners NZ Ltd</p> <p>ORIX New Zealand</p> <p>SG Fleet</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>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>Scania Finance NZ Limited</p> <p>Toyota Finance NZ ➤ Mazda Finance</p> <p>Yamaha Motor Finance</p>	<p>Avanti Finance ➤ Branded Financial</p> <p>Basalt Group</p> <p>Blackbird Finance</p> <p>Caterpillar Financial Services NZ Ltd</p> <p>Centracorp Finance 2000</p> <p>Finance Now ➤ The Warehouse Financial Services ➤ SBS Insurance</p> <p>Future Finance</p> <p>Geneva Finance</p> <p>Harmony</p> <p>Humm Group</p> <p>Instant Finance ➤ Fair City ➤ My Finance</p> <p>John Deere Financial</p> <p>Latitude Financial</p> <p>Lifestyle Money NZ Ltd</p> <p>Limelight Group</p> <p>Mainland Finance Limited</p> <p>Metro Finance</p>	<p>Nectar NZ Limited</p> <p>NZ Finance Ltd</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(L &F) ➤ Speirs Finance ➤ Speirs Corporate & Leasing ➤ Yoogo Fleet</p> <p>Turners Automotive Group ➤ Autosure ➤ East Coast Credit ➤ Oxford Finance</p> <p>UDC Finance Limited</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>IOumulate Premium Funding</p> <p>Rothbury Instalment Services</p>	<p><u>Affiliate Members</u></p> <p>Buddle Findlay</p> <p>Chapman Tripp</p> <p>Credisense Ltd</p> <p>Credit Sense Pty Ltd</p> <p>Experian</p> <p>Experieco Limited</p> <p>EY</p> <p>FinTech NZ</p> <p>Finzsoft</p> <p>Happy Prime Consultancy Limited</p> <p>KPMG</p> <p>Landscape Ltd</p> <p>Loansmart Ltd</p> <p>LexisNexis</p> <p>Motor Trade Association</p> <p>One Partner Limited</p> <p>PWC</p> <p>Simpson Western</p>	<p><u>Credit Reporting, Debt Collection Agencies,</u></p> <p>Baycorp (NZ)</p> <p>Centrix</p> <p>Credit Corp</p> <p>Debt Managers</p> <p>Debtworks (NZ) Limited</p> <p>Equifax (prev Veda)</p> <p>Gravity Credit Management Limited</p> <p>IDCARE Ltd</p> <p>Illion (prev Dun & Bradstreet (NZ) Limited</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>Total 91 members</p>



FINANCIAL SERVICES FEDERATION (FSF)

THE NON-BANK FINANCE INDUSTRY SECTOR - 2022



48%

NON-BANK

BANK

of personal consumer loans are financed by the **non-bank sector** represented by FSF members.

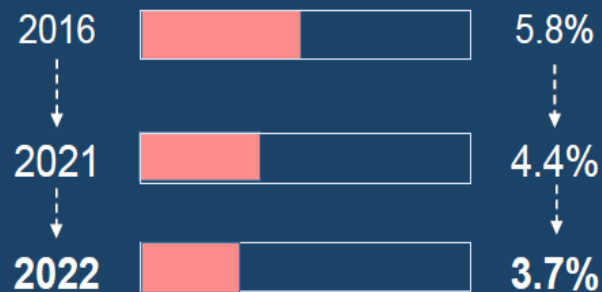
*Setting industry standards for responsible lending,
promoting compliance and consumer awareness.*

Percent of Loan Requests Approved

46%



Percent of Loan Book in Arrears



KEY FACTS: THE NON-BANK FINANCE INDUSTRY SECTOR

FSF Members (as at 28 Feb 2022)

Number of Members	57
Number of Employees	3,561
Applications Processed	1,085,739
Loan Requests Approved	495,434
Percent of Loan Book in Arrears	3.7%

Bank Sector (as at 28 Feb 2022)

Value of Mortgage Loans	\$329B
Value of Consumer Loans	\$7.6B
Value of Business Loans	\$118B

Non-Bank Sector Share (as at 28 Feb 2022)

% of Total Mortgage Loans	0.4%
% of Total Consumer Loans	47.7%
% of Total Business Loans	5.9%

Insurance Credit Related (as at 28 Feb 2022)

Number of Employees	237
Number of Policies	311,409
Gross Claims (annual)	\$27.2M
Days to Approved Claim	20 days

Consumer Loans (as at 28 Feb 2022)

Total Value of Loans	\$8.1B
Number of Customers	1,699,683
Number of Loans	1,584,984
Monthly Instalments:	\$330M

Average Value of Loan:

Mortgage	\$171,932
Vehicle Loan	\$12,393
Unsecured	\$2,467
Other Security	\$5,754
Lease Finance	\$2,804

Average Monthly Instalment:

Mortgage	\$257
Vehicle Loan	\$463
Unsecured	\$144
Other Security	\$302
Lease Finance	\$241

Business Loans (as at 28 Feb 2022)

Total Value of Loans	\$7.3B
Number of Customers	136,830
Number of Loans	264,827
Monthly Instalments:	\$590M

Average Value of Loan:

Mortgage	\$443,784
Vehicle Loan	\$28,869
Unsecured	\$7,443
Other Security	\$32,374
Lease Finance	\$24,921

Average Monthly Instalment:

Mortgage	\$2,281
Vehicle Loan	\$1,064
Unsecured	\$799
Other Security	\$11,044
Lease Finance	\$939