New Zealand Banking Association
Te Rangapū Pēke

Submission

to the

Finance and Expenditure Committee

on the

Financial Markets (Conduct of Institutions) Amendment (Duty to Provide Financial Services) Amendment Bill

4 July 2025

NEW ZEALAND BANKING ASSOCIATION – TE RANGAPŪ PĒKE
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About NZBA

1. The New Zealand Banking Association – Te Rangapū Pēke (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.

2. The following seventeen registered banks in New Zealand are members of NZBA:

- ANZ Bank New Zealand Limited
- ASB Bank Limited
- Bank of China (NZ) Limited
- Bank of New Zealand
- China Construction Bank (New Zealand) Limited
- Citibank N.A.
- The Co-operative Bank Limited
- Heartland Bank Limited
- The Hongkong and Shanghai Banking Corporation Limited
- Industrial and Commercial Bank of China (New Zealand) Limited
- JPMorgan Chase Bank N.A.
- KB Kookmin Bank Auckland Branch
- Kiwibank Limited
- Rabobank New Zealand Limited
- SBS Bank
- TSB Bank Limited
- Westpac New Zealand Limited

Contact details

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Introduction

4. NZBA welcomes the opportunity to provide feedback to the Finance and Expenditure Committee (**Select Committee)** on the Financial Markets (Conduct of Institutions) Amendment (Duty to Provide Financial Services) Amendment Bill (**Bill**).

5. We oppose the Bill, as it would create an unnecessary, complex compliance burden and uncertainty through additional regulation that does not address any identifiable issue.

6. The Bill may slow access to credit for businesses, lead to the misallocation of capital in a free market and undermine the principle that businesses should determine who they do business with.

7. Our key submissions on the Bill are as follows:

    7.1. We support access to banking as a fundamental service for New Zealanders.

    7.2. Existing legislation already protects New Zealanders from unjustifiable refusal or withdrawal of banking services.

    7.3. The Bill is based on a misunderstanding – banks provide financial services (and make credit decisions) based on valid and commercial reasons (including risk-based and legal), not "murky 'environmental, social or governance' moralising".

    7.4. By creating more bureaucracy in the lending process, we believe this Bill could slow up access to credit for legitimate businesses and customers who would normally get their lending easily approved.

    7.5. The Bill undermines the ability of the free market to determine how capital is allocated across the economy, and undermines the freedom of commercial entities to contract and make commercial decisions.

    7.6. Aspects of the Bill's drafting are not clear (and so will be impractical to implement).

Access to banking is fundamental

8. We agree that access to banking services is fundamental to New Zealanders and the economy. However, this must be balanced against banks' need to operate in line with their own commercial strategy, risk appetites and policies (including in respect of financial, credit, conduct, and legal risk; fraud, technology and financial crime considerations; and regulatory capital requirements) and decision-making frameworks.

9. Banks have sophisticated and time-tested processes and models for determining the risk profile of customers. Decisions to refuse or withdraw services from individuals or

businesses are invariably made on a case-by-case basis, for reasons that are commercial, legal or otherwise risk based, or align with well accepted international or national standards. Examples of such international standards include:

9.1. The International Labour Organisation Declaration on Fundamental Principles and Rights at Work

9.2. The International Bill of Human Rights

9.3. United Nations Guiding Principles on Business and Human Rights[1]

9.4. Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises.[2]

Existing legislation protects against unjustifiable withdrawal of banking services

10. In our view, there is already sufficient scope within the current Conduct of Financial Institutions (**CoFI**) regime to prevent financial institutions (such as banks) from treating consumers unfairly by declining to provide or withdrawing services based on "murky 'environmental, social, or governance moralising'".

11. The Financial Markets Authority is already keenly focused on ensuring that CoFI is applied to ensure banks provide good customer outcomes for New Zealanders. Should the Government determine that New Zealand banks' approach to refusing or withdrawing banking services is "murky" in this context, it would be better for the Government to direct regulators to provide guidance on this area. This would be a more effective approach than enacting the Bill, which would create an additional compliance burden and impinge on freedom of contract for no appreciable benefit.

12. Similarly, financial institutions are already prevented from refusing or withdrawing financial services (or treating anyone less favourably) by reason of any of the prohibited grounds of discrimination under the Human Rights Act 1993.

Banks already make decisions for valid commercial reasons

13. The Bill is based on a misunderstanding regarding how banks operate their businesses. Environmental, social and governance (**ESG**) considerations do not operate separately from commercial, legal and other risk-based decisioning policies and processes banks apply to the provision of financial services.

14. Banks provide banking services and credit based on valid commercial and / or legal reasons, regardless of whether the customer is retail, company or body corporate. In our experience, we have not encountered member banks "withdrawing banking

[1] We note that MBIE directs businesses to this on their website.
[2] As above.

services from New Zealanders, body corporates or companies, whose political views or outlook may not align with the sensibilities of that institution".

15. Banks take their role as providers of credit and banking services very seriously and balance that role alongside providing a return to their shareholders. Rather than switching off essential banking services, banks seek to mitigate adverse impacts and improve outcomes. Historically, banks have worked with customers to address banks' legal, reputational and credit risks rather than withdrawing services from customers. Banks' decisions in respect of banking relations are underpinned by valid commercial reasons, such as risk mitigation, expertise, and business strategy.

Banks make risk-based decisions

16. ESG considerations are relevant to credit and banking services decisions when they have commercial, legal or risk implications. Banks generally do not provide banking services and / or make credit decisions based solely on ESG considerations in the absence of other factors.

17. Many banks consider ESG-related factors as a means to identify and address a broad set of matters that have the potential to impact a borrower's financial performance in the long term, and/or adversely affect its reputation. These factors can result in financial and reputational risks to the respective bank. As such, ESG considerations increasingly form part of credit risk assessment and are fundamentally of a commercial nature.

Risk can impact the decision to provide services

18. Banks must manage lending risks to operate a successful business and to comply with regulation (such as RBNZ Conditions of Registration). In addition, a director's duty to act in the best interests of their company includes considering all relevant risks, including ESG matters. Credit decisions can be subjective in nature and banks must take a balanced approach across a variety of different factors; they are complex and nuanced. If banks fail to manage their lending risks appropriately, this could impact other customers and overall financial stability of that bank.

    18.1. Examples of risks to borrowers that could give rise to credit risks for banks include loss of affordable insurance for climate-related reasons and potential impacts on asset values; stranded asset risk for emissions-intensive business models and assets; and loss of access to key export markets that seek low-emissions products.

    18.2. For rural lending, ESG issues – such as climate risks, water quality and animal welfare – are often an integral part of a bank's assessment of a farm's commercial viability when examining a credit application.

19. Banks need to consider risk over long-term timeframes, and typically lend to businesses for a term of 5-7 years. Additionally, unless a loan will be amortised to zero by the end of the term, there is refinance risk at the end of the term. Banks legitimately need to look at risks beyond the term of a loan when providing credit.

Banks have regard to domestic and international legal requirements and standards

20. In many cases, decisions to withdraw or refuse banking services will be in accordance with New Zealand law or overseas regulations, frameworks and guidance. The Bill is vague regarding the legal basis on which a financial institution may refuse or decline to provide services to a consumer. The meaning of the term "enactment" in s 446JA(2)(b) is both unclear and too narrow. It might not take account of the global expectation that banks (particularly overseas owned banks) must follow international requirements, standards and expectations (see paragraph 9 above).

21. For example, a New Zealand bank might be approached to provide services to a person who is sanctioned in Australia but not sanctioned in New Zealand. It is unclear whether the Bill would enable that bank to refuse that customer. Similarly, banks' anti-money laundering and countering financing of terrorism (**AML/CFT**) policy positions can be influenced by important overseas guidance (as opposed to enactments) such as the European Union's Guidance "*Good practices on payments to / from government-controlled areas of Ukraine*". Overseas-owned New Zealand banks need to comply with their parent companies' prohibited customer lists in order to support parents' risk appetites.

22. We also note that the proposed s 446JA(1) contradicts the Financial Sector (Climate-related Disclosure and other Matters) Amendment Act 2021, which requires financial institutions to disclose how their climate-related risks are identified, assessed, and managed. These disclosures are intended to support informed, efficient capital allocation decisions. Many of New Zealand's key trading partners, including Australia, have implemented or are implementing climate-related disclosure regimes.

Bill creates unnecessary bureaucracy in the lending process

23. The Bill would likely create significant additional complexity and bureaucracy in the lending process. It would likely require banks to identify those product and credit decisioning considerations that might be interpreted as relating:

    23.1. directly or indirectly to any environment, social or governance matters (the scope of which may be different across banks)

    23.2. to any climate-related reporting standard issued by the External Reporting Board

    23.3. any industry (possibly sector or subsector (horizontal or vertical)) in which the consumer operates.

24. The Bill would then require banks to identify and record, in a way that could demonstrate compliance with the Bill, how those considerations have been applied in a manner that constitutes a "verifiable valid commercial reason". This would likely also require banks to create a formalised process for creating and recalling decisions across all products.

25. By creating additional bureaucracy in the lending process, we believe the Bill would likely slow up access to credit of legitimate businesses and customers who would normally get their lending easily approved. This increased compliance burden would therefore impact both financial institutions (i.e. time and resource involved) and consumers. The Bill may have the unintended consequences of:

    25.1. reducing access to banking services and slowing down the economy as access to banking services becomes more time consuming

    25.2. disproportionately adding pressure on smaller market participants, and acting as a barrier to new entrants

    25.3. leading to an increase in litigation, as it is unclear from the Bill where the burden of proof would lie and how a "valid and verifiable commercial reason" would operate as a defence.

Freedom of contract

26. The Bill does not allow the free market to determine how capital is allocated across the economy. Significant intervention in the free market may damage New Zealand's reputation with international investors.

27. Banks are commercial businesses and, like other non-bank commercial businesses, should be able to make their own commercial decisions. In addition, not all banks have the ability or desire to provide banking services to all industries. Which industries banks service will depend on expertise, capital requirements, organisation structure, and ultimately, their business strategy. The Bill would interfere with freedom of contract and the freedom for businesses to choose who they do business with.

28. There are 27 registered banks in New Zealand, and a wide range of other financial service providers. All have different strategic focuses, such as consumer lending, business and agribusiness lending, and different risk appetites, providing a wide range of options for New Zealand customers.

Aspects of the Bill are unclear or impractical

The meaning of many terms is unclear

29. Many terms in the Bill have no clear meaning. This will make compliance challenging and could lead to their uneven application across financial institutions. From

experience, we know that vague and subjective drafting can often create unintended consequences when trying to ensure compliance.[3] This lack of clear meaning for many terms used in the Bill is also likely to result in increased costs due to the legal uncertainties, and increase the risk of disputes and litigation.

30. For example, it is unclear what "valid and verifiable commercial reason" means. The term might be interpreted very differently between financial institutions dependent on whether they are part of an overseas group of companies, their business models and risk appetite and approach to risk management. Likewise, the term "verifiable" raises questions regarding who might provide such verification and on what grounds.

31. The meaning of treating a consumer "less favourably" is also unclear and is inconsistent with references in s 446JA(2) regarding decisions to "withdraw" or "refuse to provide" services.

32. Significantly, the meaning of the phrase "industry within which the consumer operates" is also unclear and makes the potential scope of these obligations highly uncertain. For example, it is unclear whether the term 'industry' includes sectors or sub-sectors (vertical and / or horizontal).

Misaligned terms

33. Other terms do not align with the legislation this Bill is proposing to amend.

    33.1. **446JA(1) and (3)(b)** – the Bill's definition does not align with the Financial Markets Conduct Act 2013 (**FMCA**) / CoFI definition of consumer (s 446P(1)) and the broader FMCA definition of a 'retail client' and 'wholesale client' (if that is intended).

    33.2. **446JA(1)(a)** – the term 'financial services' is not used in CoFI and goes further than the policy objective of the Bill to provide access to banking services and facilities. Under the FMCA, the term is incredibly broad and includes, amongother things, acting as an insurer, acting as an administrator of a financial benchmark, operating a financial product market, and being a mobile trader. As currently drafted, all registered banks, licensed insurers and licensed non-bank deposit takers would be required to provide every 'financial service' to a consumer.

    33.3. **446JA(2)(b)** – The wording of section 446JA(2)(b) is also ambiguous. The reference to "enactment" could be interpreted to mean only New Zealand legislation, and not applicable foreign laws. This interpretation would be

[3] For example, the amendments to the Credit Contracts and Consumer Finance Act in 2021 led to an unintended tightening of credit across the personal sector and an increased risk of disputes and potential litigation, increasing costs for clients and banks.

problematic from an anti-money laundering and countering financing of terrorism and sanctions perspective, and may prevent overseas-owned banks from complying with parent risk policies and risk appetites.

33.4. An additional concern is that 416JA(2)(b) would require banks to act unethically. Limiting the carve out in (b) to "as required or permitted by any other enactment" may mean that banks are required to provide banking services for illegal activities.

33.5. **Clause 3** – the Principal Act should be the Financial Markets Conduct Act 2013.

34. **446JA(1)(b)(i)** – the reference to the Human Rights Act should be removed, as individuals already have direct redress under the Human Rights Act. Including this kind of reference would create an unhelpful precedent for cross referring to any potentially applicable legislation, each of which have their own tailored complaint and enforcement regimes.