FINANCIAL SERVICES FEDERATION

10 June 2024

Consumer Policy
Building, Resources and Markets
Ministry of Business, Innovation and Employment

By email: consumer@mbie.govt.nz

Draft changes to the Responsible Lending Code

The Financial Services Federation (FSF) is grateful to the Ministry for the opportunity to respond to the draft changes to the Responsible Lending Code (RLC).

Introductory comments:
The FSF congratulates the Ministry on their work to develop the draft changes and the accompanying helpful discussion document and recognises the enormous workload officials have been facing with a very challenging timeframe to complete it.

The FSF is the industry body representing the responsible and ethical non-bank finance providers operating in New Zealand. Our membership (a list of which is attached as Appendix A) includes motor vehicle finance providers, non-bank housing lenders, Non-Bank Deposit Takers (NBDTs), the larger finance companies operating in New Zealand, fleet and asset leasing providers, credit-related insurers and a number of Affiliate members which include internationally recognised legal and consulting partners. Our members provide their products and services to more than 1.7 million New Zealand consumers and businesses. 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 strongly supports the change in policy regarding affordability assessments and agrees that the affordability regulations that are being revoked were inflexible and more onerous than justified by the risks to borrowers. It has certainly been the experience of FSF members that their compliance costs increased significantly in order for them to meet their obligations under the regulations whilst increasing the number of loan applications declined for consumers who could in fact afford the credit being applied for.

The FSF also understands and supports the objectives for revising Chapter 5 of the RLC which are to continue to protect consumers from unaffordable credit by being clear about some basic expectations/standards; and to promote and facilitate fair, efficient and transparent markets for credit by giving lenders the confidence to make inquiries that are more or less extensive depending on the risk profile of the lending; and to have flexibility and discretion in their processes that enables them to approve credit they are satisfied is likely to be affordable.

The FSF is also supportive of the approach taken to replacing Chapter 5 of the RL by starting with the text from the 2017 version of the Code and updating this text to reflect relevant changes to the CCCFA since 2017; and addressing areas where the guidance could better support lenders to understand what may be required to comply with the lender responsibility.

The following are the FSF's answers to the specific questions raised in the discussion document:

1. Do you have any concerns with changes proposed to paragraph 5.1, or other changes we should consider?

The FSF has no concerns with the changes proposed to paragraph 5.1 and no suggestions for other changes that should be considered.

2. Do you have any concerns with any of the changes proposed to guidance on responsibly estimating the payments that will be required/made under the agreement?

The FSF has always had concerns with guidance that requires the application of "reasonable" surpluses or buffers. This is because there is no guidance as to what would be considered to be reasonable. The FSF believes that the surplus after a borrower's income and expenses have been assessed is the buffer that ensures that the borrower can meet other expenses and can withstand increases in interest rates.

The FSF does not find the new para 5.3 to be particularly helpful and suggests that it could be deleted in its entirety. Borrowers are required to make a minimum payment on a credit card, but they may use their card to meet all their payments during a month then choose to repay it in full at the end. This is at their discretion in terms of the way in which they manage their finances. Any repayments above the minimum monthly repayment required is discretionary in the FSF's view.

Also, much of what borrowers spend on their credit card could be deemed to be on discretionary expenses and therefore are not required to be taken into account in the affordability assessment. Further, with respect to 5.3.b, many revolving credit facilities are open-ended in terms of the period for repayment, so this guidance is not helpful.

Further, a prospective change in a borrower's wishes is highly speculative and lenders are not required to consider other speculative changes in a borrower's financial arrangements such as them voluntarily contributions to a savings account as an example.

If para 5.3 is retained, the FSF recommends that these adjustments are only made to the loan under the agreement and not to other revolving credit contracts a borrower may have with other lenders. The information required to make this adjustment for other revolving credit contracts will result in extensive inquiries into features such as credit limits, interest rate, term to maturity and minimum monthly repayments for each revolving credit contract held by the borrower.

3. Do you see any other guidance on this topic as desirable? If so, please explain.

The FSF has no further suggestions for guidance on this topic.

4. Do you have any concerns with the guidance proposed in paragraph 5.5? If so, what changes should we consider?

The FSF has no concerns with the guidance proposed in paragraph 5.5.

5. Do you believe the Code should provide general guidance on use of surpluses, buffers and adjustments to account for uncertainty that the loan will be affordable? If so, what would you suggest it say, noting the potential for excessively conservative approaches by lenders.

The FSF does not believe the Code should provide any further general guidance on the use of surpluses, buffers and adjustments other than what has already been suggested in the answer to question 2 and what is required in paragraph 5.6.

6. Do you have any concerns with the changes proposed to guidance on inquiries into income or believe we should consider any other changes?

The FSF considers para 5.8 to be somewhat open-ended in terms of the expectations of lenders, particularly when considering the increasing casualisation of today's workforce. In which case assessing future income can be difficult. The FSF suggests that consideration be given to the way in which irregular or variable income is able to be assessed in the Australian RG209 which is by way of taking an average of the last 90 days' income.

7. What wording do you think would work best (in paragraph 5.9.c) to capture other, less essential expenses that may be important for the lender to account for?

The FSF supports the wording of para 5.9.c in the draft Code rather than the alternative wording from the current definition of "listed outgoings" in regulation 4AE. However, the FSF notes that what is "other regular or frequently reoccurring expenditure which may be material to the affordability of the loan (such as tithing, transfers to family overseas)" may not be visible to the lender through assessment of bank statements and therefore the lender is reliant on borrower disclosure of these expenses and their ongoing nature or otherwise. In the experience of FSF members, borrowers do not always disclose such expenses in their loan applications.

8. Do you have any concerns with other changes proposed to guidance on inquiries into expenses, or believe we should consider any other changes?

The FSF has no further concerns with other changes proposed to guidance on inquiries into expenses.

9. Do you believe guidance on joint expenses would be worthwhile. If so, would you have any issues with paragraphs 5.28 – 5.32 of the current Code being used?

The FSF supports the inclusion of paras 5.28, 5.29 and 5.30.a of the current Code as being sufficient guidance to lenders as to how to apportion joint expenses but would not support including paras 5.30.b – 5.32 inclusive as the FSF believes that these require lenders to go back to the intrusive line of questioning of borrowers that the revocation of the affordability regulations and these changes to the Code are designed to avoid.

The FSF believes that the Code could allow lenders to rely on a declaration from the borrower with respect to their share of joint expenses unless what they are declaring is unreasonable and it appears to the FSF that this is what para 5.30.a is allowing.

Lenders could be required to enquire into expected changes in income for either the individual borrower or their partner and they could be allowed to rely on the information provided by the borrower with respect to this. Any unexpected changes in circumstances with respect to joint income that would cause the borrower difficulty in meeting repayments is already covered by the fact that the lender is required to have an appropriate process for considering hardship applications.

10. Do you believe guidance on inquiring into spending through use of Buy Now Pay Later facilities is necessary? If we were to do this, would paragraph 5.33 of the current Code be a good approach?

The FSF does not believe that any guidance on inquiries into spending through the use of Buy Now Pay Later facilities is necessary and therefore does not support the inclusion of para 5.33 of the current Code into this version of the Code. The FSF believes that Buy Now Pay Later can be discounted in its entirety because it is either being used for necessary expenses, in which case it is already being considered in the affordability assessment under the requirement in para 5.9.b, or it is for discretionary spending which could be stopped if necessary to meet repayment commitments.

11. Would you have any concerns, based on the proposed guidance, about lenders making unreasonable assumptions that the borrower will reduce certain expenditure? If so, please explain why and what the Code might do to address this.

The FSF has no such concerns. We refer to the ASIC v Westpac case in Australia (the "Wagyu and Shiraz" case) where the Federal Court dismissed ASIC's appeal against the initial judgment in Westpac's favour and agreed with the bank that borrowers will adjust their spending according to their commitments and that the use of a statistical benchmark to determine what is a financially acceptable level of expenses for the circumstances of the individual borrower is entirely appropriate.

12. Do you have any concerns with the 2017 guidance on methods of inquiry? Please explain.

The FSF has no such concerns.

13. Do you believe further guidance on use of statistical information is necessary? If so, why?

The FSF does not believe further guidance on the use of statistical information is necessary.

14. Do you agree paragraph 5.14 is desirable to make lenders aware of their obligation under the Privacy Act 2020?

The FSF believes that para 5.14 should be deleted as it is not necessary to make lenders aware of their obligation under the Privacy Act 2020. The FSF's members are fully aware of their obligations under this legislation and are already fully compliant with it. The FSF does not believe the Code should be providing guidance on the way in which lenders should comply with any other legislative obligations they may have beyond the CCCFA as the point of the Code is to provide guidance to lenders on meeting their obligations under the CCCFA.

Further, the Privacy Act is subject to its own regulatory development (for example the Privacy Amendment Bill currently before Parliament which is inserting new Information Privacy Principle 3A). Enshrining current state privacy legislation in the Responsible Lending Code risks conflict with changes down the line as the RLC would not necessarily be updated for every Privacy Act change.

15. What might be the implications of using the 2017 guidance on verification? What changes, if any, would you suggest?

The FSF notes that para 5.13 already provides lenders with a number of options for obtaining information from the borrower so believes only para 5.16 is necessary further guidance with respect to method of inquiries and that para 5.15 could also usefully be deleted (along with para 5.14 for the reasons stated above). In the FSF's view para 5.15 is largely repeating what is already stated in para 5.13.

The FSF agrees that further verification from the borrower does contribute to disproportionate processing costs and delays.

The FSF has frequently submitted that borrowers actually bear some personal responsibility (although no liability unlike that of lenders) under the credit contract for providing the lender with accurate information.

The FSF also submits that para 5.18 is unnecessary because lenders are very aware of the fact that it is they, not financial advisers or other intermediaries, who remain responsible for ensuring they comply with their responsible lending obligations.

16. Do you have any other feedback on guidance relating to verification or use of information provided by intermediaries?

The FSF has no further feedback on guidance relating to verification or use of information provided by intermediaries.

17. Do you believe the proposed guidance on extent of inquiries would encourage lenders to make their inquiries more proportionate to affordability risk, as intended? What changes might help to achieve this?

The FSF submits that modern practice for most lenders includes the use of sophisticated algorithms that produce a scorecard for each borrower of both positive and negative figures that lenders use to predict the likelihood of an individual borrower meeting their repayment commitments on a particular loan. This use of big data is only likely to increase over time and the Code needs to reflect this rather than suggesting lenders use outdated practices that require more intense human intervention.

It is a core part of lenders' processes to understand the risk exhibited by an individual borrower that they may not be likely to make their repayments without substantial hardship and lenders already have the ability to make more or less extensive inquiries depending on the risk they have identified and that leads them to the decision to either approve or decline the loan application depending on the risk factors exhibited by an individual borrower.

Therefore, the FSF submits that para 5.20 should be amended to say that the lender **"may choose"** to make more extensive inquiries where the listed circumstances 5.20.a – 5.20.d are evident, rather than that the lender **"should choose"** make these inquiries.

This is also particularly appropriate where the lender has already taken a more conservative approach than is required under the RLC to determine whether the loan is affordable to the borrower without them suffering financial hardship and therefore further inquiries are not necessary, such as where the lender has used the higher of the borrower's stated expenses or an appropriate statistical benchmark.

With respect to para 5.21.a, the FSF questions the meaning of "significant asset". Most consumer lending is provided for the purchase of an asset which could be considered to be "significant" – for example a house, a vehicle or a piece of furniture or whiteware – and the loan is more often than not secured by a charge over that asset. On that basis, the asset is at risk of loss if the borrower does default on their repayments so that is a potential consequence of most lending that is offset by the fact that the lender is required to ensure at the outset that the repayments can be made by the borrower without suffering significant hardship. The FSF would therefore prefer to see para 5.21.a deleted from the Code.

The FSF finds the guidance in para 5.22 to be helpful as guidance as to where it might be "obvious" to the lender that the borrower can afford the repayments under the credit contract and therefore can make less extensive inquiries.

The FSF supports the inclusion of new para 5.23 to clarify that greater inquiries will always be appropriate for high-cost credit contracts as described by regulation 4AO(1).

18. Do you have any other feedback on guidance to support lenders in assessing affordability risk and what that means for how they should approach inquiries?

The FSF has no further feedback on the guidance to support lenders in assessing affordability risk.

19. Do you have any views on the need for guidance on record keeping and changes we should consider?

The FSF has no suggestions for change to the suggested paras 5.24 – 5.27 providing guidance on record keeping.

20. Do you have any views on the need for guidance on assessing affordability of high-cost credit and whether changes are desirable?

The FSF does not represent any high-cost credit providers and therefore has no views on any guidance for such lenders.

21. Do you have any views on guidance for assessing affordability in the case of pawnbroking?

The FSF has no members that are pawnbrokers and, on that basis, has no comment to make on the guidance for assessing affordability in the case of pawnbroking.

22. Do you have any other feedback on how the draft content for Chapter 5 can better met its objectives, including anything that might be missing?

The FSF has no further feedback on the draft content for Chapter 5.

23. Do you have any suggestions for how this content could be presented more clearly or usefully to users?

The FSF has no further suggestions for how this content could be presented more clearly or usefully to users.

Once again, the FSF is grateful to be able to comment on the draft Code on behalf of our members and would be happy to provide any further feedback if that would be helpful.

Lyn McMorran
EXECUTIVE DIRECTOR

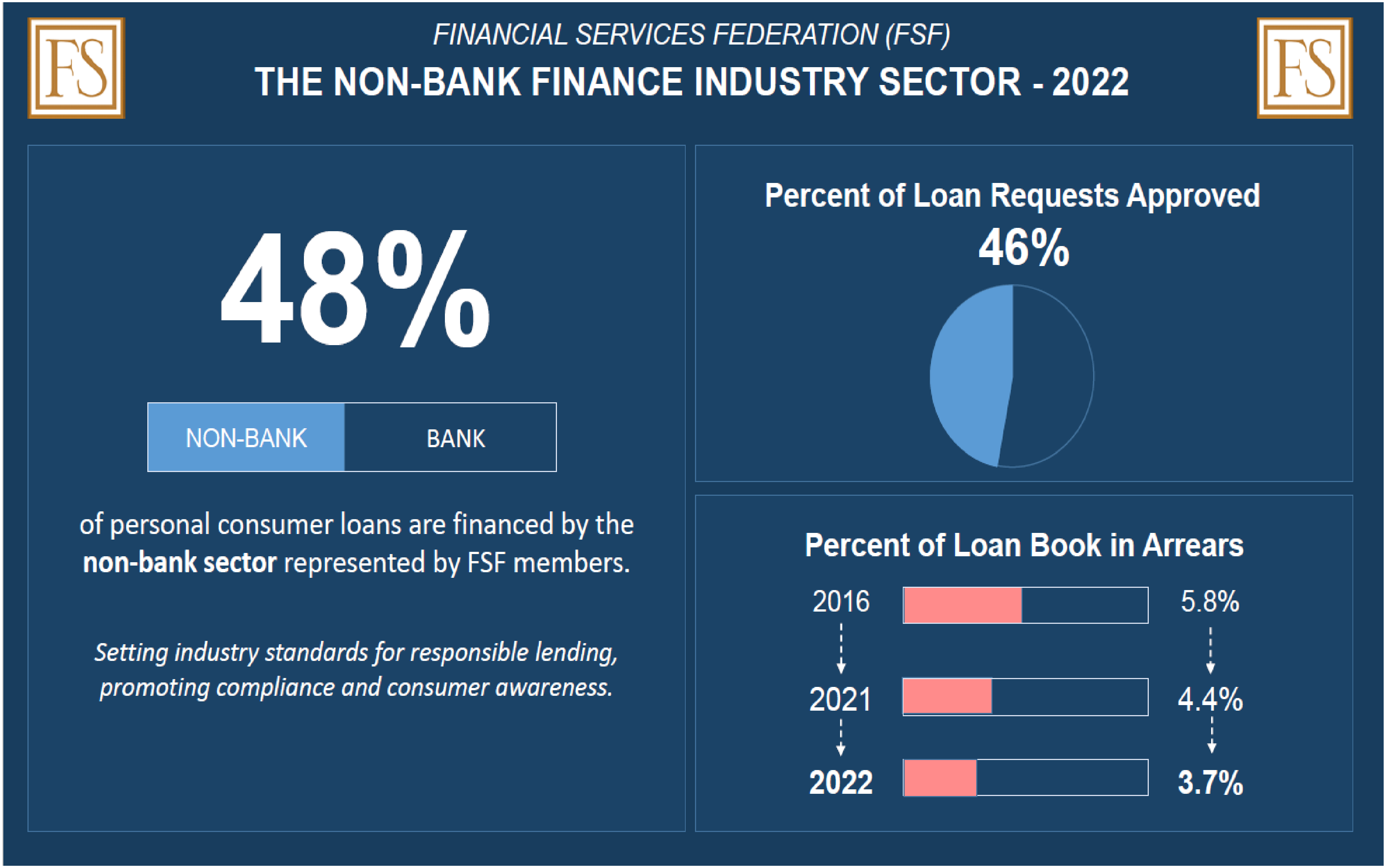
Appendix A

FINANCIAL SERVICES FEDERATION

FSF Membership List as at April 2024

Non-Bank Deposit Takers, Specialist Housing/Property Lenders, Credit-related Insurance Providers	Vehicle Lenders Finance Companies/Diversified Lenders	Finance Companies/ Diversified Lenders contd.	Finance Companies/ Diversified Lenders, Insurance Premium Funders	Affiliate Members	Affiliate Members contd., and Leasing Providers
XCEDA (B) Finance Direct Limited ➤ Lending Crowd General Finance (BB) Gold Band Finance (B+) ➤ Loan Co Mutual Credit Finance (B) Credit Unions/Building Societies First Credit Union (BB) Nelson Building Society (BB+) Police and Families Credit Union (BB+) Specialist Housing/Property Lenders Basecorp Finance Limited First Mortgage Managers Ltd. Liberty Financial Limited Pepper NZ Limited Resimac NZ Limited Credit-related Insurance Providers Protecta Insurance Provident Insurance Corporation Ltd	Auto Finance Direct Limited BMW Financial Services ➤ Mini ➤ Alphera Financial Services Community Financial Services Go Car Finance Ltd Honda Financial Services Kubota New Zealand Ltd Mercedes-Benz Financial Motor Trade Finance Nissan Financial Services NZ Ltd ➤ Mitsubishi Motors Financial Services ➤ Skyline Car Finance Onyx Finance Limited Scania Finance NZ Limited Toyota Finance NZ ➤ Mazda Finance Yamaha Motor Finance Finance Companies/Diversified Lenders AfterPay Avanti Finance ➤ Branded Financial Basalt Group	Blackbird Finance Caterpillar Financial Services NZ Ltd Centracorp Finance 2000 DebtManagers Finance Now ➤ The Warehouse Financial Services ➤ SBS Insurance Future Finance Geneva Finance Harmoney Humm Group Instant Finance ➤ Fair City ➤ My Finance John Deere Financial Latitude Financial Lifestyle Money NZ Ltd Limelight Group Mainland Finance Limited Metro Finance Nectar NZ Limited NZ Finance Ltd	Personal Loan Corporation Pioneer Finance Prospa NZ Ltd Speirs Finance Group (L &F) ➤ Speirs Finance ➤ Speirs Corporate & Leasing ➤ Yoogo Fleet Turners Automotive Group ➤ Autosure ➤ East Coast Credit ➤ Oxford Finance UDC Finance Limited Yes Finance Limited Zip Co NZ Finance Limited Insurance Premium Funders Elantis Premium Funding NZ Ltd Financial Synergy Limited Hunter Premium Funding IQumulate Premium Funding Rothbury Instalment Services	Alfa Financial Software NZ Limited AML Solutions Limited Buddle Findlay Chapman Tripp Credisense Ltd Credit Sense Pty ltd Deloitte EY FinTech NZ Finzsoft Happy Prime Consultancy Limited KPMG Loansmart Ltd LexisNexis Motor Trade Association Odessa Technology Inc. One Partner Limited PWC Sense Partners Simpson Western Summer Lawyers	Credit Reporting, Debt Collection Agencies, Centrix Credit Corp ➤ Baycorp Debtworks (NZ) Limited Equifax Gravity Credit Management Limited IDCARE Ltd Illion Quadrant Group (NZ) Ltd Recoveries Corp NZ Ltd Leasing Providers Custom Fleet Euro Rate Leasing Limited Fleet Partners NZ Ltd ORIX New Zealand SG Fleet Total 97 members

Appendix B



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
2016
5.8%
2021
4.4%
2022
3.7%

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