

House of Representatives

Supplementary Order Paper

Tuesday, 21 March 2017

Regulatory Systems (Commercial Matters) Amendment Bill

Proposed amendments

David Seymour, in Committee, to move the following amendments:

Part 1, new subpart 3A

After *Part 1, subpart 3* (page 18, after line 23), insert:

Subpart 3A—Credit Contracts and Consumer Finance Act 2003

35A Principal Act

This subpart amends the Credit Contracts and Consumer Finance Act 2003 (the **principal Act**).

35B Section 5 amended (Interpretation)

In section 5, in the definition of **credit fees**, after paragraph (b)(v), insert:

- (vi) fees and charges payable to a person who is licensed to provide a peer-to-peer lending service (within the meaning set out in regulation 185 of the Financial Markets Conduct Regulations 2014) for or in connection with facilitating and establishing the credit contract through the peer-to-peer lending service, and who has no beneficial interest in the credit contract

Explanatory note

This Supplementary Order Paper proposes amendments to the Credit Contracts and Consumer Finance Act 2003 (the **Act**). The amendments proposed relate to the defin-

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ition of **credit fees** in the Act. The Financial Markets Conduct Act 2013 (FMCA) enables peer-to-peer lending services to be offered in New Zealand. However, the Act predates the FMCA and did not contemplate licensed peer-to-peer providers acting as intermediaries to provide credit contracts. Consequently, some uncertainties have emerged about how the Act applies in the context of peer-to-peer lending. In particular, there has been uncertainty about whether fees charged by licensed peer-to-peer intermediaries for their services in matching lenders with borrowers and in arranging peer-to-peer loans are credit fees for the purposes of the Act or not. The proposed amendment is intended to clarify that such fees are not credit fees for the purposes of the Act.

The effect of the proposed amendment is to confirm that licensed peer-to-peer lending intermediaries can include a profit component in fees a licensed peer-to-peer intermediary charges a borrower (which the Act would prohibit if the fees were credit fees). The proposed amendment relates only to fees payable to licensed peer-to-peer lending intermediaries. It does not relate to fees payable to or for the benefit of creditors who make the peer-to-peer loans. If a licensed peer-to-peer lending intermediary is the economic owner of the loan (in whole or in part), it will not benefit from this exclusion.

Wellington, New Zealand:

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