



## FINANCIAL SERVICES FEDERATION

jkerr@fsf.org.nz

29 March 2007

Debbie Monaghan  
Domain Name Commissioner  
P O Box 11881  
**AUCKLAND**

Dear Debbie

### **Application for Second level domain name .bank.nz**

1 We wish to register our concerns about the restricted basis on which the application proposes that this 2LD extension would be available. We are also concerned that the proposed process and criteria for accepting moderation requests would entrench this restriction.

#### **Definition of the “community of interest” for the new 2LD**

2 The applicant describes the community of interest as being all organisations that have been registered as registered banks by the Reserve Bank of New Zealand. Further it is stated that only those organisations may describe themselves as “banks”.

3 Defining the community of interest by organisational form is essentially anti-competitive and unnecessarily narrows the real community of interest in “banking services”. It would create an exclusive domain name that denied access to other New Zealander providers of banking services, including some FSF members that are not registered banks.

4 Such services as internet banking are provided by PSIS Limited [www.psis.co.nz](http://www.psis.co.nz) and Southland Building Society [www.sbs.net.nz](http://www.sbs.net.nz) to name just two examples. More generally building societies in New Zealand are specifically empowered by statute to provide banking services (refer s9A(1)(a)(vi) Building Societies Act 1965).

5 Domain names are used as a convenient way of locating information and reaching others on the internet. It is our view that from the perspective of web users it is the wider grouping of New Zealand financial institutions that provide ‘banking services’ which more correctly identifies the “community of interest” relevant to the use of this 2LD. It is a fact that such services are lawfully provided by a wider group of entities than registered banks. Nothing in the Reserve Bank Act limits the provision of banking

---

#### **A National Federation of Financial Institutions**

Financial Services Federation Inc.  
6<sup>th</sup> Floor, Wakefield House, 90 The Terrace, PO Box 10-053  
Telephone (04) 472-1731, Fax (04) 472-1732, Wellington 6143  
[www.fsf.org.nz](http://www.fsf.org.nz)

services to registered banks. If the “community of interest” is viewed from an activity perspective a wider definition is called for than that proposed.

6 This issue is of increasing importance, as the distinction between bank and non-bank providers has if anything become less clear cut over time, and many New Zealanders obtain their ‘banking services’ from organisations that are not registered banks. This is likely to continue, and the possibility of direct access by non-banks to the payments system and the possible RBNZ supervision of some non-bank entities under recent MED proposals further illustrate this point.

7 The suggestion is made by the applicant that a narrower organisational form based approach to defining the community of interest, to registered banks only is appropriate because only they can use the term “bank”. It is our legal advice that this is arguable and that the restriction contained in Section 64 of the Reserve Bank Act is to use of the word “bank” in a formal name or title, or a trading name at most.

8 We realise that the RBNZ has expressed a contrary view on this, but would note that it is at least doubtful whether “name” in this context extends to a domain name as opposed to a registered name or trading name. Ultimately this issue could need to be clarified by the courts. In the meantime, we suggest it would not be appropriate for you to, in effect, regulate use of the word “bank” in a manner that seems likely to be more restrictive than Parliament has seen fit to do.

9 We submit that if such a domain name is to be approved it should be approved only on the basis that it is available to all New Zealand financial institutions who lawfully provide banking services. Any narrowing in the definition of the “community of interest” may serve the “branding” interests of the applicant, but is misleading for internet users and marginalises non-bank providers of banking services. In this respect it would operate to bring the .nz name into disrepute.

10 Further, adopting the narrow definition of “community of interest” proposed in the application would unarguably create an overlap between registered banks who would have access to the .bank.nz name and other providers of similar services who would be excluded, despite the fact that in some cases they are explicitly permitted by legislation to provide banking services. (See 4 above). Such other providers of banking or similar services would be required to stay with the present generally used .co.nz (or some other) extension. This would be confusing to internet users and harmful to the competitive standing of those excluded, in ways that we doubt were ever intended for domain name usage.

11 We also submit that the future use of the 2LD be moderated independently of the NZBA, for reasons that are self evident.

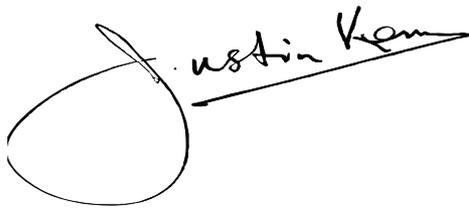
### **Why does this second level domain have to be moderated?**

12 In answer to this question the applicant claims it will assist in minimising the opportunity of its use by organisations or individuals with fraudulent intentions that would present themselves as a bank to the public. The policy proposed for moderation would in fact operate to exclude organisations which had no such fraudulent intent, but really did offer banking services. The suggestion that moderation is needed for this purpose is both arrogant and insulting. Balance and fairness would require that a party independent of the NZBA moderate the domain extension.

13 We note the comments of others on the fraud protections offered by this 2LD and do not think fraud prevention is a factor. Fraudsters have many tools available to them that this extension simply is not capable of addressing.

14 In summary we do not believe this application should proceed.

Yours sincerely

A handwritten signature in black ink that reads "Justin Kerr". The signature is written in a cursive style with a large, looped initial "J" and a long horizontal stroke extending to the right.

Justin Kerr  
**Executive Director**