Level 4, 276 Lambton Quay
PO Box 25335 (Featherston Street)
Wellington
Email: info@fincap.org.nz
Phone: 04 471 1420
www.fincap.org.nz

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Finance and Expenditure Committee
Parliament Buildings
Wellington

Re: Credit Contracts and Consumer Finance Amendment Bill
Preventing or effectively remedying harm caused by irresponsible lending is crucial to the financial wellbeing of everyday borrowers. Robust consumer protections in the Credit Contracts and Consumer Finance Act (**CCCFA**) and the surrounding settings for compliance and enforcement can see consumers better able to participate in the economy and access credit to their benefit.

FinCap welcomes the opportunity to comment on the Credit Contracts and Consumer Finance Amendment Bill (**The Bill**). We generally support the transfer of regulatory responsibility for credit to the Financial Markets Authority. However, we see opportunities for:

- Amendments to The Bill that would address issues with vehicle finance adding to everyday borrower's cost of living pressures or hardship.
- Requiring a statutory review in four years' time to check if decisions from the financial services reforms that weaken consumer protections need revisiting.
- Addressing other aspects or gaps in the CCCFA that financial mentors are seeing resulting in harm to borrowers.
- Other issues that may have been overlooked in the drafting.

We expand on these comments in the submission below and have included some recommended drafting for amendments to the Bill.

About FinCap
FinCap (the National Building Financial Capability Charitable Trust) is a registered charity and the umbrella organisation supporting the 177 local, free financial mentoring services across Aotearoa. These services supported almost 62,000 whānau facing financial hardship in 2024. We lead the sector in the training and development of financial mentors, collect and analyse client data and encourage collaboration between services. We advocate on issues affecting whānau to influence system-level change to reduce the causes of financial hardship.

Proposed amendments to address issues with vehicle finance

Prohibit flex commissions
The Commerce Commission's 2021 Motor vehicle financing and add-ons review revealed a majority of lenders had flex commissions which were banned in Australia in 2018 and the United Kingdom in 2021.[1]

The following is an example of how these commissions operate from the Commerce Commission:

[1] See: https://comcom.govt.nz/__data/assets/pdf_file/0037/269947/Motor-vehicle-financing-and-add-ons-review-10-November-2021.pdf

'A consumer is applying for finance with a lender through a car dealer. Based on the consumer's risk rating, the lender gives the consumer a base interest rate of 20%. The lender allows the dealer to add up to 6% to the base interest rate. The dealer decides to add 5% to the base interest rate, meaning that the overall interest rate paid by the consumer is 25%. The dealer is paid the additional 5% interest charged on the loan.'[2]

In the above example, a $14,500 loan towards a safe and reliable, eight-year-old vehicle with six-digit mileage would have the 5% flex commission incur an extra $1348 interest charges over the lifetime of a three-year loan if all repayments were made on time. This ends up being over 9% extra relative to the purchase price of the vehicle in flex commissions. Nothing is in place that puts a cap on the interest commission percentage or that requires it to be disclosed.

The Commerce Commission noted that lenders were competing to be preferred lenders to car dealerships by offering the highest interest commissions. The overseas changes were made after it was recognised that borrowers end up paying more interest than they would ordinarily.

Everyday borrowers who are vulnerable in high pressure sales environments are exposed to additional cost of living pressures from this practice. Our previous and upcoming *Voices*[3] report notes that the cohort of financial mentoring clients with motor vehicle finance face deeper weekly deficits than those without.

The flex commission practice, which could be seen as a market failure is also obscured from borrowers and their financial mentors by commercial confidentiality. **We recommend the Bill is amended to algin with Australia and the UK by prohibiting interest commissions** to remove the undisclosed cost pressure being added for everyday borrowers.

Recommended Amendment
Insert new clause 19A
19A New section 45KA inserted (Prohibition on flex commissions)
After section 45K, insert:
45KA Flex commissions prohibited

(1) a lender or insurer must not give, or engage in conduct that results in another person giving, the introducer under the flexible credit cost arrangement or an associated person any benefit, whether monetary or non-monetary, if:
    a. the amount of the benefit is determined by, or varies by reference to, (in whole or in part):
        i. in the case of a credit contract—the annual percentage rate under the contract; and
        ii. in the case of a consumer lease—the amount

(2) For the purpose of this section, **flexible credit cost arrangement** in relation to a credit contract or consumer lease means a contract, arrangement or understanding (other than a servicing agreement or a management agreement) between a lender or insurer and another person (**introducer**):
    a. for the introducer or an associated person to provide credit services in relation to the credit contract or consumer lease; and
    b. under which the introducer or an associated person can determine, propose or influence:

[2] Ibid, p.14
[3] See: https://www.fincap.org.nz/blog/fincap-releases-voices-report-2023/

i. in the case of a credit contract—the annual percentage rate under the contract; or
ii. in the case of a consumer lease—the rental charge for the lease.

(3) For the purpose of this section, **introducer** in relation to a flexible credit cost arrangement entered into by a lender or insurer means the person who has entered into the arrangement with the lender or insurer.

Match overseas opt-in protection for high pressure selling of loan add-ons

The Commerce Commission's 2021 Motor vehicle financing and add-ons review also highlighted that low value add-ons with large sales commissions are sold with loans, with premiums adding hundreds of dollars in principal and interest charges to the cost of loans.[4]

The Commerce Commission found it was typical for a commission for the sale of Mechanical Breakdown Insurance, Repayment waivers, Credit Contract Indemnity Insurance, Payment Protection Insurance and Repayment Waivers to cause a 100% increase to the wholesale cost for these add-ons.[5] In some instances the regulator found there were not systems controls to prevent more than a 100% increase from commissions, or even visibility from the insurer of what commission had been paid.[6]

We support proposed changes in the Bill at Clauses 6 and 15-18 which look to ensure that repayment waiver extended warranty products are clearly in scope for the same protections as other add-ons as this is an improvement on the status quo. However, **we recommend amendments that introduce 'opt in' rather than 'cooling off' protections to help prevent the mis-selling of add-on products.**

A high-pressure sales environment at many car dealerships where salespeople have strong incentives to sell potentially unsuitable or expensive add-ons needs better controls to ensure efficiency, transparency and fairness towards better consumer outcomes. On presenting to a financial mentor, many borrowers do not realise they have purchased and are paying interest on hundreds if not over $1000 worth of add-ons to their loan. That, or they misunderstand what they have purchased as it hasn't been adequately explained to them by a car dealer. This can see people involved in an accident and then finding out the add on insurance isn't a third-party vehicle insurance like they understood, meaning they are underinsured and exposed to having to pay thousands of dollars for the damage caused.

The Commerce Commission's report also highlights that the ratio of claims compared to premiums for the add on products are around the range that saw intervention in Australia. The Australian Securities and Investments Commission noted that add-on insurance is poor value as for every dollar in premiums paid, only 9 cents is paid back in claims.[7] The add on products often have many exclusions or conditions to make a claim. As mentioned above, many borrowers are also unaware they are covered as they don't realise they have financed the add-ons.

Industry have recognised there is an issue in response to community groups' concerns about their products. In 2022 some shared through the Insurance Council of New Zealand that they have

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[4] See: See: https://comcom.govt.nz/__data/assets/pdf_file/0037/269947/Motor-vehicle-financing-and-add-ons-review-10-November-2021.pdf

[5] Ibid, p.16

[6] Ibid, p.16

[7] See: https://asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-189mr-asic-releases-guidance-and-customer-information-requirements-to-implement-the-new-add-on-insurance-deferred-sales-model/

voluntarily extended cooling off periods.[8] However, we don't see cooling off periods as are currently offered as protection in the CCCFA as sufficient for solving the problems with add-ons. Borrowers have to know they have purchased the add-ons, then find the fine print about cooling off and then have their cooling off action recognised by the relevant trader.

One solution to the options with add-ons might be to ban the adding of premiums to loans as has been the case with PPI in the United Kingdom since 2009.[9] This is part of many actions that has seen 36 billion pounds in mis-sold PPI payment refunded to consumers.[10] Instead, **we recommend an amendment to introduce a blanket opt-in deferred sales method for all add-ons. This should mirror the Australian four-day pause before a consumer then decides to proactively contact the trader and confirm they want to purchase an add on.[11]** The four days gives borrowers the opportunity, outside of high-pressure sales environments, to assess independent information about the pricing and value of such products or alternatives that are not readily available at the point of sale.

Opt-in protections also mean that behavioural economics exploited by salespeople can be disarmed. These might be reflected in a borrower being worn down by repeated high-pressure pitches playing on loss aversion.[12] Another example might be a borrower being put in a sales situation where they feel it would be socially disrespectful not to agree to sign up for a recommended product. With an opt-in protection a borrower simply defaults to not purchasing the poor value product where such pressure is applied.

In the three years of data collected by the Commerce Commission from a sample of financial services involved in car sales they saw consumers pay $548 million in retail premiums for add-ons.[13] The Finance and Expenditure Committee has an opportunity to act now with this recommended amendment, and help many households get money back in their pockets when they avoid purchasing unsuitable add-ons. This would be more efficient than adding more work for the Financial Markets Authority, to duplicate work already completed by the Commerce Commission to highlight issues in the industry and then act on them.

We oppose the proposed change at Clause 8 of The Bill that could weaken consumer protections in relation to the sale of add-ons. The change says that lenders are considered to have arranged insurance if they know the insurance will be financed when the lending occurs. While this may read as reasonable at face value, we oppose it on the basis that it ends up making a higher threshold for enforcement of borrower protections. For example, we have seen related but separate companies provide a loan and add-ons where a loophole might arise around proving knowledge of the arrangement of insurance from the lender.

We recommend prohibiting disabling devices (immobilisers) for secured vehicles that coerce payment. Lenders immobilising vehicles to coerce payment from a defaulting borrower should be prohibited. 83L-M of the CCCFA allow lenders to install and use disabling devices on secured goods.

Financial mentors have shown FinCap loans where the borrower has:

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[8] See: https://www.icnz.org.nz/industry/media-releases/enforcement-key-to-consumer-protection/
[9] See: https://www.financial-ombudsman.org.uk/businesses/complaints-deal/ppi/ppi
[10] See: https://www.puntersouthall.com/insights/super-complaints-have-shaped-legislation-regulation#_ftn3
[11] Drafting from Australia may be helpful for the drafting of relevant amendments: https://treasury.gov.au/sites/default/files/2020-01/c2020-48919d-exposure-draft-bill-dsm.pdf
[12] https://www.behavioraleconomics.com/resources/mini-encyclopedia-of-be/loss-aversion/
[13] See: https://comcom.govt.nz/__data/assets/pdf_file/0037/269947/Motor-vehicle-financing-and-add-ons-review-10-November-2021.pdf

- An upfront cost included in their loan for the installation of a disabling device that can be used by the lender's collection team.
- A regular rental payment for the device to be active.
- A fee for removing the device at the end of the loan.

The disabling device has the effect of forcing someone to repay the loan over other essential costs when in hardship. People who are experiencing hardship are unable to access essential transport, which can impact their health and safety and economic participation:

"From time to time the lender immobilised the car due to loan arrears meaning that Prisha found it difficult to attend hospital appointments." FSCL case study.[14]

Where lending was irresponsible, the disabling devices worsen the consequences. Financial mentors have told FinCap of a car immobilised in a hospital car park when the lender was told a child's serious health issues were the reason for hardship. They have told us of cars stopped in car parks where fines and towing costs have compounded the issue. Many have also reported their client's immense distress at a disabling device loudly signalling that it will prevent the car starting again while they are driving on a motorway.

Lenders have not shown that they can make use of disabling devices on vehicles appropriately as a debt collection tool, without unreasonable harm to borrowers. Their use of these devices should therefore be prohibited to improve consumer outcomes.

Recommended Amendment
Amend clause 22A
22A Section 83M amended
In section 83M(1), after "the purposes of section 83ZN(1)(c), insert ", or for a vehicle that the creditor has security interest over.

[further consequential amendments to ensure the definition of vehicle is the same as that at 9I(2) of the CCCFA]

Comments on the proposed changes and financial service reforms phase 2 decisions so far.

FinCap welcomes the proposed changes for replacing the certification of lenders and mobile traders with a licensing regime. We anticipate this will offer the new regulator more tools for timely intervention when financial mentors report an issue. The years which the current system can take to halt a lender from continuing to breach the law are frustrating for financial mentors. Financial mentors dedicate resource to making strong complaints to prevent issues causing more financial strain on borrowers but see the problems continuing. Faster regulator action being enabled will help The Bill's broad policy to be realised and improve outcomes for consumers.

FinCap also supports the transferring of regulatory responsibility of credit to the Financial Markets Authority and the providing additional regulatory tools and powers. FinCap's recent engagement with the Commerce Commission and Financial Markets Authority have given us confidence that the transfer will be successful and that the new regulator understands the need to facilitate financial mentors' reporting of potential issues. We have been assisting the Commerce Commission to receive information about a lender who appears to clearly breach the rules but is still lending at the time of

[14] See: https://fscl.org.nz/case-studies/a-lender-miscalculates-income/

writing, despite our sharing evidence of the issues last year. The proposed introduction of stop orders and direction orders could have seen this lending halted much sooner and much less ongoing financial and mental stress for borrowers subjected to unlawful conduct.

We also **strongly support the proposed change at Clause 48 of The Bill to require specific identification of consumer goods a lender has security interest over**. This will ensure financial mentors can help borrowers understand exactly what repossession is possible, and their options, when they present in a panic about potential repossession.

FinCap generally supports transferring the power to designate or exempt whether a class of arrangements are consumer credit contracts from the Minister to the Financial Markets Authority. Engaging with a regulator to request action on an emerging model not captured by relevant laws would likely be more orderly than competing for a Minister's time to consider issues. However, it appears the equivalent Financial Market Conducts Act processes for exemption are better defined that those for designating. **We therefore recommend the Committee consider how it might ensure the Financial Markets Authority will have a clear publicly outlined process:**

- **Where emerging lending products can be flagged for potential designation as loans with CCCFA protections.**
- **For the consultation process where financial mentors and others from the community (as substantially affected persons) are invited to share relevant insights about why a class of arrangements should be designated as covered by the CCCFA.**
- **Including what matters the Financial Market Authority would report as needing consideration by Government as they are beyond the scope (such as the need to adjust the per annum interest rate threshold for high-cost credit protections).**
- **That can close harmful loopholes in a timely manner to prevent harm, especially to vulnerable borrowers.**

We also recommend ensuring the regulator can use the powers to designate or exempt classes of arrangements to close protection loopholes quickly. FinCap continues to be concerned that Buy Now Pay Later lenders and the often 36 month 'interest free' lending for several thousand dollars of technology by telecommunications providers. Both are currently not required to complete affordability assessments or charge only reasonable late fees.[15]

Our upcoming Voices report will share that Buy Now Pay Later debts for the financial mentoring clients in our sample have increased from 1.6% of listings in 2021 to 4.2% of listings in 2024. Also, that in the second quarter of 2024, 83% of those in the sample with a debt to the Ministry of Social Development also had a Buy Now Pay Later debt compared to 35% of the whole sample.[16] Many debts to the Ministry of Social Development are only granted in emergencies where there is no other way to pay for essentials. If a person has this debt to the Ministry, it is very likely that repayments on credit offered by a business will be unaffordable from the start.

Consumer NZ and FinCap have been funded by the Michael and Suzanne Borrin Foundation to examine whether the CCCFA intervention implemented in September 2024 is sufficient to prevent financial hardship.[17] Our Buy Now Pay Later Regulatory Change Review will conclude in late 2025. A second round of research will report back what impact the limited application of the CCCFA protections to Buy Now Pay Later have had. If this research finds the exemptions from affordability

[15] FinCap provided large amount of details on the telco issues in a 2021 consultation: https://www.mbie.govt.nz/dmsdocument/19026-fincap-buy-now-pay-later-submission-pdf

[16] The report will be released in the coming weeks at https://www.fincap.org.nz/submissions-news/

[17] See: https://www.borrinfoundation.nz/buy-now-pay-later-regulatory-change-review/

and suitability checks for Buy Now Pay Later are too broad, it should be simple for the FMA to narrow, or remove the exemptions altogether, in a timely way.

Financial mentors are also unsure what the ruling obtained by the Commerce Commission about the application of the CCCFA to pawnbroking[18] means in practice. We flag this for addressing by the Committee or the Financial Markets Authority.

FinCap opposes the proposed change at clause 12 that will mean a website can be a substitute for continuing disclosure. There is not universal digital inclusion in our nation and some consumers may miss out on accessing important information about their loan.

Debt collection

We caution the change at (4)(b)(i) in clause 43 to remove debt collection disclosure before Insolvency Act 2006 application. Requiring a clear breakdown of what is owed at the point of debt collection or an application for insolvency towards collecting a debt is a useful protection that can improve transparency and outcomes for consumers. At times debt collectors can add large fees to debts but make it difficult to see what proportion of a demand for repayment is for these fees rather than the principal and interest charges which were disclosed clearly when the loan was made.

FinCap is concerned some creditors have asserted that the requirement to provide a debt collection disclosure has confused or worried customers and might advocate for further removal of the requirement than is proposed by The Bill. In case that happens, we point out that this is a protection that proactively makes facts available to a borrower and their financial mentor and helps address the information asymmetry often present in debt collection activity. In the case of insolvency, it would help a borrower know their precise financial circumstances as required to best interact with Insolvency Services. Lenders concerned that the notices may not help customers should work on their communications and support surrounding the notice if they have not already done so and resolved any issues.

The requirement for debt collection disclosure is an important but minor protection relative to wider issues with debt collection.[19] Broader changes are needed to ensure the Fair Trading Act is functioning to adequately define what reasonable private debt collection conduct is acceptable and make compliance enforceable. FinCap wishes to flag this important context with the Committee, that **we have a related recommendation for broader debt collection reform, starting with the recent announcement of a Fair Trading Act review commencing in 2025**.[20] Our upcoming *Voices* report will offer much more context on why better defining what reasonable debt collection conduct is acceptable will minimise harm from the unmanageable debt households are carrying following the cost of living crisis.

Review if decisions are causing hardship in four years

FinCap is concerned about a number of decisions made in the financial services reforms so far which risk worse outcomes for consumers. MBIE's policy analysis in reviews or projects that informed these changes in The Bill have regularly noted limitations around the evidence they could rely upon.

As an example, FinCap helped MBIE look at known lenders who have some or all of their per annum interest rates beyond certain thresholds in relation to the statutory review of high-cost lending. We didn't have precise data on interest rates that would have been ideal for a thorough evaluation of outcomes and nor did MBIE.

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[18] See: https://newsroom.co.nz/2024/06/12/court-rules-to-further-regulate-pawn-shops/

[19] See: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4161249

[20] See: https://www.beehive.govt.nz/speech/speech-fintechnz-hui-taumata-2025

We can see the logic of decisions not to strengthen, or to remove, protections where there is currently little clear evidence on which to base decisions for market intervention. However, such decisions carry with them the risk of a protection gap allowing lending practices that cause or compound significant detriment to everyday borrowers. **We recommend an amendment requiring a statutory review in four years' time as to whether:**

- **Irresponsible lending and substantial hardship that has arisen means the removal of affordability regulations should be reversed.**
- **Harm is occurring that requires intervention for the annual interest rate that defines a high-cost consumer credit contracts be adjusted from 50% to 30%.**
- **The due diligence duties for directors and senior managers need to be reinstated to improve compliance with the CCCFA.**
- **Issues with access to justice mean the onus being put on consumers to prove loss in order to receive the remedy of waived fees and interest for a disclosure failure should be reversed.**
- **The change in regulatory settings has adequately replaced the protection of consumers' interests through annual returns from creditors to the regulator and opportunities to challenge the recertification of lenders.**

FinCap continues to oppose the previous removal of regulations that clearly signalled minimum standards for affordability checks on loans.[21] We anticipate situations will arise where irresponsible lending will go unchecked because of the ambiguity that arises around acceptable practices in the absence of regulations. A review in four years' time should seek to answer whether the regulations should be reinstated to improve outcomes for consumers, especially those facing financial hardship.

Loans with over 30% of per annum interest costs are expensive and risk greater harm to vulnerable borrowers, especially where there is repeat borrowing. The decision not to reduce the annual interest rate that defines a high-cost consumer credit contracts from 50% to 30%[22] will likely result in more borrowers having worse outcomes relative to the counterfactual. More evidence will likely emerge to demonstrate this in the next four years.

We continue to oppose The Bill's removal of the due diligence duties for directors and senior managers. The new regulatory approach may go some way to replacing the incentive for compliance that these created. It is also of note that not enough time has passed for enforcement action to go through the courts and set a precedent that better defines the limits of due diligence duties. It would be prudent to assess in four years' time if there has been less fairness in credit markets as a result of directors and senior managers not being as focused on compliance relative to when the due diligence duties were in place.

FinCap opposes changes which put the onus on borrowers to prove harm from a disclosure failure to receive the remedy of waived fees and interest charges. We are also concerned around the proposed retrospective changes to the law around remedies for disclosure. The retrospective change may exhaust consumer's practical chances of any remedies where lenders have failed to meet their obligations. Consumers will generally be less resourced than lenders to access legal processes necessary for justice. We recommend a review in four years' time to assess whether consumers have had issues with access to justice that mean these changes should be reversed.

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[21] See: https://www.fincap.org.nz/blog/submission-on-lending-affordability-regulations/

[22] See page 7: https://www.mbie.govt.nz/dmsdocument/29097-financial-services-reforms-policy-decisions-proactiverelease-pdf

We are concerned that certified lenders will be automatically transferred to being licensed under the proposed changes. This means they will not have a process where their application for recertification can be challenged as would have happened otherwise. We anticipate the new regulatory settings will provide better mechanisms for monitoring the compliance for lenders who have received warning letters from the Commerce Commission or had valid complaints raised. However, it would still be prudent to assess in four years' time whether the transition has appropriately replaced the protection offered to consumers from recertification.

FinCap is also unsure whether the proposed change as part of Clause 40 of the bill which removes the requirement for creditors to provide annual returns to the Commerce Commission will be effectively replaced by new regulatory settings. FinCap has previously viewed these returns as a being a potential vehicle to give the regulator visibility of the use of any exemptions that were leading to poor outcomes. If a gap does arise from the change, then we recommend also assessing in four years' time whether these annual returns should be required again and the information required be bolstered.

Recommended Amendment

Insert new clause 69A

69A New section 137D inserted (Review of amendments)

After section 137C, insert:

137D Review of amendments

1. The Minister must, as soon as practicable after the expiry of 4 years from the commencement of this section,—
    a. review the operation and effectiveness of the amendments contained within the Credit Contracts and Consumer Finance Amendment Bill 2025, with particular regard to whether:
        i. irresponsible lending and substantial hardship that has arisen means the removal of affordability regulations should be reversed.
        ii. harm is occurring that requires intervention for the annual interest rate that defines a high-cost consumer credit contracts be adjusted from 50% to 30%.
        iii. the due diligence duties for directors and senior managers need to be reinstated to improve compliance with the CCCFA.
        iv. issues with access to justice mean the onus being put on consumers to prove loss in order to receive the remedy of waived fees and interest for a disclosure failure should be reversed.
        v. the change in regulatory settings has adequately replaced the protection of consumers' interests through annual returns from creditors to the regulator and opportunities to challenge the recertification of lenders.
    b. prepare a report on that review.
2. The Minister must present the report to the House of Representatives as soon as practicable after it has been completed.

Recommendations for further amendments towards The Bills' broad policy

We recommend adjusting the definition of remedies so they are timely and lead to just outcomes which prevent a 'debt overhang' for loans found to be unlawful from the start.

The common 'debt overhang' scenario seen involves a car sold at a price beyond its value in a secured loan where the legislated affordability checks have not been completed sufficiently. The loan principal can at times also be increased by add-ons which we raise concerns about later in this submission. Repayments are missed and the secured vehicle is repossessed and sold at auction for well below the value of the remaining loan. The borrower works with a financial mentor to complain to a dispute resolution scheme who after a few months concludes that the loan was unaffordable from the start and that all fees and interest must be waived. The principal remains to be paid, and the borrower has only had the use of the car for a small amount of time relative to the ongoing financial strain.

"… the law required the lender to refund the interest and fees charged on the loan but, because the residual debt was so high, we asked the lender to consider also reducing the debt to an amount that Jason and Maggie may be able to pay off over time. We thought this may be a fairer outcome in the particular circumstances of this case. We cannot require a lender to reduce a debt..." – Financial Services Complaints Limited (**FSCL**) Case Study[23]

FinCap is aware of financial mentors who have encountered this gap in remedies where the law has been applied, despite great efforts to seek justice. Borrowers in these situations end up with a debt and nothing to show for it despite a dispute resolution scheme having found the lender breached the law when failing to conduct reasonable affordability assessments.

The Bill presents a chance for greater fairness, efficiency and transparency through our **recommended amendments to make it clear remedies should not deliver a 'debt overhang.'** Dispute resolution schemes have said they are not confident they can instruct their members to waive the remaining loan amount when this would be fair, as demonstrated in the FSCL commentary above. It should not be necessary for a court ruling to set a precedent for financial dispute resolution schemes to be able to deliver fair resolution when debt overhangs arise.

Recommended Amendment

Insert new clause 21A

21A Section 83ZM amended

After section 83ZM(3), insert:

(4) the creditor is not entitled to, and must not claim, the difference between the amount required to settle the contract as at the date of the sale and the net proceeds of the sale if a Court, Disputes tribunal, or Disputes Resolution Service has determined that the creditor breached their obligations under section 9C in relation to the relevant contract.

We recommend a shortening of timeframes for supplying evidence to borrowers. During FinCap's consultation with financial mentors towards the preparation of submissions, several raised frustrations that lenders are not providing documents required through disclosure requests under 9CA and section 24 of the CCCFA in the required timeframe. They are also frustrated that often their work with borrowers to address substantial hardship is held up by other lenders waiting for the maximum of 15 or 20 working days to supply requested documents.

Financial mentors often are assisting borrowers with multiple debts and seeking to help the borrowers realise their options. Copies of affordability assessments or simple statements about how much is owed inform the options. The longer they take to arrive, the longer the borrower may face the consequences of substantial hardship and find it hard to continue engaging with their financial mentor due to compounding issues. The delays for key documents can also mean financial positions cannot be fully known, as is necessary for seeking relief from an insolvency or a KiwiSaver hardship withdrawal.

Recommended Amendments

Amend clause 10

In clause 10, replace "Repeal section 9CA(8)." with "(1) Repeal section 9CA(8)." and insert: (2) In section 9C(7) replace "20 working days" with "5 working days"

[23] See: https://fscl.org.nz/case-studies/residual-debt-unaffordable/

Insert new clause 14A
14A Section 24 amended
In section 24(3) replace "15 working days" with "5 working days"

Addressing economic harm between joint borrowers
Financial mentors have reported instances of economic harm, a form of family violence,[24] clearly presenting as a driver of the financial difficulties of those they support. Two scenarios, reported to FinCap on multiple occasions for each, are as follows:

- a woman who has a debt for a car loan where she was coerced into agreeing to having her name on the loan, being a co-borrower or being a guarantor. Despite her name being on the loan, she never had the vehicle or no longer has access to it but is pursued for, or continues to pay the debt.
- a woman separates from a co-borrower for a large mortgage. She continues to pay, despite this being unaffordable, because her former partner refuses to agree to a hardship application. Sometimes the former partner remains at the property and refuses to contribute to mortgage payments, putting the woman's equity in jeopardy.

We have heard from some lenders that legislation may be a barrier to them appropriately addressing economic harm. The lenders point to issues around statutory hardship applications needing to be agreed to by co-borrowers as a barrier. Other lenders have seemed to work around this barrier and arrange safe solutions that prevent survivors of family violence being burdened with unmanageable debt due to a partner's or former partner's actions.

Either way, more work is needed to guide lenders on how they can avoid enabling, or appropriately spot and respond to, these family violence issues. The responsible lending code currently just offers likely ineffective guidance that lenders encourage potentially coerced borrowers to seek independent advice. This action could risk escalation of safety issues related to physical and other forms of family violence.

Good Shepherd has been a leader for resolving these issues; they have recently commenced work with the Financial Services Federation on an industry code of practice for supporting survivors of economic harm.[25]

We recommend the committee report back that the Government should look to endorse, or set, a review that determines how the law best supports fairness and efficiency in improving outcomes for borrowers who are survivors of family violence. We put forward a review as there are many safety issues that need consideration and could be overlooked if an amendment is made to The Bill by the committee.

A government led review examining the potential need for a separate legislative change could be needed. Alternatively, Government may just need to endorse the outcomes of the current Good Shepherd and Financial Services Federation work. This for instance, might be reflected in elements of the resulting industry code being mirrored in the Responsible Lending Code.

Please contact Senior Policy Advisor Jake Lilley on jake@fincap.org.nz or 027 278 2672 to discuss any aspect of this submission further.

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[24] See: https://goodshepherd.org.nz/resources/recognise-economic-harm/
[25] See: https://goodshepherd.org.nz/good-shepherd-and-fsf-partner-to-address-economic-abuse/

Ngā mihi,

Fleur Howard
Chief Executive
FinCap