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Finance and Expenditure Committee
Parliament Buildings
Wellington

Re: Financial Markets Conduct Amendment Bill
Compliance from businesses providing financial services can prevent avoidable hardship and put money back in hundreds of thousands of people's wallets each week. Financial markets conduct requirements need to be comprehensive and the regulator needs more tools to spot and take timely action to address any potential noncompliance that is emerging.

FinCap welcomes the opportunity to comment on the *Financial Markets Conduct Amendment Bill* (**The Bill**). Financial mentors' limited capacity is strained where financial services noncompliance causes money problems. We support elements of The Bill which improve the Financial Markets Authority's (**FMA's**) powers and clarify pricing and complaints standards in conduct requirement. However, we are concerned with some proposed weakening of consumer protections. We also see opportunities to strengthen the FMA's administration of the financial markets regulatory system by providing the regulator more tools and enabling greater visibility of debt collection markets.

Above all else we would like to see the Finance and Expenditure Committee act to see super complaints powers being introduced as a result of our engagement. These can help realise more timely responses to issues in financial markets that might not otherwise put money back in people's wallets each week.

We expand on these comments in the submission below and would welcome the opportunity to make an oral submission too.

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.

Effective fair conduct programmes

FinCap supports strengthened definitions of consumer protections in fair conduct programmes

Communicating pricing
Upfront, prominent transparency in pricing of financial services can help consumers make effective decisions. We therefore support the proposed addition of requirements in clause 19(7) of The Bill requiring fair conduct programmes to include how a business will communicate about pricing in a timely, clear, concise and effective manner.

Hearing complaints
Complaints are important to identifying and resolving issues in financial markets. Humility is valued by most in our nation and can mean we're not as assertive about explicitly complaining when communicating about problems with staff at a business. Often, staff at businesses can fail to recognise an expression of dissatisfaction as a complaint. **We support the strengthening of the requirements at clause 21(1) of The Bill** as they seek to address this issue. Financial mentors knowing the 'magic words' to trigger a response shouldn't need to be required for businesses' fair conduct towards their customers.

The website publication or ability for consumers to request a copy of information on how to make a complaint lowers barriers to resolving issues that could be causing or compounding financial hardship. These actions are required in fair conduct programmes already but the proposed changes to improve the identification of complaints will also bolster the protection provided by the law for consumers.

FinCap opposes proposed changes to remove protections from fair conduct programmes

We recommend not commencing changes that will remove elements of fair conduct programmes, especially the current requirement that businesses regularly review the effectiveness of programmes. **Clause 19(1) of the Bill should be removed.**

The requirements at 446J(1)(a) of the Financial Markets Conduct Act 2019 require businesses to demonstrate they have properly considered how they will meet their legal obligations. The regime is currently active and businesses should have done this work already. It is therefore not unreasonable for them to continue to clearly document their compliance and improve the ability of the Financial Markets Authority to administer checks in doing so.

The requirements at 446J(1)(k) of the Financial Markets Conduct Act 2019 require businesses to ensure: '*that there are in place methods for regularly reviewing, and systematically identifying deficiencies in, the effectiveness of the*[fair conduct] *programme.'* This is a protection that ensures fair conduct programmes do not sit on a shelf but instead are proactively revisited to check they are fulfilling their purpose by businesses.

The proposed change could move the onus over to relying on consumers to spot and successfully raise issues with the outcomes, relative to expectations of a fair conduct programme, for a review to be triggered. Financial mentors might be relied on to close the gap and spot mis-selling of unsuitable financial products and services causing strain on many households' weekly expenses relative to income. Financial mentors may not have the clearest documentation or time resource to raise such issues. The change would therefore make COFI less effective and should be removed.

We recommend requiring a review of the proposed changes and the wider Conduct of Financial Institutions regime in four years' time
31 March 2025 saw the Conduct of Financial Institutions regime for insurers and deposit takers come into full effect. FinCap believes the regime provides a pathway for addressing many issues, especially with commissions driving the sale of unsuitable financial products which see less money available for households each week when they are trying to avoid financial strain.

However, we are not sure better outcomes will be realised and **recommend that if not already required, a review is scheduled in four years' time which includes terms of reference requiring assessment of whether:**

- **The regime has met its objective in general.**

- **Any changes made by The Bill have seen the regime unable to address issues relevant to its objective and should be reversed.**
- **Whether or not the scope of the regime should be extended beyond insurers and deposit takers to other financial services (if this has not already occurred).**

Recommended Amendment

Insert new clause 53A

53A New section 598 inserted (Review of Amendments)

After section 597, insert:

598 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 provisions of the Financial Markets Conduct Amendment Bill 2025. This review must consider whether:
        i. the regime has met its objective in general,
        ii. any changes made by The Bill have seen the regime unable to address issues relevant to its objective and should be reversed, and
        iii. whether or not the scope of the regime should be extended beyond insurers and deposit takers to other financial services (if this has not already occurred).
    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.

Such reviews are part of good policy making. We recommend a four-year timeframe as issues with a financial product can take years to present to financial mentors and this should be enough time gather evidence of what is and is not working well. The areas of assessment we propose relating to the scope are further explained below.

Apply fair conduct programme protections to all financial services, not just banks and deposit takers

Bringing fairness for the consumer to the front of lenders' minds can only bring about better outcomes. While issues with institutions like deposit takers and insurers conduct can cause problems across a large portfolio of consumers, an issue from a smaller but currently uncaptured provider can cause just as much harm to an individual household. **We recommend that this bill applies the modern regulatory instrument that is Conduct of Financial Institutions regime to all financial services, including debt collection specialists.** This would see all consumers benefit from the protection offered**.**

Our soon to be released *Voices* report update[1] will share that financial mentors have seen ongoing increase in presentation of people with mortgages to over one in ten. We can also see that one in eight presentations apply for a withdrawal from KiwiSaver on the basis of significant hardship. Those presenting with these issues have saved in the past and may have interacted with brokers or advisers who contributed to their financial vulnerability. But if not employed by a deposit taker, these traders won't be required to have an internal fair conduct programme that would reduce likelihood of such contribution to financial issues.

Almost all presentations to financial mentors have debts which mean they could also face issues with demands from debt collectors that would not be consistent with what fair conduct programmes

[1] See last year's update here: https://www.fincap.org.nz/blog/fincap-releases-voices-report-2023/

would require. Among the range of avoidable problems that these gaps in the coverage of Conduct of Financial Institution requirements present is the increased demand on financial mentors to support those having financial difficulty. Extended coverage of the regime can help reduce the strain on financial mentors among many other benefits.

Effective tools and scope for the Financial Markets Authority

Proposed changes in the Bill

We strongly support proposed additional compliance and enforcement tools for the regulator. FinCap understands that onsite inspection powers combined with a licencing regime will enable the Financial Markets Authority to proactively monitor compliance. Issues with financial service providers' conduct can currently take years to 'surface' and then be dealt with by regulators. The consequence of this slow compliance system is households losing out on money in their pockets every week over years. Refunds or other remedies that can eventuate from regulator work to correct issues don't cover the cost of missed opportunities where funds weren't available, or the compounding harm incurred as a consequence of any financial hardship caused.

Earlier intervention enabled by this proposed new power can halt and resolve problems sooner. The power might also increase the likelihood of the regulator gathering evidence to take successful action in situations where businesses might try and destroy evidence. It is also important to recognise that the proposed power not only helps consumers avoid problems but also helps businesses comply and avoid the risk of penalties.

We also support the proposed introduction of control approval provisions for the reasons discussed in the explanatory note of The Bill.

We recommend more tools and scope for the regulator to strengthen financial markets conduct

FinCap recommends introducing super complaints to increase the likelihood, and give the public greater confidence, that consequences of noncompliance will be addressed. At times FinCap and other community organisations identify systemic issues that impacted consumers are unlikely to report to a regulator at all. There are also issues with impacted consumers not having the time or trust to engage with a regulator through long investigations. If resolved the issues could see cost of living and other financial pressures eased with money back in many people's wallets.

Class actions can potentially help address consumer issues not otherwise addressed but are generally only pursued where profit is likely. Super complaints, sometimes known as designated complaints, could fill this gap in the compliance system. Similar jurisdictions have provided regulators and the public with this additional tool. The Australian Competition and Consumer Commission had designated complaint applications approved for a super complaints system to commence in 2024.[2] **Super complaints across various regulators have successfully raised issues leading to tens of billions of pounds being returned to consumers in the United Kingdom since they were introduced over two decades ago.[3]** A description copied below of a super complaint mechanism operating for financial services issues in the United Kingdom defines the mechanism we are recommending:

"The Financial Services and Markets Act 2000 (FSMA) provides that certain consumer bodies may complain to the Financial Conduct Authority (FCA) about a feature or a combination of features of a market for financial services in the UK that are or may be significantly damaging the interests of

[2] See: https://treasury.gov.au/designated-complaints and https://www.accc.gov.au/about-us/designated-complaints

[3] See a summary here: https://www.puntersouthall.com/insights/super-complaints-have-shaped-legislation-regulation#_ftn3

consumers. This process is intended to provide consumer bodies with a mechanism to raise issues with us about features of the market that may be affecting consumer interests. We must respond within 90 calendar days." FCA Guidance[4]

This super-complaint mechanism could be valuable for situations where an organisation such as FinCap holds significant evidence of a widespread breach, but vulnerable consumers are hesitant to complain directly. Our *Client Voices* software also collects trader information and indicates how some lending might contribute to substantial hardship for borrowers. It can provide significant deidentified information around how different demographics are impacted too.

A super complaint mechanism might also be a helpful tool for an organisation to raise complaints around breaches such as an unfair regular fee of $5 that impacts tens of thousands of people. Although it is likely to be seen as uneconomical for any one borrower to put time into seeking this fee be refunded, the scale may justify an organisation raising the systemic issue with the regulator where it would not be visible otherwise.

Super complaints offer an opportunity to strengthen financial markets conduct and help the Financial Markets Authority administer the regulatory system. They support wider current reform objectives to improve consumer outcomes. The 90 day public report back requirement common in Australian and United Kingdom super complaints mechanisms could provide more incentive for consumer groups to resource the work needed to raise issues. This is because we will know there will be a response in a known timeframe. We recommend the Bill is amended to introduce super complaints to our nation's financial service regulatory eco-system.

Recommended Amendment
Insert new clause 59
59 New section 66A inserted (Response to designated complainants)
After section 66, insert:
66A Response to designated complainants

1. A designated complainant may make a complaint on behalf of any person or group of persons about the conduct of another person regarding any matter regulated by the Financial Markets Conduct Act, the Financial Markets Authority Act, or any other legislation granting jurisdiction to the FMA.
2. The FMA must respond to the complaint of a designated complainant within 90 days, giving notice of how it intends to proceed with the complaint or if it is dismissing the complaint.
3. For the purposes of sub-clause (1), a **designated complainant** is any person or organisation designated by the Minister
4. The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the designation of designated complainants

We recommend that debt collection specialists are licenced as financial market participants too.
FinCap doesn't see issue with proposed changes in The Bill for a single financial markets licence. While this change is being made there is an opportunity to improve consumer outcomes by recognising debt collectors' role in financial markets where trading is practiced in relation to the value of overdue payments. The payments originate from financial services or other consumer products and services.

[4] See: https://www.fca.org.uk/publication/finalised-guidance/fg13-01-designated-consumer-bodies.pdf

Unfair debt collection practices can currently go unchecked. Aotearoa does not have coherent laws or enforcement tools to effectively prevent unfair conduct from debt collectors.[5] The announcement of a Fair Trading Act review to be launched later in 2025 offers the opportunity to set clearer expectations on reasonable debt collector conduct.[6]

However, there also appears to be little regulator visibility of this market which can lead to significant consumer harm. Debtors faced with debt collection are especially vulnerable as they will have often defaulted due to facing hardship, and then be facing pressure to face more hardship to meet repayment. Given debt collection exists as a financial service looking to draw the greatest value out of portfolios of overdue debts, the Financial Market Authority would be best placed to administer licencing and have the visibility of the market that comes with this. For these reasons, FinCap recommends that licencing for debt collection as a class of financial service providers is introduced through an amendment to The Bill.

Recommended Amendment
Insert new clause 16A
16A Section 388 amended
After section 388(d) insert:
(e) acting as a debt collector

Other related matters to flag with the Finance and Expenditure Committee

We recommend reviewing the exemption from financial advice protections for not-for-profits and aligning the review's timing with the Te Tāpapa framework. Financial mentors do excellent, high-quality work, to support other community members facing hardship. They currently fall under a very broad exemption from the laws being considered by the Finance and Expenditure Committee in doing so:

> **13 Non-financial not-for-profit organisation**
>
> (1) Financial advice is not regulated financial advice if it is given—
>
> (a) in the ordinary course of the business of a non-financial not-for-profit organisation; and
>
> (b) for no charge.

Financial Markets Conduct Act 2013, schedule 5, section 13.

Despite the exemption, financial mentors are advised against giving financial advice in FinCap's introductory training. Their role is more about ensuring people are aware of their options when facing financial hardship. Unfortunately, there is nothing stopping anyone from calling themselves a financial mentor despite having no appropriate training. That person might then give flawed financial advice that leads to harm and tarnishes the reputation of, and confidence in, all financial mentors by doing so.

We make the recommendation in this section as we want to flag that the exemption highlighted needs narrowing in the future. The timing of the process to do so should align with FinCap's relevant work programme. This can avoid disrupting financial mentors and other workers' support for their communities.

[5] As discussed in this research: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4161249
[6] See: https://www.beehive.govt.nz/speech/speech-fintechnz-hui-taumata-2025

FinCap has recently launched and started implementing the Te Tāpapa framework for professionalising financial mentoring over the next five years. Financial mentoring has arisen from decades of community action to address financial hardship faced by whānau. A change that may define who is and isn't a financial mentor and who they are accountable to should be developed by the financial mentoring sector and supported by the government. This would lead to better outcomes than government simply setting standards over community workers who best know the appropriate scope of their work.

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

Ngā mihi,

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