

27 September 2021

Submitted via: comcom.govt.nz

Tristan Gilbertson
Telecommunications Commissioner
Commerce Commission
Wellington

RE: Draft report to the New Zealand Telecommunications Forum Inc. on recommendations for improvements to the TDRS

FinCap welcomes the opportunity to comment on the Commerce Commission (**the Commission**) Draft report to the New Zealand Telecommunications Forum Inc. on recommendations for improvements to the TDRS (**draft report**). Phone and internet services are essential services that are needed for the health, wellbeing and social participation of whānau in Aotearoa. When access to these essential services is challenging or when the way that these essential services are provided is causing harm then whānau should have as few barriers as possible to fair resolution.

FinCap generally supports the recommendations made by the Commission in the draft report as we believe the surrounding review has been robust and that implementation of the recommendations will improve outcomes for whānau who face hardship and are assisted by financial mentors or who are able to avoid facing hardship because of effective external dispute resolution. We provide some additional commentary below and also plan to make wider comment on issues with the provision of essential phone and internet services in response to the Commission's upcoming consultation relating to retail service quality.

About FinCap

FinCap (the National Building Financial Capability Charitable Trust) is a registered charity and the umbrella organisation supporting the 200+ local, free financial mentoring services across Aotearoa. These services support more than 70,000 people in financial hardship annually. We lead the sector in the training and development of financial mentors, the collection and analysis of 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.

Comment on specific recommendations from the draft report

Irresponsible lending from internet and phone providers for unaffordable products and services is a systemic issue that has been regularly raised with FinCap by financial mentors. Commonly this involves bundled sales arrangements that sit outside of the current jurisdiction of the Credit Contract and Consumer Finance Act. These bundle the repayment of a 'top end' phone (and an undisclosed amount relating to cost of credit) alongside an ongoing plan for that phone has a substantial break fee but is not affordable for a person's circumstances. This, as well as many other ways in which essential phone and internet services are sold, can lead to debt issues that see a person continuing to pay, sometimes for services they didn't use, for years and years while at times having to forgo paying for other essentials like food to do so.

A report due for release on our website on 28 September 2021¹ that analyses financial mentors experiences relating to debt collection has found that utility debts mostly with electricity and gas providers, but also phone and internet are the main original sources of debt collection seen by those interviewed. Financial mentors also report to FinCap that issues with the recovery of historic utility debt can impact a person's financial wellbeing more than a decade later. For example, a court judgement obtained without a debtor realising may mean a person is still being chased by a debt collector for a debt from before 2010 where an account was not closed properly when they moved home. The impact on their credit report may impact their likelihood of successfully applying to rent a home or obtain electricity supply.

FinCap strongly welcomes the work done towards *finding 28* in the expert report from cameron.ralph.khoury (CRK) which was part of the review surrounding this draft report. This finding recognises that the TDRS has significantly less coverage of debt issues compared to the Telecommunications Industry Ombudsman in Australia. We urge action be taken to better protect whānau in Aotearoa from debt collection issues relating to the provision of essential phone and internet services. Given these are essential services, in general FinCap calls for more protections to maintain access to the essentials in Aotearoa without the accumulation of unmanageable debt as well as low barriers to effective resolution when things go wrong.

The case study below was recently provided to FinCap by a financial mentor. It reflects similar experiences of people facing hard choices when stuck repaying debt to phone and internet providers that are regularly reported to FinCap.

Case Study – Upsold phone plan leads to missing out on other essentials

A client called Bobby* supports a large household, full of her children and grandchildren. Money is tight, and at times they can't afford to pay the bills. Even essential costs such as groceries, power and rent are a stretch. Several years ago, Bobby brought an expensive phone on a Mobile Repayment Option (MRO) plan. This plan allowed her to buy a brand-new and top-of-the-range phone instantly. Owning a smartphone enables Bobby to complete tasks at home or on the move. She can access her mobile banking app on her phone and find directions to locations around the city. When purchasing the mobile phone, the salesperson encouraged Bobby to buy the more expensive phone, advertising its superior camera and speed.

However, the repayment plan has become difficult to sustain. The costs each month are significant. She pays \$42.58 a month for the phone itself. She is also signed onto an endless data plan, which costs \$80 a month and is a condition of the MRO. The total monthly cost is \$123.58, or an average of \$28.40

¹ See: <https://www.fincap.org.nz/news/>

a week. The penalty charges for late payments are also high, which means that paying her phone plan sometimes takes priority over other essential costs.

*This person's name has been changed

FinCap strongly supports recommendation DR3 including the removal of an exclusion for equipment sold by a provider from the scheme's jurisdiction by 4 December 2021. We do so on the basis of our understanding that this will give whānau in situations like the case study above the option of complaining about the sales process leading to this outcome while knowing they can escalate this to effective external dispute resolution. If we are incorrect in our understanding, then we recommend that the Commission strengthen its recommendations so that it will have the impact of protecting people facing harm because of this systemic issue from both past and future sales.

The draft report recommendation DR13 is for the TDRS to reset the deadlock period from six weeks to 10 days. This is a significant improvement for community access. However, even within 10 days, issues with phone and internet providers could cause or significantly compound hardship. For instance, the loss of phone services due to a disconnection in unreasonable circumstances could lead to loss of income from a missed work shift. Another example could be added costs for travel to a community service instead being able to just call. Both could trigger a debt spiral where defaults to multiple creditors occur in quick succession and the related financial penalties escalate leaving a person with a hard road to stay solvent. FinCap recommends that the Commission expands this recommendation by also pointing to the need for an immediate 'fast-track' process to be available where the Scheme believes a person complaining could be harmed by hardship relating to the complaint in less than 10 days.

We also strongly support the Commission recommendation D17 around the TDRS reminding members of the requirement to pause credit recovery for the same reasons as discussed in the above paragraph.

The second case detailed in Figure 13 of CRK's report (which is a table of complaints ruled out of jurisdiction in 2020) is concerning as it shows a person was unable to challenge the use of debt collection as the issue was over a year old. DR24 in the draft report makes a series of recommendations for amending the Customer Complaints Code that the TDRS responds to. As discussed above in this submission and detailed in the case study, it is common for financial mentors to report issues with conduct more than a year ago that are still leading to consumer harm. On this basis we strongly support the removal of the 12-month limit for complaints.

Financial mentors are experts at advising what repayment amounts to one creditor will be realistic in the context of a person's wider debt issues. Financial mentors can also often make the difference in terms of a person feeling confident to raise an issue with a business or their external dispute resolution. We therefore request that the Commission also expand recommendation DR24 to include amendments that would instruct the TDRS to work co-operatively with community support workers like financial mentors as this will lead to better access and outcomes for people facing vulnerability and hardship.

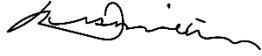
In general, measures should also be taken so that phone and internet providers should also be instructed to work co-operatively with community workers like financial mentors. This would align the expectations on this industry with providers of other essential services which are subject to the Electricity Authority's Consumer Care Guidelines² and the soon to be implemented changes to the Responsible Lending Code.³

² See 7.d.iii. here: <https://www.ea.govt.nz/assets/dms-assets/28/Consumer-Care-Guidelines.pdf>

³ See 2.10 here: <https://www.mbie.govt.nz/assets/responsible-lending-code.pdf>

Please contact Jake Lilley, Policy Advisor at FinCap on 027 278 2672 or at jake@fincap.org.nz to clarify any aspect of this submission.

Ngā mihi

A handwritten signature in black ink, appearing to read 'Ruth Smithers', with a stylized flourish at the end.

Ruth Smithers
Chief Executive
FinCap