

29 January 2021

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Committee Secretariat  
Justice Committee  
Parliament Buildings  
Wellington

Dear Justice Committee Members

**RE: District Court (Protection of Judgement Debtors with Disabilities) Amendment Bill**

FinCap welcomes the opportunity to comment on the District Court (Protection of Judgement Debtors with Disabilities) Amendment Bill (**The Bill**). Hardship experienced throughout Aotearoa should not be compounded by unreasonable debt collection action.

We have a direct interest in this issue – our sector provides financial mentoring to around 70,000 people facing hardship each year. Through this work we have identified the largest debt collection agency in Aotearoa as the second most frequent single creditor listed on budgets behind Work and Income.

We strongly support the Bill as it will ensure people with disabilities are protected from avoidable hardship where essential equipment like mobility devices could otherwise be seized after court action.

However, there are many wider issues the Financial Mentors that FinCap works with see with debt collection practices every day including:

- Demands for unreasonable repayment amounts
  - Debt collectors demanding amounts that mean people need to access food banks to free up money to pay a debt
- Harassment
  - Excessively frequent contact of people who clearly have no way to pay
  - Calling at unreasonable hours and use of regular automated emails
  - Unnecessarily contacting whānau and employers to cause embarrassment
- Unreasonable fees and interest being applied
  - Fees or interest well exceeding the initial debt amounts
- Asserting incorrect information
  - Illegitimate threats of immediate legal action
  - Coercing people to pay debts that had previously been written off
  - Pursuing debts that have passed statutes of limitation
  - Not providing documentation to prove a debt is owed

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The Bill as it stands does not address these issues. However, there is scope for an amendment to prevent attachment orders on Work and Income payments that will assist in addressing the first of these issues in that it will protect essential income for people reliant on social assistance.

There is also potentially scope for the committee to recommend action is taken to implement comprehensive protections for debtors.

Such protections should address issues with debt collectors' harassment, assertion of incorrect information, unreasonable demands for payment or charging of unreasonable fees that cause avoidable hardship. We expand on these comments in the submission below.

The lack of protection for people unable to pay debt is a pressing issue that is exacerbating hardship for a great many low-income people in Aotearoa. We would greatly appreciate the opportunity to brief the committee on this issue in person.

### **About FinCap**

**FinCap** (the National Building Financial Capability Charitable Trust) is a registered charity and the umbrella organisation supporting the work of Aotearoa New Zealand's 200 local free financial capability and budgeting agencies, which annually support more than 70,000 people in financial hardship. Our input to that involves training Financial Mentors, hosting and analysing data from client interaction, supporting networking, and communicating and advocating around issues affecting those agencies.

### **Comments on the Amendment bill**

The seizing of items necessary for the care or support, independence, or to promote inclusion and participation in society of a debtor is unacceptable. People with a disability may be disadvantaged in a number of ways that put them at additional risk of hardship. Where people are otherwise unable to pay this is a clear sign they are likely to be experiencing hardship and that essential products or services should not be taken away.

Such seizures will undermine a pathway out of hardship. For example, a seizure of this equipment would make physically travelling to access a Financial Mentor's assistance to avoid or address hardship more difficult. The seizure of these items could also unnecessarily force a person into a dilemma where they must choose to pay to replace the items or pay to access the essentials - housing, utilities and food. As above we strongly support the Bill as it will avoid courts authorising this absolutely unacceptable action.

These changes should be implemented as soon as possible and retrospectively apply to all relevant warrants to seize property at that time if this is not automatically the case. Where possible the Committee could also consider what can be recommended to address any harm caused by seizure of the items in the past. For example, an initiative – like a fund – could be created where people who had the items seized in the past can apply for the items to be replaced. While such a measure would not

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completely undo all consequences from unacceptable seizures and related hardship occurring, it could halt ongoing harm continuing.

**Recommendation 1.** The Justice Committee recommend the changes in the Amendment bill are made and implemented as soon as possible.

**Recommendation 2.** If it is not automatically the case, then the changes in the Amendment bill apply to all current warrants to seize property.

**Recommendation 3.** The Justice Committee recommends action to halt any harm from the previous seizure of items necessary for care or support, independence or to promote inclusion and participation in society in the past continuing.

### **There are wider issues with debt collection**

Significant issues with debt collection practices in Aotearoa need to be addressed. The current law and regulation in this space does not provide sufficient protection to avoid unacceptable consumer harm. A concerted effort to address or avoid unfair practices from debt collectors is needed.

Financial Mentors throughout Aotearoa regularly see issues where the people they are assisting to avoid or address hardship have been coerced into paying debt collectors in a way that means they are unable to pay for rent, food, utilities and other products and services essential to health, wellbeing and social participation.

### **Attachment orders should not deduct Work and Income payments or equivalent low wages**

Further amendments are needed to address issues with debt collection that arise from the District Court Act 2016. People in Aotearoa only receiving income from Work and Income or who have low wages should not be required to have money redirected from the essentials to debt repayments. Clause 157 allows up to 40 percent of a person's income to be taken off them in an attachment order. People on low incomes or only receiving income from Work and Income are at real risk of poverty and any involuntary redirection of their income risks compounding hardship and poverty. In the state of Victoria, Australia, income from Centrelink is protected from collection.<sup>1</sup> Those working as Australia's equivalent to Financial Mentors in Victoria regularly use this protection to help people avoid compounding hardship when unable to pay. We would welcome the Justice Committee recommending amendments protecting income from Work and Income or an equivalent threshold of wages from collection in order to protect all debtors from poverty caused by having to go without the essentials.

**Recommendation 4:** Amend the District Court Act 2016 to protect income from Work and Income or equivalent threshold of wages from being collected.

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<sup>1</sup> See Section 12 of the Judgement Debt Recovery Act in Victoria.

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## Targeted debt collection regulation is needed

This Amendment bill appears to only address one stage of debt collection which involves courts. However, appropriately protecting people who are in hardship from unreasonable debt collection practices needs wider reform. Recent reviews have examined issues with debt collection related to loans but common sources of debt collection issues for people in hardship seeing Financial Mentors also include providers of essential services like telecommunications companies, electricity and gas retailers or rental housing providers.

FinCap is aware of debt collection processes undertaken in various models which could generally be seen to escalate as follows:

- Direct collection by the original business a debtor owes money to, such as a lender or electricity provider
- A debt collection business purchasing a debt and pursuing it or undertaking debt collection for the owner of a debt
- Any of the abovementioned organisations applying to the courts for judgement against a debtor

There are some requirements around how businesses should conduct themselves when undergoing any of the above that are scattered across different laws but there is plenty of evidence that in practice these do not adequately protect debtors facing hardship. FinCap has published results of a survey of Financial Mentors showing many were concerned with unreasonable fees and interest being piled onto debts, demands for unaffordable repayments and harassment.<sup>2</sup> Anyone can find themselves unable to pay back a debt from a change in circumstances beyond their control or due to mistakes. For example, a person may have unexpectedly found themselves without income where their tourism business was impacted by COVID-19. This does not mean they should be punished to the point where they are unable to access essential services.

The Ministry of Business, Innovation and Employment (**MBIE**) conducted the Consumer Credit Review in 2018. The discussion paper acknowledged issues that arise with debt collection relating to lending including:

- False and misleading claims
- Unaffordable repayment demands
- Excessive charges for debt collection in fees and interest
- Harassment<sup>3</sup>

FinCap's response to the discussion paper noted that services providing financial mentoring saw these issues on a daily basis. We provided the below example of some of the issues mentioned. FinCap would also be happy to see if Financial Mentors are available to speak to the general issues with debt collection that they see if this would be helpful to the Justice Committee.

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<sup>2</sup> [Justice Innovation Centre Community Law Canterbury & FinCap, 2019. Research report: Survey of financial mentoring and budgeting services in Aotearoa on high cost loans, debt collection and other consumer credit issues, p.24-26](#)

<sup>3</sup> Discussed in: [MBIE, 2018. Discussion Paper: Review of consumer credit regulation, p.35-40](#)

**Story relating to poor debt collection practices:**

*A client had already told the trading company that she could not afford the agreed repayments and was going to be seeing a Financial Mentor. The Financial Mentor also contacted the company and asked them for a week to come back with a proposal. They agreed, but a debt collector from the company still turned up at the client's home after 7pm, unannounced, and harassed the client, refusing to leave until she had signed an agreement to pay (more than she could afford). The Financial Mentor phoned the company the next day to cancel this agreement and get some clarification, and was stonewalled. The person she spoke to didn't know which Financial Services Disputes Organisation they were registered with (actually didn't know what the Financial Mentor was talking about), and finally suggested that the Financial Mentor was at fault and their collectors would never act in that way.<sup>4</sup>*

The above example demonstrates how targeted regulations could ensure debt collectors are required to only contact an authorised expert representative like a Financial Mentor when this is requested and allow reasonable time for the representative to undertake their work. It also demonstrates that despite there being guidance against unreasonable contact this is not deterring such actions which include coercion to pay unreasonable amounts. Finally, it shows that there are significant barriers to fair outcomes through dispute resolution where this conduct occurs even for an expert Financial Mentor.

Reform in relation to the collection of debts that are covered by the Credit Contract and Consumer Finance Act 2019 (CCCFA) that followed from the review only addressed issues around the disclosure of debt collection. It is also worth noting the Repossession rules under 83ZN of the CCCFA contain a list of items protected from being a security. It is unclear whether these would cover the items protected in the Bill. The list in the CCCFA or associated guidance may need updating to provide protection for this form of debt collection that may not end up before a court but have a similar impact on a person with a disability.

**Recommendation 5:** Checks are made that a person with a disability is also protected from having the items necessary for care or support, independence or to promote inclusion and participation in society taken from them in repossession processes under the CCCFA.

We are also aware of several published or upcoming pieces of research and reports that highlight the need for reform around debt collection. The Commerce Commission's complaints snapshot for 2019/2020 noted 145 complaints in relation to debt collection which was the highest complaint rate for any category in their Consumer Credit reporting.<sup>5</sup> They gave debt collectors providing no proof of a debt and debt collectors harassing a debtor as examples.

Also, in October 2019 the Salvation Army released a discussion paper looking at debt collection and repossession in Aotearoa. The report found that significant issues needed resolving. Recommendations included:

<sup>4</sup> FinCap, 2018. *Submission on discussion document: Consumer Credit Regulation Review*: p.56-57

<sup>5</sup> See: [https://comcom.govt.nz/data/assets/pdf\\_file/0027/227745/Complaints-Snapshot-2019-20.pdf](https://comcom.govt.nz/data/assets/pdf_file/0027/227745/Complaints-Snapshot-2019-20.pdf)



- Stronger and more consistent regulation of debt collection and repossession through a single law that specifically targets better outcomes as opposed to the current scenario where rules are scattered across different laws
- Implementation of a judgement-proof debtor policy like in Victoria, Australia
- Pursuing other debt collection 'options' that were not progressed following MBIE's 2018 Discussion Paper<sup>67</sup>

We are also aware of an academic journal article examining debt collection which is finalised and due for publication in the New Zealand Business Law Quarterly.<sup>8</sup> At a high level this work finds that guidance on debt collection in Aotearoa is not as comprehensive as Australia's ASIC ACCC guidelines. The author of the journal article observes that many of the issues raised with debt collection through the 2018 MBIE review of consumer credit regulation had been addressed in Australia through their regulators' approach. It also found harassment and coercion in Aotearoa can lead to civil proceedings but in other jurisdictions similar conduct is deterred with more robust penalties. It is argued that changes to the Fair Trading Act 1986 could mean Aotearoa could achieve similar outcomes to Australia.

We thank the Justice Committee for considering issues with debt collection. Based off the above evidence there is a clear case for progressing reform that will lead to targeted regulation to ensure all debt collection does not cause hardship for people unable to pay in Aotearoa. We would welcome the Justice Committee recommending work commence to make such protection a reality.

**Recommendation 6:** The Justice Committee recommend action to ensure targeted comprehensive protections for people facing debt collection in Aotearoa.

If you would like to discuss any aspect of this submission please contact Jake Lilley, Consumer Issues Advisor at FinCap on 04 333 0393 or at [jake@fincap.org.nz](mailto:jake@fincap.org.nz).

Ngā mihi,



Moana Andrew  
**Acting Chief Executive**  
**FinCap**

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<sup>6</sup> MBIE, 2018. *Discussion Paper: Review of consumer credit regulation*

<sup>7</sup> [Tanielu, R. \(2019\) Debt collection and repossession in Aotearoa. The Salvation Army Social Policy & Parliamentary Unit.](#)

<sup>8</sup> Please contact FinCap to see if access to the paper can be arranged ahead of publication.

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## Appendix one - Summary of Recommendations

**Recommendation 1.** The Justice Committee recommend the changes in the Amendment bill are made and implemented as soon as possible.

**Recommendation 2.** If it is not automatically the case, then the changes in the Amendment bill apply to all current warrants to seize property.

**Recommendation 3.** The Justice Committee recommends action to halt any harm from the previous seizure of items necessary for care or support, independence or to promote inclusion and participation in society in the past continuing.

**Recommendation 4:** Amend the District Court Act 2016 to protect income from Work and Income or equivalent threshold of wages from being collected.

**Recommendation 5:** Checks are made that a person with a disability is also protected from having the items necessary for care or support, independence or to promote inclusion and participation in society taken from them in repossession processes under the CCCFA.

**Recommendation 6:** The Justice Committee recommend action to ensure targeted comprehensive protections for people facing debt collection in Aotearoa.