

14 October 2021

Submitted via: comcom.govt.nz

Tristan Gilbertson
Telecommunications Commissioner
Commerce Commission
Wellington

RE: Improving Retail Service Quality Draft Baseline Report

FinCap welcomes the opportunity to comment on the Commerce Commission (**Commission**) Improving Retail Service Quality (**RSQ**) Draft Baseline Report (**Draft Report**). Fair access to essential phone and internet services is vital for the health, well-being and social participation of people, whānau and communities. It is regularly reported to FinCap that accessing these essential services can get too complex, confusing, unfair and generally messy for whānau. Such experiences can lead to debt issues that cause or compound experiences of hardship and which have the potential go on for decades. This hardship involves whānau ending up defaulting on payments for, or altogether going without other essentials. RSQ needs to improve.

In our work to address hardship through providing support to the 900 financial mentors in Aotearoa we strongly support the Commerce Commission ensuring phone and internet providers are acting in the interests of the community through work on RSQ issues. This should include active monitoring of debt and affordability practices as a priority and the Commission acting, wherever necessary, to address any systemic issues identified with such oversight.

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.

Issues with essential phone and internet provision expose whānau to wider hardship

FinCap's overarching concern with current RSQ is that providers are not adequately considering how the way they provide goods and services may cause whānau to face vulnerability and hardship.

Walking into a store and asking for a phone necessary to keep up with the world can lead to getting bamboozled, up sold and stuck in a contract that makes you more at risk of hardship for years. Calling to connect the internet at a new rental home can see the same issues and outcome. This should not be the case.

Aotearoa needs stronger consumer protections to ensure:

- That whānau can access the essential services they need;
- That provider practices mean whānau are most likely to be sold products and services that are most likely to suit their circumstances; and
- That when whānau circumstances change essential internet and phone service providers offer effective assistance to avoid long term hardship.

The below case study from a recent FinCap submission¹ has been expanded as the woman involved and the financial mentor she is working with have provided further information. It demonstrates why more consumer protections are needed to avoid people being stuck with unfair outcomes and reflects many similar issues raised by financial mentors with 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 bought 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 \$43.58 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 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.

October update

Working with her financial mentor, Bobby identified and took up an option in this arrangement to reduce the plan associated with the handset to \$40 per month for less service. However, any monthly plan at a lower cost than that would require Bobby to repay all remaining debt on the handset immediately. Even with payments now at \$83.58 a month Bobby still sometimes faces prioritising this payment over other essential costs to avoid late payment penalties.

*This person's name has been changed

¹ See: <https://www.fincap.org.nz/submission-on-recommendations-for-improvements-to-the-tdrs/>

Among many other gaps in protections reflected above, the contract arrangements in the case study fall outside of the Consumer Credit and Consumer Finance Act (CCCFA). The CCCFA sets out targeted protections for borrowers to prevent them facing substantial hardship but these don't apply even though from FinCap's perspective this arrangement is equivalent to a loan and similar protections should apply. We recommend the Commerce Commission monitor these arrangements, their outcomes and compare these to work done within their credit team on irresponsible lending.

Responses to consultation questions

Do you agree the proposed key RSQ matters need improving? Please tell us why, or why not.

FinCap strongly agrees that RSQ matters in Table 4 of the draft report need improving, especially issues with contracts and debt and affordability practices that could lead to hardship. Whānau should be able to access their essential phone and internet services without facing hardship and should also have rights for support from internet and phone providers to avoid hardship when life doesn't go to plan.

Do you agree that debt and affordability practices fall within the scope of RSQ? Please tell us why, or why not.

FinCap strongly agrees that debt and affordability practices are in scope. Significant harm can be caused where practices to ensure whānau keep connected to phone and internet services at a fair price with fair arrangements are inadequate. Phone and internet services are increasingly necessary to maintain mental wellbeing through staying connected with whānau during a global pandemic. They are also needed for other essential actions in life like accepting work shifts, interacting with government and community support services, calling to make hardship arrangements with a creditor and socially participating with the wider community. Not having phone and internet for these actions means people quickly incur additional monetary and time costs or are 'left behind.' No one should be put in a situation where they don't have access to phone and internet services because of an inability to pay and the regulator should be looking at how retail service practices are hindering access for whānau in Aotearoa.

Financial mentors report that the outcomes from debt and affordability issues cause significant harm in communities. FinCap recommends that protections in this space should be brought up to speed with those in other industries. Lenders and electricity providers have expectations for good debt practices in the Electricity Authority's Consumer Care Guidelines² and the soon to be implemented changes to the Responsible Lending Code.³ While there may be some voluntary industry guidelines for internet and phone providers these are nowhere near as robust.

Some of the negative impact where the provision of essential internet and phone services is not working out in the interest of whānau and leading to unmanageable debt was evidenced in the recent *Debt Collection in Aotearoa from the perspective of financial mentors*⁴ report. It found that utility debts mostly with electricity and gas providers, but also phone and internet providers were the main original sources of debt collection seen by those interviewed. The report elaborates on the wider issues whānau are then exposed to because of these debts.

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

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

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

⁴ See: <https://www.fincap.org.nz/wp-content/uploads/2021/09/Debt-collection-in-Aotearoa-from-the-perspective-report.pdf>

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.

In its role with RSQ the Commission should be actively monitoring how debt issues arise that lead to whānau facing hardship due to RSQ issues. This hardship may stem from disconnection from these essential services or where whānau incur debt that means they are more likely to have difficulty accessing essential services in the future. Such outcomes reflect serious harm to the community that a regulator should be able to identify and address when it is systemically caused by service provider practices.

Do you agree that we should only maintain a watching brief over the matters in paragraph 53? Please tell us why, or why not.

FinCap strongly supports work in this area. We recommend the Commission go further than a watching brief and takes action to improve monitoring of debt and affordability issues. This is on the basis that a watching brief as a concept appears passive compared to the response required to better understand and address debt and affordability issues. As previously discussed in this submission, these issues cause ongoing harm in communities hence why this should be a priority.

The complex nature of issues with phone and internet providers where whānau are often dealing with technology and contract features that are unfamiliar means it is difficult for whānau to identify issues, make complaints and get resolution. The detailed information reported to FinCap on debt and affordability issues that we are currently in a position to share is in our view the 'tip of the iceberg' and the Commission should utilise any available powers to conduct further analysis.

Rather than watching, the Commission could actively request further information on how often people are exposed to the requirement to pay early termination fees under a contract, the size of these fees, how often people default within the first few months of a mobile plan or how often people are disconnected from phone or internet services. The Commission could also look at what hardship practices are in place and how many customers are engaged with these practices in comparison to the frequency of debts being sent for recovery. Another metric could be how often whānau are denied connection to essential phone and internet services. We would also welcome work on comparisons with wider work at the Commission on lending protections as discussed earlier in this submission. Through analysing such information, the Commission would be in a better position to understand RSQ issues that are causing harm.

Of the proposed key RSQ matters, which ones do you think we should address first? Please tell us why.

Debt and affordability issues with essential services can mean whānau have no access or end up with unmanageable debt. Both outcomes can cause long term compounding harm from hardship and the sooner intervention prevents these undesirable outcomes, the more that harm can be avoided.

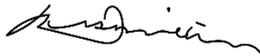
Do you think an industry or Commission RSQ code would improve the proposed RSQ matters? Please tell us why, or why not.

FinCap recommends a Commission RSQ code as the most efficient way of addressing issues in the interests of the community. There are many providers that operate in this space and there may be even more as technology changes. A regulator code would provide more accountability for all

businesses, general certainty about what the expectations are as well as robust opportunities for community organisations to raise systemic issues and have them addressed across all providers.

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