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Submitted via: debttogovernment@ird.govt.nz

A proposed framework for debt to government
Inland Revenue, Te Tari Taake
Wellington

RE: A proposed framework for debt to government

No child should have to go without essentials because government departments are creating and collecting debt that was always going to be unaffordable. Debt to government is creating distrust and harm for whānau that are trying to engage with the systems that are meant to support them.

FinCap welcomes this work on the proposed framework for debt to government (**Proposed Framework**). Issues with debt to government are regularly raised by financial mentors. Inconsistencies and errors within the current system need urgent attention as they are currently causing, and have caused for decades, harm to whānau across Aotearoa.

We strongly recommend that clear policy and legislative changes be urgently implemented in line with this framework to address the issues that are causing the most harm. Future work that complies with this framework must prevent money continuously being taken from the pockets of whānau, especially during this time of added cost-of-living pressure.

About FinCap

FinCap (the National Building Financial Capability Charitable Trust) is a registered charity and the umbrella organisation supporting the 190 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.

General comments

Debt to government is causing harm to many whānau across Aotearoa. According to several reports and Insight Briefs by the Social Wellbeing Agency (SWA) debt to government is impacting women¹, Māori², and children especially. Of the people that owe debt to government 62% are parents or share an address with a child. This debt to government work is therefore clearly crucial for addressing child poverty.³

¹ See <https://swa.govt.nz/assets/The-persistence-of-debt-to-government-research-report.pdf>

² See <https://www.dpmc.govt.nz/sites/default/files/2022-02/proactive-release-reducing-impact-of-debt-to-government-3feb22.pdf>

³ See <https://swa.govt.nz/assets/Children-and-debt-Insights-report.pdf>

The amount of debt that whānau have to government departments is exacerbating harm. According to one of the reports by the SWA the median debt to the Ministry of Social Development (MSD) is around \$1,000 per person.⁴ Although the majority of debts owed to government are less than \$5,000, we have heard from financial mentors that some of their clients have debt to MSD of up to \$80,000.

We have been able to gain insights about debt to government through Client Voices, the financial mentor data base. Those that are presenting to financial mentors are almost always already in, or facing, potential hardship and are seeking support. The below figures are based on cases closed between 1 January and 31 December 2022.

	All	Clearly noting debt to government	Clearly noting debt to MSD	Clearly noting debt to MOJ	Clearly noting debt to Kainga Ora
Number of client cases in sample	18,119	6,878	5,334	2,211	286
Percentage cases with last budget in deficit	52.39%	55.4%	56.06%	57.09%	63.74%
Number of cases that have started an insolvency procedure	228	135	70	47	4

From this data we can see that people with debt to government were more likely to close with a deficit budget. We can also see that a significant proportion of whānau working with financial mentors and going through insolvency have debt to government where insolvency indicates that paying debt would cause substantial hardship.

Children in Aotearoa need to be able to thrive, play, learn and explore, and the wellbeing of their whānau is often the key determinant of this. Through the insights of financial mentors, Client Voices data and research, FinCap has found debt to government to be a key barrier to the wellbeing of children and the prosperity of whānau in Aotearoa.

Chapter 2 - Principles for creating and managing debt:

Q1. Do you have any comments on the principles as outlined?

Q2. Do you agree with the concept of principles? If so, are these the correct principles? What have we omitted?

Q3. Have we described the principles accurately in your view? If not, how would you reframe them?

Responses to the proposed principles

We support the principle of fairness, and later sections of this submission highlight current issues that show why a focus on fairness is needed. We strongly recommend that the principle of fairness should include obligations to treat debt from legacy policy with fairness and in line with changes that are made to the treatment of current debt.

⁴ See <https://swa.govt.nz/assets/Publications/reports/Understanding-debt-and-debtors-to-government.pdf>

For example, the 70a sanction that punished parents for not naming the other parent of their child caused immense harm.⁵ When this policy changed, there were wait times for refunds and harm remained for many. Hardship compounds due to debt caused as a consequence of the sanctions, and refunds are not always sufficient to cover issues caused by compounding hardship. This harm can stay with whānau for years and cause ongoing challenges and barriers. It is crucial that changes to harmful policies include appropriate support and robust processes for providing swift refunds for all those that were impacted.

We strongly support the inclusion of minimising hardship as a principle in the Proposed Framework. However, we strongly recommend that it is adjusted to specifically define hardship in line with capabilities for assessing affordability. Hardship should be seen as a situation where whānau are unable to meet non-discretionary expenses. We recommend the below definition for non-discretionary expenses:

Expenses that the borrower does not have complete agency to cease without significant detriment, meaning the expense interacts with:

- a) Rules, whether contractual, social, cultural, or moral obligations
- b) The physical or mental health, and wellbeing of the borrower
- c) The wellbeing of that borrower's whānau, dependents and pets
- d) Social and cultural connectedness.

We also recommend that the principle of minimising hardship should be the dominant principle, in combination with fairness, when there is a possible trade-off. The principle of minimising hardship should outweigh other considerations, such as behavioural responses, when considering the outcome for whānau.

We recommend that the principle of behavioural responses be readdressed to promote higher trust. This principle should always be the lesser considered principle compared to minimising hardship. Our recommendations throughout this submission about implementing affordability assessments provide a practical method for prioritising the principle of minimising hardship.

We strongly support the mention in the principle of public value that write-off options provide efficient relief. We recommend that there be further emphasis on the harm caused to whānau by chasing debt in this principle. Debt can create unnecessary stress for whānau, especially when it is debt that was always going to be unaffordable to repay. These factors should be core considerations in this principle.

Transparency is a crucial principle and should be implemented to lower the barriers to understanding the creation and collection of debt. We also recommend that this principle directs government departments to consider power imbalances and to implement processes for ensuring that whānau have informed consent wherever a debt is created. This recommendation aligns strongly too, with the principle of fairness.

We recommend that the principles be enforced consistently and with robust requirements and processes across all government departments in their daily operations. There should be a specific regular public report on alignment and re-alignment once the framework is implemented. These principles and the responding approaches and actions should be universal across all departments.

⁵ See <https://www.rnz.co.nz/national/programmes/checkpoint/audio/2018802991/woman-sanctioned-by-msd-over-fear-of-naming-child-s-father-owed-thousands>

Chapter 3 – purpose-centred approach

Q4. Do you have any comments on the different kinds of debt, their different purposes, and different treatments?

Q5. Are the right categories identified?

We support the categories of debt for consideration and appreciate that this Proposed Framework is focused on central government. However, financial mentors often also report concerns with the rigid way in which many councils create and collect debt and how this can compound the hardship the whānau they work with are already facing. We therefore recommend that it is considered as an additional category or type of debt.

We recommend that the Proposed Framework should apply more widely to local government and include requirements for universal hardship policies at councils. Whānau that are having payment difficulty should be able to have a breathing space. Hardship policies outline expectations on councils to consider applications on grounds of hardship, to make changes to payment timeframes or amounts to suit a whānau are having payment difficulty. Fees should also be waived where there's no net benefit in pursuing them. We have heard that debt collection by councils is often far from best practice, and the Proposed Framework should cover councils as well as central government.

Libraries have led the way and ceased with giving out fines⁶, and councils have in place a rates rebate scheme for those on low incomes.⁷ If the rates rebate scheme can be implemented for homeowners, then there should be support across councils that provides relief for all, whether homeowners or renters.

We respond in more detail below, under questions 6 and 7 in particular, to the specific consideration and treatments of different categories of debt to government.

Recommendation: Apply the Proposed Framework to councils and ensure that there are better practice hardship policies at all councils.

Q6. Are there other policy factors that should be considered?

We support the policy factors that have been considered. However, we also make the below recommendations to strengthen the Proposed Framework and promote further consistency across government departments and their treatment of debt. The sections below under this question address consistency across all government departments.

This proposed framework is a great step towards addressing consistency and we support that compliance with this framework will direct any decisions on issues of debt to government. However, we recommend that this framework sets concrete and consistent expectations across departments that the creation and collection of debt must be focused on wellbeing. The recommendations that we make below are focused on achieving this consistently.

One core entity

We understand from the Proposed Framework document that the previously recommended approach of one core Crown debt collection agency is not being considered further. However, we recommend that consideration of some form of core operations entity be made. There are many issues with the sharing of information and privacy across departments. However, these are key

⁶ See <https://www.horowhenua.govt.nz/News-Events/News/Horowhenua-libraries-to-remove-overdue-fines>

⁷ See <https://www.govt.nz/browse/housing-and-property/getting-help-with-housing/getting-a-rates-rebate/what-is-a-rates-rebate/>

considerations for financial mentors and the whānau they work with. The lack of transparency is causing higher repayment rates than is affordable, overpayment debt and the need for repeat disclosure which can be re-traumatising and harmful.

We recommend that IR be considered a central point for ensuring that people's information is correct consistently. There should also be a flagging process for changes to circumstances as well as updating affordability assessments and ensuring that the combined debt between departments is not exceeding the client's affordability threshold. The recommendations given throughout this submission could apply to either one collection entity, or else to all departments to process consistently in a manner as if they are one entity.

Recommendation: Consider IR as a central point for core operations of debt to government.

Protected income

Currently, those on benefits are receiving very low incomes that do not meet the costs of living.⁸ Debt to government being taken from benefits significantly increases hardship. We strongly recommend that a protected income approach be established and that debt repayments to government are not taken from benefits or equally low incomes.

This recommendation is in-line with calls made by Child Poverty Action Group to cease the collection of debts from beneficiaries in order to prevent further exacerbation of child poverty in Aotearoa. Additionally, the incomes of those on equally low incomes should also be protected. For those that have debt to government but are receiving higher incomes, repayments should not exceed 4% of their budgeted surplus and affordability assessments for repayments should be completed for each and every case (discussed further below). The protected income approach also aligns with our recommendations relating to attachment orders, which can be found under question 7.

Recommendation: Implement a protected income approach so that debt repayments to government are not taken from beneficiaries or those on equally low incomes.

Waiving unaffordable debt

Long-term problem debt becomes an unnecessary and harmful burden for whānau. It creates stress and a feeling of little control over the financial capability of a whānau. Research by the Social Wellbeing Agency shows that those that do not become debt free within two years have a greater than 65 percent chance of remaining in debt for at least the next three years.⁹ We recommend that debt held for over two years with little likelihood of prompt repayment is written off. The two-year timeframe that we are recommending could be used as a structured timeline for readdressing the ability of the debtor to repay their debt. This approach would be a backstop to the protected income approach (recommended above under this same question), for those that have changes in circumstances and move above the protected income threshold.

Robust affordability assessments throughout the process would help to prevent issues with behavioural responses where people might be disincentivised to repay their loans. Affordability assessments should be completed at the start of any debt being created, as well as continuously throughout the life of a debt. If at two years there is little likelihood of prompt repayment and the debt is only causing harm to a whānau that has no ability to repay, it should be written-off. We comment further on affordability assessments below.

⁸ See <https://fairerfuture.org.nz/liveable-incomes-2022>

⁹ See <https://www.taxpolicy.IR.govt.nz/publications/2022/>

There are legislative changes needed to ensure that all government departments have consistent and fair capabilities to waive debt or fees where there is risk of hardship. Currently, IR has legislative powers to write-off penalties and interest related to tax debt.¹⁰ MSD has very limited powers for writing off debt. This inconsistency should be addressed so that all government departments have the power to write off principal debt, fees, and penalties where there is the prospect or reality of hardship.

Recommendation: Waive debt that is held for two years with little prospect of prompt repayment.

Affordability assessments

This section responds to Chapter 4 of the Proposed Framework as well as to this question 6. FinCap welcomes the comments particularly in 4.14, that hardship should be the basis for relief. We therefore provide this section to support this and recommend an approach for assessing affordability. We support the focus on hardship throughout the Proposed Framework and the efforts in ensuring that there are robust processes for assessing and responding to hardship, to promote financial wellbeing.

We recommend that affordability assessments be consistently implemented for all repayments of debt to government departments, in-line with the Responsible Lending Code.¹¹ It's important that we clarify that affordability assessments should not ever prevent whānau from accessing essentials (see our recommendation below under question 7). However, it should mean that any repayments whānau have to make now, and in the future, do not push them into hardship.

Affordability assessments need to thoroughly consider the real life expenses that are necessary for whānau to live their lives without hardship. We therefore recommend the following definition of discretionary expenses when assessing for affordability:

Expenses that the borrower does not have complete agency to cease without significant detriment, meaning the expense that interacts with:

- a) Rules, whether contractual, social, cultural, or moral obligations
- b) The physical or mental health, and wellbeing of the borrower
- c) The wellbeing of that borrowers whānau, dependents and pets
- d) Social and cultural connectedness.

Affordability assessments should be a key practice across all government departments to ensure that repayments are affordable, and to create a threshold for waiving debt. Affordability assessments should be implemented for all debt categories, whether it's for repayments for loans, overpayment debt, fines, or debt occurring from non-compliance. They should also be applied to all repayments, whether these are being made by beneficiaries or those on wages or salary incomes.

Under question 9 of this submission, we address the issues that are occurring with repayment amounts being set at unaffordable levels. Current practice for assessing affordability and lowering repayment amounts appears to be inconsistent, which leaves room for unfair consequences to arise. Stable processes for assessing affordability across all departments for all repayments will increase fairness and ensure that even when other errors may have occurred whānau will always be making repayments that are affordable. For some, affordability assessments will show that they cannot

¹⁰ See footnote 12, page 14 <https://swa.govt.nz/assets/Publications/reports/Understanding-debt-and-debtors-to-government.pdf>

¹¹ See <https://www.mbie.govt.nz/assets/responsible-lending-code.pdf>

make any repayment. For these situations, we refer to our above recommendation of the protected income approach and our recommendation about waiving unaffordable debt.

Recommendation: Implement affordability assessments across all government departments for all repayments.

Priority phone lines

In conjunction with commitment 3 of New Zealand's Fourth National Action Plan to establish a multi-channelled approach to accessing public services and support, we recommend that direct phone lines for financial mentors to MSD and IR are established.

A direct phone line for financial mentors is of net benefit as financial mentoring sessions are Government funded. Rather than spending up to several hours waiting on hold, the financial mentor and whānau they are working with could use the session more effectively and reach support directly.

Financial mentors have repeatedly mentioned that the extensive wait time on the phone to Inland Revenue (IR) and Work and Income (W&I) is disruptive to the support they are providing to whānau. Self-service phone line options have become available for accessing certain IR tools. However, the self-service options are limited and do not provide access to important tools, such as the ability to change income details. W&I have a similar self-service option; however, this offers fewer options for clients calling for support. This highlights the inconsistencies between government departments which are often used simultaneously by whānau accessing welfare support.

Furthermore, although the self-service system may be beneficial to many, it should not be solely relied upon to fill the communication gap. Financial mentors have mentioned that whānau often want to speak to a 'real' person on the phone. This preference is more probable when a whānau has had negative experiences in the past, such as having to pay back overpayment debt to government due to a misunderstanding of complex expectations and rules.¹² There should also be the option for anyone to request an outbound call. The onus should be on the government department to call them back and talk them through any issue.

A direct phone line to MSD and IR for financial mentors would help to ease these challenges for whānau and financial mentors. This would create a more efficient and effective system, that allows financial mentors to help solve issues that are time pressured and ensure that the wellbeing of the whānau they work with is not jeopardised. This also enables whānau agency, as they can be on the phone together with the financial mentor.

An additional issue with the access to services over the phone, is the application of fees when paying a late payment fee via the phone with IR. This fee seems counterproductive considering the likelihood that these payments are already unaffordable if they have already been paid late.

Recommendation: Implement a priority phone line for financial mentors to MSD/W&I and IR.

Case manager training

Case managers at all government departments and agencies make a huge difference in the outcomes for whānau. Currently, there are massive inconsistencies across case managers and their knowledge, care, and ability to support whānau. Financial mentors have raised that some case managers have difficulty understanding the standard budget that financial mentors complete with

¹² See <http://www.weag.govt.nz/assets/documents/WEAG-report/aed960c3ce/WEAG-Report.pdf>

their mutual clients. This is a particular issue when together they are assessing the client's level of hardship and ability to repay.

As mentioned at point 4.21 of the Proposed Framework, agencies should consider what other support might be available to whānau. It is important the case managers understand the role of financial mentors so that they can refer on appropriately. It should be compulsory that case managers complete training on the Building Financial Capability (BFC) strategy and on the ground supports to strengthen understanding and create consistency. If all case managers understand what financial mentors do, how to work with them for better outcomes and what the impacts of hardship are for whānau then the work of both will together achieve better outcomes.

Recommendation: improve training for case managers so that there's consistency across the country and for all whānau seeking support.

Sustainable funding

Financial mentors across Aotearoa are supporting whānau with the challenges tied to the increasing cost of living. Over this same period, financial mentoring services have begun to feel the same pressure of the cost-of-living increase as other sectors, particularly in terms of office space, utilities and wages. Additional to these direct cost pressures, services are reporting a general decline in available volunteer resources as the sector ages and as volunteers have to decrease their unpaid hours. Where possible these volunteer hours will be filled by paid staff.

The sector is delivering clear and measurable financial benefits to whānau and communities - particularly the most vulnerable in Aotearoa. Many of these benefits will be mitigating cost in other sectors of the Government's social spend, and all of these benefits are improving the quality of life of whānau in the face of intense cost of living pressure.

Given the measurable benefits provided by financial mentoring services, the increased financial pressures being faced by an increasing number of whānau, it is clear that the additional funding requested represents extremely high value spend.

Financial mentors provide crucial support to whānau in navigating their benefit entitlements and overcoming barriers for their clients when engaging with government departments. At 4.4d of the Proposed Framework there is consideration of agencies including "an assessment of whether or not debtors are receiving their full and correct entitlements from government agencies." Financial mentors are currently filling this gap and supporting whānau to check they are receiving all that they are eligible for. Although this should be a given step at all agencies, where there are hiccups, financial mentors are best placed to help.

The Proposed Framework is a huge step in the right direction, but there will always be 'hiccups' in systems that need addressing. As highlighted throughout this submission, financial mentors have specialist expertise and can limit and prevent harm caused by debt to government. Financial mentors are key in addressing debt to government issues and should have sustainable funding in order to continue their important work.

Recommendation: Increase funding to reach all 190 financial mentoring services to meet the growing demand. For current levels of service, the recommended total per annum is \$51.6m, and total over a four-year period of \$206.4m.

Q7. Do you have any feedback on the recommended treatments?

Overpayment of government support

Response to the Proposed Framework

Issues with overpayment debt are constantly raised by financial mentors. Many financial mentors have mentioned that their clients try hard not to incur overpayment debt and are updating their details regularly, however, they still end up with overpayment debt. This is especially difficult for those working on casual contracts where their work hours can change drastically each week.

We generally support the recommended treatment of overpayment debt. We agree that there should be no interest or penalties applied to this category of debt. However, we recommend that the timeframe and write-off threshold treatments be re-written to more clearly require consideration of these options where hardship is a potential.

Grace periods and abatement rates

A grace period is the additional time given to a person to notify departments about changes in circumstances without incurring fees or debt. Time-limited grace periods across the social security system to smooth the times where changes occur would provide a breathing space for whānau.

The Welfare Expert Advisory Group in 2019 recommended improvements to the relationship rules system. An element of this recommendation was the establishment of grace periods for discussing the nature of their relationship with MSD to limit the stress of changes in income. This is an example of how the grace period concept can support whānau by giving more time to changes without adding the likelihood of debt being created.

In 2021 grace periods were introduced to be applied to the Family Tax Credit for the In-Work Tax Credit where they continue to receive the payments for up to two weeks when taking an unpaid break from work.¹³ This is another example of where the grace period concept has been implemented to support whānau during especially stressful times.

We recommend the implementation of a four-week grace period across all entitlement when there are changes in circumstances, such as income. This is often where overpayment debt is created and through giving a grace period, whānau would have more time to organise and adapt to their changing circumstances without the pressure of possible debt. Financial mentors have also noted that the grace period would be useful for those that are receiving fortnightly income to limit the additional confusion that often occurs.

Grace periods can be easily implemented across government departments. When a person notifies the government department that their circumstances have changed, they can identify when these changes began and how many weeks have passed. It would be straightforward to ensure that they are within the four-week timeframe. This would be simplified further if the approach of creating a core entity is followed. This way the core entity would be a one stop shop for reporting relevant information and having it flagged across all departments.

We also recommend that debt collection should be paused while a client is waiting for an appointment. Where there are long wait times to get an appointment, and whānau are trying to sort difficult issues with any department, then debt collection should be paused. This aligns with the principles of minimising hardship as well as fairness. Collecting debts create additional stress

¹³ See <https://www.taxpolicy.IR.govt.nz/news/2020/2020-05-29-work-tax-credit-grace-period>

emotionally and financially to whānau, especially when they are simultaneously trying to determine a solution to an issue that may be connected to hardship in the first place.

Alongside the implementation of grace periods abatement thresholds should be raised at the same rate as minimum wage.¹⁴ The Labour Party's 2020 manifesto committed to progressively increasing the abatement threshold in line with minimum wage increases.¹⁵ This is an important commitment that should be continued.

Recommendation: Implement four-week grace periods across all benefits to prevent overpayment debt.

Information sharing and privacy

While grace periods will support the limitation of overpayment debt being created and lessen stress, it does not address the entire issue. Information sharing across government departments is also crucial. With the review of child support in 2022, changes to the Approved Information Sharing Agreement¹⁶ were consulted on, with the objective of IR and MSD sharing up to date information.

This approach should be repeated across government departments to ensure that it is clear how much is being deducted already by other departments from a client's income. This will help to ensure that the combined amount from departments is meeting affordability assessment requirements and does not breach their protected income.

Excerpt of a financial mentor's email:

Also, the departments need to talk to each other. I have a client who did a DRO, including substantial W&I debt. They continue to lend to her!

Alongside this recommendation, we note that financial mentors are regularly encountering barriers to supporting their clients because IR will not accept their privacy waivers. Instead, financial mentors are at times having to complete forms that place them in an unideal situation to continue supporting their clients. We recommend that IR accepts the privacy waivers of financial mentors or works closely with financial mentors to find a suitable alternative that makes the communications clear and efficient.

Recommendation: Improve information sharing between and within government departments. This issue of information sharing would also be improved with our recommendation of IR as the core entity.

Government department caused debt

MSD is under duty to take all reasonably practicable steps to recover sums that are specified as debts due to the Crown (overpayments or penalties). However, W&I cannot recover a debt that was caused by a mistake on its part, and wasn't contributed to by the client, and where the client received the payment in good faith and changed their position, it would be unfair to recover it.¹⁷

¹⁴ See <https://www.msd.govt.nz/documents/about-msd-and-our-work/>

¹⁵ See <https://www.taxpolicy.IR.govt.nz/publications/2021/2021>

¹⁶ See <https://www.privacy.org.nz/privacy-act-2020/information-sharing/approved-information-sharing-agreements/>

¹⁷ See <https://communitylaw.org.nz/community-law-manual/chapter-23-dealing-with-work-and-income/trouble-with-work-and-income-penalties-investigations-and-overpayments/overpayments-when-youre-paid-too-much-by-mistake/>

Financial mentors have raised that the processes for identifying and waiving debt that is caused by a department's error are inconsistent. Financial mentors often go through the review of decision process with the whānau they work with to get overpayment debts waived where it's the fault of the department. However, outcomes regularly differ. In addition, financial mentors find that many whānau are reluctant to go to review of decision because of fear of repercussions whether real or perceived. This highlights the presence of power imbalances and issues of unfairness.

All government departments should be proactively identifying and waiving debt that they have caused, instead of the burden being placed on whānau and financial mentors to overturn debt that was not legally recoverable in the first place. This should be the case where debt has been partially caused by government departments too, especially considering the principle of fairness as well as the power imbalance issues previously discussed.

Debt caused wholly or in part by government departments is completely unfair and there are still many whānau repaying these debts. This needs urgent and immediate attention and reversal. Debts that are caused wholly or in part by government departments need to be identified, waived or reimbursed if they have already been repaid. These are not legally recoverable debts and so should never be repaid.

Where the systems of government departments are unable to effectively identify debts that have been caused by its error, they should waive and reimburse all overpayment debts in order to fulfil the principle of fairness, as well as minimising hardship.

Recommendation: Proactively waive and reimburse any debt that is caused wholly or in part by government departments.

Debt occurring from loans or repayments for services

Response to the Proposed Framework (question 7 continued)

There should never be penalties or interest applied to loans or repayments for services. These are essential expenses that whānau need for their wellbeing and should never have additional costs applied to these. We recommend that the language used here is stronger, and in line with our previous recommendation that hardship should be the dominant principle. We recommend that where the word 'may' be used it is replaced with 'will.'

Consistent non-recoverable grants for essentials

In the Proposed Framework, section 3.12 notes that "government should consider whether it is appropriate for certain forms of assistance to be repayable at all." No whānau should be pushed into unaffordable debt in order to obtain the most basic essentials. The Department of Prime Minister and Cabinet's work looking at children's wellbeing in the first 1000 days highlights the importance of all children having the essentials so that they can have the best start possible. Therefore, non-recoverable grants should be available for essentials. At the same time, affordability assessments to determine the recoverability of additional supports should be implemented.

Currently benefit advances can be accessed as interest-free loans taken out by beneficiaries to pay for essential or emergency costs such as bonds/rent, car repairs, or school costs. These should be available through non-recoverable grants at W&I. Loans for whānau to afford essentials such as school costs should not be creating debt spirals and taking from the next week's food budget.

To implement a clear and consistent process for non-recoverable grants for essentials, there needs to be an understanding of 'essential expenses' that supports financial wellbeing, rather than the

bare minimum requirements for survival. For example, the ministerial direction for redirections defines essential costs in relation to a person, as electricity, gas, and water. Meanwhile, on the W&I website living expenses include food, accommodation costs and school costs.¹⁸ Although these resources serve very different purposes, it emphasizes how the understandings and definitions of essential costs or expenses is unclear for whānau trying to get access to essentials.

We recommend that essential expenses are defined in line with the definition given under questions 1-3 and under question 6, 'affordability assessments', for defining discretionary expenses. We also recommend that the DEP-17 questions in the Stats NZ 'Measuring child poverty: material hardship' should be used as guidance for what are considered essential expenses. For example, the Stats NZ questions highlight that there are more considerations to a child's wellbeing than just whether they have food, but whether that food has nutritional value. It also references whether the whānau can afford to purchase gifts for birthdays and Christmas. This is an important expense that contributes to the social wellbeing and inclusion of a whānau and can at times be underrated as an essential expense.

Essential expenses should be clearly listed consistently across government websites and communications. The availability of these essentials through non-recoverable grants should also be made obvious. There will likely be considerations necessary for the number of times that certain items can be accessed through non-recoverable grants. Affordability assessments would be a helpful tool for assessing eligibility for non-recoverable grants, and for repeat access.

Recommendation: Make all essential expenses available through non-recoverable grants. Use the affordability assessment approach to determine when support for expenses outside of the definition are recoverable or not.

Quality of essential services

It seems that often the easiest and cheapest options for essential services and products are provided for whānau when they request support. Financial mentors have noted that time is wasted through faulty products that do not suit the purpose for whānau. For example, financial mentors have mentioned that it's common for clients to receive support for repeat fixes to cars, but a longer-term approach for that client might mean a new car rather than repeatedly fixing a broken one. For many, public transport is not a reliable option, especially for those with children or those in smaller towns. It is therefore important to understand that a car is the most practical transportation option for many, and there should be suitable support available.

These needs will clearly differ between clients, but all staff should be well trained to identify suitable solutions for whānau rather than band aids that will only extend hardship. Here is a case study that exemplifies the challenges for whānau when items are not up to standard and become more of a challenge rather than being helpful.

Case study:

A client was granted a fridge-freezer through work and income through the Fisher and Paykel whiteware relationship in March 2021. On April 2nd the fridge-freezer started playing up. A technician visited and said that a part was required but will not be available until June. The client was not sure whether it was an electrical fault or not. If it was an electrical fault, it may have been harmful to their family and possibly cause a fire.

¹⁸ See <https://www.workandincome.govt.nz/eligibility/living-expenses/index.html>

The client is now paying off a faulty fridge-freezer to W&I. This appliance should have been replaced as it was less than 30 days old. The financial mentor sent an email to the regional W&I contact but also spent 38 minutes on hold and then was hung up on by Fisher and Paykel. The client was told not to contact W&I but has still not had any success with Fisher and Paykel.

It is important that the circumstances and needs of each whānau are carefully assessed, and the appropriate and most helpful services and products are provided. As shown in the above case study, faulty products create additional stress. All whānau should have options for items and services that suit them best.

We also note that recent draft recommendations from the Energy Hardship panel propose several strategies related to MSD and government support.¹⁹ One proposal is that MSD programmes for purchasing energy-related household appliances offer energy efficient choices. Another recommendation is to establish clear and direct lines of communications between MSD and customers in energy hardship. Additionally, they propose that extra Government financial support is provided to those in energy hardship and better targeting of the Winter Energy Payment (WEP).

We recognise here too that benefits and income should be increased in the first place, so that whānau can afford these essential expenses. Increasing benefits would save time and stress and would pair well with the below recommendation about a savings scheme approach to strengthen financial capability. We comment further on benefit increases under question 11.

Recommendation: Ensure that products quality is up to standard and train all staff to assess the needs of each whānau appropriately so that whānau have a choice in options.

Recommendation: Implement the proposed strategies of the Energy Hardship Panel to provide energy efficient choices through W&I.

Savings

As a back-drop, we recommend that MSD creates a savings system rather than debt system for whānau. This would both support building financial capability and follow a strengths-based rather than deficit-based approach. This would sit alongside work to make essentials available through grants, so that any additional items or where any limits are met for repeat access whānau could use savings that have been built on their accounts.

Alongside this, the Community Services card should also be used to support whānau with the essentials. The income threshold for eligibility for the cards should be lifted and indexed if not already. The services that are available through these cards should be increased to meet the needs of whānau.

Recommendation: Create a savings scheme approach instead of a deficit-based approach to accessing support from government departments.

¹⁹ See <https://www.mbie.govt.nz/assets/energy-hardship-the-challenges-and-a-way-forward-energy-hardship-expert-panel-discussion-paper.pdf>

Private debt administered by a government department

Attachment orders

To our understanding of the definition provided, attachment orders would fall into the category of Government-administered debt between private parties. Attachment orders tell an employer or W&I to take money directly from a debtors benefit or wages to repay a creditor.²⁰ Financial mentors regularly see situations where Attachment Orders from the courts are causing hardship through taking up to 40 per cent of a person's benefit wages.

There has also been evidence to show that lenders have targeted women and beneficiaries using attachment orders.²¹ This particular case study is a quote from a lender, stating that they find "going for women is best because they are more likely to be beneficiaries." This is referring to attaching. This appalling behaviour demonstrates that attachment orders are being used as punitive tools that can be taken advantage of by irresponsible and oppressive lenders.

FinCap has identified private creditors who appear to be exploiting the attachment order system. These businesses are all receiving over a million dollars in payments each year despite the original debts often dating back to questionable lending over a decade ago. The current system results in MSD having no option but to pay creditors whose conduct has been questionable through court ordered redirections.

We strongly recommend the implementation of a judgement proof debtor policy for private debt.²² In the state of Victoria in Australia the Judgement Debt Recovery Act was implemented in 1984.²³ This Act stipulates that instalment orders cannot be applied to incomes that are derived solely from a pension or benefit. For this to be replicated in Aotearoa, the District Court Act 2016 needs amending to protect W&I incomes and prevent continued hardship. Section 157 (4) should be deleted, and section 155 should be amended with the addition of the following signal to relevant requirements in other legislation: "(5) This section is subject to s 417 of the Social Security Act 2018."

We also recommend that this category be separated further so that child support and attachment orders are considered and treated separately. Attachment orders are an outdated punitive debt collection tool, while child support is a necessary support for children and whānau in single parent households.

Recommendation: Implement a Judgement Proof Debtor policy to protect benefit incomes from attachment orders.

Chapter 4 – person-centred approach

Q8. Is it easy for debtors to understand what they owe, and to who?

The 'cheap as' data approach which allows access to MSD online and website services for free is a step towards increasing access and understanding.²⁴ From feedback from financial mentors the websites and online services, for example MyIR and MyMSD are useful tools once they know how to navigate them. However, they are not very user friendly or clear, and take time to understand. Mentors have noted that whānau can find it difficult to see clearly how much debt they are in and what this is for when using these services.

²⁰ See <https://www.justice.govt.nz/fines/about-civil-debt/collect->

²¹ See <https://www.nzpif.org.nz/news/view/53815>

²² See [Judgement Proof Debtor Policy](#)

²³ See http://www5.austlii.edu.au/au/legis/vic/consol_act/jdra1984237/

²⁴ See [Work and Income cheap as data](#)

There are also issues with the language that is used, which is often inconsistent, confusing, and technical at times. We welcome the recognition of this at 4.20 of the Proposed Framework. For many, the language that is used by government departments that are placing them into debt is unclear. Plain language should be used across all government departments as a step towards increasing true accessibility.

It is often not obvious that support from MSD is a loan, rather than a grant. This means that whānau are not able to give informed consent at these times. This again highlights the need for more process for assessing affordability and ensuring that non-recoverable grants are given for essentials, and that debt be wiped.

Lenders in Aotearoa must act in line with the responsible lending principles in the Credit Contracts and Consumer Finance Act (CCCFA). One requirement is that lenders must help whānau to understand what is being signed before it is signed while applying for lending. This same requirement should be implemented at all government departments when they are creating any kind of debt.

Under the CCCFA, lender's behaviour must be fair and oppressive behaviour is illegal. One example of oppressive behaviour is pressuring people to sign contracts with no time to consider or get advice. Although loans given by government departments can differ to those that are provided through consumer credit contracts, the same principles and requirements should apply. There are still processes here and informing people properly about what they are signing and why they are in debt is crucial.

This also connects to the principle of transparency and highlights the importance of making processes clear and using plain language. This is important both on the online access as well as in-person or on the phone. Staff at W&I need to have correct and up to date knowledge and consistent processes in place to ensure that potential confusion is avoided at each step.

Recommendation: Ensure that plain language is used consistently across government departments and in particular where there is the potential for debt being created.

Q9. Are minimum debt repayment amounts typically set at manageable levels?

We have heard repeatedly from financial mentors that repayment amounts are set at unaffordable levels, without any proper process for assessing affordability. Financial mentors have also raised issues with inconsistency between case managers and their ability or willingness to lower repayment rates to an affordable level.

Case study:

A client is in Work and Income had an income from W&I of \$521. They were living in W&I accredited accommodation and charged \$420 a week for rent, for a single room, and then their internet was \$45 a week, electricity \$21. Their repayments to W&I were automatically set at \$30.50 as well as a \$5 weekly repayment to MOJ. There was no affordability assessment and until the financial mentor was able to step-in, the client was in an impossible situation with a budget in deficit.

Through insights from Client Voices we can see that the median weekly repayment rate per case for all debts is \$68.95. There's a jump for median repayments per case when government debt repayments are included. The median weekly repayment per case including debt to government is \$92.51. Broken down by department, where a debt is owed to MSD the median weekly repayment is \$85.95. The same for MOJ is \$109.86 and \$169.24 for Kāinga Ora. At the same time, 55.23% of

clients with debt to MSD are earning income from a government entitlement. This shows that many are repaying large amounts of debt each week, while many are also on benefits.

Previous guidance for MSD includes a recommended maximum recovery rate for current clients. This recommended maximum rate is \$40 a week, unless it is volunteered by a client to pay more.²⁵ The Ministry's policy also stipulates that repayment rates need to be realistic and not cause hardship.

Considering that these requirements and recommendations are in place already, and that the insights from financial mentors show that recovery rates are not being set in line with these, there needs to be stronger requirements and enforcement of policies for ensuring affordable recovery rates at Ministry's.

Comments from a financial mentor:

"The repayments are one of the first things I look at when doing a budget. One of my clients was paying \$45 a week while on a benefit. Government departments need to discuss with clients about repayment affordability first, instead of automatically deducting from their income, sometimes being the cause of financial hardship".

Comments from a financial mentor:

"My thoughts are for MSD debt only; I think they should not put clients into substantial debt. Some people owe several thousand dollars e.g 20 K or more; there should be a cap of, say, 10K Also repayments should be capped at a certain level e.g. \$20 weekly max. with typical repayments of, say, \$5 or \$10 weekly. The total debt owed to MSD is currently enormous and increasing continually; the government should write off all the debts and then start a new more conservative system."

Recommendation: We reiterate the recommendations above. Firstly, that affordability assessments be implemented for all repayments. We also repeat the recommendation that debt be waived after two years where there is little likelihood of prompt repayment, and that a protected income approach be implemented for those on benefits or low income.

Q10. How easy is it for debtors to negotiate for hardship relief?

Financial mentors are often able to support their clients with negotiating hardship relief. However, there are barriers because of power imbalances that mean for many clients they have had trouble going through this process before they began seeing a financial mentor. There are also issues with past negative experiences causing harm to whānau and preventing them from seeking engagement with W&I even when they are in hardship.

We also recommend here that debt collection should be paused while a client is waiting for an appointment. A financial mentor mentioned that their client waited five weeks for an appointment to work out issues with their rent payments, during this time their debt grew rapidly.

Recommendation: pause debt collection while a client is waiting for an appointment.

Q11. What kinds of supports are most effective for people with persistent debt?

An important factor here is that for many incomes are too low to afford essentials, let alone repayments for debts. We again point to the importance of children having essentials, especially

²⁵ [Controllor and Auditor-General - Part 3: How MSD manages debt](#)

during the first 1000 days. All benefits should also be raised so that all whānau can afford the essentials. We also support the recommendation made by Child Poverty Action Group for the extension of the In-Work Tax Credit (IWTC) to all children in low-income households, regardless of the paid work status of their parent(s) or caregiver(s).²⁶

Please refer to above recommendations under questions 4-7 about access, overpayment, non-recoverable grants, and consistency.

Q12. What changes would you like to see to the way that the government manages debts, particularly debt owed by low-income households?

Please refer to above recommendations under questions 4-7 about access, overpayment, non-recoverable grants, and consistency.

Q13. Should there be non-monetary options for paying down fines or debt? How could this work? What potential benefits or risks do you see with this idea?

We have no comments to make here.

Chapter 5 – Impact of the framework on affected population groups

Q14. Do you agree that the framework should require culturally appropriate communications with debtors? What would this look like for Māori, Pasifika and other affected groups?

Yes, we encourage further targeted consultation if not already under way with Māori and Pasifika experts.

Q15. Are extended families and larger households affected differently by government debt? How could this be addressed in the framework?

Whānau with more children are more affected by government debt. An Official Information Act (OIA) request about debt to government in Taitoko, Levin found that whānau there with five children have a greater debt burden compared to whānau without children or with less children. The graph below shows these insights for in Levin.

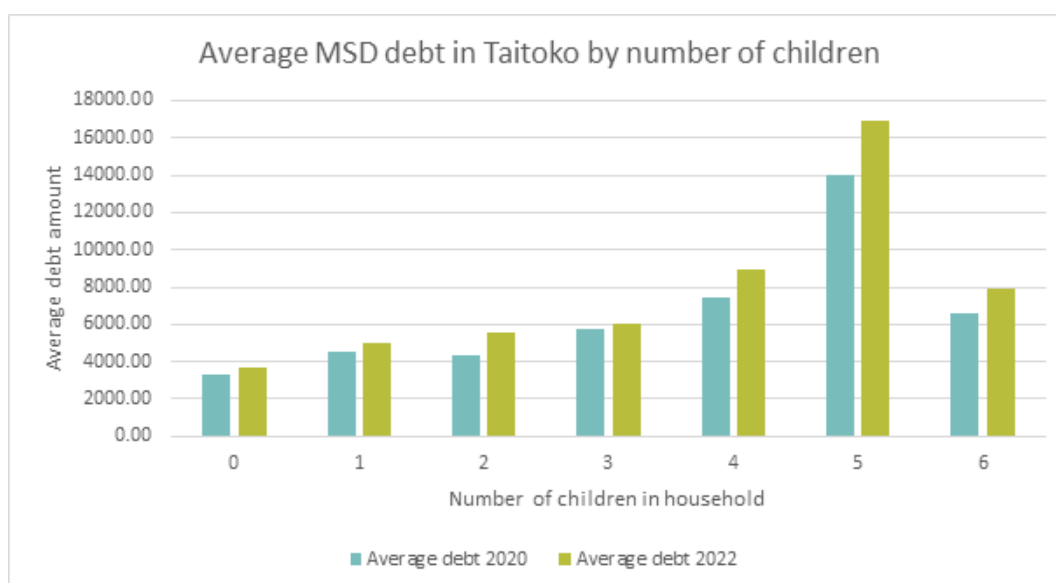


Figure 1 - MSD debt Taitoko by number of children

²⁶ See <https://www.cpag.org.nz/statistics/working-for-families>

We refer here to the recommendation that was made above, that debt held for over two years be waived where there is little prospect of prompt repayment. This would provide relief regardless of the makeup of the whānau as it is a proportionate response to affordability.

Q16. Should the framework reference a specific role for whānau, hapū or iwi or other community groups in the resolution of problem debt? What would this look like?

Please refer to our response under question 14.

Q17. What issues are of most concern to the group that you represent?

Please refer to the recommendations made under questions 4-7 about access, overpayment, non-recoverable grants, and consistency.

Q18. Are they addressed by the proposed framework?

It is important that the recommendations made under questions 4-7 about access, overpayment, non-recoverable grants, and consistency are implemented to address the most pressing issues with debt to government.

Q19. Do you have comments on the ways to improve the accessibility of communications about debt for different population groups (for example, young people or disabled people?)

Sustainable funding for all financial mentors in Aotearoa is necessary as a backstop for improving access to key information about debt to government. We also refer here to our recommendations under question 8.

Q20. What improvements would you suggest?

Please refer to our response under question 19.

Chapter 6 – Next steps

Q21. Do you have any comments on the proposed implementation of the framework, as outlined in Chapter One at 1.13 – 1.15 above?

Issues with debt to government are urgent and causing harm to whānau in Aotearoa. The key recommendations given in this submission should be implemented at the earliest possible stage to limit continued harm.

There needs to be robust review of policies and processes at all departments immediately once this framework is in place. We refer here again to the recommendation made under questions 1-3 that there be specific regular public report on alignment and re-alignment once the framework is implemented.

Q22. Do you have any other feedback not covered by previous questions which you would like to provide?

Social housing

Several financial mentors and a social housing worker have raised serious concern over current processes for clients living in public (social) housing. Below is a case study that highlights the issue and how unfair this is for many clients as a way of debt being created.

Case study:

A client had to complete their tenancy review with MSD and give information about their situation and housing needs. As part of this process the client had to provide 52 weeks of income details, in order for MSD to assess the correct amount to charge.

However, this client had language and mental health barriers to filling out the required

paperwork. Due to these barriers, the client could not fill out the paperwork within the determined timeframe. When they missed the deadline, they began to be charged market rate rent, rather than the typical 25% of income rate for social housing. This meant that their rent went from \$78 to \$450 a week.

The client found the process and paperwork difficult to understand but did manage to complete the paperwork and they found that the circumstances were the same and the rent price went back to 25%. The client ended up with \$5500 of debt during the time that the paperwork was overdue. This debt was not waived despite it being evident by the time that it was completed that the client qualified for social housing.

Financial mentors noted that for the clients in this situation, there are often language or mental health barriers to them filling out the paperwork. This is an unfair issue that should not be occurring. Where paperwork is not filled out in time, the whānau should be worked with to determine a solution rather than being pushed into debt. Charging market rate only causes harm and creates debt that will likely be unaffordable.

Recommendation: Ensure that full market rate is never charged for social housing, and refund all those that have had a debt created because of this issue.

Family violence policies

Aotearoa is ranked as the worst developed country in the OECD for family violence.²⁷ Recent research shows that women who are exposed to intimate partner violence (IPV) have an increased likelihood of reporting adverse health outcomes.²⁸ Financial mentors have raised issues with debt to government and family violence.

Case study:

A client was in a domestic violence situation and their abuser was using their money. The client applied for sole parent support because they wanted to be separated from their partner. However, the partner remained at the client's address, despite this being unwanted. MSD created a debt with the client for seeking the "wrong" benefit type because the partner was still living in their home. This highlights the need for more secure systems to identify and support those experiencing family violence.

It is crucial that essential service providers and government departments have robust family violence policies in place to help prevent and support after family violence. These policies should be included in the debt to government Proposed Framework, to create consistency across government departments to avoid creating and collecting debt in a harmful way where family violence occurs.²⁹

The Proposed framework should require all government departments implement clear and consistent policies that ensure they:

- Are informed about the complexities and signs of family violence and seek advice to tailor their approach to best support their customers.
- Avoid requiring evidence of family violence, so that responses are timely and prioritise the safety of the survivor-victim.

²⁷ See <https://goodshepherd.org.nz/economic-harm/>

²⁸ See <https://jamanetwork.com/journals>

²⁹ Genesis Energy forgives debts of women abused by partners through their "fresh start" program. See more here <https://www.stuff.co.nz/business/money/>

- Avoid repeat disclosure of circumstances. This can be traumatising and potentially creates a barrier to further support being sought. Some examples of solutions for this are referral arrangements and a dedicated phone line to flag the situation.
- Implement systems for smooth referrals to expert support services.
- Safely separate debt between the perpetrator and victim-survivor and implement processes for waiving debt for people affected by family violence.
- Have effective processes for safety and protection of victim-survivors information. Ensure that information is kept confidential between account holders when it is requested.

We recommend that the above policies, or similar, are implemented at all government departments so that family violence is consistently identified and addressed. Affordability assessments would be a helpful tool to provide the time and chance to probe into the financial situation of a whānau and instances of economic harm or family violence may be more visible through this process.³⁰ We refer again to the recommendation to implement affordability assessments across all government departments for all repayments.

Recommendation: Implement family violence policies across all government departments.

Debt to government and insolvency

We are pleased to see the focus on clarifying categories of debt types to government departments. As well as the clarity for treatment of each category of debt, there are carry on benefits for insolvency processes. There have been issues raised by financial mentors where confused categories of debt create difficulty for clear insolvency procedures. While fraudulent debt is excluded from insolvency, overpayment debt is not listed as excluded. Financial mentors have raised cases where fraud debt is not correctly separated from overpayment debt, leading to overpayment debt not being wiped through insolvency procedures.³¹

Fraudulent debt is defined as being incurred by fraud, for example if a person claimed a benefit from W&I that they knew they were not entitled to.^{32 33} In the Proposed Framework the treatment of debt due to intentional non-compliance is severe. We recommend that in-line with the principle of minimising hardship, and with our recommendation of minimising hardship being the dominant principle, there should be options for write-offs and extending timeframes. Affordability assessments should also be implemented for repayments on these debts, in-line with our recommendation that they are applied to all repayments.

We have heard repeatedly from financial mentors of the harm that is caused to whānau through generations with fraud debt sticking, and no way to remove it when it's unaffordable. Under questions 1-3 we recommended a higher trust approach be implemented. Many whānau have experienced harm from debt to government departments, and a warmer approach to support wellbeing would minimise hardship, harm, and stress for many whānau.

Recommendation: In order to fulfil the principle of minimising hardship, as well as our recommendation for a higher trust model, implement options for waiving fraud debt where there is hardship.

³⁰ See <https://www.informa.com.au/insight/financial-abuse-enablement-an-insidious-side-effect->

³¹ See <https://www.insolvency.govt.nz/personal-debt/personal-insolvency-options/bankruptcy/>

³² See <https://www.insolvency.govt.nz/support/glossary/#fraudulent-debt>

³³ Fraud debt must be proven and evidenced by MSD that a debt is a fraud debt and not overpayment or an error.

Debt collection practices

Debt collection agencies used by government departments should be included under widespread regulation of debt collection. Research from Victoria University shows that inconsistencies exist between government departments and their use of Debt Collection Agencies (DCA's). Affordability assessments are again an important tool for avoiding engagement with a DCA, as well as wider regulation to the entire debt collection industry which is overdue in Aotearoa.

Recommendation: Create consistency as to when external debt collection agencies are engaged if at all and what standards they must meet.

Ngā mihi,

A handwritten signature in black ink, appearing to be 'Moana Andrew', written in a cursive style.

pp: Moana Andrew
Kaihautu - Deputy CEO