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Finance and Expenditure Committee
Wellington

Re: Fair Trading Amendment Bill

> *"A person is showing up at the door with a direct debit form, they refuse to leave until it is signed.*
>
> *The lowest amount that they will accept is $15 and at times* [the clients] *have been intimidated and* [have] *been feeling quite scared because the person won't leave…."*[1]

The above is from a 2025 radio interview with a financial mentor on debt collection issues.

Modernising the Fair Trading Act now can minimise the risk of further harm from unreasonable debt collection conduct associated with unmanageable debts which many households currently face.

FinCap welcomes the opportunity to comment on the Fair Trading Amendment Bill (**Bill**). We strongly support the Bill's objectives 'to ensure that the Act remains fit for purpose as business practices and digital markets evolve, strengthen deterrence of unfair trading conduct, support appropriate consequences for breaches, and enable efficient and effective enforcement.'

FinCap proposes amendments to the Bill so that it will better achieve the objectives, through settings that address the unconstructive, harmful debt collection conduct which financial mentors see far too often. The Fair Trading Act (**FTA**) must perform better in practice as communities seek to leave cost of living issues behind them.

We recommend that the Government otherwise conduct a wider, thorough review and public consultation of the FTA beyond the focused piece of expediated work which resulted in this Bill.

We expand on these comments and also have broader recommendations for modernising the regulation of debt collection in the submission below.

About FinCap

FinCap (the National Building Financial Capability Charitable Trust) is a registered charity and the umbrella organisation supporting the 183 local, free financial mentoring services across Aotearoa. In 2025 FinCap could see more than 30,654 closed financial mentoring cases in the Client Voices system we provide most of those services, an increase from 19,543 whānau facing financial hardship and accessing support in 2021. We lead the sector in the training and development of financial mentors, the collection and analysis of client data and encourage collaboration between services. FinCap also works with government and businesses towards greater financial wellbeing in communities.

[1] Financial mentor, interviewed on RNZ Nine to Noon 19 March 2025. Retrieved from: https://www.rnz.co.nz/national/programmes/ninetonoon/audio/2018979477/financial-mentors-raise-concerns-over-debt-collection

FinCap recommendations specific to the Fair Trading Amendment Bill process:

1: Amend the Bill to apply the proposed 'Tier 1' civil penalties for S23 to better deter, and enable enforcement to address, the use of physical force, harassment or coercion.

2: The Committee seek advice on ways it could progress the Commerce Commission, MBIE and FMA working together for more detailed regulator guidance on acceptable debt collector conduct, including strong guidance on the frequency and nature of contact that reflects unacceptable harassment.

3: The Bill continues to introduce a civil liability regime to improve enforcement but ensures that criminal regimes continue to be available when appropriate.

4: The Bill increases maximum penalties and the Committee actively consider harmonisation with the Australian regime.

5: The Government otherwise conduct a wider, thorough review and public consultation of the FTA beyond the focused piece of expediated work which resulted in this Bill.

FinCap recommendations for other reform to address debt collection issues:

6: The government amend legislation to license debt collectors, to ensure regulators can monitor debt collection markets and can hold debt collectors to account to any current rules or commitments they have made.

Including all debt collection activities in s5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 can achieve this. All debt collectors should have a free and independent external dispute resolution scheme available, providing a practical mechanism for alleged debtors to assert their rights.

7: That the government declare a moratorium on Attachment Order payments from benefits while there is a review of the settings.

8: A review of the Attachment Order settings starting with a forum of all the different government, court and community organisations that are involved in creating, or resolving, hardship from these court orders.

Financial mentors see serious harm from a lack of penalties for breaching prohibitions on harassment and coercion.

Financial mentors and regulators need more tools to stop harm from unfair debt collection conduct. Our soon to be released *Voices* report shows a continuing trend of increased unmanageable debt with more households presenting to financial mentors. Regardless of where these debts originate, there are gaps in effective consumer protections for these debtors who are now exposed to harm from unreasonable debt collector conduct.

Ideally, protections will arise that stop harassment to demand payment where:

- the debt collector should know repayment would cause substantial hardship; or
- repeating attempted contact is unlikely to make the alleged debtor any more aware of the alleged overdue amount and any potential legal action (if legal action is being actively considered).

Such conduct increases strain to financial mentors' limited resources and causes or prolongs adverse social, health and mental health issues, among the many other problems associated with avoidable financial hardship.

The risk of harm to mental health from harassment from debt collectors is very significant. Recent research in the United Kingdom has noted half of the participants who were behind on consumer credit bills had experienced suicidal ideation in relation to the cost of living.[2] It built on earlier research findings that those with two or more debts were five times more likely to have attempted suicide.[3] This overseas research also highlighted the following as the five key drivers of mental health impact from debt collection practices:

- the stigma of being in debt;
- insensitive debt collection practices;
- the tone of communications from creditors;
- the frequency of communications; and
- the cumulative impact of multiple creditors' collections activities.[4]

This overseas research can be taken as a proxy of the potential scale of harm of debt collection practices here, alongside evidence from financial mentors of their clients' mental health challenges and disclosed suicidal ideation.[5] This potential scale of harm and the rate at which financial mentors see debt collection issues (presented later in this submission) points to a need to urgently act to deter harassment and coercion that creates, invokes or contributes to the five key drivers identified in this overseas research.

Harassment and coercion are prohibited in the FTA but the Commerce Commission currently does not have the tools and resources to respond to issues in a timely way to strongly deter this conduct. This leads to significant consumer harm from repeated interactions where alleged debtors are frightened and can end up paying sums they cannot afford without experiencing substantial hardship.

Financial mentors are experts in working with creditors to establish what amount is legitimately owing and payable. However, FinCap is still hearing that mentors encounter debt collectors who are impossible to work constructively with and that consumer protections are not practical to use as leverage to resolve this impasse. Harm caused by debt collection and the issues behind it are covered in detail in a research report, a quote of which is republished below:

> *'Many participants in the study noted that debt collectors often take approaches to collection that are deliberately distressing and highly unsuccessful. Bombarding clients, frightening them or making constant unachievable demands do not, in the end, do much to see debt repaid.'*[6]

Our earlier submission to the targeted consultation preceding this Bill also recommended action on penalties for harassment and coercion. However, we note documents released by MBIE reveal officials recommended putting work on harrasment and coercion aside as they were time

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[2] See: https://www.moneyandmentalhealth.org/publications/debts-and-despair/
[3] See p.13: https://www.moneyandmentalhealth.org/publications/suicide-and-debt/
[4] See: https://www.moneyandmentalhealth.org/publications/debts-and-despair/
[5] See p.34: https://www.fincap.org.nz/images/files/FinCap-Voices-report-2023.pdf?_cchid=6a354d77322e8cb2ac259214127740d9
[6] See: https://www.fincap.org.nz/images/files/Debt-collection-in-Aotearoa-from-the-perspective-report.pdf

constrained. Delaying action poses risks that debtors here are exposed to more harm as the long tail of debt from the current cost of living pressures continues.

FinCap recommendation 1: Amend the Bill to apply the proposed 'Tier 1' civil penalties for S23 to better deter, and enable enforcement to address, the use of physical force, harassment or coercion.

More guidance is needed on what the FTA should look like in practice for debt collection
Most debt collectors FinCap is aware are operating on a large scale, are operating in both Australia and here. Based on what financial mentors have told us, the larger debt collection agencies can have the same contact centres for onshore debts and those they contact in Australia. We have compared the protections in practice with the Australian equivalent of our sector and concluded that the consumer protections there are workable and an improvement on our status quo.

Given that legislation is unlikely to keep pace with changes in the way debt collectors and alleged debtors might interact, FinCap also recommends work related to this Bill includes a commitment for more detailed regulator guidance on acceptable debt collector conduct. This needs to include strong guidance on the frequency and nature of contact that reflects unacceptable harassment. A joint regulator approach to the guidance seems appropriate given the harmonisation of relevant legislation that the Commerce Commission and Financial Markets Authority (**FMA**) enforce.

Such guidance could adapt better than legislation to new developments as debt collectors and alleged debtors take up new technology. It could also help financial mentors and alleged debtors have more constructive interactions where the guidance leaves very little room for different understandings of what conduct is expected from a debt collector in the relevant context. This could see less escalation of disagreements and instead more realistic repayments set up for what are clearly evidenced outstanding debts.

We currently have three pages of higher-level debt collector guidance from the Commerce Commission[7] compared to much more practical guidance from the Australian regulators.[8] An example of the difference in clarity is: our current guidance says "*It may be harassment and/or coercion to:… …make unreasonably frequent attempts to contact the debtor, their family and friends";* while the ASIC ACCC Guideline says communication must have a reasonable purpose and recommends contact (also described relative to 'attempted contact') with a debtor doesn't exceed three times a week or 10 times per month.[9] FinCap's current position is that the Australian guidance is a good starting point for developing guidance that is better suited to our context and more consumer centric.

Research involving interviews with the debt collection industry has also revealed clearer guidance would benefit debt collectors. The research shares that debt collectors acting appropriately could better demonstrate compliance and that this can give rise to a competitive advantage when seeking to purchase debt or act as an agent.[10] It may also be relevant to consider that in 2018, ANZ, BayCorp, Credit Recoveries Ltd, the Financial Services Federation and Milton Graham submitted some form of support for aligning with Australian guidelines. [11] Some of this list also said they were already operating in accordance with those guidelines here.

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[7] See: https://comcom.govt.nz/__data/assets/pdf_file/0026/157661/Guidance-for-debt-collectors-June-2019.pdf
[8] See: https://www.accc.gov.au/system/files/Debt%20collection%20guideline%20for%20collectors%20and%20creditors%20-%20April%202021.pdf
[9] Ibid p.13-14
[10] See p.34: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4161249
[11] See: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3799718 p.15 - 17

FinCap recommendation 2: The Committee seek advice on ways it could progress the Commerce Commission, MBIE and FMA working together for more detailed regulator guidance on acceptable debt collector conduct, including strong guidance on the frequency and nature of contact that reflects unacceptable harassment.

FinCap supports the introduction of civil penalties as well as increased maximum penalties and urges consideration of matching maximum penalties from Australia.
FinCap agrees with the introduction of civil penalties on the basis that they may lead to timelier, and more successful regulator action, which acts as a greater deterrent to breaches. This deterrence has the potential to better prevent breaches that could cause hardship and increase the workload of financial mentors.

Timelier action could also increase financial mentors' confidence in the enforcement system around debt collection and consequently increase the likelihood they put resources into reporting potential breaches.

We form this position on the basis of previous commentary in the MBIE targeted Consultation Paper preceding this Bill that s240 of the Crimes Act will remain as a back stop for very serious misconduct. We note however that the equivalent Australian regulator clearly has both civil and criminal penalties available for encouraging compliance and this is worth exploring.

Recommendation 3: The Bill continues to introduce a civil liability regime to improve enforcement but ensures that criminal regimes continue to be available when appropriate.

Officials' advice towards the drafting of this bill asserted that the scale of our economy means we should not have penalties regimes equivalent to Australia. This ignores that many major traders here are part of an Australian business portfolio. FinCap has met with directors and managers of Australian businesses who have talked about their operations here as though we are a seventh state or territory of their nation where consumers are less likely to complain. Signals should not be sent to Australian businesses that unfair trading is less risky with consumers and small enterprises here.

> *If you contact a debtor to request payment of a debt then you are a debt collector whether the debt is owed to you or another company.*[12]

The above is a definition which demonstrates the breadth of debt collection that occurs across the economy from the Commerce Commission. Some specialist debt collectors operating here are large, ASX listed companies that earn tens of millions in profits.[13] Other essential service creditors who debt collect overdue payments relating to their core business can have over a billion dollars in annual profits at times. Orders to pay $115,500 including reparations, as have recently arisen from a debt collector who misled alleged debtors,[14] could not be sufficient to deter misconduct for such large traders.

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[12] Definition offered by the Commerce Commission guidance:
https://comcom.govt.nz/__data/assets/pdf_file/0026/157661/Guidance-for-debt-collectors-June-2019.pdf
[13] See: https://www.creditcorpgroup.com.au/media/1919/asx-5-august-2025-ccp-annual-report-2025.pdf
[14] See: https://comcom.govt.nz/news-and-media/news-and-events/2025/debt-collector-convicted-and-fined-for-misleading-conduct

Outside of debt collection activity, there are of course other sectors where financial mentors have fair trading concerns which might be contributing to financial hardship experienced by their clients. Penalties need to be set so they can deter misconduct across all these contracts and transactions.

We ask that the Committee consider whether alignment with the Australian penalties regime better fulfils the Bill's objectives, especially whether a penalty of up to '*30 percent of a firm's turnover during the breach period*' is a clearer deterrent than *'the consideration for the relevant transaction(s) that constituted the contravention.'*

Recommendation 4: The Bill increases maximum penalties and the Committee actively consider harmonisation with the Australian regime.

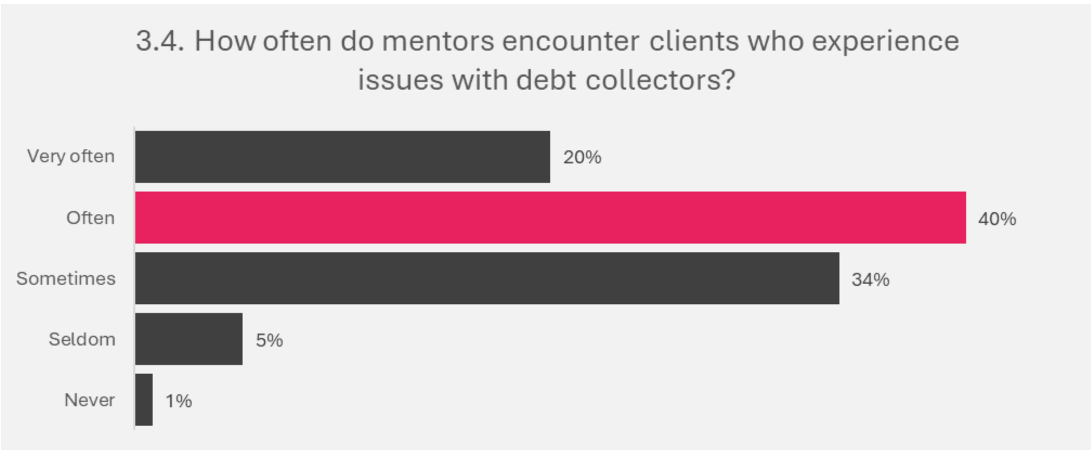
Not acting now on debt collection risks prolonging harm across communities from cost-of-living issues

> *"I have a client with a loan secured by a car. She was served with aggressive car repossession action when arrears only $600 and after a job loss. They wanted the arrears paid within five weeks and wouldn't consider the hardship twice (client completed the application herself and they wouldn't let me correct it). A lot of harassments with multiple calls per day/ night. Wanting large repayments when no food budget for the family."* [15]

The above is from the Debt collection in Aotearoa from the perspective of financial mentors report.

In the last five years FinCap and researchers have repeatedly heard instances of debt collectors' unreasonable conduct towards people who are unable to pay without experiencing substantial hardship. We plan to release our next *Voices* update on 23 July, including the survey information demonstrating how common these debt collection issues are and why there is a need for reform through improved drafting in this Bill and beyond.

We surveyed financial mentors about their experience working with clients who were being sought by debt collectors. When asked "How often do you encounter clients who experience issues with debt collectors?", 60% of mentors responded with either 'Often' or 'Very often'.[16]

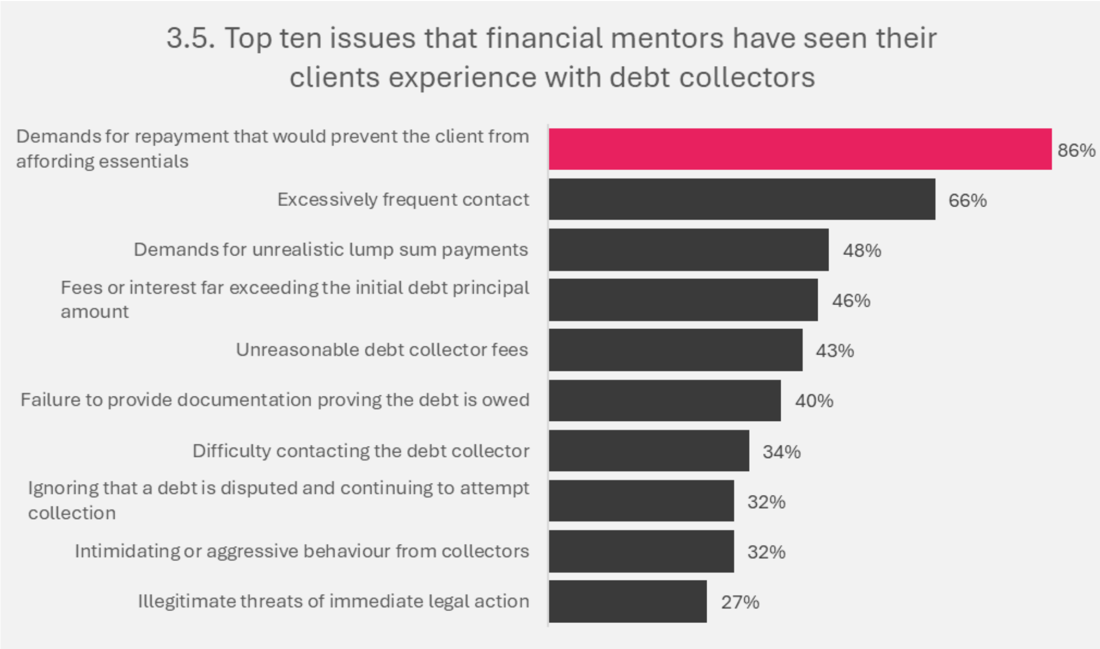


[15] Stace, V. & Gordon, L. (2021). *Debt Collection in Aotearoa from the perspective of financial mentors,* p.36. Available at https://fincap.org.nz/images/files/Debt-collection-in-Aotearoa-from-the-perspective-report.pdf

[16] *FinCap Satisfaction Survey February 2026 Analysis Report* (unpublished). This question had 115 respondents.

When asked more specifically what the main issues experienced by their clients were, financial mentors overwhelmingly pointed at reckless conduct used to extract repayment. 86% of the mentors who responded said they had seen debt collectors make demands for repayment that prevented clients from affording essentials.[17]

Notable for consideration in relation to the prohibition of harassment, is that two thirds of those surveyed said they had seen excessively frequent contact from debt collectors to their clients. Just below a third had seen potential coercion reflected in 'intimidating or aggressive behaviour from collectors.'



Taken together, with the multitude of anecdotes we hear, these two graphs suggest that harmful practices are prevalent within the industry and reinforce our ongoing calls for reform over the last five years.

Outside the scope of this Bill, FinCap puts forward the following recommendations for debt collection reform which we urge Committee members to work on with us:

Recommendation 6: The government amend legislation to license debt collectors, to ensure regulators can monitor debt collection markets and can hold debt collectors to account to any current rules or commitments they have made.

Including all debt collection activities in s5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 can achieve this. All debt collectors should have a free and independent external dispute resolution scheme available, providing a practical mechanism for alleged debtors to assert their rights.

FinCap also urges action to address issues with debt collection through Attachment Orders, which see $711,408 in payments each week[18] from the benefits. To best address this, FinCap recommends:

[17] *FinCap Satisfaction Survey February 2026 Analysis Report* (unpublished). This question had 111 respondents.
[18] Newsroom (2026), [$37m drained from benefits to debt collectors in grim vortex]

Recommendation 7: That the government declare a moratorium on Attachment Order payments from benefits while there is a review of the settings.

Recommendation 8: A review of the Attachment Order settings starting with a forum of all the different government, court and community organisations that are involved in creating, or resolving, hardship from these court orders.

FinCap suggests a review should also investigate the possibility of Judgement Proof Debtor protections, similar to what have been in place in Victoria, Australia for over 40 years.[19]

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

Ngā mihi,

Jake Lilley
Senior Policy Advisor
FinCap
(On behalf of Fleur Howard, Chief Executive)

[19] Justice Connect (n.d.), *Being judgment proof.*