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5 May 2021

Submitted by email to: DRSReview@mbie.govt.nz

DRS Review, Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
Wellington

RE: Review of the Approved Financial Dispute Resolution Scheme Rules Discussion Paper

FinCap (The National Building Financial Capability Charitable Trust) welcomes the opportunity to comment on the Ministry of Business, Innovation & Employment (**MBIE**) Review of the Approved Financial Dispute Resolution Scheme Rules Discussion Paper (**Discussion Paper**). Free, accessible and fair dispute resolution schemes should be readily available to ensure people, whānau and communities working with Financial Mentors do not have hardship compounded or caused by financial providers' misconduct.

From the regular discussions FinCap has with the 800 Financial Mentors around Aotearoa it is clear that some Financial Mentors are confident in escalating issues to financial dispute resolution schemes and this has led to a fair outcome where hardship is avoided in some cases. A recent example is a Financial Mentor who assisted a whānau through dispute resolution where there were concerns around irresponsible lending in relation to credit cards. This action successfully prevented the whānau being at risk of losing their home. There is an opportunity for more Financial Mentors to ensure the people they work with have access to justice like this example through removing barriers to utilising financial dispute resolution.

An imbalance of power between people who are experiencing hardship and financial services needs to be overcome by dispute resolution schemes. FinCap has heard that people assisted by Financial Mentors are often fearful of raising a legitimate complaint about an issue such as irresponsible lending as they perceive this may lead to severe consequences from the better resourced financial service involved. Every complaint or issue raised with a financial dispute resolution service should be valued and actioned as far as possible as otherwise some experiencing financial hardship and other issues may be discouraged from ever raising an issue again. The scope of timeframes and issues that financial dispute resolution schemes will actively encourage people to raise and then quickly action should be consistently broad.

The submission below contains some general comments and recommendations from FinCap about how financial dispute resolution schemes can better serve the community followed by direct responses to the discussion paper question template.

About FinCap

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

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General comments on financial dispute resolution schemes

Without access to a free, accessible, and fair financial dispute resolution scheme many people, whānau and communities, particularly those facing hardship have little hope of getting a fair outcome when a financial service is causing harm. Cost alone often makes taking action through already intimidating formal legal processes impossible. Financial Mentors often assist people who are experiencing multiple complex issues at one time. Vulnerabilities like experiencing mental health issues, family violence, difficulty finding work, imprisonment, the death of someone close, difficulty reading and writing or with maths, injury or illness or a multitude of other issues can make ongoing engagement with organisations difficult. This should not mean people do not have access to justice.

All dispute resolution schemes should have a consistent vulnerability policy that at a minimum:

- Publicly commits the scheme to being flexible as to access and jurisdiction where people experiencing vulnerability or hardship may have difficulty accessing the scheme under normal processes.
- Publicly commits the scheme to train all frontline staff on vulnerability and give them the relevant authority to appropriately assist people experiencing vulnerability or hardship to access the scheme on first contact.
- Requires members of the scheme to have processes in place to identify when a customer is experiencing vulnerability and make appropriate referrals to support like Financial Mentors as well as appropriate triggers to make these customers aware of their ability to access a scheme.
- Publicly commits the schemes to also offering referrals to relevant supports for a holistic good outcome where a person is experiencing hardship due to multiple factors, some of which are not within the scheme's expertise.
- Publicly commits the schemes to community engagement aimed at improving access to schemes for communities that are experiencing greater levels of hardship or vulnerability.
- Includes position statements related to issues involving a customer with an inability to pay. These positions should be aimed at minimising or avoiding hardship.
- Commits schemes to identifying systemic issues that are causing or compounding hardship in the community and disseminating this information to relevant decision makers for the purpose of relevant reform.
- Clearly outlines how the scheme will collaborate with support workers such as Financial Mentors.

All schemes implementing such policies would create a focus on helping those facing hardship who can experience the most harm from not having access to justice. Consistent minimum requirements like the above which are published for the public would reduce barriers to navigating what is available to someone being assisted by a Financial Mentor. FinCap would be happy to provide further feedback as financial dispute resolution schemes progress the updating, creation or effective implementation of such policies.

Recommendation: All financial dispute resolution schemes are required to implement public vulnerability policies with minimum standards of what must be included.

Financial Mentors have expressed frustration that there are four different financial dispute resolution schemes in Aotearoa. FinCap does not believe that competition between dispute resolution providers is in the interest of the community. The multiple schemes risk confusion, inconsistency in approaches which means some outcomes are fairer than those from other schemes with similar issues and more

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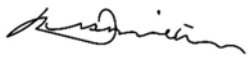
barriers to navigating to the right scheme to make a complaint. The four schemes risk inefficiently duplicating administrative costs and unnecessary member acquisition and retention costs which are ultimately passed on to consumers by members. The competition also incentivises financial services not acting in the reasonable interests of communities to be a member of the scheme that is most difficult for those communities to access, is more likely to find on the side of the financial service and charges the lowest amount for membership. These incentives can reduce access to justice.

Having one dispute resolution for financial services would be an opportunity for more resources, consistency in outcomes, clearer access for the community and more efficient engagement for FinCap and Financial Mentors. It would address many of the potential issues that MBIE has included in the Discussion Paper. Australia has recently reformed to have a single scheme provider and we see this as better practice. Alternatively, having one point of contact for all schemes would be a step in the right direction for improving access to the schemes where a person would not have to wait on hold to multiple schemes only to find out that their financial service is not a member.

Recommendation: Relevant decision makers progress work towards there being a single dispute resolution body for financial services.

The remainder of this submission follows the submission template provided by MBIE for the Discussion Paper. Please contact Privacy of natural persons to clarify any aspect of this submission.

Ngā mihi,



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Response to Discussion Paper questions

1	What is your feedback on the proposed objective and criteria for the review? What is your feedback on the proposed weighting of the criteria?
	FinCap agrees that the main objective of the review should be to *improve consumer access to redress available through the schemes*. We agree that 'accessibility' should be weighted more heavily. We recommend that 'fairness' is also weighted more heavily as a criterion as this directly relates to how all can access fair outcomes. As discussed above, we believe schemes should be required to implement public vulnerability policies and considering 'fairness' strongly in this review will emphasise the need to improve access for people experiencing hardship or vulnerability and being assisted by a Financial Mentor.
	Financial cap
2	Are you aware of any instances of consumer harm due to the issues outlined?
	FinCap has not received any feedback from Financial Mentors on this issue other than that inconsistency makes accessing different financial dispute resolution schemes confusing. However, we believe that inappropriate and inconsistent financial caps are a barrier to access to justice for the community.
3	Do you have any feedback on the problems outlined?

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	FinCap recommends consistent and much higher caps for redress and flexible caps to allow for what is reasonable in the circumstances where non-financial loss or indirect financial loss has taken place. Hardship caused by financial services can impact whānau and communities for generations. The median house price in Aotearoa on 31 March was reported to be $826,300 by the Real Estate Institute of New Zealand.[1] If half of all homes sold for that amount and had involved borrowing of up to 80 per cent of the total cost then many whānau would not be able to access dispute resolution where serious misconduct by the bank could cause severe hardship. By comparison to the current caps in Aotearoa, the caps on the equivalent scheme in Australia offer far more access. The Australian Financial Conduct Authority (**AFCA**) compensation amount limit per claim for credit provided to a person for non-business-related purposes is $542,500 and is capped at $1,085,000 in total to be in jurisdiction.[2] We believe the financial cap for redress across all schemes should be set well above the median house price figure so that most property owners would not be excluded from dispute resolution or have to limit the amount of a legitimate claim to avoid risking costly court action against a better resourced financial service. Where consistent caps are implemented by this review they should also be appropriately adjusted on a regular basis relative to a price index in order to avoid access to schemes decreasing where costs in Aotearoa rise.
	Option one: set the primary jurisdictional and redress cap at $350,000
4	Do you have any feedback on this option?
	As in our recommendations in question 3 above, the amounts should be much higher. We are also concerned that tethering to the District Court limit might not be a timely way for adjusting limits as prices change. A different index may be more appropriate to adjust the jurisdiction to what is happening on the ground.
5	Are there any other costs or benefits of this option?
	Please see our above responses.
	Option two: introduce a weekly alternative to a lump sum cap
6	Do you have any feedback on this option?

[1] See: *https://www.interest.co.nz/charts/real-estate/median-price-reinz* (retrieved 30 April 2021).
[2] See: *https://www.afca.org.au/about-afca/rules-and-guidelines*

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	FinCap supports investigating whether this mechanism for a cap could effectively overcome the issues we raise above in question 4. We recommend a workshop for a diverse range of community advocates is held to consider whether the $1,500 per week cap is appropriate in this mechanism.
7	Do you agree that a weekly payment alternative should be introduced for all schemes? Why/why not?
	We agree this could be a good option for schemes' caps enabling accessibility as weekly repayment rates on mortgages that span decades and high-cost credit contracts may be much closer in amount on a weekly basis than a total claim amount. Consistency across all schemes with this may be more appropriate given some schemes may not have members offering high-cost credit contracts and some may not have members offering mortgages.
8	Is $1,500 an appropriate weekly payment alternative? Why/why not?
	We request a workshop with stakeholders to consider whether this figure is high enough to allow access to appropriate dispute resolution for all whānau across a range of financial services.
9	Are there any other costs or benefits of this option?
	Please see above.
	Other potential issues with inconsistent awards
10	Do you have any feedback on the problems outlined?
	The inconsistencies identified by MBIE would create barriers for Financial Mentors understanding what the person they assisting's options are. It is also a barrier to fair and consistent outcomes where direct or indirect harm caused by a financial service should be compensated for.
11	If a consistent special inconvenience award was to be introduced, in what circumstances should it be awarded? Should this be discretionary, or strictly prescribed?

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	FinCap supports the introduction of a consistent special inconvenience award with an ability for this to be applied in a broad range of circumstances. The $10,000 amount suggested in the paper would be a step in the right direction. However, FinCap also recommends that there should be the ability to go beyond the $10,000 cap where a situation has arisen when more than that amount of harm has been caused by a financial service's conduct but could not be addressed otherwise in a resolution to a complaint. Circumstances surrounding experiences of hardship that are contributed to by a financial service's conduct will often be unique and complex. FinCap therefore recommends the application of special inconvenience awards should be discretionary. However, if discretionary, there should be a system of regular review across all the schemes with the purpose of ensuring the discretion and a set of principles for application should be prescribed.
12	If an interest award was to be introduced, how should it be calculated?
	FinCap recommends the introduction of interest award in all schemes similar to the current Financial Services Complaints Limited Scheme (FSCL) that is mentioned in the Discussion Paper: *May award interest on a payment. CEO will calculate interest having regard to any relevant factors.* We consider the same factors apply as in our recommendations in response to question 11 here. The use of this discretion across different schemes should be regularly reviewed and a set of principles for this discretion established.
13	What are the benefits and costs of the options?
	A significant benefit would be that representatives such as Financial Mentors who may assist multiple people to access dispute resolution in the course of their work will find this more efficient where there is consistency across schemes. These workers may also gain more familiarity about what interest charges and special inconveniences payments could be called for and be more efficient in outlining where these are relevant to a complaint.
	Timing of membership & jurisdiction
14	Are you aware of any specific situations where providers have switched between schemes resulting in the situation described above? If so, what happened?
	This issue has not been directly raised with FinCap by Financial Mentors recently. However, we are concerned that this situation could arise and lead to a whānau facing hardship.
15	Do you agree with the potential problems that may occur as a result of inconsistent scheme rules about the timing of membership/jurisdiction?

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	FinCap is very concerned that a situation could arise where whether or not a whānau has access to enforceable dispute resolution is at the discretion of a financial service provider who changed schemes. This should not be able to occur.
	Option one: require all schemes to consider claims about current claims about current members, even if the issue arose prior to membership
16	Do you have any feedback on this option?
	This option is appealing because it is simple and it would be much clearer as to where a whānau or a Financial Mentor should go with a complaint.
17	Are there any other costs or benefits of this option?
	There is a risk that this option incentivises a provider to switch away from a scheme which is doing a better job of delivering appropriate outcomes to whānau that cost more for financial service provider to another not consistently acting in the interests of the community.
	Option two: require schemes to consider complaints where the issue occurred when the provider was a member of the scheme, even if they are no longer a current member
18	Do you have any feedback on this option?
	This option could prevent the incentive in our response to question 17 of the Discussion Paper arising. However, it could be confusing for a Financial Mentor or whānau to navigate to the right scheme to make a complaint.
19	Are there any other costs or benefits of this option?
	Please see our comment above.
	Applicable time periods (limits) for bringing a claim
20	Do you any feedback on the problems outlined?

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FinCap agrees that the timing limits may impact accessibility to dispute resolution and fairness. This should be avoided, particularly for people who are facing hardship which can quickly compound and cause long term harm. Paragraph 66 of the Discussion Paper rightly points out that a limit on bringing a complaint could stop a whānau having access to dispute resolution because of events beyond their control.

People experiencing some forms of vulnerability may also find it hard to bring a complaint within a strict two or three-month window when facing multiple issues like moving home, mental health changes, health complications and family violence. This should not mean people do not have access to justice where the conduct of a financial service is unfair and causing harm.

AFCA has much longer time limits for bringing a complaint. The AFCA rules in relation to credit products appear to just have a limit of two years from the end of a contract or response from an internal dispute resolution at a financial service in relation issues with hardship under their National Credit Code (AFCA rule B.4.2.1) or six years since the person complaining was aware of loss otherwise (AFCA rule B.4.3.1.). AFCA rule B.4.4.2. also allows AFCA flexibility to extend time limits where 'special circumstances apply.'[3] By comparison, the schemes in Aotearoa are much more inflexible about access over time. Many financial services in Aotearoa also trade in Australia and accept AFCA's timeframes in doing so. It would not be radical to extend the jurisdictions of schemes here.

FinCap recommends that the time limits for bringing a complaint are consistent across schemes and extended up to six years since the person complaining was aware of loss. All schemes should also have public facing vulnerability policy with the ability to extend time limits where special circumstances apply. This would ensure fairness and access to justice.

21	Are you aware of instances of consumer harm from the problems outlined?

[3] See: *https://www.afca.org.au/about-afca/rules-and-guidelines*

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Some Financial Mentors have mentioned to FinCap that the time limits before a complaint can be brought are a barrier for the people they assist pursuing a claim about irresponsible lending. For example, having to wait three months to begin a complaint which then may take several months to resolve is too risky when a person has multiple debts and a form of insolvency will better protect someone from being left without the basics while juggling demands from multiple creditors. The limit may also be detrimental to a financial service or other businesses the debtor owes as it is possible that none of these organisations will be paid under some forms of insolvency where there are no assets to be recovered. The barrier for access to justice may mean a person must pursue a form of insolvency that impacts their credit file and access to aspects of the economy or some employment opportunities for a long period.

The timeline before a complaint can be brought should be short. AFCA's timeline for this appears to be 21 days in some circumstances[4] which is close to FSCL's limit.

FinCap recommends that all schemes should be required to limit their timeline before a complaint can be brought to 20 days or less and have flexibility to bring a complaint earlier where someone is facing compounding hardship.

Option one: limit time period I to a maximum of two months

22 Do you have any feedback on the option?

FinCap recommends that all schemes should be required to limit their timeline before a complaint can be brought to 20 days or less and have flexibility to bring a complaint earlier where someone is facing compounding hardship.

23 Are there any other costs or benefits of this option?

This will increase accessibility and access to justice. Being knocked back from bringing a complaint because of time limitations is a barrier to raising a complaint, especially for whānau facing multiple issues.

Option two: create a consistent time period II of three months after deadlock

24 Do you have any feedback on this option?

FinCap recommends that the time limits for bringing a complaint are consistent across schemes and extended up to six years since the person complaining was aware of loss. All schemes should also have public facing vulnerability policy with the ability to extend time limits where special circumstances apply. This would ensure fairness and access to justice.

[4] See: *https://www.afca.org.au/media/468/download*

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25	Are there any other costs or benefits of this option?
	There is great benefit to a whānau not being blocked from access to justice because of restrictive timeframes.
	Option three: introduce discretion to hear a complaint after time period II
26	Do you have any feedback on the option?
	We strongly support this option, please see our feedback to previous questions.
27	Are there any other costs or benefits of this option?
	This will allow access to justice for people whose experience of vulnerability is a barrier to making a complaint.
	Option four: consistent limit for time period III
28	Of the four schemes, which way of outlining time period III is preferable? Why/why not?
	FinCap recommends that the time limits for bringing a complaint are consistent across schemes and extended up to six years since the person complaining was aware of loss. All schemes should also have public facing vulnerability policy with the ability to extend time limits where special circumstances apply. This would ensure fairness and access to justice. We see the settings from AFCA as similar to many schemes' parameters around six years but with more of a focus on the person making a complaint which is appropriate given power imbalances.
29	Are there any other costs or benefits of this option?
	Please see FinCap's previous responses.
Other Comments	
Please see our submission introduction and 'General comments on financial dispute resolution schemes' section above.	