

## FINANCIAL LEGAL RIGHTS SERVICE PROPOSAL – MARCH 2024

### Background to this proposal

1. In July 2023, 7 organisations<sup>1</sup> came together for a hui to better understand the challenges that consumer advocacy groups face in Aotearoa New Zealand with assisting whānau with consumer finance issues, particularly under the Credit Contracts and Consumer Finance Act (CCCFA) and other consumer laws. Each of the organisations assist vulnerable consumers with issues created by irresponsible lending, mis-sold products, and confusing dispute resolution processes. Those organisations who work with financial mentors expressed a particular and growing need for increased access by financial mentors to specialised legal advice and representation on consumer finance matters for the whānau they work with.
2. A further meeting took place in December 2023, in which these organisations discussed a possible solution being a pilot legal service as a unit of Community Law Centres Aotearoa (CLCA). CLCA is the peak body for the 24 Community Law Centres (CLCs) across the motu and can access the necessary governance, infrastructure, and regulatory compliance to deliver a financial rights legal service. CLCs provide free legal help in their communities. CLCA also operates the nationwide pro bono clearinghouse, Te Ara Ture, which has more than 700 lawyers registered to provide free legal advice and representation across a range of legal matters.
3. This paper explains the need for this service, outlines what it would involve, and seeks support and funding for this service.

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<sup>1</sup> Community Law Centres Aotearoa (including Te Ara Ture), Christians Against Poverty, FinCap, Salvation Army, Good Shepherd, DebtFix, Christian Budgeting NZ. Citizen's Advice Bureau has also been involved in this project.

## The need in our communities for financial legal advice

### *Problem debt and financial legal issues*

4. A common problem that each of our organisations see is problem debt, and the effects of it are wide-reaching. As set out in DPMC’s 2022 paper on Debt to Government:<sup>2</sup>

*“[d]ebt can be a standard feature of financial life and plays an important role in smoothing household expenditure. However, debt can also become a problem when servicing it becomes either unaffordable, or a heavy burden. In this paper, we call this ‘problem debt.’ Problem debt can have a significant impact on individuals and whānau in hardship, contributing to financial hardship, stress, poor physical and mental health, stigma, and social exclusion.”*

5. Each of our organisations see these negative effects on whānau and the ongoing ramifications that problem debt can have (for example, desperation leading to criminal activity, effects on credit reports, whānau having to explore personal insolvency avenues, or drain KiwiSaver to pay for problem debt). There are a range of reasons why people experience problem debt. Financial mentors, CLCs and other consumer advocates have seen a proliferation of clients subject to irresponsible lending, primarily in the form of personal loans and car loans. They often face barriers in challenging problem debt because of the complicated nature of credit contracts, inconsistent decisions from the four dispute resolution schemes, and time it takes to resolve these issues.
6. We also see issues arise in debt collection, personal insolvency, insurance and banking. We anticipate that a financial rights legal service would build confidence across financial mentors, CLCs and other consumer advocates so that they can in turn assist the people they are working with and to progress their matters effectively.

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<sup>2</sup> Department of Prime Minister and Cabinet, 3 February 2022, [Proactive Release - Reducing impact of debt to government - 3 February 2022 - Department of the Prime Minister and Cabinet \(dpmc.govt.nz\)](https://www.dpmc.govt.nz/proactive-release-reducing-impact-of-debt-to-government-3-february-2022), para 3.

7. In addition, we know that the law in many of these areas has not been tested in the Courts, especially rights and obligations under the CCCFA. There are barriers to consumers progressing cases to the Courts. There are limitations with the legal aid regime (for example, low eligibility thresholds, and there are very few civil legal aid providers), and CLCs have limited resourcing and capacity to do representation work. The potential for a costs award can also be a deterrent. It appears that lenders have no real incentive to cease poor practices and continue to prey on the vulnerable and uninformed. Removing barriers and facilitating access to justice for consumers is central to why this service is necessary.
8. It is relevant that MBIE's Consumer Protection New Zealand Consumer Survey 2022 found that those on lower incomes are more likely to be less aware of consumer protection legislation, to know less about it and to have less knowledge about dispute resolution services.<sup>3</sup> Of the Consumer Guarantees Act, Fair Trading Act and the CCCFA, the CCCFA was the least understood across all consumers surveyed. People struggle to navigate consumer law on their own and our organisations could do more to help them with additional support.
9. Having looked at the consumer advocacy landscape in New Zealand and the free consumer legal service offered in Australia, we believe a dedicated financial legal rights service will greatly improve consumers' abilities to exercise their rights. Each of the organisations supporting this proposal have insight into the deep need in our communities for support with exercising their financial legal rights, as set out below.

#### *Financial Capability Sector*

10. Financial mentors supported by FinCap helped 69,800 people in 2023. The median debt for those supported in 2022 was \$13,666.35 spread across a median of four loans.<sup>4</sup> This debt is a significant burden for whānau.

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<sup>3</sup> MBIE Consumer Protection, 2022, New Zealand Consumer Survey, [New Zealand Consumer Survey 2022: Survey findings \(mbie.govt.nz\)](#), pp 11-18.

<sup>4</sup> See FinCap, 2023, *Voices Report*, <https://www.fincap.org.nz/wp-content/uploads/2023/09/230915-Final-Voices-report.pdf>.

11. Christians Against Poverty (**CAP**) estimates that about 40% of the families that approach them in financial hardship have been provided an unaffordable loan, and consider they are only just scratching the surface of the widespread harm. Over the last three years, CAP has grown a team of four people focussed on raising disputes with lenders. CAP has successfully raised 69 disputes with lenders and their disputes resolution schemes in relation to inadequate affordability assessments.<sup>5</sup> This has resulted in over \$760,000 of debt written off from loans that were demonstrably unaffordable from the very outset. CAP has a near 100% success rate when raising a dispute for clients. CAP's data of complaints is evidence that there has been widespread non-compliance by lenders of existing responsible lending principles.
12. In 2023 the Salvation Army supported 3,076 clients (including about 8,500 of their dependents) with 7,852 sessions by their 41 financial mentoring staff across 29 locations across the country. Their clients report that they find the support of the service to be incredibly helpful. What's missing is the capability for financial mentors to identify options for further legal action in complicated cases.
13. Debtfix Debt Relief Foundation is a hardship and debt solutions charity. Debtfix works with about 3000 clients each year (having 20 trained financial mentors). Recently they have had one part time volunteer looking into contracts and irresponsible lending. In 2023 they had 27 irresponsible lending claims and managed to get \$500,000 of debt written off. DebtFix believes there are many more people who need this kind of help. A financial rights legal centre would be a great benefit to their team by ensuring that somewhere to go for their legal questions and then will be able to guide clients in the right direction and supporting them along the way.
14. Unpacking the requirements on creditors which are relevant to each person's circumstances can be overwhelming for those working in the financial capability sector. They also need to support the whānau they work to be brave and resilient in going through complaints and disputes processes. Financial legal support would likely

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<sup>5</sup> An anonymised breakdown of the data relating to these disputes is available.

build their confidence in challenging and progressing action against creditors, and enliven more pathways for the prevention of poverty through access to justice.

### *Citizens Advice Bureau*

15. Citizens Advice Bureau provides provide free, confidential, independent information and advice to anyone. In 2023 we helped over 9,000 clients with issues relating to debt, consumer credit and financial services. We work closely with both financial mentoring services and Community Law, and our experience is that there is significant non-compliance with the law around lending, and there is insufficient capacity for those on the front line to address some of the more complex situations we see. We strongly believe that a financial legal rights centre would help address some of the significant gaps in protecting some of the most vulnerable members of our community.

### *Community Law Centres*

16. CLCs advised on over 2,300 matters relating to financial rights in the 2023 calendar year. On most matters, CLCs provided advice. There were a small amount of matters on which representation was provided, or that required only information.
17. Most CLC lawyers and caseworkers work across a broad range of legal areas, and some have expertise consumer finance law. For this reason, CLCs would also benefit from access to financial legal advice for their clients. CLCs have varying levels of relationship across the motu with local financial mentors and consumer advocates, with some working closely together. However, CLCs simply do not have the capacity to provide the scale of service required to meet the need.
18. Below are some examples of recent queries from financial mentors which would be better addressed through specialist financial law support:
  - (a) What avenues are available to prevent a debt collector harassing whānau through repeated contact despite regular accepted requests to cease contact from their financial mentor?

- (b) Are there avenues to arrange the return of important cultural items secured in an unaffordable pawnbroking contract? Should the traders belong to a financial dispute resolution scheme?
  - (c) What can be done when a repossessed car is due for sale, despite no response to a financial mentor challenging the flawed justification for repossession for two months?
  - (d) How can a financial mentor get more information about the alleged debt behind a credit file listing when the trader who made the listing has not responded to requests for information?
  - (e) Is a bank required to follow instructions when the people a financial mentor is assisting requests that no withdrawal from ATMs be available on a savings account?
  - (f) Can a creditor refuse a financial mentor privacy authorisation form and associated request? Is there anything the creditor must do when a financial mentor has indicated their customer is experiencing hardship in making that request?
19. The following case studies from CAP illustrate the difficulties that consumers face in pursuing their financial legal rights (names changed to protect privacy):
- (a) Sela is a solo mum of two kids. When Sela went through insolvency the lender repossessed her lounge set at 8pm as he believed that she wouldn't continue to pay her loan. The lender's process of repossession breached the CCCFA in several ways. The process of raising a dispute was time-consuming and involved difficult communications with the lender, but the lounge set was eventually returned and charges were reversed. Through the process, the lender admitted that he had made at least 15,000 similar callouts and repossessions. Engagement with a financial rights legal service would have greatly helped earlier in the process to engage with the lender, and also to uncover how widespread these unlawful repossession practices are.
  - (b) Rachel is sole parent to five kids. Rachel was coerced while in an abusive relationship to obtain a car loan that she could clearly not afford. The hardship



from the loan pushed her all the way into insolvency. CAP's advocacy team disputed the loan but the settlement offer to waive all fees and charges fell far short of compensating the client for the hardship she experienced. Te Ara Ture has arranged professional legal help through their pro bono service and this case is actively being worked on. It is easily one of the worst cases CAP has ever seen of a lender's complete disregard for the responsible lending principles. It wouldn't be possible for CAP to progress this case without professional legal pro bono support.

- (c) Jone got into significant trouble by going back to the same lender for additional top ups to meet his essential living costs while in financial hardship. Jone has refinanced six times since March 2022, in each case having clear evidence of financial hardship. In the last refinance, the monthly fee associated with the accumulated debt more than doubled, skyrocketing the total debt to be repaid. The lender has been very challenging to engage with and support from a financial rights legal service would have dramatically shortened the time taken to resolve the issue by raising the lender's willingness to engage with the dispute.

20. Many whānau come to a financial mentor, CLC or other consumer advocate in financial hardship or with a financial problem not knowing they have been the victim of irresponsible lending or what their financial legal rights are. The service would allow these agencies to more effectively and confidently provide consumers with knowledge about their rights and how to pursue them effectively.

### Advantages for regulators

21. As well as improving access to justice and outcomes for consumers, a financial rights legal service would also benefit regulators and Court processes in the following ways:
- (a) Specialist consumer law support could help advance provision of more precise evidence of systemic issues to regulators in order to inform policy and avoid further harm. As an example, as a result of CAP and other financial mentors raising complaints, the Commerce Commission has the evidence to commence proceedings against Go Car Finance. This is unlikely to have happened if consumers had to raise their own concerns. More coordination of this kind of effort could lead to better compliance and consumer outcomes.



- (b) The service would be able to provide data on trends in consumer law and make policy suggestions on this basis.
- (c) Financial mentors, CLCs and other consumer advocates would have the assistance of the service in identifying and collating relevant evidence for disputes, which would likely help move dispute resolution along more efficiently.
- (d) Cases that make it to the District Court through the service would be better prepared. The service could reduce the number of unrepresented applicants, and legal representation would ensure that cases that are brought or responded to are focussed and present the most viable legal arguments.
- (e) It is apparent that the current Government intends to reform the CCCFA to protect vulnerable consumers, without unnecessarily limiting access to credit.<sup>6</sup> This service would provide a significant contribution to the protection of vulnerable consumers.
- (f) The service would improve access to justice in an area of law where there is significant need, and is consistent with the Wayfinding for Civil Justice stakeholder strategy.<sup>7</sup>
- (g) We know that this kind of service works. In Melbourne, the Consumer Action Law Centre<sup>8</sup> is a consumer advocacy organisation which provides free financial counselling and legal advice to consumers in Victoria via a consumer helpline, and legal advice to consumer advocates such as financial mentors and CLCs in Victoria through a worker helpline. It also has a campaigns and law reform function and provides specialist consumer legal representation. It was formed in 2006. An evaluation of the worker helpline shows how effective the helpline is in contributing to good client outcomes and building confidence in those working with clients.<sup>9</sup> The organisations supporting this proposal have strong connections with the Consumer Action Law Centre. We would welcome the opportunity to arrange a

<sup>6</sup> Beehive Press Release, 31 January 2024, [Reducing barriers for financial services | Beehive.govt.nz](https://www.beehive.govt.nz/news/reducing-barriers-for-financial-services).

<sup>7</sup> Ministry of Justice, December 2023, [Microsoft Word - Wayfinding for Civil Justice National Strategy - final with Foreword 6 December 2023](#).

<sup>8</sup> Consumer Action Law Centre, [About - Consumer Action Law Centre](#).

<sup>9</sup> Consumer Action Law Centre, 2021, [Evaluation of Consumer Action's Worker Advice Service - Consumer Action Law Centre](#).



meeting between MBIE and the Consumer Action Law Centre so that you can hear more about their experiences in this space.

## Proposal for a Financial Rights Legal Service

*What would the service look like?*

22. We propose a financial rights legal service that would be dedicated to providing:

- (a) Free specialised legal advice to financial mentors, CLCs and other consumer advocates. The legal advice would be in all areas of consumer law, with a particular focus on financial legal rights relating to consumer credit, banking, debt collection, insurance, and personal insolvency law. We envisage the advice could take a variety of forms. It could be a 30-minute phone call, or an email exchange. There might be multiple interactions with research and drafting support provided by the service. In addition, appropriate cases could be referred to the service for ongoing representation.
- (b) Free legal representation to progress cases. Referrals could also be made to Te Ara to provide pro-bono support if necessary. We intend to develop a structured prioritisation process for deciding how limited resources for undertaking representation are allocated.
- (c) Policy expertise that would pursue campaign projects, and also benefit regulators by identifying systemic issues that consumers are experiencing. While some of the financial capability sector resources have been targeted towards unaffordable loans so far, there are other areas that need to be addressed. For example:
  - Low value add-on insurance products (see the Commerce Commission's report on vehicle finance and add-on insurance products, many of which were labelled as low-value);<sup>10</sup>
  - Unfair debt collection processes (CAP wrote a report on this in 2021);<sup>11</sup>

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<sup>10</sup> Commerce Commission, *Motor Vehicle Financing and add-ons Review*, December 2021, [Commerce Commission - Commission releases report on motor vehicle financing and add-on products \(comcom.govt.nz\)](https://www.comcom.govt.nz/commission-releases-report-on-motor-vehicle-financing-and-add-on-products).

<sup>11</sup> Christians Against Poverty, 2021, *Demanding Better*, [2021-WAS-one-page.pdf \(consumeraction.org.au\)](https://www.consumeraction.org.au/2021-WAS-one-page.pdf).

- Egregious and punitive use of vehicle immobilisers (see another CAP report on this in 2022).<sup>12</sup>
- (d) Education to financial mentors, CLCs and other consumer advocates. This will upskill them to be able to provide the best service possible and draw from learnings across the sector.
23. People needing legal support on their financial rights could access the service through their financial mentor, CLC, or other consumer advocate. We believe that a unit with nationwide reach, as part of the CLCA network is the most accessible, cost-effective and efficient pathway to meeting this need. We do not see the service as being available to consumers directly just yet. Although that could be an option for expansion down the track.
24. We anticipate the service having three staff: two lawyers dedicated to consumer law, and one policy/education specialist. The staff members may be located in different parts of Aotearoa. We see most of the work (eg 50%) being dedicated to supporting those working with whānau, with the remaining capacity dedicated to policy/education programmes (30%) and Court representation (20%). Internal capacity building, strategy and planning also need to be factored in across the service.

*How will a financial rights legal service be governed?*

25. Our proposal is for the service to be piloted through CLCA, governed by the CLCA board (an incorporated society) and delivered by an existing CLC. Guidance would be provided by a steering group made up of sector representatives, which would have input into the policy projects that the service might undertake and the evaluation of the service.
26. We envisage that representatives of each of CAP, FinCap, CLCA, CAB, Salvation Army, DebtFix and Consumer NZ would be invited to be on the steering group.

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<sup>12</sup> Christians Against Poverty, 2022, *Lifting the Bonnet on Unethical Practices, Vehicle finance 2022 f UPDATED.pdf* ([capnz.org](http://capnz.org)).

*How much will it cost?*

27. We consider \$380,000 per annum to be an appropriate amount to pilot the service. It appears to us that a minimum 2-year pilot would be necessary to adequately test the service, especially given that Court processes can take years. This amount is broken down into the following:

Salaries:	\$290,000
Overheads:	\$90,000