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Submitted via [financialconduct@mbie.govt.nz](mailto:financialconduct@mbie.govt.nz)

Financial Markets Policy  
Commerce, Consumers and Communications  
Ministry of Business, Innovation & Employment  
Wellington

Kia ora Financial Markets Policy Team,

**RE: Treatment of intermediaries under the new regime of the conduct of financial institutions discussion document**

FinCap (The National Building Financial Capability Charitable Trust) welcomes the opportunity to comment on the Ministry of Business, Innovation & Employment (**MBIE**) Treatment of intermediaries under the new regime of the conduct of financial institutions discussion document (**Discussion Document**).

The financial mentoring services that FinCap works with regularly see people who are facing hardship that has been compounded or caused by the unfair conduct of businesses or their intermediaries. The consequences of this avoidable hardship can be ongoing for generations or place further burden on financial mentoring services to work beyond their resources to prevent the consequences of hardship in their communities. This is unacceptable.

Following the consultation on this Discussion Document, MBIE should recommend options that do not seek to weaken the expectation that all involved in a 'customer journey' with the products and services covered by these reforms practice fair conduct.

While there may be requirements that apply to some intermediaries through other initiatives that relate to fair conduct, this should not allow a financial institution to be able to 'tick a box' and not pay as stringent attention to the experience of a potential or existing customer who is at risk of unacceptable conduct. Such attention is necessary to achieve holistic culture change and fair outcomes from fair conduct at all steps of the provision of a product or service.

Some stakeholders have raised questions about power imbalances between a large intermediary such as a broker and a smaller financial institution. Where these issues may arise, we strongly support placing the same requirement for fair conduct on the relevant intermediary to achieve fairness for people, whānau and communities accessing financial products and services.

We expand on these comments in our responses to the Discussion Document questions below.

## 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.

## Responses to Discussion Document Questions

*Do you have any comments on Option 1: 'Amend definition of intermediary to focus on sales and distribution'? (Q1)*

FinCap is concerned that this option will weaken the protection for people at risk of experiencing unfair conduct from an intermediary. The list of intermediaries who would no longer be caught in this definition still involves professionals whose unfair conduct could cause significant harm to a community member. All involved in the customer journey in some way should be focused on ensuring fair conduct.

We oppose this change and prefer the broader definition where the regulation making powers to exclude some prescribed occupations from being 'involved' that are in the bill are used if this is necessary.

*Do you think the scope of the proposed definition of an intermediary is comprehensive enough to capture the variety of sales and distribution methods and to avoid gaps and risks of arbitrage? (Q2)*

No. please see our response to the previous Discussion Document question.

*Do you have any comments on Option 2? (Q3)*

As above, FinCap would prefer that definitions remain broad and that the regulation making powers to exclude certain prescribed occupations are made use of if this is necessary. We believe this would be in circumstances where there is close to no risk that these prescribed occupation's unfair practices that cause a person, whānau or community hardship will arise without this being identified and remedied by a financial institution or relevant regulator with the power to do so.

Financial mentors have regularly raised issues around unfair practices by debt collectors towards people utilising their assistance. These broadly relate to coercive and unreasonable demands for large payments that mean people are unable to afford essential items, excessive fees, harassment through excessive contact or inappropriate contact with a third party, and misleading information about proof of a debt or the likelihood of imminent consequences.

Whatever options around definitions are pursued by MBIE following the consultation on the Discussion Document, these should not weaken any expectation that internal or third-party debt collection at financial institutions practice fair conduct towards people having difficulty paying.

FinCap strongly recommends that MBIE work with relevant decision makers to pursue targeted regulation to ensure fair conduct from all debt collectors in Aotearoa.

*Do you have any comments on the objectives regarding the treatment of intermediaries? (Q6)*

Regulations are enforced according to regulator's priorities at the time and regulation existing doesn't always mean it is always ensuring its objectives. Broadly FinCap recommends that the Government ensures regulators are adequately resourced and have the necessary powers available to deter misconduct from businesses that can cause or compound the hardship that people, whānau and communities face.

The limitation of regulators resources should be considered in the context of the objective 'unnecessary duplication of regulatory obligations.' While FSLAA obligations may exist, this is not necessarily a guarantee that an intermediary subject to these obligations is practicing fair conduct. A financial institution using that intermediary being required to ensure fair conduct towards their customers could be a much more resourced and effective safeguard than relying on the reporting of misconduct by consumers. From what FinCap has observed, many consumers are often unlikely to be aware of their rights to complain or unlikely to raise a complaint. Also, when a consumer makes such a complaint to a regulator there are still barriers to enforcement if the regulator's current priorities do not align and there is no current capacity for regulator intervention to address misconduct.

*Do you have any comments on Option 3: 'Minimal changes to intermediaries obligations'? (Q7)*

FinCap supports no change, or this option out of the three presented in this Discussion Document. Where there are issues over a financial institution having the power to require an intermediary to practice fair conduct then equivalent direct requirements should be placed on that intermediary through this reform or subsequent reforms. At very least more regulatory monitoring of outcomes related to such intermediaries should be put in place to capture gaps in protections. FinCap strongly supports the expansion of fair conduct requirements to other businesses offering similar products beyond the current swift and targeted reform in general.

From a consumer perspective, fair outcomes from fair conduct should be expected regardless of who out of an intermediary or financial institution involved in providing the product has power over the other.

*Do you have any comments on Option 4: 'More significant changes to intermediaries obligations'? (Q9)*

FinCap does not support this option. As noted in the Discussion Document, these risk setting too low a level of oversight over some intermediaries.

*What do you think the level of responsibility should be for financial institutions' oversight of intermediaries? For example, "managing or supervising the intermediary to ensure they support the financial institutions compliance with the fair conduct principle", or "monitoring whether the intermediary is supporting the financial institution's compliance with the fair conduct principle", or something else? (Q10)*

Regardless of the level of responsibility eventually decided, there needs to be a clear expectation that financial institutions act to cease any misconduct or unfair intermediary practice happening in relation to their products or service, identify all impacted, remedy any harm caused by this misconduct and immediately and publicly report misconduct or unfair practice that has caused serious harm to relevant regulators. This action is necessary to prevent people, whānau and communities facing ongoing hardship because of the unfair practice or misconduct and for the public to trust financial institutions are acting in consumer's interests.

*What standard do you think financial institutions should have to oversee their intermediaries to? (Q11)*

For the above actions discussed in our response to Discussion Document question 9 to occur through robust systems that will identify unfair practice, FinCap views requirements to manage and supervise intermediaries as more appropriate.

*Do you have any comments on Option 5: 'Distinguish between FSLAA and non-FSLAA intermediaries'? (Q12)*

FinCap does not support this option as regulators have less resources to enforce fair conduct in financial advisors compared to all the relevant financial institutions. We expand on this in our response to Discussion Document question 6.

*Do you have any comments on the proposals regarding obligations in relation to employees and agents? (Q14)*

We strongly support comprehensive obligations in relation to employees and agents practice of fair conduct. Please see our comments on debt collection above in response to Discussion Document question 3.

*Do you think there should be a distinction drawn between employees and agents? Why/why not? (Q15)*

No. Drawing a distinction might risk setting lower standards for either employees or agents which lead to insufficient oversight as to unfair conduct in relation to a financial institution's product or service.

Please contact Jake Lilley, Policy Advisor at FinCap on Privacy of natural persons or at [jake@fincap.org.nz](mailto:jake@fincap.org.nz) to discuss any aspect of this submission further.

Ngā mihi,

Privacy of natural persons

Ruth Smithers  
**Chief Executive**  
**FinCap**