

**Submission to the Ministry of Business, Innovation & Employment
on the
Exposure Draft of the Credit Contracts and Consumer Finance
Amendment Regulations 2020**

To the Competition and Consumer Policy Team
Building, Resources and Markets
Ministry of Business, Innovation & Employment
Wellington

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Our organisation

We are grateful for the opportunity to submit on Exposure Draft of the Credit Contracts and Consumer Finance Amendment Regulations 2020. We are submitting on behalf of Good Shepherd NZ.

Since 2013, Good Shepherd NZ has been providing NILS no-interest loans and StepUP low-interest loans to people who are financially excluded from mainstream banking services, in partnership with BNZ, and supported by Ministry of Social Development. We work with community-based social service providers including Aviva, Vaka Tautua, The Salvation Army and Presbyterian Support Otago, to provide loan programmes in 26 locations across New Zealand.

A large number of clients who apply for one of our loans have their applications declined because they simply can't afford to repay the loan due to high levels of high cost debt. This has led us to develop our newest financial programme, DEBTSolve, which offers debt advocacy, financial counselling and debt consolidation loans to people affected by problem debt.

General

The CCCFA doesn't currently apply to not for profit organisations delivering no interest loans. We do however deliver all our loan products in line with the current responsible lending legislation and guidelines.

We would want to make sure that amendments to this legislation and regulations do not inadvertently extend obligations to comply to not for profit organisations delivering no interest loans. Any additional compliance requirements would increase the operating costs for us and other similar organisations, reduce our ability to deliver these essential services to vulnerable New Zealanders, and could ultimately threaten the viability of these services.

We welcome the current suite of amendments to New Zealand's responsible lending legislation and are also keen to see continued increases to the resourcing available to policing and enforcing this legislation. The strongest and best drafted legislation and regulation is only of benefit to vulnerable New Zealanders to the extent it is enforced.

Assessment of whether credit or finance will meet the borrower's requirements and objectives

The proposed regulations make it sufficiently clear to lenders what level of enquiry they need to make of a borrower before assessing if it is satisfied the credit or finance will meet the borrower's requirements and objectives. This approach should address most of the more blatant abuses of this responsible lending provision in the past. In our view compliance with these requirements does not place any significant burden on lenders.

Assessment that a borrower is likely to repay without substantial hardship

We are very supportive of the proposed approach for assessing the borrower's ability to repay their loan without substantial hardship. It enshrines a best practice approach, an approach which is essential to ensure that vulnerable borrowers are protected. This is the approach taken by Good Shepherd NZ and its partners in assessing loans for affordability and can be applied to all lending. Implementation of this approach will ensure that vulnerable borrowers are protected from the significant damage which can occur through poor lending practice and predatory lending.

This approach is however unnecessary and will be problematic for lenders lending to less vulnerable borrowers with higher incomes. Existing approaches to affordability assessment will be perfectly adequate for assessing affordability for these borrowers, and undertaking the more prescribed approach may result in increased cost for those involved, an avoidance by mainstream lenders of some types of lending which may result in more borrowers being pushed into the high cost lending market.

We are open to the possibility that the current more flexible approach in the Responsible Lending Code might be sufficient for lenders who are not providing high-cost or other relatively high-risk lending, and for loans to borrowers with higher incomes. We would however would want to ensure that only lenders/types of lending which are of limited risk to vulnerable borrowers are included in any exceptions.

There are a number of options available for differentiating between transactions where the more prescriptive approach should be applied. It is possible that some form of 'comply or explain' / 'if not why not' approach to following the full prescribed process, as identified in the Commentary Document, might be a suitable way of achieving this. It might be possible to develop a formula similar in approach to the mortgage lending Loan to Value Ratio restrictions, but using a debt to

income ratio.

If any changes are proposed to the applicability of the proposed affordability regulations we would like further submissions to be sought.

We have some concern that the regulations do not include requirements for satisfying section 9C(4)(a) in relation to guarantees. Although the risk that borrower defaults on their loan and a creditor calls on the guarantor for repayment may be low, the potential impact on a vulnerable guarantor could be just as devastating as on the initial borrower. In our view lenders should be required to make similar enquiries of a guarantor as for the borrower, particularly in the case of high cost credit contracts.

We are pleased to see the inclusion of Proposed regulation 4AI (1), which will go some way to limiting the likelihood of borrowers getting into a debt spiral as they use one high cost loan to pay off an earlier high cost loan. However the proposed regulation states that it applies if a lender “has reasonable evidence” that the borrower has been in default on other consumer credit contracts in the past 90 days. We submit that this leaves it open for a lender to say they didn’t feel that they had sufficient evidence for this regulation to come into play. We would prefer this regulation to apply if a lender “has any evidence” that the borrower has been in default on other consumer credit contracts in the past 90 days. It would then be for the lender to make further enquiries to satisfy themselves if the borrower has been in default on other consumer credit contracts in the past 90 days, or not.

Advertising

We are supportive of the regulations proposed in relation to advertising.

We would like the regulations to require high cost lenders to advertise their daily interest rate in addition to the annualised figure. This is important because the interest rate cap of 0.8% applies to high cost loans on a daily basis. A requirement for high cost lenders to advertise their daily interest rate in addition to the annual interest rate is important to allow the Commerce Commission, financial mentors and consumers to easily determine whether a high cost loan is within the cap.

We feel consideration should be given to requiring lenders to present key information in a standardised format to allow borrowers to make effective comparisons between different lenders and different products. Many lenders make information about fees and charges very hard to locate, some even resorting to using so-called “mouse-print” with tiny fonts and compacted lines of print.

Variation disclosure

We are satisfied with these proposed regulations, which we believe will ensure borrowers receive fuller information about the effect of changes to their loan.

Debt collection disclosure

We are pleased to see the detail which must be disclosed to the borrower under these regulations. This should improve borrower’s ability to understand and where necessary challenge collection action taken against them.

Other regulations inserted by the Bill

The new initiative requiring lenders to encourage borrowers to seek financial and budgeting assistance or to contact a dispute resolution scheme is a positive step. With the aim being to

encourage people to seek the appropriate support and advice, we would like to somehow see a range of options being presented to borrowers to meet their many and various needs.

Credit Contracts Legislation Amendment Act Commencement Order 2020

We see no issues with the dates proposed, providing sufficient time for lenders to adjust processes to ensure compliance with the new rules.

Content of the annual return

We are keen to see stronger monitoring and policing of the responsible lending legislation and feel that the types of information listed would be very useful to regulators and others in understanding the consumer credit market, particularly the high cost consumer credit market. Much of this information would be useful to Good Shepherd NZ in understanding its client base and developing alternative low cost products to better meet the essential borrowing needs of New Zealanders living on limited incomes.

Much of the data requested is more useful if it is able to be separated out by interest rate charged. This allows the impact of different interest rates on the variables (e.g. number of loans rolled over; average term of a loan; number of unique borrowers) to be assessed.

As noted above, the current CCCFA legislation does not apply to not for profits delivering no interest loans, and we would want that to continue. Any requirement for not for profit lenders to comply with the proposed type of annual return reporting would impose a significant burden on them, however this wouldn't preclude them from opting to share this data.

Conclusion

Thank you for considering our submission. We appreciate the extensive consultation that has taken place on this issue since 2018 by the Ministry of Business, Innovation and Employment. We are available to discuss any of our submissions, or other issues arising.