

Exposure draft of the Credit Contracts and Consumer Finance Amendment (CCCFA) Regulations 2020

Ministry of Business Innovation and Employment (MBIE)

Te Ope Whakaora – The Salvation Army New Zealand Fiji Tonga and Samoa Territory Submission

General Comments:

1. Overall, The Salvation Army is generally supportive of the amendments outlined in the CCCFA Amendment Regulations 2020 Exposure Draft. The Salvation Army has three main social services engaged with the credit contracts area; our national network of financial mentors or budgeters located in various Salvation Army Community Ministry centres, our national network of Community Finance workers providing advice and access to low or no interest loans products, and the Good Shop vans operating in South Auckland and Porirua. In our estimates, over half of the 120,000-plus New Zealanders that use our social and Christian spiritual services have some sort of problem-debt on credit contract and consumer finance issue. Therefore, we have tried to provide insights, views and opinions on the different options presented in the Exposure Draft based on the clients using our services, and the feedback received from these three specific social services. We will provide our views below following the format used by MBIE in the Exposure Draft.

Background:

2. The mission of The Salvation Army is to **care for people, transform lives and reform society through God, in Christ and by the Holy Spirit's power**.¹ The Salvation Army is an evangelical Christian church and social services organisation that has worked in New Zealand for over one hundred and thirty years. It provides a wide range of practical social, community and faith-based services, particularly for those who are suffering, facing injustice or those who have been forgotten and marginalised by mainstream society.
 - a. The combined services of Te Ope Whakaora The Salvation Army provided support to around 120,000 people in 2019. Our social service includes Community Ministries (CM), Salvation Army Social Housing (SASH), and Addictions, Supportive Accommodation and Reintegration Services (ASARS).
 - b. These services included over 57,000 food parcels to more than 28,000 families and individuals, providing some 2,400 people with short- or long-term housing, nearly 7,000 families and individuals supported with social work or counselling, just over 17,000 addictions counselling sessions, more than 5,500 families and individuals helped with budgeting, other practical assistance to over 6,000 families and

¹ <https://www.salvationarmy.org.nz/church-community/resources>

individuals, 6,500 hours of chaplaincy support, and some 9,000 victims, defendants and families supported at court.

3. This submission has been prepared by the Social Policy and Parliamentary Unit (SPPU) of The Salvation Army. The SPPU works towards the eradication of poverty by encouraging policies and practices that strengthen the social framework of New Zealand. This submission has been approved by Commissioner Mark Campbell, Territorial Commander of The Salvation Army's Aotearoa New Zealand Fiji Tonga and Samoa Territory.

4. Affordability and Suitability

a. General Comments

- i. We believe one unintended consequence of the tighter affordability and suitability provisions could be an increase in co-borrowing. This could be where family members or friends who are not direct beneficiaries of the loan are brought on as co-borrowers for a client. This would in turn place the co-borrower in difficult circumstances if there is a default on the loan. This scenario might increase with these new regulations.
- ii. One option to remedy this would be to ensure in the affordability assessments that all borrowers, including co-borrowers, must be required to have or gain a direct and continuous benefit from the loan purpose. Lenders might be able to justify this easier if the loan purpose is a car (i.e. lenders saying that the co-borrower could be a passenger in the car sometimes). Therefore, making the standard where the benefit is direct and continuous for a co-borrower might limit the likelihood of unsuitable co-borrowing from the principal borrower's family or friends. Also, this higher standard might help reduce the pressure that can go on people to co-borrow or guarantee a loan for a friend or family member. We submit the majority of these new amendments should apply to assessing a co-borrower's affordability for the loan.
- iii. These affordability assessment changes will likely restrict lenders from lending to people without their own bank accounts. We believe this is fine. In our view, if someone does not have their own bank account, then this is an indication that there are some basic issues around financial stability that need to be addressed before any debt is incurred.

b. Specific comments on amendments

- i. **New regulation 4AA** – We support this amendment. We particularly endorse regulation 4AA(2)(e) and (f) about the onus on the lender to check whether any of these additional features (if any) should come under this financing or be paid separately by the borrower outside of this credit arrangement. This allows the borrower to ideally assess again whether or not this borrowing is required and meets their specific needs.
- The specific requirements detailed in the Exposure Draft are sufficient to help ensure a good affordability assessment is being undertaken. These requirements cover many of the realities that our clients are facing.
 - However, one possible additional requirement could be for the lender to assess that any co-borrowers or guarantors to the credit arrangement directly benefit from the main borrowing. We discuss this more below.
 - Also, it is vital to determine whether the borrower is currently applying for other loans, even if it is with different lenders. In the *Survey of financial mentoring and budgeting services in Aotearoa on high cost loans, debt collection and other consumer credit issues*² report released in 2019, the Justice Innovation Centre notes that budgeters reported that most clients had more than one loan at one time. This is illustrated in the figure below. A good affordability assessment must ensure that clients do not have too many loans (particularly high cost short term loans) operating at the same time because this could lead the borrower to greater financial hardship.

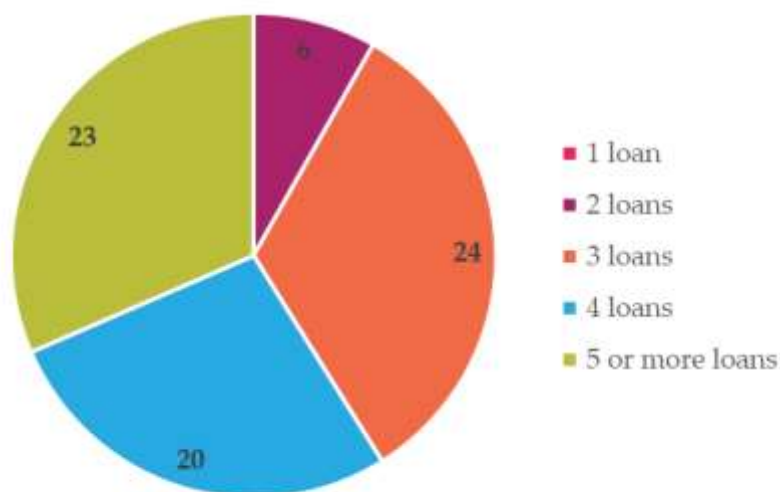


Figure 3. Average number of loans held by presenting clients, by agency (n=73) 3

² <https://www.fincap.org.nz/wp-content/uploads/2019/04/REPORT1.pdf>

³ Ibid, page 13.

- In regulation 4AA(2)(b), there is the requirement for the lender to check the purpose of the loan. We submit that the lender should also check whether the borrower has taken out a loan for this same purpose with another lender, regardless of whether they were successful or not with a previous loan application. In our Salvation Army Community Finance service, we had a person apply for a loan for a car with us after they took out a loan for another car the week before. It would be irresponsible to lend in this kind of situation.
- Also, there is no clear interpretation of what constitutes a “material change” under regulation 4AA. We are concerned that in a revolving credit arrangement, a lender could say topping up a loan to its original limit (e.g. client borrowed \$1000, balance is now \$300 and they want to take it up to \$1000 again) is *not* a material change. In this example, we contend this is indeed a significant material change and therefore a new affordability assessment should be undertaken. This new assessment can help ensure this topping up is still within the responsible lending rules.

ii. **New regulation 4AB** – We support this new amendment.

iii. **New regulation 4AE** – The Salvation Army submits that greater clarity is needed around what constitutes a ‘reasonable surplus’ in this amendment. We believe the following factors can contribute to greater clarity here;

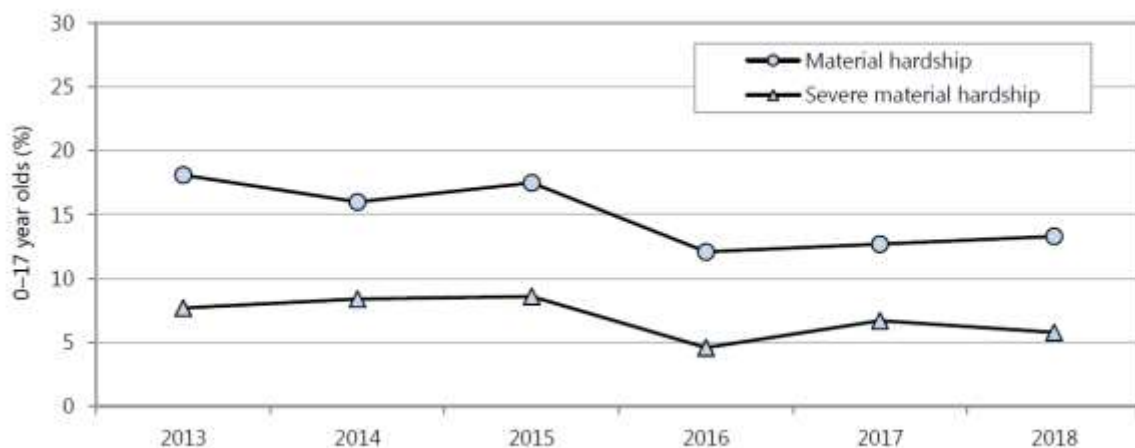
- Consider the number of dependants the potential borrower has;
- The amount should be based on percentage of income rather than an actual dollar amount. This would reflect the reality that the greater someone’s income level the higher the level of discretionary spending they will have come to rely on.
- There is good guidance from the Australia Securities and Investments Commission’s (ASIC) Regulatory Guide 209 Credit licensing: Responsible lending conduct that states the lender must have regard to *how much of a surplus there is between the money the consumer is likely to have remaining after their ongoing expenses have been deducted from their after-tax income and the proposed additional repayments.*⁴
- We submit this assessment is particularly important for the clients we work with because most are on welfare benefits or lower incomes. Therefore, their incomes are already limited and so a robust affordability assessment can ensure that people do not unnecessarily face any more hardship. Clearly what constitutes a reasonable surplus is different for different people and families.
- Additionally, in the context of many of the people and families we work with, there are good insights on what could contribute to a

⁴ <https://download.asic.gov.au/media/5403117/rg209-published-9-december-2019.pdf>, page 69.

good definition of a reasonable surplus from the *Child Poverty Monitor Project* that tracks child poverty in our nation.⁵ The *Child Poverty Monitor 2019* states that *material factors influence the day-to-day living conditions in which children are growing, learning, and playing. There are items, opportunities and material conditions that most people agree are essential for children to grow with dignity in their standard of living, and essential for the people who love them to add value to their lives and development. These can include children having suitable clothes and shoes, leisure activities, a good bed, means to keep warm, and sufficient food. Essentials also include whānau with children having resources to pay utility bills on time, cope with unexpected demands on household budgets, enjoy occasional holidays, and access health services when they are needed.*⁶

- This report added that in 2018, 13% of New Zealand children (approximately 148,000) were in households that cannot afford six or more specific consumption items that most people regard as essential. Examples included in the index are where the respondent does not have two pairs of good shoes, puts off a visit to the doctor, or the household is not able to pay the electricity or gas bills on time.⁷ This reality is captured in the graph⁸ below taken from the 2019 report that shows this material deprivation.

Figure 8. Children in households living in material hardship, by hardship level, 0–17 year olds New Zealand 2013–2018



Source: Stats NZ Child Poverty Statistics. Years ended June

- This discussion is crucial because any baseline definition of a reasonable surplus must consider access to essentials and fundamental resources and services for people and families. Again,

⁵ <https://www.childpoverty.org.nz/about>

⁶ https://ourarchive.otago.ac.nz/bitstream/handle/10523/9827/CPM_2019.pdf?sequence=3&isAllowed=y page 11.

⁷ Ibid, page 12.

⁸ Ibid.

for our clients, considering material deprivation is vital to having a definition of reasonable surplus that meets the needs for lower income families who are more prone to financial hardship than other New Zealanders.

- iv. New regulation 4AF** – We strongly support this new amendment. The requirement to consider any likely changes to income is difficult for lenders to assess. But for our clients, this is very important. These changes can be anticipated, especially if there is good communication and information exchange between the borrower and lender. The reality for many of our clients entering credit arrangements is that their likely income can and does change. For example, a beneficiary might be transitioning to or from part or full time employment which can affect their welfare benefit. Changes to these abatement rates were announced in 2019.⁹
- v. New regulation 4AG** – We support this regulation. It is positive that other factors or realities such as sending money overseas regularly feature in this part of the assessment. This kind of spending is a reality for many of our clients, particularly Pacific families with church commitments and/or supporting family members in their home Pacific island nations. The various parts of this regulation 4AG are positive aspects of the assessment, especially in situations where expenses are not necessarily paid electronically but instead are paid with cash. We also support the requirement for lenders to reconcile any discrepancies in the information the borrower has provided.
- vi. New regulation 4AH** – We generally support this regulation. It will be difficult to try and get an accurate picture of the expenses for borrowers. The reasonable person test in the Exposure Draft is logical. But these comparisons need to account for geographical and ethnic differences between borrowers which then impact on what is considered a reasonable person. This approach seems to be the best way to get a realistic assessment of expenses. We also believe that the age of dependants should be a requirement in this regulation. But in multi-generational households, the dependants might also include elderly family members and/or people with disabilities. These need to be considered within this regulation as well.
- vii. New regulation 4AI** – We strongly support the inclusion of this presumption when the loan in question is a high cost short term loan. We understand that this definition of a high cost consumer credit contract is in line with the Principal Bill/Act. But we submit that a more accurate definition of what is really a high cost short term loan in a New Zealand context. This was also

⁹ <https://communitylaw.org.nz/community-law-manual/chapter-22-dealing-with-work-and-income/benefit-rates-how-much-youll-get-and-how-much-you-can-earn/how-earning-money-will-affect-your-benefit-abatement/>

one of the key recommendations of the *Harm from high-cost lending* report from BERL Economics in 2019.¹⁰

5. Advertising

a. Specific comments on amendments

- i. **New regulation 4AK** – We support all aspects of this amendment.
 - We are interested in seeing if there is guidance on the length/speed of this information required under this amendment, especially for TV and online advertising. The borrower must have adequate time to read and understand the payment options of this loan and not be confused or potentially duped by super-speed advertising.
 - The Exposure Draft refers to public or systematic advertising. Does this cover loan advertisements that come via text messaging or similar apps? Many of our budgeting clients are texted by loan companies with details of their loan products. We contend this is public or systematic advertising and so should fall within the requirements of this regulation 4AK. Also, does advertising via online gaming fall within this definition? Through our Salvation Army Oasis Gambling Harm service, we have advocated for stronger regulation in the advertising that is shown in online gaming and other online platforms.¹¹ Our gambling workers report gambling advertisements being shown popular games such as Fortnite and Candy Crush. This could be potentially damaging to many, particularly children and young people. In the same token, advertising of loans through similar online platforms must be monitored and regulated stronger so they can fall under this amendment.
 - Additionally, with the fast pace of online and digital development, these regulations must be flexible enough to cover new and relevant emerging technologies.
- ii. **New regulation 4AL** – We strongly affirm this new regulation. The requirement to disclose what the mandatory credit or establishment fees are is very positive.
- iii. **New regulation 4AM** – We support this amendment. Disclosure of any fees related to that loan, especially if it has been advertised as ‘interest-free’, is vital for the consumer.

¹⁰ <https://www.fincap.org.nz/wp-content/uploads/2019/05/The-harm-from-high-cost-lending-BERL.pdf>

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https://www.salvationarmy.org.nz/sites/default/files/files/%5Bfile_field%3Atype%5D/online_gambling_review_submission_-_the_salvation_army_300919.pdf

- iv. **New regulation 4AN** – We submit that the ‘15-minute-approval’ phrases, or similar fast-paced assessment phrases, are very misleading. For desperate consumers looking for urgent financial help, these kinds of phrases are extremely enticing and may be seen as an easy option to get quick money. The advertising should not be allowed to invoke emotional responses like this, especially for lower income consumers with limited financial means. Our view is this kind of advertising is deliberate and targeted to lower income New Zealanders and is blatantly unjust.
- v. **Advertising regulations in the Bill** – We support this addition. However, we submit that the inclusion of this information of the risk warning and MoneyTalks website on a lender’s website and forms is clearly prescribed to ensure these additions are not in obscure or un-readable parts of the lender’s site.

6. Variation disclosure

- a. We are fully supportive of these amendments. The requirement to make a variation disclosure and disclose the effects of any changes is very positive. It is also helpful that guarantors can also be informed of this disclosure. The impact of a variation disclosure for the clients we measure is significant, particularly if they are on very low incomes and facing extreme financial stress at the time there is a variation in the details of the loan.
- b. We submit that any disclosure under this regulation should also include a link or direction to the MoneyTalks website or information. This is similar to the requirements in the advertising section above and do not seem too onerous for lenders. The value of including the MoneyTalks information is that for major changes of an agreement, the borrower should have information and access to support with their financial situation. This is particularly relevant for borrowers with high cost loans.

7. Debt collection disclosure

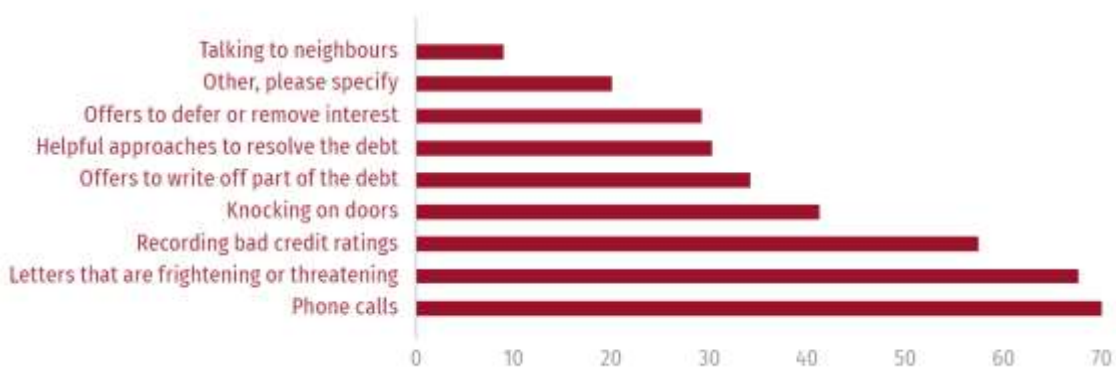
- a. The Salvation Army released a discussion paper titled *Debt collection and repossession in Aotearoa* in 2019.¹² This paper contains our main recommendations for this area of the credit contracts space.
- b. We agree that greater prescription of this debt collection disclosure can increase transparency and encourage debtors to get more help when needed. Our budgeters

¹² <https://www.salvationarmy.org.nz/article/debt-collection-and-repossession-aotearoa>

engage with clients during their loan terms but also when a client has defaulted and had the loan pass into the debt collection or repossession phase. This can be an extremely taxing and time consuming area of work for our financial mentors and budgeters. Still, it is vital for information about the help available through mentors or MoneyTalks is presented to clients because of the highly-emotional and stressful debt collection or repossession processes.

- c. One of the key problems in this area is the lack of clarity about when and how a loan has been passed onto a separate debt collection agency. Connected to this is often the lack of clarity in the fees this new organisation has imposed on the debtor.
- d. The increased transparency sought for in these specific regulations should be based on the actual behaviours of the debt collectors. In the 2019 *Survey of financial mentoring and budgeting services in Aotearoa on high cost loans, debt collection and other consumer credit issues* report, budgeting services reported back on the types of behaviours that many debt collectors employed.¹³ The survey shows that punitive and aggressive behaviours are used by some debt collection agencies. This is detrimental to the wellbeing of the debtor (and their family), but also the debtor's neighbours. The figure below taken from this report identifies the key areas where better disclosure and greater transparency is needed.

Figure 12: Behaviours from debt collectors as reported by budgeting agencies



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- e. **Unpaid balances** – We support this aspect of the regulation. The idea of giving information to allow borrowers to challenge any possible inaccuracies is helpful. But for many of our clients, there is a need for advocacy and support from others at the debt collection phase. Again, linking to main sources of help for clients, particularly borrowers of high cost loans, is likely to ensure they can indeed challenge any inaccuracies in the disclosed unpaid balances.

¹³ Reported in the report detailed in Endnote xii above, page 20.

¹⁴ Supra note xii, page 20.

- f. **Continuing disclosure** – We support the disclosure of debt collection charges under this section.
- g. **Excluded fees** – We strongly support including any such fees in the disclosure process. We can understand the apprehension that this information could be difficult for consumers to navigate. But we come back to the importance of including in these communications (ideal before debt collection has actually started) all avenues of help the consumer has available to them so they can get support to navigate through this information. We do not consider the potential inclusion of not-yet incurred costs as intimidating. Instead, the greater transparency, although stressful for the client, means that they have all the information relevant to their situation can ideally seek more help for their situation.

8. Other regulations

- a. We support the regulations relevant to clause 59 of the Bill. We have discussed our views of this in the sections above.
- b. We affirm new regulation 5A(3) about MoneyTalks, and 5A(2) and (4) about the disputes resolutions schemes available to them. We acknowledge that this part can be very difficult for the clients we work with. For example, in our submission to the recent Banking Ombudsman Scheme Review, we discussed the complexity for our budgeters and their clients have in navigating between different disputes schemes.¹⁵ For the purposes of these regulations, including this information is crucial. But our wider advocacy would be that the recent Australian experience in this space provides good lessons. In April 2017, the Review into Disputes Resolution and Complaints Framework was returned to the Australian Government. The Report makes 11 recommendations that represent an integrated package of reforms that will see the EDR framework well-placed to address current problems and ensure it is designed to withstand the challenges of a rapidly-changing financial system. The Panel’s central recommendation is the establishment of a new single EDR body for all financial disputes (including superannuation disputes) to replace FOS, CIO and SCT (other schemes).¹⁶ Therefore, a true consumer-centric development would see the consolidation of the multiple New Zealand disputes resolutions schemes would help consumers, particularly vulnerable ones, navigate through these credit arrangements and issues better.
- c. We support the inclusion of the regulations that prescribe how the interest rate cap will be calculated.

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https://www.salvationarmy.org.nz/sites/default/files/files/%5Bfile_field%3Atype%5D/20190927sppsubmissionbanking_ombudsman_scheme_review.pdf

¹⁶ https://static.treasury.gov.au/uploads/sites/1/2017/06/R2016-002_EDR-Review-Final-report.pdf

9. Commencement Order

- a. We do not have any revisions of the draft commencement dates and so we support this draft.

10. Content of the annual return

- a. We can appreciate that these are significant requirements on lenders. Yet, the data requirements listed here are comprehensive and would greatly assist the Commerce Commission in strengthening this lending and borrowing sector. We therefore support all of the information listed in the Exposure Draft. Some other possible additions include:
 - i. Ethnic breakdown of borrowers
 - ii. The number of clients that have been linked successfully to MoneyTalks, a budgeter, and/or a disputes resolution scheme
-