20 October 2022

Submitted via: consumer@mbie.govt.nz

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

Copied to: Privacy of natural persons

RE: Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2022 and updated Responsible Lending Code Consultation Paper

Good Shepherd NZ welcomes the opportunity to comment on the Ministry of Business, Innovation & Employment (**MBIE**) Credit Contracts and Consumer Finance amendment Regulations (No 2) 2022 and updated Responsible Lending Code Consultation paper (**Consultation Paper**).

Introducing our organisation and community

Since 2013, Good Shepherd NZ has been providing small, microfinance 'Good Loans' to people who are on limited incomes and financially excluded from mainstream banking services, in partnership with BNZ, and supported by Ministry of Social Development. Good Loans are used to purchase essential items such as second-hand cars, devices for school and since the beginning of October 2022, we have phased out our low interest loans and all Good Loans are now entirely interest-free.

We provide Good Loans directly via our phone-based service, as well as working with social service providers Aviva, Budget First and Presbyterian Support Otago who provide loans face-to-face in their own communities. To date, we have loaned almost $12 million, saving clients an estimated $6 million in interest and fees compared to borrowing from high-cost lenders.

To meet the needs of people who applied for a Good Loan but were unable to meet the affordability criteria due to existing high-cost debt, we developed DEBTsolve, a programme that combines debt advocacy and coaching with up to $15,000 for debt solution loans.

We also provide Drive car insurance, with low premiums and no excess on the first claim. This product was developed in partnership with Suncorp to meet the needs of people who were using a Good Loan to purchase a car but not taking out insurance.

We are piloting a specialist economic harm support service for people to address the financial impact of family violence. This combines advocacy and mentoring alongside specialist family violence loans for people who don't meet the traditional criteria for Good Loans, but whose financial situation has been impacted by family violence.

General comments related to this consultation

Recommendation: Decision makers in current and future Governments maintain and continue to strengthen our current Credit Contract and Consumer Finance Act safe lending laws so that:

- Financial mentors and other community workers have the tools to reverse harm caused by unfair lending that was always going to be unaffordable.
- All lenders are better deterred from unfair and unaffordable lending that would lead to harm in our community.

We make the above recommendations because:

- Since the recent tightening of responsible lending laws our clients are becoming more aware of their rights and able to identify what lending they shouldn't have had access to in the past.
- Creditors are now providing affordability assessments when asked. Previously we often had difficulty obtaining these from lenders, often needing to threaten a complaint to the Privacy Commission and Commerce Commission before they would provide these.
- Since the changes we have seen clients who have been declined a loan due to a more robust affordability assessment and then referred to the appropriate service for support.
    - 'Sophia' is a single mum and needed a car to get her 3 children to school. She went to a car yard who declined her request for finance for a vehicle. Sophia was then given Good Shepherd NZ's phone number and told we might be able to provide some support for her situation, and possibly a lower interest car loan.
- Since the changes we have seen a reduction in the number of high-cost loans that clients are presenting with to our service.
- We have worked with clients to understand what it means to be in significant hardship. In doing so these clients have been able to approach their creditors and follow the hardship process.

We also note the need to continually review and address challenges and issues as they are identified. By way of examples:

- Good Shepherd NZ is now providing unsecured microfinance loans up to $15,000 with no interest, fees or charges. While these loans are not *consumer credit contracts,* they are *credit contracts* and therefore subject to the CCCFA in regard to debt collection. With loans of these size, we will need to instigate processes to attempt to recover this capital, and as a charitable organisation with a social purpose, Good Shepherd NZ is committed to best practice in dealing with clients all our microfinance work. However, the obligations and penalties prescribed under the CCCFA are onerous in our circumstances, noting also that our directors are volunteers.
- Good Shepherd NZ is currently in initial consultation with the New Zealand Bankers Association to work through some of the difficulties apparent in joint lending when family violence is present. Some of these challenges will require action from lenders as well as legislative support to enable banks to provide appropriate and fair solutions for their customers.

Response to the consultation paper questions

Question 1: Do you agree with amending the definition of 'listed outgoings' along the lines proposed? Do you have any comments on the wording of these changes?

Recommendation: MBIE when drafting to implement changes removing checks around truly discretionary expenses, specifically require lenders to consider what is, and is not, discretionary in each individual circumstance.

The proposed drafting of the change of regulation 4AE creates a risk that lenders will misclassify expenses and their affordability assessments will underestimate 'listed outgoings,' which will cause harm through the creation, or compounding, of financial hardship.

We make the above recommendations because:

- A particular item may or may not be discretionary for a particular borrower in a particular circumstance. For example, a family with a dog is required to have the dog registered. In a budget this expense would be categorized under 'pet expenses.' This particular pet expense is not discretionary as it is a legal requirement for dogs to be registered.
- Some expenses would be considered discretionary for some individuals but not for others. If the individual is dealing with an addiction, expenses related to gambling and alcohol may not realistically be able to be reduced to make a loan affordable.
    - 'Rachel and Jo' applied for a loan with Aotea Finance for a car. The loan was approved but 'Rachel' the main income earner was not able to make the repayments consistently within a few months of getting the loan. When we reviewed the affordability assessment, Aotea had reduced the amount spend on alcohol to make the loan affordable. If Aotea had discussed this with Rachel and Jo they would have found out that Jo is an alcoholic. The Ombudsman agreed that in these clients' situation alcohol was not a discretionary expense and it was not realistic to reduce the alcohol spend to make a loan affordable.
- Each client's situation is different. 'Sam' works long hours to support his wife and children. Sam's wife has a back injury and on the nights that Sam must work over dinner time she buys takeaways. The clients' bank statements show a high takeaway spend but also a higher-than-expected grocery bill as Sam often cooks for his mother who lives in a retirement home. Neither the grocery bill nor the takeaway spends are expenses that can be reduced by this particular family in their particular situation.
- Spending on dental, medical, or optical care cannot be classified as 'discretionary' just because the client might be able to receive support from work and income. Clients are not guaranteed to get access to the grants and in many cases, these may not cover the full cost of the procedures.
- Some clients have a moral and ethical obligation to support their whanau in another country and as such money transfers cannot always be considered discretionary.
    - 'Leila' is the oldest child and as such has a cultural obligation to support her aging parents who live in the Islands. Leila sends money to her family regularity using Western Union. While this obligation maybe a challenge for Leila she does not see this as discretionary spending.

Question 2: Do you agree with amending the definition of 'relevant expenses' along the lines proposed? Do you have any comments on the wording of these changes?

Recommendation: MBIE, when drafting to implement the removal of truly discretionary expenses from 'relevant expenses' should ensure that the onus is on lenders to meet a high threshold of establishing reasonable expectations around what is, and is not, discretionary in each individual circumstance.

The proposed drafting of the change of regulation 4AE creates a risk that lenders will misclassify expenses and their affordability assessments will underestimate 'relevant expenses,' which will cause harm through the creation, or compounding, of financial hardship.

We make the above recommendations because lenders should always have a full financial conversation with each client to fully understanding their particular financial situation. Lenders should consider the financial obligations of each client and their family. Points made in relation to Question 1 are also relevant to this question.

Question 3: Which of the two options for guidance in the Draft Code relating to treatment of discretionary expenses is most appropriate and why? Do you have any comments on the wording of either of the options?

Recommendation: Strengthened drafting along the lines of 'option 1' in the Consultation Paper should be implemented by MBIE to realise the instructions for change. This style of drafting acknowledges that the circumstances of borrowers are unique and this needs to be considered by all lenders when deciding what is truly a discretionary expense. The time within which borrowers may be able to cease or reduce a particular expense may also vary.

We make the above recommendations because it requires lenders to have a full financial conversation with clients and not allow blanket assumptions to be used in place of assessing the actual borrower's actual situation.

- One of our clients, 'Joshua', experienced hardship when he lost his job due to Covid. Whilst reviewing his application for hardship a lender queried the amount allocated for his phone bill in his budget. The lender suggested that Joshua stops using so much data on his phone and get a standard internet connection through a provider such as Spark. Joshua was not able to access standard internet providers due to the rural location in which he lived. The service he could access was over and above the cost of mobile data that he consumed by using his phone.

Question 4: Do you agree with the approach to excluding some credit cards as proposed in 4AL(2A)? If not, what changes would you make?

Recommendation: MBIE's drafting of regulations in response to instructions to stop the double counting of everyday expenses paid by credit card without incurring charges should be precise and not leave room for harmful lending models to emerge unchecked.

We make the above recommendations because many of our clients use credit cards to pay for their essential costs such as internet and food. Without taking into account the full usage of the credit card a lender would underestimate the budget and not get an accurate representation of a client's day to day costs.

- 'Dany' has his internet and insurance monthly costs debited from his credit card. This ensures that he can work remotely for his part time job as well as ensure his car is covered in case of an accident. These are both essential expenses.

Question 5: Is any additional guidance needed for the exception in 4AL(2A) for certain credit cards? If so, what should this guidance state?

Recommendation: MBIE expand the proposed drafting in the Responsible Lending Code guidance related to the instructed change to avoid double counting of everyday expenses paid by credit card without incurring charges. This expanded drafting should ensure lenders are guided to ask about, and consider, each potential borrower's unique circumstances and whether charges will likely occur on the revolving credit card arrangements following additional lending.

We make this recommendation because:

- Credit cards are sometimes offered to clients when applying for a loan. E.g. a Finance Now credit card provided while getting a loan for a cell phone.
- When clients have an unforeseen situation that leads to hardship they are able to get into further hardship by accessing a revolving credit account.
    - 'Hannah' broke her phone in a car accident. Due to this she applied for finance at Noel Leeming to get a $500 cell phone. Hannah was given a credit card with a limit of $1500.00. Hannah was able to service the repayments for $500 for the cell phone but she was not able to service the monthly repayments for the full Credit Card limit as the lender had not asked her about the future expenses to replace her car.

Question 6. Do you agree with explicitly excluding BNPL in its entirety from 4AL(2)? If not, are there alternative ways, that would be workable for lenders, to impute future BNPL expenses based on a borrower's existing BNPL facilities?

Recommendation: The Minister for Commerce and Consumer Affairs and Cabinet extend CCCFA requirements to Buy-Now-Pay-Later (BNPL) lending to prevent the harm caused to the community by this lending. This would have the added benefit of avoiding unnecessary complexity or significant gaps in the proposed redrafting of CCCFA related regulation.

We make this recommendation because:

- A sizeable proportion of Good Shepherd NZ clients get into financial difficulty with BNPL, often when credit limits are increased after the client has repaid their initial BNPL borrowing.
- BNPL tends to perpetuate and worsen the debt cycle especially when used essential purchases such as food
    - 'Abbey' is a sole parent who purchased winter clothing for her son using BNPL. The repayments were tough because they came out before Abbey could purchase food, often leaving Abbey too little money to purchase a full week's grocery shop. After 4 weeks of not getting enough food, Abbey started running out of staples in her cupboards. Abbey then used BNPL facilities to stock up and get discounts on bulk items. Whilst BNPL was helpful in the short term. In the long-term Abbey was forced to use BNPL to continue to purchase her food as she was not able to pay for her weekly grocery bill and the BNPL repayments.
- The timing of when BNPL payments are direct debited from a client's account is based on the date a purchase is made – e.g. if a client makes one BNPL purchase a day for three consecutive days their second (weekly) payments will come out on three consecutive days the following week. This makes it harder for clients to budget and get out of hardship.
- BNPL is just another form of credit, yet our clients don't understand this because it is not treated the same as other types of consumer credit. This needs to be rectified to help clients better understand BNPL and its impact on their household budget.

Recommendation: MBIE does not exclude BNPL lending from the revolving credit section of CCCFA related regulation but instead implements specific drafting to manage the risk related to this type of lending and implementing instructed policy changes.

Question 7. In light of excluding BNPL from 4AL(2), is any further guidance in the Code necessary to address the treatment of BNPL expenses? If so, what should this guidance state?

Recommendation: MBIE drafts extended guidance in the Responsible Lending Code instructing lenders to obtain sufficient information to understand the nature of revolving BNPL lending available to a potential borrower. The guidance should also instruct lenders to establish whether additional BNPL lending has recently been extended to the borrower or whether they have recently incurred any fees related to such borrowing.

We make this recommendation because Good Shepherd NZ regularly sees clients:

- with multiple BNPL facilities at the same time.
- over time increasing the amount of their BNPL borrowing often after being offered an increased limit and on occasion when a client is already in financial hardship
- paying fees for missed payments

- 'Jo' had high debt repayments after losing his job. To compensate he utilised BNPL to cover the shortfall in income, to purchase clothing that was on sale. He was encouraged to use BNPL for the purchase because the discount only applied if he did. Jo then needed to purchase food and but had no money available as his BNPL payment had just been direct debited from his account. He needed food so obtained another BNPL facility to pay for his food. This cycle continued until Jo had over $165 a week taken out of his account to pay for his BNPL debts. Jo was not able to plan or budget with his ever-changing amount of direct debt and the borrowing cycle he was stuck in.

Question 8. Do you agree with the way that the Draft Regulations relating to the expanded exception for variations and replacements of existing credit contracts is phrased? If not, what changes would you make?

Recommendation: The drafting of regulations to allow a lender to replace a borrower's existing debt from other lenders set a clear onus on that lender to meet a high threshold of checking this lending will be better than alternatives. It is important borrowers are not prevented from accessing existing hardship assistance entitlements, insolvency options and available support from community workers. Any lending permitted by this change must ease rather than create or compound existing, or emerging hardship faced by the borrower.

We make this recommendation because:

- Good Shepherd NZ regularly sees clients who have approached alternative lenders when they are struggling to make repayments on their current loans. It is important these lenders do a full financial review and affordability assessment to ensure that clients are put in a better financial situation by consolidating their debts rather than compounding and extending their problems.
- If people cannot afford the current repayments on existing borrowing:

- It is unlikely the client can afford additional borrowing
- Often a consolidation loan will 're-age' the existing debt, meaning clients will pay smaller instalments but over a longer duration than the original loans. This means the clients will end up paying far more in interest
- Consideration should be given to whether the initial borrowing was actually affordable (and whether the loan should ever have been provided)
- Dealing with the current creditor, under hardship, or otherwise is usually a useful option
- Resorting to additional borrowing often contributes to and reinforces their debt spiral.

Question 9. Which of the two drafting options for expanding the exception for variations and replacements of existing credit contracts would be most workable and why?

Recommendation: Strengthened drafting along the lines of 'option 2' in the Consultation Document be implemented by MBIE. The strengthening should realise instructed changes to allow debt replacement that is truly in the best interests of the borrower. This approach to drafting is preferable because it doesn't allow any further charges to a potential borrower without clear justification and accountability from lenders.

We make this recommendation because we regularly work with clients who have been put into a worse position by refinancing their existing debt with commercial lenders.

- 'Danielle' engaged with Good Shepherd NZ's DEBTsolve service to get help with her unsustainable levels of debt. Danielle had recently refinanced her borrowing and as part of the refinancing the loan was secured against her vehicle. Danielle experienced financial hardship, was unable to pay the new repayments in full and was issued a repossession notice. The refinancing had not solved her financial problems but now she was at risk of having her car repossessed and was no longer able to access a NAP.

Question 10. Do you agree with the suggested guidance in the Draft Code relating to the expanded exception? If not, what changes should be made to the Draft Code guidance?

Recommendation: Proposed guidance in the Responsible Lending Code relating to proposed drafting for debt replacement be expanded to set a high standard for establishing that replacing existing consumer lending is truly in the best interests of the borrower. Where the purpose of replacing existing lending is to reduce or avoid financial difficulties then the Responsible Lending Code should note that the borrower is a 'vulnerable borrower' as discussed on page 98 of the Responsible Lending Code version revised June 2022.

Question 11. Would any of these changes require changes to lender systems before they could come into force? If so, what are the likely timeframes for making these changes?

No comment

Conclusion

Thank you for considering our submission.

Please contact Matt Halsey on Privacy of natural persons to discuss any aspect of this submission further.

Ngā mihi,

Matt Halsey

Matt Halsey (He/him)
Development Manager – Good Loans
Good Shepherd NZ

M: Privacy of natural persons
W: goodshepherd.org.nz
E: Privacy of natural persons