



**Ministry of Business, Innovation and Employment (MBIE)
Draft Responsible Lending Code (the Code) for Consultation**

The Salvation Army New Zealand Fiji and Tonga Territory Submission

BACKGROUND

1. The Salvation Army is an international Christian and social services organisation that has worked in New Zealand for over one hundred and thirty years. The Army 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.
2. We have over 90 Community Ministry centres and Churches (Corps) across the nation, serving local families and communities. We are passionately committed to our communities as we aim to fulfil our mission of caring for people, transforming lives and reforming society through God in Christ by the Holy Spirit's power.¹
3. This submission has been prepared by the Social Policy and Parliamentary Unit (SPPU) of The Salvation Army. This Unit works towards the eradication of poverty by encouraging policies and practices that strengthen the social framework of New Zealand.
4. This submission has been approved by Commissioner Robert Donaldson, the Territorial Commander of The Salvation Army's New Zealand, Fiji and Tonga Territory.

¹ <http://www.salvationarmy.org.nz/our-community/mission/>

RESPONSES TO CONSULTATION QUESTIONS

5. INTRODUCTION

5.1 *Please provide any comments you may have on the ability for the lender to make a judgment about the number of inquiries and the extent of information sought as well as the extent of the assistance that should be provided based on specified factors in the Code. Does this approach strike the right balance between consumer protection, providing certainty for lenders, and minimising unnecessary compliance costs?*

- The Salvation Army submits that the Code strikes a fairly even balance between the needs of both lenders and consumers. In particular, we support the guidance that lenders should make more enquiries where consequences of default are higher or when they are assessing substantial hardship.
- We submit that more guidance for lenders is important, especially to ensure that the true object of the Credit Contracts and Consumer Finance Amendment Act 2014 (CCFA 2014) is fulfilled. Responsible lenders who have a strong responsible business model will likely benefit from this Code as it guides their own business practices, while also encouraging better informed consumers to cautiously enter into credit agreements.

5.2 *Please provide any comments you may have in relation to the aim that the Code be technology neutral, and whether the guidance in the Code allows for technology neutrality (including by reference to specific aspects of the guidance).*

- We fully support the Code being technologically neutral. This provision is important given the popularity of, and access to, internet access. In our experience, many of our clients access credit arrangements via numerous mediums including face-to-face, telephones and on the internet. We submit that the guidance offered in this Code does allow for technological neutrality. However, the crucial part is how this is actually done by these lenders. For example, for the requirement to assist borrowers and guarantors to make informed decisions for on-line lending, we recommend that lenders use the simple language and formats described in the Code for their web pages. This could involve web pages that are not too 'busy' or crowded with information, and also navigation tabs on web pages that are simple and efficient to use.

6. OBLIGATIONS THAT APPLY BEFORE AND THROUGHOUT THE AGREEMENT

6.1 *In your view, will this guidance: (1) protect the interests of consumers; (2) promote the confident and informed participation in credit markets by consumers; and (3) promote and facilitate fair, efficient, and transparent credit markets? Please provide reasons as to how it may or may not do this.*

- The Salvation Army submits that this Code, and the CCCFA 2014 itself, go a long way to protecting the interests of vulnerable consumers. The key element now will be the tight monitoring and enforcing of these provisions. We sincerely hope that the Code will ensure more informed participation by consumers into credit markets. But this is often difficult to ascertain, particularly as vulnerable consumers can at times make desperate decisions. Ideally, we hope this Code will discourage lenders from engaging in predatory business strategies or models. This in turn will likely lead to consumers requiring credit having responsible lenders available to them. Additionally, the fair and transparent credit market mentioned above can only be possible if the CCCFA and its subsequent Code and Regulations are actively monitored and enforced by key agencies.

6.2 *Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities? Please provide any comments you may have on whether the guidance (and which aspects) should be more prescriptive, or more flexible, and the reasons for that.*

- The Salvation Army submits that the guidance in this section is sufficiently clear to encourage responsible lending practices. In particular, we are very supportive of the clarity and detail in the sections discussing compliance from staff and those acting as agents of the lender. In our experience, it is critical that a lender's staff and agents act responsibly as they, and not a lender's owners or management, are the usual point of contact for consumers. Well-trained and informed staff will help ensure consumers are treated with integrity, and also ensure the business as a whole is outworking responsible lending behaviours and practices.

7. ADVERTISING

7.1 *In your view, will this guidance: (1) protect the interests of consumers; (2) promote the confident and informed participation in credit markets by consumers; and (3) promote and facilitate fair, efficient, and transparent credit markets? Please provide reasons as to how it may or may not do this.*

- We are very supportive of the guidelines in this section of the draft Code. We particularly endorse the guidance around the Content of Advertising, Definition of Confusing, and High-cost Short-term Credit Agreements sections. Also, we submit that the exclusions in section 3.5 of the draft Code about advertising practices that lenders should *not* engage in is very sound and beneficial to consumers, particularly vulnerable borrowers. However, we submit that this list should not be final because unscrupulous lenders can always develop new irresponsible business practices that must be identified and stopped.
- We are in favour of section 3.5 being worded as follows; *irresponsible advertising practices from lenders includes, but is not limited to, the following.* We propose this or similar wording to capture any future irresponsible advertising behaviour.
- These guidelines should be technologically neutral, particularly for on-line advertising for high-cost short-term credit. We have discussed this approach above in section 5.2 of this submission.

7.2 *Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities?*

- Yes, we believe it does provide this certainty for all parties.

7.3 *Do you think the specific practices set out in the guidance will lead to consumer benefits in the form of greater transparency of credit products and key features of the product? Please consider both the value of the information to the consumer balanced against the potential risk of providing consumers with too much information.*

- The Salvation Army submits that providing information to consumers is crucial, regardless of any potential information overload for them. We have a national network of budget advisors and other staff who work alongside our clients as advocates. Providing as much vital information as possible is very helpful for advocates like our staff who need this information to help educate and advise

clients. We certainly believe that this advertising guidance will lead to greater transparency of credit products because the aim of this Code is to provide the right information that consumers need when deciding between lenders and products in ways that are informative, direct and easily understood. Even if the information is not valued by some consumers, the advocates that might be working with them will likely support this approach to presenting information because it can aid their work with the current client, as well as any future ones they might have.

High-cost short-term agreements

7.4 *Do you agree that it is appropriate for all advertising of high-cost short-term credit agreements to carry a risk warning? Why or why not?*

- Absolutely! In our experience, this type of lending can be hugely detrimental to vulnerable consumers and their families. We submit that a prominent risk warning coupled with the other advertising guidelines will ideally help consumers decide whether or not to enter these types of agreements. For example, a prominent risk warning used alongside advertising discussed in sections 3.4 and 3.5 of the guidelines will, in our opinion; help these consumers thoughtfully consider entering these agreements. In our experience, those seeking high-cost short-term agreements are commonly the most vulnerable types of consumers as they are usually facing desperate situations.

7.5 *Do you have any comments in relation to the specific wording of the warning?*

- Some possible warnings are below. As mentioned above, this warning should be in isolation from other key advertising information as discussed in other parts of the Code;
 - WAIT! These loans should not be used for long-term borrowing.
 - WARNING: These loans are for short term situations, not long term ones.

8. INQUIRIES INTO AND ASSESSMENT OF BORROWER'S REQUIREMENTS AND OBJECTIVES

8.1 *In your view, will this guidance: (1) protect the interests of consumers; (2) promote the confident and informed participation in credit markets by consumers; and (3) promote and facilitate fair, efficient, and transparent credit markets? Please provide reasons as to how it may or may not do this.*

- The Salvation Army endorses the provisions in this section of the Code. The period before the consumer enters into a credit arrangement is absolutely crucial. Safeguards and guidance, like those found in this section of the Code, are vital to ensure responsible lenders effectively assess potential clients.

8.2 *Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities? Please provide any comments you may have on whether the guidance (and which aspects) should be more prescriptive, or more flexible, and the reasons for that.*

- We submit that the guidance here is very clear for lenders. We agree with the majority of the provisions in this section.
- However, we submit greater clarification might be needed in the following section;
 - Section 4.2 of the Code – We submit that greater inquiries should also be made if there is evidence or knowledge that the potential consumer has recently applied for and been denied from a similar credit arrangement. In our experience, vulnerable consumers will ‘shop’ around and apply for credit to multiple lenders. Often, these consumers take the first lender that approves their application. If this type of information comes to the attention of the current potential lender without a breach of their privacy, then greater inquiries should be made.

8.3 *Do you think that any of the inquiries set out at paragraph 4.1 should be mandatory in all cases? Why or why not?*

- The Salvation Army submits that if any inquiries should become mandatory in that section, then it should be paragraphs (a), (b), and (c).
- A responsible lender should be making all of the types of inquiries set out in section 4.1. We focus on paragraphs (a), (b) and (c) because these inquiries will likely give the best indication of the potential borrower's true requirements and objectives for this credit arrangement. Paragraphs (d) and (e) provide greater

contextual information. But the previous three paragraphs provide more direct information about the borrower's situation.

- Still, a truly responsible lender would make all of the inquiries outlined in section 4.1 and we encourage this type of business practice.

8.4 *Please provide any comments you may have in relation to the specific guidance for high-cost short-term credit agreements, reverse mortgages, buy-back transactions, and pre-approved offers of credit.*

- We fully support the requirement that all of these types of inquiries outlined in section 4.1 are made mandatory for those seeking high-cost short-term credit arrangements.
- We also fully support the Assessment and Processes provisions of the draft Code outlined in sections 4.9 and 4.10 respectively.

9. INQUIRIES INTO AND ASSESSMENT OF SUBSTANTIAL HARDSHIP (BORROWERS)

9.1 *In your view, will this guidance: (1) protect the interests of consumers; (2) promote the confident and informed participation in credit markets by consumers; and (3) promote and facilitate fair, efficient, and transparent credit markets? Please provide reasons as to how it may or may not do this.*

- We submit that these guidelines will help protect consumers and promote a transparent credit market if the lenders can effectively implement these practices into their everyday business practices. It is likely that responsible lenders already have most or all of these practices operating in their business.
- The Salvation Army prefers Option 1 regarding Substantial Hardship. Both of the options presented here have great benefits. However, we submit that assessment based on the criteria in Option 1 would better indicate whether or not a credit agreement could be repaid without the borrower suffering substantial hardship.

9.2 *Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities? Please provide any comments you may have on whether the guidance (and which aspects) should be more prescriptive, or more flexible, and the reasons for that.*

- There is sufficient clarity here, particularly for consumers applying for high-cost short-term credit.
- The Salvation Army submits that under section 5.3, it should be possible for lenders to engage with non-governmental organisations (NGOs) like The Salvation Army if the borrower has explicitly consented to this, the NGO is already working with this person, and the NGO can provide crucial information that might affect the assessment of substantial hardship. Again, privacy for the consumer is important here. Explicit consent is vital here. But as mentioned earlier, NGOs and similar groups are often working with and advocating for vulnerable consumers. Therefore their intimate knowledge of a person's holistic situation could greatly assist in assessing the borrower's current state and potential to suffer substantial hardship.

Substantial hardship

9.3 *Please indicate whether you have a preference for option 1 or 2, and the reasons for that. Do you have any suggested alternative definitions?*

- Please see response above.

9.4 *Is the level of hardship or the threshold set out in the definitions appropriate?*

- We contend that the threshold set in Option 1, when considered alongside the other information gathered from the lender's assessments and inquiries, as guided by this Code, are appropriate.

9.5 *In some circumstances, a borrower may be able to make repayments without substantial hardship by selling certain non-essential assets. Should the definition of substantial hardship reflect this? If so, how?*

- We would be hesitant in including this in the definition of substantial hardship. There must be greater clarity as to what non-essential assets might be. This should be an option available to borrowers. But caution should be exercised here; especially as some form of future hardship might be develop if the borrower sells assets they currently own.

Inquiries

9.6 *For pawn broking transactions where the only consequence of an inability to pay the redemption price is the loss of the pledged good, should the reasonable inquiries that should be made or the assessment of whether borrowers can repay without substantial hardship be any different? If so, how?*

- The Salvation Army submits that the reasonable inquiries outlined in section 5 of the Code should apply to pawn-broking situations.

9.7 *Do you think that any of the inquiries set out at paragraph 5.2 should be mandatory in all cases? Why or why not?*

- We contend that all of the requirements in 5.2 should be mandatory practice for a responsible lender. We have this view because this approach would protect consumers, particularly vulnerable consumers. Furthermore, it would help develop a more transparent and efficient credit market as consumers who are unable to repay their loans because they are facing substantial hardship is not a positive image for the credit market, and it means lenders' businesses struggle because the loans are not being repaid. Responsible lenders would likely want to encourage good repayments of their loans, rather than build a business model based on penalties and fees placed on struggling borrowers.

10. INQUIRIES INTO AND ASSESSMENT OF SUBSTANTIAL HARDSHIP (GUARANTORS)

10.1 *In your view, will this guidance: (1) protect the interests of guarantors; (2) promote the confident and informed participation in credit markets by guarantors; and (3) promote and facilitate fair, efficient, and transparent credit markets? Please provide reasons as to how it may or may not do this.*

- Yes it will. Protections and guidelines for guarantors should be at the same level as those for the principal borrower.

10.2 *Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities? Please provide any comments you may have on whether the guidance (and which aspects) should be more prescriptive, or more flexible, and the reasons for that.*

- We submit that these guidelines will benefit lenders in their attempts to comply with the Code. It is helpful that these guidelines are essentially the same as those in the previous section. We support the guidelines around high-cost short-term loans being more prescriptive for lenders. The credit market as a whole should benefit from these clearer guidelines and responsibilities.

10.3 *Are the inquiries that should be made of the borrower to assess whether it is likely that the borrower will be able to make the payments under the agreement without suffering substantial hardship also relevant for the guarantor. Why or why not?*

- Absolutely. In our experience, guarantors to a loan agreement are often not fully informed or aware of their rights and obligations as a guarantor. This guidance to consider potential financial hardship for a guarantor is positive and helps protect all of the parties involved in the agreement.

10.4 *Do you think that any of the inquiries set out at paragraph 5.2 should be mandatory in all cases for guarantors? Why or why not?*

- As per our response in 9.7 of this submission above, we contend that all of the inquiries in paragraph 5.2 should be mandatory for the lender.

11. ASSISTING BORROWERS TO MAKE AN INFORMED DECISION

11.1 *In your view, will this guidance: (1) protect the interests of consumers; (2) promote the confident and informed participation in credit markets by consumers; and (3) promote and facilitate fair, efficient, and transparent credit markets? Please provide reasons as to how it may or may not do this.*

- This is one of the most difficult parts of the Code because it such a vital clog in the credit process. Overall, the guidelines in this section seem to protect the interests of both lenders and consumers. As aforementioned, fully informed and aware consumers are good for business for lenders. Therefore any guidance that helps inform consumers is positive. Consumers are likely to be better informed participants in the credit market if they can see that lenders are not acting in a predatory nature but are, in fact, responsible and sound businesses. We support this section of the Code.

11.3 *Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities? Please provide any comments you may have on whether the guidance (and which aspects) should be more prescriptive, or more flexible, and the reasons for that.*

- The Salvation Army submits that the majority of this section provides good clarity for lenders. However, there are some points we request further clarification in;
 - Under section 7.4 of the Code, we submit that the lender should direct consumers they deem as vulnerable or those applying for high-cost short-term loans to community law centres or a Citizens Advice Bureau specifically. There are very few options where vulnerable consumers or low income earners can obtain free or low cost legal assistance. If lenders specifically named and directed these consumers to that type of legal help, then the consumer might more readily access this help. This collaboration between lenders and NGOs will help build a more transparent and fair credit market for consumers.
 - Under section 7.8(c), we question as to how the lender can ascertain whether or not a borrower has already received independent legal advice. Is verbal (or similar) affirmation from the borrower sufficient?

- Under section 7.13, we submit that lenders should develop a list of independent language experts that could assist in language issues. We would be concerned if interpretation help was sought from staff members who are fluent in that language. That is not independent. There should be a list of organisations, individual advocates or other services (e.g. a language line) that should be presented to vulnerable consumers to encourage informed decision making from consumers.

Communicating key features

11.4 *Do the key features of a credit agreement listed at 7.2 capture the key information borrowers should have to make an informed decision as to whether to enter into a credit agreement?*

- The Salvation Army supports the criteria listed in section 7.2 of the Code. We submit that it should be mandatory for lenders to provide this information to borrowers.

12. ASSISTING GUARANTORS TO MAKE AN INFORMED DECISION

12.1 *Please provide any comments you may have on the guidance in paragraphs 8.5 - 8.7 about when a lender should recommend that guarantors seek legal or consumer information advice, when they should require legal advice, and when they should require independent legal advice.*

- The Salvation Army generally supports the provisions about legal advice in sections 8.5 – 8.7 of the Code. As mentioned in the section above, we believe it is beneficial if the lender provides a list of local community law centres, private law firms, and consumer information advice organisations to the guarantor. This would mean that section 8.5 of the Code would have greater strength if, in fact, the lender could direct the potential borrower to local legal advice and consumer assistance.
- We submit that the same rationale and opinions we expressed in the previous section (i.e. Assisting Borrowers to Make Informed Decisions) apply in this area when informing guarantors regarding a credit arrangement.

13. CREDIT-RELATED INSURANCE AND REPAYMENT WAIVERS

13.1 *In your view, will this guidance: (1) protect the interests of consumers; (2) promote the confident and informed participation in credit markets by consumers; and (3) promote and facilitate fair, efficient, and transparent credit markets? Please provide reasons as to how it may or may not do this.*

- The Salvation Army submits that this section is consistent with the previous parts of the draft Code in that it provides mechanisms in which consumers can be protected, while at the same time encouraging a transparent and efficient credit market. The guidance here is sufficient and we support this.

13.2 *Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities? Please provide any comments you may have on whether the guidance (and which aspects) should be more prescriptive, or more flexible, and the reasons for that.*

- We submit that this section provides robust guidance to lenders because these provisions are consistent with the guidance provided in other sections of the draft Code. It is challenging in situations where the borrower has other insurance policies on their assets. But there seems to be a fair balance between the borrower being informed about the credit-related insurance product, and the lender relying on the insurance information presented to them.

13.3 *Do the key features of a credit-related insurance agreement listed at 9.9 captures the main information borrowers require to make an informed decision as to whether to purchase credit-related insurance? Should the Code provide further guidance on which “key exclusions” borrowers should be informed of? If so, how?*

- The information listed in section 9.9 of the draft Code is sufficient and we support these key features.
- We submit that the Code should provide some further guidance as to the ‘key exclusions’ that borrowers should be informed of. This could be met by a section of the credit-related insurance contract listing the actual exclusions that the contract will not cover. This would provide sufficient clarity to ensure the borrower is making an informed decision for this aspect of the credit contract.

14. FEES

14.1 *In your view, will this guidance: (1) protect the interests of consumers; (2) promote the confident and informed participation in credit markets by consumers; and (3) promote and facilitate fair, efficient, and transparent credit markets? Please provide reasons as to how it may or may not do this.*

- The Salvation Army contends that the guidance around fees in this section is a very good starting point to ensure responsible lending practices can develop. However, in our experience, the setting and enforcement of fees by lenders is often one of the main areas vulnerable consumers are negatively impacted by. We want to highlight section 10.7 of the Code that discusses ‘reasonable standards of commercial practice’. This section is focussed on default fees. But we would argue that this rationale or approach is relevant for all and any types of fees that a lender might impose.
- We also propose that the criteria set out in section 10.10 around reviewing fees should be mandatory and regular for lenders, and not optional as per the current wording.
- One of the aims of this Code is to promote a fair and transparent credit market. In the area of fees, there is a lot of reliance on lenders taking into account past experiences (sections 10.1, 10.3) or looking at reasonable standards of commercial practice (sections 10.3, 10.7). Responsible lenders would likely follow this guidance to ensure that their fee regimes are fair and transparent. However, we sincerely hope that those lenders with more unscrupulous fee regimes would be identified, monitored and reprimanded for their unfair fees via the Act and the Code. In our opinion, the identification of these irresponsible lenders is crucial in order to preserve a fair and transparent credit market. We recommend that the Commerce Commission and other key monitoring agencies continue to strengthen their relationships with NGOs working directly with consumers to identify those lenders with irresponsible and unfair fee regimes.

14.2 *Does the guidance in this area provide sufficient certainty for lenders as to how to comply with the relevant principles and responsibilities? Please provide any comments you may have on whether the guidance (and which aspects) should be more prescriptive, or more flexible, and the reasons for that.*

- As stated above, this section provides good, clear advice to lenders. We again affirm that, as stated throughout this section, common commercial practices must not necessarily be taken as a reasonable standard of commercial practice. What constitutes these reasonable standards of commercial practice might need to be defined or informed in the Code or other supporting documents to help eliminate any confusion.

Reasonable standards of commercial practice

14.3 *Do you agree with the guidance in relation to how lenders should have regard to reasonable standards of commercial practice when setting credit fees and default fees?*

- Please see our responses above. We support this reasonable standard for the setting of credit and default fees. Yet we also support greater clarification as to what these standards might in fact be. If there is a mandatory and regular internal review of fees by lenders, as we recommend above, then having an identified set of reasonable standards could assist lenders when they are reviewing the fees regime they set.

15. SUBSEQUENT DEALINGS

15.1 *Please provide any comments you may have on the guidance provided in this chapter, including any suggested revisions or additions.*

- The Salvation Army supports the features of this section of the Code. The only element we would recommend be added in subsequent dealings would be external avenues of support and advice a consumer could access. As mentioned earlier, this could include a list of local NGOs providing consumer information advice, or a list of local community law centres or Citizens Advice Bureaus.

16. DEFAULT AND OTHER PROBLEMS

16.1 *Please provide any comments you may have on the guidance provided in this chapter, including any suggested revisions or additions.*

- We support the provisions in this section.
- As per section 12.7 of the Code, we submit that the borrower should be encouraged to inform their employer that an assignment of their wages is involved in a credit contract *before* the contract is even entered into.
- We endorse the guidelines for debt collection agents, particularly the requirement to comply with their legal obligations, and understand the full terms of the credit contract in question.
- We recommend that, under section 12.17 and 12.18 of the Code, external support for the borrower should be made available if they have defaulted on their loan, or the lender is moving towards exercising its enforcement rights under the Act.

17. REPOSSESSION

17.1 *Please provide any comments you may have on the guidance provided in this chapter, including any suggested revisions or additions.*

- The Salvation Army fully supports the guidelines in this section of the Code and the mechanisms within the Act. However, we make the following recommendations;
 - As per section 13.7 of the Code, we recommend that lenders should be encouraged to only engage with independent repossession agents if they have a sound and reputable business history. We believe this will re-inforce the safety measures for the borrower in both the Act and the Code.
 - We submit that, as per section 13.10(h)(i) of the Code, if an item has been removed from the secured or repossessed goods, then the repossession agent should take practical steps to place these items in a safe and sheltered location to ensure that these items are not damaged. For example, if a car is being repossessed and there are car-seats in there, then we submit that the car-seats should be removed and placed in a safe place so the borrower or owner can recover them.
 - We particularly support section 13.2 of the Code where the economic viability of a repossession and re-sale should be seriously considered by the lender.

18. OPPRESSION

18.1 *Please provide any comments you may have on the guidance provided in this chapter, including any suggested revisions or additions.*

- The Salvation Army fully supports these guidelines with no further comment.

For further information or discussion, please contact:

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