



Credit Contracts Legislation Amendment Bill
Finance and Expenditure Committee

The Salvation Army New Zealand Fiji Tonga and Samoa Territory Submission

Executive Summary

1. The Salvation Army is **generally supportive** of many of the amendments in this Bill. These are detailed below in our submission. We welcome the Government's attempts to reform this area of credit contracts and consumer finance, particularly as our view was that the 2015 reforms were insufficient to truly protect consumers' interests. Consequently, this could be an once-in-a-lifetime opportunity to effectively reform this law and sector and place the public and consumers at the core of this sector and not predatory practices.
2. In that vein, we submit that focus of these current reforms should specifically be the protection of New Zealand consumers, particularly those deemed vulnerable and marginalised consumers. The Salvation Army's emphasis therefore in this submission will be on the types of people and whanau that use our financial mentoring and budgeting services, our community finance scheme, and our holistic Christian spiritual and social services across the country. We specifically want to highlight the main purpose of the principal Act, particularly section 3(1) that states [the] **primary purpose of this Act is to protect the interests of consumers in connection with credit contracts, consumer leases**, and buy-back transactions of land (emphasis added).¹ This primary purpose in our view shapes and guides The Salvation Army's advocacy concerning vulnerable consumers in our submission to this Bill.
3. Despite the solid proposed amendments in this Bill, The Salvation Army submits that there are aspects in this Bill, or missing from this Bill, that lead us to believe the main goal of protecting consumers will not be met with this Bill as it stands. In effect, our view is that this Bill **does not** go far enough with its amendments to truly protect consumers, especially from predatory lending practices, high cost short term loans, and other unscrupulous practices in this sector. We support the large majority of this Bill. But we contend that there are changes and additions required for this Bill to truly fulfil the stated purpose in the Principal Act. For example, a critical mechanism missing from this legislation is the ability to establish an **interest rate cap** on loans, expressly short term high interest loans. A large part of our submission is focussed on advocating for an interest rate cap mechanism that could be included in the body of the Bill, or as a Supplementary Order Paper to the Bill.

¹ Credit Contracts and Consumer Finance Act 2003, retrieved 30 May 2019 from:
<http://www.legislation.govt.nz/act/public/2003/0052/latest/whole.html#DLM211518>

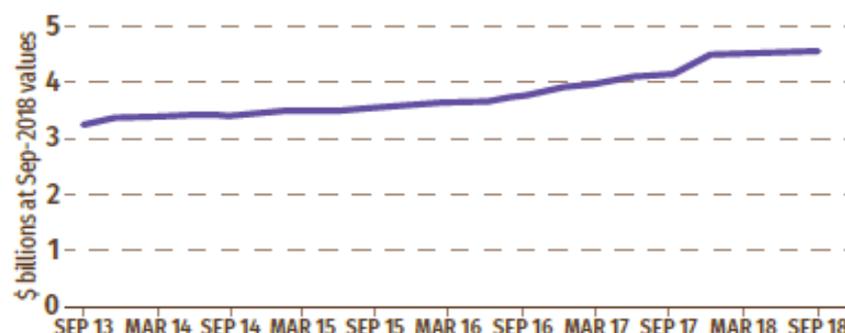
Background:

4. The Salvation Army is an international Christian church 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 Christian faith-based services, particularly for those who are suffering, facing injustice or those who have been forgotten and marginalised by mainstream society. We are passionately committed to our communities as we aim to fulfil our mission. We have over 90 Community Ministry centres and Churches (Corps) across the nation, serving local families and communities. This service covers numerous Christian spiritual and social (addictions, social housing, prisoner reintegration, foodbanks, social work, community finance, financial mentoring and budgeting and many more) services across the nation. We are passionately committed to our communities as we aim to fulfil our Territorial Mission Statement; **caring for people, transforming lives and reforming society by God's power.**²
5. This submission has been prepared by the Social Policy and Parliamentary Unit of The Salvation Army. This Unit works towards the eradication of poverty by advocating for policies and practices that strengthen the social framework of New Zealand. This submission has been approved by Commissioner Andrew Westrupp, Territorial Commander of The Salvation Army's New Zealand Fiji Tonga and Samoa Territory.
6. This submission is a summary submission from The Salvation Army. We, alongside other charities and community partners, have encouraged individual staff members and Salvation Army centres, locations or services to make their own submissions to this Bill in order to provide grassroots insights and views from across the country. Salvation Army leadership supports these local submissions.
7. In terms of the matters discussed in this Bill and the principal Act, the key contact points for our services are essentially through our financial mentoring and budgeting services, and our community finance scheme. This engagement is summarised below to provide some context to our interaction with this principal Act and wider sector, and also to illustrate the complex and interrelated challenges and social issues most of our clients using our services face.
8. In the 2019 version of our annual State of the Nation Report, it was the first time that we included some sort of measurement for fringe lending and exploitative debt as one of the social progress indicators in this report. We did this because we could see the increasing trend of clients presenting with problem debt issues that often came from loans with payday lenders for high cost short term loans. While The Salvation Army has our own data on these issues for our clients, the proxy we used in this report was based on consumer lending by non-bank lending institutions. This indicator is depicted below. Nevertheless, it is telling that after much thought and debate, we classed debt and fringe lending in our Social Hazards section which records national statistics on alcohol and other drug addiction, and problem gambling and gambling harm. Debt and borrowing money do not generate the physiological

² Retrieved 30 May 2019 from: <http://www.salvationarmy.org.nz/our-community/mission/>

and psychological responses associated with drug use, drinking alcohol and gambling that place people at risk of addiction, but it is the case that ruinous debt or exploitative lending can trap people in a cycle of dependence and poverty, in much the same way as alcohol, drugs and gambling might. Over the past five years, this type of lending has expanded almost 39% in inflation-adjusted terms and by almost \$1.5 billion in nominal terms, giving some indication to the size of this market.

Figure 34: Consumer lending by non-bank lending institutions—2013–2018—at Sep-18 \$ values¹⁰⁴



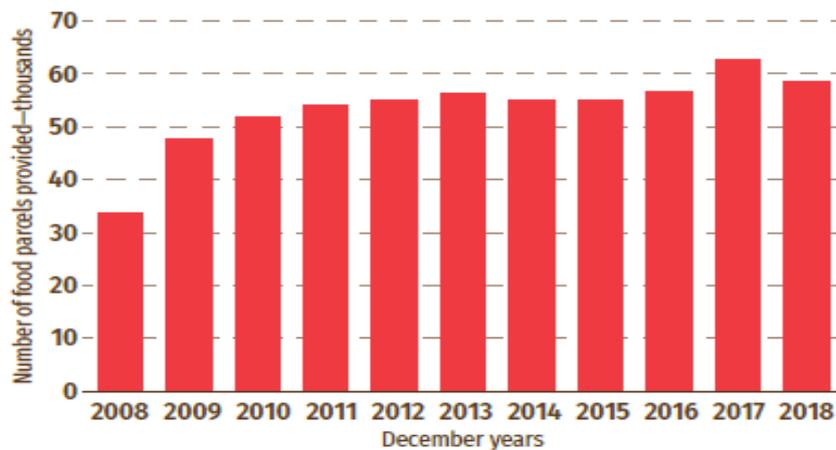
9. Community Ministry Centres – The Salvation Army operates 68 Community Ministry Centres across the country. These centres vary in size and the types and scale of spiritual and social services offered to the local community. These centres often act as the first point of entry the public has with our services. In these centres, there are often multiple services operating, including food welfare (i.e. food banks), financial mentoring and budgeting, counselling, community finance and others.

- a. In 2017-18, The Salvation Army provided over 62,000 food parcels to over 30,000 individuals and families.³ Traditionally our food banks have been an important way to seek and get support from our services. But then we are able to offer and provide holistic and wrap around support for our clients, connecting them to other Salvation Army services or community connections.
- b. The graph below, taken from our 2019 State of the Nation Report, shows the trend in our food welfare provision over the last 10 years, showing in some way the wider context that vulnerable people and consumers are operating within.⁴

³ *The Salvation Army Annual Report 2017-2018: Breaking New Ground*, retrieved 01 May 2019 from https://www.salvationarmy.org.nz/sites/default/files/files/%5Bfile_field%3Atype%5D/tsa_annual-report_17-18_web.pdf

⁴ *Are we well? Are we safe? State of the Nation Report 2019*, retrieved 01 May 2019 from <https://www.salvationarmy.org.nz/research-policy/social-policy-parliamentary-unit>

Figure 22: Food parcels distributed by The Salvation Army—2008–2018⁵⁴



10. Budgeting and financial mentoring – We provide a network of financial mentors and budgeters who provide financial advice and support to clients. This network operates across the country. Our staff here are usually the frontline advocates and support workers in credit contract, consumer finance and problem debt related issues. In 2018, we provided over **15,000 budgeting sessions to over 5,000 individuals or families.**⁵ Our financial mentoring and budgeting services are closely aligned to the FinCap Trust, who supports nearly 200 free budgeting services across the country, and other key community partners in this building financial capability space.

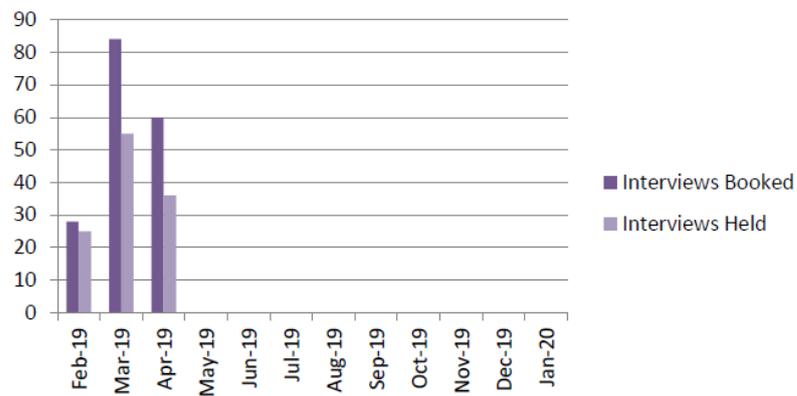
11. Community Finance - The Community Finance scheme offers affordable loans for approved people on low incomes (wage earners or benefit recipients). Loan applications are made through approved our Community Finance centres, which then work with you throughout the life of your loan, monitoring repayments and providing support and financial education. In 2018, The Army also doubled the number of low-or-no-interest loans it provides through this Community Finance Scheme—giving out **526 loans**. The scheme—run in partnership with Good Shepherd, BNZ Bank and the Ministry of Social Development—provides loans to people at risk of using high-interest lenders.⁶ Where a person is ineligible for a loan, staff will meet with them to discuss their finances and provide additional financial support and advice. In our opinion, increasing the access to safer and more ethical avenues to credit are one of the levers that can be used to effectively protect consumers and reduce reliance on predatory lenders already in the sector. Since 2014, our Community Finance service has had **42,655** enquiries for our loan products, and **5,145** initial loan interviews with consumers. Clearly there is an appetite for safer, more ethical pathways to credit from consumers. These programmes and products need to be supported more, enhances and expanded so that consumers are not using predacious forms of credit that are too commonly available in our nation.

⁵ Supra note 3.

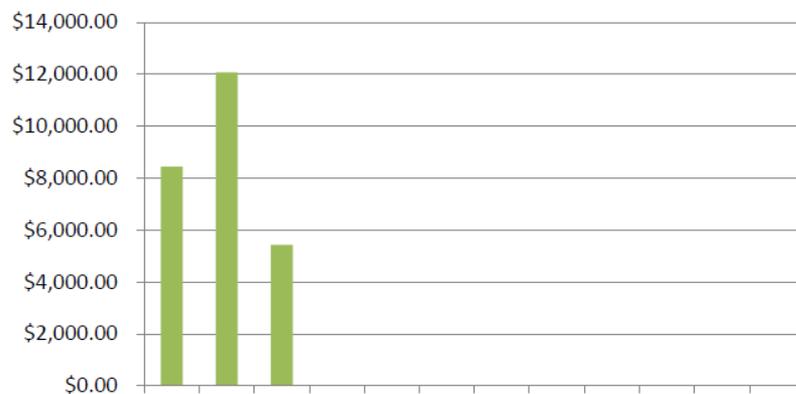
⁶ Supra note 3.

12. The Good Shop – Finally in this section, The Salvation Army alongside other corporate, government and community partners, launched in February The Good Shop van to act as an innovative disruptor and alternative to mobile trader and predatory lending businesses in the South Auckland area. Although it has only been three months since the launch, the preliminary results have been very interesting. The figures below are from 20/02/19 to 30/04/19. We believe these figures are early indications that show innovations like The Good Shop can, if coupled with stronger consumer laws and more access to safer credit, really build strong and effective protections for New Zealanders, particularly our more vulnerable consumers;⁷

Interest Free Shopping - Interviews



Total value of Loans Issued



⁷ *The Good Shop Quarterly Report February – April 2019*: (complete report is not available for public viewing because of commercial sensitivities).

Specific Responses to Amendments

13. Interest Rate Cap

- a. The Salvation Army has been one of many vocal advocates who have called for the inclusion of an interest rate cap in this legislation as yet another tool to protect consumers from getting caught up in debt traps and spirals by making repayments to their loans that are beyond their means.
- b. Our strong contention is that there should be a mechanism included in this Bill, whether in the body of the primary Bill or in any subsequent regulations that drop out from this Bill that allows for the establishment of an interest rate cap. In our view, an interest rate cap in addition to the other proposed amendments in this Bill will go a long way in actually protecting consumers, especially consumers like those using Salvation Army services.
- c. To be clear, we agree that having a mechanism in the legislation which acts as a limit on the accumulation of interest and fees on high cost loans to 100% of the original loan (over the life of the loan) is a good improvement in these current reforms. We will affirm this below. However, this kind of cap without a cap on interest rates themselves will not, in our view, effectively fulfil the stated purposes of the principal Act to protect the interests of consumers. We have consistently advocated for an interest rate cap during the 2015 reforms and now in these current reforms. Our views have not changed. With the problem debt issues that we see with our clients daily, we wholeheartedly believe that an interest rate cap alongside other strong measures in the law will protect consumers.
- d. It baffles The Salvation Army that an interest rate cap mechanism was not included by this Government as one of the protective measures for consumers, specifically those who have high cost loans. We are aware that many submitters to this Bill who are supportive of an interest rate cap will quote the well documented evidence and lessons from other similar jurisdictions like the UK and Australia. We support this research and advocacy for these reforms as we have done so in the past.
- e. We highlight at this point the draft research paper *Working Towards a Fairer Consumer Credit Market: A study of the issues in New Zealand's consumer credit market and proposals for reform* that will be fully released later in 2019.⁸ Stace and Finn stated that The World Bank paper argued that interest rate caps can be justified in order to protect consumers from usury and exploitation, by guaranteeing access to credit at reasonable rates. Caps can also help avoid social harm by limiting access

⁸ *Working Towards a Fairer Consumer Credit Market: A study of the issues in New Zealand's consumer credit market and proposals for reform - Interest rate caps, what do we know about their use and impact in other jurisdictions and how might they contribute to a fairer consumer credit regime in New Zealand*, Draft research paper that sets out the results to date (April 2019) of the research of the FinCap/ Community Law Canterbury/ Victoria University / BERL team on interest rate caps, final paper released later in 2019 (draft available from FinCap Trust).

to credit to impaired and low-income consumers.⁹ We submit that this growing current New Zealand research on these credit issues is extremely useful foundations for the Committee as they deliberate on this Bill.

- f. The UK approach changed in 2015 with a total cost cap of 100 percent of the loan borrowed including all interest, fees and charges (similar to New Zealand) that also included a limit on the interest and fixed fees of 0.8 percent per day of the amount borrowed. The recent BERL report *The Harm from High Cost Lending*, detailed the results of a review of these changes in the UK and we quote directly here:

*A 2017 review of the cap by the Financial Conduct Authority (FCA) found that after the introduction of the regulation there were decreases in the number of applications for loans, loan acceptance rates, and in the number of firms offering high cost loans. The FCA considered this to be because **lenders are less likely to lend to consumers who cannot afford to repay as the cap limited the income they could receive from borrowers who did repay.***

*The FCA also found that **after the interest rate cap consumers pay less, repay on time more often and are less likely to need help from debt charities as a result of a high cost loan. The FCA found that debt charities also indicated that consumers are presenting themselves earlier and with lower debts. This suggests that underlying problems are addressed sooner, before people take out a high cost loan.** Additionally, despite concerns at the time of the introduction of the cap that borrowers would turn to other high cost products or to **illegal moneylenders**, the FCA found this has not proven to be the case.*¹⁰ (emphasis added)

- g. These lessons from the UK indicate the real positive impact that an interest rate cap can have on debt levels, consumer behaviour and the lending industry itself. Furthermore, the UK example shows how a total cap on the cost of credit *and* an interest rate cap can work together to expressly protect consumer interests.
- h. We note that BERL in their recent report calls for a cap on the interest rate charged (inclusive of fees and charges) of 0.8 percent per day. We are supportive of this rate as a good starting point given the results from the UK's reforms in 2015. At the same time, we submit there are good lessons available through the Australian experience in recent years, particularly for loans that are for 15 days or less where interest cannot be charged. In practical terms, what the exact interest rate is can be debated and discussed at length in the future using the UK and Australian experiences as a starting point. Again, for our New Zealand reforms, we call for an immediate inclusion in this Bill of a mechanism to determine and then implement an interest rate cap for high cost loans. This is missing from the current Bill and in our opinion;

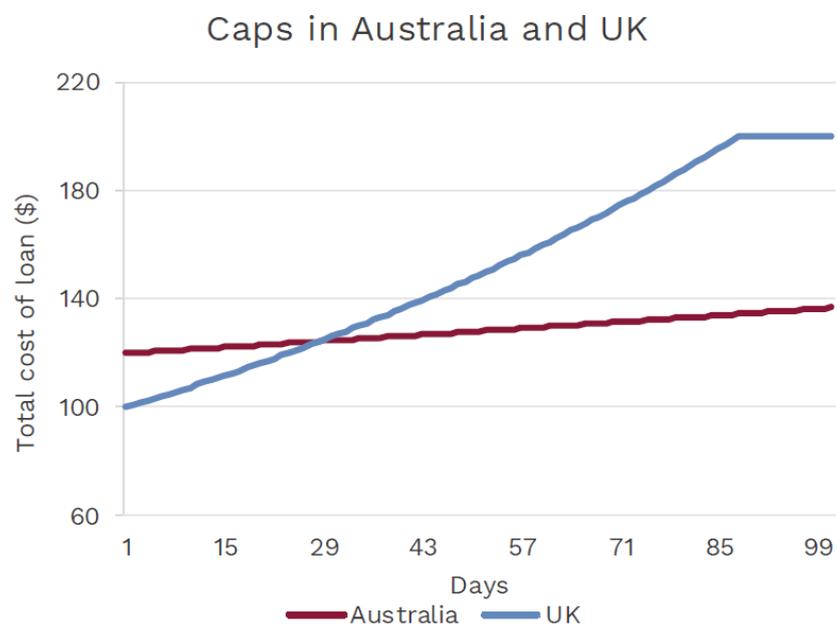
⁹ Ibid page 9.

¹⁰ *The Harm from High Cost Lending: The case for increased and improved regulation – Haratua 2019*, BERL, 2019, at pages. 21-22.

this Bill is therefore weaker because of the absence of the interest rate cap mechanism.

- i. **Comparison of interest rate caps** – The BERL report has a detailed discussion and comparison of the interest rate caps between the UK and Australian jurisdictions. The figure included below from BERL shows how the respective caps work, particularly in relation to the loan period.¹¹ The interest rate cap we are advocating for must take into account the New Zealand context and use the lessons from these countries. Again, we strongly recommend the inclusion of this kind of instrument in this Bill.

Figure 11 Comparison of interest rate caps in Australia and the UK



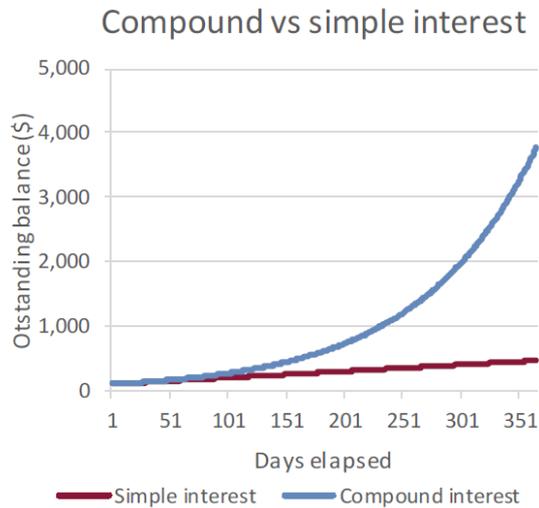
- j. **Simple interest vs Compound interest** – Also in the BERL report, there is a lengthy discussion of the differences between simple and compound interest. We refer to this later in this submission, especially around the calculation and promotion of the Annualised Interest Rate. However, it is sufficient here to refer to BERL’s comparison between compound and simple interest as depicted below.¹² The crucial element BERL states here which we completely support is the need for accurate information about loans to be presented to the consumer, including the need to show the reality of the loan repayments for the consumer over time. As we state later in this document, we support the standard use of a compounding rates for Annual Interest Rates. As BERL concludes, **APRs that are compounding would give borrowers more accurate information of the actual cost of the loan and allow for better**

¹¹ Supra note 10 at page 29.

¹² Ibid, page 25.

*comparisons between loan options. This will also allow borrowers to make better-informed decisions over which loans are the best for them.*¹³

Figure 12 Simple and compound interest at 1 percent per day on \$100 loan



- k. In support of this, one of our Financial Mentors based in Auckland, Andrew Mitchell, conducted a simple survey of how much it would cost to borrow \$100 and to repay the loan over six weeks in equal instalments. Andrew conducted this desktop search and survey on 10 June 2019 and checked a few websites of popular loan companies to compare the final costs for consumers. His findings are below. Please note that his calculations do not include any default fees and assume that the loan would be paid on time. If default fees were included, these amounts would be much higher. Still, Andrew's survey shows the differences between the interest rates caps in the UK and Australia and the much looser and varied amounts consumers are paying in New Zealand.

¹³ Ibid page 27.

Scenario: Borrow \$100 for six weeks

Company	Cost	Comments
Australia	\$130	
United Kingdom	\$140	
Acorn Finance	n/a	Minimum amount is \$400
Advanced Cash	\$151	
Cash Converters	\$199	2 months to repay
Easy Financing	n/a	Minimum amount is \$300
Ferratum		Can't access calculator
Moola	\$191	
Payday Advance	\$201	
Pretty Penny		Can't access calculator
Save My Bacon	\$175	

- i. Based on the realities that our clients face with their very complex and often interconnected social issues, one of the key struggles is always financial and not having enough money to make ends meet. Many of these financial challenges are based on problem debt related issues that we believe could be largely addressed if an interest rate cap was added to the suite of protections in this Bill. The practical consequence that we believe emerges then for our clients with these consumer protections (including an interest rate cap) is that people and families will have more money to try make ends meet, to survive and to pay for the basic necessities they need for life. With the Government’s focus on holistic wellbeing, our view is that wellbeing could be enhanced for people and whanau, particularly vulnerable consumers, if an interest rate cap was included with these other noteworthy provisions in this Bill.
- m. At this point, it is also useful to acknowledge and address the rhetoric from MBIE around rejecting an interest rate cap for this Bill. As the draft paper on interest rate caps states, MBIE rejected the interest rate cap option because they believed ***imposing a cap would likely result in the closure of “many” high-cost lenders and a significant tightening of credit criteria by those who remain, leaving borrowers with poor credit histories fewer option. One of the main arguments against a cap is that caps may exacerbate financial exclusion for those without access to mainstream credit, by reducing or removing high cost lenders as a credit option.***¹⁴ The Salvation Army rejects this reasoning. Firstly, we submit that it is a fulfilment of the primary purpose of the principal Act if people are unable to access credit. In other words, it is good if people are excluded from accessing credit because this in fact protects them from greater harm and debt traps. Stopping people with poor credit histories and/or problem debt issues from accessing credit from predatory lenders is a huge positive for that person and their family and friends. Secondly, and conversely, we refute MBIE’s approach because there are other options available for

¹⁴ Supra note 8, at page 8.

consumers with difficult credit histories to access safer and more ethical credit. These options include our own Community Finance scheme at The Salvation Army offering no-interest and low-interest loans. Furthermore, there is Nga Tangata Microfinance who in April 2019 celebrated providing over \$1 million in safe fair and affordable no interest loans to nearly 500 low income clients (since starting in 2010).¹⁵ What is really needed here is more investment from Government and even the Banking sector into loan products that are safer, more ethical and more accessible for vulnerable consumers. We recognise the recent work for developing an access to safer credit strategy by various government, corporate and community agencies. But greater investment in increasing the amount of loans available for vulnerable consumers would mean these consumers would not have to access unsafe loans from fringe lenders which would cause them greater hardship.

- n. Finally in this section, we want to alert the Committee members to the energy and work taking place in local communities regarding this Bill and the stark absence of an interest rate cap mechanism. Maori iwi, budgeters, financial mentors, social service agencies, churches, community groups and other charities and NGOs have in recent times voiced their support of an interest rate cap. We submit that these voices cannot and should not be ignored here, primarily because it is these very groups engaging directly with consumers with debt issues and facing debt traps or spirals. Some of examples of these collaborative voices and recent research and evidence are listed below.

¹⁵ *Safe Fair Interest Free Loans top \$1 million* (Press Release), Nga Tangata Microfinance April 2019, retrieved 06 June 2019 from: https://docs.wixstatic.com/ugd/fc4ada_4aadd2aacaad4beca74939bc2d8def23.pdf

14. Clause 6 – Definition of Mobile Trader

- a. We support the inclusion of this new definition which in effect brings mobile trader transactions within the parameters of the principal Act.
- b. However, since the launch of our Salvation Army Good Shop van (with a second van planned for Porirua in July 2019), we have some interest in this new definition and inclusion given that we are not working from a for-profit business model like other mobile trading businesses. We submit that this area might greater clarification at the select Committee oral submission stage. We do not expect other charities to open other fair and ethical mobile trading businesses any time soon. But with this Bill, and also the current and upcoming reforms of the Charities Act 2005¹⁶ by the Department of Internal Affairs (which includes a review of charities who own or are connected to businesses) this is somewhat of a grey area that we hope to see fairly clarified.
- c. It is pertinent here to also acknowledge some have called for a complete banning of these mobile trading businesses in New Zealand. The damage they have done and continue to do in communities is well documented.¹⁷ The Good Shop we are operating is a mobile innovation, albeit not-for-profit as all the other mobile traders are. Regardless, The Salvation Army supports the banning of these types of businesses, even though our Good Shop project might be affected by this. If they are banned, then consumers would be greatly protected if those kinds of options were removed from the market.

15. Clause 10 – Amending lender responsibility rules

- a. We strongly support this provision in the Bill. We affirm the three key changes in this amendment; lenders ensuring advertising complies with set advertising standards, lenders making reasonable enquiries and robust affordability assessments, and the removal of section 9C(7) in the principal Act.
- b. The Salvation Army submits that having an interest rate cap (as well as the other protections detailed in the Bill) will greatly assist lenders with their lender responsibilities and strengthen this sector. This is because foreseeably the lenders will conduct more rigorous affordability assessments to ensure their loans fall within the set caps and protections, and consumers who should not receive these loans because of their inability to pay these loans back without undue hardship would ideally not be pushed to debt traps and spirals.

¹⁶ Retrieved 06 June 2019 from: <https://www.dia.govt.nz/charitiesact>

¹⁷ Retrieved 10 June 2019 from: <https://comcom.govt.nz/business/consumer-reports/mobile-trader-project-201415>

16. Clause 11 – Records about enquiries made

- a. The Salvation Army fully supports the amendments in this clause. These responsibilities for lenders will create greater transparency and safeguards for both the consumers seeking loans and for the lender themselves as their practices are well-documented and available for scrutiny.

17. Remedies for breaches of these new lender responsibilities

- a. We fully support the inclusion of remedies in clauses 24, 31, and 36 of the Bill if there is a breach of these new duties or a failure to comply with these principles in the principal Act.

18. Clause 13 – Meaning of consumer credit contracts

- a. We support this provision.

19. Clause 14 – New section 17A inserted – When creditors advertise in other languages

- a. The Salvation Army strongly supports this provision. In our frontline experience, our financial mentors and budgeters have had many issues with clients that are or have in the past faced financial problems because in inaccurate and leading advertising.
- b. We add that there have been discussions in New Zealand and abroad about more restrictions on this type of advertising, specifically for short term high cost loans. We believe there should further investigation into these protections. Our gambling harm service – Salvation Army Oasis – has consistently advocated for the enforcement of the Code for Advertising Gaming and Gambling in all advertising involving gambling.¹⁸ A revised Code for gambling will be implemented in August 2019.¹⁹ For this submission, any research and discussion that looks at reducing and possibly even removing all advertising for high cost short term loans is necessary to explore how this might protect consumers in New Zealand. There are some good starting points in the principal Act and Responsible Lending Code, and in the gambling harm sector that can be referred to.

¹⁸ Retrieved 10 June 2019 from: <https://www.asa.co.nz/codes/codes/code-for-advertising-gaming-gambling/>

¹⁹ Ibid.

20. Clauses 15 to 20 – Variation and guarantee disclosure

- a. We support these provisions. However, we affirm the requirement for creditor to make reasonable efforts to locate guarantors as per section 26 amended, new subsections 6. It is practical to include this amendment. Yet in our experience, there are creditors who do not fulfil this obligation. This must be enforced in order to protect the interests of those guarantors.
- b. We support clause 20 here about making disclosure via electronic form. Still, diligence must be kept to ensure the debtor or guarantor has given accurate electronic information and contact details.

21. Clause 21 – Records about how fees are calculated

- a. We fully support this clause as it strengthens the existing provision section 41 in the principal Act. We applaud the protections enshrined in this clause, particularly the new section 41A (2) and (3) which fortifies the regulatory and enforcement roles of the Commerce Commission.

22. Clause 22 – Subpart 6A – Other provisions relating to consumer credit contracts

- a. As aforementioned above, we are fully supportive of this measure, including the remedies for failure to comply with this provision found in clauses 24, 31 and 36.
- b. This new provision is in line with the advocacy of community groups, consumer advocates and current research. But we also note that both the recent reports for BERL Economics and Finn and Stace advise that this kind of cap that limits the cost of borrowing should be implemented in conjunction with an interest rate cap.
- c. The Australian and UK experiences mentioned earlier show clearly that this kind of measure successfully protect consumers and help stop them falling into debt traps. But this kind of provision was never done in isolation from an interest rate cap in both these similar jurisdictions as is being proposed here. As BERL Economics notes, ***[b]oth of these restrictions (i.e. interest rate cap and a cap on the total cost of borrowing) need to look at interest rates and fees together. Any restriction focussing on either interest rates or fees without considering the other will see lenders substituting between these charges to maximise their profits.***²⁰ We argue that predatory lenders will indeed lean towards increasing interest rates with the implementation on the cap on the total cost of borrowing in order to maximise their profits. If this is the case, then consumer interests will have been ignored and actually damaged further.

²⁰ Supra note 10, at page 21.

- d. We also highlight that this provision only applies to a contract that has an annual interest rate of 50% or more. What if the loan has an annual interest rate of less than 50% per annum? In our frontline experience, there are numerous types of loans and credit contracts that have an annualised interest rate of less than 50%, including some car loans and personal loans. These loans are just as problematic as those with interest rates of 50% and more. We submit that the select Committee should lower the annualised interest rate stated in this clause to possibly 20 to 30% to capture loans under the 50% cap.

23. Clause 23 – Duty of directors and senior managers

- a. We fully support the provisions in this clause. Directors and senior managers of creditors need to be held to greater accountability and this clause contributes to this greatly.

24. Clauses 24 to 40

- a. Addressing all of these provisions together, we completely support the amendments found in these clauses.

25. Clause 41 – Fit and proper test

- a. We fully support this clause. Too often in our frontline work, especially in the mobile trader area, owners and managers of these businesses close up shop and open new businesses working in the same communities and delivering the same predatory loan products and services. These provisions are in our opinion robust and will help protect consumer interests.
- b. We also support the powers available to the Commerce Commission through these amendments. The Commission plays a crucial regulatory and enforcement role and strong powers and adequate funding are critical to the Commission efficiently playing these roles which in turn support and protect consumers.

26. Clause 42 – Disclosure before debt collection

- a. We definitely support this clause as more transparency and safeguards in the debt collection process is vital to protecting consumers.
- b. Although a review of debt collection laws is not covered by this Bill, we strongly advocate further investigation and reform into our debt collection practices to

ensure consumers are protected from any unprincipled behaviour. We call on the Committee and/or Minister of Commerce and Consumer Affairs to launch a robust review of these debt collection laws and practices.

- c. 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.²¹ This is detailed in the image below:

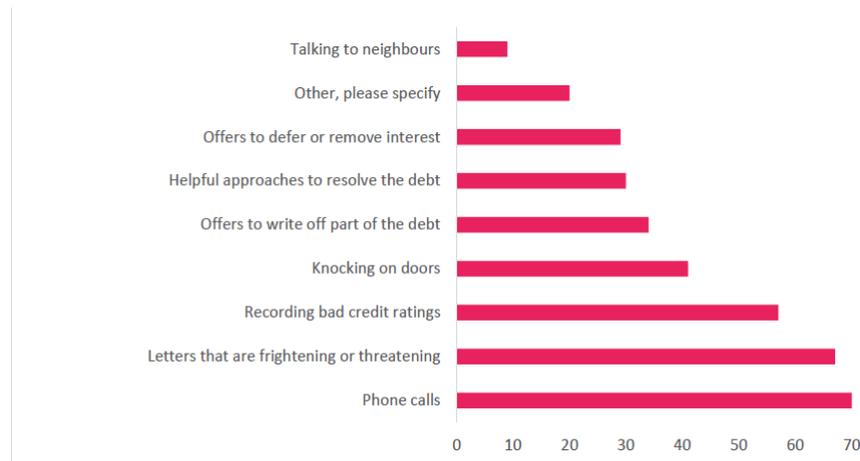


Figure 13. Count (number of agencies) of debt collection practices experienced by agency clients (n=76).

- d. This report shows that punitive and aggressive behaviours are used by these debt collection agencies. This is detrimental to the wellbeing of the debtor (and their family), but also the debtor's neighbours. We understand that these companies are 'trying to make a living'. But these kinds of behaviours would not be tolerated generally in other aspects of society and life. Therefore, we call for an exigent review and reforming of our New Zealand debt collection laws.

27. Clause 45 – New statements

- a. We support the amendments in this clause around the information disclosed to debtors at the time the contract is entered into.
- b. We add that if the debtor is undertaking their second high cost loan within a small time period after the first loan, then we echo the recommendation from BERL that ***before an individual can enter into a second high cost loan, or can enter into a high cost loan within one month of repaying their previous high cost loan, they be required to obtain independent financial advice from a financial mentor or***

²¹ *Survey of financial mentoring and budgeting services in Aotearoa on high cost loans, debt collection and other consumer credit issues*, Dr Liz Gordon, Justice Innovation Centre, Community Law Canterbury February 2019, page 25, retrieved 06 June 2019 from: <https://www.fincap.org.nz/wp-content/uploads/2019/02/REPORT1.pdf>

financial adviser.²² This kind of amendment will greatly help protect vulnerable consumers making stressful financial decisions under urgency and times of desperation.

28. Clause 47 – Meaning of layby sale agreement

- a. We support the repealing of this section that in effect brings layby sales agreements within the credit contracts definitions.

29. Clauses 49 to 59 – Amendments to Financial Services Providers Act 2008

- a. We are generally supportive of the amendments in these various clauses.
- b. We do concede that these amendments mean there is increased administration costs placed on The Salvation Army because of The Good Shop innovation model we have. But fulfilling these requirements if passed into law will contribute to a more transparent and fair system. We submit that the Committee might discuss this matter with The Salvation Army given that we are not operating a for-profit model like other mobile trading businesses. But if these provisions pass into law, then we are willing to fulfil these responsibilities as per the principal Act, and Financial Services Providers Act.

²² Supra note 10, at page 28.

30. Additional Recommendations

- a. In this final section of our submission, we want to propose some key recommendations and additions that are absent from this Bill. We contend that incorporating these measures into the Bill will enhance the protection for consumers.
- b. **Debt Collection review** – We refer the Committee to Paragraph 26 of our submission which captures our submissions about this area.
- c. **Limiting percentage of income spent on high cost loans** – This mechanism has been implemented in Australia. As the draft research paper referenced earlier notes; *Instead, strict rules on how great a proportion of a borrower's salary could be committed to payments under high cost loans were recommended. This would be an extension of the current rule in Australia that for borrowers whose predominant source of income is Centrelink payments (in New Zealand terminology, beneficiaries), the total payable under all high cost loans due and not repaid cannot exceed 20% of the borrower's gross income. The final report recommended that the 20% limit be replaced with a 10% limit of the borrower's net income.*²³
- d. We contend that this kind of instrument will provide greater protection for vulnerable consumers, especially like many of the clients that we see in our services. This would also mean that large amounts of a consumer's income will not be used to repay high cost loans. Beneficiaries in New Zealand are already on limited incomes and should not be using more than 20% (or even 10%) of their income on repayments because they have other living costs to deal with. If this measure was included with the protections already covered in this Bill, consumers would be protected from falling deeper into problem debt related issues.
- e. Additionally, there is a renewed focus in policy discussions around hardship and vulnerability. This is a welcome development. Consequently, an amendment such as one proposed in Paragraph 30(c) above would be a wonderful addition to these policy discussions and debates.

²³ Supra note 8, at page 17.

- f. **Multiple loans** – The Salvation Army consistently sees clients with multiple loans. This fact is reinforced by the 2019 survey of budgeting services across the country.

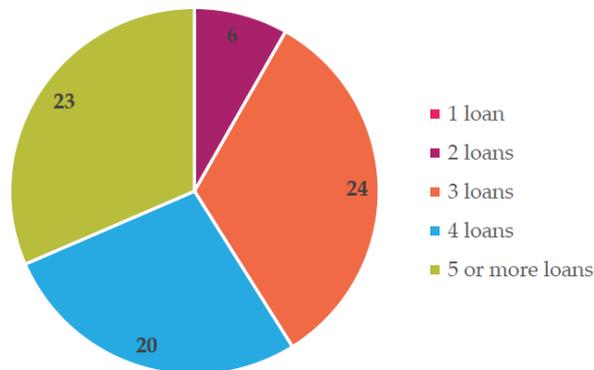


Figure 3. Average number of loans held by presenting clients, by agency (n=73)

- g. The figure above is extremely worrying. Subsequently, if there were limits on the number of high cost loans a consumer could take out, then we believe these consumers would avoid destructive debt traps or spirals. The UK experience has been to **introduce a limit on the number of times a loan could be rolled over, to twice. The FCA considered the more times a loan was rolled over, the more likely the borrower would find themselves in financial difficulty.**²⁴ We call on the Committee to include this kind of amendment to provide stronger protections for consumers, specifically those who are vulnerable consumers and in hardship.
- h. **Afterpay and similar schemes** – There are always emerging issues or trends in this area. With Afterpay and other similar schemes, we note they are essentially similar to the old no-interest layby schemes that prevalent in the 1980s and 1990s. The difference is that often the goods are taken by the buyer when the contract is entered into.
- i. In our view, these types of arrangements are credit contracts. Therefore they should fall within the parameters of the principal Act. Even if no interest is charged, these arrangements should still have to go through the rigorous processes that other credit arrangements have to abide by, particularly around disclosure and affordability assessment requirements.
- j. **Commerce Commission** – The Salvation Army is always supportive of the regulatory, enforcement and educational work that the Commission undertakes in the community. Yet in our view, the Commerce Commission is not sufficiently resourced to always effectively enforce this principal Act. In our experience, we try to consistently engage with the Commission by passing information to them of lenders and companies that we believe are working in a predatory and illegal way. But investigating these claims further, and if appropriate, litigating these claims can be a

²⁴ Supra note 8, at page 11.

very long and drawn out process. We value the work they, especially if it leads to prosecutions and penalties of predatory lenders. But we advocate that the Commission be resourced better to regulate and enforce more claims and cases that will give consumers greater protection and confidence.

- k. **Clearer calculation of the Annual Interest Rate (AIR)** – We support the recommendation from BERL to move to an to an ***Annual Interest Rate that is calculated based on compounding interest and this is regulated to be consistently used by all in the industry.***²⁵ Lenders regularly use these rates in the promotion and advertising of their loans. The key here is to ensure that borrowers have all the relevant information before entering into a loan agreement. BERL argues that the rate should be compounding to show the true cost of interest payments and to ensure people are aware of the full cost of the interest charges on the loans they take out.²⁶ If this truer rate was mandated in the legislation, then the advertising of high cost loans (if indeed they were to continue to be advertised) would be more accurate and provide more assurance and information to the borrower.

²⁵ Supra note 10, at page 25.

²⁶ Ibid page 26.