Submission template

Submission on discussion document: *Guidance for lenders on assessing affordability: draft changes to the Responsible Lending Code*

Your name and organisation

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Responses to discussion document questions

	Guidance (5.1-5.4)
1	*Do you have any concerns with changes proposed to paragraph 5.1, or other changes we should consider?*
	No.
2	*Do you have any concerns with any of the changes proposed to guidance on responsibly estimating the payments that will be required/made under the agreement?*
	Related to 5.3b, primarily, although the same question can be asked elsewhere in 5.3: What is meant by 'reasonable' (i.e., for amount and term of loan) in the context of revolving credit contracts? We note that current minimum repayment terms for credit cards may enable repayment of a given balance over approximately 3 years, providing there is no additional spending over that period. However, any additional monthly spending on the card whilst making those minimum repayments equates to a 30-year loan term. Guidance for consumers on how long it will take to pay off their balance and under what conditions (e.g., continued use of their credit card) is advisable and such guidance should be obvious and explicit (e.g., provided with the statement/bill). Under the current guidance, "lenders should take into account…" that borrowers may wish to repay more (and faster) than the minimum repayment, however it is not clear how or why a lender would do anything more than the generally vague suggestion on current credit card statements referring borrowers to sorted.org.nz. We support explicit information on repayment being given to borrowers, like that required in Australia (see FIGURE 1, included after 'Other Comments' section). In 5.28, we note high-cost consumer credit lenders are encouraged to explain what high-cost lending is to borrowers. Similar transparency should be encouraged for all lending, and especially for revolving lines of credit for which the affordability assessment may not be current due to a change in borrower circumstances.
3	*Do you see any other guidance on this topic as desirable? If so, please explain.*
	Guidance on the margin required for the "reasonable" buffer. For example, such a buffer should be sufficient to accommodate rate movements relative to the term of the lending (i.e., medium-term rate movements for medium-term lending, longer-term sufficiency for longer term loans).
	Purpose of inquiries (5.5-5.6)
4	*Do you have any concerns with the guidance proposed in paragraph 5.5? Is so, what changes should we consider?*
	We note the guidance for "reasonable inquiries" is closely linked to that guidance provided in 5.6-5.7 and have commented accordingly below.
5	*Do you believe the Code should provide general guidance on use of surpluses, buffers and adjustments to account for uncertainty that the loan will be affordable? If so, what would you suggest it say, noting the potential for excessively conservative approaches by lenders.*

	Yes, general guidance is required, in our opinion. Consumer protection through responsible lending aims to avoid consumers becoming over-indebted, defined broadly as the "substantial hardship" described in 5.1. It is important to note academic literature highlights that individuals and households can become over-indebted due to an external shock (either income-based, e.g., job loss, health issues, or relationship breakdown, or expense-based, e.g., increased cost-of-living pressure) – see Disney, Bridges and Gathergood (2008)[1] for a useful summary. Income or expense economic shocks can occur after lending is assessed as affordable and can tip indebted individuals into 'over-indebted', with significant adverse wellbeing consequences. New Zealand-based research conducted by the Retirement Commission[2] also highlights most New Zealanders (69%) plan their spending (budget), however only one in four reported always keeping to their plan. A further 44% reported 'often' keeping to their planned spending. While our budgeting is somewhat better than international counterparts like Canada and Australia, New Zealanders do not tend to score well on "informed financial product choice" (average score of 48/100 vs Australia's 57) or "spending restraint" (69/100 vs Australia's 74). For the latter, 21% of New Zealander's surveyed reported running short through overspending. Lastly, the study reports New Zealanders lack financial confidence, scoring below international counterparts (60/10 vs Australia's 65 and Canada's 71). Taken together, along with (international) evidence that debt handling is particularly difficult to shift through consumer financial education (Kaiser and Menkhoff 2017)[3], borrowers likely require support to ensure their desired debt levels are, in fact, affordable. Budgetary buffers or surpluses at time of lending are thus an important tool to help insulate consumers and enable resilience against future negative economic shocks. While some lenders may apply such guidance with an abundance of caution, the emphasis on the proposed Code "giving lenders the confidence to make inquiries that are more or less extensive depending on the risk profile of the lending" places the onus on lenders to use discretion.
	Scope of inquiries (5.7-5.11)
6	*Do you have any concerns with the changes proposed to guidance on inquiries into income, or believe we should consider any other changes?*
	No.
7	*What wording do you think would work best (in paragraph 5.9.c) to capture other, less essential expenses that may be important for the lender to account for?*
	In our opinion, the additions in the proposed Code are fine, however the intent described in the discussion (that "expenses that the borrower could more easily forgo or that are less significant" be excluded, versus those "that are likely to remain important to the borrower")

[1] Disney, R., Bridges, S., & Gathergood, J. (2008). *Drivers of Over-indebtedness*. Report to the UK Department for Business. Accessed from http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.514.9586&rep=rep1&type=pdf.

[2] Galicki, C. (2021). *New Zealand Financial Capability Survey 2021*. Te Ara Ahunga Ora Retirement Commission. Accessed from https://assets.retirement.govt.nz/public/Uploads/Research/TAAO-RC-NZ-FinCap-Survey-Report.pdf.

[3] Kaiser, T., & Menkhoff, L. (2017). Does financial education impact financial literacy and financial behavior, and if so, when?. *The World Bank Economic Review*, 31(3), 611-630.

	could be made more explicit in 5.9. For example, explicit mention of the relative importance of material expenses as important to the expense inquiry (where relevant) could be added.
8	*Do you have any concerns with other changes proposed to guidance on inquiries into expenses, or believe we should consider any other changes?*
	Further to previous comments, we note a motivating factor for the proposed Code changes was the prescriptive nature of the current Code and the overly cautious approach then applied by lenders. However, we believe allowing lenders to collect all information related to a borrower's expenditure then having discretion to apply 5.9.d is important. Additionally, we note the prevailing assumption of the proposed Code is that borrowers will adjust less-essential expenditure ("forgo"). Please see our comments in (5) on the disconnect between budgeting and keeping to their budget for New Zealanders.
9	*Do you believe guidance on joint expenses would be worthwhile. If so, would you have any issues with paragraphs 5.28 – 5.32 of the current Code being used?*
	Yes, the current paragraphs on Joint Expenses could be used. It would be good to have clear guidance available to lenders on how to approach suspicions or reports of economic harm (i.e., financial abuse), in their inquiries, however we expect vulnerability is covered in more depth elsewhere in the Code and Act.
10	*Do you believe guidance on inquiring into spending through use of Buy Now Pay Later facilities is necessary? If we were to do this, would paragraph 5.33 of the current Code be a good approach?*
	Coverage of relatively novel financial products, including Buy Now Pay Later, may help future-proof the Code for future financial innovations.
11	*Would you have any concerns, based on the proposed guidance, about lenders making unreasonable assumptions that the borrower will reduce certain expenditure? If so, please explain why and what the Code might do to address this.*
	Yes, please refer to comment in (8) and (5). Common sense, via lender discretion, should prevail. However, inquiring after the importance of less-essential spending (see [7]) as standard practice will likely shed light on borrower intent and capability to adjust expenditure.
	Method inquiries (5.12-5.17)
12	*Do you have any concerns with the 2017 guidance on methods of inquiry? Please explain.*
	No.
13	*Do you believe further guidance on use of statistical information is necessary? If so, why?*
	No.
14	*Do you agree paragraph 5.13 is desirable to make lenders aware of their obligation under the Privacy Act 2020?*
	Yes.

15	*What might be the implications of using the 2017 guidance on verification? What changes, if any, would you suggest?*	
	No comments to make.	
16	*Do you have any other feedback on guidance relating to verification or use of information provided by intermediaries?*	
	No.	
	Extent of inquiries (5.18-5.21)	
17	*Do you believe the proposed guidance on extent of inquiries would encourage lenders to make their inquiries more proportionate to affordability risk, as intended? What changes might help to achieve this?*	
	Yes.	
18	*Do you have any other feedback on guidance to support lenders in assessing affordability risk and what that means for how they should approach inquiries?*	
	It would be good to have clear guidance available to lenders on how to approach suspicions or reports of economic harm (i.e., financial abuse), in their inquiries, however we expect vulnerability is covered in more depth elsewhere in the Code and Act.	
	Record keeping (5.22-5.25)	
19	*Do you have any views on the need for guidance on record keeping and changes we should consider?*	
	No.	
	High-cost consumer credit contracts (5.26)	
20	*Do you have any views on the need for guidance on assessing affordability of high-cost credit and whether changes are desirable?*	
	We note that the CCCFA appears to have achieved its objective regarding predatory high-cost lending (commonly referred to as "loan sharks"), however, are supportive of lowering the threshold of high-cost lending i.e., from 50% to 30%, as suggested by the Minister. Additionally, high-cost lending would likely benefit from stronger language (i.e., "must" rather than "should") in 5.28, especially for "explaining to the borrower what a high-cost loan is", to enable more informed borrower choice and market transparency.	
	Pawnbroking (5.27-5.28)	
21	*Do you have any views on guidance for assessing affordability in the case of pawnbroking?*	
	No.	
	Other	

22	*Do you have any other feedback on how the draft content for Chapter 5 can better meet its objectives, including anything that might be missing?*
	No.
23	*Do you have any suggestions for how this content could be presented more clearly or usefully to users?*
	See comments above.

Other comments

FIGURE 1 – *Australian example of Minimum Repayment Warning* (see 2)

Minimum Repayment Warning: If you make only the minimum payment each month, you will pay more interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay...	You will pay off the Closing Balance shown on this statement in about...	And you will end up paying an estimated total of interest charges of...
Only the minimum payment	33 years 7 months	$[redacted]
$[redacted]	2 years	$[redacted] a saving of $[redacted]

Having trouble making repayments?: If you are having difficulty making credit card repayments, please message us through the Bankwest app or Online Banking, or call us on 13 17 19. We may be able to assist you.