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(NZ), Inc.**

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New Zealand

07 June 2024

Consumer Policy  
Building, Resources and Markets  
Ministry of Business, Innovation and Employment  
By email: [consumer@mbie.govt.nz](mailto:consumer@mbie.govt.nz)

Dear Secretariat,

American Express New Zealand welcomes the opportunity to respond to the Ministry of Business, Innovation and Employment (MBIE) consultation on draft changes to the Responsible Lending Code. We support and endorse MBIE's 'outcomes-based' approach to better facilitate responsible and more efficient issuance of consumer credit in New Zealand.

Adopting an 'outcomes-based approach' regulatory framework could provide lenders discretion to tailor solutions that optimizes credit decisioning whilst satisfying responsible lending principles. This approach could both better protect vulnerable borrowers, and reduce unintended consequences, such as reduced access to credit markets. Evidence has shown that highly prescriptive requirements can lead to lenders either not offering or rejecting applications for credit where the requirements cannot be satisfied in a reasonably practicable way.

We have made several suggestions within our attached response to improve clarity within the Code, consistent with MBIE's key policy objectives.

American Express welcomes the opportunity to engage further with you and your team on these reforms to ensure your current proposal achieves our shared goals of consumer protection, financial inclusion, and economic growth for New Zealand.

Ngā mihi nui,

Robert Bourne  
Country Manager, American Express NZ

A handwritten signature in black ink, appearing to read "P.P. Bradley McHugh".

*P.P. Bradley McHugh, Director Government Affairs*

# Submission template

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## Guidance for lenders on assessing affordability: draft changes to the Responsible Lending Code

*This is the submission template for the discussion document, Guidance for lenders on assessing affordability: draft changes to the Responsible Lending Code. The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion document by 5pm on 10 June 2024. Please make your submission as follows:*

1. Fill out your name, organisation and contact details in the table: “Your name and organisation”.
2. Fill out your responses to the consultation document questions in the table, “Responses to discussion document questions”. Your submission may respond to any or all of the questions in the discussion document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. If you would like to make any other comments that are not covered by any of the questions, please provide these in the “Other comments” section.
4. When sending your submission:
  - a. Delete this page of instructions.
  - b. Please clearly indicate in the cover letter or email accompanying your submission if you do not wish for your name, or any other personal information, to be disclosed in any summary of submissions or external disclosures.
  - c. Note that, except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE’s website. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission. If your submission contains any confidential information:
    - i. Please state this in the cover page or in the e-mail accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
    - ii. Indicate this on the front of your submission (eg the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
  - d. Note that submissions are subject to the Official Information Act 1982 and may, therefore, be released in part or full. The Privacy Act 2020 also applies.
5. Please send your submission (or any further questions):
  - as a Microsoft Word document to [consumer@mbie.govt.nz](mailto:consumer@mbie.govt.nz) (preferred), or
  - by mailing your submission to:

*Consumer Policy  
Small Business, Commerce and Consumer Policy  
Ministry of Business, Innovation & Employment  
PO Box 1473  
Wellington 6140  
New Zealand*

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

## Your name and organisation

<b>Name</b>	Rob Bourne, Country Manager Bradley McHugh, Director Government Affairs
<b>Organisation (if applicable)</b>	American Express International (NZ)
<b>Contact details</b>	robert.bourne@aexp.com bradley.mchugh@aexp.com

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

The Privacy Act 2020 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

MBIE intends to upload submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). If you do not want your submission to be placed on our website, please check the box and type an explanation below.

I do not want my submission placed on MBIE's website because... [Insert text]

## Please check if your submission contains confidential information:

I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because... [Insert text]

## 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 specific comments.

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?

American Express agrees that for revolving credit contracts its appropriate for Credit Card lenders to take into account that a borrower make payments greater than the minimum required payments sufficient to enable the borrower to repay the full amount of the loan within a reasonable period.

Other jurisdictions including Australia define this reasonable period as no more than 3 years.

3 Do you see any other guidance on this topic as desirable? If so, please explain.

No further specific comment.

### Purpose of inquiries (5.5-5.6)

4 Do you have any concerns with the guidance proposed in paragraph 5.5? If so, what changes should we consider?

We would request that the 'should' be amended to a 'may' here to allow lender discretion in certain unique circumstances where such inquiries are not required to satisfy the principles of responsible lending. An example of such circumstances might include where it is obvious the applicant can meet repayment obligations without suffering substantial hardship.

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.

No Specific comments.

### 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?

We would request that 5.8 be amended by replacing the 'should' to a 'may'. Lenders will make all reasonable efforts to identify, verify and adjust for volatile, irregular or variable income however given income verification solutions reliance on short term data (eg last 3 months pay slips) they may fail to identify volatile or variable income in all cases. Making this a mandatory requirement risks making income verification more expensive, or additional follow up enquiries more onerous which may lead to borrowers being rejected unnecessarily if the compliance costs are too high for lenders.

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?

*No specific comment.*

8

*Do you have any concerns with other changes proposed to guidance on inquiries into expenses, or believe we should consider any other changes?*

*No specific comment.*

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?*

*We consider that some high level guidance on joint expenses is worthwhile, and that it is appropriate for lenders to either apportion joint expenses based on data available such as partner income or rely on applicant's statement of share of expenses.*

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?*

*No specific comment.*

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.*

*No specific comment.*

#### **Method inquiries (5.12-5.17)**

12

*Do you have any concerns with the 2017 guidance on methods of inquiry? Please explain.*

*No specific comment.*

13

*Do you believe further guidance on use of statistical information is necessary? If so, why?*

*No specific comment.*

14

*Do you agree paragraph 5.13 is desirable to make lenders aware of their obligation under the Privacy Act 2020?*

*No specific comment.*

15

*What might be the implications of using the 2017 guidance on verification? What changes, if any, would you suggest?*

*We consider that 5.16 should be amended to allow the lender discretion on whether to verify the information or rely on statistical data. Such that 5.16 should say that the lender "May take reasonable steps to verify that information or rely on other statistical data". Requiring lenders to verify all expense information provided by a borrower puts unnecessary burden on lenders and borrowers. Giving lenders the ability to rely on statistical data when data may be unreliable reduces the operational burden of lenders.*

*Given the challenges connected to expense verification, lenders in the industry heavily rely on statistical data which should be reflected within the provision.*

16 Do you have any other feedback on guidance relating to verification or use of information provided by intermediaries?

No specific comment.

#### 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?

No specific comment.

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?

No specific comment.

#### 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 specific comment.

#### 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?

No specific comment.

#### Pawnbroking (5.27-5.28)

21 Do you have any views on guidance for assessing affordability in the case of pawnbroking?

No specific comment.

#### 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 specific comment.

23 Do you have any suggestions for how this content could be presented more clearly or usefully to users?

No specific comment.

## Other comments

