

# 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

Name	privacy of
Organisation (if applicable)	Insurance & Financial Services Ombudsman (IFSO Scheme)
Contact details	privacy of

[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

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?*

No

3

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

No

### 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?*

No

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. Consumers do not complain to the IFSO Scheme that they have had their loan applications declined; however, we do receive complaints from consumers who have loans with very small surpluses. Guidance on what an appropriate surplus or buffer would look like would be helpful.*

### 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 believe the proposed sections 5.7 and 5.8 are very necessary. We regularly receive complaints where the lender has not properly accounted for the borrower's irregular or variable income. However, we believe section 5.8 should be re-worded to say "A lender should ... [adjust] ..." (i.e. remove the word "consider"), to strengthen it as much as possible (we note the discussion document's comments about the use of "must" referring only to statutory obligations).*

*For example, in case study 00224091, the lender assessed the affordability of a loan based on the borrower's full income, which included overtime of up to 33 hours per fortnight. However, the lender failed to factor in any likely changes in overtime, including that there might be less, or none, available. The borrower's work hours were changed and he was*

unable to work as much overtime, causing him to experience hardship and he eventually underwent a no asset procedure.

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?

We agree with the change in paragraph 5.9c to include frequently reoccurring expenses which may be material to the affordability of the loan. However, we believe it is important that lenders be required to confirm with borrowers that they agree to forgo these expenses (if that is agreed) and that lenders are required to keep records of these conversations.

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

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. Guidance on joint expenses would be helpful and we agree with using paragraphs 5.28-5.32 of the current code for this purpose.

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?

Yes. Lenders should aim to understand the full picture of the borrower's circumstances, which includes their use (and intended use) of Buy Now Pay Later facilities.

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. We believe lenders should be required to confirm with borrowers that they agree to reduce certain expenditure, if this is agreed (and the lender should keep records of this conversation). Lenders should then be required to apply a "reasonableness" overlay to the information they receive. If, for example, they can see the borrower buys take-aways for every meal every day, and then says they will buy groceries and learn to cook every meal, is it reasonable to rely on this information from the borrower?

#### 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?

Yes. We receive a lot of complaints involving loans where lenders have used statistical information to estimate expenses. These cause problems because it is difficult for us to determine whether the information is reliable and current, because lenders generally refuse

to provide information (citing commercial interests). Lenders use statistical information from a variety of sources and it is difficult to determine whether they are reliable.

If the FMA specified which statistical information was able to be used (e.g. the IRD HEM of xx year), or even which categories must be included in statistical information, then it would be much easier to apply this test. Alternatively, require lenders to prove they have used statistical information which is recent and reliable.

14

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

15

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

We believe lenders should be required to verify basic information, e.g. salary information. Many already do so and it does not take much time or effort for borrowers to provide payslips. Therefore, we believe proposed section 5.15 should be re-worded to say, "...information (including supporting documents should be obtained from the borrower" (i.e. remove "may").

16

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

We are concerned about the wording of proposed section 5.17. It appears to allow lenders to rely on (limited) information provided by an intermediary and it renders section 5.16 ineffective where an intermediary is involved. For example, where a borrower completes an application saying they have no dependants but visits at the car dealership heavily pregnant and with 2 children. In this example, the intermediary has reasonable grounds to believe the information about dependants may not be reliable and should ask the borrower, but this is not captured by sections 5.16 or 5.17.

#### 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?

It is hard to tell whether the guidance will encourage lenders to make their inquiries more proportionate. However, we believe the 2017 wording should be used for section 5.21 ("should be made") and, if there are issues with specific types of loan, these should be specifically provided for, because otherwise it weakens the requirements for all loans

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

#### 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?

*We support the proposed guidance on record keeping, especially the use of “should”. We see huge variability in the quality of records kept by lenders. In practice, we view this as a “must” – if lenders cannot prove they kept records, they cannot prove they complied with the obligations.*

#### 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

#### 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?*

No

### Other comments