

10 June 2024

Ministry of Business, Innovation and Employment

Wellington

By email: [consumer@mbie.govt.nz](mailto:consumer@mbie.govt.nz)

## **Draft Changes to the Responsible Lending Code – Submission by Christians Against Poverty**

Tēnā koutou, thank you for inviting submissions on the draft changes to Chapter 5 of the Responsible Lending Code. Christians Against Poverty (CAP) values the opportunity to share our insights. CAP has over 15 years of experience working with people in financial hardship and advocating for fair outcomes related to irresponsible lending so we trust that our perspective will be a valuable contribution to meet the Minister's aims to continue to provide protection to vulnerable borrowers.

As CAP has expressed in previous submissions, we oppose the revoking of the regulations that will weaken protection for vulnerable consumers. CAP has provided evidence<sup>1</sup> of the harms caused over the years by irresponsible lending – particularly that of inadequate affordability assessment – and we are very concerned that the removal of regulations will once again open the door to poor lending practices.

The draft changes to the Responsible Lending Code (the Code) have incorporated a couple of important protections but, generally, CAP opposes the overall approach of reverting back to 2017 guidance, with adjustments. The Minister rightly commented that the development of clear guidance would help manage the increased risk of consumer harm by over-relaxing inquiries into affordability<sup>2</sup>. However, CAP believes that the Code, as drafted, falls short of the goal of providing clear guidance. CAP would have preferred to see the Code developed from the current version, with clear translation of the regulations describing a 'safe harbour' that lenders can rely on.

The Code can be improved further by the inclusion of clear examples, and we encourage MBIE to draw from the existing Code and the regulatory framework which was developed with careful consideration from a wide range of stakeholders over many years.

CAP provides feedback on the specific questions from the Discussion Paper, below, and we welcome further opportunities to discuss any aspects of this submission.

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<sup>1</sup> Submissions in January/February 2024, May 2024

<sup>2</sup> <https://www.mbie.govt.nz/dmsdocument/28285-progressing-financial-services-reform-proactiverelease-pdf> (Section 54)

**1. Do you have any concerns with changes proposed to paragraph 5.1, or other changes we should consider?**

CAP supports the drafting of 5.1 which has helpfully incorporated some examples of common necessities. We propose adding a couple of examples of sources of 'further borrowing' that financial mentors would commonly see. E.g., "...any of the above (such as Work and Income, Buy Now Pay Later);". These examples would be in keeping with the format of paragraphs a. and b.

Perhaps it could be further clarified that this is intended to be a non-exhaustive list.

**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?**

In relation to paragraph 5.3. a., a 'reasonable buffer' is ambiguous. CAP has unfortunately seen too many examples of lenders largely ignoring the repayment of revolving credit contracts, consigning borrowers to remain in perpetual debt.

CAP recommends incorporating wording from Regulation 4AL(2)(b) in this section because it would give a balanced example of what 'reasonable' would look like. For example,

5.3.a. "...buffer to any minimum required payment or an amount sufficient to repay the credit contract within no more than 3 years, whichever is greater."

Responsible lenders will already be adhering to this process so there will be no administrative cost to achieving compliance.

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

A clear example is necessary in this section to provide appropriate guidance on what "reasonable buffer" and "reasonable in the circumstances" mean.

**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, the Code should provide general guidance on buffers and adjustments. This guidance should make clear that the importance of utilising buffers and adjustments increases in situations when either the reliability or certainty of the information collected in the inquiries is lower, or when the impact of loan default would be more significant (e.g., higher interest rates or larger loan balances), or when the number of people dependent on the borrower is higher (e.g., more children), or when the stability of future income is less certain.

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

CAP is concerned that the current wording of 5.7 could be misconstrued that it would be appropriate for a lender to consider sale of assets as a way of repaying a loan for a borrower that will rely on income to repay their debt. 5.7.c. needs to be clarified as inquiries relevant to those that will not rely on income.

In the vast majority of lending situations, it should not be the case that a lender expects a borrower to sell assets to cover an affordability assessment shortfall where the borrower relies on income to make the repayments.

CAP supports the wording of paragraph 5.8 but recommends deleting the word “consider”.

**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?**

The current drafting of 5.9.c is acceptable but would add “gym membership” and “subscriptions” as examples – there are sometimes exit/penalty fees for ending a contracted service that may disincentivise/inhibit a borrower from immediately reducing spending on that service.

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

CAP believes that Section 4AE of the Regulations provides a comprehensive definition of listed outgoings that would be a preferable definition of expenses. It has the added benefit of already being complied with by responsible lenders.

**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 inclusion of paragraphs 5.28-5.32 would be an important addition to the Code and recognises the diverse situations and arrangements by which borrowers can manage their 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?**

Yes. Existing paragraph 5.33 would adequately acknowledge this fast-growing type of debt. Consumers are more frequently than ever before using BNPL products to meet their essential living costs. A responsible lender would consider evidence of existing BNPL use when considering a borrower’s current financial circumstances.

**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.**

CAP’s principal concern relates to the frequency with which lender inquiries have uncovered significant risk factors, such as indebtedness, inconsistent routine, addictive behaviours (gambling,

excessive spending, consumption of alcohol), reliance on BNPL yet, all too frequently, lenders have overlooked or ignored these red flags.

This concern could be addressed by broadening the currently inadequate definition of 'vulnerable borrower' in the Code. Lenders have an obligation to make additional inquiries if the borrower is vulnerable, so if a lender's initial inquiries turned up any significant risk factors, this could be the mechanism by which lenders are directed to make further inquiries. This would give lenders the assurance that their normal inquiries are sufficient for the majority of situations but would place an appropriately higher expectation for additional inquiries where there is a risk factor present.

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

Yes, CAP is concerned that there is insufficient information here to appropriately guide lenders. CAP requests that examples be included here that would demonstrate responsible practice, such as the collection of bank statements for the previous 90 days and payslips.

Lenders that are already compliant with the current regulations will already have processes to make these inquiries so there should be no significant administrative cost to achieve compliance.

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

CAP would like to see language from Regulation 4AN(2)(a) introduced to the Code to provide clear guidance around the use of robust or independent benchmarks and some examples of sources, such as Statistics NZ. CAP has made numerous successful complaints to Disputes Resolution Services about the inadequate use of lenders' benchmarks/estimates, which are frequently lower than is necessary to avoid substantial financial hardship.

**14. Do you agree paragraph 5.14 is desirable to make lenders aware of their obligation under the Privacy Act 2020?**

*Yes, this is an appropriate addition.*

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

One of the poor lending processes that CAP observed under the 2017 model was where lenders would often ignore the presenting evidence on bank statements, and instead opt for their own benchmark. Within Regulation 4AM(2)(c), there is an explicit preference for the expenses verified by reliable evidence (a) than of those estimated (c). CAP is concerned that lenders may too easily revert to relying on a borrower's statements or estimates, despite them being contrary to other evidence from inquiries.

Paragraph 5.16 could be improved to guide against this by the introduction of an example:

*"For instance, if a borrower's bank statements show frequent defaults for other loan payments, a borrower's loan statement verifying that the defaults have been settled may be more reliable than verbal confirmation from the borrower."*

Some examples would be most helpful here to bring good practice from Regulations 4AK to 4AM into the Code.

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

No.

**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?**

The wording of 5.19-5.21 incorporates some good additions that appear to give lenders a more targeted approach to further inquiries where risk factors are present.

As mentioned above in Q11, the definition of ‘vulnerable borrower’ needs to be improved to appropriately consider further inquiries related to non-financial risk factors.

**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?**

CAP would like to see the inclusion of the words “...or missing regular payments” after the words “without suffering substantial hardship” in paragraph 5.22 b. a. (the second sub-paragraph a.). This change would acknowledge that there is often a link between substantial hardship and missed payments. A borrower may be avoiding substantial hardship by being in default of their loan obligations. For clarity, either evidence of substantial hardship or missing regular payments should be flags for more extensive inquiries, not less extensive.

**19. Do you have any views on the need for guidance on record keeping and changes we should consider?**

Appropriate and comprehensive record keeping plays a key role in helping financial mentors and debt solutions providers to advocate for fair outcomes for borrowers. We think it is appropriate that there is additional expectation that lenders retain records where there has been a need for further inquiries or where the borrower has been vulnerable.

**20. Do you have any views on the need for guidance on assessing affordability of high-cost credit and whether changes are desirable?**

This paragraph 5.28 provides effective guidance for high-cost lending. No changes recommended.

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

No.

**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?**

As mentioned in the opening comments, CAP opposes reverting to the 2017 model under which there were many instances of consumer harm through irresponsible lending where lender processes inadequately assessed affordability.

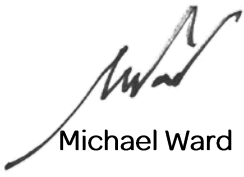
Rather, this Code could have been drafted from the repealed regulations by setting a foundational standard of responsible practice. This Code can still be further improved by the introduction of clear examples that will guide a clear minimum standard.

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

None.

CAP welcomes any questions or comments on this submission.

Ngā mihi nui,

A handwritten signature in black ink, appearing to read 'Michael Ward', written over a thin horizontal line.

**Michael Ward**

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