

**Submission on MBIE'S guidance for lenders on assessing affordability: draft changes to the Responsible Lending Code**  
**Community Law Centres Aotearoa – 10 June 2024**

## **Background**

1. Community Law Centres Aotearoa (**CLCA**) welcomes this opportunity to submit on the *guidance for lenders on assessing affordability: draft changes to the Responsible Lending Code*. The contact for this submission is Karen Hodgson, [karen@clca.co.nz](mailto:karen@clca.co.nz).
2. CLCA is the national body that coordinates and advocates for the 24 Community Law Centres (**CLCs**) across Aotearoa. Our member CLCs work out of over 140 locations to provide free legal help to those who are unable to pay for a private lawyer and do not have access to legal aid. As well as around 300 staff, CLCs' services are supported by over 1,200 volunteer lawyers who run legal advice clinics and deliver free assistance. Each year, these CLCs provide free legal support to 43,000 clients and free law-related education to 24,000 people. In addition, we provide free legal information via the Community Law Manual (the digital version of which has 3,900 views per day on average) as well as an estimated 200,000 people who contact CLCs directly. Te Ara Ture is the nationwide clearinghouse for pro bono legal services, and it is a division of CLCA.
3. Our CLCs regularly advise on matters under the CCCFA. They assist clients with lenders' internal dispute resolution processes and with external dispute resolution schemes. We often see cases where, lenders have not followed the Lender Responsibility Principles in the Act, the Credit Contracts and Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020, or the Responsible Lending Code. We see this kind of behaviour particularly in relation to car finance and personal loans.
4. We have also observed that the Regulations were working well when lenders used them properly. We are disappointed that the substance of the Regulations has been revoked. Our view is that the Regulations make it clear to lenders about how to best engage with clients on affordability. In addition, when there is an allegation that proper inquiries are not made, there is concrete guidance to refer to. For this reason, the draft Chapter 5 would benefit from incorporating more of the Regulations. We anticipate that without concrete guidance, lenders will make minimum inquiries and incorrect assumptions, which will not give them a full and accurate picture of the borrower's financial position.
5. CLCA generally opposes the overall approach to revert back to the 2017 version of Chapter 5 of the Code with some adjustments. The Coalition Government and the Minister have repeatedly said that the purpose of reform of the CCCFA is to "*Rewrite the Credit Contracts and Consumer Finance Act 2003 to protect vulnerable consumers without unnecessarily limiting access to credit.*" Our view is that reverting to the 2017 version of the Code swings the balance too far in favour of lenders and does not sufficiently protect vulnerable consumers. Some lender compliance costs should be accepted as necessary as the cost of doing business well. However, this new Chapter 5 increases the risk to consumers and does little to mitigate those risks.

6. We respond to some of the particular questions posed in the discussion document below. We also add that we have reviewed FinCap’s submission and support it. Our CLCs see many of the same issues as financial mentors, and often work together to support whānau experiencing financial hardship through complaints processes.

**Q1. Do you have any concerns with changes proposed to paragraph 5.1, or other changes we should consider?**

7. The wording of paragraph 5.1 should be amended to require that the lender be “reasonably satisfied”. This would make it clear that it is an objective standard, not just the lender’s own sense of being satisfied.

**Q5. 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.**

8. Yes, Chapter 5 should use surpluses, buffers and adjustments to account for the fact that income and expenses change. This is especially important where affordability may be assessed as marginal. We suggest that the wording from the Regulations be used here.

**Q6. Do you have any concerns with the changes proposed to guidance on inquiries into income, or believe we should consider any other changes?**

**Q8. Do you have any concerns with other changes proposed to guidance on inquiries into expenses, or believe we should consider any other changes?**

**Q12. Do you have any concerns with the 2017 guidance on methods of inquiry?**

**Q15. What might be the implications of using the 2017 guidance on verification? What changes, if any, would you suggest?**

9. In our view, the new Chapter 5 does not provide “*clear guidance in the Code on how lenders should fulfil their obligation to carry out ‘reasonable inquiries’ that a loan is likely to be affordable*” as anticipated by the Cabinet paper on these reforms.<sup>1</sup> Nor does the new Chapter 5 meet the objective in the discussion document to “*continue to protect consumers from unaffordable credit by being clear about some basic expectations/standards.*” There are no examples or suggestions of what a lender should do to estimate or verify income and expenses as set out in the Regulations. We recommend that the requirements in the Regulations be adjusted and included in the Code to assist lenders with estimation and verification of a borrower’s income and expenses.
10. At the very least, paragraphs 5.7 and 5.9 regarding inquiries into income, means of paying and expenses need stronger language and more guidance similar to what was in the Regulations. The inquiries listed should be the minimum. We recommend that these are inquiries that “*should*” be included, not “*may*” be included.

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<sup>1</sup> See paragraph 54 of Cabinet Paper “Progressing Financial Services Reform” [Progressing financial services reform \(mbie.govt.nz\)](https://www.mbie.govt.nz/progressing-financial-services-reform) (22 April 2024). Paragraph 20 makes a similar point.

11. We also recommend the new Chapter 5 include an example or flow chart of an affordability assessment to create further guidance (similar to that on page 26 of the current Code). This would give lenders some clear guidance about what steps to take.

**Q19. Do you have any views on the need for guidance on record keeping and changes we should consider?**

12. Our CLCs report difficulties in obtaining records from lenders. Lenders often do not provide documents in a timely manner, they drip feed documents, provide incomplete documentation, and/or will be confused about the effect of privacy waivers from CLC clients, making the process more time-consuming than it should be.
13. Records are important for lenders to be able to show what information they used when conducting an affordability assessment, should the lending be challenged. Without more guidance in the current draft Chapter 5 of the Code, if a decision were to be challenged, the lender could rely on the Code and say they had made sufficient inquiry, without showing any detailed records of inquiries. A summary will not be sufficient evidence of any inquiries. We note that a “*concise summary*” is permitted under the current Code, but this in the context of more detailed inquiries having been required by the Regulations and guidance in the Code about what a summary may include.

**Q20. Do you have any views on the need for guidance on assessing affordability of high-cost credit and whether changes are desirable?**

14. Yes, CLCA’s view is that this section of Chapter 5 must remain.

**Q22. 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? Q23. Do you have any suggestions for how this content could be presented more clearly or usefully to users?**

15. We refer to the comments earlier in our submissions that aspects of the Regulations should be included into the Code to make the guidance clearer for lenders, and robust for consumers.