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

Your name and organisation

Name	Brent Hollows
Organisation (if applicable)	
Contact details	

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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 concerns. 5.1.c. -quite a few people borrow through places like Red Rat and use BNPL for clothing purchases. I think those such borrowings should be excluded as they will already be catered for in the budget completed and moreover they are existing commitments. Furthermore, technically anyone continually using BNPL to purchase clothing would not be able to be lent to. Is it intended that 5.1.c. captures one off items like the need to borrow for Bond a.k.a. 4 weeks rent in advance? Is undue difficulty in clause 5.1 the same as substantial hardship?
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, however I believe that the figure included in the budget for revolving credit facilities should have an allowance for a higher interest rate and an allowance to repay the loan principal back over say 30 years for mortgages, 5 years for car loans and 3 years for anything else.
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? Is so, what changes should we consider?*
	No, however reasonable enquiries should be defined for 5.5.a. situations. Interest only debt servicing should be factored in just in case the estate proceeds are delayed or the unconditional sale falls through in 5.5.b. instances. A budget should still be completed for all lending to comply with 5.5.c. and it should be supported by a credit check and for 5.5.a. situations supported by 90 days of bank statements.
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, the current wording is fine and allows flexibility.
	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, they seem fine.
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?*

	For 5.9.c. I think it should be up to lenders to decide what is relevant in 5.9.c. after consulting with the borrower. Really only the borrower knows what is relevant and discretionary and what is not and it will be different for each borrower therefore it is virtually impossible to produce guidance on this. It would be a very long and not very useful list. Charity begins at home and if someone is truly in financial hardship they should not tithe nor send money overseas. These items should therefore be categorised as discretionary; they should not be seen as being in the same category or having the same importance as items like food, utilities & rent etc. I agree with the inclusion of childcare in 5.9.a. However, for quite a few people regular essential spending on clothing is not a factor unless they have growing children and then it can be lumpy expenditure difficult to fathom. Lots of borrowers tell me that they see clothing as discretionary expenditure that their weekly budget surplus could be used for. Pay TV really is a luxury and is discretionary; it is not really a relevant mandatory expense so I am pleased that it is now gone. Definitely pleased that savings have gone; it was crazy to ever include them.
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, 5.10.c. I agree about designer clothes and this is also a similar collary with new versus second-hand clothing particularly school uniforms. It is hard to verify from bank statements what the make-up of borrowers clothing purchases are. In practice borrowers do not present eftpos receipts. Furthermore, there is a wide difference in cost between brand new and second hand clothing.
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, but not 5.30.b. I have encountered numerous objections having to request information from the non-borrower. This surely is a Privacy Act concern. I always ask the non-borrower paying the expense to confirm that they pay that expense not the borrower. It is a bit awkward to verify this information by asking a non-borrower to provide 6 months of bank statements and to submit to filling out a budget or otherwise to prove they can pay half of the rent for example without incurring financial hardship. The actual situation can usually be proved from the borrowers 6 months of bank statements that I obtain; those would record an absence of the particular expense. Guidance of not having to approach the non-borrower and the verification process would be very helpful.
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?*
	Absolutely include 5.33 and BNPL lenders should have to do a full affordability test like everyone else has to. Disappointed by the soft inconsistent approach chosen. Year by year I see bank statements and budgets showing a higher reliance on BNPL to the point that I see more people on a mouse wheel not being able to get off. People I have not been able to lend to when they needed to borrow. BNPL slowly eats away at peoples surpluses. My approach is to use a combination of the actual average pattern of BNPL payments over a 6 month bank statement period combined with the actual commitment at loan application time and also factoring in the total BNPL limit and thus the relevant total possible weekly amount payable and this is inserted in to the budget. I also ask the purpose for BNPL borrowing and are regularly told it is for food or clothing. BNPL is another name for pay day lending without interest. Very hard to break the cycle which is akin to an overdraft or credit card never being paid back.

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, the proposed guidance is satisfactory. Anyway most borrowers and all lenders should be honest and there is already an obligation on lenders to discuss budget items line by line and item by item. I think the current guidance satisfactorily covers the situation. The lender should not be making the assumption it should always be confirmed with the borrower. I verbally discuss the finalised budget with the borrower line by line and have them sign confirming the discussion as being accurate true and correct and they are provided with a copy of this.
	Method inquiries (5.12-5.17)
12	*Do you have any concerns with the 2017 guidance on methods of inquiry? Please explain.*
	No, however 5.13.c could also insert bank statements which I believe are more important than a credit check. Of course you need both. 5.11 suggests that a credit check is not mandatory by using the word "may" in 2 places. Is this intended?
13	*Do you believe further guidance on use of statistical information is necessary? If so, why?*
	No, but I don't use it. 6 months of bank statements is the gold standard! Some items such as eftpos purchases at petrol stations are often co-mingled with non-fuel purchases necessitating to believe what the borrower tells you and sense check this against for example what other borrowers with similar circumstances have told you. Would it be possible to include a provision for lenders to use their own rolling data actual averages from their own actual borrowers to make up their own set of statistics?
14	*Do you agree paragraph 5.13 is desirable to make lenders aware of their obligation under the Privacy Act 2020?*
	Do you mean 5.14? 5:14 is very subtle and I didn't link it to Privacy Principle 8 the way it is worded. Anyway in every case whether in doubt or not the lender should be discussing the correctness of the information with the borrower irrespective of Privacy Principles. 5:13.a. clearly doesn't have any Privacy Principle 8 implications. 5:13.b suggests you already hold the information so you would not need to obtain what you already have. A borrower should already be signing a privacy waiver when they apply to borrow that should include the situation. I always confirm the results of the credit check, MOJ overdue fines search, bank statements, PPSR search etc. with the client in all cases even when I believe they are correct and there is no doubt. I don't think the RLC is the appropriate place to be discussing Privacy Act Principles. Nonetheless, borrowers' privacy rights have been infringed far too much in recent times with everything we have had to ask and find out already. The proposed amendment to the RLC is welcome and addresses the unnecessary invasive requirements.
15	*What might be the implications of using the 2017 guidance on verification? What changes, if any, would you suggest?*
	It has the potential in cases to speed up the process whch will become more streamlined again. You should be able to believe the borrower. Should the example in 5.15.c. be expanded to include bank statements?

16	*Do you have any other feedback on guidance relating to verification or use of information provided by intermediaries?*
	No. Should section 9C(7) of the CCCFA be reinstated?
	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 definitely for some but it doesn't overcome somebody being able to question the lenders affordability risk judgment as to what the risk is and that I believe this will continue to make lenders overly conservative without also addressing the large penalties and fines. 5.21.a suggests that all secured lending would be captured and thus require more extensive enquiries as the risk is greater. Banks are complaining it is too hard to lend and want affordability criteria softened but banks predominantly lend against houses and therefore this is a huge risk to such borrowers i.e. losing their house. The two options in this guidance are diametrically opposed. Banks therefore as a result of this it seems would still have to do complete more extensive enquiries because the debt is huge and the downside is huge. The exception to extensive enquiries could be, for example, when the LVR is less than 70% but mainly when the DSR is less than 30%. I am still likely to perform the same process as if the affordability requirements had not been removed. They were burdensome at first but now I have streamlined systems in place and the lending book quality has improved.
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. The relaxation in the RLC is both welcome and sensible.
	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?*
	No, this is irrelevant because there are no longer any HCL providers. The HCL interest rate should be kept at 50%. There is no compelling evidence in the media or in the public arena that the issues that were occurring with HCL are still occurring with loans in the 30-49% range. I therefore feel strongly in the interest of having a fair and efficient credit market with access to borrowers that the HCL I/R threshold should remain at 50%. Dropping the rate would further negatively impact on borrowers access to credit by excluding an even larger number than the 150,000 excluded when the 21 HCL stopped doing HC loans. I also think that this would see an exodus of lenders from the market making it harder for borrowers to get credit.

	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, it is really well written and most welcome.
23	*Do you have any suggestions for how this content could be presented more clearly or usefully to users?*
	No.

Other comments