

Written feedback

to the

Ministry of Business, Innovation and
Employment

on the

Discussion Document: *Guidance
for lenders on assessing
affordability: draft changes to the
Responsible Lending Code*

10 June 2024



About NZBA

1. The New Zealand Banking Association – Te Rangapū Pēke (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.

2. The following eighteen registered banks in New Zealand are members of NZBA:
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 - ASB Bank Limited
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 - China Construction Bank
 - Citibank N.A.
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 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank N.A.
 - KB Kookmin Bank Auckland Branch
 - Kiwibank Limited
 - MUFG Bank Ltd
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited

Contact details

3. If you would like to discuss any aspect of this submission, please contact:

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Introduction

4. NZBA welcomes the opportunity to provide feedback on the Ministry of Business, Innovation and Employment (**MBIE**) consultation paper: *Guidance for lenders on assessing affordability: draft changes to the Responsible Lending Code (Consultation Paper)* and its exposure draft of Chapter 5 of the Responsible Lending Code (**Code**). We appreciate the work that has gone into developing the Consultation Paper at pace.
5. We are pleased with the direction of the proposed content for Chapter 5 of the Code, which better aligns with the Minister's intent of enabling customers to access financial services safely without unnecessary hurdles.
6. However, while the changes now better support the Minister's intent, it is vital that MBIE does not reintroduce the prescriptive lending requirements from the Credit Contracts and Consumer Finance Regulations 2004 (**Regulations**) following this consultation. To this end, we welcome the opportunity to continue to work constructively with MBIE as it considers responses to this consultation and next steps.
7. We provide more detailed drafting suggestions in Appendix 1 and set out high-level responses to some of the questions raised in the Consultation Paper below.

Caution against additional prescription

8. NZBA is concerned that certain questions in the Consultation Paper (for example, questions 5, 9, 10 and 13) risk reintroducing prescription into the Code, creating further difficulty for responsible lenders to provide credit and running counter to the Minister's aims.
9. As we have previously submitted, many responsible lenders treat the Code as law. Issuing further guidance within the Code on (for example) the use of surpluses, buffers, and adjustments risks creating additional prescription and limiting the flexibility of responsible lenders when assessing loans. Further, 'surpluses', 'buffers' and 'adjustments' are terms used in the affordability regulations which are to be repealed. Continued reference to these terms risks lenders referencing the repealed regulations to achieve compliance which does not align to the Minister's stated intention.
10. We also have some concerns around providing further guidance around the use of statistical information beyond what is already provided in the Code (i.e., that the information is reliable and the method used is reasonable). Any guidance risks taking a one-size fits all approach that may be unhelpful, particularly given banks use complex, comprehensive statistical benchmarks in lending processes.
11. We encourage MBIE to remain cautious of introducing further guidance which may have unintended consequences and risk undermining the intent to better facilitate the safer provision of credit.

APPENDIX 1 | DETAILED FEEDBACK

Para	MBIE proposal	Suggested drafting	Comment
5.1	<p>To meet this lender responsibility, a lender should be satisfied that it is likely that the borrower will make the payments under the agreement without undue difficulty as well as:</p> <p>a. meet necessities (such as accommodation, food, utilities, transport, required medical expenses, clothing, costs associated with any dependents (such as childcare)); and</p> <p>b. meet other financial commitments (such as repayments on existing debts, insurance); without having to:</p> <p>c. further borrow from another source in order do any of the above;</p> <p>d. sell or realise property or assets other than in accordance with the borrower's intentions at the time of approval.</p>	<p>To meet this lender responsibility, a lender should be satisfied that it is likely that the borrower will make the payments under the agreement without undue difficulty as well as:</p> <p>a. <u>as well as</u>:</p> <p>i. <u>_____</u> meet necessities (such as for example accommodation, food, utilities, transport, required medical expenses, clothing, costs associated with any dependents (such as childcare)); and</p> <p>ii. <u>_____</u> meet other financial commitments (such as for example repayments on existing debts, insurance);</p> <p>b. <u>without having to</u>:</p> <p>i. <u>_____</u> enter into a further consumer credit contract or make a material change to an existing consumer</p>	<p>Restructure to avoid sandwich drafting and improve grammar for clarity.</p> <p>Replace 'further borrow from another source' with 'enter into a further consumer credit contract or make a material change to an existing consumer credit contract'. Proposed wording would not have captured where a customer is forced to increase lending with that same lender to meet repayments.</p> <p>However, this requirement does not need to be stated in the test for substantial hardship and it may be better to remove to avoid any potential confusion where the purpose of lending is for cash flow management – like an overdraft or a credit card.</p> <p>Sale of assets to repay lending is included as otherwise that could be considered as causing hardship. The previous provision clarified that where the borrower intends to sell assets to repay lending that is not a trigger for substantial hardship, but sale of other assets the borrower does not intend to sell is.</p> <p>There is no specific need to clarify that further borrowing to repay would be substantial hardship – this would already be addressed as the borrower would not</p>



Para	MBIE proposal	Suggested drafting	Comment
		<p>credit contract borrow from another source in order do any of the above;</p> <p>ii. <u>sell or realise property or assets other than those the borrower intends to sell or realise in accordance with the borrower's intentions at the time of approval.</u></p>	<p>otherwise be able to meet necessities and other financial commitments as well as repaying the lending.</p> <p>Also suggest replacing 'sell or realise property or assets other than in accordance with the borrower's intentions at the time of approval' with 'sell or realise property or assets other than those the borrower intends to sell or realise' for clarity. Time of approval is too specific. Alternative is to use the language from the UK CONC 'sell or realise property or assets other than those the borrower has indicated a clear intention to use to repay the lending.'</p>
5.2	<p>Where the interest rate under the agreement can vary, a lender should take account of the risk that interest rates may rise. For example, to mitigate the risk that potential increases adversely impact on a borrower's capacity to make the payments required, the lender might:</p> <p>a. use a single, sensitised interest rate (which includes a 'buffer') regardless of the loan's actual interest rate;</p> <p>b. use the loan's actual interest rate plus a margin (which functions as a 'buffer'); or</p> <p>c. apply an interest rate floor, to ensure the interest rate applied reflects</p>	<p>Where the interest rate under the agreement can vary, a lender should take account of the risk that interest rates may rise. For example, to mitigate the risk that potential increases adversely impact on a borrower's capacity to make the payments required, the lender might:</p> <p>a. use a single, sensitised interest rate (which includes a 'buffer') regardless of the loan's actual interest rate;</p> <p>b. use the loan's actual interest rate plus a margin (which functions as a 'buffer'); or</p>	<p>References to 'buffers' should be removed. Those references connected specifically to the test in Regulation 4AF, which is no longer relevant and could create confusion, suggesting lenders must continue to ensure a reasonable surplus under the old requirements.</p> <p>Also, remove the reference to 'average' in (c), as interest rate floors may not necessarily reflect average rates, but a range of rates.</p>



Para	MBIE proposal	Suggested drafting	Comment
	<p>higher likely average interest rates over the longer term when operating in a low interest rate environment.</p>	<p>c. apply an interest rate floor, to ensure the interest rate applied reflects higher likely average interest rates over the longer term when operating in a low interest rate environment.</p>	
<p>5.3</p>	<p>For revolving credit contracts, a lender should take into account that a borrower may wish to make payments that:</p> <p>a. in the case of a credit card, are greater than any minimum required payments, such as by applying a reasonable buffer to any minimum required payment;</p> <p>b. in other cases, make payments that are sufficient to repay the full amount of the loan within a period that is reasonable in the circumstances.</p>	<p>For revolving credit contracts, a lender could should take into account that a borrower may wish to make payments that:</p> <p>a. in the case of a credit card, are greater than any minimum required payments, such as by applying a reasonable buffer to any minimum required payment;</p> <p>b. in other cases, make payments that are sufficient to repay the full amount of the loan within a period that is reasonable in the circumstances.</p>	<p>Suggest that this is reworded to avoid the implication that a lender must check with the borrower what repayments they intend to make. Deletion of a also simplifies the requirements (and aligns with the existing reg 4AL(2)(b)(i) which allows lenders to use 3 years).</p>



Para	MBIE proposal	Suggested drafting	Comment
5.5	<p>To meet this lender responsibility, a lender should make reasonable inquiries into:</p> <ul style="list-style-type: none"> a. a borrower’s income and expenses, where a borrower may rely on that income to make some or all payments under the agreement; b. means other than income that the borrower will rely on to make any payment under the agreement; and c. the likelihood of repayment. 	<p>To meet this lender responsibility, a lender should make reasonable inquiries into:</p> <ul style="list-style-type: none"> a. a borrower’s income and expenses, where a borrower may rely on that income to make some or all payments under the agreement; b. means other than income that the borrower will rely on to make any payment <u>some or all of the payments</u> under the agreement; and c. the likelihood of repayment. 	<p>Recommend aligning construction in (b) with that of (a), so it is clearer that income or another means can be relied on to meet some or all of the payments under the agreement.</p>
5.7	<p>A Lender’s inquiries into the borrower’s income or other means of making any payment under the agreement may include inquiries into:</p>	<p>A Lender’s inquiries into the borrower’s income or other means of making <u>payments</u> under the agreement may include inquiries into:</p>	<p>Recommend changing ‘any payment’ to ‘payments’ so that the inquiries are wholistic in relation to payments overall.</p>
5.9	<p>A lender’s inquiries into expenses may include inquiries into:</p> <ul style="list-style-type: none"> a. the borrower’s expenses to meet necessities to maintain a reasonable standard of living (such as 	<p>A lender’s inquiries into expenses may include inquiries into:</p> <ul style="list-style-type: none"> a. the borrower’s expenses to meet necessities to maintain a reasonable standard of living 	<p>Recommend replacing ‘such as’ with ‘for example’ or ‘likely to include’ through this Chapter and the wider Code. Language used to illustrate should be clearer and non-exhaustive.</p>



Para	MBIE proposal	Suggested drafting	Comment
	<p>accommodation, food, utilities, transport, clothing, required medical expenses, costs associated with any dependents (such as childcare));</p> <p>b. the borrower’s other financial commitments, such as insurance, including repayments on existing debts and the extent to which existing debts are to be repaid from the credit advanced;</p> <p>c. other regular or frequently reoccurring expenditure which may be material to the affordability of the loan (such as tithing, transfers to support family overseas);</p> <p>d. changes in the borrower’s relevant expenditure that are likely.</p>	<p>(such as <u>for example</u> accommodation, food, utilities, transport, clothing, required medical expenses, costs associated with any dependents (such as childcare));</p> <p>b. the borrower’s other financial commitments, such as insurance, including repayments on existing debts and the extent to which existing debts are to be repaid from the credit advanced;</p> <p>c. other <u>non-discretionary</u> regular or frequently reoccurring <u>expenditure expenses</u> which may be material to the affordability of the loan (such as <u>for example</u> tithing, transfers to support family overseas);</p> <p>d. changes in the borrower’s relevant expenditure that are likely.</p>	<p>Recommend removing specific references to childcare and insurance as there will be elements of both which may be discretionary. References to those items may create confusion and suggest lenders should always include those expenses when this may not necessarily be the case. For example, a private nanny versus a public kindy or preschool. Or house insurance required by a lender to protect the mortgaged home versus pet, life, income protection or health insurance. The lender may need to make inquiries as to whether the borrower intends to continue those expenses to the extent they are discretionary or may instead include a reasonable value for basic necessities rather than discretionary higher spend. Or the lender may choose to use the higher spend declared. The Code should avoid dictating the right approach, beyond recommending lenders appropriately capture necessities, financial commitments, and other expenses.</p> <p>If childcare is kept, then we suggest reframing to make it clearer only basic costs, not discretionary spend, should be included: ‘costs associated with any dependents like necessities for childcare.’</p> <p>We note that, other than mandatory insurance a lender may require to protect assets they hold as security, it should be up to the borrower to decide what insurance they hold or what level of insurance they maintain. The Code should not make a moral judgement that it is not appropriate for a customer to choose to cancel their</p>



Para	MBIE proposal	Suggested drafting	Comment
			<p>insurance or adjust the level of the insurance to ensure lending they want or need is affordable. That is a matter of choice for the customer. If insurance is kept, we suggest moving it to (c) rather than (b) as a regular or frequently reoccurring expense. We also suggest framing as '(for example, tithing, transfers to support family overseas, or insurance the customer intends to retain)'.</p> <p>There is a subtle difference in meaning between 'reoccurring' and 'recurring'. Recurring is something which happens with regularity and repeatedly. This is not necessarily the case for 'reoccurring' (e.g. a natural disaster may reoccur, but not necessarily with repeated regularity).</p>
	<p><i>Commentary</i></p> <p><i>This part of the Code provides examples of how the purpose for which the borrower is seeking credit might make it clear to a lender that the borrower's relevant expenditure will change or cause them to inquire further with the borrower:</i></p> <ul style="list-style-type: none"> <i>Where the loan is for the purchase of a home the borrower would live in, it would be reasonable for the lender to omit existing rent, once those payments are expected to</i> 	<p><i>Commentary</i></p> <p><i>This part of the Code provides examples of how</i> <i>The purpose for which the borrower is seeking credit might make it clear to a lender that the borrower's relevant expenditure will change or cause them to inquire further with the borrower:</i></p> <ul style="list-style-type: none"> <i>where the loan is for the purchase of a home the borrower would live in, it would be reasonable for the lender to</i> 	<p>Suggest removing the introductory wording on the commentary as the content that proceeds doesn't specifically talk to how the purpose of borrowing may drive the nature of inquiries.</p> <p>Replace 'once' with 'if' in relation to rental payments. If those rental payments will stop, a responsible lender will not include them in affordability assessments. If the payments may stop after the loan is taken out, then including those payments in the affordability assessment may artificially limit the income available to meet repayments on a loan with a lengthy loan term. We do not see situations where rent continues after the loan has been taken out on owner-occupier lending.</p>



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	<p>cease</p> <ul style="list-style-type: none"> Where the loan is for the purchase of a vehicle, it might be reasonable for the lender to inquire into any changes in the borrower's total vehicle licensing, maintenance, and on-road costs. 	<p>omit existing rent, once if those payments are expected to cease</p> <ul style="list-style-type: none"> where the loan is for the purchase of a vehicle, it might be reasonable for the lender to inquire into any changes in the borrower's total vehicle licensing, maintenance, and on-road costs. 	<p>However, where that happens, the lender will consider the most appropriate way of incorporating that as an ongoing expense or a one-off expense. The Code should avoid delving into fringe scenarios that are uncommon as the general requirement to make reasonable inquiries and assess substantial hardship is appropriate to address.</p>
5.13	<p>5.13. In making the reasonable inquiries, a lender may obtain information:</p> <p>a. directly from the borrower (including any supporting documents);</p> <p>...</p> <p>d. which is generated based on statistical information relating to an appropriate class of borrowers, provided that:</p>	<p>5.13. In making the reasonable inquiries, a lender may obtain information:</p> <p>a. directly from the borrower (which may include including any supporting documents);</p> <p>...</p> <p>d. which is generated based on statistical information relating to an expense or appropriate classification of borrowers, provided that:</p>	<p>Expanding 5.13d to include expenses. This would enable lenders to rely on benchmarks and/or statistical information related to the type of expense. For example, rental property expenses, property rates, and property insurance.</p>
5.14	<p>Where a lender is using information it already holds about the borrower in accordance with paragraph 5.13 above, and has any doubts as to whether it is</p>	<p>Where a lender is using information it already holds about the borrower in accordance with paragraph 5.13 above, and has any doubts as to</p>	<p>We suggest removing paragraph 5.14 as it appears unnecessary. Paragraph 5.13 already requires the lender to be satisfied the information they already hold about a borrower is current before it is used. We're not</p>



Para	MBIE proposal	Suggested drafting	Comment
	<p>using that information correctly, the lender should confirm with the borrower the correct use of that information.</p>	<p>whether it is using that information correctly <u>the information may no longer be accurate or reliable</u>, the lender should confirm with the borrower <u>before using</u> the correct use of that information.</p>	<p>aware of any situations, practically, where a lender may need to check <i>the right use</i> of information held. It is either reasonable to use the information (given the duty to act with care, diligence, and skill, and make reasonable inquiries) or it is not. To the extent this content refers to obligations in the Privacy Act (IPP8), then it is not necessary as that Act will already apply and does not need to be specifically referred to in requirements in the Code.</p> <p>However, if needed, we suggest replacing with a reference to checking with the borrower if the lender has concerns around the reliability or accuracy of any information before it is used.</p>
5.15	<p>5.15. In conducting inquiries, information (including supporting documents) may be obtained from the borrower. It will usually be reasonable for a lender to rely on the information provided to them by the borrower where this information is:</p> <p>...</p> <p>b. within the usual range of information for that type of borrower (for instance, if a borrower with two children provides information about their rent that is within the standard range for the rental of a three bedroom house); or</p>		<p>Remove.</p> <p>We suggest that the points in 5.15a – c would be better placed in 5.16.</p> <p>The original 2017 content referenced the test in s 9C(7), being that a lender can rely on what a borrower tells them unless it is unreasonable to do so.</p> <p>The content in the previous Code then set out scenarios where it would always be reasonable to rely on information obtained from a borrower.</p> <p>The draft Code does not include express permission that a lender can rely on what a borrower tells it unless it is unreasonable. We understand that this is not intended to create an obligation to verify, and so</p>



Para	MBIE proposal	Suggested drafting	Comment
			suggest the deletion of 5.15 and inclusion of 5.15a – c in 5.16 to make this more explicit.
5.16	Where the lender has reasonable grounds to believe any information provided by the borrower is not reliable, they should take reasonable steps to verify that information.	<p>Where the lender has reasonable grounds to believe any information provided by the borrower is not reliable, they should take reasonable steps to verify that information. For example, by checking the information is:</p> <ul style="list-style-type: none"> a. consistent with information the lender already holds about the borrower (for instance, because the borrower is an existing customer); b. within the usual range of information for that type of expense or borrower (for instance, if a borrower with two children provides information about their rent that is within the standard range for the rental of a two or three bedroom house); or c. supported by documents from a reliable third party, such as Inland Revenue. 	<p>See comment on 5.15 above.</p> <p>We have also set out an expansion of current 5.15b to include expenses. This would enable lenders to rely on benchmarks and/or statistical information related to the type of expense. For example, rental property expenses, property rates, and property insurance.</p>



Para	MBIE proposal	Suggested drafting	Comment
5.18	<p>A lender should require financial advisers and intermediaries to implement and maintain appropriate policies and procedures to collect information from the borrower and perform any necessary verification, and to train their staff on the Code and the lender responsibility principles. The lender, not financial advisers or other intermediaries, remains responsible for ensuring the lender complies with its responsible lending obligations.</p>	<p>A lender should require financial advisers and intermediaries to implement and maintain appropriate policies and procedures to collect information from the borrower and <u>take any reasonable steps to verify that information where necessary</u> perform any necessary verification, and to train their staff on the Code and the lender responsibility principles. The lender, not financial advisers or other intermediaries, remains responsible for ensuring the lender complies with its responsible lending obligations.</p>	<p>A different standard for verification should not be imposed simply because an intermediary is acting for the borrower.</p> <p>The reference to the lender remaining responsible for compliance is already addressed in Chapter 2 of the Code and is unnecessary in this context. We also note that a mortgage adviser is the agent of the borrower and not the agent of the lender. A lender should be entitled to rely on the information the mortgage adviser provides as if it has come from the borrower directly. This is reflected in the attestations that lenders require mortgage advisers to give – that the information in applications has been checked and confirmed by the borrower before it is submitted. While the lender undoubtedly remains responsible for complying with the Act, to the extent they rely on information given by a mortgage adviser, the lender is relying on information <i>given to them by the borrower</i>. This is a critical distinction to draw, otherwise it creates a risk that lenders would seek to verify all information given by a mortgage adviser with the borrower. Instead, lenders set the processes that mortgage advisers must meet, and ensure the mortgage advisers meet those requirements, but these arrangements reflect the mortgage adviser is the borrower’s agent.</p>



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5.19 to 5.22	<p>5.19 The scope, method or other extent of inquiries that are reasonable for a lender to make to be satisfied of the matters set out in paragraph 5.1 may differ depending on the circumstances.</p> <p>5.20. A lender should make more extensive inquiries where there is a greater risk that the borrower will not be able to make payments under the agreement without suffering substantial hardship. This may include where:</p> <p>a. the size of the loan is large relative to the borrower’s ability to repay;</p> <p>b. the borrower’s credit history suggests repeated challenges making payments under credit contracts or paying for necessities on time (e.g. utilities bills);</p> <p>c. there are signs that the borrower is a vulnerable borrower; or</p> <p>d. the credit agreement is a high-cost credit agreement.</p> <p>5.21. More extensive inquiries may also be reasonable in circumstances</p>	<p>5.19 The scope, method or other extent of inquiries that are reasonable for a lender to make to be satisfied of the matters set out in paragraph 5.1 may differ depending on the circumstances <u>and a lender may need to consider and balance several factors.</u></p> <p>5.20. A lender should make more extensive inquiries where there is a greater risk that the borrower will not be able to make payments under the agreement without suffering substantial hardship. This may include where:</p> <p>a. the size of the loan is large relative to the borrower’s ability to repay;</p> <p>b. the borrower’s credit history suggests repeated challenges making payments under credit contracts or paying for necessities on time (e.g. utilities bills);</p>	<p>The Minister’s intent is that the scope and method of inquiries can vary depending on the risk involved. The Code must make it clear that a lender may make fewer inquiries in certain circumstances.</p> <p>While the proposed drafting includes scenarios where the lender can make fewer inquiries in proposed paragraph 5.21, these are not the inverse of the scenarios in 5.20. Nor does the proposed drafting recognise that a lender may need to balance competing criteria. For example, a top up on a loan should not automatically require a lender to make more inquiries because the borrower risks the loss of a significant asset if the borrower is unable to make repayments. Instead, the lender will need to balance that risk against whether the relative size of the top up compared to the borrower’s existing obligations.</p> <p>Likewise, there are often other considerations. For example, inquiries for a new customer may be different to inquiries for an existing customer.</p> <p>We suggest reframing the content as matters for consideration.</p>



Para	MBIE proposal	Suggested drafting	Comment
	<p>where the consequences of the borrower not being able to make payments under the agreement may be serious (or more serious than under the existing agreement, in the case of a material change to that agreement). This includes where:</p> <ul style="list-style-type: none"> a. the potential consequences include the loss of a significant asset; or b. the default interest plus default fees are high relative to the amount of the loan or credit limit. <p>5.22. A lender may make less extensive inquiries where:</p> <ul style="list-style-type: none"> a. the risk that the borrower will not be able to make payments under the agreement without suffering substantial hardship is lower; and b. the consequences of not being able to make those payments (compared with the consequences associated with the current agreement, in the case of a material change to that agreement) are less serious. <p>This includes cases where:</p>	<ul style="list-style-type: none"> c. there are signs that the borrower is a vulnerable borrower; or d. the credit agreement is a high-cost credit agreement. <p>5.21. More extensive inquiries may also be reasonable in circumstances where the consequences of the borrower not being able to make payments under the agreement may be serious (or more serious than under the existing agreement, in the case of a material change to that agreement). This includes where:</p> <ul style="list-style-type: none"> a. the potential consequences include the loss of a significant asset; or b. the default interest plus default fees are high relative to the amount of the loan or credit limit. <p>5.22. A lender may make less extensive inquiries where:</p>	



Para	MBIE proposal	Suggested drafting	Comment
	<p>a. the lender is refinancing existing debt, or making a material change to an existing contract, without a material increase in the regular payments the borrower would be required to make, and the borrower appears to have made payments under the existing agreement(s) without suffering substantial hardship</p> <p>b. the lender's inquiries are at a given point sufficient to establish that it is obvious in the circumstances of the particular case that the borrower will make the payments under the agreement without suffering substantial hardship, so as to make any further inquiries disproportionate.</p>	<p>a. the risk that the borrower will not be able to make payments under the agreement without suffering substantial hardship is lower <u>including where</u>:</p> <p><u>i. the size of the loan is small relative to the borrower's ability to repay;</u></p> <p><u>ii. the size of any material change is small relative to the borrower's existing obligations;</u></p> <p><u>iii. the borrower's credit history is sound, showing little challenge in making payments under credit contracts or paying for necessities on time (e.g. utilities bills);</u></p> <p><u>c. the borrower is an experienced user of credit; or</u></p> <p>and</p> <p>b. the consequences of not being able to make those payments</p>	



Para	MBIE proposal	Suggested drafting	Comment
		<p>(compared with the consequences associated with the current agreement, in the case of a material change to that agreement) are less serious <u>or do not materially change (compared with the consequences associated with the current agreement, in the case of a material change to that agreement).</u></p> <p>This includes cases where:</p> <ul style="list-style-type: none">a. the lender is refinancing existing debt, or making a material change to an existing contract, without a material increase in the regular payments the borrower would be required to make, and the borrower appears to have made payments under the existing agreement(s) without suffering substantial hardshipb. the lender's <u>reasonable</u> inquiries are at a given point sufficient to establish that it is obvious in the circumstances of	



Para	MBIE proposal	Suggested drafting	Comment
		<p>the particular case that it is likely the borrower will make the payments under the agreement without suffering substantial hardship, so as to make any further inquiries disproportionate.</p>	
5.25	<p>A lender should keep records of any information they obtained from their inquiries into income, other means of making payments under the agreement, expenses and likelihood of repayment.</p>	<p>A lender should keep records of any relevant information they obtained from their inquiries into income, other means of making payments under the agreement, expenses and likelihood of repayment.</p>	<p>The use of ‘any’ could be interpreted as creating a record keeping requirement that is more prescriptive than what is contained in the Act.</p>
5.26	<p>If assumptions were used to estimate the likely payments required by the agreement, (such as for variable interest rates and revolving credit contracts), it may be appropriate to keep records showing how those payments were estimated.</p>		<p>Remove.</p> <p>This imposes a new obligation. The current Code is silent on this requirement and imposing this through the Code may require lenders to change their systems and processes to capture new information for the purposes of record keeping.</p> <p>The Code refers to buffers and adjustments applied to income and expenses, not to the assumptions applied to the repayments for new lending.</p>



Para	MBIE proposal	Suggested drafting	Comment
			<p>Assumptions are applied to all types of lending, including term contracts. For example, a lender will assume the interest rate, repayments, and loan term will remain the same. A lender may also assume the product maximum term may apply, rather than a shorter term requested by the customer.</p> <p>Proposed content in 5.2 and 5.3 address some of the adjustments likely to be needed. Further guidance for the purpose of record keeping is unnecessary.</p>
Include joint expenses and BNPL		<p>Numbering will be dependent on where the new provisions are added:</p> <p>Joint expenses</p> <ol style="list-style-type: none">1. Some of a borrower's expenses may be shared with other people, for example a partner, spouse, extended family, or flatmates. When making inquiries into expenses, lenders should ask about a borrower's own expenses as well as any they share with another person, including how they're shared.	<p>Additional guidance on joint expenses and BNPL would be helpful.</p>



Para	MBIE proposal	Suggested drafting	Comment
		<p data-bbox="920 341 1330 437">2. Lenders may choose to apportion shared expenses. For example:</p> <ul style="list-style-type: none"><li data-bbox="1016 464 1375 699">a. the lender may choose to use a known amount for the borrower's contribution, like a borrower who is flatting and contributes \$30 a week towards power; or<li data-bbox="1016 722 1375 890">b. the lender may choose to use the whole amount of the shared expense or an apportioned amount. <p data-bbox="871 962 1317 1023">Existing buy now pay later (BNPL) facilities</p> <ul style="list-style-type: none"><li data-bbox="920 1046 1375 1214">1. If a borrower has an existing BNPL facility, the lender should consider the following when estimating likely debt payments associated with that facility:<ul style="list-style-type: none"><li data-bbox="1016 1238 1375 1334">a. the borrower's previous and intended use of the BNPL facility;	



Para	MBIE proposal	Suggested drafting	Comment
		<p>b. the credit limit and repayment period of the BNPL, if known; and</p> <p>c. lenders may omit likely debt payments on BNPL to the extent that these reflect expenses already account for by expenses to meet necessities or other non-discretionary regular or frequently recurring outgoings.</p>	