

26 August 2019

Mr Phil Khoury
Cameron Ralph Khoury

By email: cobcop.review@crkhoury.com

Dear Mr Khoury

Customer Owned Banking Code of Practice Independent review 2019 – Report One

The Australian Financial Complaints Authority (AFCA) welcomes the opportunity to provide feedback to Report One of the independent review of the Customer Owned Banking Code of Practice.

Our feedback¹

Item	AFCA feedback
Principles to guide the Review	AFCA supports the proposed principles, in particular that the revised Code be approved by ASIC.
Code structure	AFCA supports all parts of the revised Code being enforceable by customers, including the proposed Key Promises. The proposed structure of the Code set out in Recommendation 1b appears logical.
Key promises	The revised Code should incorporate key promises in a broader range of areas consistent with other industry codes. For example, commitments to: <ul style="list-style-type: none">> timeliness> accessibility> transparency> accountability.

¹ The feedback is provided by the staff of AFCA and does not necessarily represent the views of individual directors of AFCA.

Language and style

AFCA supports the proposed drafting principles outlined in Recommendation 3.

Small business provisions

- AFCA supports the revised Code incorporating the key small business protections contained in the ABA Banking Code of Practice (ABA Code). AFCA also supports expressing those key protections more succinctly, but care should be taken to ensure nothing is “lost” in that process. All protections afforded to small business in the ABA Code should be included in the revised Code.
- AFCA supports broadening the definition of small business. The definition should align with the definition in AFCA’s Rules².
- Proposed clause 6A.7 should be amended to remove the condition that a copy of the valuation report will [only] be provided where it is used in a way that adversely affects the Small Business borrower. No such restriction applies in the equivalent clause of the ABA Code (clause 90).
- Proposed clause 6A.9 should be amended to expressly include the protection afforded to small businesses in clause 76 of the ABA Code. That is, it should make clear that remedying the breach within the notice period will mean a bank no longer requires full repayment and will not take enforcement action.
- The proposed provision should include an additional clause dealing with non-monetary defaults. Chapter 22 of the ABA Code represents an important shift in a bank’s right to rely on a non-monetary default and should be adopted in the revised Code.
- The proposed provision should include an additional clause dealing with the appointment of investigating accountants and insolvency practitioners, similar to clause 92 of the ABA Code.
- As outlined in our April 2019 submission, the revised Code should require a bank to commence discussions with a small business at least 6 months before the expiry of the loan term.

² The definition of small business in AFCA’s Rules is: “...a *Primary Producer* or other business that had less than 100 employees at the time of the act or omission by the Financial Firm that gave rise to the complaint”.

Any questions?

If we can assist by discussing issues, or providing further information, please do not hesitate to contact me at aprice@afca.org.au or on (03) 9613 7350.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alan Price'.

Alan Price
Legal Counsel
Australian Financial Complaints Authority