



Mr Mike Callaghan AM PSM
Independent Reviewer
2021 Code Review
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Email: submissions@bankingcodereview.com.au

Dear Mr Callaghan

2021 Independent Review of Banking Code of Practice

Thank you for the opportunity to provide feedback on the *2021 Independent Review of Banking Code of Practice*.

The NSW Small Business Commissioner (the Commission) is an independent statutory office of the NSW Government. It provides strategic advice, advocacy and affordable dispute resolution services to small businesses across NSW.

The Commission's role includes:

- encouraging government agencies and larger businesses to enter productive working relationships with small businesses
- facilitating and encouraging the fair treatment of small businesses
- promoting a fair operating environment in which small businesses can flourish.

The Commission supports enhancements to the Banking Code of Practice (the Code) to boost compliance and strengthen enforcement. In particular, we welcome the previous establishment of the Banking Code Compliance Committee that expands its powers and jurisdiction in investigating Code breaches and the Australian Financial Complaints Authority to facilitate complaints handling.

The Commission also welcomes recent changes to the Code prohibiting banks from charging default interest to distressed farmers and requiring banks to provide inclusive services to culturally and linguistically diverse as well as regional small business owners.

In addition to these changes, the Commission welcomes the current independent review and encourages further consideration of initiatives to make the Code more inclusive, accessible and enforceable to protect small businesses in the current economic environment.

Enforcement

The Commission notes breaches of the Code have increased significantly in relation to small business loan applications and the appointment of external property valuers, investigative accountants and insolvency practitioners. The Commission encourages further consideration of whether this reflects deficiencies in the architecture of the Code, including its enforcement regime. The merits of designating enforceable provisions should be considered in circumstances where there are persistent compliance challenges.



The consultation note raises whether the Code has sufficient detail such that key provisions can be enforced, including in the event they are designated as enforceable provisions under the law. The Commission appreciates the tension between writing the Code in language that tries to balance accessibility to consumers and the ability for practitioners to obtain the precision they need to understand rights and obligations under the Code. Where this tension has the potential to diminish the practical effectiveness of the Code, the Code should be drafted in a way such that its intended effects can be effectively enforced, whether legally or otherwise.

Our experience with small business stakeholders suggests an effective approach is for more technical aspects of the Code to be accompanied by simple and clear guidance that outlines their rights and key benefits of the Code supported by accessible ways of escalating complaints that preserve anonymity.

Support for business during COVID-19

Anecdotal feedback suggests small businesses have been, on the main, generally supported by their banks throughout COVID-19. While difficult circumstances may have generated difficult experiences for some small businesses, the Commission welcomes this support. We are unaware of any contemporary feedback suggesting major deficiencies in bank responses to restrictions implemented in mid-2021 though we note the current situation is still developing.

We encourage further consideration of specific commitments in the Code to ensure reasonable and consistent treatment of small businesses experiencing financial distress related to significant economic shocks or natural disasters.

The Commission notes that uncertainty contributes to increased anxiety and mental health challenges that some small business operators may face in the event of a significant disruption or impact to their business. The Code potentially has a role to play in setting out clear expectations for small business banking customers so they can have confidence what to expect in these circumstances.

Thank you again for the opportunity to provide feedback. If you require further information, please contact Megan Bennett, on either megan.bennett@smallbusiness.nsw.gov.au or (02) 9372 8767.

Yours sincerely

Chris Lamont
Commissioner
NSW Small Business Commission
6 August 2021