

Mr Mike Callaghan
Code Reviewer
2021 Code Review
Australian banking Association
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Australia Square NSW 1215
Via submissions@bankingcodereview.com.au

13 October 2021

2021 Independent Review of Banking Code of Practice

Dear Mr Callaghan,

Thank you for your agreement to extend time to COSBOA to make submissions to the review of the Banking Code of Practice (BCoP) .

The small business sector employs more than half of all Australians (as compared with 29% in big business and 20% in the public sector). In all, there are more than 2 million small businesses employing over 6.5m Australians. It therefore follows that the wealth and well-being of the Australian community is enhanced when small business friendly policy and regulatory settings are advanced by all Australian governments.

As such a set of principles governing the behavioral standards of financial institutions, upon which small businesses rely, is critical. COSBOA has consulted and collaborated with our members, some have made submissions independently.

On the Banking Code of Practice and the Review's interim report we make the following comments from a small business perspective.

Prescriptive or Principles?

COSBOA's preference is principles but, these must be underpinned by

- Strong ethical frameworks implemented by the banks, including education of staff
- Increased professional standards for bank staff
- Improved definitions of what competencies are required throughout bank ranks, including middle and upper management

A recent study¹ suggests a \$45B gain in GPD in Australia through the adoption of ethical frameworks and goes on to define how such frameworks could be implemented. COSBOA contends that much of these gains would be enjoyed by small business, who have for years been subjected to unfair contract terms, unreasonable payments times and intolerable over regulation and red tape, due to increasing regulatory activity as a reaction to decreasing ethical behavior.

COSBOA agrees with the Interim report's suggestion that the BCoP Clause 10, which calls for bank staff to engage with customers in a fair, reasonable, and ethical manner is the backbone of the Code's

¹ <https://ethics.org.au/the-ethical-advantage/>

Principled approach. Such a principle, if adopted would then drive the necessity of better educated, competent staff, who have the ability and confidence to make decisions within the guiding principles.

COSBOA dismisses any suggestion that defining fair reasonable and ethical is too difficult. We agree that such a definition, extended to current similar definitions in the Corporations and Credit Acts makes sense.

COSBOA understands the tensions between consumer's wanting better protections and banks needing more flexibility. Small business sits in the middle. We require both. Small business must be able to access finance when required. Such access is critical to national economic health. Prescriptive lending – especially the unnecessary application of “responsible lending criteria,” post banking commission, to small businesses has made it more difficult to get finance. Our members advise us that the time to obtain loans and the complexity of requirements has more than doubled². The Australian Small Business and Family Enterprise Ombudsman also reported the same issue.

The Rise of Technology

COSBOA's makes the following observation on the increasing rapidity of technological innovation in the banking and finance sector. While these bring increased efficiency, they have not brought downward pressure on banking fees for small business, despite the increase in online transaction volumes. Not only are these services more expensive, but often system and process driven. This creates a tension between system driven processes that do not apply human knowledge, experience, discernment, and nuances. Recently banks announced they would be adopting AI to assist with processing loans³. While this simplifies and creates efficiencies, it also moves banks towards a more prescriptive and rigid approach to their customers.

COSBOA acknowledges such technology can also remove human biases and prejudices in a positive way. The introduction of AI in lending in the UK saw 70% non-metropolitan loans to founders, an unusual level of regional diversity and 8x the loans to women, more than the normal venture capital avenues globally. COSBOA consultation, clearly identified that process driven lending did not however cope with the complexity and diversity of small business financial arrangements and requirements.

Difference between the needs of a consumer and a business

COSBOA would welcome clarity around the differences between a consumer and a small business in the BCoP. We welcome inclusion in the code and note that small business differs from a consumer, in the following ways:

- **COMPLEXITY** A small business may have more complex financial arrangements including equipment leasing, commercial property rental or loans, inter-company lending, loans to and from Directors, significant assets and needs for flexibility of funding around cashflow. The diversity of small business needs is increasingly being served by brokers.
- **MIXED OWNERSHIP** Often a mix of personal and commercial assets as security.
- **FUTURE FOCUSED** Lending on forward based projections, rather than a consumer loan which is based on history.
- **COMMERCIAL PURPOSE** The financial arrangements are for commercial rather than lifestyle purposes and generally will have a purpose of income production.

² COSBOA Member Consultation CAFBA

³ [ClearCo will set up in Australia using algorithmus and AI based models to evaluate prospective business and start up funding.](#)

Issues such as size are not as relevant as **intent** and **purpose**. Competent qualified credit professionals can make these distinctions. However, it is often not clear to credit providers. Brokers assist with understanding how the small businesses, security, credit, and compliance influence the banks decisions. However, there is a lack of feedback when loans are rejected that make this increasingly difficult for banks and brokers and inevitably, small businesses.

COSBOA contends that this brings responsibility back to banks to have the education and relevant competencies and common sense in trained bank staff. While we prefer principles over prescription, this must be supported by action in increased bank staff training and education. Banks have the power to destroy a business through bad decisions, so “there’s a moral obligation for them to know their stuff.”⁴

Communicating and Balancing the Code, Industry Guidelines and Laws

COSBOA agrees the BCoP is not on the recommended reading list of any small businesses, unless they get into trouble. COSBOA would suggest the BCoP be made BOTH simpler and more comprehensive.

The simpler a document the better, however cross referencing can help those with complex issues find the relevant information.

One document can be written in many ways, so it is fit for purpose for many different audiences. The BCoP is used by consumers, small businesses, bank staff, financial counsellors, and AFCA staff. Creating a “master” BCoP that is comprehensive and then different versions for different audiences is not a difficult task if the BCCC and ABA are committed to the principles of the code.

This requires an understanding of the different uses the document serves. There are good examples of this practice in other areas of Government. For example efforts to improve mental health outcomes in workplaces are general principles that were then adapted in communications pieces to suit small, medium and large workplaces, all having different needs and resources.

COSBOA, under this approach would support the BCoP being a more comprehensive statement, incorporating industry guidelines and picking up where there’s overlap with laws that are similar or relevant. For small business, finding all relevant information in one document is easier than trawling many websites, and laws and regulations and industry association information, and regulatory bodies, to find relevant information.

There needs to be more attention placed on both how and where it is communicated and more emphasis on promoting the code to consumers and small businesses.

Alexi Boyd
Chief Executive Officer

Council of Small Business Organisations Australia (COSBOA)

COSBOA is the big voice for small businesses people since 1977. As a collaboration of peak organisations, we promote small business with independent, tenacious advocacy to powerful decision-makers to get a better deal for millions of small businesses people and a better economy for all Australian people.

⁴ Consultation with COSBOA member CAFBA

ABOUT COSBOA

The Council of Small Business Organisations of Australia (COSBOA) is just that – a council of organisations. The capability, representation and reach of the organisation is defined by its national association members – many of whom have substantial resources in advocacy and influence. These organisations essentially work behind the COSBOA Secretariat and COSBOA Board and do the heavy lifting on policy development, policy research and small business engagement.

COSBOA was set up in 1979 to be an unambiguous advocate for small businesses. The founders of COSBOA had noted that various organisations who claimed to represent small business also represented big business. This created a conflict, and the needs of small business often came second to the needs of big business or economic theorists. COSBOA's constitution highlights that the organisation exists not necessarily for its members but for the whole small business community. Members receive support in advocacy and with development of their own policies if needed. Members join COSBOA because it is solely about small business people.

Unlike other business advocates who operate models that are built on geographic hierarchies, the COSBOA model advances and encompasses discrete national industry representation (e.g. pharmacy, hairdressing, butchers, newsagents and servos). It is harnessed to caucus policy issues that are of common concern across multiple industries – and provide national reach to small business owners by utilising the peer-to-peer communication mechanisms of COSBOA's industry association members.

Many people wrongly judge COSBOA as a small Canberra-based secretariat, led by its high-profile CEO and media advocate. But the association is a cooperative of national industry bodies that do much of the heavy lifting for the COSBOA Secretariat in terms of policy development and small business engagement. In that way, the organisation through our membership has a reach of over 1.2 million small businesses and together they represent the broader Australian society and community.

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