



Tasmanian Small Business Council

Uniting Small Business

Tasmanian Small Business Council Inc

116 Bathurst Street Hobart TAS 7000

GPO Box 224 Hobart TAS 7001

Ph (03) 62319174

Robert@thefrontman.com.au

www.tsbc.org.au

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Response to ABA Code review

The Interim Report of the independent review of the Revised Code of Banking Practice released in September 2021 invites feedback.

The Tasmanian Small Business Council response focuses on the six summary issues noted on page 18 of the Interim Report. We also raise what we believe to be the responsibility of the Code to clarify the relationship between the codes and the relevant legislation and Regulatory Guidelines that govern both the rights of parties under the loan contracts and banking regulation.

Influence of Royal Commission

The interim report speaks of “**awareness**” and “**compliance**”

Awareness

The report makes little reference to the fact that there is negligible awareness of the Code among bank customers, a fact verified in a recent report from the Banking Code Compliance Committee.

The Australian Banking Association is specific in stating that “*The Code of Banking Practice establishes the industries key commitments and obligations to its individual and small business customers.*” The ABA further notes that “*when a bank adopts the Code, it becomes a binding agreement between you and your bank.*”

These commitments are repeated in a submission to The Senate on 13 June 2017 by Christopher Doogan, AM, Independent Chairman, Code Compliance Monitoring Committee (‘CCMC’). He states, “*Once a bank subscribes to the Code it becomes mandatory for that bank to comply with the Code and the obligations under the Code are incorporated into the contracts between the bank and those customers to whom the Code applies.*”

In light of these commitments, the codes are and should continue to be, part of the customers’ and the banks’ loan contract, and should be provided to the customers before or when they sign their loan contract. It contains important information about rights and obligations of both parties. This is important and should be addressed in the review.



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Compliance

The word “compliance” is important because loan contracts are governed by the rule of law and the relevant code. For ‘**compliance**’ to be effective, the review could be more specific when commenting on the need for the legislation and codes to be **relevant** and **mandatory**.

The legislation and the relevant code should be provided to customers and expressed in plain language. This was a recommendation by the Taskforce on Industry Self-Regulation (2000).

Importance of the Code

The Code has been an important part of contracts between banks and customers since 2003. The commitment was repeated by subscribing banks in October 2004. They stated:

The Code establishes the banking industry’s key commitments and obligations to customers on standards of practice, disclosure, and principles of conduct for their banking services. When your bank adopts the Code, it will become a binding agreement between you and your bank.

The Code is not legislation; however, banks that adopt the Code are contractually bound by their obligations under the Code.

The Code’s audience

The review should make recommendations that improve the relationship between banks and their customers.

Fair, reasonable, and ethical

Engaging with the customer in a fair, reasonable, and ethical manner is a key principle that must underpin **all commitments** in the Code. In order for the Code to work more effectively, banks must accept, and customers must understand that:

A financial service licensee must do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly; and have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of financial services as part of the financial services business of the licensee or the representative. – Corporations Act 2001 Section 912 A (Attached)



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The Interim Report notes ASIC Regulatory Guide 183 *'Approval of financial services sector codes of conduct'* is relevant to the Code of Banking Practice. However, there are also other Regulatory Guides which impact on the bank - customers relationship and their agreement. A footnote in the Code setting out the Regulatory Guides that are applicable would ensure that banks customers are properly informed.

Other matters

We would like an opportunity to meet with the reviewer so other matters raised in my submission, which could benefit the industry, could be included.

Geoff Fader

Chair, Tasmanian Small Business Council

4 October 2021



Commonwealth Consolidated Acts

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CORPORATIONS ACT 2001 - SECT 912A

General obligations

(1) A [financial services licensee](#) must:

(a) do all things necessary to ensure that the [financial services](#) covered by the [licence](#) are [provided](#) efficiently, honestly and fairly; and

(aa) have in place [adequate arrangements](#) for the management of conflicts of [interest](#) that may arise wholly, or partially, in relation to activities undertaken by the licensee or a [representative](#) of the licensee in the [provision](#) of [financial services](#) as part of the [financial services business](#) of the licensee or the [representative](#); and

(b) comply with the conditions on the [licence](#); and

(c) comply with the [financial services laws](#); and

(ca) take reasonable steps to ensure that its [representatives](#) comply with the [financial services laws](#), except to the extent that:

(i) those [representatives](#) are [insurance fulfilment providers](#); and

(ii) the [financial services laws](#) relate to the [provision](#) of [claims handling and settling services](#) by those [representatives](#); and

(cb) if the licensee is the [operator](#) of an [Australian passport fund](#), or a [person](#) with responsibilities in relation to an [Australian passport fund](#), comply with the law of each [host economy](#) for the fund; and

(d) subject to [subsection](#) (4)--have available [adequate](#) resources (including financial, technological and human resources) to [provide](#) the [financial services](#) covered by the [licence](#) and to carry out [supervisory arrangements](#); and

(e) maintain the competence to [provide](#) those [financial services](#); and

(f) ensure that its [representatives](#) are [adequately](#) trained (including by complying with [section 921D](#)), and are competent, to [provide](#) those [financial services](#); and

(g) if those [financial services](#) are [provided](#) to [persons](#) as [retail clients](#):

(i) have a dispute [resolution](#) system complying with [subsection](#) (2); and

(ii) give [ASIC](#) the information specified in any [instrument](#) under [subsection](#) (2A); and

(h) subject to [subsection](#) (5)--have [adequate](#) risk management systems; and

(j) comply with any other obligations that are [prescribed](#) by regulations [made](#) for the purposes of this [paragraph](#).

(2) To comply with this [subsection](#), a dispute [resolution](#) system must consist of:

(a) an internal dispute [resolution](#) procedure that:

(i) complies with standards, and requirements, [made](#) or approved by [ASIC](#) in accordance with regulations [made](#) for the purposes of this subparagraph; and

(ii) [covers complaints](#) against the licensee [made](#) by [retail clients](#) in connection with the [provision](#) of all [financial services](#) covered by the [licence](#); and

(c) membership of the [AFCA scheme](#).

(2A) [ASIC](#) may, by legislative [instrument](#), specify information that [financial services licensees](#) must give [ASIC](#) relating to their internal dispute [resolution](#) procedures and the operation of their internal dispute [resolution](#) procedures.

(2B) An [instrument](#) under [subsection](#) (2A) must not specify any information that is [personal information](#) within the meaning of the *Privacy Act 1988* .

(3) Regulations [made](#) for the purposes of subparagraph (2)(a)(i) may also deal with the variation or revocation of:

(a) standards or requirements [made](#) by [ASIC](#); or

(b) approvals given by [ASIC](#).

(4) [Paragraph](#) (1)(d):

(a) does not [apply to](#) a body regulated by [APRA](#), unless the body is an [RSE licensee](#); and

(b) does not [apply to](#) an [RSE licensee](#), unless the [RSE licensee](#) is also the [responsible entity](#) of a [registered scheme](#).

(5) [Paragraph](#) (1)(h):

(a) does not [apply to](#) a body regulated by [APRA](#), unless the body is an [RSE licensee](#) that is also the [responsible entity](#) of a [registered scheme](#); and

(b) does not [apply to](#) an [RSE licensee](#) that is also the [responsible entity](#) of a [registered scheme](#), to the extent that the risk relates solely to the operation of a [regulated superannuation fund](#) by the [RSE licensee](#).

(5A) A [person](#) contravenes this [subsection](#) if the [person](#) contravenes [paragraph](#) (1)(a), (aa), (ca), (d), (e), (f), (g), (h) or (j).

Note: This [subsection](#) is a [civil penalty provision](#) (see section 1317E).

(6) In this section:

"person with responsibilities in relation to an Australian passport fund" means a [person](#) (other than a regulator) who has functions or duties in relation to the fund under the Passport Rules for [this jurisdiction](#).

"regulated superannuation fund" has the same meaning as in the [Superannuation Industry \(Supervision\) Act 1993](#) .

"RSE licensee" has the same meaning as in the [Superannuation Industry \(Supervision\) Act 1993](#) .

