



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

14 January 2021

Michael Lawrence  
Chief Executive Officer  
Customer Owned Banking Association  
GPO Box 4686  
Sydney NSW 2001

*via email: l Moran@coba.asn.au*

*Michael*  
Dear Mr Lawrence

### **Customer Owned Banking Code of Practice**

Small businesses often lack the sophisticated legal and financial advice provided to larger businesses. This places them in a position of vulnerability closer to that experienced by consumers rather than medium or large businesses. Our recommended changes to the Code (also included in the marked up copy attached) are as follows:

**1. Extend the rights under the Code for a guarantor of a loan to withdraw or limit a guarantee (for credit that has yet to be provided) to directors of small businesses. (Paragraphs 73 and 94)**

A common aspect of small businesses is that they are built on relationships, with friends and family often going into business together. Where these relationships breakdown, directors should have the right to withdraw or limit a guarantee for credit yet to be provided.

**2. Commit to not charge interest on lenders mortgage insurance. (Paragraphs 105 and 106)**

We welcome the commitment to not take commission and charge only the actual cost of the lenders mortgage insurance. To meet this commitment, members should not charge interest on the cost of this product. The reference to interest in Paragraph 105 should be removed, and an explicit commitment to not charge interest on lenders mortgage insurance should be included.

**3. Provide a grace period between the notification of a new minimum repayment amount and the application of any penalties for not meeting this new minimum. (Paragraph 119)**

The Code allows a lender to notify a customer of an increase in interest no later than the day on which the change takes effect. We acknowledge the necessity for this requirement which reflects the range of products offered by your members. However small businesses need time to manage their cash flow appropriately. We recommend that the Code allow a 30 day grace period to give a small business time to adjust their cash flow to meet their new obligation.

**4. Explicitly preference direct electronic notification with customers. (Paragraphs 120 and 122)**

Owners of small businesses rarely have time to actively monitor changes to their banking arrangements. We recommend a commitment to preference direct notification, particularly in cases of unfavourable changes impacting small businesses, unless requested otherwise.

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**5. Explicitly commit to discharging registrations on the Personal Property Securities Register (PPSR) after the closure of an account. (Paragraph 144)**

It is important to small businesses that their assets are unencumbered by registrations left on the PPSR after the relevant obligation is fulfilled. An explicit commitment in the Code will remind your members of their requirement under the *Personal Property Securities Register Act (2009)* (Cth) to end registration within 5 business days after the day the obligations are discharged.

**6. Provide a payout figure for a loan or credit facility within 3 business days of request. (Paragraph 145)**

Referring to business days allows a member an extended period of time to undertake what should be a simple administrative function. Where public holidays follow weekends, seven business days can quickly become 10 or more calendar days. For small businesses 7 business days from request can result in an alternate offer to refinance being withdrawn. We consider 3 days as a reasonable period to provide this information.

**7. In cases of member-initiated account closure provide 30 days' notice and contact customers via phone before sending the notice. (Paragraphs 146 and 147)**

In cases of member-initiated account closure we strongly recommend that the customer be called to alert them to the notice of account closure. This will have the additional benefit of providing an opportunity for the customer to give a new address for the notice.

Small businesses will also need a minimum of 30 days' notice to ensure they can arrange new banking facilities. The notice of account closure should provide general reasons if appropriate.

**8. Allow forgiveness of late fees for small businesses provided assistance. (Paragraph 161)**

While the section Lending to Small Business allows three months for a small business to rectify a default a member may wish to further extend support. Where such support is extended it should be on the same basis as to all other customers in financial difficulty.

**9. Provide information about AFCA to customers when communicating with them about a complaint. (Paragraphs 180 and 181)**

AFCA is an important pathway for dispute resolution. It is unreasonable to rely on a customer to ask for information about a service they do not necessarily know exists. We strongly recommend the Code commits members to proactively provide information about AFCA when advising a decision, and when advising if additional time is required to reach a decision.

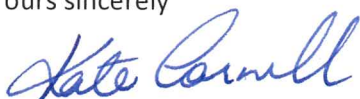
It is important that internal dispute resolution processes are transparent, when a member is seeking more time to resolve a complaint they should include the reasons for the delay.

**10. Provide additional training to staff supporting small business customers. (Paragraph 186)**

Small businesses have unique needs and pressures. Additional training for staff that support small businesses will ensure your members deliver services with reasonable care and skill.

Thank you for the opportunity to comment. We would welcome discussion on our submission and, if possible, ask that you contact Jac Frater on 02 6213 7434 or at [Jac.Frater@asbfeo.gov.au](mailto:Jac.Frater@asbfeo.gov.au) to arrange.

Yours sincerely



**Kate Carnell AO**

Australian Small Business and Family Enterprise Ombudsman