



**Tasmanian Small
Business Council**

Uniting Small Business

Tasmanian Small Business Council Inc

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Mr Phil Khoury,

26 October 2021

BCCC Code Reviewer

Dear Phil,

BCCC Review

It is appropriate that there be regular reviews of the provisions in the Australian Bankers Association's Code (the Code) and the responsibilities of the Banking Code Compliance Committee (BCCC), as both must be effective and able to protect customers and the banks.

When customers review the operations of the Australian banking system, it is apparent that customers are relying on the practices by banks to comply with their responsibilities since the introduction of the "self-regulation" in 1993. If there is evidence that a Code subscribing bank has not complied with its responsibilities under the Code, then the compliance monitors must decide the facts and the bank has to rectify the misconduct.

It has been the practice by the ABA since 2003 and the Code Compliance Monitoring Committee (CCMC) to treat the Code of Banking Practice as some form of guidance that the banks can, at their discretion, ignore for their benefit. The Code of Banking Practice, since 2003 is an essential component of the banks' lending agreement and therefore a contractual document. There is evidence that when there are deliberate breaches of loan contract, the CCMC have either turned a blind eye or applied a different code. This practice is unlawful.

The ABA members and its officers have on many occasions stated: *"The Code of Banking Practice establishes the industries key commitments and obligations to its individual and small business*

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customers.” The ABA further notes *“when the bank adopts the Code, it becomes a binding agreement between you and the bank.”*

ASIC’s document, discovered in October 2007, titled ‘Code of Banking Practice’, states:

“The original Code of Banking Practice was released in 1993 and has been extensively revised. In August 2003, a revised Code was released, followed in May 2004, after some further finetuning, by a modified Code. The 2003 and 2004 versions of the Code were developed in consultation with consumer advocates, businesses groups, ASIC and other stakeholders following a major independent review during 2000-2001.

A Code Compliance Monitoring Committee has been set up to investigate possible breaches of the Code. anyone can refer a possible breach of the Code to this committee. The CCMC monitors subscribing banks’ compliance with the Code. You can complain to the CCMC if you think a bank has breached the Code. You don’t have to show you have suffered a loss to complain.

If you believe the breach of the Code is serious and/or may involve many bank customers apart from yourself, you may wish to make a complaint to ASIC”.

In June 2017, the CCMC’s Independent chairperson, Christopher Doogan AM, informed the Senate *“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.”*



As noted, banks have responsibilities under the relevant code and the code compliance monitors have to determine whether banks complied with those responsibilities. These responsibilities are mirrored by the Corporations Act

All AFS licensees have an obligation to provide their financial services efficiently, honestly and fairly: s912A(1)(a) of the Corporations Act.

AFS licensees are required to have adequate resources to provide financial services covered by the AFS licence: s912A(1)(d) of the Corporations Act.

Under the Corporations Act, an AFS licensee is required to

- (a) Take reasonable steps to ensure that its representatives comply with the financial services laws (s912A(1)(ca)); and*
- (b) Ensure its representatives are adequately trained, and competent, to provide the financial services authorised by the licensee (s912A(1)(f)).*

The requirements set out in the Corporations Act mirror the provisions in the Code of Banking Practice. Failure by banks to rectify breaches of the code are also rectified by the Corporations Act. There was confusion when the 2004 Code was published regarding the importance of the code monitoring provisions. This introduced questions in relation to the CCMC's independence. However, this was rectified by the Corporations Act, which states:

Under s912B of the Corporations Act, AFS licensees must have arrangements for compensating retail clients for loss suffered as a result of a breach by the licensee or its representatives of their obligations in Ch 7 of the Corporations Act.



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Any failure by banks to comply with the relevant code leaves their licensees and the banks' directors liable for breaking the law. However, when banks have failed to provide customers with all the relevant documents, it is deceitful. If they then obtain a financial advantage or cause a disadvantage to their customers, it is a crime.

Yours truly

Geoff Fader

Chair, Tasmanian Small Business Council