

SUMMARY OF ISSUES

To assist with the analysis of the issues raised in the submissions and listed in the Issues Register, I have identified 12 key groupings of issues. Some of the main points of focus are set out in this summary.

1. Code language, structure and promotion

There have been submissions that the Code is inaccessible as a result of its length, detail and legalistic style. There are some views that it should operate more at a principles-level and should be less process-prescriptive. There are other views that the process prescription introduces certainty and is more enforceable.

In thinking about this, I am considering Australian Bankers' Association industry guidelines and the role that these can have in 'fleshing out the detail' of Code principles-level provisions. I recognise, however, that at a time when the banks want to rebuild trust and confidence, it may be that a more detailed Code is currently required. A move to a Code framed as principles and supported by guidelines may be a medium term aspiration.

2. Small business issues

A threshold issue I am considering is how 'small business' should be defined for the purposes of the Code. Here I am looking with interest at the Financial Ombudsman Service's revisiting of its 'small business' definition and a number of submissions to that review.

I am also looking at issues raised in Government Inquiries about the provision of credit process, pre-loan disclosure, valuations of security, default notice periods, end of loan processes and banks' handling of complaints for small businesses. I have looked at the way issues are dealt with in small business lending codes of practice in other comparable jurisdictions such as Ireland, UK and Canada.

3. Responsible lending

Credit cards are a major focus of submissions to the Review in relation to responsible lending.

The Australian Government Treasury has proposed 9 credit card reforms and is beginning a program of testing of some of these reforms to determine whether they are likely to achieve the goal of reducing the 'credit card debt trap'. In the meantime, the Treasury has encouraged industry to adopt these reforms voluntarily. I am considering whether to recommend that the Code adopt any of these proposals.

4. Joint account holders and guarantors

The concern that has been raised here is financial exploitation of more vulnerable customers. I am looking at whether a joint debtor should be held liable for a debt from which they derive very minimal benefit. There are also issues relating to control of a joint account where the account holders' relationship comes to an end (mainly in divorce or separation situations).

Guarantors already have substantial protections under the Code but some additional protections have been proposed to me.

5. Financial difficulty

Submissions to my Review recognise that the banks' financial hardship processes provide very significant assistance to large numbers of consumers. Nevertheless there have been many requests for further enhancements to the Code provisions.

I am considering whether the Code should require banks to be more proactive in early identification of customers who might otherwise progress to hardship (something that some of the banks already do). I am also seeking to understand whether the Code should deal more expressly with the way in which banks may sometimes offer short-term assistance to customers in financial difficulty.

6. Impaired loans/ late payment

Many of the submissions in relation to impaired loans are specific to small business. Other issues raised with me include default fees, credit reporting and to garnishing of accounts into which Centrelink payments are made.

7. Banking services terms and conditions

Bank fees are the main issue here. Consumer representative organisations have suggested that whilst competition between banks serves to moderate 'visible' front end fees such as loan application fees, the competitive market place does not moderate some other 'less-visible' fees such as default fees. Government Inquiry reports have also questioned the fairness of default fees.

It is not my role to determine the level of fees. I am, however, considering whether the Code should require better disclosure in relation to certain fees or establish principles as to how certain fees should be levied.

8. Cancellation of direct debits and recurring payment arrangements

Consumer representative organisations maintain that consumers continue to experience difficulties in cancelling their direct debit arrangements. This issue is particularly complicated where the regular payment is by card that is part of a card scheme such as the Visa or Mastercard scheme – where the banks have less control over the process.

9. Marketing and sales

The principal issue raised by non-industry stakeholder organisations is the marketing by banks of consumer credit insurance. Here I am utilising the research reports of the Australian Securities and Investments Commission in developing my views. Fairness issues pertaining to lenders mortgage insurance have also been raised.

10. Consumers with special needs

A number of submissions have suggested that the Code key commitment relating to customers with special needs should be broadened to encompass other groups including those with disability, those experiencing trauma, abuse or disadvantage including natural disaster, family violence or socio-economic disadvantage, the elderly, those for whom English is their second language and so on.

Other proposed changes to the Code include a provision recognising the rights of customers with disability to supported decision-making (as per the Australian Law Reform Commission Report *Equality, Capacity and Disability in Commonwealth Laws* in 2014) and a provision recognising

the entitlement of all residents to a bank account (as per the recent European Union Payment Accounts Directive). I am also looking at the issues posed for some customers, who do not have ready access to the internet, as a result of the increasing digitalisation of banking services.

11. Other Code content issues

Other issues that have been raised with me that I am considering include confidentiality, privacy, complaints handling and staff training.

12. Code compliance and monitoring

The Code Compliance Monitoring Committee (CCMC) is an independent organisation that oversees banks' compliance with the Code. My review has raised questions about the respective priorities of the CCMC's responsibilities (eg. the balance of effort between investigating individual allegations of breaches of the Code – and conducting inquiries into broader questions of effectiveness and recommending better practice).

The CCMC has also been challenged over its profile, accessibility and the visibility of its work. A number of stakeholders have argued that the CCMC is not adequately resourced and have argued that it has insufficient powers. Others have argued strongly that the CCMC should not become a 'quasi-regulator' as this would break down the openness and trust it currently has with industry.

Finally, it is clear from a review of the CCMC's work and from submissions that there remains confusion in consumers' eyes between the CCMC's role in investigating breaches and the Financial Ombudsman Service's role in looking at loss and possible compensation.

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