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ASIC Banking Code

Via email: [BankingCode@asic.gov.au](mailto:BankingCode@asic.gov.au)

4 January 2024

Dear ASIC Banking Code Consultation Team

**Re: CP73 Proposed changes to the Banking Code of Practice**

The Council of Small Business Organisations (COSBOA) represents the interests of Australia's small businesses. As mentioned in our submission to the 2021 Independent Review of Banking Code Practice, 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.

Small business owners rely on the Australian Banking Code of Practice to ensure they are treated fairly and ethically by their banks. These small businesses frequently use in-person banking services to facilitate cash deposits, business financing and other support mechanisms.

In general, COSBOA welcomes the proposed Banking Code of Practice in relation to small businesses, with some additional commentary below for ASIC's consideration:

- **Definition of small business:** COSBOA welcomes the updated definition small business, which increases the upper limit of aggregate borrowings from \$3 million to \$5 million, therefore covering more small businesses. Varying definitions of small business exist in Australia and aligning definitions assist small businesses in understanding what applies to them and what protections they have.
- **Guarantor provisions:** COSBOA is of the view that the compulsory meeting in the proposed Code provides an appropriate balance in protecting guarantors and not impeding their role at the same time. It is an important tool in ensuring all parties understand their obligations. COSBOA, however, does suggest an amendment to include 'third-party' before guarantor only in reference to small-business lending. The term "vulnerable guarantor" is very broad and open to a wide range of unworkable interpretations. Common industry language in small-business lending is

“third-party guarantor”, which is specific to the class of guarantor who is vulnerable if providing a security or guarantee for a small business to which they are not a related party.

- **Relocated complaints information:** Clearly stipulating the avenues a small business has to resolve a complaint through Internal Dispute Resolution, complaining to the Australian Financial Complaints Authority or taking Court action provides valuable time back to small businesses who often undertake all the various roles in running a business from Human Resources to Finance and Accounting. Whilst COSBOA supports the movement of this section to the introduction of the proposed Code, proposed Part D2 at the end of the Code should be moved into the same area so that it is clear and accessible to all banking customers that their banks are committed to compliance through RG 271.
- **Revised structure:** COSBOA supports the simplification of the proposed Code and the removal of any duplicative provisions between the Code and what already exists in other legislation. COSBOA also supports the Proposed Customer Guide.
- **Lending to Small Business:** COSBOA supports the clarification of what happens when lending to a small business, however, does wish detailed reasoning compared to general reasoning be given to a small business when a loan is declined. This reasoning should be limited to where a loan may be declined due to not fitting within a Bank’s policy rather than a rejection based on a credit assessment. Whilst COSBOA understands that factors in a Bank’s process change over time and make it impractical to provide this information in relation to future applications, however, reasoning is imperative in ensuring the small business can direct their energies and resources to Bank’s that may fit their needs. Sufficient safeguards can be put into place to ensure that providing reasoning why a loan has been declined does not trigger the ‘tipping off’ prohibition provisions under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth).
- **Vulnerability definition:** The amendment of the vulnerability provisions is important considering the everchanging circumstances in which small businesses operate in. The non-exhaustive list will give small businesses assurance that they can share their circumstances with their Banking Provider.

In relation to some of ASIC’s other questions raised in the consultation paper, COSBOA has the following comments:

**C1: Do you think the proposed Code contains an appropriate range of commitments by the banks to prevent consumer harm that go beyond what is required by the law?**

Ultimately, preventing consumer harm is difficult to address through one Code. However, various additional rights and protections exist under Australian legislation for small businesses. Banking providers have obligations to provide consumers with information and resources related to the banking service being sought. It is important that all resources are provided in plain English and are also accessible in different languages for those individuals who are from culturally and linguistically diverse backgrounds.

COSBOA already works closely with the ABA, Commonwealth Bank and even the Commercial and Asset Finance Brokers Association of Australia in relation to small businesses and looks forward to working collaboratively with them to ensure small businesses are protected. The Cyber Wardens program is one such example of an initiative aimed at educating small businesses of the importance of cyber security, even when it comes to banking.

COSBOA also looks forward to further engagement with the ABA following consideration of the Government's Buy Now Pay Later regulation and review of the Privacy Act changes, and whether further changes are required to the proposed Code.

**C10: Do you think a commitment to take all reasonable steps to have in place appropriate systems, processes and programs to support an integrated approach to compliance would result in meaningfully improved customer protections? Why or why not?**

COSBOA understands that ABA's decision to not include this commitment in the proposed Code is because Banks already have an existing obligation to maintain adequate systems, processes and programs under the APRA Prudential Standards, obligations in section 47 of the *National Consumer Credit Protection Act 2009* (Cth) and section 912A of the *Corporations Act*. These legislative and regulatory frameworks exist above the Code and apply regardless of whether it is reiterated in the proposed Code or not. Improved customer protections will only take place when Banks take a continuous improvement approach to compliance and improving customer experience.

COSBOA thanks ASIC for the opportunity to provide a submission on the Proposed Code and is happy to provide any follow up information that may assist ASIC in their processes.

Yours sincerely,

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CEO, COSBOA