

Our reference: QSBC-7893

28 September 2023

Ms Suanne Russell
Lead Ombudsman – Small Business and Transactions
Australian Financial Complaints Authority
via email: consultation@afca.org.au

Dear Ms Russell

Re: AFCA Approach to Appropriate Lending to Small Business – consultation paper

The Queensland Small Business Commissioner (QSBC) welcomes the opportunity to provide feedback on the consultation draft of the AFCA Approach to Appropriate Lending to Small Business (the Approach).

It is the aim of the QSBC to enhance the operating environment for small businesses in Queensland. There are approximately 473,000 small businesses in Queensland who represent more than 97% of Queensland businesses¹. Since the start of the COVID-19 pandemic, Queensland has seen an increase in the value of outstanding small business loans in 11 of 19 industries². This increased reliance on finance and a tightening of economic conditions may see more small businesses accessing, or attempting to access, credit potentially resulting in an increase in complaints to AFCA.

As such, the QSBC welcomes the development of the Approach documentation by AFCA to help inform small businesses on how AFCA reaches decisions regarding eligible small business lending complaints.

The QSBC provides the following feedback on the consultation draft of the Approach:

Section 3: How do we decide if a financial firm has met its lending obligations

1. Do you have any comments about our proposed approach to assess whether a small business loan is appropriate?

The QSBC recommends that the guidance for financial firms on the list of factors (page 19) and common warning signs (page 24) be strengthened to make it clearer that firms are not expected to consider all factors or make further enquiries for every application. It is imperative that a balance be struck between financial firms requesting information to make an informed lending decision and the burden placed on small businesses to comply with the requests. There is a risk that if financial firms regulated by AFCA become too risk averse because of the Approach, that small businesses may be pushed to unregulated and predatory credit providers.

¹ ABS 8165 Counts of Australian Business, including entries and exits as of 30 June 2022. Australian Bureau of Statistics, Canberra.

² Queensland Small Business Outlook: Beyond the pandemic, September 2023. Queensland Small Business Commissioner, Brisbane.

Other feedback

2. Do you have any comments about the examples provided in the Approach? Are there other examples you would like to see in the Approach?

The QSBC notes that the examples provided are extremely helpful for small businesses to contextualise AFCA's approach and understand how it may be applied to their situation. For sections where relevant factors may be broadly interpreted by AFCA, such as Section 3.5 on relevant information and Section 3.6 on further information, the QSBC suggests that two examples be provided – one that shows AFCA's determination in favour of the small business, and one in favour of the financial firm. This will further assist small businesses in contextualising AFCA's approach. The same could be done for the case study at Section 7.

3. Do you have any comments about the use of the phrase "appropriate lending" as a description of the standard to be applied for small business lending?

The QSBC supports the phrase "appropriate lending" to differentiate this standard from the "responsible lending" standard which applies to consumer loans. The QSBC agrees that a new phrase will help avoid confusion by small businesses who may think they are covered by the "responsible lending" provisions in the *National Consumer Credit Protection Act 2009*, when they are not. The 'important note' provided at Section 2.4 of the Approach is helpful in clarifying this for small businesses and could possibly be highlighted earlier on in the Approach document. We also note that a draft AFCA Approach to Responsible Lending document has been developed, which will further assist in clearing up confusion once it is released.

4. Do you have any other feedback about changes that could be made to the draft Approach to better achieve our objectives?

The Approach document provides small businesses who are pursuing, or considering pursuing, a complaint with detailed information on AFCA's approach. As small businesses are time poor, the QSBC recommends that the Approach document be supplemented with a one-page factsheet and/or website content with key information that then refers the business to the detailed Approach document should it be required.

The QSBC also recommends that some guidance on AFCA's average timeframes for decisions be added to the Approach and/or supplementary material. In the QSBC's experience, providing small businesses with this type of information when they are in dispute helps to manage expectations and provides them a feeling of control or assurance in a time of distress.

Thank you once again for the opportunity to provide feedback on the consultation draft of the AFCA Approach to Appropriate Lending to Small Business. I am confident that the final Approach will be a valuable guide for small businesses and financial firms and will help ensure that small businesses have access to fair and appropriate lending.

If you have any questions, please contact me on [REDACTED] or at [REDACTED]

Yours sincerely



Dominique Lamb
Queensland Small Business Commissioner