



**Small Business
Development Corporation**

Our ref: D23/7508

Lead Ombudsman – Small Business and Transactions
Australian Financial Complaints Authority
GPO Box 3
MELBOURNE VIC 3001

Email: consultation@afca.org.au

Dear Ombudsman

NEW DRAFT APPROPRIATE LENDING TO SMALL BUSINESS APPROACH

The Small Business Development Corporation (**SBDC**) is Western Australia's (**WA**) peak government body for small business and welcomes the opportunity to provide feedback on the Australian Financial Complaints Authority's (**AFCA**) new Appropriate Lending to Small Business Approach (the Approach)¹.

As the *National Consumer Credit Protection Act 2009* (**National Credit Act**) does not apply to small business credit, there is a significant difference between the obligations of financial firms lending to a small business compared to a consumer. However, the SBDC is aware there can be confusion among some small businesses who incorrectly assume their business lending is covered under the National Credit Act.

The SBDC commends AFCA for preparing two separate documents to clarify the differences that apply to consumer and small business lending, and in particular the Approach document to explain how complaints made by small businesses about credit provided for business or investment purposes are considered.

The use of the term “appropriate lending” rather than “unregulated lending” for small business credit not covered by the National Credit Act, to differentiate it from the “responsible lending” that applies to consumer credit, is supported by the SBDC. Using this terminology and the development of the two separate approaches should assist small businesses to better understand the different obligations and types of complaints that AFCA will, and will not, consider in relation to small business lending.

¹ The views presented here are those of the SBDC and do not necessarily represent those of the WA Government.

The preparation of the Approach document will also assist small businesses to have a better understanding of AFCA processes and how decisions are made as to whether credit was appropriately provided in each individual circumstance. This may include through consideration of common law principles, good industry practice and obligations owed by a financial firm under industry codes and legislation where relevant, for example, if a small business meets the definition under the *Australian Securities and Investments Commission Act 2001 (ASIC Act)*.

The SBDC notes that one of the objectives of the Approach is to ensure greater consistency in AFCA's response to small business lending complaints. This will be beneficial to small businesses in providing them with an understanding of the way in which complaints are likely to be considered, as well as potential outcomes depending on the circumstances. Including the common circumstances that may apply as well as example scenarios in the Approach document will also be useful for small businesses in that regard.

The SBDC believes that a likely additional benefit of the publication of the Approach could be improved processes and standards of service by financial firms in an attempt to minimise future complaints. This would obviously be a positive outcome for small businesses.

While the Approach document appears to provide comprehensive details about AFCA's processes for handling small business lending complaints, it also makes it quite lengthy. The SBDC contends that many small business operators may not have the time, or ability, to read through the entire document.

Once the content of the document is finalised, the SBDC sees benefit in AFCA also producing a short summary document and/or flowchart with a strong visual element (similar to the Quick Guide in the AFCA Rules) to outline the Approach, as this would make it more easily digestible for many small businesses.

Thank you for the opportunity to make a submission in response to the new draft Approach. If you would like to discuss this submission in more detail, please contact Sophie Leadbeater, Senior Policy and Advocacy Officer on [REDACTED] or at [REDACTED].

Yours sincerely



David Eaton PSM
Small Business Commissioner

22 September 2023