Australian
Finance
Industry
Association

AFIA Finance Industry Code of Practice - Consultation Questions

The consultation draft AFIA Finance Industry Code of Practice was developed with input from AFIA members who participated in our various finance sub-sector working groups and our internal consultation processes. We want to thank those members for their engagement and commitment to developing this new Code. This draft Code has not been approved or endorsed by AFIA members or the AFIA Board. AFIA is now seeking feedback from stakeholders on the draft Code. We are particularly interested in feedback on the following specific topics and issues. However, stakeholders should feel free to provide comments to us on the entire Code Package.

1. **Purpose** – the aim of the AFIA Finance Industry Code of Practice is to improve outcomes for customers and financial firms, help explain legal obligations and industry practices, and support the adoption of good industry practices and behaviours? Do you agree with this purpose to promote a culture of integrity, transparency and fairness across the finance industry?

2. **Scope** – the AFIA Finance Industry Code of Practice covers lending to consumers and business customers and does not apply to lending to large corporate, government or semi-government customers. Do you have any comments about the scope of the Code?

3. **Definitions** – the AFIA Finance Industry Code of Practice includes a Definitions section. We are interested in whether we should specifically define a small business and/or conversely a large corporate to clarify the scope of the Code. There are a number of statutory and other definitions applicable to "businesses" – what definition/s do you think we should include and why? If we included a similar definition to that contained in the unfair contract terms (UCT) legislation, is this appropriate for the Code? Or would it create inappropriate risks for customers or financial firms? How can we get the best balance between lifting industry standards and not adversely impacting on the availability and cost of finance? Are we clear enough about the role and definition of intermediaries and others, including representatives, suppliers, introducers, staff and agents, etc? Do you have comments on any of the other definitions?

4. **Structure** – the AFIA Finance Industry Code of Practice sets out key commitments, standards on accessing finance, treating customers fairly, and resolving complaints promptly and fairly, code governance arrangements including monitoring and administration, and includes schedules about consumer lending, novating leasing and business finance. The Code is designed to have broader

application than just the lending activities in the proposed schedules and additional schedules can be added. Existing codes of practice for AFIA members, such as the BNPL Code, IPF Code, and OSBL Code may be embedded into the final version of the Code. It should be noted that the final version of the Code will also be published online so that, for example, a customer can select the product or lending activity relevant for them and create a targeted online version for easier reading. Is the structure of the Code sufficiently clear? Should there be additional schedules on particular specialised lending activities, such as consumer leases or trade and cashflow finance for small businesses?

5. **Accessing finance** – the AFIA Finance Industry Code of Practice sets out standards for access to our finance products and services, ensuring they are fit for purpose, disclosures are clear and concise, information about remuneration paid to intermediaries is understood, and good industry practices are implemented on the use of technologies, including artificial intelligence (AI), information and data protection, and security measures and controls. Cybersecurity risks, scams and fraudulent activity are top of mind for customers and financial firms. Do you have any comments, generally about this section or on specific topics and issues covered in this section?

6. **Treating customers fairly** – the AFIA Finance Industry Code of Practice sets out standards to improve the accessibility of our products and services to promote financial inclusion as well as reduce barriers that may prevent people from participating in the mainstream finance industry. Support for people experiencing financial difficulties, vulnerability or financial abuse or domestic violence are significant issues for customers and our community. Do you have any comments, generally about this section or on specific issues?

7. **Resolving complaints promptly and fairly** – all AFIA members are committed to internal and external dispute resolution arrangements that are fit for purpose and easily accessible. The Australian Financial Complaints Authority (AFCA) is the main EDR scheme for financial-related complaints in Australia. Some AFIA members are required by law to be a member of AFCA, some have voluntarily become a member of AFCA, and some are not members of AFCA, and they use alternative mechanisms, such as a medication scheme or alternative process.

   Alternative and specialised lending requires expertise, including dispute resolution. Asset finance is secured lending where the loan is taken over the vehicle or equipment, and in certain cases may involve repossession if loan commitments are not met, which may have a broader impact on business considerations, not just lending. Some business lending involves complicated arrangements, and in certain cases may involve difficult and sensitive family matters. Some business lending solutions can be very straightforward, and not require complicated or costly dispute resolution arrangements. Some businesses have access to other mechanisms, such as farm debt mediation. Therefore, what is the best approach to setting industry standards for dispute resolution across the range of different lending activities and sub-sectors?

8. **Code governance** – the By-Laws and Terms of Reference set out the governing arrangements, including the establishment of the AFIA Code Compliance Committee (CCC), an independent committee that oversees code accreditation and ongoing monitoring of the Code. Both ASIC and the ACCC have issued guidance on the development of industry codes, which has been adhered to with the development of the AFIA Finance Industry Code of Practice. There is a clear regulator and customer expectation that arrangements for effective monitoring of code compliance are in place and there are actions that are able to be taken in response to non-compliance with, or a breach of, an industry code. AFIA's code compliance model addresses these requirements. The CCC is not a dispute resolution body, and it does not deal with individual complaints or disputes. It makes sure the Code is being complied with and the commitments and industry practices contained in the Code remain suitable and relevant. Do you have any comments?

   The CCC will be comprised of at least three members who must be independent. The CCC Terms of Reference stipulate that "independent" means the person cannot have been a member of the AFIA Board or an employee or officer of a Code Member, or an employee of any organisation or body that advocates or campaigns on behalf of finance-related consumer matters in Australia in the previous 12 months. There are some additional independence criteria, including no material business relationships with Code members and no substantial security holdings. The independence provisions play a critical role in establishing and maintaining the integrity of the CCC and supporting confidence in objective oversight of compliance with the Code. This is particularly the case where the CCC may receive commercial in-confidence and other sensitive information. In addition to independence, it is critical that the CCC have a mix of representatives with knowledge, skills and experience. Currently, the CCC terms of reference do not specify what knowledge, skills or experience is eligible. Do you have any comments specifically or generally about the eligibility criteria for the CCC, independence, knowledge, skills or experience, etc?

9. **Coverage** – it is proposed that the AFIA Finance Industry Code of Practice will include our existing Online Small Business Lenders (OSBL) Code of Practice and the Insurance Premium Funding (IPF) Code of Practice, with these codes retired at the time the new AFIA Finance Industry Code of Practice becomes effective and members of those codes transition into the new Code. We are currently updating AFIA's Buy Now Pay Later (BNPL) Code of Practice, which needs to happen concurrently with the introduction of the new BNPL regulatory regime by the government. Therefore, we are not proposing to embed the BNPL Code into the AFIA Finance Industry Code of Practice at this time. We are also updating AFIA's Car Rental Code of Practice, which covers a different type of retail activity and this Code is quite different to the finance activities of other AFIA members. Therefore, we are not proposing to embed the Car Rental Code into the AFIA Finance Industry Code of Practice. Do you have any comments?

10. **Technology neutrality** – the AFIA Finance Industry Code of Practice is designed to be technology neutral. Many Australians already participate in online finance, using their smartphone and devices to access their finance products and services. As customer needs and preferences change, we believe this trend will continue and there will be increasing customer expectations regarding tech-enabled finance. The

commitments and industry practices in the Code adhere to existing legal and regulatory provisions regarding disclosures, communications, record keeping, and marketing, while providing customers with information dissemination in the ways they expect and that suit their finance needs and preferences. Industry will continue to leverage technology to improve our products and services for customers, ensuring interoperability of technologies as far as practicable across different tech-oriented, platforms, operating systems, devices, etc. We are also conscious of the need to make sure customers are able to participate in finance in an accessible and safe way, and while cyber-related risk to personal and financial information is a current concern for all Australians, our commitment to good industry practices in accessibility, information and data protection, and security are not limited to technology-related risks. Do you have any comments?

11. **Other documents** – in addition to AFIA Finance Industry Code of Practice, we have some other documents, including new industry guidelines on customers experiencing financial difficulties, vulnerability, or financial abuse or domestic violence, which provides additional details to help members on these important economic and societal issues. We also have updated the Fair Wear & Tear Guide. Do you have any comments? Are there other documents we should prepare, such as other industry guidelines, fact sheets or infographics?