

29 September 2023

Ms Suanne Russell  
Lead Ombudsman – Small Business and Transactions  
Australian Financial Complaints Authority  
GPO Box 3  
Melbourne VIC 3001

By email: [consultation@afca.org.au](mailto:consultation@afca.org.au)

Dear Ms Russell

### **Pepper Money's submission on AFCA's Appropriate Lending to Small Business Approach**

Thank you for the opportunity to make a submission to AFCA with respect to AFCA's Appropriate Lending to Small Business Approach (the **Approach**). As the majority (if not all) of Pepper Money's commercial loan applicants will meet AFCA's definition of a small business, Pepper Money is keenly interested in the Approach and would like to take this opportunity to provide our observations and feedback.

#### **Overarching comment**

As AFCA is the main avenue of complaint available to a small business customer (outside of making a complaint through a lender's internal dispute resolution process), understanding AFCA's approach to lending to small businesses is vital. Pepper Money encourages AFCA to continue to engage with industry on matters relating to small business lending given it is currently an area that Government has decided not to regulate further. It is important that both industry and AFCA act fairly towards small business customers, but without stifling the flow of, or the ease of accessing credit that small businesses rely on to thrive.

#### **Level of prescription**

As noted above, Government has repeatedly declined to formally regulate small business lending in a similar manner to consumer lending. This is a recognition by Government that lending to small business is a bespoke activity and not one that can easily have specific rules applied. There is no one way to assess a loan to a small business. For this reason, Pepper Money is concerned that the level of prescription in the Approach is not appropriate and is more akin to making a loan to a consumer. Pepper Money considers that AFCA should exercise caution in its Approach so that small business lending is not stifled and small businesses who want and need financing will be able to obtain it.

Pepper Money is concerned that the level of prescription proposed by AFCA is not in line with currently industry practice.

AFCA should also consider whether being too prescriptive in its Approach will restrict small business access to credit from AFCA members. This could have the effect of small businesses seeking out lenders who are not AFCA members and who may have predatory lending practices or

offer small business customers fewer protections (including access to AFCA's complaint handling processes).

### **Good commercial practice / industry practice**

AFCA notes that when assessing a small business lending complaint, it will take into account good industry practice and industry codes of practice. Relevantly, there are a number of including the:

- ABA Banking Code of Practice
- COBA Customer Owned Banking Code of Practice
- AFIA Online Small Business Lenders Code of Practice
- AFIA Insurance Premium Funding Code of Practice

which set different standards. Further, there are small business lenders who are not subscribed to any of these codes and AFCA states that it may apply these codes to non-subscribers.

While we understand AFCA has regard to Codes in considering what is good industry practice, we believe that it would be inappropriate for AFCA to apply the requirements of one code to a lender who subscribes to, and has acted consistently with, another code. Moreover, Code requirements should not be determinative of what constitutes good industry practice,

Further, AFCA should clarify to what extent AFCA will take into account a lender's own credit policy if it is not in line with the above industry codes (because the lender is not a subscriber to those codes).

### **Asset types**

Pepper Money considers that the Approach should better differentiate between asset types that are provided as security for a small business loan. This is because the risk to the customer differs depending on the type of security that they may lose if the loan is enforced.

A borrower who provides a vehicle or equipment as security should not be assessed in the same way as a borrower or guarantor who provides their owner-occupied home as security as the risks are vastly different.

The Approach should ensure that it allows lenders the flexibility to make judgement calls with respect to their level of credit assessment based on the impact that enforcement would have on the customer, particularly when credit is needed by the borrower urgently in order for them to maintain their business.

### **Application of buffers**

Pepper Money considers that it is inappropriate for AFCA to presume that interest rate buffers should be applied in all instances and by all lenders – particularly when the lender is not APRA regulated.

The basis for APRA's requirement to apply a buffer is to ensure the stability and resilience of ADIs. APRA does not set buffers solely to ensure that borrowers will be able to repay their loans.

APRA's standard with respect to interest rate buffers do not apply to non-ADIs and should not be expected to be applied by non-ADIs. There is no regulatory requirement for a non-ADI to apply an interest rate buffer and the Approach should not state that all lenders are required to apply buffers.

## Warning signs

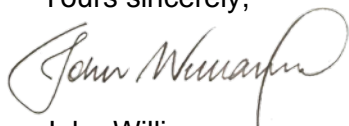
The Approach notes that when reviewing a lending decision AFCA will have regard to if the lender should have known information or sought further information because the application included circumstances or information that should have prompted further inquiry. It would be helpful for AFCA to provide further examples of what warning signs they expect lenders to be on notice of as there is also a risk that it will become more difficult for viable businesses to access credit due to additional oversight and due diligence by lenders.

## Examples generally

It would be helpful if AFCA could include more complex examples in the Approach, particularly around warning signs a lender may have missed, lending to businesses without a proven track record including new businesses and loans secured by different asset classes.

Thank you again for the opportunity for us to provide input on the Approach. Please contact me at the details should you wish to discuss any matters relating to our submission.

Yours sincerely,



John Williams  
General Counsel and Company Secretary

[Redacted contact information]