

Fintechs Receive Code of Lending Practice

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Introduction

The Australian Finance Industry Association (**AFIA**) has released the AFIA Online Small Business Lenders Code of Lending Practice (**Code**) for online small business lenders. This Code, which requires compliance from members by 31 December 2018, aims to create standardised processes for online loans. This article will explore the expansion of the Fintech online business lending industry in Australia and provide an overview of the key promises and features of the Code.

Small businesses and the Fintech industry

The 2.2 million small to medium enterprises (**SMEs**) in Australia account for more than 99% of Australian businesses.¹ These businesses contribute \$380 billion to the economy and employ two thirds of the Australian workforce.² Despite their prominence, SMEs face difficulties in accessing credit without risking personal assets, such as their family home. This problem was highlighted in the recent Productivity Commission's Report on Competition in the Australian Financial System, which found that banks have reduced appetite for SME lending due to the high-risk nature of the loans and their local capital holding requirements.³

The Fintech industry has emerged as an alternative financing solution for SMEs in areas where the traditional funding methods have fallen short. The number of Fintechs in Australia has risen from less than 100 in 2014 to 579 in 2018.⁴ This rapid growth has seen an increase in online lending to small businesses, with the development of unsecured balance sheet lending products. These loans are typically less than 12 months in duration, for amounts less than \$100,000 and have attracted high customer satisfaction ratings.⁵

The rise of online business loans has been fueled by their efficient and highly automative online application, assessment and decision processes.⁶ The introduction of the Open Banking Regime later this year will further support growth, as consumers gain greater control of their banking data.

Online small business lenders currently face legal and compliance commitments from a variety of government and industry organisations, including ASIC, APRA, AUSTRAC, OAIC, ACCC and

¹ Australian Small Business and Family Enterprise Ombudsman (**ASBFEO**) *Fintech lending to small and medium-sized enterprises: improving transparency and disclosure* (February 2018) <https://www.asbfeo.gov.au/sites/default/files/documents/ASBFEO-fintech-report.pdf> 13.

² *Ibid* 2.

³ Productivity Commission, 'Competition in the Australian Financial System: Productivity Commission Inquiry Report' (Report No 18, 29 June 2018) <https://www.pc.gov.au/inquiries/completed/financial-system/report/financial-system.pdf> 435.

⁴ ASBFEO above n 1, 8

⁵ Australian Finance Industry Association (**AFIA**), *Code of Lending Practice: AFIA Online Small Business Lenders* (29 June 2018) <https://www.asbfeo.gov.au/sites/default/files/documents/ASBFEO-fintech-report.pdf> 2.

⁶ ASBFEO above n 1, 6.

AFCA.⁷ The Code aims to collate these obligations to assist new and existing lenders understand their legal and regulatory responsibilities.

The Code

The Code outlines best practice principles to standardise transparency and disclosure for unsecured small business loans.⁸ These principles will enable small business owners to identify whether an online loan complies with the Code, is suitable for their needs, how much it will cost and whether it is the best solution available.⁹

There are three main objectives of the Code:

1. the promotion of high industry standards of service to customers
2. providing a benchmark for consistency amongst members, including for the disclosure of comparable financial information to borrowers, and
3. encouraging compliance with legal and industry obligations.

Who does the Code apply to?

The Code is binding on Code Compliant Members of the AFIA Online Small Business Lenders Group (**members**) when they provide online small business loans. The Code currently has 6 signatories: Capify, GetCapital, Moula, OnDeck, Prospa and Spotcap. Whilst the Code is applicable to the broader Fintech industry, these signatories are currently limited to balance sheet lenders.

Signatories are required to attest their compliance with the Code annually. They are also required to ensure that their staff, agents, representatives and the finance brokers they interact with have regard to their obligations under the Code.

Key Promises

The Code lists eight key promises from members to their customers.

Honesty and integrity

Members agree to act with honesty and integrity and to treat customers fairly in their dealings.

Clear information about loan products

Members will provide clear and accessible information about their loan products. This includes providing customers with their terms and conditions, a statement of fees and charges, a standard pricing comparison document and a summary document of key features of the loan product.¹⁰

⁷ Ibid 10.

⁸ AFIA, above n 5, 2.

⁹ Ibid.

¹⁰ Ibid 13.

Members will also ensure that their advertising and promotional material is not misleading or deceptive, or likely to mislead or deceive.¹¹ Members also agree to incorporate standard plain language as set out in the Code's glossary of key terms in their communications with customers.

Consider financial circumstances

Members promise to consider the customer's loan purpose and financial circumstances when lending money. Members also promise to act in good faith and in accordance with their policies when a customer experiences hardship.¹² Both of these considerations are in line with the responsible lending provisions under the *National Consumer Credit Protection Act 2009* (Cth).

Deliver high customer service and standards

Members promise to provide high quality customer service and standards, including respect for customers' personal information. The concern for customers' privacy and security involves compliance with the *Privacy Act 1988*, including the Australian Privacy Principles and the *Privacy (Credit Reporting) Code 2014*.¹³

Members will commit to providing clear and effective communication to their customers, including providing customers with a summary document outlining the key features of the loan product. The Code also promotes the use of electronic communications.¹⁴

Deal fairly with complaints

Members will provide their customers with adequate dispute resolution services. To deal fairly with complaints, the Code establishes both internal and external dispute resolution processes and allows consumers to report potential breaches of the Code to the Code Compliance Committee.

Focus on customers

Members will place high priority on service, competitiveness and customer focus to provide their customers with polite and responsive service.¹⁵

Comply with legal and industry obligations

Members will comply with their legal and industry obligations, as well as their obligations under the Code. The Code will act alongside members' obligations under existing laws and obligations, with legal obligations prevailing in the event of conflict or inconsistency with the Code.¹⁶

¹¹ Ibid.

¹² Ibid 18.

¹³ Ibid 17.

¹⁴ Ibid 16.

¹⁵ Ibid 12.

¹⁶ Ibid 10.

Support and promote the Code

Members promise to support and promote the Code. This includes providing training to staff, agents and representatives to ensure they are aware of, and comply with, the Code.

Enforcement

Enforcement of the Code will be supported by a Charter focused on governance, including monitoring, review and enforcement processes.¹⁷ This Charter will be developed by AFIA no later than 31 December 2018.

Compliance with, and enforcement of, the Code will be overseen by an independent Code Compliance Committee (**CCC**). The CCC acts as an additional dispute resolution process to members' own internal and external dispute resolution services.¹⁸ Consumers who deal with members can report concerns about Code compliance or possible breaches of the Code to the CCC. The CCC has the power to investigate these allegations at their discretion and may make recommendations to resolve the complaint or impose sanction on members under the Charter.¹⁹

Summary

The rapid expansion of online small business loans provided by Fintechs in Australia has led to a legal and regulatory obligations from a myriad of sources. AFIA has responded to the need for industry standardisation by developing an Online Small Business Lenders Code of Lending Practice. The Code, which establishes obligations for Fintechs in their dealings with consumers, is hoped to provide transparency and standardisation for small businesses when accessing online finance.



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¹⁷ Ibid 6.

¹⁸ Ibid 20.

¹⁹ Ibid.