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Time for banks to show they have actually changed

The Australian Small Business and Family Enterprise Ombudsman, Kate Carnell noted the Commissioner's acknowledgement that the Australian Banking Association (ABA) Code of Banking Practice is 'the chief protection for small business borrowers' and welcomes the strengthening of the code with enforceable code provisions. A breach of such provisions would constitute a breach of the law.

Responding to the Banking Royal Commission final report released today, Ms Carnell said it is imperative the ABA and its members immediately embrace the recommendations her office has made identifying where the code is still inadequate.

"The starting point is amending the definition of small business so it applies to small businesses with a turnover of up to \$5 million and up to 100 full-time employees, as recommended in our 2016 Small Business Loans Inquiry and supported by the Commissioner," she said.

"The code has too many 'get out of jail' clauses that advantage the banks and it still contains provisions at odds with the unfair contract terms legislation.

"There is no reason for the ABA not to address these concerns immediately.

"The code needs to provide adequate notice periods of changes or decisions not to roll-over a loan. Yet where notice periods are defined, the code then has 'get out' clauses for the lenders to ignore them.

"For example, clause 77 allows lenders to give a shorter notice period or give no notice where they require full repayment of a loan based on their 'reasonable opinion' or to protect their risk.

"Clause 213 requires lenders to only cooperate and comply with the request from their own code compliance body if they consider the request 'reasonable'.

"For the code to be meaningful rather than tokenistic, there needs to be an effective mechanism in place to ensure adherence."

While the Ombudsman agrees the National Consumer Credit Protection Act does not apply to lending for small businesses, this does not address the current credit crunch driven by the lack of direction from the regulators on what constitutes responsible lending for small business.

"This results in uncertainty for banks who adopt an ultra-conservative approach, which is detrimental to access to finance," Ms Carnell said.

"The Royal Commission report has not addressed this issue and has left it open to the banks, which changes nothing."

The Ombudsman said the Royal Commission has emphasised protections required for the agribusiness sector, but has failed to recognise exactly the same circumstances apply to many small business loans.

"The impact of default penalty interest rates, the appointment of receivers and the devastation of natural disasters is not limited to only agricultural businesses. The impact of the floods on Townsville businesses is a live example," she said.

"The government's announcement to expand the remit of AFCA for a period of 12 months to accept applications for disputes dating back to 1 January 2008, is a step in the right direction, but will not result in access to justice for those businesses that don't fit within the scope.

*** "We call on the government to implement the findings from Ramsay's supplementary report on a scheme for past disputes that includes an independent forum to hear past disputes and government supported legal case funding. These businesses simply do not have the resources to take misconduct to court.

*** "The Royal Commission has failed to address conduct relating to third parties such as receivers, liquidators and valuers, in relation to small business financial services disputes. ***

"My office has the legislative powers to conduct such an inquiry as this remains unfinished business."

Note