

31 October 2024

Australian Finance Industry Association (AFIA)
The Commons on George
Level 3, 388 George Street
SYDNEY NSW 2000

By email only: codes@afia.asn.au

To whom it may concern,

Re: Submission to AFIA Finance Industry Code of Practice (AFIA Code) – Public Consultation Draft September 2024

Mortgage Stress Victoria (MSV) is a community legal centre providing integrated financial counselling, legal and social work assistance to homeowners in mortgage stress. We advocate for legal and policy reform and for consumers individually with the aim of minimising harm to them. Our advocacy benefits industry by resolving consumer hardship and reducing complaint time frames and the costs of enforcement action. We support the introduction of a robust and fair AFIA Code and the outcomes it proposes to achieve.

Increasingly, Australians are choosing to apply for home loans with non-bank lenders,¹ and they expect the same high quality service provision and policies that minimise harm which banks are committed to. MSV considers the Australian Banking Association's 2025 Banking Code of Practice (Banking Code) to be the minimum benchmark for a consumer and business credit code of conduct in Australia. Therefore, our submission largely recommends the AFIA Code mirrors the Banking Code. Substantially adopting the Banking Code will result in consumers having increased confidence in non-bank lenders and AFIA members becoming non-bank lenders of choice.

Given that the *National Consumer Credit Protection Act 2009* (Cth) (NCCP Act) is largely inaccessible for most consumers, industry codes provide a more user-friendly and accessible tool consumers can use to understand their rights and the obligations of lenders. However, clauses of the AFIA Code that do not adequately explain legal rights and

¹ The Reserve Bank of Australia, Callum Husson, Samuel Kuran and Michelle Lewis, 16 March 2023, *Non-Bank Lending in Australia and the Implications for Financial Stability* - [Non-bank Lending in Australia and the Implications for Financial Stability | Bulletin – March 2023 | RBA](#).

obligations in the NCCP Act may lead consumers to believe their rights are equal to and no more than what is stated in the AFIA Code. Therefore, our submission recommends clarity in clauses of the AFIA Code which do not fully inform consumers as to their rights.

Lastly, we have focused on supporting consumers who are disadvantaged by systems which are not inclusive or accessible. Inaccessible and exclusive financial systems can cause consumers to rely on others for support and put them at risk of financial or other forms of abuse. It is the responsibility of lenders to provide inclusive and accessible services and proactively engage with consumers to protect them rather than waiting on consumers to inform lenders when the damage has been done.

We thank you for the opportunity to submit our recommendations on the AFIA Code. Our submission will follow the headings of the AFIA Code.

Part C – Accessing Finance

We will be clear and concise with you about our products, services and technologies

Transparent communication

- **Recommendation 1:** Under the heading “We will be clear and concise with you about our products, services and technologies”, insert a clause which states, “We will communicate with you in a clear, transparent and timely manner.”

Staff training

In 2022, Deloitte Access Economics on behalf of the Commonwealth Bank found that financial abuse costs victim-survivors and the economy a combined \$10 billion a year.² In Victoria, 49% of residents were either born overseas or have a parent born overseas and come from culturally and linguistically diverse (CALD) backgrounds. This highlights the need for lenders to invest in staff training in these areas.

Training of staff is integral to high standards of service provision. All staff should be provided with adequate training so they can identify when a person is experiencing family violence, requires an interpreter or has other needs to enable them to access services. At a minimum, this training should include:

- a) Understanding, recognising and acting on signs that a customer is experiencing hardship or requires support to engage with and access services;
- b) The nature and consequences of family violence and financial abuse and how it can impact on financial services such as lending;
- c) Plain English and respectful communication;

² Deloitte Access Economics, February 2022 – *More than 600,000 Australians experienced financial abuse in the past year* – [More than 600,000 Australians experienced financial abuse in past year | Redfern Legal Centre](#).

- d) Treating people with a diverse range of experiences and needs with sensitivity, respect and compassion;
 - e) Options for assistance available to customers and referral pathways.
- **Recommendation 2:** Under the heading “We will be clear and concise with you about our products, services and technologies”, insert a clause which commits to providing the abovementioned training (a – e above) to staff.

Clause 29

Communicating with customers effectively is key to a good relationship, reduces the provision of unsuitable loans, goes toward all parties understanding their contractual obligations and reduces dispute resolution time frames. It is best practice to use plain English in communications.

- **Recommendation 3:** Include in clause 29 that written communication will be in plain English unless otherwise required by law.

We will consider your financial circumstances when providing our products, services and technologies

Clause 39

The NCCP Act places an obligation on lenders to make reasonable inquiries about and verify the accuracy of the loan application to ensure that a loan is not unsuitable. Clause 39 should better reflect a lender’s legal obligations.

- **Recommendation 4:** Include in clause 39 that “where required, we will make reasonable inquiries about and verify the information you provide us in accordance with ASIC Regulatory Guide 209”³ and that clause 39 applies in addition to the responsible lending provisions under the NCCP Act.

Clause 40

- **Recommendation 5:** Include in clause 40 that “we have taken reasonable steps to inquire about and verify your loan application and assessed that you can comply with the terms of the contract without substantial hardship and it meets your requirements and objectives.”

We will comply with our industry and legal obligations

³ Australian Security and Investment Commission (ASIC) December 2019, ‘Regulatory Guide 209, Credit licensing: Responsible Lending Conduct’ at RG209.120 – RG209.170.

Accessibility

Consumers expect that reputable lenders will provide services in an accessible manner. The failure to offer accessible services to customers causes issues that would otherwise be simply and easily resolved and unnecessary cost to both customer and lender.

The AFIA Code should include a commitment to provide services in an accessible way depending on a customer's accessibility needs beyond the responsibilities under the relevant anti-discrimination laws.

The Banking Code's third guiding principle on service states, "we will ensure banking services are accessible and inclusive."⁴

- **Recommendation 6:** Under the heading "Accessibility", insert a clause which states, "We will ensure services are accessible and inclusive."

Part D - Treating Customers Fairly

We will help customers experiencing financial difficulties and hardship

- **Recommendation 7:** Delete all clauses under the heading "We will help customers experiencing financial difficulties and hardship" (clauses 65 to 72) and insert under this heading all clauses of Part D1 of the Banking Code, including the reference to this part applying to business loans.

People with low or no income

The Banking Code includes commitments to provide information to customers with low or no income at Part B3.

- **Recommendation 8:** Under the heading "We will help customers experiencing financial difficulties and hardship", insert all clauses of Part B3 of the Banking Code.

We will help people experiencing vulnerability

Supporting customers who have different accessibility needs or are experiencing hardship

The clauses in Parts B1 and B2 of the Banking Code set the minimum benchmark which consumers expect from lenders providing products and services.

⁴ Australian Banking Association, 27 June 2024 and effective from 28 February 2025, *Banking Code of Practice*, page 7.

- **Recommendation 9:** Delete all clauses under the heading “We will help people experiencing vulnerability” (clauses 73 to 77) and insert under this heading all clauses of Parts B1 and B2 of the Banking Code.

Strength-based language

Referring to customers who have different accessibility needs, or who are experiencing certain things such as living with disability, family violence or mental illness, as ‘vulnerable’ infers these customers have some deficiency or that they are the problem.

The AFIA Code should consider changing its terminology and instead use strength-based language which reflects the strength and resilience of customers who live in a society which is predominantly designed in a way that prevents them from engaging with it.

The Banking Code too does not use strength-based language; however, AFIA and its members have an opportunity to be a leader on this issue.

- **Recommendation 10:** Consult with leaders such as disability advocates and family violence support services about strength-based language and adopt it in the AFIA Code instead of using words like ‘vulnerable’ or ‘vulnerability’ to describe customers and their experiences.

Our debt recovery practices will be transparent

Enforcement expenses

During debt recovery, enforcement expenses are passed on to the customer which increases the total amount owing on the debt and perpetuates a customer’s financial hardship. This creates a higher risk of a shortfall debt in cases of secured debts after the asset is sold.

Passing on unreasonable enforcement expenses negatively impacts the customer and the lender who may not be able to recover their enforcement expenses. The NCCP Act prescribes that only reasonable enforcement expenses can be recovered from a customer.⁵ Amending the AFIA Code to include a clause to this effect will benefit consumer and business customers.

- **Recommendation 11:** Under the heading “Our debt recovery practices will be transparent”, insert a clause which commits to accruing and passing on only reasonable enforcement expenses to customers including guarantors.

Clause 79

⁵ *National Consumer Credit Protection Act 2009* (Cth), Schedule 1, National Credit Code, s 49 and s 107.

Clause 79 refers to a lender's right to take action in certain circumstances without first telling the customer. If a customer misses a payment the creditor should always attempt to communicate with them and give them an opportunity to remedy the default even if there is no requirement to do so.

- **Recommendation 12:** In clause 79, delete the words, "If we reasonably think that you cannot remedy a default, we may have rights under your contract and at law to take action without telling you first" and replace them with the words, "Even in circumstances where we have the right to take action without telling you first, we will make reasonable attempts to contact you first if we reasonably think that you cannot remedy a default.'

Clause 85

Clause 85 does not offer any positive commitment by lenders to encourage business customers to make contact when they are at risk of defaulting or have defaulted. Including a positive commitment to consider and offer hardship assistance to business customers will result in more opportunities to remedy defaults and offer temporary hardship assistance to the benefit of all parties to the credit contract.

- **Recommendation 13:** Insert in section 85 that, "We will work with you to find a solution and in circumstances where your hardship is resolvable, we will offer you reasonable hardship assistance."

Clause 87

- **Recommendation 14:** Amend the wording of clause 87 to read, "We will comply with debt recovery practices in the ACCC and ASIC Debt collection guideline: For collectors and creditors. We will only use agents who comply with the debt collection guideline and this Code, and we will only sell our debts to debt collectors who to the best of our knowledge comply with the debt collection guideline."

Part E – Resolving Complaints Promptly and Fairly

We will have internal dispute resolution arrangements

and

You will have access to external dispute resolution

- **Recommendation 15:** In addition to the clauses under the two headings "We will have internal dispute resolution arrangements" and "You will have access to

external dispute resolution” (clauses 88 to 95), insert under these headings all clauses of Part D2 of the Banking Code.

Guaranteeing a Loan

Our experience at MSV is that guarantors are more likely to be family members or elderly parents who are experiencing family violence and have been coerced to guarantee consumer or business loans. Lenders must be vigilant and take extra care with respect to customers who guarantee loans as they are generally at higher risk of financial abuse.

The Banking Code’s Part B6 applies to guarantors of both consumer and business loans, and the same rigour should be applied by non-bank lenders.

- **Recommendation 16:** Insert a Part on “Guaranteeing a Loan” (e.g. a new Part F after Part E on Resolving Complaints Promptly and Fairly) in the AFIA Code and within it insert all clauses of Part B6 of the Banking Code.

Joint Accounts

- **Recommendation 17:** Insert a Part on “Joint Accounts” (e.g. a new Part G after our recommended Part F on Guaranteeing a Loan) in the AFIA Code and within it insert all clauses of Part C1 of the Banking Code.

Definitions

The AFIA Code does not define financial hardship or financial difficulty. We recommended at our Recommendation 7 above that Part D1 of the Banking Code be inserted in the AFIA Code. Part D1 includes a definition of financial difficulty at clause 168.

If our recommendation to insert the Banking Code’s Part D1 is not adopted, then the definition of financial difficulty in Part D1 should be inserted in the Definitions part of the AFIA Code. In our experience, having a clear definition of financial difficulty/hardship eliminates unnecessary confusion and promotes consistency in the application of hardship assistance in practice.

- **Recommendation 18:** If Recommendation 7 is not adopted, insert the definition of financial difficulty stated at clause 168 of the Banking Code into the Definitions part of the AFIA Code.
- **Recommendation 19:** Insert “family violence or financial abuse” as an unexpected event or unforeseen change outside your control in the definition of financial difficulty to be adopted at Recommendation 18 above.

Schedule 1: Consumer Finance

Responsible lending

- **Recommendation 20:** In addition to the existing clauses under the heading “Responsible lending”, insert all clauses of Part B4 of the Banking Code.

Information about your loan

Disclosure obligations

Clause 1.39

When reading this clause customers may not understand that the information stated in clause 1.39 is a reduced list of information prescribed by the NCCP Act at section 17 of the National Credit Code.⁶ This clause should be amended to avoid confusion.

- **Recommendation 21:** Amend clause 1.39 to state, “In our credit contract, we will provide you with information about the features of the loan (including as prescribed by section 17 of the *National Credit Code*, Schedule 1 to the *National Consumer Credit Protection Act 2009*) which includes but is not limited to:
 - a) The loan amount;
 - b) The repayment amount and frequency;
 - c) The term;
 - d) The interest rate;
 - e) Fees and charges;
 - f) The balloon payment (if applicable); and
 - g) Total interest payable over the loan term.”

Copies of documents, statement and other information

- **Recommendation 22:** Under the heading “Copies of documents, statement and other information”, delete all clauses (clauses 1.40 to 1.42) and insert clauses 22 to 26 of the Banking Code.

We will ensure co-borrowers and guarantors are informed about rights and obligations

- **Recommendation 23:** If Recommendation 16 is adopted, delete the words “and guarantors” from the heading “We will ensure co-borrowers and guarantors are informed about rights and obligations” and delete clauses 1.46 to 1.49.

⁶ Ibid, s 17.

Defaults and repossession of secured assets

Clause 1.52

Repossession of goods should only take place as an option of last resort.

- **Recommendation 24:** Insert in clause 1.52, “Before repossessing goods, we will make all reasonable attempts to reach a suitable alternative arrangement with you so you can keep the goods.”

Clause 1.53

Dot point 3 of clause 1.53 omits important information about the customer's right to have goods returned if they pay the arrears and reasonable enforcement expenses pursuant to the NCCP Act and therefore does not properly reflect a lender's obligation.⁷

- **Recommendation 25:** Insert in dot point 3 of clause 1.53, “If the arrears and enforcement expenses specified within the notice are paid within 21 days we must return any goods to you.”

Clause 1.54

Considering the housing crisis and harm caused by repossession, the expectation of consumers and consumer advocates is that real property should be repossessed as an option of last resort. This aligns with a lender's obligations under the NCCP Act to consider hardship notices.⁸ The AFIA Code should offer a strengthened commitment to this.

- **Recommendation 26:** Insert in clause 1.54, “Before repossessing your property, we will make all reasonable attempts to reach a suitable alternative arrangement with you so you can keep the property.”

Sale of real property

In cases where the only reasonable outcome is sale of an owner-occupied property, lenders should work with customers to give them the opportunity to sell the property themselves if they want to even if a court judgment order has been obtained. Giving control of this process to customers who are making reasonable attempts to sell the property reduces the risk of homelessness which occurs when a person is forcibly evicted.

Committing to working with customers so they can sell a property themselves is in line with the Australian Financial Complaints Authority's (AFCA) jurisdiction to consider complaints to allow a complainant to sell the property themselves and will reduce AFCA complaints, saving lenders and customers time, money and stress.

⁷ Ibid, s 102(4).

⁸ Ibid, s 72.

- **Recommendation 27:** Under the heading “Defaults and repossession of secured assets”, insert a clause stating, “Even if we have obtained a court judgment order against you for repossession of your property, if you are taking reasonable steps to sell the property we will work with you so you can sell the property yourself if you want to.”

Personal property

There is little guidance in the NCCP Act about what should be done with personal property left in a house after a customer has been evicted. This is an opportunity for AFIA and its members to take the lead on this issue by making a commitment with respect to personal property left behind. In our client casework we have seen personal property removed and damaged by third party agents of lenders.

The lack of regulation and clarity about the process for personal property left behind causes distress to consumers.

- **Recommendation 28:** Under the heading “Defaults and repossession of secured assets”, insert clauses regarding person property left behind in repossessed properties after eviction which commit to:
 - Making reasonable attempts to contact the customer and allow them to remove their personal property within a timeframe specified by the lender which is not less than two weeks;
 - Arranging for storage of personal property for a minimum period of one month at the expense of the lender if they are not removed by the customer within the timeframe specified by the lender; and
 - Compensating a customer for personal property that is damaged at the time of eviction or while the property is in the possession of the lender.

Schedule 3: Business Finance

Obtaining a business loan

- **Recommendation 29:** Under the heading “Obtaining a business loan”, insert clauses 77 to 81 of the Banking Code.

We will ensure guarantors are informed about rights and obligations

- **Recommendation 30:** If Recommendation 16 is adopted, delete all clauses under the heading “We will ensure guarantors are informed about rights and obligations”.

Defaults and enforcement of loans

- **Recommendation 31:** Delete clauses 3.28 to 3.30 and replace them with clauses 82 to 90 of the Banking Code.

Sale of real property

Where a principal place of residence is security for a business loan and the lender has obtained a court judgment order for repossession of the principal place of residence, the same commitment as outlined in our Recommendation 27 should be applied for the same reasons.

- **Recommendation 32:** Under the heading “Defaults and enforcement of loans”, insert a clause similar to the one suggested in our Recommendation 27 in relation to a principal place of residence which is security for a business loan.

Personal property

Where a principal place of residence is security for a business loan and it will be repossessed, the same commitment as outlined in our Recommendation 28 should be made with respect to personal property left behind for the same reasons.

- **Recommendation 33:** Under the heading “Defaults and enforcement of loans”, insert a clause similar to the one suggested in our Recommendation 28 in relation to personal property in a principal place of residence which is security for a business loan.

We are happy to consult further on our submission if required.

Yours sincerely,

Mortgage Stress Victoria

List of Recommendations

- **Recommendation 1:** Under the heading “We will be clear and concise with you about our products, services and technologies”, insert a clause which states, “We will communicate with you in a clear, transparent and timely manner.”
- **Recommendation 2:** Under the heading “We will be clear and concise with you about our products, services and technologies”, insert a clause which commits to providing the abovementioned training (a – e above) to staff.
- **Recommendation 3:** Include in clause 29 that written communication will be in plain English unless otherwise required by law.
- **Recommendation 4:** Include in clause 39 that “where required, we will make reasonable inquiries about and verify the information you provide us in accordance with ASIC Regulatory Guide 209⁹ and that clause 39 applies in addition to the responsible lending provisions under the NCCP Act.
- **Recommendation 5:** Include in clause 40 that “we have taken reasonable steps to inquire about and verify your loan application and assessed that you can comply with the terms of the contract without substantial hardship and it meets your requirements and objectives.”
- **Recommendation 6:** Under the heading “Accessibility”, insert a clause which states, “We will ensure services are accessible and inclusive.”
- **Recommendation 7:** Delete all clauses under the heading “We will help customers experiencing financial difficulties and hardship” (clauses 65 to 72) and insert under this heading all clauses of Part D1 of the Banking Code, including the reference to this part applying to business loans.
- **Recommendation 8:** Under the heading “We will help customers experiencing financial difficulties and hardship”, insert all clauses of Part B3 of the Banking Code.
- **Recommendation 9:** Delete all clauses under the heading “We will help people experiencing vulnerability” (clauses 73 to 77) and insert under this heading all clauses of Parts B1 and B2 of the Banking Code.
- **Recommendation 10:** Consult with leaders such as disability advocates and family violence support services about strength-based language and adopt it in the AFIA

⁹ Australian Security and Investment Commission (ASIC) December 2019, ‘Regulatory Guide 209, Credit licensing: Responsible Lending Conduct’ at RG209.120 – RG209.170.

Code instead of using words like 'vulnerable' or 'vulnerability' to describe customers and their experiences.

- **Recommendation 11:** Under the heading "Our debt recovery practices will be transparent", insert a clause which commits to accruing and passing on only reasonable enforcement expenses to customers including guarantors.
- **Recommendation 12:** In clause 79, delete the words, "If we reasonably think that you cannot remedy a default, we may have rights under your contract and at law to take action without telling you first" and replace them with the words, "Even in circumstances where we have the right to take action without telling you first, we will make reasonable attempts to contact you first if we reasonably think that you cannot remedy a default."
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- **Recommendation 27:** Under the heading “Defaults and repossession of secured assets”, insert a clause stating, “Even if we have obtained a court judgment order against you for repossession of your property, if you are taking reasonable steps to sell the property we will work with you so you can sell the property yourself if you

want to.”

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 - Arranging for storage of personal property for a minimum period of one month at the expense of the lender if they are not removed by the customer within the timeframe specified by the lender; and
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