**Submission on the enforceability of financial services industry codes**

Marketlend's submission may be best summarised by one sentiment: without enforceable penalties, industry codes aren't worth the paper they're written on.

In order to protect the integrity of Australia's financial services industry, and the customers we serve, all licensees regulated by ASIC must face tangible penalties when running afoul of codes of practice.

As such, it is our submission that all industry codes should require ASIC approval. Rather than this be voluntary, as it currently is, it must be a mandatory process before a code can be called such. This step is critical as it would enable ASIC to ensure that codes of conduct are unambiguously written to protect the interests of the end-user, rather than the organisations impacted by the code.

Further, where possible, non-compliance should be referred to ASIC. Currently, some voluntary codes, such as the current AFIA Online Small Business Lenders Code of Lending Practice, include no referral mechanism. Any business regulated by ASIC should be referred to the regulator in cases of serious and systemic non-compliance to ensure penalties are enforced completely independently.

Codes impacting industries regulated by ASIC must be also made mandatory. By doing so, the consequences of non-compliance are increased. In the aforementioned AFIA code, for example, one of the only available penalties is revocation of status as a 'code-compliant member'. Currently, only eight businesses out of more than 200 are signatories to the code, rendering this penalty meaningless.

While not directly related to the enforceability of penalties, one aspect we’d also like to raise is that financial services codes must include a provision for clear ‘plain English’ communication. Codes are made to protect the customer. Typically, the first step in customer engagement is via an advertisement or website. To ensure consumers are aware, and more importantly, understand the pricing and structure of the products or services they’re consuming, codes of conduct must include provisions for easily understandable pricing and terms. Using the AFIA code again as a reference, it does not include these provisions, nor does it include a mandate for ‘truth in advertising’. These features must be included in any financial services code of conduct.

Finally, the outcome of any investigation instigated by a complainant must be made public. At the very least, the complainant must be notified of the outcome. In the AFIA code, the results of investigations are given to complainants 'if relevant'. It is difficult to foresee a circumstance in which it wouldn't be relevant to notify a complainant of the outcome of their complaint.

Ultimately, the reason for a code of conduct is to hold organisations accountable. This can only be achieved if penalties are meaningful, and only then if those penalties are enforced.

**Leo Tyndall**

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