



Australian
**Small Business and
Family Enterprise**
Ombudsman

12 March 2019

Committee Secretary
Senate Standing Committee on Economics
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

Dear Sir/Madam

AUSTRALIAN SECURITISATION FUND BILL 2019

We support the *Australian Business Securitisation Fund Act 2019* in its objective of increasing the availability, and reducing the cost, of credit provided to small and medium enterprises. We would iterate the concerns first raised in our submission dated 16 January 2019 and appear only partially addressed in the Act.

Investments of the Fund

We note the reduction of the amounts of credit within the debt security from \$10 million to \$5 million. While addressing a critical gap, \$250,000 to \$5,000,000, as the intended beneficiaries are SMEs this reduction will exclude loans to larger, medium businesses and capital intensive businesses.

Investment Mandate

We remain concerned that the mandate does not explicitly exclude banks subject to the *Major Bank Levy Act 2017* and their subsidiaries. While this is noted in the Explanatory Memorandum we believe this exclusion should be in the legislative instrument which is not open to change not the mandate which can be changed at the direction of the Minister.

Fund Performance

The explanatory materials note the target rate of return to be positive and to at least cover the Government's cost of funding. We understand the rate of return will be benchmarked against the 0-1 year Treasury Bond Index, historically around 2 per cent. For transparency and clarity we recommend that this benchmark be explicitly cited in the investment mandate. This will ensure that the expected rate of return remains at a level that achieves the objective of the Act – reducing the cost of credit provided to SMEs.

Fund Review

We iterate our request that the Annual Reports should include the rate of return achieved on debt securities and the risk characteristics of the underlying assets. Reporting these factors each year is required to attract other investors in the securitisation market to invest in SME loan backed securities.

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We acknowledge and welcome the inclusion of greater detail in the two reviews of the operation of the Act. Monitoring market development (deal volume, deals outstanding, deal pricing) and the trends in availability and cost of credit for SMEs (loan volume and interest rates charged) is appropriate. Obtaining qualitative information through engaging industry stakeholders is a beneficial addition to the evaluation process. Combined, these factors will indicate if the objectives

This data will also inform the Government if there is a need to remain in the market by exercising the option to reinvest as a debt security matures. In due course, indicate when the Government can commence a timely exit from the market as competition in the securitisation market has sufficiently increased.

Small Business Protection

Importantly, this Fund aims to level the playing field for smaller lenders. Of concern is the lack of regulation for commercial lending. Many lenders are not covered by APRA or ASIC or even a voluntary industry code of conduct. As the recent Royal Commission identified, the chief protection for small business borrowers is the Australian Banking Association's (ABA) Banking Code of Practice (the Code). This Code only applies to the 23 members of the ABA not the other, nearly 100, Authorised Deposit-taking Institutions.

For customer owned lenders, building societies, credit unions and mutuals, the majority are covered by the Customer Owned Banking Associations' Code of Practice. Yet in the rapidly expanding fintech sector, only seven, out of nearly 700, are covered by a Code with the majority unregulated as they do not lend to consumers.

An unintended consequence being that the beneficiaries of the Fund - SMEs – may borrow from lenders that are subject to little or no regulation with not have internal or external dispute resolution schemes. This may result in a small business borrower not having adequate access to justice if there is inappropriate conduct by the lender.

We recommend that the Act require, for investments of the fund, the issuer of a debt security to be a member of the Australian Financial Complaints Authority.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact [REDACTED].

Yours sincerely

[REDACTED]

Kate Carnell AO

Australian Small Business and Family Enterprise Ombudsman