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Ms Christine Cupitt
Chief Executive Officer, Acting
Australian Banking Association

By email: Christine.Cupitt@ausbanking.org.au

Dear Ms Cupitt

Australian Banking Association (ABA) application for authorisation AA1000441— further request for information

Thank you for your response of 2 August 2019 to our letter of 15 July 2019, requesting further information in relation to the above application for authorisation lodged with the Australian Competition and Consumer Commission (the **ACCC**) on 22 May 2019.

We have reviewed your letter and request a further response from the ABA in relation to some of the issues raised, and some additional issues, in order to assist the ACCC in its consideration of the application.

Informal overdrafts

As you are aware, the Final Report of the Royal Commission recommended that the Banking Code be amended to provide that “without prior express agreement with the customer, banks will not allow informal overdrafts on basic accounts.”¹

The ABA proposes to amend the Banking Code to provide that basic, low and no fee accounts will have no informal overdrafts, except in “instances where it is impossible or reasonably impractical for us to prevent your account from being overdrawn.”

In order to assess the likely benefits and detriments of the proposed conduct, it is important that we understand the circumstances in which the ABA considers it will be “impossible or reasonably impractical” for a member bank to prevent an informal overdraft, and the (approximate) proportion of transactions that fall into this category. As part of this response, please clarify whether the ABA considers it is impossible or reasonably impractical to prevent informal overdrafts occurring in relation to some or all contactless payments, whether over or under \$100. If so, please indicate what further steps might be taken in relation to this issue.

This information relates directly to the implementation of a recommendation of the Royal Commission, and the extent to which the ABA’s proposal meaningfully addresses that

¹ Noting that, within its definition of “basic accounts”, the Royal Commission included Basic Bank Accounts, low fee and no fee accounts.

recommendation. If precise or detailed data is not available, please provide an informed estimate; this may well be sufficient for our purposes.

I acknowledge your concerns about making public any detailed information about when it will be impossible or reasonably impractical for a bank to prevent an account from being overdrawn. The Authorisation process provides for information to be excluded from the public register where appropriate. When you provide the information sought, please indicate which parts should be excluded from the ACCC's public register, and why.

Proactive identification of potentially eligible customers

Ensuring awareness of basic, no fee and low fee accounts among eligible customers appears to be fundamental to addressing the Royal Commission's concerns in relation to these customers, including that, in the past, banks have failed to take reasonable steps to ensure that customers are provided with information about banking accounts and services accessible and relevant to them.

We are concerned to ensure that the amended Code addresses this concern.

Better use of data by banks may help to make more eligible customers aware of their eligibility for BBAs, low fee and no fee accounts. Your letter notes that although the relevant Centrelink payments can be identified in customer accounts through payment codes, extensive engagement with the relevant government departments would be needed in order to determine which payment recipients hold eligible government cards.

While the data cannot confirm eligibility, it does indicate that a customer is at least *potentially* eligible for such accounts. Given potentially eligible customers can be identified in this way, please indicate whether you consider it feasible and reasonable for the amended Code to require member banks to periodically identify potentially eligible customers using proactive methods (such as data analysis), to inform these customers of the relevant products and eligibility requirements, and to invite them to apply if they are eligible.

Charging interest on basic accounts

The Royal Commission recommended that the Code be amended to provide that banks will not charge dishonour fees on basic accounts. The Royal Commission expressed a number of concerns in relation to informal overdrafts on basic accounts:

[T]he fee charged when an informal overdraft is granted may be small but, with repeated overdrawing these fees can soon mount up, [and]... the evidence received... indicated that some customers did not know that they had been offered, and had made use of, an informal overdraft.

The joint submission by consumer groups recommended the Code be amended to prohibit banks charging interest on overdrawn amounts for basic, low and no-fee accounts.

Your response notes that some banks do not charge interest in these circumstances, but those that do advise it could be very costly to build systems to prevent or limit interest on overdrawn amounts in BBAs, low and no fee accounts. You also note that a customer in these circumstances who is experiencing financial hardship in respect of repaying the overdrawn amount can contact the bank. You state that the ABA does not propose to agree to a general prohibition on the charging of interest on informal overdrafts in relation to BBAs, low and no fee accounts.

The Royal Commission's concerns relate to the impact on low income customers of being charged fees (often small fees, frequently) on overdrafts they are not aware they have been granted. Charging interest on overdrawn amounts would appear to raise the same concerns, and may tend to defeat the intention of the prohibition on overdraft fees.

Given some member banks are able to avoid charging interest on overdrawn basic accounts, please explain why others consider it too costly to do so.

Minimum standards for BBAs

The ABA proposes to set out minimum standards and eligibility criteria for Basic Bank Accounts (BBAs), but to require member banks only to offer one or more BBA, low fee or no fee account (i.e. not to require member banks to offer a product which meets the proposed minimum standards).

The concerns raised and recommendations made by the Royal Commission related to all three types of accounts.

We are concerned as to whether the benefits claimed by the ABA in relation to the minimum standards for BBAs, including raising the standard average BBA offering, greater certainty and protection for customers that products will meet minimum requirements, and improved availability of BBAs, will be likely to arise in practice if member banks are not required to offer a BBA.

It appears that member bank may have insufficient incentive to offer, or continue to offer, BBAs over time. They could instead meet the requirements of the amended Code by offering low fee or no fee accounts, to which lower standards apply.

In these circumstances, please provide your views as to whether the Code should require member banks to offer BBAs, in order for the ACCC and the community to be confident that the claimed benefits of the minimum standards proposal will in fact arise.

Charging of fees on agricultural loans in default

The Royal Commission recommended that the Code be amended to provide that while a declaration remains in force in an area affected by drought or other natural disaster, banks will not charge default interest on loans secured by agricultural loans in that area.

Similar concerns may arise where banks continue to charge default fees on agricultural loans in these circumstances.

Please indicate whether the ABA will amend the Code to require banks not to charge default fees on agricultural loans in the circumstances outlined above.

Term of authorisation

Your application requests authorisation for 10 years. Please provide further information and reasons to support the ABA's request for authorisation for this period, which is longer than the (five year) period more commonly granted by the ACCC.

Please provide a response by **COB 30 August 2019**. This letter will be placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Hannah Ransom on (02) 6243 1255.

Yours sincerely



David Jones
General Manager
Adjudication