



Date 17 May 2019

David Jones
General Manager, Adjudication
Merger and Authorisation Review
Australian Competition and Consumer Commission
By email: david.jones@acc.gov.au

Dear Mr Jones

Application for authorisation by the Australian Banking Association on behalf of its member retail banks

The Australian Banking Association (**ABA**) seeks authorisation from the Australian Competition and Consumer Commission (**ACCC**) to implement certain of the amendments to the 2019 Banking Code of Practice (**Banking Code**). The amendments are proposed to commence from 1 March 2020. The amendments are also subject to approval by the Australian Investments and Securities Commission (**ASIC**) under its industry code approval powers.

The ABA also seeks interim authorisation to enable ABA members to agree to amend the Banking Code at the ABA Council meeting on 28 June 2019, and to enable Member Banks to implement the Code after ASIC approval, subject to final ACCC authorisation being granted, ahead of the 1 March 2020 commencement date.

These amendments reflect the banking industry's commitment to the Banking Code as a living document that remains responsive and relevant, and to fully implementing the recommendations of the Royal Commission.

The ABA's application and confidential submission in support of application for authorisation on behalf of its member retail banks (**Submission**) are attached to this covering letter. The application is made on behalf of ABA member banks, their subsidiary banks and future ABA members (**Member Banks**).

Amendments to the Banking Code subject of the authorisation application

The amendments to the Banking Code that are the subject of the authorisation application include:

- Codification of the concept of a basic bank account (**BBAs**);
- Minimum eligibility criteria for BBAs;
- Certain minimum features of a BBA;
- An undertaking to not allow informal overdrafts on BBAs, or low or no fee transaction accounts that are opened by government concession card holders (point 3 of Recommendation 1.8 of the Final Report of the Royal Commission; into Misconduct in the Banking, Superannuation and Financial Services Industry (**Royal Commission**))
- An undertaking not to charge dishonour fees on BBAs, or low or no fee transaction accounts that are opened by government concession card holders (point 4 of Royal Commission Recommendation 1.8);
- An undertaking not to charge overdrawn fees on BBAs, or low or no fee transaction accounts that are opened by government concession card holders (reflecting the overall intent of point 4 of Recommendation 1.8); and
- An undertaking not to charge default interest on loans provided to farmers for the purposes of a farming operation affected by drought or natural disaster (Royal Commission Recommendation 1.13).



Confidentiality claims

The Submission contains confidential information concerning the ABA, the Member Banks and their commercial affairs. This information is described in the table below. Any disclosure of this confidential information would unreasonably and adversely affect ABA and the Member Banks. The full Submission is therefore provided to the ACCC on a confidential basis and on the ACCC's usual confidentiality terms as follows:

- there is no restriction on the internal use, including future use, that the ACCC may make of confidential information consistent with the ACCC's statutory functions;
- confidential information may be disclosed to the ACCC's external advisors and consultants on the condition that each such advisor or consultant will be informed of the obligation to treat the information as confidential; and
- the ACCC may disclose confidential information to third parties (in addition to its external advisors and consultants) if compelled by law or in accordance with section 155AAA of the *Competition and Consumer Act 2010 (Cth)*.

The ABA makes the following claims for confidentiality in relation to the Submission. We have enclosed a non-confidential version of the Submission.

Confidential section of the Submission	Information owner	Reasons for claim
Annexure 3: Information contained in columns 1, 2 and 3 of the row relating to MyState Bank	MyState Bank	The ABA submits that this information should be excluded from the public register as it concerns developments that have not yet been made public by MyState. On this basis, the information is considered by MyState Bank to be commercially and competitively sensitive.
Annexure 4: Column 2 and Column 3 of the table	Each bank listed in column 1 of the table in Annexure 4	<p>The information provided in column 2 sets out whether each bank currently charges default interest for farming operations where a farm has been affected by drought or natural disaster. The ABA submits that this information should be excluded from the public register as it is not consistently publicly disclosed and is considered to be commercially and competitively sensitive.</p> <p>The information provided in column 3 concerns the criteria currently used by each bank to determine whether a drought or natural disaster has occurred for the purposes of whether to charge default interest charges on loans for farming operations. The ABA submits that this information should be excluded from the public register as the criteria used by each bank in these circumstances is not consistently publicly disclosed. The publication of this information to the market generally could result in commercial harm to the disclosing banks.</p>
Annexure 5: Entire annexure	ABA	<p>Annexure 5 contains communication materials for the ABA's BBA public awareness campaign.</p> <p>The ABA submits that this information should be excluded from the public register as publication of launch materials would impact the effectiveness of the ABA's planned public awareness campaign. A high impact launch is integral to promoting consumer awareness of BBA products. Publication of campaign materials in draft form would dilute the impact of this launch and undermine the effectiveness of the campaign.</p>



Application format and process

The ABA notes that the proposed amendments, together with other amendments not the subject of this application, are also subject to an application for approval ASIC to amend the approved Banking Code of Practice under section 1101A of the *Corporations Act 2001*.

The ABA proposes to convene a roundtable of ABA, ASIC, ACCC and consumer representatives to discuss the amendments in the week of 20 May. The ABA is seeking regulatory approval from ASIC and interim authorisation from the ACCC by **Friday 14 June**, to enable the publication of the amended Banking Code from 1 July 2019.

The ABA is committed to working with the ACCC to address questions and concerns and ensure the Banking Code remains responsive and relevant. Jerome Davidson, Policy Director ABA will act as the ABA's primary contact on this application. Jerome can be contacted at Jerome.davidson@ausbanking.org.au or on 02 8298 0419.

I would also be pleased to discuss this application with you or a member of your team.

Yours sincerely

Anna Bligh AC
Chief Executive Officer
(02) 8298 0400
anna.bligh@ausbanking.org.au

Application for authorisation by the Australian Banking Association on behalf of its member retail banks

Parties to the proposed conduct

1 Provide details of the applicants for authorisation, including:

1.1 name, address (registered office), telephone number and ACN

The Australian Banking Association (ACN 117 262 978)
Level 18, 6 O'Connell Street. Sydney 2000 Ph: (02) 8298 0417
PO Box H218, Australia Square, NSW 1215

1.2 contact person's name, position, telephone number and email address

Jerome Davidson
Policy Director
02 8298 0419
jerome.davidson@ausbanking.org.au

1.3 a description of business activities

The ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services.

For further information, please see section 2 of the confidential submission in support of application for authorisation by the Australian Banking Association on behalf of its member retail banks (**Submission**).

1.4 email address for service of documents in Australia.

jerome.davidson@ausbanking.org.au

2 If applicable, provide details of the other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought. Where relevant provide:

Name, address (registered office), telephone number and ACN	Contact person's name, telephone number and email address	Description of business activities
AMP Bank Locked Bag 5059 Parramatta NSW 2150 Ph: 13 30 30 ACN 081 596 009	Fadia Bazzi Ph: 13 30 30 fadia_bazzi@ampbanking.com.au	Bank

<p>Arab Bank Australia</p> <p>Exchange Centre Level 7, 20 Bridge Street Sydney NSW 2000 Ph: (02) 9377 8900</p> <p>ACN 002 950 745</p>	<p>James Gow Ph: (02) 9377 8900 james.gow@arabbank.com.au</p>	<p>Bank</p>
<p>Australia and New Zealand Banking Group Limited</p> <p>ANZ Centre Melbourne 833 Collins Street DOCKLANDS VIC 3008 Ph: (03) 9273 5555</p> <p>ACN 005 357 522</p>	<p>Tom Westcott Ph: (03) 8655 5814 Thomas.Westcott@anz.com</p>	<p>Bank</p>
<p>Bank Australia Limited</p> <p>Private Bag 12, Kew VIC 3101 Ph: (03) 9854 4644</p> <p>ACN 087 651 607</p>	<p>Rowan Dowland Ph: (03) 9854 4644 rowan.dowland@bankaust.com.au</p>	<p>Bank</p>
<p>Bank of China</p> <p>Level 12, 39-41 York Street Sydney NSW 2000 Ph. (02) 8235 5888</p> <p>ACN 110 077 622</p>	<p>Phillip Kong Ph: (02) 8235 5888 phillip.kong@bankofchina.com.au</p>	<p>Bank</p>
<p>Bank of Queensland</p> <p>Level 17, 259 Queen Street BRISBANE QLD 4000 Ph: (07) 3212 3494</p> <p>ACN 009 656 740</p>	<p>Richard Beck Ph: (07) 3212 3494 Richard.Beck@boq.com.au</p>	<p>Bank</p>
<p>Bank of Sydney Limited</p> <p>62 Pitt Street Sydney NSW 2000 Ph: (02) 8262 9060</p> <p>ACN 093 488 629</p>	<p>Helen Leondios Ph: (02) 8262 9060 helen.leondios@banksyd.com.au</p>	<p>Bank</p>

<p>Bendigo and Adelaide Bank Limited</p> <p>The Bendigo Centre Bendigo, Victoria 3550 Ph: 1300 361 911</p> <p>ACN 068 049 178</p>	<p>Linda Veronese Ph: (03) 84147854 Linda.Veronese@bendigoadelaide.com.au</p>	<p>Bank</p>
<p>Citigroup Pty Ltd</p> <p>2 Park St Sydney NSW 2000 Ph: 13 24 84</p> <p>ACN 004 325 080</p>	<p>Kathy Farah Ph: 13 24 84 Kathy.farah@citi.com</p>	<p>Bank</p>
<p>Commonwealth Bank of Australia</p> <p>48 Martin Place SYDNEY NSW 2000 Ph: 132 221</p> <p>ACN 123 123 124</p>	<p>Sean Kennedy Ph: 132 221 Sean.Kennedy@cba.com.au</p>	<p>Bank</p>
<p>HSBC Bank Australia Limited</p> <p>Level 36, Tower 1, International Towers Sydney 100 Barangaroo Avenue Sydney NSW 2000 Ph: (02) 9006 5888</p> <p>ACN 006 434 162</p>	<p>Joginder Sharma Ph: (02) 9006 5888 joginder.sharma@hsbc.com.au</p>	<p>Bank</p>
<p>ING Bank (Australia) Limited</p> <p>60 Margaret Street SYDNEY NSW 2000 Ph: (02) 9028 4000</p> <p>ACN 000 893 292</p>	<p>Shivanthi Fernando Ph: (02) 9028 4000 Shivanthi.Fernando@ing.com.au</p>	<p>Bank</p>
<p>Macquarie Bank Limited</p> <p>No.1 Martin Place SYDNEY NSW 2000 Ph: (02) 8232 3333</p> <p>ACN 008 583 542</p>	<p>Sam Dawson Ph: (02) 8232 3333 Sam.Dawson@macquarie.com</p>	<p>Bank</p>

<p>Members Equity Bank Limited</p> <p>Level 28, 360 Elizabeth Street, Melbourne, VIC 3000 Ph. (03) 9708 3000</p> <p>ACN 070 887 679</p>	<p>Francisco Ruiz Diaz Ph: (03) 9708 3000 Francisco.RuizDiaz@mebank.com.au</p>	<p>Bank</p>
<p>MyState Bank</p> <p>Level 2, 137 Harrington Street Hobart TAS 7001 Ph: 138 001</p> <p>ACN 067 729 195</p>	<p>Melanie Rottier Ph: 138 001 Melanie.Rottier@MyState.com.au</p>	<p>Bank</p>
<p>National Australia Bank Limited</p> <p>800 Bourke Street MELBOURNE VIC 3000 Ph: 13 22 65</p> <p>ACN 004 044 937</p>	<p>Vanessa Curtain Ph: 0400 697 625 Vanessa.L.Curtain@nab.com.au</p>	<p>Bank</p>
<p>Rabobank Australia Limited</p> <p>Level 16 Tower 3/Darling Park Tower 3, 201 Sussex St, Sydney NSW 2000 Ph. (02) 8115 4000</p> <p>ACN 001 621 129</p>	<p>Jason Vongratsavai Ph: (02) 8115 4000 Jason.Vongratsavai@rabobank.com</p>	<p>Bank</p>
<p>Suncorp Bank</p> <p>Level 28, 266 George Street BRISBANE QLD 4000 Ph: (07) 3362 1222</p> <p>ACN 66 010 831 722</p>	<p>Matthew Tapsall Ph: (07) 3362 1222 Matthew.tapsall@suncorp.com.au</p>	<p>Bank</p>
<p>Westpac Banking Corporation</p> <p>Westpac Place 275 Kent Street SYDNEY NSW 2000 Ph: (02) 9293 9270</p> <p>ACN 007 457 141</p>	<p>Holly Dorber Ph: 132 032 holly.dorber@westpac.com.au</p>	<p>Bank</p>

The proposed conduct

3 Provide details of the proposed conduct, including:

3.1 a description of the proposed conduct and any documents that detail the terms of the proposed conduct

Please see section 4 of Submission and Annexures 2 and 7 to the Submission.

3.2 the relevant provisions of the *Competition and Consumer Act 2010* (Cth) (the Act) which might apply to the proposed conduct:

- cartel conduct (Division 1 of Part IV)
- contracts, arrangements or understandings that restrict dealings or affect competition (s. 45)
- concerted practices (s. 45).

3.3 the rationale for the proposed conduct

Please see sections 3 and 4.3 of the Submission.

3.4 the term of authorisation sought and reasons for seeking this period. By default, the ACCC will assume you are seeking authorisation for five years. If a different period is being sought, please specify and explain why.

Please see sections 4.3(c) and 4.4. of the Submission.

4 Provide documents submitted to the applicant's board or prepared by or for the applicant's senior management for purposes of assessing or making a decision in relation to the proposed conduct and any minutes or record of the decision made.¹

The minutes of the ABA Council Meeting of 20 February 2019 record that:

Amending the Banking Code - Inclusive and accessible banking (recommendation 1.8)

The ABA should amend the Banking Code to provide that:

4.1 banks will work with customers:

- who live in remote areas; or
- who are not adept in using English
- to identify a suitable way for those customers to access and undertake their banking;

¹ Applicants are encouraged to consult with the ACCC prior to lodgement to discuss the scope and range of documents needed in the context of the proposed conduct for which authorisation is sought.

- 4.2 if a customer is having difficulty proving his or her identity, and tells the bank that he or she identifies as an Aboriginal or Torres Strait Islander person, the bank will follow AUSTRAC's guidance about the identification and verification of persons of Aboriginal or Torres Strait Islander heritage;
- 4.3 without prior express agreement with the customer, banks will not allow informal overdrafts on basic accounts;
- 4.4 banks will not charge dishonour fees on basic accounts.

The ABA supports the Royal Commission recommendation.

Charging default interest (Recommendation 1.13)

The ABA should amend the Banking Code to provide that, while a declaration remains in force, banks will not charge default interest on loans secured by agricultural land in an area declared to be affected by drought or other natural disaster.

The ABA supports the recommendation of the Royal Commission and takes steps to amend the Banking Code, following consultation with the ACCC.

- 5 Provide the names of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant products or services) and detail how or why they might be impacted.

Please see sections 7 and 8 of the Submission.

Market information and concentration

- 6 Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).

Please see section 5 of the Submission and Annexures 3 and 4 to the Submission.

- 7 Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.

Please see sections 3 and 5 of the Submission.

- 8 In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

The ABA submits that this is not a relevant consideration for purposes of assessing this application.

- 9 In assessing an application for authorisation, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:

- 9.1 existing competitors
- 9.2 likely entry by new competitors

9.3 any countervailing power of customers and/or suppliers

9.4 any other relevant factors.

[Please see section 8 of the Submission.](#)

Public benefit

10 Describe the benefits to the public that are likely to result from the proposed conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

[Please see section 7 of the Submission.](#)

Public detriment (including likely competitive effects)

11 Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.

[Please see section 8 of the Submission.](#)

Contact details of relevant market participants

12 Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties such as actual or potential competitors, key customers and suppliers, trade or industry associations and regulators.

[Alix Pearce, Director Policy and Campaigns CALC. alix@consumeraction.org.au 03 8554 6912 \(on behalf of Consumer Action Law Centre; Financial Counselling Australia; Financial Rights Legal Centre\)](#)

Additional information

13 Provide any other information or documents you consider relevant to the ACCC's assessment of the application.

[Please see the Annexures to the Submission.](#)

Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).

Signature of authorised person

A handwritten signature in blue ink, appearing to read 'Anna Bligh', with a long horizontal flourish extending to the right.

The Hon. Anna Bligh AC

Chief Executive Officer

This 17th day of May 2019



The Australian Banking Association (ABA) on behalf of ABA member retail banks

Submission in support of application for
authorisation by the Australian Banking
Association on behalf of its member retail
banks

Final

17 May 2019

Contents

	Page	
1	Executive Summary	1
2	The Applicants	7
2.1	ABA	7
2.2	ABA member banks seeking authorisation	7
2.3	Government's response to the Royal Commission	8
3	Background to the Application	8
3.1	Royal Commission Final Report	8
4	Proposed amendments to the Banking Code	11
4.1	2019 code features	11
4.2	Description of conduct to be authorised	13
4.3	Rationale for the proposed revisions to the 2019 Banking Code	15
4.4	Interim authorisation also sought to enable Member Banks to commence implementation prior to 1 March 2020.	16
5	Survey of current industry practices	17
5.1	BBA industry	17
5.2	Loans for farming operations	17
6	Framework for analysis of authorisation request	18
6.1	Relevant markets impacted by the proposed conduct	18
6.2	Counterfactual	18
7	Significant public benefits	18
7.1	The BBA	18
7.2	Agricultural Loan – default interest suspension	23
8	No competitive detriment	25
9	The public benefits outweigh any competitive detriments	28
10	Conclusion	28

1 Executive Summary

Authorisation sought The new Banking Code will commence on 1 July 2019 (**2019 Banking Code**) replacing The Code of Banking Practice 2013.

The Australian Banking Association Inc. (**ABA**) seeks authorisation to implement in the 2019 Banking Code points 3 and 4 of Recommendation 1.8 (relating to informal overdrafts and dishonour fees) and Recommendation 1.13 (relating to default interest charged on loans secured by agricultural land) made in the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Royal Commission**), which was tabled in Parliament on 4 February 2019 (**Final Report**). These amendments are proposed to come into effect on 1 March 2020.

In addition, the ABA also seeks authorisation to prescribe certain minimum requirements relating to basic bank accounts (**BBA**) when a Member Bank elects to offer a BBA (the **BBA Proposal**). These amendments are also proposed to come into effect on 1 March 2020.

In summary, the ABA seeks authorisation to implement the following points into the 2019 Banking Code:

- codify the concept of a BBA;
- set minimum eligibility criteria for BBAs (noting that banks may operate broader eligibility criteria);
- mandate the minimum features of a BBA, including;
 - no account keeping fees;
 - free periodic statements;
 - no minimum deposits (except that you may be required to have your government benefit payment paid into this account);
 - free direct debit facilities;
 - access to a debit card at no extra cost; and
 - free and unlimited Australian domestic transactions;
- mandate the following minimum features of BBAs and low fee and no fee accounts where they are opened by customers that hold a current government concession card:
 - no informal overdrafts without the customer’s express agreement (reflecting point 3 of Recommendation 1.8); and
 - no dishonour fees (reflecting point 4 of Recommendation 1.8)
 - no overdrawn fees (reflecting the overall intent of point 4 of Recommendation 1.8);
- undertake not to charge default interest on loans provided to farmers for the purposes of a farming operation, during a period that the land they use for that operation is in drought or subject to another natural disaster (the **Agricultural Proposal**) reflecting the principle articulated in

Recommendation 1.13. In circumstances where the bank subsequently becomes aware that the land is in drought or impacted by natural disaster, or where the customer brings their loan purpose to the attention of the bank (if it was not initially disclosed to, or recorded by, the bank), the bank will refund interest charged as a result of the default during the drought or other natural disaster.

For further detail of the requested amendments, please see Section 4.2 below.

**Significant
public
benefits**

The authorisation sought by ABA, underpinned by Recommendations from the Royal Commission Final Report, will result in significant public benefits for BBA customers, the agricultural sector and farmers.

The public benefits arising from the BBA Proposals include:

- Reflecting the concern articulated in the Royal Commission Report that minimum community standards were not complied with, the BBA Proposal would codify minimum community standards for transaction account features;
- Greater certainty and protection for customers that BBA products offered by member banks will meet minimum requirements:
 - The Royal Commission Final Report highlighted a number of accessibility issues for low income customers, which showed that low financial capability as well as language and geographic barriers may exclude some Australians from accessing banking services or products.
 - In relation to informal overdrafts, case studies in the Royal Commission's Interim Report (tabled in Parliament on 28 September 2018) (**Interim Report**) considered low income customers and demonstrated that terms and conditions in relation to informal overdrafts were not accessible and failed to inform customers about associated fees and interest rates arising from overdrafts.
 - The BBA Proposal specifically addresses these issues by ensuring that where a customer holds a current government concession card, informal overdrafts (other than where it is impossible or not reasonably practical for the banks to prevent the account from being overdrawn) are not available through BBAs, low fee, or no fee accounts without the customer's express agreement, and that overdraft and dishonour fees are not charged on BBAs, low fee, or no fee accounts.
 - The BBA proposals will provide an industry wide commitment and offer greater certainty to customers as to the availability and features of Member Bank BBAs.
- Enhanced customer awareness of the availability and content of BBAs, including through increased promotion of BBAs to suitable customers on behalf of banks:
 - The BBA Proposals, together with existing provisions of the Banking Code, will promote BBAs by placing

obligations on banks to put into place procedures that will increase customer awareness of BBA availability, whilst upholding the customer's right to choose the transaction account appropriate to their needs.

- Providing greater awareness of BBA offerings will go some way to ameliorating access challenges faced by a number of customers who would likely benefit from BBAs. The proposed 2019 Banking Code (as compared to the 2013 Code) expands the requirement for banks to promote awareness of their BBA products by actively raising awareness of the availability of BBAs and providing easily accessible information about these products.¹ For example, the 2019 Code requires banks to:
 - actively ask if a person has any of the listed government concession cards when applying for a new account;
 - offer a BBA to a consumer if they ask for one and are determined eligible; and
 - train staff to help recognise customers or potential customers that may qualify for a BBA.
- Increased availability of higher quality BBA products through standardised minimum requirements:
 - The BBA Proposals will raise the standard average BBA offering as the minimum features proposed are broader and offered on a more consistent basis than BBAs currently offered in the market. A summary of the features of BBAs currently offered by ABA member banks is set out in **Annexure 3**.
 - Member Banks consider that a comprehensive suite of minimum features for BBAs would ensure that the availability of accessible and affordable banking is improved, consistent with the objective of removing financial barriers to the access of banking services and products that underpins Recommendation 1.8 of the Royal Commission.
 - Further detail of the specific public benefits each feature of the BBA Proposal would bring is set out in **Table 1** below.

The public benefits arising from the Agricultural Proposals include:

- Greater protection of farmers and the agricultural industry in times of natural disaster and drought.
 - Debt financing is commonly used by farmers to support and expand their farming operations and is available from

¹ 2019 Banking Code, cl 45, 46. See also 2013 Banking Code, cl 16.5.

a number of bank and non-bank lenders in Australia. Farming operations are vulnerable to natural disasters and droughts, which can dramatically impact farmers' ability to meet loan obligations.

- Farmers having the certainty that default interest will not be charged on loans in relation to land for the purposes of farming operations affected by drought and natural disaster. The charging of default interest, even where default interest was ultimately waived by the bank in some cases contributed to farmers not being able to meet their loan repayments.
- Increased certainty for farmers in natural disaster or drought
 - Previously, banks may have applied hardship policies on discretionary grounds. The Agricultural Proposals will create mandatory and uniform practice related to not charging default interest for farming operations loans affected by drought and natural disaster. This will reduce uncertainty for affected farmers by making minimum eligibility criteria for relief from default interest clear and easily ascertainable.
 - The default interest provisions complement the expanded financial difficulty provisions in the Banking Code:
 - The right of the customer to be represented by a financial counsellor or representative (cl162)
 - The ability for the bank to proactively contact the customer if the bank thinks the customer may be experiencing financial difficulty (cl165-166)
 - An obligation to work with the customer to respond to financial difficulty (cl167).²

The Proposal is pro-competitive and will result in no competitive detriment

The BBA and Agricultural Proposals will not result in any significant competitive detriment in the relevant markets, and in any event, any limited impact is outweighed by significant public benefits.

In relation to the BBA Proposals, there will be no, or at most minimal, competitive detriments, and any competitive impact that were to arise would be outweighed by substantial public benefits for the following reasons:

- The BBA Proposals only set out the minimum features for the BBA and will not restrict Member Banks from competing in relation to the offer of other additional features such as wider eligibility criteria or rebates from charges from use of private ATMs.
- Whilst banks engage in the process of evaluating their basic product offerings, they will be able to assess their products, innovate and differentiate based on their individual capability or capacity to offer more favourable terms in various areas. The BBA Proposals will not reduce the Member Banks ability or incentive to innovate and compete on

² See Annexure 7. Authorisation is not sought in respect of these provisions.

features that go beyond the proposed minimum standards.

- Member Banks are also subject to significant community expectations as to their social responsibility to constantly make improvements to features and terms of products aimed at low income Australians such as BBAs. As a result, Member Banks have the incentive to innovate and offer improved minimum features, not only as a means of competing with one another, but also as a way to better meet increasing community expectations in relation to the banks' social responsibility.
- Codification of a minimum set of features contained in the BBA Proposal will lead to a better outcome by ensuring all Member Banks offering a BBA product offer features above and beyond the current market offering. The BBA Proposals will lead to an overall increase in the average number, features and service levels of existing transaction accounts or BBA products offered by ABA members. Current BBA offerings are set out in **Annexure 3**, and a range of other transaction accounts that have different product features and fees to BBAs will continue to be offered.
- Furthermore, If the BBA Proposal is authorised, banks will not be able to arbitrarily limit the customers who are eligible, as the BBA Proposal will include minimum eligibility criteria described in more detail below. These criteria will increase the availability of BBA products to low income customers across the industry.

The Agricultural Proposals will not result in any competitive detriments in any relevant market, for the following reasons:

- While the Agricultural Proposals go further than the recommendation in the Final Report, they are nevertheless sufficiently limited in their application and effect to ensure that there will be no effect on competition between Members for the supply of farming loans, while still achieving their purpose of assisting farmers in time of real need. In particular, the Agricultural Proposals:
 - are limited to loans granted to “farmers” for the purposes of “farming operations”;
 - will only apply in limited situations of drought or natural disaster. Member Banks are free to compete in respect of all other features, and product offerings will continue to compete as to the terms of charging default interest in all other circumstances where farmers are in default; and
 - do not contemplate a moratorium on default interest more generally, but rather a suspension of default interest during the period of the drought or natural disaster.
- There are a number of features in respect of which banks can, and indeed do, compete to distinguish their products, including: the size of the loan they are prepared to offer, the interest rate, the repayment term and default interest (which will continue to apply except in times of drought or natural disaster).
- From a demand side perspective, customers are also likely to attribute less value to features of a loan which apply in limited circumstances than features which impact their everyday cashflow and business more

generally.

- There is no incentive for Member Banks to raise interest rates to offset the effect of the Agricultural Proposals. The policy intent behind the Agricultural Proposals - to extend assistance to farmers in times of crisis that arises from circumstances beyond their control - would be undermined if the Member Banks decided to increase rates for loans to farmers and would expose Member Banks to significant reputational risk. It would, in any event, be counter-intuitive for the Member Banks to increase interest rates to offset the Agricultural Proposals. Given the limited application of the Agricultural Proposals, there is a real prospect that Member Banks would lose more revenue by making the key competitive feature of their loans less attractive to offset diminished default interest in circumstances which may not even occur.
- Terminology adopted by the Agricultural Proposals, is consistently used throughout the farming debt industry and will therefore reduce consumer confusion currently created by the variation in language.

The public benefits outweigh any competitive detriments

For the reasons set out above the ABA and Member Banks submit that any competitive detriments that may arise from the BBA Proposals and the Agricultural Proposals (of which ABA and Members maintain there are none), are outweighed by the significant public benefits that arise.

Interim authorisation requested

The ABA seeks interim authorisation to enable ABA members to agree to amend the Banking Code at the ABA Council meeting on 28 June 2019, and to enable Member Banks to implement the Code, subject to final authorisation being granted, ahead of the 1 March 2020 commencement date.

The Banking Code amendments are also subject to approval by ASIC, and form part of a broader suite of amendments being considered by ASIC, some of which will take effect from 1 July.

ASIC has advised the ABA that if it approves the amendments it will do so through one instrument, which will be required by industry before 1 July 2019.

Interim authorisation of the BBA and Agricultural Proposals represents no material competition risk as:

- there are no competitive detriments; and
- in any event any limited detriment is outweighed by significant public benefits.

Given the urgency, and the fact that the grant of interim authorisation does not raise competition risks, the ABA seeks authorisation from 17 June 2019 pending a decision on final authorisation.

Interim Authorisation from 17 June 2019 will enable the ABA to make appropriate practical arrangements for publication of the Code on 1 July 2019. The ABA Council is scheduled to meet on 28 June 2019 and is hoping interim authorisation will allow it to incorporate the BBA proposals and Agricultural Proposals to the 2019 Code, subject to a decision on final authorisation, at that time.

The ABA and Member Banks see the recommendations of the Royal Commission as a roadmap to drive the change needed to earn back the trust of the Australian people, and see it as a priority to ensure these changes are made as early as

possible. While Member Banks have individually taken steps to implement a number of Royal Commission recommendations, the ABA considers that in order for confidence in the banking sector to be fully restored, recommendations addressed to the ABA in the Final Report must be implemented and codified with the full support of all Member Banks, to ensure consistency and certainty and to avoid customer confusion. Moreover, once incorporated as code obligations, breaches will be enforceable. While enforcement of the changes proposed through recommendations 1.8 and 1.13 was not specified in the Final Report, the ABA believes that the existence of monitoring and enforcement mechanisms under the Code are the reason that the recommendations specify that the changes should be effected through changes to the Banking Code, rather than unilateral changes to banking practices included in recommendation 1.14.

Term of final authorisation The ABA requests that the ACCC authorise the implementation of the BBA Proposals and Agricultural Proposals into the 2019 Banking Code for a period of 10 years.

2 The Applicants

2.1 ABA

ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA benefits from the active participation of 23 member banks in Australia (**Member Banks**) and works with government, regulators and other stakeholders to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.³ 19 ABA members, with retail banking business in Australia, will subscribe to the 2019 Banking Code.

The ABA's current priority policy issues relevant to this Application include:

- *Development of industry codes and standards:* the continuing development of the Code of Banking Practice (**Banking Code**) and a number of other industry standards and guidelines which ensure best practice across the Australian banking industry, including focus on adopting the Royal Commission recommendations;
- *Accessibility:* the improvement of Australians' access to affordable retail banking and support during difficult times; and
- *Rural and regional banking:* the coordination of the banking industry's response to issues related to rural and regional Australia.⁴

2.2 ABA member banks seeking authorisation

The ABA seeks authorisation on behalf of its Member Banks and their subsidiary banks (together, the **Applicants**). Each Member Bank is listed in **Annexure 1**. The ABA also seeks authorisation on behalf of any banks that may become ABA members in the future.

³ Australian Banking Association, 'About us' at: <https://www.ausbanking.org.au/about-us/the-aba/>.

⁴ Australian Banking Association, 'What we do' at: <https://www.ausbanking.org.au/about-us/what-we-do/>.

2.3 Government's response to the Royal Commission

There is bipartisan support for the ABA's implementation of the Relevant Recommendations. On 4 February 2019 the Coalition Government released the Government's Response to the Final Report of the Royal Commission into the Banking, Superannuation and Financial Services Industry (**Government Response**). The Government Response supported ABA action on the Relevant Recommendations.

On 22 February 2019 Labor's Response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry was published (**Labor's Response**). The Labor Party similarly supported ABA action on the Relevant Recommendations and specified an expected implementation date for the Relevant Recommendations of 1 October 2019.

3 Background to the Application

3.1 Royal Commission Final Report

The Final Report made a number of recommendations for the banking industry, outlining steps that regulators, associations, banks and the industry more generally should take in response to the conduct and events considered by the Royal Commission.⁵

The Royal Commission made a number of recommendations to amend the terms of the 2019 Banking Code, including the following, in relation to which the ABA now applies for authorisation to implement in the 2019 Banking Code, recommending that:

- banks not allow informal overdrafts on BBAs, without prior express agreement with the customer (point 3 of Recommendation 1.8); and
- banks not charge dishonour fees on BBAs (point 4 of Recommendation 1.8); and
- banks not charge default interest on loans secured by agricultural land in an area declared to be affected by drought or other natural disaster, while a declaration remains in force (Recommendation 1.13) (together, the **Relevant Recommendations**).

(a) Recommendation 1.8 – Recommended Code requirements in relation to BBAs

The Final Report describes a basic account to be a bank account that provides account holders with essential banking services at a lower cost than other forms of account. The Royal Commission noted that basic accounts are aimed at meeting the banking needs of low-income customers, including customers that receive certain government benefits or that hold government concessions.⁶

The Royal Commission considered 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.

(i) Informal Overdrafts

⁵ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report Volume 1, paragraph 2.1 at p 20.

⁶ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report Volume 1 at p 91.

An informal overdraft will arise when a bank allows a customer to withdraw more than the amount standing to the credit of the customer's account; the bank will then generally charge the customer a fee for lending the amount of the informal overdraft. Informal overdrafts generally arise due to payment system and transaction timing issues, such as:

- offline contactless (Paywave, Paypass etc) transactions which are chip based with a monetary limit per transaction and processed by the bank as an overnight batch only, after the transaction is completed;
- point of sale machines operating 'off line;
- multiple direct debits being deducted on the same day; or paper-based transactions that are not processed instantaneously (e.g. paper-based card imprint system); and
- recurring transactions (i.e. scheme based) and direct debits (BECS regulated), which are agreed to between the customer and the merchant or the bank respectively and for which individual transactions occur automatically.

Informal overdrafts may be allowed by a bank without any prior agreement with the customer, and therefore differ from formal overdrafts that are agreed between the customer and the banks in advance and are subject to responsible lending requirements.

In some cases, such as off-line ATMs or POS machines, it is impossible or reasonably impractical for the banks to prevent the account from being overdrawn, however banks can take steps to ensure that informal overdrafts are not offered or allowed when preventing the overdraft is within the bank's control.⁷

A bank cannot prevent a deposit account with no informal overdraft from becoming overdrawn in transactions, such as: offline contactless (Paywave, Paypass etc) transactions which are chip based with a monetary limit per transaction and processed by the bank as an overnight batch only, after the transaction is completed, electronic transactions which require a PIN entry where there is a connection to the bank system where an authorisation is sought, or recurring transactions (i.e. scheme based) and direct debits (BECS regulated), in cases where a merchant seeks authorisation.

In cases where a merchant seeks authorisation, authorisation would not be given where it would exceed the credit limit or account balance for a customer with no informal overdraft/shadow limit. Similarly, single online transactions (e.g. online shopping) will check for available funds when there is an authorisation process by the merchant, but not otherwise. The entry by a customer of the CVV number of the card, or purchases through apps such as ApplePay or GooglePay will perform this authorisation. However for some online purchases merchants do not collect the CVV and there will not be a check for available funds, which means the account can become overdrawn.

Banks communicate these overdrafts to customers in a range of ways. For example, a number of banks send text messages to the customer alerting them to the overdraft.

The Final Report set out the Royal Commission's key concerns with informal overdrafts:

- While a fee charged for an informal overdraft may be small, with repeated overdrawn, fees can mount up.

⁷ For recurring transactions (i.e. scheme based) and direct debits (BECS regulated), the bank will sometimes be unable to apply a restriction where a merchant processes the transaction without reference to a bank authorisation process. This is not within the bank's control.

- Some customers did not know that they had been offered, and/or made use of, an informal overdraft.⁸

The Final Report notes that “*restricting informal overdraft arrangements to customers who actively seek out such an arrangement would very likely go some way to reducing the numbers of customers on benefits who owe significant debts to banks, and would very likely go some way to reducing the amounts owed by individual customers.*”

The Final Report recommended that the Banking Code should be amended to provide that informal overdrafts should not be offered on BBAs, unless the customer has expressly sought and been granted that facility.⁹

(ii) Dishonour fees

The Interim Report defined dishonour fees and the circumstances around them, noting that:

“some bank customers in remote and very remote areas may make arrangements with retailers and others that require periodic payments. The person to whom the payment is to be made will often have the customer give a direct debit authority to the bank. If the account on which the customer has given the authority has insufficient funds the debit will be dishonoured and the bank will charge the customer a dishonour fee.”¹⁰ (dishonour fee)

A case study considered by the Royal Commission gave the example of a customer who was charged significant dishonour fees for rejected direct debit payments that had failed due to insufficient funds.¹¹

The Final Report acknowledged that standard banking policies, procedures and offerings are not always appropriate or beneficial for all Australians, in particular dishonour fees can reduce the accessibility of banking services for these customers. The Final Report recommended that the Banking Code be amended to provide that Dishonour Fees not be charged on BBAs.¹²

(b) Recommendation 1.13 – Charging Default Interest

The Interim Report recognised that default interest may cause particular problems in the context of agricultural loans.

Default interest is the interest charged under a loan agreement on payments that are not made on time (**default interest**). A loan agreement may provide for one rate of interest and then provide that a lower, or ‘acceptable’, rate will be charged if payments are made on time. Default interest rates may be markedly higher than the rate applied when payments are due and may also be charged in addition to a fee. While default interest is charged for a range of reasons, including increased capital charges for impaired loans, and as an incentive to comply with the terms of the loan,¹³ in the context of agricultural loans affected

⁸ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report Volume 1 at p 91-92.

⁹ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report Volume 1 at p 92.

¹⁰ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report Volume 1 at p 261.

¹¹ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report Volume 2 at p 470-479.

¹² Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report Volume 1 at p 92.

¹³ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report Volume 2 at p 425.

by drought or natural disaster, default interest can cause the balance owing to grow quickly.¹⁴

Individuals in the agricultural sector can be affected by significant weather and climate events beyond their control. Natural disasters or sustained periods of drought can dramatically negatively affect cash flow, profitability and the ability to service debts. Case studies considered by the Royal Commission demonstrated that in the past, banks had been slow to offer hardship assistance to farmers in such circumstances. In one case, farming land was affected by long term drought and it became impossible for the customers to meet their loan obligations. Default interest continued to be charged to these accounts despite the fact the interest would unlikely be repaid.¹⁵

In its Interim Report, the Royal Commission stated that default interest should not be used to enhance a lender's strategic position in circumstances of debt distress, particularly when the land securing the debt was affected by drought or natural disaster. The RC considered that the application of default interest, in circumstances where cash flow and profitability are so detrimentally affected, merely amplified distress and debt levels and has no commercial rationale.¹⁶

Accordingly, in the Final Report, the Commissioner recommended that the ABA amend the Banking Code 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 land in that area.¹⁷

4 Proposed amendments to the Banking Code

The 2019 Banking Code replaces The Code of Banking Practice 2013. The Banking Code sets standards of practice for banks, their staff and representatives. Part 4 of the 2019 Banking Code is concerned with Inclusive and Accessible Banking and within this Part, Chapter 16 is concerned with BBAs.

The ABA seeks ACCC authorisation to amend the 2019 Banking Code in the manner set out below.

These amendments are proposed to come into effect no later than on 1 March 2020.

4.1 2019 code features

(a) BBA

The 2019 Banking Code, as currently anticipated to be implemented, contains the following commitments from Member Banks to customers relating to BBAs:

"We will raise awareness of basic, low or no fee accounts and give you information about them

¹⁴ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report Volume 1 at p 253-254.

¹⁵ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report Volume 2 at p 415-426.

¹⁶ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report Volume 2 at p 425.

¹⁷ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report at p 103.

45. We will raise awareness of our affordable banking products and services such as basic, low, or no fee accounts, including that you may be eligible if you have a government concession card.

46. We will give you information that is easily accessible about accounts that have low, or no, standard fees and charges.

47. We will offer you a basic, low, or no fee account if you ask for one and we determine that you are eligible for one.

Training for staff about customers eligible for basic, low, or no, fee accounts

48. We will train our staff to help them to recognise a customer, or potential customer that may qualify for a basic, low, or no fee account.”

(b) Agricultural loan

Part 9 of the Banking Code sets out minimum requirements for banks working with customers in financial difficulty. While these are only minimum requirements, they currently include:

- The right of the customer to be represented by a financial counsellor or representative¹⁸
- The ability for the bank to proactively contact the customer if the banks thinks they customer may be experience financial difficulty¹⁹
- An obligation to work with the customer to respond to financial difficulty.²⁰ This could include measures such as:
 - deferring or reducing loan payments;
 - restructuring and consolidating loans;
 - altering loan repayments to interest-only;
 - changing limits on lines of credit (e.g. credit card);
 - waiving certain fees and charges;
 - waiving penalties for early withdrawal of a term deposit;
 - freezing loans in exceptional circumstances, such as after an emergency event or natural disaster;
 - providing a moratorium on collections action; or
 - providing alternative banking arrangements.

¹⁸ Banking Code 2019, cl162.

¹⁹ Banking Code 2019, cl165-166.

²⁰ Banking Code 2019, cl167.

(c) Enforcement provisions

The Code is enforceable and forms part of each Member Banks' banking services and guarantees.²¹ An independent code monitoring body, the Banking Code Compliance Committee (**BCCC**) has been established to monitor compliance with the Code²² and has power to monitor and oversee compliance, investigate allegations of Code breaches, make findings and recommendations on Code breaches and apply sanctions.²³

After considering the seriousness of a breach, the BCCC may impose sanctions, including for example: requiring a bank to rectify or take corrective action on a breach; requiring a bank to undertake a compliance review of remediation actions; formally warning a bank; requiring a bank to undertake a staff training program on the Code; naming the bank in the BCCC annual report or website; and reporting serious or systematic ongoing instances to ASIC.²⁴

4.2 Description of conduct to be authorised

(a) BBA

The ABA seeks ACCC authorisation to amend the 2019 Banking Code to:

- (i) set minimum criteria for eligibility for a BBA as a customer holding a Pensioner Concession Card, Health Care Card or Commonwealth Seniors Health Card (noting that Banks may choose to offer broader eligibility criteria);
- (ii) mandate the following minimum features of a BBA where a Member Bank elects to offer a BBA:
 - (A) no account keeping fees;
 - (B) free periodic statements;
 - (C) no minimum deposits (except that you may be required to have your government benefit payment paid into this account);
 - (D) free direct debit facilities;
 - (E) access to a debit card at no extra cost;
 - (F) free and unlimited Australian domestic transactions²⁵;
- (iii) to give effect to parts 3 and 4 of Recommendation 1.8 of the Final Report, that for basic, low fee and no fee accounts for eligible customers:
 - (A) no informal overdrafts; and
 - (B) no dishonour fees or overdrawn fees;
- (iv) where an informal overdraft cannot be avoided, Banks will comply with the Department of Human Services Code of Operation.²⁶

²¹ 2019 Banking Code, cl 2.

²² 2019 Banking Code, cl 207.

²³ 2019 Banking Code, cl 211-215.

²⁴ 2019 Banking Code, cl 215.

²⁵ Note that customers may be charged for certain ancillary services. For example, bank cheques, telegraphic transfers, or transactions at ATMs owned and operated by third parties.

For these proposals, **'informal overdraft'** means credit a bank provides when (without the customer's express agreement) the bank permits the customer to overdraw their account, but excluding instances where it is impossible or reasonably impractical for the bank to prevent the customer's account from being overdrawn.

'No overdrawn fees' means banks will not charge a fee where a customer's account falls into debit. However, that customer may be charged interest on the amount in debit.

'No dishonour fees' means banks will not charge a fee because a debit on a basic account is declined due to insufficient funds in the account.

Under the proposed amendments to the 2019 Banking Code, the decision to offer a BBA under the 2019 Banking Code remains voluntary. However, if a Member elects to offer a BBA, the BBA must meet the minimum criteria.

However, **the prohibition on overdrawn and dishonour fees in basic, low and no fee accounts opened by customers with a current government concession card applies to all Code subscribers.**

Please refer to **Annexure 2** for the specific text of the proposed amendments to the Banking Code.

(b) Agricultural Loan

The ABA proposes to amend the Banking Code to provide that:

- (i) Farmers²⁷ who have been provided with a loan for the purposes of a farming operation,²⁸ will not be charged default interest on that loan by a bank during any period that the land they use for that operation is in drought or subject to another natural disaster. In circumstances where the bank subsequently becomes aware that the land is in drought or impacted by natural disaster, or where the customer brings their loan purpose to the attention of the bank (if it was not initially disclosed to, or recorded by, the bank), the bank will refund interest charged as a result of the default during the drought or other natural disaster.
- (ii) Land will be considered in drought or subject to another natural disaster where an Australian State or Territory Government makes a declaration to that effect; or if no such declaration is made, where the bank is satisfied on other grounds that the land is in drought or subject to another natural disaster.

The proposal that the bank may also base the decision on other grounds builds on the minimum standard of applying Government declarations by giving the bank flexibility to apply the default interest provision more broadly than when a Government declaration is in force.

These proposed amendments give effect to Recommendation 1.13 of the Final Report. Please refer to **Annexure 2** for the specific text of the proposed amendments to the Banking Code.

²⁶ 2019 Banking Code, cl 181.

²⁷ *Farm Debt Mediation Act 1994* (NSW) ss 4 (**NSW FDM Act**).

²⁸ *Farm Debt Mediation Act 1994* (NSW) s 4AB.

(c) Application to farmers running farming operations

The proposed Banking Code amendment will apply to loans to farmers, running farming operations, as defined by the NSW Farm Debt Mediation Act. This approach uses standardised definitions that are legislated of both farmer,²⁹ and farming operation,³⁰ that will provide certainty for customers about which loans the default interests prohibition applies to. It also addresses the spirit and intention of the Royal Commission recommendation, to ensure that farmers, whose farming operations are affected by drought and natural disaster are not charged default interest. The ABA believes this expanded approach goes further than simply limiting the prohibition to loans secured by agricultural land. For example, the proposed approach will cover aquaculture and forestry operations, and will apply to farming operations even where the loan is not secured by agricultural land.

This approach also includes farmers who lease their land or else do not use land as security, but take out loans to fund their farming operations.

Please refer to **Annexure 2** for the specific text of the proposed amendments to the Banking Code.

4.3 Rationale for the proposed revisions to the 2019 Banking Code

The Royal Commission highlighted many examples of conduct which fell short of community expectations, resulting in the Royal Commission making many recommendations to ensure that banks meet community expectations, including the Relevant Recommendations, as described in this application. The ABA and its members wish to ensure that they commit to and implement the Relevant Recommendations and community expectations more broadly without delay.³¹

(a) BBAs

While not all parts of the BBA proposals put forward by the ABA in this Application were expressly recommended by the Royal Commission, these minimum requirements are consistent with and give effect to the intention of Recommendation 1.8 of the Royal Commission, with a more extensive response than provided for in that recommendation. The ABA proposes that the Banking Code is amended to ensure that BBAs are provided with a minimum set of features as described in Section 4.2 above, which expands the Royal Commission recommendations relating to informal overdrafts and dishonour fees.

The ABA and Member Banks see the recommendations of the Royal Commission as a roadmap to drive the change needed to earn back the trust of the Australian people.³² However, the ABA and its members consider that, in addition to Recommendation 1.8, there are other features of a BBA that are designed to promote and protect low income customers' banking needs.

The broader goal of Recommendation 1.8 was to promote accessibility of banking services and products across the banking industry by amending the Banking Code. Points 3 and 4 deal specifically with the removal of product features and fees that can cause financial difficulty. However, in addition to dishonour fees and informal overdrafts, customers can

²⁹ *Farm Debt Mediation Act 1994* (NSW) ss 4.

³⁰ *Farm Debt Mediation Act 1994* (NSW) s 4AB.

³¹ Please see ABA Media Release 'Banking Code shakeup after Royal Commission Final Report' dated 27 February 2019 at <https://www.ausbanking.org.au/media/media-releases/media-release-2019/banking-code-shakeup-after-royal-commission-final-report>.

³² Statement from ABA CEO Anna Bligh on the release of the Final Report of the Royal Commission on 4 February 2019, at <https://www.ausbanking.org.au/media/media-releases/media-release-2019/statement-from-aba-ceo-anna-bligh-on-the-release-of-the-final-report-of-the>.

also be significantly disadvantaged by other terms, including fees that are imposed on day-to-day transactions, such as withdrawals or balance enquiries. Member Banks consider that a comprehensive suite of minimum features for BBAs would ensure that customers' interests are effectively protected, consistent with the objectives underpinning Recommendation 1.8 of the Royal Commission.

Moreover, by ensuring that this minimum set of features is mandated as a minimum industry standard for BBAs, customer confusion would be avoided, contributing to greater customer awareness and understanding of the availability and features of BBAs.

(b) Agricultural loans

The ABA also supports the inclusion of Recommendation 1.13 in the 2019 Banking Code (commitment not to charge default interest on agricultural loans over land subject to drought or other natural disaster) with the associated standardised criteria as set out in Section 4.2(b) above, to ensure certainty by borrowers in relation to the application of Recommendation 1.13.

The ABA's approach to Recommendation 1.13 better addresses the spirit and intention of the Royal Commission recommendation and will ensure that the farmers, whose farming operations are affected by drought and natural disaster are suitably protected from being charged default interest. ABA's Agricultural Proposals aims to better protect farmers by also including farmers who take out loans to fund their farming operations who may lease their land but do not strictly use the land as security.

(c) Term of authorisation sought

To ensure certainty and customer awareness, ABA seeks a term of authorisation for 10 years.

4.4 Interim authorisation also sought to enable Member Banks to commence implementation prior to 1 March 2020.

As noted above, ABA Members propose to agree to amend the Banking Code at the ABA Council meeting 28 June 2019, and propose to enable Member Banks to implement the Code, subject to final authorisation being granted, ahead of the 1 March 2020 commencement date.

The Banking Code amendments are also subject to approval by ASIC, and form part of a broader suite of amendments being considered by ASIC, some of which will take effect from 1 July 2019. ASIC has advised the ABA that if it approves the amendments it will do so through one instrument, before 1 July 2019.

Interim authorisation of the BBA and Agricultural Proposals represents no material competition risk as:

- there are no competitive detriments, and
- in any event, any limited detriment is outweighed by significant public benefits.

Given the urgency, and the fact that the grant of interim authorisation does not raise competition risks, the ABA seek interim authorisation from 17 June 2019 pending a decision on final authorisation.

5 Survey of current industry practices

5.1 BBA industry

The ABA conducted a confidential bilateral survey with Member Banks' regarding their current BBAs. We refer to **Annexure 3** which sets out a detailed description of the current market offerings for each of the Member Banks.

In summary, we note that out of 19 Code subscribing banks, at least 9 banks, including the 4 major banks currently offer a BBA, while the other Code subscribing banks offer a low or no fee account with some features consistent with a BBA.

Of the Member Banks that offer a BBA, all of the banks offer the following features:

- no account keeping fee;
- no minimum account balance required to open the account;
- free and unlimited transactions;
- free statements;
- ability to set up and cancel direct debits at no extra cost; and
- where applicable, there are no overdrawn fees if a bank allows an account to go into arrears.

5.2 Loans for farming operations

The ABA also conducted a confidential bilateral survey with member banks in order to determine: whether member banks currently charge default interest on loans in drought/natural disaster; and if so, the criteria the banks used when determining whether there was a drought or natural disaster. We refer to **Annexure 4** which sets out the current market offerings for each of the ABA member banks.

Please refer to a more detailed and confidential **Annexure 4** which sets out current market offerings.

Of the Member Banks that provide loans for farming operations (of which there are nine) no bank now charges default interest for a loan affected by drought or other natural disaster.

Member Banks note that there is no national uniformity of declaration that clearly sets out when a drought or natural disaster has occurred. Consequently, the majority of Member Banks are guided by state government declarations, insofar as states make such declaration. However, some States do not make such declarations. Accordingly, Member Banks adopt a range of practices to determine whether land is affected by drought or natural disaster, for example:

- One bank applies postcode data provided by a state government to determine areas where a drought or natural disaster has been declared.
- Another bank indicated that where the relevant State or Territory does not offer declarations for drought, the bank will instead look at the Bureau of Meteorology's Australian Rainfall Deficiency Measure to determine if an area should be deemed as subject to drought.

- Furthermore, the majority of the Member Banks do not have formal procedures in place, but instead have the flexibility to extend this kind of policy on a case-by-case basis.

6 Framework for analysis of authorisation request

6.1 Relevant markets impacted by the proposed conduct

The following markets are relevant for the purposes of the ACCC's assessment of the application:

- supply of retail transaction banking services in Australia; and
- the supply of loans to farmers for farming operations.

6.2 Counterfactual

(a) The BBA

The counterfactual will involve the member banks who choose to supply BBAs continuing to do so, without any minimum standards, resulting in a likely continued lack of customer awareness of BBA product availability, driven by the inability of the ABA and its members to promote to low income customers a BBA product defined by a minimum set of features.

(b) Agricultural Loan

While all banks that offer agricultural loans currently offer relief by way of no default interest on agricultural loans in the context of natural disasters, there is no consistency between the banks as to what triggers a prohibition on the charging of default interest, the scope of application, and in particular, when a drought or other natural disaster is considered to give rise to the prohibition.

7 Significant public benefits

7.1 The BBA

Banks occupy a central and everyday role in the lives of each Australian, yet general participation in the financial system often comes at a cost. The principle of accessibility provides that no Australian should be excluded from the financial system or from accessing basic bank services or products for reason of financial or other barriers.

The BBA Proposals would be implemented as standard features mandated by the Banking Code. From 1 July 2019 it will be a condition of membership of the ABA that banks with a retail presence in Australia and who offer BBA products comply with the Banking Code requirements.³³

The BBA Proposals will therefore deliver the following public benefits:

- greater certainty and protection for customers that BBA products offered by member banks will meet minimum requirements;

³³ See ABA Media Release, New Banking Code of Practice will be compulsory, binding and enforceable 26 March 2018 at: <https://www.ausbanking.org.au/media/media-releases/media-release-2018/new-banking-code-of-practice-will-be-compulsory-binding-and-enforceable>.

- enhanced customer awareness of the availability and content of BBAs, including through increased promotion of BBAs to suitable customers on behalf of banks; and
- increased availability of higher quality BBA products through standardised minimum requirements
- removal of access to informal overdrafts and removal of overdrawn and dishonour fees from basic, low and no fee accounts.

(a) Greater certainty to consumers

Informal overdrafts

The Royal Commission Report considered cases where low income customers had been provided informal overdrafts at high cost. It was found that in some circumstances, customers had been provided with informal overdrafts and accrued significant fees. On occasion the fortnightly Centrelink payments of some customers would be used entirely to clear overdrawn amounts. Customers in one particular remote community had a wide range of literacy and financial literacy levels. Many customers had been provided with informal overdrafts and some of these customers did not understand what overdrafts were, or that they had been provided them at significant cost.³⁴

Case studies reported in the Interim Report also showed that terms and conditions were not accessible and failed to properly inform customers about the nature of informal overdrafts, associated fees and interest rates.³⁵

By incorporating point 4 of Recommendation 1.8, the BBA Proposal will offer greater certainty and control to eligible customers who had been provided an informal overdraft and accrued significant fees. In particular, eligible customers with a basic, low or no fee account will never be charged dishonour or overdrawn fees.

Minimum set of features for BBAs

The Royal Commission Final Report also highlighted a number of accessibility issues beyond financial issues; including language and geographic barriers that may exclude some Australians from accessing certain banking services or products.

It was identified that “*where remoteness of location is coupled with language and cultural differences, those difficulties are very significant.*”³⁶ A case study in the Interim Report referred to a customer based in a remote community around 100 kilometres from Katherine in the Northern Territory. With the assistance of a support worker the customer drove one and a half hours to the nearest bank branch.³⁷ The case study highlights that some Australian customers may not be able to choose the best BBA on offer or may not have the skills to research or access information to evaluate offerings.

In this context, under the BBA Proposals, at least 10 Member Banks intend to offer a BBA product with a standard set of minimum features. Providing an industry wide commitment will offer greater certainty to customers that all BBAs across the industry contain key

³⁴ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report Volume 2 at p 480-484.

³⁵ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report Volume 2 at p 480-481.

³⁶ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report Volume 2 at p 476.

³⁷ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report Volume 2 at p 470.

accessibility requirements and make it easier for customers with low financial capability to understand the concept and features of a BBA.

(b) Enhanced awareness and promotion of BBAs

Volume 2 of the Interim Report included case studies considered by the Royal Commission in its inquiries. One case study referred to the experience of a customer whose main source of income was Centrelink payments. The customer lived in a remote community and had access to only one privately owned ATM that charged fees for use. She was charged significant overdraw and dishonour fees. Despite her circumstances and clear eligibility for a basic account, when she went to the bank she was recommended and provided with a fee bearing account.³⁸

The Royal Commission noted such conduct fell short of what the community would expect, noting that information about basic banking products should be offered to those customers who are entitled to have one.³⁹

Furthermore, it was identified in the Royal Commission Report that in the past banks may have conducted interviews with clients with the aim of promoting bank products, without significant attention being paid to the client's need and suitability for various product offerings.⁴⁰

The BBA Proposals and Chapter 16 of the 2019 Banking Code have set new and increased obligations for banks to raise awareness of BBAs and train staff to recognise customers or potential customers who may qualify for these products.⁴¹ The ACCC 2002 Draft Determination noted its investigations had found a large number of interested parties were not aware BBA products were even offered by individual banks.

As part of a broader awareness and education campaign on the 2019 Banking Code, the ABA has prepared specific communications materials to be used by banks in branches and other communication channels (e.g. ATM screens) to raise awareness of basic accounts. Examples of these materials are set out in **Annexure 5**.

The BBA Proposals will promote BBAs by placing obligations on banks to put in place procedures that will increase customer awareness of BBA availability, whilst retaining the customer's right to choose a transaction account that best meets their needs.⁴² Providing greater awareness of BBA offerings will go some way to ameliorating access challenges faced by a number of customers who would likely benefit from BBAs.

(c) Enhanced quality of BBAs

The BBA Proposals will raise the standard average BBA offering as minimum features proposed are broader and offered on a more consistent basis than BBAs currently offered in the market.

Features proposed in this Application are significantly greater than the features proposed in the 2002 Application. On 16 December 2002, the ACCC provided its Draft Determination on

³⁸ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report Volume 2 at p 470-475.

³⁹ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report Volume 2 at p 477.

⁴⁰ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report Volume 2 at p 477.

⁴¹ Clauses 45-48 2019 Banking Code of Practice.

⁴² Some customers who may be eligible may also benefit from an alternative account, if for example, they have a small amount of savings and wish to benefit from a higher interest rate.

the ABA's 2002 Application. The ACCC 2002 Determination noted that potential public benefits could have been greater if the ABA had offered substantially enhanced BBA features.⁴³ The BBA Proposals of this current Application greatly exceed those proposed in the 2002 Application. Please refer to **Annexure 6** for a direct comparison of the 2002 application proposals versus the BBA Proposal.

The ABA also considers that each of the BBA features proposed will offer benefits to the public. Table 1 below sets out the public benefits that arise from each of the features offered under the BBA Proposal.

Table 1: public benefits of each feature of the BBA Proposal

BBA Feature	Public benefit
No account keeping fee	Greater accessibility and affordable for low-income customers.
No minimum account balance required to open the account	Improve accessibility.
Free and unlimited transactions through: branch (over the counter services); ATMs; EFTPOS; telephone banking; and internet/mobile banking (where these channels are offered by the bank).	Greater accessibility and affordability to low income customers who frequently make a high volume of low value transactions.
Free periodic statements	Greater accessibility and affordability of banking services for low income customers. It will also encourage greater financial awareness and facilitate better budgeting and planning.
Ability to set up and cancel direct debits	Facilitating convenient ways for customers to pay bills and use their bank account in more efficient ways will simplify and encourage use of more accessible banking services.
No overdrawn fees (if your bank allows an account to go into arrears)	Improves accessibility and affordability of banking for low income customers.
Ability to access a debit card at no extra cost	Increases accessibility and affordability of banking services.
No dishonour fees	Increases accessibility and affordability.
No informal overdrafts offered, and banks to take	Ensures that low income consumers have greater control of

⁴³ ACCC Draft Determination regarding Application for Authorisation lodged by the ABA, dated 16 December 2002, p 32, para 5.75.

reasonable steps to avoid them	<p>their finances.</p> <p>Where an informal overdraft cannot be avoided, Member Banks will comply with the Department of Human Services Code of Operation.</p>
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(d) Consumer representative feedback

The ABA has consulted with the following consumer representative organisations regarding the BBA Proposal: Consumer Action Law Centre; Financial Counselling Australia; Financial Rights Legal Centre.

The proposal to codify the BBA and specify minimum eligibility criteria and BBA features was supported on consultations with these groups. These groups also supported the requirements in the Code to:

- (i) Provide information about accounts that are appropriate for low income earners⁴⁴
- (ii) Asking customers whether they hold a Government concession card when opening a new transaction account and providing those customers with information about basic, low or no fee accounts⁴⁵
- (iii) Raise awareness of basic, low or no fee accounts⁴⁶
- (iv) Train staff about customer eligible for basic, low or no fee accounts⁴⁷
- (v) Provide information about basic account to customers in hardship⁴⁸

However, consumer representatives also advised that the BBA proposal would not ensure that all customers who are eligible and want a BBA would receive one. In particular, consumer representatives raise the following concerns:

- (i) **Language that places the onus on the customer:** The Banking Code specifies that obligations at cl 42 apply if the bank becomes aware that the customer is a low income earner and the bank may only become aware this is the case if the customer tells the bank. The obligations under clause 44 and chapter 16, relating to raising awareness of basic low and no fee accounts also rely on the customer disclosing that they hold a Government Card. Financial Rights Legal Centre noted:

“This is problematic since rarely if ever will people self-identify in such a way. This language should generally be amended to turn the onus back on the bank to put in place appropriate systems to ascertain the customer’s status, and to provide all relevant information and take reasonable action.”

- (ii) **Existing low income customers who are not in basic, low or no fee accounts:** The obligations to identify customers that hold a Government card and raise awareness of basic low and no fee accounts apply if the bank becomes aware that the customer may be eligible for a basic account. Consumer representatives have

⁴⁴ Banking Code 2019, cl242.

⁴⁵ Banking Code 2019, cl144.

⁴⁶ Banking Code 2019, cls45-47.

⁴⁷ Banking Code 2019, cl148.

⁴⁸ Banking Code 2019, cl166.

said that banks should be required to proactively assess the eligibility of existing customers for a basic, low or no fee account and take proactive steps to provide further information to those customers or assist them with switching accounts.

- (iii) **Banks are not required to offer a basic account:** If Member banks do not have a basic bank account Member banks will offer eligible customers an alternative low, or no fee account. Consumer representatives have raised concerns that these alternative accounts may charge fees for example fees to receive statements or account keeping fees.

(e) ABA response to consumer representative feedback

ABA member banks have recognised the limitations of an approach that is largely forward looking, intended to capture customers opening new transaction accounts and broadly relies on a customer self-identifying. However, there is a new requirement in the Banking Code for banks to proactively ask customers whether they hold a Government concession card when opening a new transaction account and providing those customers with information about basic, low or no fee accounts.

In addition to the requirements in the 2019 Code, some banks are taking more proactive steps to identify customers that may be eligible for a BBA and providing support for them to switch.

For example, one bank has instructed branch and call centre staff to manually check a customer's accounts when they interact with the customer to see if they are eligible (e.g. identifying if the customer received Centrelink income) and to then offer assistance to move them into a basic account (if the customer is willing).

Another bank has developed a solution to systematically identify if a customer is receiving Centrelink income and uses that information to offer basic accounts to eligible customers.

Another bank has made a public commitment to contact customers in receipt of eligible Centrelink or Veterans' Affairs benefits to help them move to low-cost basic bank accounts. That bank is developing a process to proactively contact customers that may be eligible for BBAs and are currently finalising the best approach to contact these customers. The bank plans to begin contacting these customers in June 2019 and will stagger this to manage the volumes of enquires going to frontline staff.

While these more proactive steps are in early days of operation, the ABA is encouraging all our members to consider what more proactive measures could be put in place to identify customers that may be eligible for a BBA and provide support for them to switch.

It is the intention of all Member Banks to offer all eligible customers a product that is appropriate to their needs. Currently 9 Member Banks, including all major banks and the large regional banks offer a BBA. While some member banks do not offer a basic account, those banks will offer a low or no fee an account. Further, the removal of informal overdrafts and removal of overdrawn and dishonour fees applies to BBAs, as well as low and no fee accounts where those accounts are opened by a customer with a current government concession card. The commitment to offer at least either a basic, low or no fee account, represents an overall public benefit. The ABA will also commit to consider consumer group feedback as part of the next review of the Banking Code, to be completed by 1 July 2022.

7.2 Agricultural Loan – default interest suspension

The Agricultural Proposals will result in significant public benefits including:

- greater protection of agricultural industry in times natural disaster and drought; and

- increased certainty for farmers in natural disaster or drought.

(a) Greater protection of agricultural industry in times of natural disaster and drought

The Agricultural Loan Proposals will simplify the treatment of loans provided to farmers managing farming operations in times of disaster. The agricultural industry is uniquely vulnerable to drastic weather events and the occurrence of such events is often unpredictable and can dramatically alter everyday business operations, profitability and cash flow.

Debt financing is prevalent and important to the agricultural industry and many agricultural enterprises rely on debt financing for land purchases and operating expenses. Where the impacts of drought or other natural disaster last for sustained periods, farmers may find their businesses stagnate. This will often impact their ability to meet loan obligations and default interest will grow. These pressures amplify the already significant personal distress suffered by farmers in these circumstances.

Due to the importance of the agricultural industry to the Australian economy⁴⁹, it is in the public interest that the specific characteristics of agricultural business are appropriately taken into account to mitigate the adverse effects that strict enforcement of loan terms may otherwise have in such times of hardship.

(b) Increased certainty for farmers in natural disaster or drought

Recognising that many banks already offer some form of relief, ensuring that practices regarding relief from default interest are uniform among Member Banks, while continuing to allow for a case by case assistance with financial difficulty, will provide greater certainty for Australian farmers, in times of severe environmental crises.

In its Interim Report the Royal Commission considered a case study where a farmer with a loan secured by agricultural land was not offered any relief, although that farmer was unable to meet loan obligations in part because their land was experiencing drought.⁵⁰ The Agricultural Proposals will ensure that all farmers with farming operations loans affected by drought or natural disaster will be relieved from default interest. The creation of straightforward and non-discretionary relief practices will therefore provide predictability for farmers.

The inclusion of a requirement on Member Banks to refund default interest in circumstances where it later becomes clear that an area was subject to drought or natural disaster and the loan was provided for the purpose of a farming operation, also increases the protection afforded to farmers.

The banking industry is a longstanding and critically important supporter of the agricultural sector. Given the importance and prevalence of debt financing in the agricultural industry, the ABA considers it important that the banking industry act to earn back the trust of the agricultural community.⁵¹ The ABA considers the Agricultural Proposals demonstrate the industry's commitment to working together with farmers in times of significant difficulty and will offer real benefit and relief to farmers affected by drought or natural disaster by providing greater certainty in these circumstances.

⁴⁹ The Royal Commission acknowledged that the agricultural industry is an important contributor to the Australian economy and is the primary source of jobs in many regional and rural areas. Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report Volume 1 at 225.

⁵⁰ Kenneth M Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report Volume 2 at 418.

⁵¹ See Anna Bligh's media statement on the Final Report of the Royal Commission: "the Royal Commission Final Report is the industry's roadmap for earning back the trust of the Australian people,"

(c) Feedback from rural financial counsellors

The ABA has consulted with the National Rural Financial Counselling Executive Officers network (RFSC network). This network includes executive representation from all 12 rural financial counselling services across Australia.

The proposal to codify the suspension on charging default interest on farming loans was fully supported by the RFSC network. As not all State Government issue drought declarations the RFSC did suggest that more clarity could be provided publicly to explain the conditions needed to satisfy the bank that some adverse climate or natural conditions have impacted an agricultural property.

d) ABA response to stakeholder feedback

In relation to the feedback that clarity could be provided publicly to explain the conditions needed to satisfy the bank that some adverse climate or natural conditions have impacted an agricultural property, it is noted that:

- It is clear to customers that default interest will not be charged where a state government has made a declaration
- The amendments also provide that the bank may base its decision on other grounds. This point is designed to give the bank flexibility to apply the default interest provision more broadly. This flexibility could be impeded by publishing a list of specified circumstances.

8 No competitive detriment

(a) The BBA

The BBA Proposal will not result in any competitive detriment in the relevant markets. In any event, any detriment that may arise is outweighed by significant public benefits.

(i) Banks do not compete with each other in respect of BBA features considered to be minimum community standards:

- As revealed by the Royal Commission and the Recommendations, banks do not compete with each other in relation to minimum standards. While there is currently a lack of consistency as to what constitutes a BBA, the ABA and Member Banks nevertheless accept that there are certain community expectations around minimum standards, over which parties do not generally compete in the market.
- Nonetheless, the absence of any ability to collaborate on BBA minimum standard definitions results in lack of customer awareness and therefore demand for BBA products. The BBA Proposal is intended to raise the minimum standards of BBAs to meet community expectations.
- The BBA Proposals only set out the minimum features for the BBA and will not restrict Member Banks from competing in the offer of other additional features such as wider eligibility criteria or rebates from charges from use of private ATMs.
- Whilst ensuring that all BBAs meet the minimum criteria, the BBA Proposals do not limit a bank from considering and including further features. Indeed, the ABA considers that whilst banks engage in the process of evaluating their basic product offerings, they will also be able to assess their products, innovate and differentiate based on their individual capability or capacity to offer more favourable terms in

various areas. The ABA considers that at the very least, Member Banks will not be any less incentivised from offering additional features on their BBAs to compete.

- While competition will certainly drive the development of more innovative and accessible BBAs going forward, Member Banks also have an important social responsibility to make constant improvements to features and terms of products aimed at low income Australians such as BBAs. As a result, Member Banks have the incentive to innovate and offer improved minimum features, not only as a means of competing with one another, but also as a way to further address the increasing social responsibility expected by the community.
- While improvements to BBAs have been implemented at some banks already, it is also the case that many banks offer BBAs on terms that undermine consumers' ability to obtain appropriately accessible products. By setting a minimum, the BBA Proposals encourage competitive forces whilst simultaneously ensuring a minimum level of product quality and accessibility.
- The minimum set of features contained in the BBA Proposal goes above and beyond the current market offering. Therefore, any competitive detriments that may arise from a minimum set of features will be outweighed by the public benefits of the BBA, particularly for low income Australians.

(ii) The BBA Proposals will lead to an increase in products offered:

- The BBA Proposals will lead to an increase in the number, features and service levels of existing transaction accounts or BBA products in the market. This can be seen by the natural competition that encouraged the increased BBA offerings to date.
- The BBA Proposals will also not prevent a bank who is not party to the Code from: offering a transaction account that meets the criteria of the BBA; offering such products on less accessible terms; or opting to not provide a basic product at all.
- If the BBA Proposal is authorised, banks will not be able to arbitrarily limit the customers who are eligible as the BBA Proposal will include, as minimum eligibility criteria, customers who hold:
 - a Pensioner Concession Card;
 - a Health Care Card; or
 - a Commonwealth Seniors Health Card.
- Customers who meet these minimum eligibility criteria must be offered such an account. Member Banks are entitled to offer BBA products to a broader range of persons by expanding the eligibility criteria if they elect to do so.

(b) Agricultural Loan

The Agricultural Proposals will not result in any competitive detriments in the relevant market.

(i) The Agricultural Proposals are sufficiently limited in their reach

- While the Agricultural Proposals go further than recommendation in the Final Report, they are nevertheless sufficiently limited in their application and effect to ensure that there will be no effect on competition between Member Members for the supply of farming loans, while still achieving their purpose of assisting farmers in time of real need:

- The Agricultural Proposals are limited to loans granted to “farmers” for the purposes of “farming operations”. Member Banks compete on a number of other loans offered to customers.
 - The Agricultural Proposals will only apply in limited situations of drought or natural disaster. Member Banks are free to charge default interest in all other circumstances where farmers are in default.
 - The Agricultural Proposals do not contemplate a moratorium on default interest, but rather a suspension of default interest during the period of the drought or natural disaster. Default interest will continue to be charged at the end of drought or natural disaster period.
- (ii) The Agricultural Proposals will not restrict banks from competing on other aspects of a loan agreement
- The Agricultural Proposals do not restrict competition between banks offering loans to farmers for farming operations more broadly.
 - Loan agreements are generally complex and involve a number of terms and conditions. There are several features which banks can, and indeed do, compete on to distinguish their products, including:
 - the size of the loan they are prepared to offer;
 - the interest rate;
 - the repayment term; and
 - default interest (which will continue to apply except in times of drought or natural disaster).
 - From a demand side perspective, customers are also likely to attribute less value to features of a loan which apply in limited circumstances than features which impact their everyday cashflow and business more generally.
- (iii) There is no incentive for Member Banks to raise interest rates to offset the effect of the Agricultural Proposals
- The clear policy intent arising out of the Agricultural Proposals is to extend assistance to farmers in times of crisis that arises from circumstances completely beyond their control. This is particularly important in Australia which can be subject to extreme weather conditions. This policy intent would be completely undermined if the Member Banks decided to increase rates for loans to farmers and would expose Member Banks to significant reputational risk.
 - It would, in any event, be counter-intuitive for the Member Banks to increase interest rates to offset the Agricultural Proposals. As mentioned above, features of farming loans such as, interest, are the key areas of competition between Member Banks. Given the limited application of the Agricultural Proposals, there is a real prospect that Member Banks would lose more revenue by making the key competitive feature of their loans less attractive to offset diminished default interest in circumstances which may not even occur.
- (iv) Terminology is unambiguous and will avoid consumer confusion
- The terminology put forward by the ABA in the Agricultural Proposals is intended to make unambiguous the circumstances under which relief from default interest will

apply to farmers. Where possible, proposed definitions incorporate existing statutory definitions from the NSW FDM Act to ensure the banking industry adopts a consistent approach in farming debt contexts. Additionally, where possible the ABA has proposed a definition of drought and natural disaster that is consistent with the approach taken by State and Territory Governments. Incorporating consistent definitions across the farming debt market will reduce the risk of consumer confusion and enhance the ability of consumers to make informed choices when managing farming operations loans. All ABA Member Banks with an agricultural presence will comply with these requirements and as such, the provision of relief in these circumstances will not be a unique feature measured by farmers considering a farming operations loan. As the Agricultural Proposals will be standard and uniform there will be little risk that customers would secure loans as a result of being misled by the definition.

9 The public benefits outweigh any competitive detriments

For the reasons set out above the ABA and Member Banks submit that any competitive detriments that may arise from the BBA Proposals and the Agricultural Proposals (of which ABA and Members maintain there are none), are outweighed by the public benefits that arise.

10 Conclusion

For the reasons set out above, the ABA applies for authorisation including interim authorisation in relation to the BBA Proposal and Agricultural Proposal to enable ABA members to agree to amend the Banking Code at the ABA Council meeting 28 June 2019, and to enable Member Banks to implement the Code, subject to final authorisation being granted, ahead of the 1 March commencement date. Reflecting the community expectations evident in the context of the Royal Commission and the resulting Recommendations, there are significant public benefits of the Banking Code enshrining minimum standards for BBAs, including but not limited to prohibitions on informal overdrafts and dishonour fees for low income customers, and in relation to the charging of default interest on agricultural loans.

Annexure 1 – ABA Member Banks with retail banking presence in Australia

- 1 AMP Bank Limited
- 2 Australia and New Zealand Banking Group Limited
- 3 Arab Bank Australia Limited
- 4 Bank Australia
- 5 Bank of China
- 6 Bank of Queensland Limited
- 7 Bank of Sydney
- 8 Bendigo and Adelaide Bank Limited
- 9 Citigroup Pty Ltd
- 10 Commonwealth Bank of Australia
- 11 HSBC Bank Australia Limited
- 12 ING Bank (Australia) Limited
- 13 Macquarie Bank Limited
- 14 ME Bank
- 15 MyState Bank
- 16 National Australia Bank Limited
- 17 Rural Bank Limited
- 18 Rabobank Australia Limited
- 19 Suncorp Bank
- 20 Westpac Banking Corporation

Annexure 2 – Proposed changes to the Banking Code

BBA Proposal

CHAPTER 16

Basic accounts or low or no fee accounts

Basic accounts

44A We may offer 'basic accounts', or other kinds of low or no fee transaction accounts.

44B Basic accounts have, at a minimum:

- No account keeping fees
- Free periodic statements
- No minimum deposits (except that you may be required to have your government benefit payment paid into this account)
- Free direct debit facilities
- Access to a debit card at no extra cost
- Free and unlimited Australian domestic transactions*

*Note that you may be charged for certain ancillary services. For example bank cheques, telegraphic transfers, or transactions at ATMs owned and operated by third parties.

We will raise awareness of basic, low or no fee accounts and give you information about them

45. We will raise awareness of our affordable banking products and services such as basic, low, or no fee accounts, including that you may be eligible if you have a government concession card.
46. We will give you information that is easily accessible about accounts that have low, or no, standard fees and charges.

Special conditions for basic, low or no-fee accounts for eligible customers

47. If you are an eligible customer and you ask for a basic account, and we offer one, we will provide one to you. If we do not offer a basic account, we will offer you an alternative low, or no fee account. Any basic, low fee or no fee account we offer to you because you are an eligible customer, will have:
 - No informal overdrafts
 - No dishonour fees; and
 - No overdrawn fees

For the purposes of this Chapter:

'eligible customer' means a person who holds a current a government concession card listed in paragraph 44.

'informal overdraft' means credit we provide when (without your express agreement) we permit you to overdraw your account, but excluding instances where it is impossible or reasonably impractical for us to prevent your account from being overdrawn.

'no overdrawn fees' means we will not charge a fee where your account falls into debit. However, you may be charged interest on the amount in debit.

'no dishonour fees' means we will not charge a fee because a debit on a basic account is declined due to insufficient funds in the account.

Training for staff about customers eligible for basic, low, or no, fee accounts

48. We will train our staff to help them to recognise a customer, or potential customer that may qualify for a basic, low, or no fee account.

Agricultural proposal

Charging default interest during drought and natural disasters

179A (1) Where you are a farmer and we have provided you with a loan for the purposes of a farming operation, we will not charge default interest on that loan during any period that the land you use for that operation is in drought or subject to another natural disaster.

(2) For subparagraph (1) to apply, you may need to tell us about the circumstances, and we will refund any interest charged as a result of the default during the drought or other natural disaster.

"Farmer" is as defined in section 4 of the Farm Debt Mediation Act 1994 (NSW) (meaning a person (whether an individual person or a corporation) who is solely or principally engaged in a farming operation and includes a person who owns land cultivated under a share-farming agreement and the personal representatives of a deceased farmer).

"Farming operation" is as defined in section 4AB of the Farm Debt Mediation Act 1994 (NSW) (meaning a business undertaking that primarily involves one or more of the following activities:

- (a) agriculture (for example, crop growing and livestock or grain farming),
- (b) aquaculture,
- (c) the cultivation or harvesting of timber or native vegetation,
- (d) any activity involving primary production carried out in connection with an activity referred to in paragraphs (a)-(c).

Land is "in drought or subject to another natural disaster" where an Australian State or Territory Government makes a declaration to that effect; or, if no such declaration is made, where we are satisfied on other grounds that the land is in drought or subject to another natural disaster.

"Default interest" is the application of a higher annual percentage rate applicable under a loan if you are in default, for the period that the default continues.

Annexure 3 – Current BBA available in the market

Provider	Account	Features
Australia and New Zealand Banking Group Limited	Access Basic	<ul style="list-style-type: none"> • no account keeping fee • free account statements • no minimum balance • free set up and cancellation of direct debts • no overdrawn fees • free ANZ Access card (ATMs and EFTPOS purchases) • unlimited free transactions with ATMs, EFTPOS, Internet Banking, App and Phone banking, but use of international ATMs, foreign currency transactions and foreign purchases will attract fees • no dishonour fees or periodical payment non-payment fees, but fees may be charged for overseas transactions such as overseas drafts and overseas, cheques • offered through branches and Contact Centre • available to customers with an eligible Concession and Health Care card: <ul style="list-style-type: none"> – Seniors Concession card – Pensioner Concession card – Centrelink Health Care card – Repatriation Health card / DVA Health card
	Pensioner Advantage	<ul style="list-style-type: none"> • no account keeping fee • free account statements • no minimum balance • free set up and cancellation of direct debts • no overdrawn fees • free ANZ Access Visa Debit Card for domestic ATM withdrawals and deposits and EFTPOS purchases, but fees apply for international transactions, drafts, cheques, currency conversions and ATM usage • ability to earn interest when customer deposits eligible pension or allowance • periodical non-payment fee is in the process of being removed, debit interest may be charged on overdrawn amounts

Restriction of Publication Claimed

Provider	Account	Features
		<ul style="list-style-type: none"> • offered in branch and Contact Centre • available to customers with an eligible specified Centrelink pension or allowance or a Veterans' Affairs pension or allowance, including <ul style="list-style-type: none"> – Aged pension – Disability Support Pension – Widow's pension or allowance – Wife's pension – Carer's pension – Sole parent's pension – Service pension – Incentive allowance – Newstart allowance – Sickness allowance – Special Benefit allowance – Partner allowance – Parenting allowance
Suncorp Bank	Everyday Essentials Account	<ul style="list-style-type: none"> • no account keeping fee • free statements • no minimum deposit amounts • free direct debits • no formal overdrawn facility • no overdrawn fee for informal overdraws, but a casual overdraft reference rate for personal accounts may be charged • free visa debit card • free unlimited Suncorp transactions with branch, bank owned and operated ATMs, EFTPOS, internet and mobile banking and phone banking • no dishonour fee, but fees on foreign drafts and overseas cheques may apply • offered through branches and contact centres • available to low-income earners or customers with a Government issued

Restriction of Publication Claimed

Provider	Account	Features
		Concession, Pension card or who receive a Government payment
National Australia Bank Limited	NAB Classic Banking	<ul style="list-style-type: none"> • no account keeping fees • free monthly statements • no minimum deposits • no fees for set up and cancellation of direct debits • no overdrawn fees however fee applies where overseas cheques are dishonoured • free debit card • no fee charged by NAB for transactions via NAB ATMs, EFTPOS, internet banking and telephone banking • default interest applies for dishonour of overseas cheques • offered in branch, digital / online and direct • available to all customers
	NAB Retirement Account	<ul style="list-style-type: none"> • no account keeping fees • free monthly statements • no minimum deposits • no fees for set up and cancellation of direct debits • no overdrawn fees however fee applies where overseas cheques are dishonoured • free debit card • no fee charged by NAB for transactions via NAB ATMs, EFTPOS, internet banking and telephone banking • offered in branch and direct • available to all customers over 55 years-old and retired or receiving a Department of Social Security / Veterans' Affairs pension or allowance
Bendigo and Adelaide Bank Limited	Bendigo Concession Account	<ul style="list-style-type: none"> • no account keeping fees • free monthly statements • no minimum deposit amounts • free set up and cancellation of direct debits

Restriction of Publication Claimed

Provider	Account	Features
		<ul style="list-style-type: none"> • no overdrawn fees • free debit card • free and unlimited transactions through all through branch, ATMs, EFTPOS, Telephone Banking, Internet or mobile banking • no dishonour fees and no overdrawn interest charged • offered in branch • available to customers holding Government Concession cards: <ul style="list-style-type: none"> – Health Care card – Pensioner Concession card – Commonwealth Seniors card – Department of Veterans' Affairs Health card (gold card only) <p>and who have their qualifying pension or allowance paid into the account</p>
<p>ING Bank (Australia) Limited</p>	<p>Orange Everyday</p>	<ul style="list-style-type: none"> • no account keeping fee • free statements • no minimum deposit • free set up and cancellation of direct debits • no overdrawn fees, default interest is charged after 3 days • free debit card • free and unlimited transactions through branch (AusPost), ATMs, EFTPOS, telephone banking and internet / mobile banking • rebates for ATM operator fees globally for eligible customers • no dishonour fees, but overdrawn fees apply after 3 days • offered online • available to customers over 18 years old
<p>██████████</p>	<p>██████████ ██████████ ██████████</p>	<ul style="list-style-type: none"> • ██████████ • ██████████ • ██████████ • ██████████

Restriction of Publication Claimed

Provider	Account	Features
		<ul style="list-style-type: none"> ■ [Redacted] ■ [Redacted] ■ [Redacted] ■ [Redacted] ■ [Redacted] ■ [Redacted] ■ [Redacted] ■ [Redacted] ■ [Redacted] ■ [Redacted] ■ [Redacted] ■ [Redacted] ■ [Redacted] ■ [Redacted] ■ [Redacted] ■ [Redacted]
Westpac Banking Corporation	Choice concession	<ul style="list-style-type: none"> • no account keeping fees • no minimum deposits (except that the bank requires that customers have their government benefits paid into this account) • free direct debit set up/cancellation • access to a debit card at no extra cost • free biannual account statement • no overdrawn fees • access to online, mobile and telephone banking • no outward dishonour fees (these are fees charged where a customer tries to make a payment out of their account, but the bank does not make the payment due to the account having insufficient funds) • fees are charged for certain ancillary services such as cheques denominated in a foreign currency being deposited into the account • ability to set up BPAY and make periodical payments, but fees are payable if a recurring/periodical payment is dishonoured (there are no fees for recurring/periodical payments if there are sufficient funds in the account)

Restriction of Publication Claimed

Provider	Account	Features
		<ul style="list-style-type: none"> • offered in branch, via digital and call centres • available to customers with a Pensioner Concession card or Health Care card, who have their benefits paid into their account
Westpac Banking Corporation – regional brands	Concession account	<ul style="list-style-type: none"> • no account keeping fee • no minimum deposits • free direct debit set up/cancellation • access to a debit card at no extra cost • free biannual account statement • no overdrawn fees • access to online, mobile and telephone banking • no periodical payment, direct debit or outward cheque dishonour fee, but foreign currency service dishonour fees may be charged • fees are charged for certain ancillary services such as cheques denominated in a foreign currency being deposited into the account • ability to set up BPAY and make periodical payments • offered in branch and through call centres • available to customers with eligible health concession card or seniors card (these customers are currently not required to have their benefits paid into their account)
Commonwealth Bank of Australia	Streamline Basic	<ul style="list-style-type: none"> • low fee account • no monthly account keeping fee • no paper statement fee • free set up and cancellation of direct debits and ability to use BPAY • not eligible for informal overdrafts (except in stand-in or offline processes and in this case, no interest or fees charged), no overdrawn fee is charged • free and unlimited transactions through Commbank and Bankwest ATMs, EFTPOS and internet. Fees may be charged for international transactions, including transactions performed overseas or where the merchant / OFI / entity processing the transactions is located overseas • unlimited branch and phone assisted withdrawals • no dishonour fees • offered in branch and on the Indigenous Customer Assistance Line (ICAL) for ICAL customers • available for customers with an eligible Government Concession Card, who have

Restriction of Publication Claimed

Provider	Account	Features
		<p>their benefit paid into their account</p> <ul style="list-style-type: none"> - Health Care card - Seniors Health Care card - Pension Concession card
Bankwest	FeeSaver Basic	<ul style="list-style-type: none"> • no monthly maintenance fee • no paper statement fee • free set up and cancellation of direct debits and periodical payments • free and unlimited transactions • no overdrawn fees • free access to debit card • no dishonour fee • offered in branch • available to customers with Government Health Care Card, Pensioner Concession Card or Seniors Health Card, and other low-income customers
AMP Bank	AMP Access Account	<ul style="list-style-type: none"> • no account keeping fees; • free account statements • no minimum deposits • no overdrawn fees • unlimited free transactions including withdrawals / deposits through Bank@Post, BPAY, EFTPOS, Internet Banking and Telephone banking • free access card (Visa Debit) • free access to cheque book • free set up and cancellation of direct debits, BPAY and periodical payments • dishonour fees charged including default interest payable and fees associated with dishonour of overseas cheques • offered through fixed income brokers, AMP Planners, AMP Aligned planners direct by paper, online • available to all customers

Annexure 4 – Current practices in relation to farming operations loans

Provider	Default interest currently charged on loans for farming operations where farm affected by drought / natural disaster?	Criteria used to determine drought / natural disaster
Australia and New Zealand Banking Group Limited	■	<ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED]
Suncorp Bank	■	<ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED]
National Australia Bank	■	<ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED]
Bendigo and Adelaide Bank Limited	■	<ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED]
Rural Bank Limited	■	<ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED]
Westpac Banking Corporation	<ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] 	<ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED]

Restriction of Publication Claimed

Provider	Default interest currently charged on loans for farming operations where farm affected by drought / natural disaster?	Criteria used to determine drought / natural disaster
		<p>[REDACTED]</p> <p>[REDACTED]</p>
Commonwealth Bank of Australia	<p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
Bankwest	<p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
Bank of Queensland	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

Annexure 5 – Communication materials for BBA awareness campaign



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Annexure 6 – comparison of BBA features offered from 2002 application to the current BBA Proposals

2002 BBA Proposals	Current BBA Proposals
No account keeping fee	No account keeping fee
No minimum account balance required to open the account	No minimum account balance required to open the account
No minimum monthly balance requirements	No minimum deposits (except that the customer may be required to have their government benefit payment paid into this account).
Unlimited number of deposits provided free of charge each month	Free and unlimited transactions* through: branch (over the counter services); ATMs; EFTPOS; telephone banking; and internet/mobile banking.
6 non-deposit transactions provided free of charge each month which includes 3 over the counter withdrawals each month	Free and unlimited transactions* through all of the following channels offered by the bank you hold the account with: <ul style="list-style-type: none"> • Branch (where we offer over-the-counter services) • Automatic Teller Machines (ATMs) • Electronic Funds Transfer at Point of Sale (EFTPOS) • Internet or mobile banking • Telephone banking
Eligibility criteria – holders of Commonwealth Government health concession cards	Eligibility criteria – to qualify, a customer will need to hold a Pensioner Concession Card, Health Care Card or Commonwealth Seniors Health Card.
N/A	The general concept of a basic bank account
N/A	Free periodic statements
N/A	Ability to set up and cancel direct debits
N/A	No overdrawn fees (if your bank allows an account to go into arrears)
N/A	Ability to access a debit card at no extra cost
N/A	No dishonour fees

N/A	No informal overdrafts without express agreement of customer
-----	--------------------------------------------------------------

Annexure 7– Banking Code - consolidated changes

[Cover of new Code]

[ASIC approval version July 2018 – with consolidated amendments]

[Logos]

Australian Banking Association

Banking Code of Practice

Setting the standards of practice for banks their staff and their representatives

Commences 1 July 2019

FINAL VERSION

The Australian Banking Association has the active participation of member banks in Australia.

Australian Banking Association

PO Box H218 Australia Square NSW 1215

Telephone 02 8298 0417

Web www.ausbanking.org.au

Banking Code of Practice

~~Published 31 July 2018~~ Published 28 June 2019

Welcome to the Banking Code of Practice

The new Banking Code of Practice sets a new standard of customer service for Australia's banks.

The new Code is part of a significant reform agenda to improve banking services to better meet community standards and expectations.

Australians, along with businesses large and small, entrust their financial security and wellbeing to one or more of the banks who are signatory to this Code.

In signing this important document, these banks make a commitment to you, their customers, to ethical behaviour, to fair and responsible lending practices and to the protection of your privacy.

In a world where technology is rapidly changing the banking experience, making it more convenient, more mobile and more transparent than ever before, strong, ethical banks remain critical to customer trust and confidence.

With this new Banking Code of Practice, banks take on a stronger responsibility to deliver on that expectation.

In addition to a community and industry wide expectation, the high standards of behaviour and service set out in this Code are enforceable rights for customers.

In an Australian first, this new Banking Code of Practice has been considered and approved by the Australian Securities and Investments Commission under their industry code approval powers.

I look forward to the Banking Code of Practice improving the banking experience for all customers.

<Signature>

Anna Bligh

Chief Executive Officer, Australian Banking Association

[date]

Foreword

Our role in society

Australia's banks play an important role in contributing to the prosperity of the nation's economy, for the benefit of all Australians.

Our customers count on us to provide them with a safe place to deposit money, to offer a wide range of options to access banking and financial services, and to help businesses start and grow.

We understand that trust is critical to our relationships with customers and that for us to earn that trust, we need to do the right thing.

We acknowledge that our responsibilities to customers, investors, employees and the broader community must be carefully balanced.

Customers, investors, employees and communities expect our behaviour to meet high ethical standards, backed up by the right internal culture and practices.

We are committed to continuously improving and being accountable.

In fulfilling these responsibilities, we will continue to contribute to the stability, strength and prosperity of Australia's financial system and society. To do this, we will look to continually improve our banking services and how we engage with our customers and communities.

The Banking Code of Practice (**the Code**) is one of the ways we strive to achieve these goals.

What is the Banking Code of Practice?

This Banking Code of Practice (the Code) sets out the standards of practice and service in the Australian banking industry for individual and small business customers, and their guarantors. This version of the Code takes effect from 1 July 2019.

The Code provides safeguards and protections not set out in the law. It complements the law and, in some areas, sets higher standards than the law.

The Code was first introduced in 1993. Since then, it has undergone multiple improvements — responding to emerging issues and the changing needs of our customers — to ensure it remains relevant.

This version of the Code has been developed in close consultation with key stakeholders including consumer groups, government, regulators and the banking industry. It replaces the previous version, *The Code of Banking Practice 2013*.

Over time, many of the standards embedded in the Code have been included in the law.

By promoting best practice, the Code has led to higher standards in the banking and financial services industry.

Our Guiding Principles

The Code is underpinned by our Statement of Guiding Principles.

These principles — shared by all the member banks— provide an ethical, customer-oriented and sustainable framework. They guide us in our decision-making when performing our work and serving our customers.

1. Trust and confidence

- We are committed to earning and retaining the trust of our customers and the community.
- We are committed to making promises and keeping them to deliver good customer and community outcomes.
- We will comply with all laws relating to banking services.
- We will protect your privacy.
- We recognise our role in society and our impact on the wider community.

2. Integrity

- We will act honestly and with integrity.
- We will be fair and responsible in our dealings with you.
- We will build and sustain a culture based on strong ethical foundations.

3. Service

- We will deliver high customer service and standards.
- We will ensure banking services are accessible, inclusive and provided to you in a fair and ethical manner.
- We will raise awareness of the basic (low, or no fee) banking products that we may offer.
- We will take a responsible approach to lending.
- We will work to help you if you are experiencing financial difficulty.

4. Transparency and accountability

- We will communicate with you in a clear and timely manner.
- We will be accountable in our dealings with you.
- We will be transparent in our communications with you.

[Title page]

[Logos]

Australian Banking Association

Banking Code of Practice

Setting standards of conduct for banks, their staff and their representatives

Each bank that has adopted the Code will comply by 1 July 2019

It is a condition of ABA membership that member banks with a retail presence in Australia are required to sign up to the Code. Banks that have adopted the Code are listed on the ABA website ausbanking.org.au/code

BANKING CODE OF PRACTICE

Table of Contents

Australian Banking Association	i
Banking Code of Practice	1
Chapter 1 Who the Code applies to.....	4
Chapter 2 Publication and review of the Code.....	6
Part 2 Your banking relationship.....	7
Chapter 3 Our compliance with the Code.....	7
Chapter 4 Trained and competent staff.....	7
Chapter 5 Protecting confidentiality.....	7
Chapter 6 Compliance with laws.....	7
Chapter 7 Closing a branch.....	7
Part 3 Opening an account and using our banking services.....	8
Chapter 8 Providing you with information.....	8
Chapter 9 Communication between us and you.....	8
Chapter 10 Responding to your request for information.....	8
Chapter 11 What information we will give you.....	9
Chapter 12 Acquiring a new product or service.....	10
Part 4 Inclusive and accessible banking.....	11
Chapter 13 Being inclusive and accessible.....	11
Chapter 14 Taking extra care with customers who may be vulnerable.....	11
Chapter 15 Banking services for people with a low income.....	12
Chapter 16 Basic accounts or low or no fee accounts.....	13
Part 5 When you apply for a loan.....	15
Chapter 17 A responsible approach to lending.....	15
Chapter 18 Our approach to selling consumer credit insurance (CCI).....	16
Chapter 19 Lenders mortgage insurance.....	17
Part 6 Lending to small business.....	18
Chapter 20 Helping a small business when it applies for a loan.....	18
Chapter 21 Notice before taking enforcement proceedings.....	18
Chapter 22 Specific events of non-monetary defaults.....	19
Chapter 23 When we decide not to extend a loan.....	20
Chapter 24 When we appoint external property valuers, investigative accountants and insolvency practitioners.....	20
Part 7 Guaranteeing a loan.....	22

Chapter 25	Limiting liability under the guarantee	22
Chapter 26	What we will tell and give you	22
Chapter 27	Signing your guarantee	24
Chapter 28	Withdrawing or ending your guarantee	25
Chapter 29	Enforcing our rights under the guarantee	25
Part 8	Managing your account	27
Chapter 31	Keeping your accounts safe and secure	27
Chapter 32	Statements we will send you	27
Chapter 33	Cost of transaction service fees	27
Chapter 34	Managing a credit card	28
Chapter 35	Direct debits and recurring payments	29
Chapter 36	Joint Accounts	29
Chapter 37	Closing any of your banking services	29
Chapter 38	Your right to copies of certain documents	30
Chapter 39	When we change our arrangements with you	31
Part 9	When things go wrong	32
Chapter 40	Contact us if you are experiencing financial difficulty	32
Chapter 41	We may contact you if you are experiencing financial difficulty	32
Chapter 42	We will try to help you if you are experiencing financial difficulty	33
Chapter 43	When you are in default	35
Chapter 44	When we are recovering a debt	35
Chapter 45	Combining your accounts	36
Chapter 46	Helping with deceased estates	36
Part 10	Resolving your complaint	38
Chapter 47	Our Customer Advocate	38
Chapter 48	If you have a complaint about us	38
Chapter 49	How we handle your complaint	39
Chapter 50	Code monitoring, complaints and sanctions	39
Acronyms	42
Definitions	43
Transitional period	46

Banking Code of Practice

Part 1 How the Code works

Chapter 1 Who the Code applies to

1. The Code applies to you, as defined in the table below:

<p>“You” and “your”</p> <p>“You” and “your” means a person who, at the time we provide the banking service, or information is provided, is:</p> <ol style="list-style-type: none">a) our customer, and where relevant, a prospective customer, and is either:<ol style="list-style-type: none">i. an individual, who is not treated as a business under the Code; orii. a small business; orb) a guarantor, or a prospective guarantor.
<p>“We”, “us” and “our”</p> <p>“We”, “us” and “our” means the bank that you deal with that has signed up to the Code.</p>
<p>“Banking service”</p> <p>Banking service means any financial service or product provided by us in Australia to you:</p> <ol style="list-style-type: none">a) whether supplied directly or through an intermediary; andb) if provided by another party and distributed by us, extends only to the distribution or supply and not to the service or product itself. <p>Examples of banking services the Code applies to:</p> <ul style="list-style-type: none">• bank accounts and term deposits;• credit cards, debit cards, prepaid cards;• home loan, personal loans, bill facilities, overdrafts– in the Code these are included in the definition of “loans”;• consumer credit insurance;• payment services; and• foreign currency exchange services. <p>However, banking services the Code does not apply to include:</p> <ul style="list-style-type: none">• shares, bonds and other securities that we issue; and• financial products and financial services for the purposes of Chapter 7 of the <i>Corporations Act 2001</i>, if you are a ‘wholesale client’ rather than a ‘retail client’.

Who is a “guarantor”?

A guarantor is an individual who gives a guarantee to secure a loan that we give to another individual or to a small business to which Part 7 of the Code applies.

What is a “business”?

A customer is treated as a business if they apply for, or receive, a banking service for a purpose that is wholly or predominantly a trading or commercial purpose and where the National Credit Code does not apply.

What is a “small business”?

A business is a “small business” if at the time it obtains the banking service all of the following apply:

- a) it had an annual turnover of less than \$10 million in the previous financial year; and
- b) it has fewer than 100 full-time equivalent employees; and
- c) it has less than \$3 million total debt to all credit providers — including:
 - i. any undrawn amounts under existing loans;
 - ii. any loan being applied for; and
 - iii. the debt of all its related entities that are businesses.

“Farmer” is as defined in section 4 of the Farm Debt Mediation Act 1994 (NSW) (meaning a person (whether an individual person or a corporation) who is solely or principally engaged in a farming operation and includes a person who owns land cultivated under a share-farming agreement and the personal representatives of a deceased farmer).

“Farming operation” is as defined in section 4AB of the Farm Debt Mediation Act 1994 (NSW) (meaning a business undertaking that primarily involves one or more of the following activities:

- (a) agriculture (for example, crop growing and livestock or grain farming),
- (b) aquaculture,
- (c) the cultivation or harvesting of timber or native vegetation,
- (d) any activity involving primary production carried out in connection with an activity referred to in paragraphs (a)-(c).

Land is “in drought or subject to another natural disaster” where an Australian State or Territory Government makes a declaration to that effect; or, if no such declaration is made, where we are satisfied on other grounds that the land is in drought or subject to another natural disaster.

“Default interest” is the application of a higher annual percentage rate applicable under a loan if you are in default, for the period that the default continues

The Code forms part of our banking services and guarantees

2. Our written terms and conditions for all banking services and guarantees to which the Code applies will include a statement to the effect that the relevant provisions of the Code apply to the banking service or guarantee.
3. The terms and conditions need not set out those provisions.

Chapter 2 Publication and review of the Code

How the Code is to be publicised and made available

4. We will promote the Code.
5. We will ensure the Code is available and accessible in different ways, including in hard copy and electronically. If you want a hard copy you can ask us in a branch or over the phone and we will give or send you one for free.

Three yearly reviews of the Code

6. The ABA will arrange for the Code to be independently reviewed at least every three years from the date this Code comes into effect.
7. When reviewing the Code, we will also consult with consumer representatives, small business organisations and other stakeholders.

FINAL VERSION

Part 2 Your banking relationship

Chapter 3 Our compliance with the Code

Our commitments to the Code

8. We will honour the commitments we make to you in the Code.

Chapter 4 Trained and competent staff

Our staff and representatives will be trained and competent — including about the Code

9. We will make sure that our staff and our representatives are trained so that they:
- a) can competently do their work; and
 - b) understand the Code and how to comply with it when they are providing banking services.

How our staff will engage with you

10. We will engage with you in a fair, reasonable and ethical manner.

Chapter 5 Protecting confidentiality

We will protect your confidentiality

11. We will meet our general duties under law to protect your confidentiality.
12. We will also have our own privacy policies available on our website.

Chapter 6 Compliance with laws

How we will comply with the law and the Code

13. If the Code imposes an obligation on us that is in addition to obligations applying under a relevant law, then we will comply with the Code unless doing so would lead us to breach the law.

Chapter 7 Closing a branch

Our commitments when closing a branch

14. We will comply with the ABA protocol when closing a branch. The protocol outlines our commitment to provide banking services to personal, and small business, customers in remote, rural and regional areas. This protocol is available at <https://www.ausbanking.org.au/industry-standards>.

Part 3 Opening an account and using our banking services

Chapter 8 Providing you with information

We will give you clear information

15. We will give you clear information about our products and services so you can make an informed decision about which product or service is suitable for you.
16. We may give you advice, or recommend that you seek, advice.

Chapter 9 Communication between us and you

How we will communicate with you

17. We will communicate with you in a timely manner and we will give you information that is useful and clear.
18. Anything that we are required to give to you under this Code may be given to you:
 - a) in writing, electronically or by telephone;
 - b) by telling you that the information is available on a website or other electronic forum; or
 - c) as otherwise agreed with you.

However, if the Code specifies the method of communication, then we will comply with that method.

19. Where this Code requires us to communicate in writing, this includes electronic communications.
20. All communication under this Code will be consistent with our obligations under the law or other applicable codes.
21. Our terms and conditions will be distinguishable from our marketing material.

Chapter 10 Responding to your request for information

How we will respond to your request for information

22. We will answer your questions about our banking services.
23. If you ask us for advice on any of our banking services, then we will:
 - a) give it to you through staff who are authorised and trained to give you that advice; or
 - b) refer you to someone else who can provide you with advice – for example: a lawyer, accountant, financial adviser or financial counsellor.

Chapter 11 What information we will give you

Terms and Conditions, Fees and Charges

24. If you are entering into a contract for a banking service with us, then we will give you our:
- terms and conditions;
 - fees and charges; and
 - if applicable, interest rates.

We will do this before, or when, the contract is made. This information may be in separate documents.

25. The documents provided in paragraph 24 will clearly set out:
- the amount of fees and charges and how often they are credited or debited to your account;
 - any interest rate that applies, how and when different interest rates may apply, the method by which interest is calculated and when interest will be debited to your account;
 - how often we give you statements of account;
 - how we may change fees, charges, interest or other terms and conditions, and how we will notify you of these changes;
 - for a loan, whether the loan is repayable on demand; and
 - a statement that information on current standard fees, charges and any interest rates is available on request.

Specific information

26. If the following information applies to your banking service, we will give you that information in, or with, our contract:
- minimum balance requirement;
 - any restriction on depositing money, or withdrawing money, from a relevant account;
 - the repayment details; and
 - how we process your request to cancel a direct debit arrangement.

Term deposits

27. Our terms and conditions for a term deposit account will contain the following specific information:
- how we will pay interest and repay the principal to you;
 - how funds may be dealt with at maturity; and
 - details of any fee, charge, or change in an interest rate resulting from a withdrawal in advance of maturity.

Cheque accounts

28. Our terms and conditions for an account with cheque access will contain the following specific information:
- the normal length of time we take to clear a cheque;

- b) how you may arrange for us to clear a cheque faster than normal – known as arranging special clearance;
- c) how and when a cheque may be stopped;
- d) the effect of crossing a cheque;
- e) the meaning of 'not negotiable' and 'account payee only';
- f) the significance of deleting the words 'or bearer' from a cheque;
- g) how you may write a cheque so as to reduce the risk of it being changed in an unauthorised way; and
- h) when we will not pay (known as, 'dishonour') a cheque – including if the cheque is post-dated or stale.

Exchange rates and commissions

29. If we give you a foreign exchange service (other than by credit card, debit card, or travellers' cheque), then we will give you the following information:
- a) details of the exchange rates and commission charges that we know will apply — if we do not know those details, then we will give you the details we know about how to find out relevant information at the time of the transaction; and
 - b) an indication of when any money you send overseas would normally arrive at the destination to which you are sending it.

Insuring your property

30. If you have a loan and we have a security (for example, a mortgage) over your primary place of residence or a residential investment property you own, then we will remind you of your obligations to insure the property. We will remind you of that at least once a year. Our reminder will include:
- a) a statement that you should check with your insurer about your cover; and
 - b) a reference to the Australian Securities and Investments Commission's MoneySmart website (www.moneysmart.gov.au) for information on property insurance.

Chapter 12 Acquiring a new product or service

We will ensure we have your agreement about fees

31. If we charge a fee for you to acquire a new product or service, then we will make sure we have your agreement to do so.

Part 4 Inclusive and accessible banking

Chapter 13 Being inclusive and accessible

We believe in inclusive banking services

32. We are committed to providing banking services which are inclusive of all people including:
- older customers;
 - people with a disability; ~~and~~
 - Indigenous Australians, including in remote locations; **and**
 - people with limited English.**
33. We will train our staff to treat our diverse and vulnerable customers with sensitivity, respect and compassion.

We are committed to providing banking services which are accessible

34. We are committed to improving the accessibility of our banking services for people with a disability, ~~and~~ older customers **and people with limited English.** We will take reasonable measures to enhance their access to those services.

When providing banking services to Indigenous customers

35. If you tell us you are an Indigenous customer, we will take reasonable steps to make information about our banking services accessible to you. We will also:
- tell you about any accounts and services that are relevant to you;
 - tell you about any accounts or services that have no, or low standard fees, if our enquiries indicate you may be eligible for these and help you transfer to another account you want; and
 - help you meet any identification requirements, **by following AUSTRAC's guidance on identification and verification of persons of Aboriginal and Torres Strait Islander heritage.**

When providing banking services to remote customers.

36. ~~We will also assist our customers who reside in remote communities (including remote Indigenous communities) to identify suitable ways for them to access and undertake their banking services. We will take reasonable steps to make information about our banking services accessible to customers in remote communities, including remote Indigenous communities.~~
37. We will provide cultural awareness training to staff who regularly assist customers in remote Indigenous communities.

Chapter 14 Taking extra care with customers who may be vulnerable

We will take extra care with vulnerable customers

38. We are committed to taking extra care with vulnerable customers including those who are experiencing:
- age-related impairment;

- b) cognitive impairment;
- c) elder abuse;
- d) family or domestic violence;
- e) financial abuse;
- f) mental illness;
- g) serious illness; or
- h) any other personal, or financial, circumstance causing significant detriment.

We may become aware of your vulnerability only if you tell us about it.

- 39. We will train our staff to act with sensitivity, respect and compassion if you appear to be in a vulnerable situation.
- 40. If you tell us about your personal or financial circumstance, we will work with you to identify a suitable way for you to access and undertake your banking.
- 41. When we are providing a banking service to vulnerable customers we will:
 - a) be respectful of your need for confidentiality;
 - b) try and make it easier for you to communicate with us;
 - c) provide appropriate guidance and referrals to help you to maintain, or regain, control of your finances; and
 - d) refer you to external support, if appropriate.

Chapter 15 Banking services for people with a low income

When providing transaction banking services to low income earners

- 42. If you are an individual and you tell us that you are a low-income earner, we will give you:
 - a) information about our accounts that may be appropriate to your needs; and
 - b) information about our accounts:
 - i. for which standard fees and charges are low; or
 - ii. for which there are no fees and charges (if we offer such a product).
- 43. Our obligation in the previous paragraph applies to you regardless of whether or not you are our customer.

We may become aware if you are a low-income earner only if you tell us about it.

If you receive a Commonwealth pension or concession, we will give you information about our low or no fee accounts

- 44. If you apply for a new transaction account, we will ask you if you have any of the following government cards. If you tell us that you have one of these cards then we will give you information about any banking services we offer that have low or no standard fees and charges (see Chapter 16):
 - a) a Commonwealth Seniors Health Card;

- b) a Health Care Card; or
- c) a Pensioner Concession Card.

Chapter 16 Basic accounts or low or no fee accounts

Basic accounts

44A. We may offer 'basic accounts', or other kinds of low or no fee transaction accounts.

44B. Basic accounts have, at a minimum:

- No account keeping fees
- Free periodic statements
- No minimum deposits (except that you may be required to have your government benefit payment paid into this account)
- Free direct debit facilities
- Access to a debit card at no extra cost
- Free and unlimited Australian domestic transactions*

*Note that you may be charged for certain ancillary services. For example, bank cheques, telegraphic transfers, or transactions at ATMs owned and operated by third parties.

We will raise awareness of basic, low or no fee accounts and give you information about them

- 45. We will raise awareness of our affordable banking products and services such as basic, low, or no fee accounts, including that you may be eligible if you have a government concession card.
- 46. We will give you information that is easily accessible about accounts that have low, or no, standard fees and charges.

Special conditions for basic, low or no-fee accounts for eligible customers

- 47. If you are an eligible customer and you ask for a basic account, and we offer one, we will provide one to you. If we do not offer a basic account, we will offer you an alternative low, or no fee account. Any basic, low fee or no fee account we offer to you because you are an eligible customer, will have: ~~We will offer you a basic, low, or no fee account if you ask for one and we determine that you are eligible for one.~~

- No informal overdrafts
- No dishonour fees; and
- No overdrawn fees

For the purposes of this Chapter:

eligible customer means a person who holds a current a government concession card listed in paragraph 44.

'Informal overdraft' means credit we provide when (without your express agreement) we permit you to overdraw your account but excluding instances where it is impossible or reasonably impractical for us to prevent your account from being overdrawn.

'no overdrawn fees' means we will not charge a fee where your account falls into debit. However, you may be charged interest on the amount in debit.

'no dishonour fees' means we will not charge a fee because a debit on a basic account is declined due to insufficient funds in the account.

Training for staff about customers eligible for basic, low, or no, fee accounts

48. We will train our staff to help them to recognise a customer, or potential customer that may qualify for a basic, low, or no fee account.

FINAL VERSION

Part 5 When you apply for a loan

Chapter 17 A responsible approach to lending

Lending to individuals and small businesses

49. If we are considering providing you with a new loan, or an increase in a loan limit, we will exercise the care and skill of a diligent and prudent banker.
50. If you are an individual customer, that is not a business, we will do this by complying with the law.
51. If you are a small business, when assessing whether you can repay the loan, we will do so by considering the appropriate circumstances reasonably known to us about:
 - a) your financial position; or
 - b) your account conduct.

Where reasonable to do so, we may rely on the resources of third parties available to you, provided that the third party has a connection to you (that is, to the small business). For example where the third party is a related entity of yours (including but not limited to your directors, shareholders, trustees, beneficiaries or related body corporates), or is a partner, joint venturer, or guarantor of yours.

52. We also owe an obligation to any guarantor of the loan to comply with the above paragraph in assessing the borrower's ability to repay the loan.

Lending to co-borrowers

53. If you are an individual applying for a loan, or an increase to a loan limit, paragraphs 54 to 56 apply to you.
54. If on the information that you have provided to us in the course of applying for this loan you will not receive a substantial benefit from the loan, we will not approve you as a co-borrower unless we:
 - a) have taken reasonable steps to ensure that you understand the risks associated with entering into the loan and understand the difference between being a co-borrower and a guarantor;
 - b) have taken into account the reasons why you want to be a co-borrower; and
 - c) are satisfied that you are not experiencing financial abuse.
55. A substantial benefit includes where:
 - a) you acquire a reasonably proportionate legal or equitable interest in assets purchased with the loan funds; or
 - b) a reasonable portion of the loans funds are used to repay your debts, or other obligations owed by you.
56. You may end your liability under the loan by giving us a written request to do so, in the following circumstances:
 - a) where credit has not been provided or relied upon by any co-borrower; or

- b) for any future advances under the loan, where we can terminate any obligation we have to extend further credit to any other co-borrower under the same loan.

57. Paragraphs 53 to 56 do not apply to borrowers who are trustees, companies, directors of co-borrower companies or partners in a partnership or joint-venture arrangement.

We will tell you about our suitability assessment for a loan

58. If we approve your loan, and it is regulated under the National Consumer Credit Protection Act 2009, we will let you know that you can obtain our assessment about whether it is not unsuitable for you.

59. If you are a guarantor, we will let you know that you can also request a copy free of charge.

We will assess your ability to repay a credit card within a ~~five~~ three year period

60. When you apply for a new consumer credit card or credit limit increase, we will assess your ability to repay the amount of the credit card limit within a ~~five~~ three year period.

61A ~~If the National Credit Code would apply to the new loan or loan increase we are considering providing to you, we will factor in your ability to repay the amount of your existing credit card limits within three years when complying with our obligations to you in this Chapter.~~

Setting a credit card limit when you apply

61. You can let us know what your preferred credit card limit is and we will not give you a limit that is more than what you requested. Transactions may be processed which nevertheless cause you to exceed your limit.

Chapter 18 Our approach to selling consumer credit insurance (CCI)

Our approach to selling CCI for credit cards and loans

62. If we offer CCI, then we will give you clear information that enables you to make an informed decision — including (to the extent we can):

- a) the cost of the CCI, including any interest you will pay on the premium;
- b) how long you would be insured for;
- c) the monetary limits on the key benefits payable under the insurance; and
- d) the date your insurance ends, if that date is different to the date on which the underlying credit product ends.

63. Before we enter the contract with you, we will ensure we have your express consent to acquire the product.

Separation of application process for CCI for credit cards and loans sold in digital channels

64. We will refer to the availability of CCI only after you have completed the digital application for a credit card or loan.

65. We will let you know that whether you purchase CCI or not has no bearing on whether we approve you for a credit card or loan.

66. We will use clear disclosure for CCI on credit cards and loans to enable customers, as they navigate through the digital experience, to better understand this type of insurance. This will be through:
- a) Use of filtering questions so that we alert you to key policy exclusions such as age, residency and employment status and if you are not eligible to claim a significant part of the policy, not offering this product.
 - b) Disclosing the limits of the policy as part of the process (the circumstances in which a payout will be made and the amount of the payout).
 - c) Disclosing any incentives you might receive from taking out the CCI product and their effect.
 - d) Telling you the total cost of the insurance (if known) before you complete the CCI purchase.
 - e) Telling you how the premium is to be paid.
 - f) Where the ongoing premium is calculated as a percentage or a cost per dollar of the outstanding debt or statement balance, then we will tell you that cost and how we calculate it.

Deferred sales period for CCI for credit cards and personal loans sold in branches or over the phone

67. If we offer CCI for credit cards and personal loans through a branch or over the phone, then we will not offer that product to you until at least four days after you have applied for the credit product. This is known as a “deferred sales period”.
68. We can still provide factual information on CCI for you to consider during the deferred sales period.

Chapter 19 Lenders mortgage insurance

Lenders mortgage insurance contracts

69. We may require you to pay for lenders mortgage insurance in connection with a loan you have. If we do this, we will give you a fact sheet about lenders mortgage insurance. The fact sheet will contain information outlining the key policy features.
70. We will not charge you more for lenders mortgage insurance than the actual cost we incur for that policy. We will not receive a commission on your lenders mortgage insurance policy.
71. Depending on the terms of the lenders mortgage insurance policy, if your loan is repaid or refinanced before the end of the policy then, you may be entitled to a refund of part of the fee or charge you have paid. We will explain this to you in the fact sheet.

Part 6 Lending to small business

Chapter 20 Helping a small business when it applies for a loan

What we tell a small business when they apply for a loan

72. We will tell a small business how to apply for a loan, including the following:
- the information we require; and
 - after we have received the information we have requested, how long before we are likely to make a decision.
73. Before you accept a loan offer, we will give you a plain English document clearly setting out the key general terms and conditions of the loan. This is in addition to the disclosures required under Part 3 of this Code and may be a separate document or part of the loan document.
74. If we decide not to approve a loan to a small business, we will, ~~if appropriate~~, tell the small business the general reason why ~~unless it is reasonable for us not to do so~~.

Chapter 21 When will we not enforce a loan against a small business?

For special conditions about non-monetary defaults, see chapter 22

How much notice we give a small business before enforcing a loan?

75. If you are a small business and in default under your loan, we will give you 30 days' notice before we either require you to repay the loan in full or take enforcement proceedings.
76. If you remedy the default during the 30-day period, and no default of the same type has arisen during that period, we will not require full repayment or take enforcement proceedings.
77. We may give you a shorter notice period, or no notice period, if:
- ~~the default is unable to be remedied; or~~
 - ~~it is reasonable for us to do so to manage a material and immediate risk relating to the nature of the relevant default, your particular circumstances, or the value of the security; or~~
 - ~~we have already given you a period to remedy the default under paragraph 81, and you have not remedied that default.~~
 - ~~a) based on our reasonable opinion, it is necessary for us to act to manage an immediate risk;~~
 - ~~b) you are insolvent, or go into bankruptcy, administration or another insolvency process or enforcement action is taken against you by us or another credit provider;~~
 - ~~c) we believe, on reasonable grounds, that you or a guarantor have not complied with the law or any requirement of a statutory authority; or~~
 - ~~d) we have already given you a period to remedy a non-monetary default under paragraph 80.~~
78. If you have an overdraft or on-demand facility, we may not be required to give you any notice when we require repayment ~~but if a failure to repay that facility on demand also constitutes default under another loan with us, we will comply with this Chapter if we enforce that other loan based on that default.~~

Chapter 22 Specific events of non-monetary defaults

This chapter applies to standard form small business loans. In this chapter, 'guarantor' means any guarantor of a small business, not limited to a guarantor who is an individual.

Loan terms and conditions

79. Our loan terms and conditions will specify how and when we will not enforce a loan against a small business for non-monetary defaults.

When we will not enforce a loan against a small business for non-monetary defaults

80. If you are a small business, and you have met all your ~~loan~~ payment obligations under the loan terms, we will not take default based action against you, unless:
- a) you or a guarantor is insolvent, goes into bankruptcy, voluntary administration, other insolvency process or arrangement, or no longer has legal capacity;
 - b) enforcement proceedings is taken against you or a guarantor or your or their assets by another creditor;
 - c) early repayment is required under a separate financing arrangement you or a guarantor has with us or default based action is taken against you or a guarantor by us, due to an event of default which is described in this chapter;
 - d) we believe on reasonable grounds that you, ~~your agent~~ or a guarantor has not complied with the law or any requirement of a statutory authority, or it becomes unlawful for you or us to continue with the loan;
 - e) you or a guarantor gives us information or makes a representation or warranty to us which is materially incorrect or misleading (including by omission);
 - f) you use the loan for a purpose not approved by us;
 - g) your assets or a guarantor's assets are dealt with, or attempted to be dealt with in breach of the loan, or any security or other agreement with us without our consent;
 - h) you or a guarantor do not provide financial information required by your agreement with us;
 - i) you or a guarantor do not maintain a licence or permit necessary to conduct your business;
 - j) you or a guarantor do not maintain insurance required by your agreement with us;
 - k) legal or beneficial ownership, or management control of a borrower or guarantor or their business changes without our consent; or
 - l) status, capacity or composition of you or a guarantor changes without our consent.

What we will do before we take default based action

Remedying your non-monetary default

81. We will:
- a) give you a notice specifying the grounds on which we consider there is a non-monetary default; and
 - b) allow a reasonable time for you to remedy your non-monetary default, where it is able to be remedied and notify you of this time period.
82. ~~Paragraph 81 may not apply where, based on our reasonable opinion, it is necessary for us to act to manage an immediate risk.~~ If paragraph 81 applies, a reasonable time will not be less than 30 days

unless it is reasonable for us to act to manage a material and immediate risk relating to the nature of the relevant default, your particular circumstances, or the value of the security.

Material impact

83. We will only act on a specific event of non-monetary default identified in paragraph 80, if the event by its nature is material, or we reasonably consider the event has had, or is likely to have, a material impact on:
- a) you or your guarantor's ability to meet your or their financial obligations to us;
 - b) our credit or security risk (or our ability to assess these); or
 - c) our legal or reputation risk where paragraph 80 (d) or (e) and (f) applies.

General material adverse change clauses

84. We will not include a general material adverse change clause as an event of default in any standard form small business lending contract.

Specialised small business loans

85. For the following types of small business standard form loans, we may include financial indicator covenants or special covenants tailored to the particular nature of these loans as a trigger for default based action:
- a) loans for property development; or
 - b) loans for a specialised lending transaction, where because of their nature, require additional covenants as a way of banks managing their risks, including margin lending, loans to self-managed superannuation funds, bailment, invoice discounting, construction finance, foreign currency loans and tailored cash flow lending.

Chapter 23 When we decide not to extend a loan

How much notice will we give a small business before the end of a loan

86. If you are a small business and you are not in default, and the principal owing on your loan is not due to be fully repaid at the end of its scheduled term by regular periodic repayments, we will give you notice of our decision not to extend your loan, at least 3 months before you need to repay your loan in full.
87. If we decide to extend or refinance your loan, we are not required to do so on the same terms.

Chapter 24 When we appoint external property valuers, investigative accountants and insolvency practitioners

This Chapter applies to standard form small business loans.

When using external property valuers we will be fair and transparent

88. Our processes in relation to external expert valuations will be fair and transparent.
89. Our communication will be clear and we will explain the purpose of the valuation to the customer.

When we will provide you with a copy of a valuation

90. ~~We will provide copies of property valuations and valuer instructions~~ Where you have paid (or reimbursed us) for a valuation of a commercial or agricultural real property, we will provide you with a copy of that valuation and the related valuer instruction (except where an enforcement proceedings ~~action~~ ~~has already~~ commenced).

We may require you to acknowledge in writing that you accept our reasonable limitations on your use of the valuation before we provide it to you.

91. We will only appoint appropriately qualified and experienced valuers who are members of professional organisations which abide by a similar code of conduct.

Appointing investigating accountants and insolvency practitioners (including voluntary administrators)

92. We will act fairly when using investigative accountants and insolvency practitioners. We will ethically manage potential conflicts of interest when appointing receivers who have been investigating accountants for a small business, for example:
- a) We will only appoint qualified practitioners who are members of **relevant** professional organisations with appropriate codes of conduct.
 - b) We will require additional internal oversight of the appointment of investigating accountants as receivers, to ensure that the decision is necessary and to review the circumstances leading to the appointment.
 - c) If the relationship between the bank customer and the investigating accountant has deteriorated (for example has become unworkable) the bank will consider the appointment of an alternative qualified practitioner.

Part 7 Guaranteeing a loan

When this part applies

93. If you are an individual who gives a guarantee and/or indemnity to secure a loan that we give to another individual or small business, and this Code applies to the loan, then this part of the Code applies to your guarantee and/or indemnity.

Chapter 25 Limiting liability under the guarantee

Before accepting a guarantee

94. Your Guarantee will be limited to:
- a) a specific amount and/ or category of amounts such as all amounts owing under a specific loan, plus other liabilities and amounts as described in the Guarantee (for example, interest and recovery costs); or
 - b) the value of a specified property or other assets under a specified mortgage or other security at the time of recovery.

During the guarantee

95. You may write to us to limit, or further limit the liabilities you have guaranteed under your guarantee. However, we do not have to accept your request if:
- a) the amount, or nature, of the limit you request does not cover the borrower's existing liability (plus any interest owed, or any fees, or charges that we may incur in respect of that liability) under the relevant loan contract at the time;
 - b) we are obliged to make further advances to the borrower; or
 - c) we would be unable to preserve the current value of an asset which is security for the loan without making further advances.

Chapter 26 What we will tell and give you

Before accepting a guarantee

Notice to you

96. The terms and conditions of the guarantee will contain a prominent notice that:
- a) you should seek independent legal and financial advice;
 - b) you can refuse to sign the Guarantee;
 - c) there are financial risks involved;
 - d) you can limit your liability in accordance with this Code or as allowed by law;
 - e) you can request information about the transaction or loan; and
 - f) if applicable, that the guarantee may cover future credit facilities and variations of the existing loan.

97. We will tell you:
- a) about any notice of demand we have made on the borrower for the guaranteed loan, or any loan the borrower has (or has had) with us, within the previous 2 years; and
 - b) if any existing loan we have given the borrower will be cancelled if the guarantee is not provided.

This paragraph does not apply if you are a commercial asset financing guarantor, sole director guarantor or trustee guarantor.

Required warning notice

98. We will ensure that a warning notice appears directly above the place where you sign the guarantee. The warning notice will be substantially in the form required by section 55 of the National Credit Code and detailed in Form 8 of the National Consumer Credit Protection Regulations 2010 and consistent with this Code.

Guarantee documents

99. We will give you a copy of the following documents in relation to the borrower:
- a) the proposed loan contract;
 - b) a list of any related security contracts;
 - c) any related credit report from a credit reporting body;
 - d) any current credit-related insurance contract that is in our possession;
 - e) any financial accounts or statement of financial position the borrower has given us in the previous 2 years for the purposes of the guaranteed loan;
 - f) the latest statement of account relating to the loan for a period which a notice of demand was made by us **within the last two years**; and
 - g) other information we have about the guaranteed loan that you reasonably request — but we do not have to give you our internal opinions.

This paragraph does not apply if you are a commercial asset financing guarantor, sole director guarantor or trustee guarantor.

What we will tell you if you are a director guarantor

100. If you are a director guarantor (other than a sole director guarantor) we will tell you that you have the right to receive the documents in paragraphs 96 to 99 and that these documents contain important information that may affect your decision to give a guarantee. You may choose not to receive some or all of the documents and we will not influence your choice.

During the guarantee

101. We will give you the following information, about a borrower's deteriorating financial position as it relates to the loan you guarantee, within 14 days of the relevant event:
- a) a copy of any formal demand or default notice we send to the borrower after we send it;
 - b) a written notice if the borrower has advised us that they are experiencing financial difficulty which has resulted in a change to their loan; and

- c) a written notice if the borrower is in continuing default for more than 2 months after the issuance of the default notice referred to above.

102. If you ask us to, we will give you additional copies of any information we have given you – we will do so within 30 days.

103. However, we do not need give you those copies if we have given you the information you requested within 3 months before your request.

Paragraphs 101, 102 and 103, do not apply if you are a commercial asset financing guarantor, sole director guarantor or trustee guarantor.

Extending your guarantee

104. If a borrower obtains a new loan or has changes made to an existing loan, then these may be covered by your guarantee to the extent they fall within the limit contained in your guarantee.

105. If we agree to increase the limit in your guarantee, then we will:

- a) first give you what is required under paragraph 99; and
- b) obtain your written acceptance of the extension of the guarantee.

106. In these circumstances, we will provide you with any unsatisfied notice of demand made by us on the borrower in respect of the loan.

Chapter 27 Signing your guarantee

When we can accept your guarantee

107. We will not accept a guarantee from you until the third day after you have been given the information provided at paragraph 96 to 99.

108. However, we can accept the guarantee earlier if you:

- a) have obtained independent legal advice about the guarantee;
- b) have accepted an extension of the guarantee;
- c) are a commercial asset financing guarantor, sole director guarantor, trustee guarantor or vehicle asset financing guarantor; or
- d) you are a director guarantor and you choose to sign and deliver the guarantee earlier. We will not influence your choice.

Signing your guarantee

109. We will give the guarantee documents directly to you or your representative. We will not give the guarantee documents to the borrower, or to someone acting on behalf of the borrower, to arrange for you to sign the guarantee.

110. If we attend the signing of the guarantee, we will ensure that you sign the Guarantee in the absence of the borrower. This does not apply if you are a commercial asset financing guarantor, sole director guarantor or trustee guarantor.

Paragraphs 109 and 110, do not apply if you are a commercial asset financing guarantor, sole director guarantor or trustee guarantor.

Chapter 28 Withdrawing or ending your guarantee

Withdrawing your guarantee

111. You may, by written notice to us, withdraw from the guarantees:
- a) at any time before we provide credit under the relevant loan; or
 - b) after credit is first provided, if the signed version of the relevant loan differs in a material respect from the proposed loan we gave you before you signed the Guarantee. This does not apply for any change to the loan described in paragraph 104.

However, you may do so only to the extent of the obligations under the guarantee.

Ending your guarantee

112. You may end your liability under a guarantee you have given to us by:
- a) paying us the lower of:
 - i. the borrower's outstanding liability, including any future or contingent liability; or
 - ii. the amount to which your guarantee of the borrower's liability is limited under the guarantee; or
 - b) making other arrangements we agree to in return for releasing you from your guarantee.

Chapter 29 Enforcing our rights under the guarantee

How we will enforce our rights under the guarantee

113. We will not enforce any mortgage or other security you have given us in connection with the guarantee unless we have first enforced any mortgage or other security that the borrower has provided for the guaranteed liability. This paragraph does not apply where the guaranteed liability arises under a standard margin loan.
114. We will not enforce any judgment against you under the guarantee unless:
- a) we have first enforced any mortgage or other security that the borrower has provided for the guaranteed liability; and
 - b) if one (or more) of the following has occurred:
 - i. we have obtained Court judgment in our favour against the borrower for payment of the guaranteed liability; and the judgment debt remains unpaid for at least 30 days after our written demand for its payment;
 - ii. we have made reasonable attempts to locate the borrower but without success; or
 - iii. the borrower is insolvent.
115. However, the restrictions under paragraphs 113 and 114 do:
- ~~a) not apply if the borrower is a small business;~~

- a) not apply if you have specifically agreed in writing after the default notice is issued and we have informed you of the limitations of our enforcement rights under this chapter that they do not apply; or
- b) not require us to first enforce any mortgage or other security that the borrower has provided if we reasonably expect that the **net** proceeds of that enforcement will not be sufficient to repay a substantial portion of the guaranteed liability.

FINAL VERSION

Part 8 Managing your account

Chapter 30 Keeping your accounts safe and secure

We will tell you about safeguarding important items

116. We will tell you to safeguard your payment documents, cards and devices.

We will tell you when you should tell us if any of those items are lost or misused

117. Our terms and conditions set out when you should tell us if any payment documents, cards or devices are lost or misused.

118. We will tell you about:

- a) how you can notify us of the loss, theft or misuse; and
- b) the consequences of you not telling us about the loss, theft or misuse.

Chapter 31 Statements we will send you

When will we give you statements for your deposit account?

119. At least every 6 months — or more frequently if you ask — we will give you an account statement for a deposit account (unless it is a passbook account).

When will we give you statements if you are in default on your loan account?

120. If you are in default on your loan account, then we will give you a statement of account or alternative (for example, transaction history) if you ask for it.

What if the *National Credit Code's* statement rules do not apply to your loan or credit account?

121. If you are a small business or an individual and the rules in the National Credit Code about statements of account do not apply to your loan or credit account, then we will give you a statement of transactions on your account as though those rules did apply.

122. However, we do not have to do that if the nature of the relevant banking service means it is impractical for us to do so.

Chapter 32 Cost of transaction service fees

We will tell you the cost of transaction service fees

123. If you are an individual, **that is not a business** we will tell you about a transaction service fee immediately before you incur the fee, if it is practical and reasonable for us to do so.

124. However, it may not be practical or reasonable for us to do so in certain circumstances — for example:

- a) dishonour fees;
- b) if the fee is charged based on end-of-day balance and therefore is not necessarily incurred at the time of the transaction — for example, an overdrawn fee based on end of day balance;

- c) if you are making an online purchase: from a third party; using a merchant terminal; or using another bank's ATM; or
- d) break costs, which may be incurred if your transaction makes a prepayment to a fixed rate loan.

Chapter 33 Managing a credit card

We will pay off your higher interest credit card debts first

125. Any payment you make to your consumer credit card will be applied first to the amounts that have the highest interest rate as at the last statement date. However, if you ask us to, we may agree to apply a repayment against a specific debt owed.

Charging interest retrospectively on portion of credit card balance that is paid off by the due date

126. If you have an interest-free period on a consumer credit card balance, or part of a balance, for a period of time, we will not retrospectively charge you interest for that period because you didn't pay off that balance, or part of that balance, by the due date.

We will give you notice before an introductory balance transfer offer ends

127. If you have an introductory balance transfer offer on your consumer credit card, we will give you at least 30 days' notice before it is due to end.

You may ask us to reduce your credit card limit

128. If you ask us to reduce your existing consumer credit card limit, we will enable you to do this online or by contacting us. This will be subject to any product features that apply (for example, where the product requires a minimum limit).

You will still be required to first repay any amount above the new limit.

Credit card limit increases

129. We will not offer to increase your consumer credit limit on your existing credit card other than in response to a request by you for the increase in your credit limit.

You can ask us to dispute a transaction on your credit or debit card account

130. If — within the time limit set by your credit card or debit card scheme rules — you tell us that you dispute a transaction on your card, then we:
- a) will claim the relevant amount back if we find it be incorrectly charged and you have not contributed to the loss; or
 - b) may accept the merchant's refusal to make that chargeback only if the refusal is made in a way allowed under the relevant card's scheme rules.
131. You have the rights under the above paragraph even if the payment was debited from your credit card or debit card account and was part of a recurring payment arrangement you have with that merchant.

132. You may also have a right to dispute an unauthorised transaction under the ePayments Code or as contained in your terms and conditions.
133. We will make general information about disputed transactions available to you and notify you of the availability of this information at least once every 12 months.

Chapter 34 Direct debits and recurring payments

We will give you a list of your direct debits and recurring payments

134. If you ask us to, we will give you a list of direct debits and recurring payments on your accounts for up to the previous 13 months. The list will include only those direct debits and recurring payments that are known to us from the information we receive about your transactions.

The regular payments from your:

- a) deposit account are called 'direct debits'. This is where you have given your deposit account details (BSB and account number) to allow a merchant or service provider to debit your account regularly to pay for the services they provide you.
- b) credit card account are called 'recurring payments'. This is where you have given your credit or debit card details (card number, expiry date and security code) to allow a merchant or service provider to charge your credit card regularly to pay for the services they provide you.

What we will do when you ask to cancel a direct debit or advise us of a problem with a direct debit

135. You can ask us to cancel your direct debit request and we will promptly process this.
136. You can ask us to investigate an unauthorised direct debit and we will act promptly to assist you.
137. When we handle cancellation or complaint, we will not inform you that you should first raise the cancellation or complaint directly with the merchant you pay through the direct debit. However, we may suggest that you also contact that merchant.

Chapter 35 Joint Accounts

How to use a joint account

138. If you have a joint account, we will tell you how you can use that account.

How you can stop withdrawals

139. If you have a joint account, from which either you or another account holder can make withdrawals, you can ask us to change the account authority so that you all have to approve any future withdrawals. This may be relevant to you if you are vulnerable, see chapter 14.
140. The above paragraph does not apply to directors of a company who are signatories on behalf of the company, rather than joint account holders in their personal capacity.

Chapter 36 Closing any of your banking services

We will give you information about closing your accounts

141. We will give you readily accessible information about how to close your account.

You may close your accounts

142. If you want to close your account, then we will enable you to do this quickly and easily. Some products may have a minimum notice period.

We may close an account that is in credit

143. We may close an account of yours under its terms and conditions if that account is in credit. If we do so, we:
- a) will, if appropriate, give you reasonable notice of the closure;
 - b) will pay you the amount of the credit balance; and
 - c) may charge you an amount that is our reasonable estimate of the costs of closing your account.

We will tell you if we cancel your credit card

144. If we cancel your credit card we will tell you. If appropriate, then we will give you the general reasons for doing so.

You can ask us to cancel your consumer credit card

145. If you want to cancel your consumer credit card, then we will provide the ability for you to do this online or over the phone. If you ask us to, we will give you information about recurring payments and your outstanding balance.

Chapter 37 Your right to copies of certain documents

We will give you certain documents you ask for

146. We will, at your request, give you a copy of your documents in our possession including:
- a) a contract — including terms and conditions, standard fees and charges and interest rates;
 - b) any mortgage or other security document;
 - c) a statement of account; and
 - d) any notice we previously gave to you which is relevant to us exercising our rights.
147. However, we do not have to give you a copy of either of the following documents under the above paragraph:
- a) a notice requiring you to take action if you ask for the copy more than two years after the contract to which the notice relates was discharged or ended; or
 - b) a statement of account within three months after we gave you a copy of the same statement of account.

When we will give you the documents you ask for

148. If we are giving you a copy of a document under the above paragraph, then we will do so within 30 days.

We may waive or refund fees for providing you with a copy of a document or statement

149. We may charge you a reasonable fee for providing you with a copy of a document under this Code. However, in certain circumstances we may waive or refund that fee.
150. We may charge you a fee for hard copy statements that are not repeat statements. If you tell us, and we are reasonably satisfied, that you do not have access to electronic statements, then we will waive or refund that fee.

Chapter 38 When we change our arrangements with you

When we can change the terms of conditions of our banking services

151. The terms and conditions of a banking service may allow us to change those terms and conditions in certain situations without your agreement.

When we tell you about a change to the terms of conditions of our banking services

152. If we change our terms and conditions, we will tell you about the change as soon as reasonably possible. This includes a change to:
- our standard fees and charges; or
 - an interest rate.
153. If we change an interest rate, we will tell you no later than the date of the change, unless we are not able to because the interest rate is calculated according to a money market or some other external reference rate, or a rate otherwise designated as a variable or floating rate.
154. Apart from changes to interest rates **or changes to repayments**, if we believe a change is unfavourable to you, then we will give you prior notice of at least 30 days, subject to paragraph 155.
155. We may give you a shorter notice period, or no notice, of an unfavourable change if:
- It is reasonable for us to do so to manage a material and immediate risk we believe doing so is necessary for us to avoid, or to reduce, a material increase in our credit risk or our loss;** or
 - there is a change to, or introduction of a government charge that you pay directly, or indirectly, as part of your banking service, in that case we will tell you about the introduction or change reasonably promptly after the government notifies us of it (however, we do not have to tell you about if the government publicises the introduction or change).

How we will tell you about changes to our arrangements with you?

156. We will tell you about these changes either:
- by advertising in the national, or local, media; or
 - by giving you written notice.

Part 9 When things go wrong

Chapter 39 Contact us if you are experiencing financial difficulty

What does 'financial difficulty' mean?

157. Financial difficulty means you are unable to repay what you owe and are experiencing difficulty meeting your repayment obligations. This can be as a result of an unexpected event or unforeseen changes outside your control.

We encourage you to contact us if you are experiencing financial difficulty

158. If you are experiencing financial difficulty, then you, or your representative should contact us as soon as possible. We will discuss your situation and the options available to help you. The sooner you contact us, the sooner we can try to help.

If you have a joint account and are experiencing financial difficulty

159. If you have a joint account with someone and you are experiencing financial difficulty, then we can assist you. If you ask us to, we can do so without involving the other person initially.

If you guarantee a debt to us and are experiencing financial difficulty

160. If you are a guarantor and we have made a demand for you to pay under a guarantee and you are experiencing financial difficulty, then contact us as soon as possible and we will discuss your options.

Be open about your situation of financial difficulty

161. When you are contacting us, or thinking about contacting us, it is important for you to be open, and as realistic as you can be, about your financial position. In turn, we will be compassionate in trying to understand your situation and when discussing any way we can help.

You can choose to have us deal with your financial counsellor or representative

162. If we are working with you to help you respond to financial difficulties, then you can tell us to deal with your financial counsellor or representative — rather than dealing with you. To do this, you will need to give us their contact details in writing.
163. However, if we have made reasonable attempts to contact, or deal with, your counsellor or representative but we are unsuccessful, then we will deal with you again.

We will respond promptly to you or your representative

164. We will respond promptly to you — or your representative's — request to discuss your financial difficulties. Our reply will be within the timeframes set by the National Credit Code, if it applies.

Chapter 40 We may contact you if you are experiencing financial difficulty

We may contact you if we think you are experiencing difficulty

165. We will employ a range of practices that can identify common indicators of financial difficulty. If we identify that you may be experiencing difficulty paying what you owe under a loan (or are

experiencing financial difficulty), then we may contact you to discuss your situation and the options available to help you. We will do this on a case-by-case basis.

166. If we are able to contact you and discuss your situation under paragraph 165 and we offer basic bank accounts, and you are eligible, we will offer this product to you.

Chapter 41 We will try to help you if you are experiencing financial difficulty

We will work with you to help you respond to financial difficulty

167. With your co-operation, we will work with you to help you find a sustainable solution to your financial difficulties. Any help we can give will depend on your individual circumstances. We provide help to customers on a case-by-case basis.

We will give you information about our financial difficulty processes

168. We will make information publicly available about our processes for working with customers in financial difficulty.

What we will consider when deciding on assistance options

169. When we are deciding whether, and how, to help you with financial difficulty, we will take into account the information available to us, including information you give us about your financial situation.

Examples of how we may help you if you are experiencing financial difficulty

170. The table on page 47 sets out examples of steps we may be able to take to help you in particular situations:

Restoring your financial position is possible	Restoring your financial position is unlikely
<p>Our financial hardship arrangements focus on situations from which you can recover your financial position.</p> <p>In these situations, we may be able to help you by:</p> <ul style="list-style-type: none"> • agreeing to interest only payments for a short period; • extending the term of your loan to reduce your repayments; or • temporarily postponing or deferring payments. <p>These arrangements may require you to pay more interest over the loan term.</p> <p>What you can do</p> <p>In these circumstances, contact us and we will help you work out what you need to do.</p>	<p>A permanent change to your financial situation may mean it is now unlikely that your financial position can be recovered — even if your existing loan were to be changed.</p> <p>In that case, it may not be appropriate, for us to offer you changes to any payment arrangements under the <i>National Credit Code's</i> financial hardship process.</p> <p>However, even in these circumstances, we may be able to offer you help — for example, options may include:</p> <ul style="list-style-type: none"> • agreeing on an alternative arrangement, plan or contract; • changing the terms of your loan; • giving you time to sell your property; or • giving information about bankruptcy or insolvency arrangements. <p>What you can do</p>

	<p>In these circumstances, contact us and we will help you work out what you need to do.</p> <p>We may refer you to people who can help you find a financial adviser or counsellor.</p>
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When we may waive your debt

171. In exceptional circumstances, we may look outside normal processes to find a way to assist you if you are experiencing long term hardship as a result of a material change in circumstances.
172. If you are an individual, we may, at our discretion, reduce or waive your debt if it is an unsecured personal loan or credit card, on a case by case basis and on compassionate grounds, having regard to the following:
- c) your individual circumstances;
 - d) if you are unable to meet your repayments now and in the future;
 - e) whether the hardship is genuine and being caused by factors outside your control; and
 - f) our commercial considerations.

We will tell you about the relevant National Credit Code provisions if they apply

173. We will tell you about the hardship provisions of the National Credit Code if they apply to you.
174. We will tell you about your right to make a complaint to our external dispute resolution provider if we do not assist you under the National Credit Code.

We will not require you to access your superannuation

175. We will not require you to access your superannuation to pay any amount you owe us under a loan (unless you are borrowing for a self-managed superannuation fund). However, you may wish to discuss this option with a financial counsellor. You can also find out more about this from the Department of Human Services, see www.humanservices.gov.au

Other people who can assist you

176. If you ask us to, we will refer you to financial counselling organisations that may be able to help you. We may also recommend on our own initiative that you seek independent advice from a financial counsellor.

We will tell you about our decision in writing

177. We will tell you in writing:
- a) whether we will provide you with help in relation to your financial difficulty; and
 - b) the reasons for our decision.
178. If we agree to provide you with help in the form of changes to your agreement with us, then we will tell you in writing about the main details of the arrangements, including:
- a) the repayments you need to make under the proposed new arrangement;

- b) what will happen at the end of the new arrangement; and
- c) whether you accepting the proposed new arrangement will have any adverse consequences in relation to banking services or your credit history (for example, an entry in your credit report or cancellation of a banking service).

This does not apply to minor individual instances of help we provide — for example: deferrals, refunds or fee waivers.

Chapter 42 When you are in default

We will tell you if we report your default activity to a credit reporting body

179. We will tell you if we report any payment default of yours under your loan to a credit reporting body. You can also independently obtain a copy of your report directly from a credit reporting body.

Charging default interest during drought and natural disasters

- 179A. 1) Where you are a farmer and we have provided you with a loan for the purposes of a farming operation, we will not charge default interest on that loan during any period that the land you use for that operation is in drought or subject to another natural disaster.
- 2) For subparagraph (1) to apply, you may need to tell us about the circumstances, and we will refund any interest charged as a result of the default during the drought or other natural disaster.

Chapter 43 When we are recovering a debt

We will comply with debt collection guidelines

180. We will comply with the ACCC's and ASIC's *Debt Collection Guideline: for Collectors and Creditors*.
181. We will comply with the *Code of Operation: Recovery of Debts* from Department of Human Services Income Support Payments or Department of Veterans' Affairs Payments.
182. If we sell a debt to another party, we will only choose a party that has agreed to comply with these guidelines.

What we will tell you if we sell your debt to another party and we will not be your contact

183. If we sell your debt to another party, and you will be obliged to pay the debt to that other party, and we will no longer be your contact we will write to you to let you know and to explain:
- a) that we have sold your debt; and
 - b) who we have sold it to.

We will not sell debt when we are considering your financial situation

184. While either of the following is the case, we will not sell your debt to anyone else if:
- a) we are actively considering your financial situation:
 - i. under paragraph 167; or

- ii. under the hardship variation provisions of the National Credit Code; or
- b) you are complying with an arrangement that you and we agreed to after we completed any considerations of the type referred to in this paragraph.

185. However, we may transfer your debt in either of those circumstances if the transfer:

- a) is part of a funding arrangement — for example, a securitisation or the issue of covered bonds or similar funding arrangements; or
- b) is part of a sale of business or business restructure.

Chapter 44 Combining your accounts

We will inform you if we combine or set-off your accounts

186. If we combine or set-off your accounts, including using available funds in one of your accounts to repay a debt you owe us, then we will promptly inform you we have done so.

When we cannot combine your accounts

187. If you have an account that relates to any amounts you owe us under a loan that is regulated by the National Credit Code, then we may not combine that account in any of the following circumstances:

- a) while we are actively considering your financial situation under either:
 - i. paragraph 167 of this Code; or
 - ii. under the hardship provisions of the National Credit Code; or
- b) while you are complying with an arrangement you have made with us after we have considered your financial situation; or
- c) if doing so breaches Code of Operation: Recovery of Debts from Department of Human Services Income Support Payments or Department of Veterans' Affairs Payments.

188. If we are considering your financial situation in either of the ways referred to in the above paragraph, then we may require that you keep funds in an account until we have decided whether to agree to your request.

Chapter 45 Helping with deceased estates

Deceased's representatives

189. We will **treat the deceased person's representative with respect and compassion** and provide clear and accessible information on what you, the deceased's representative, can do to manage a customer's account in the event of their death. This information will include:

- a) **how to notify us of a customer's death;**
- b) who has authority to access the customer's account or loan details;
- c) what information we need to verify the identity and authority of that person; and
- d) what steps the person authorised needs to take to manage the deceased customer's accounts, **including information about direct debits and recurring payments on those accounts, and we will assist you to manage direct debits and recurring payments in the ways outlined in Chapter 34.**

190. ~~We will act on instructions concerning a deceased's account from a person named in a grant of probate or letters of administration within 14 days of receiving the necessary information. Once notified of a customer's death we will:~~
- a) ~~identify any fees that are for products and services that can no longer be provided, or will not be provided to the deceased's estate;~~
 - b) ~~stop charging those fees;~~
 - c) ~~if any fees referred to in paragraph (a) have already been charged since the customer's death – refund those fees; and~~
 - d) ~~act on instructions concerning a deceased 's account from a person named in a grant of probate or letters of administration within 14 days of receiving the necessary information~~
191. Prior to probate or letters of administration being granted, if we receive a request from a person authorised by a will or a person who has applied for letters of administration, and on providing a copy of the death certificate, we will, within 14 days of receiving the necessary information:
- a) provide access to information about the deceased's account including relevant ongoing fees; and
 - b) receive payment towards a debt owed to us by the deceased.

Joint accounts

192. If you are a joint account holder with a deceased customer, you may continue to operate the account subject to the terms and conditions of the account.

Part 10 Resolving your complaint

Chapter 46 Our Customer Advocate

We will have a Customer Advocate in our bank

193. We will have a Customer Advocate in our bank to help facilitate fair customer outcomes and minimise the likelihood of future problems.

The Australian Banking Association's Guiding Principles for Customer Advocates are available at: <https://www.betterbanking.net.au/wp-content/uploads/2017/01/ABA-Customer-Advocate-Guiding-Principles-FINAL-1.pdf>

Chapter 47 If you have a complaint about us

You can access free internal and external dispute resolution processes

194. If you have a complaint, contact us in the first instance
195. If we are unable to resolve your complaint to your satisfaction, we will give you information on how you can take your complaint to the **Australian Financial Complaints Authority** ~~our external dispute resolution provider~~.
196. Both our internal dispute resolution process and external dispute resolution provider will comply with ASIC guidelines.

We will publicise our dispute resolution processes

197. We will publish, and make readily available, information about our internal dispute resolution processes and our external dispute resolution provider through:
- our branches;
 - our telephone banking services; and
 - our websites or other digital platforms.

Farm debt mediation

198. Before we enter into a farm debt mediation with you, we will inform you that you may have a right, as an alternative to farm debt mediation, to make a complaint to our external dispute resolution provider.
199. If we do not reach an agreement at a farm debt mediation and you then decide to make a complaint to our external dispute resolution provider, we will give our consent for the external dispute resolution provider to consider the complaint. This paragraph only applies where your complaint would have been excluded by our external dispute resolution provider because it had previously been the subject of a farm debt mediation.

Chapter 48 How we handle your complaint

We will be fair and reasonable and will keep you informed

- 200. We will ensure our process for handling your complaint is fair and reasonable.
- 201. We will keep you informed of the progress of your complaint.
- 202. We will give you the name of a contact person who is handling your complaint and a way to contact them.

Responding to your complaint

- 203. When we have completed our investigation, we will provide you a written response, which will include:
 - a) the outcome of our investigation of your complaint;
 - b) your right to take your complaint to our external dispute resolution provider; and
 - c) the name and contact details of our external dispute resolution provider.

Timeframes for handling your complaint

- 204. If we resolve your complaint to your satisfaction within five business days, we do not need to provide you with a written response as outlined in paragraph 203, unless you ask us. This does not apply to a complaint relating to hardship, a declined insurance claim or the value of an insurance claim.
- 205. If we are unable to resolve your complaint within 21 days, we will tell you that we need more time to investigate the complaint.
- 206. If we are unable to resolve your complaint within 45 days, we will:
 - a) tell you the reasons for the delay;
 - b) tell you the date by which you can reasonably expect to hear the outcome of our investigation; and
 - c) give you monthly updates on the progress; and
 - d) provide you with the name and contact details of our external dispute resolution providers

However, we do not have to keep you informed in this way if you have not responded to requests for additional information from us, **and your non-response is preventing us from dealing with your complaint.**

Chapter 49 Code monitoring, complaints and sanctions

Code complaints, monitoring and sanctions

- 207. We have established an independent code monitoring body, the Banking Code Compliance Committee (BCCC), to monitor our compliance with this Code.

Members of BCCC

- 208. The independent BCCC, established under this Code, is comprised of the following members:
 - a) an independent chairperson - appointed jointly by the Australian Financial Complaints Authority (AFCA) and the ABA; and

- b) a consumer representative – appointed by consumer representatives on the Board of AFCA; and
- c) a banking representative – appointed by the ABA.

The BCCC acting unanimously will appoint, on terms it thinks appropriate, a person or a panel of persons, with expertise in small business and/or agribusiness to act as a consultant on small business and agribusiness issues. The consultant will provide advice on small business/agribusiness matters where requested by the BCCC.

You can contact the BCCC about a breach of this Code

- 209. If you want to report an alleged breach of this Code you can contact the BCCC.
- 210. If you have a specific dispute with your bank that involves a breach of this Code, you should contact your bank in the first instance, and then your banks external dispute resolution provider.

Powers and role of the BCCC

- 211. In relation to the Code, the BCCC has the following powers:
 - a) monitor and oversee compliance with the Code;
 - b) investigate any allegation of a Code breach noting its priority pursuant to its charter;
 - c) as appropriate, investigate serious or systemic breaches;
 - d) request information from subscribing banks and other stakeholders;
 - e) make findings and recommendations on Code breaches;
 - f) apply sanctions;
 - g) provide guidance and reports; and
 - h) undertake other functions and responsibilities as reasonably determined from time to time.

In addition, the BCCC will endeavour to:

- a) drive improvements in compliance with the Code, to achieve best practice, through a collaborative approach with the banking sector and other key stakeholders; and
- b) promote awareness of the Code and the role of the BCCC, through engagement with key stakeholders.

When the BCCC is undertaking its investigation function it will prioritise its efforts on monitoring and public assurance. Prioritising investigative effort will have regard to factors such as: number of customers affected, severity of breach and public interest.

BCCC resources

- 212. The ABA will ensure that the BCCC has sufficient resources and funding to carry out its functions. More information on the BCCC is available in its charter on the BCCC website.

We will comply with the BCCC

213. We will co-operate and comply with all reasonable requests of the BCCC in the performance of its monitoring and investigative activities.

BCCC Powers and Sanctions

214. The BCCC has the power to apply sanctions to a Code subscriber for a breach of this Code where a finding has been made that:
- a) the breach is serious or systemic;
 - b) the bank has failed to act on BCCC's request to remedy a breach, or failed to do so within a reasonable time;
 - c) there has been a breach of an undertaking given to the BCCC; ~~or~~
 - d) the bank has not taken adequate steps to prevent a serious or systemic breach from reoccurring; **or**
 - e) **the bank has not co-operated and complied with reasonable requests of the BCCC in the performance of its monitoring and investigative activities.**
215. The BCCC may impose one or more sanctions after considering the seriousness of the breach. Sanctions available to the BCCC are:
- a) requiring the bank to rectify or take corrective action on the breach identified;
 - b) requiring a bank to undertake a compliance review of our remediation actions;
 - c) formally warning a bank;
 - d) requiring a bank to undertake a staff training program on the Code;
 - e) naming a bank in the BCCC annual report or website; and
 - f) reporting serious or systemic ongoing instances where a bank has been non-compliant to ASIC.

Acronyms

ABA	The incorporated entity named Australian Banking Association or by an approved change of name
ACCC	Australian Competition and Consumer Commission
AFCA	Australian Financial Complaints Authority
ASIC	Australian Securities and Investments Commission
ATM	Automatic teller machines
BCCC	Banking Code Compliance Committee
BSB	Bank State Branch
NCC	National Credit Code

FINAL VERSION

Definitions

“the Code”	The 2018 Banking Code of Practice as published by the ABA at the commencement date.
Asset finance	Financial accommodation provided by us: (a) for the acquisition, lease, rental, hire purchase or otherwise of a tangible asset that is not land; and/or (b) to fund the payment of any insurance products acquired in connection with that asset.
Australia	Includes the coastal sea of each jurisdiction but does not include an external territory
Bank	Means a corporation authorised by law to carry on the general business of banking in Australia and that is authorised under the Banking Act 1959 to use the word “bank” or a similar expression in its name
Card scheme	Mastercard, Visa, American Express, Union Pay or Diners Club
Commencement date	The date that we first subscribe to the Banking Code of Practice.
Commercial asset financing	Asset finance provided by us to a business.
Commercial asset financing guarantor	A guarantor that is a director, shareholder or manager of a company, that has provided a guarantee for the company’s commercial asset financing.
Complaint	An expression of dissatisfaction made to us in relation to a banking service, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.
Consumer credit insurance	Insurance that provides cover if you can't meet the repayments on your loan because you lose your job, you are sick or injured, or you die.
Days	Calendar days
Default	You are ‘in default’ if you fail to meet any of the terms and conditions of the contract.
Default based action	Exercising a legal or contractual right as a direct result of an event of default.
Device	A device given by us to you that is used to perform a transaction. Examples include, ATM card, debit card or credit card, contactless device.

Director guarantor	A guarantor of a loan who is a director of a company which is to be the debtor for the loan.
Dispute	Has the same meaning as complaint.
Eftpos	Proprietary or domestic debit cards managed by eftpos Payments Australia
Enforcement proceedings	For a small business: (a) commencing proceedings in a court to recover a debt or to recover possession of property subject to security, or (b) otherwise enforcing security by taking possession (or seeking to take) of security property, exercising a power of sale over security property, appointing receivers or receivers and managers, appointing voluntary administrators, or making application to a court for the appointment of provisional liquidators or the appointment of a trustee in bankruptcy, or (c) enforcing a judgment against you, a guarantor, or your or their assets.
Loan	The credit or financial accommodation provided to you under the banking service, including, but not limited to, credit facility, credit contract, loan facility, home loan, personal loans, bill facilities, overdrafts, commercial asset finance.
Merchant	A provider of goods and services.
National Credit Code	Means the National Credit Code set out in Schedule 1 of the National Consumer Credit Protection Act 2009.
Related entity	As defined in section 9 of the Corporations Act 2001 (Cth).
Security	Includes, without limitation, mortgage of and a security interest within the meaning of the Personal Property Securities Act 2009.
Sole director guarantor	A guarantor of a loan who is a director of a company that has only one director, and that company is to be the debtor for the loan.
Standard fees and charges	Fees and charges normally charged by us in respect of a banking service.
Terms and conditions	Terms and conditions specifically applied by us to a banking service, but does not include any other terms and conditions that may apply by operation of law.

Trustee guarantor	A guarantor of a loan where the guarantor and the debtor are the same person; and that person is acting as trustee of a trust in one of these roles and is acting in their personal capacity in the other role.
Unauthorised transaction	A transaction that is not authorised by you.
Vehicle asset financing	Asset finance provided by us to an individual that is not a business, in relation to a motor vehicle and/or any related insurance products.
Vehicle asset finance guarantor	A guarantor who has provided a guarantee for the vehicle asset finance of an individual that is not a business.

FINAL VERSION

Transitional period

For this section **transition date** means:

- i. 1 July 2019; and
- ii. AA date for provisions X, Y, Z.
- iii. [Further transitional provisions].
- iv. ~~for member banks adopting the Code prior to 1 July 2019, the day on which the ABA has published on its website the member bank subscription to the Code.~~

Application to Banking Services

This Code will apply to every banking service for which you enter into an agreement with us on or after the transition date.

For ongoing banking services that we were providing you as at the transition date or where documentation was sent to you before the transition date:

- a) the terms and conditions of that banking service need not comply with this Code, and will continue to apply even if they are inconsistent with this Code. If we provide you with revised terms and conditions after the transition date, those revised terms and conditions will comply with this Code;
- b) this Code applies where it relates to matters that are not specifically dealt with in the terms and conditions of that banking service;
- c) this Code does not affect things we did in relation to that banking service before the transition date. If our banking service arrangements with you as at the transition date complied with the 2013 Code, they will continue to comply with this Code even if this Code would have required something to be done differently.

Application to Guarantees

This Code will apply to every Guarantee which you enter into on or after the transition date.

For Guarantees that you entered into before the transition date or where documentation was sent to you before the transition date:

- a. the terms and conditions of that Guarantee need not comply with this Code, and will continue to apply even if they are inconsistent with this Code. If we provide you with revised terms and conditions after the transition date, those revised terms and conditions will comply with this Code;
- b. if after the transition date we ask you to increase the limit of your Guarantee, we will comply with the relevant provisions of this Code;
- c. this Code applies with this Code where it relates to matters that are not specifically dealt with in the terms and conditions of that Guarantee;
- d. this Code does not affect things we did in relation to the Guarantee before the transition date. If our Guarantee arrangements with you as at the transition date complied with the 2013 Code, they will continue to comply with this Code even if this Code would have required something to be done differently.

2013 Code.

The 2013 Code will not apply to any banking service or Guarantee to the extent that this Code applies.