



**Australian Banking Association –  
Application for authorisation AA1000441  
Interim authorisation decision  
11 July 2019**

## Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of some aspects of the application for authorisation AA1000441, lodged by the Australian Banking Association (**ABA**) on 22 May 2019 (the **application**).
2. The ABA has applied for authorisation to amend the 2019 Banking Code of Practice (the **Code**), in response to recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Royal Commission recommendations**). In addition, the ABA also seeks authorisation to prescribe minimum features of a Basic Bank Account (**BBA**). The ABA proposes that these amendments will come into force from 1 March 2020.
3. Interim authorisation is granted to enable:
  - a) ABA members and the ABA Council to agree to make amendments to the Code in response to specific Royal Commission recommendations, and for individual ABA members to implement the amendments immediately, as follows:
    - i. amend Chapter 16 to specify that basic, low fee or no fee accounts will have no informal overdrafts, no dishonour fees, and no overdrawn fees consistent with points 3 and 4 of Royal Commission recommendation 1.8 (as set out at clause 47 in Chapter 16 of schedule 7 of the application);
    - ii. amend Chapter 42 including to provide that farmers with a loan for the purposes of a farming operation will not be charged default interest during any period the land is in drought or subject to natural disaster, and define the circumstances in which this will apply consistent with Royal Commission recommendation 1.13; and
    - iii. amend Chapter 1 to define who is a farmer and what is a farming operation (as set out in Chapter 1 of schedule 7 of the application).
4. The ACCC considers that further consideration and consultation is required before it decides whether it is appropriate to grant interim authorisation to enable the ABA to agree to amend the Code to prescribe, and for individual ABA members to implement based on amendments to the Code, or take steps towards implementing, minimum criteria for eligibility for a BBA, and minimum features of a BBA (the **Minimum Standards Amendments**) as set out at clause 44A and 44B in Chapter 16 of schedule 7 of the application.
5. The ACCC notes:

- the Royal Commission recommendations did not specifically include the Minimum Standards Amendments;
  - the decision not to grant interim authorisation to this element of the proposed changes at this time does not restrict individual banks from separately responding to and implementing the Royal Commission recommendations; and
  - the ACCC may give further consideration to whether it is appropriate to grant interim authorisation with respect to the Minimum Standards Amendments in its draft determination.
6. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

## The application for authorisation

7. The ABA seeks authorisation for 10 years for itself, 19 of its retail banking Member Banks, and any banks that may become ABA members in the future, to:
- agree to amend the relevant provisions of the Code (described at paragraph 3(a) above) to come into force on 1 March 2020, and
  - implement these provisions
- (the **Proposed Conduct**).

## The authorisation process

8. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

## Interim authorisation

9. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the Proposed Conduct while the ACCC is considering the substantive application.
10. The ABA requested interim authorisation on the basis that:
- it would enable the ABA to make appropriate practical arrangements for publication of the version of the Code containing the relevant amendments on 1 March 2020
  - it would ensure member banks have sufficient time to put systems and processes in place to comply with the revised Code by 1 March 2020
  - it would enable the recommendations of the Royal Commission to be implemented more quickly and avoid consumer confusion by ensuring consistency and certainty.
  - the proposed amendments represent no material competition risk as there are no competitive detriments, and any limited detriment is outweighed by significant public benefit.

## Consultation

11. The ACCC invited submissions from a range of potentially interested parties including industry associations, consumer organisations and state and federal government departments. The ACCC received two submissions. While both were broadly supportive of the proposed amendments, a joint submission from the Consumer Action Law Centre,

Financial Rights Legal Centre and Financial Counselling Australia raised some concerns about, and suggested some possible improvements to, the Minimum Standards Amendments, including:

- that banks should be required to offer BBAs, and proactively identify new *and existing* customers who might be eligible for a BBA, and to do this in a systematic way including through data analysis.
- noting that while BBAs won't charge overdrawn fees, interest can still be charged on any overdrawn amount. The joint submission suggests that no interest should be charged on overdrawn amounts.

12. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website [www.accc.gov.au/authorisations](http://www.accc.gov.au/authorisations).

## Reasons for decision

13. In coming to its decision in relation to interim authorisation, the ACCC considers that there:

- are likely to be public benefits in allowing the ABA to agree to make the relevant amendments, and in allowing individual banks to implement changes in response to the Royal Commission recommendations.
- is likely to be public benefit in ensuring banks have sufficient certainty to implement changes in response to the Royal Commission recommendations.
- is a level of urgency for individual banks to implement the Royal Commission recommendations, and for banks and the ABA to prepare to implement planned changes to the Code.
- may be harm to the ABA and its members if interim authorisation is denied due to having insufficient lead time to prepare for changes to the Code.
- may be harm to consumers should individual banks delay making changes in order to implement the Royal Commission recommendations, due to uncertainty in relation to immunity from competition laws.

14. Interim authorisation does not extend to the Minimum Standards Amendments at this time. The ACCC is awaiting further information, including any submissions and/or amendments the ABA wishes to make in response to the issues raised by the Consumer Action Law Centre, Financial Rights Legal Centre and Financial Counselling Australia, before deciding whether to grant interim authorisation to this element of the proposed conduct.

## Reconsideration of interim authorisation

15. The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.