

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

Date: 7 June 2019

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Subject The ABA's request for interim authorisation

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### 1 Background

On 17 May 2019, the Australian Banking Association (**ABA**) and its member banks applied to the Australian Competition and Consumer Commission (**ACCC**) seeking authorisation to implement in the new Banking Code (which will commence on 1 July 2019 (**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. The ABA also sought authorisation to prescribe certain minimum requirements relating to basic bank accounts (**BBA**) when a Member Bank elects to offer a BBA (the **BBA Proposal**).

The ABA will:

- publish one version of the 2019 Banking Code (following ASIC approval) on 1 July 2019 that will include changes that will come into effect on 1 July 2019. This version of the Code will **not** include any of the changes that are subject to ACCC authorisation; and
- publish another version of the 2019 Banking Code that incorporates those changes subject to ACCC authorisation that are intended to take effect on 1 March 2020.

The ABA seeks interim authorisation from 17 June 2019 (pending a decision on final authorisation) to allow ABA members to agree to amend the Banking Code at the ABA Council meeting on 28 June 2019 and to enable Member Banks to start implementing the 2019 Banking Code (subject to final authorisation being granted). Alternatively, if it is not possible to grant authorisation by 17 June, we request interim authorisation no later than 15 July 2019, so that the ABA Council may agree to implement these measures and allow members sufficient time to put systems and processes in place to comply by 1 March.

Following a call with the ACCC on 3 June, the ABA clarifies in this document its request for interim authorisation and its reasons. Given the urgency, and the fact that the grant of interim authorisation does not raise competition risks, the ABA seeks interim authorisation from 17 June 2019 pending a decision on final authorisation.

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### 2 Request for interim authorisation

Interim Authorisation from 17 June 2019 will enable the ABA to make appropriate practical arrangements for publication of the version of the Code containing the relevant amendments on 1 March 2020. 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, prior to 1 March 2020. The Banking Code amendments are 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

it if it approves the amendments it will do so through two instruments, the first by 1 July 2019, and it will aspire to deal with the second by 1 September 2019.

#### *Certainty for banks*

Interim authorisation is sought to ensure ABA member banks have the time they need to put systems in place to comply with the new requirements. For example, the changes require time-consuming modifications to multiple documents, as well as substantial investments in processes and procedures including staff training. Failure to do those things prior to commencement of the relevant provisions may itself constitute a breach of the 2019 Banking Code or may give rise to multiple breaches of the 2019 Banking Code.

Before making the required investment in those systems and procedures, banks need certainty and a period of 'lead time' from the date on which the changes are approved.

#### *Certainty for Australian customers*

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, the recommendations specifically addressed to the ABA in the Final Report must be implemented and codified with the full support of all Member Banks, subject to authorisation as appropriate. Interim authorisation will enable these recommendations to be implemented more quickly and avoid customer confusion by ensuring consistency and certainty.

#### *No material competition risk*

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

If the ACCC does not provide authorisation, then the conduct in question can be discontinued by the ABA member banks, i.e. the BBA Proposals and/or Agricultural Proposal will be optional and ABA member banks will be able to unilaterally decide whether to implement or not.

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**Australian Banking Association**