



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

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

Final

19 March 2020

1 Application for authorisation

The ABA seeks authorisation on behalf of its retail member banks (**Member Banks**) to implement a small business relief package to support small business customers adversely impacted by the outbreak of COVID-19 for a period of 12 months from the grant of final authorisation.

The implementation of the small business relief package, absent authorisation, may give rise to a contravention of sections 45AF, 45AG, 45AJ, 45AK and/or s45 of the Competition and Consumer Act, 2010.

In light of the urgency of small business customers' needs for relief, the ABA also seeks interim authorisation for the period until the ACCC has granted final authorisation to enable Member Banks to agree the terms of the small business relief package, begin making the changes and enhancements to the systems and processes required and to implement the package as soon as possible.

2 The Applicants

2.1 ABA

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. The ABA benefits from the active participation of 22 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.

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.

At the time of making this application, the following Member Banks have, subject to the ACCC granting interim authorisation, indicated their commitment to implementing the small business relief package:

- AMP Bank
- Australia and New Zealand Banking Group Limited
- Bank Australia
- Bank of Queensland Limited
- Bendigo and Adelaide Bank Limited
- Commonwealth Bank of Australia
- HSBC
- Macquarie Bank

- National Australia Bank Limited
- Suncorp Bank
- Westpac Banking Corporation

(Participating Member Banks)

The ABA has applied for authorisation on behalf of all of its Member Banks to allow other Member Banks to implement the small business relief package if, and when, they elect to do so.

3 Proposed conduct to be authorised

3.1 Description of conduct to be authorised

The ABA seeks ACCC authorisation for Member Banks to agree and implement a support package for small business customers experiencing financial difficulties as a result of COVID-19 (**small business relief package**), to assist small businesses to remain viable and continue to contribute to the Australian economy, while taking care that they should not be in a worse position longer term than they currently are. The small business relief package is intended to provide for the minimum level of relief to be offered to small business customers by the Member Banks who elect to implement it. Some Member Banks may independently elect to implement more extensive relief measures.

The small business relief package:

- includes a deferral of principal and interest repayments for all term loans and retail loans of a **small business customer** for 6 months (interest will be **capitalised**); and
- will be open to all **current small business customers** of a Participating Member Bank, where the customer has advised that its business is affected by COVID-19, in all sectors of the economy, and on an **opt-in basis**.

The small business relief package will be available to customers as soon as Member Banks have indicated to their customers that their internal programs and systems to offer the package have been put in place.

For the avoidance of doubt, any customer of a Participating Member Bank that is entitled to relief under each Participating Member Bank's existing hardship programs, retains that entitlement, in addition to any entitlement under the small business relief package.

In implementing the small business relief package, Participating Member Banks will apply all of the following definitions and criteria:

- the definition of "small business" will draw on the definition in the Banking Code of Practice (as authorised by the ACCC), amended for context. A business qualifies as a "small business" if, at the time of applying for the relief it has less than \$3 million total debt to all credit providers including:
 - any undrawn amounts under existing loans;
 - any loan being applied for; and
 - the debt of all its related entities that are businesses;

- “current small business customer” means small businesses who have an existing indebtedness with the Participating Member Bank and who are current in terms of their repayments on their existing facilities at 1 January 2020;
- “opt-in basis” means that small business customers will be required to contact Participating Member Banks to indicate that they would like their term and retail loan account principal and interest repayments to be deferred on application from the customer;
- customers will self-assess whether their businesses have been impacted by COVID-19 and no further verification will be required – if the other criteria mentioned above are met customers will be entitled to relief under the small business relief package on application; and
- “capitalising the interest” means that Participating Member Banks will, based on existing loan terms in the context of customers’ requirements, either:
 - extend the term of the loan repayment to account for the interest incurred during the deferral period and keep the level of repayments following the deferral the same as that the customer had paid prior to deferral; or
 - increase the level of the loan repayments to account for the interest incurred during the deferral period, but keep the term of the loan repayment the same as if the deferral had not occurred.

For the avoidance of doubt, Participating Member Banks will not apply or require a payment of the capitalised interest in a lump sum at the end of the deferral period.

3.2 Duration of authorisation

The ABA seeks authorisation for the small business relief package for a period of 12 months from the date on which authorisation granted.

3.3 Urgency requires interim authorisation

The ABA also applies for interim authorisation for the period up until the ACCC has granted final authorisation in light of the rapidly deteriorating global and Australian economic context caused by COVID-19, declared by the World Health Organisation to be a global pandemic and resulting in a reduction in supply and demand for goods and services, significant deterioration in cash flow, increases in debt and tightening of credit. Relief is urgently required to enable Participating Member Banks to urgently offer to assist affected small business customers.

4 Significant public benefits

COVID-19 is an unprecedented emergency, the like of which Australia has not experienced in recent times. Small business in Australia is experiencing economic and financial shock to a significant extent and with increasing severity. As the Government implements increased social distancing measures and travel bans and the risk to the general population increases, small businesses are having to withstand a sharp decline in revenue while having to continue servicing their existing financial obligations.

Member Banks are individually implementing their existing hardship programs, but the varied approaches and inconsistent communications to customers (as a result of the individual banks implementing different programs) is contributing to the fear and anxiety that financially vulnerable customers are experiencing.

The rationale behind the small business relief program is to give small business customers comfort and certainty that Participating Member Banks will, at a minimum, provide them with meaningful short-term relief, while taking care that customers should not be in a worse position longer term than they currently are. The ABA and Member Banks are committed to an extensive communications and marketing plan and general socialisation of the small business relief package to the small business community and their customers. Front line staff will be authorised to offer and implement the package to all eligible small business customers without further assessment being required. As mentioned above, each Participating Member Banks is exploring simple and accessible ways for eligible customers to opt-in, including online and/or call centre registration.

As mentioned above, the small business relief package is intended to operate as a minimum requirement for all Member banks who decide to implement it, providing customers with certainty of minimum terms. There are several Participating Member Banks who have indicated a willingness to independently offer relief that extends beyond the scope of the small business relief package.

According to data available to the ABA (current as at February 2019, but which is not anticipated to have changed), the definition of “small business” in the Banking Code of Practice would capture 98% of all small business in Australia. A significant number of those small businesses are customers of Member Banks who have indicated their willingness to commit to the small business relief package.

In addition to supporting the small business customers, small businesses play an important role in our economy, employing around 5 million (or 45% of) Australians and paying more than \$166b in wages and salaries each year. Giving relief to small businesses is hoped to assist small businesses to remain viable and continue to contribute to the Australian economy during this volatile period and beyond into the recovery period.

The ABA submits that the small business relief package is manifestly in the public interest.

5 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 small business relief package which will only dampen competitive decision making on loan repayment terms between banks for a short period and are significantly outweighed by the public benefits that arise.

A range of Member Banks have, subject to the ACCC granting interim authorisation, indicated their commitment to implementing the small business relief package, including several regional and smaller banks.

6 Conclusion

For the reasons set out above, the ABA applies for:

- authorisation to enable Member Banks to agree to, implement and offer the small business relief package for a period of 12 months from the date on which authorisation is granted; and
- interim authorisation until the final authorisation comes into effect to enable the ABA and Member Banks to agree to and implement the small business relief package as soon as possible.

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 Rabobank Australia Limited
- 18 Suncorp Bank
- 19 Westpac Banking Corporation

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



The Hon. Anna Bligh AC

Chief Executive Officer

This 19th day of March 2020