



## Australian Banking Association – Decision to vary conditions of authorisation AA1000441

3 December 2020

### Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to vary the conditions of authorisation AA1000441 by amending the requirements on the Australian Banking Association (the **ABA**) under paragraphs 5.8(b), 5.8(d) and 5.8(f) of the ACCC's determination, made on 21 November 2019 (the **Determination**).

### Background

2. On 21 November 2019, the ACCC granted conditional authorisation to the ABA and its members (**Member Banks**) to allow the ABA to make and implement changes to the 2019 Banking Code in response to recommendations made in the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, relating to informal overdrafts, dishonour fees, and default interest charged on loans secured by agricultural land. The ABA also sought authorisation to prescribe certain minimum requirements relating to basic bank accounts (or **paragraph 47 accounts**). Authorisation was subject to conditions which required the ABA to, among other things, report on data relating to low-income customers (**eligible customers**) who held basic bank accounts.
3. The authorisation made provision for alterations to the reporting conditions as follows:  
*5.8(g). The reporting conditions set out in conditions 5.8(b), (d), (e) and (f) above may be subject to exemptions or variations where requested by the ABA in writing and approved by the ACCC in writing and published on the public register.*
4. Further information regarding the original application for authorisation, the ACCC's Determination, and the ABA's recent request to vary the conditions is available on the ACCC's [public register](#).

### The request to vary conditions

5. On 23 November 2020, the ABA lodged a request to vary the conditions of authorisation AA1000441, specifically paragraphs 5.8(b), 5.8(d) and 5.8(f) of the Determination (the **Conditions**).

### First request

6. The condition set out in paragraph 5.8(d) of the Determination requires the ABA to provide a written report to the ACCC providing information on:
  - actions taken by Member Banks to make low-income customers who are or may be eligible for paragraph 47 accounts aware of their potential eligibility for these accounts, and the special features of these accounts, and
  - the number of paragraph 47 accounts that were opened for eligible customers by each of the Member Banks.

7. The ABA submits that, because some Member Banks only offer paragraph 47 accounts to all their customers (regardless of eligibility on the basis of income), data from these banks would be redundant and not meaningful.
8. The ABA therefore requests a variation to the effect that reporting in response to the condition at 5.8(d) may exclude data from Member Banks where all of the relevant bank's retail transaction accounts are paragraph 47 accounts (the **First Request**).

### Second Request

9. The second request relates to reporting under both 5.8(d) (described above) and 5.8(b).
10. The condition set out in 5.8(b) of the Determination requires the ABA to provide a written report to the ACCC providing information for each of its Member Banks in relation to:
  - the percentage of the total number of paragraph 47 accounts held by eligible customers which have been overdrawn without the account holder's express agreement, and
  - how many times (on average) such accounts have been overdrawn.
11. The ABA submits that, for those Member Banks who offer paragraph 47 accounts to a broader range of customers than eligible customers, and which currently have capability to identify eligible customers, to comply with the reporting conditions at 5.8(b) and 5.8(d)(ii) would require requesting customers to advise their eligibility. The ABA submits that this would result in poor customer experience and increased cost and inefficiency.
12. The ABA therefore requests a variation to the reporting condition to the effect that Member Banks that do not currently have systems and processes to be able to identify eligible customers who hold paragraph 47 accounts, be excluded from reporting in relation to paragraphs 5.8(b) and 5.8(d)(ii). The ABA's requested variation includes the ability for the ACCC to request further, broader reporting on these conditions at a later date (which also requires changes to the reporting periods set out in condition 5.8(f)) (together, the **Second Request**).

### The variation process

13. Pursuant to paragraph 3.8(g) of authorisation AA1000441 the reporting conditions may be subject to exemptions or variations where requested by the ABA in writing and approved by the ACCC in writing and published on the public register.

### Reasons for decision

14. The ACCC considers that the amendments in the First Request:
  - would not in any way diminish the ACCC's objective of this condition in ensuring banks make existing low-income customers aware of the existence of paragraph 47 accounts, because any customer who holds an account at any of these banks by definition holds a paragraph 47 account, and
  - would reduce the administrative and process burden on banks that only offer paragraph 47 accounts, by releasing them from obligations to identify customers who hold relevant government concession cards.
15. The ACCC considers that the amendments in the Second Request:
  - would provide the ACCC and other stakeholders with accurate information to assess whether eligible customers are still experiencing consequences from informal overdrafts, and how frequently these occur, and therefore whether the harm identified by the Royal Commission in relation to this group of account holders has in practice been addressed by the ABA's amendments to the Banking Code,

- would provide an opportunity for the ACCC to require a second round of reporting on these conditions (potentially with a broader dataset) at a later date, should concerns arise in this area, and
- would reduce the administrative and process burden on banks that do not currently have the ability to identify and report on eligible customers who hold paragraph 47 accounts.

16. Accordingly, the ACCC has decided to vary the conditions of authorisation AA1000441. The varied conditions read as follows:

Category A Banks are a sample of large and small banks, which have been selected on the basis of the capability of their current systems and processes to provide the required data, not any other characteristics. These banks are: [REDACTED]

Category B Banks are those banks that offer only accounts which have the special features in paragraph 47 of the Banking Code. These banks are: [REDACTED]

*Informal Overdrafts*

5.8(b)(1) The ABA must provide a written report to the ACCC by the dates specified in condition 5.8(f) below, for publication on the ACCC's public register, providing the following information:

- in relation to each of the Category A Banks, the percentage of the total number of accounts, held by eligible customers and subject to the special features in paragraph 47 of the Banking Code (as outlined in Schedule 1), which have been overdrawn (and which remain overdrawn after the bank's batch payment and dishonour processing completes such that the bank would have, but for the special features in paragraph 47 of the Banking Code, charged a fee and/or interest on the account) during the period specified in condition 5.8(f) below, without the account holder's express agreement, and
- in relation to each of the Category A Banks, how many times (on average) such accounts have been overdrawn during the period specified below.

5.8(b)(2) The ABA must, if requested by the ACCC and subject to the ACCC providing the ABA a six-month notice period prior to the start of any reporting period, by the dates specified in condition 5.8(f) below or other time periods agreed by the ACCC, provide a written report to the ACCC, for publication on the ACCC's public register, containing the information required under b(1)(i) and b(1)(ii), or a similar measure as proxy for the information required under b(1)(i) and b(1)(ii) and agreed by the ACCC, in respect of each Member Bank, or a subset of Member Banks as agreed by the ACCC.

*Proactive identification of eligible customers existing and future:*

5.8(d). The ABA must provide a written report to the ACCC for publication on the ACCC's public register by the dates specified in, and for the period specified in, condition 5.8(f) below, providing the following information:

- actions taken by each of the Member Banks to make existing customers who may be eligible for an account under paragraph 47 of the Banking Code (as outlined in Schedule 1) aware of their potential eligibility and the special features of those accounts in compliance with condition 5.8(c) above, and

- ii. the number of basic accounts, subject to the special features in paragraph 47 (as outlined in Schedule 1) of the Banking Code, that were opened for eligible customers under paragraph 47 by each of the Member Banks.

The reports in response to d(i) and (ii) may exclude data from Category B Banks.

For the first reporting period specified in condition 5.8(f) below the ABA must only report in response to d(ii) in respect of all Category A Banks that are not also Category B Banks.

For the fourth reporting period specified in condition 5.8(f) below, the ABA must only report in response to d(ii) in respect of all Category A Banks that are not also Category B Banks, unless the ACCC requests reporting in respect of all Member Banks or a subset of Member Banks, such notice to be provided to the ABA six months prior to the start of the reporting period.

*Dates for reporting*

5.8(f). The above written reports must be received by the ACCC as follows:

- On or before 31 October 2021 for the period 1 September 2020 to 31 August 2021 (inclusive), in relation to information outlined at paragraphs b(1), d and e above,
- On or before 31 October 2022 for the period 1 September 2021 to 31 August 2022 (inclusive), in relation to information outlined at paragraphs b(2) and e above,
- On or before 31 October 2023 for the period 1 September 2022 to 31 August 2023 (inclusive), in relation to information outlined at paragraph e above,
- On or before 31 October 2024 for the period 1 September 2021 to 31 August 2024 (inclusive), in relation to information outlined at paragraph d above, and
- On or before 31 October 2024 for the period 1 September 2023 to 31 August 2024 (inclusive), in relation to information outlined at paragraph e above.