Australian Banking Association

09 March 2018

The Honourable Kenneth Madison Hayne AC QC
Commissioner
Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
Via email: FSRCenquiries@royalcommission.gov.au

Dear Commissioner,

Australian Banking Association submission to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

The Australian Banking Association (ABA)[1] is pleased to provide the following submission to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Royal Commission**).

As the industry association representing its member banks, with responsibility for industry initiatives such as the Code of Banking Practice, and the ongoing Banking Reform Program, the ABA will be making general submissions in respect of terms of reference (d), (e), and (f). These are in the attached.

Yours sincerely,

Anna Bligh AC
Chief Executive Officer
Anna.bligh@ausbanking.org.au

[1] With the active participation of its members, 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 works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive, accessible and fair banking industry.

Submission to

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

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1. Introduction

1.1 As a cornerstone of the Australian economy, banks have a responsibility to retain the trust and confidence of not only customers, but the broader community.

1.2 Banks are rightly held to high ethical standards and customers and the community expect that banks will meet these standards. Customers also expect that these will not be compromised in the pursuit of profit and shareholder returns.

1.3 In recent years there have been a number of instances where banks have failed to meet the expectations of their customers and of the community. These have included cases from many areas of banks' operations, including financial advice, credit products, insurance, and treatment of customers in hardship. These failings have been the subject of public discussion[1] and have been openly and publicly acknowledged by the banks concerned.[2]

1.4 Since 2008 banks have participated in at least 57 federal inquiries[3] and reviews relevant to the banking industry leading to approximately 420 recommendations impacting on banks. There have also been approximately 44 separate Government reform initiatives arising from these reviews.[4] Initiatives include financial advice reforms, improvements to professional standards, a new executive accountability regime and a new dispute resolution authority among other areas.

1.5 Acknowledging the instances of misconduct and poor conduct, the banking industry, through the Australian Banking Association (**ABA**), initiated the Banking Reform Program in April 2016.[5] The banking reform program includes self-regulatory initiatives which are collectively aimed at improving customer outcomes, improving trust and confidence in the banking sector and better aligning with customer and community expectations.

1.6 The banking reform program has been an intensive and accelerated process of industry transformation. It has involved a significant investment of resources which demonstrates the seriousness of the industry's commitment to change. Self-initiated reform on this scale has never before been undertaken by the banking sector.

1.7 The industry has sought to ensure the direction of reform is guided by independent external reviewers. These reviews were published along with industry responses, involved consultation with stakeholders such as customer advocacy groups and was overseen by an external auditor.

1.8 This submission outlines the banking reform program initiatives.

1.9 Section 3 provides some further information on the role of banks to supplement the Royal Commission Background Paper No 1 "Some Features of the Australian Banking Industry" (**Background Paper**).[6]

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[1] https://www.theguardian.com/australia-news/ng-interactive/2016/apr/29/timeline-banking-scandals-in-australia-since-2009

[2] See evidence before the House of Representatives Standing Committee on Economics *Review of the Four Major Banks* at: https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/Four_Major_Banks_Review/Public_Hearings

[3] This number relates to federal inquiries relevant to the banking industry – specifically as it relates to consumers and banking products. It excludes federal inquiries dealing primarily with life insurance, general insurance and superannuation. It also excludes inquiries that are not directly related to the provision of products and services – for example dealing with taxation, industrial law, privacy law and regulation, and electronic conveyancing among other areas.

[4] See Appendix 1 for a list of federal government initiatives and reforms.

[5] https://www.bankers.asn.au/media/media-releases/media-release-2016/banks-act-to-strengthen-community-trust

[6] https://financialservices.royalcommission.gov.au/publications/Documents/some-features-of-the-australian-banking-industry-background-paper-1.pdf

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2. Banking reform – industry initiatives

Banking Reform Program - summary

2.1 The banking reform program is a package of nine measures designed to ensure that Australia's banks better meet the expectations of their customers and the community.[7]

2.2 The originally announced program contained six measures which the banking industry considered could make a real difference for their customers. The subject areas which informed the measures were based on consultations over time with a wide variety of stakeholders, including regulators, consumer representatives and advocates, and politicians from all sides of politics.

2.3 Banks considered the six measures would address the issues of most concern to these stakeholders about the conduct and culture of banks.

2.4 The ABA made a subsequent announcement on 29 January 2017 of an additional three initiatives developed by the banking industry in response to feedback from consumer groups about the original initiatives and other areas they considered important for banks to address[8].

2.5 The nine initiatives are not only intended to transform the culture and conduct of banks to the benefit of customers, they are also intended to be a clear demonstration that banks are responding to community concerns about how banks operate.

2.6 Much work has already been completed, including independent reviews, identifying areas for improvement, and commencing reform. Implementation of some of the reforms is complete. Implementation of other reforms is underway. It will take time for the impact of these reforms on bank processes and conduct to be fully realised.

2.7 A summary of these measures is below, further detail is on the following pages:

- **REMUNERATION**: Reviewing product sales commissions and product-based payments in retail banking in Australia – Independent review conducted by Mr Stephen Sedgwick AO[9], former head of the Australian Public Service (**Sedgwick Review**).

  The announcement of an independent review, by an independent and eminent Australian, into remuneration in retail banking stemmed from concerns about banks prioritising sales over customer service. It was intended to identify whether there were conflicted remuneration models in retail banking and/or if remuneration models were leading to poor customer outcomes.

  - *Objective* - to strengthen the alignment of remuneration and incentives and customer outcomes
  - *Outcome* – the Sedgwick Review was completed in 2017 with 21 recommendations for reform. All 21 recommendations have been accepted by banks. Mr Sedgwick has recommended that his suggested reforms should be in place by the performance cycle which falls in 2020. Banks have already put in place new guidelines, and individual bank remuneration reform will be implemented no later than 2020 in line with Mr Sedgwick's recommendation.

[7] https://www.betterbanking.net.au/

[8] This was through internal polling research conducted for ABA.

[9] https://www.betterbanking.net.au/wp-content/uploads/2018/01/FINAL_Rem-Review-Report.pdf

- **CODE OF BANKING PRACTICE** : Strengthening the commitment to customers in the Code of Banking Practice (**Banking Code**) - Review conducted by an independent and experienced consultant Mr Phil Khoury.[10] (**Khoury Review**)
- The announcement to bring forward the review of the Banking Code reflected community concerns that the current Banking Code was not sufficiently robust to ensure bank practices met community expectations. Bringing forward the review provided an opportunity to make changes to practices across the banks in a considered and consistent way and to address community concerns more quickly.
  - *Objective* – ensure the Banking Code adequately met expected standards for banks and the relationship with customers, including standards for engagement between both parties.
  - *Outcome* – code review complete in 2016 with 99 recommendations for reform. Banking Code, which is a voluntary code, has been re-written and is currently with ASIC for approval.
- **CUSTOMER COMPLAINTS** : Making it easier for customers when things go wrong through the introduction of dedicated Customer Advocates in banks.[11]
- Banks identified that there was an opportunity to improve oversight of internal dispute resolution mechanisms and improve customer experience. The introduction of dedicated Customer Advocates was seen as a mechanism to provide a greater voice for customers when things go wrong.
  - *Objective* – ensure retail and small business customers have a voice and problems are resolved more efficiently. Ensure complaints are escalated and responded to within specified timeframes.
  - *Outcome* – banks have introduced Customer Advocates. These senior positions in banks have a holistic role that can include not only handling complaints and disputes, but also take a systemic view of the complaints in banks. This can inform changes to product design and system wide changes among other things.
- **WHISTLEBLOWER PROTECTIONS** : Reaffirming support for employees who ‘blow the whistle’ on inappropriate conduct.[12]
- Banks acknowledged and accepted that there was growing public concern with the treatment of whistleblowers and took the opportunity to review the way in which banks managed whistleblower disclosures to ensure enhanced internal accountability of banks.
  - *Objective* - promote highest standards of whistleblower protections and ensure a robust and trusted framework for whistleblowing.
  - *Outcome* – industry has developed and adopted new Guiding Principles to help banks ensure their whistleblower policies meet the highest standard.
- **RECRUITMENT PROTOCOL** : Removing individuals from the industry for poor conduct – Conduct Background Check Protocol.[13] (**recruitment protocol**)
- The ABA originally announced that banks would create an industry register or mechanism to identify individuals who have breached the law or codes of conduct. This would allow

[10] http://cobpreview.crkhoury.com.au/

[11] https://www.betterbanking.net.au/better-service/getting-problems-fixed/

[12] https://www.ausbanking.org.au/images/uploads/ArticleDocuments/149/Final_Whistleblower_Guiding_Principles-Dec-2016.pdf

[13] https://www.bankers.asn.au/images/uploads/ArticleDocuments/127/ABA_Conduct_Background_Check_Protocol_and_Consent_final_120517.pdf

employers to prevent individuals with a poor conduct record from moving around the industry. Work was undertaken to develop a register however there are legal issues including privacy law requirements that mean a register could only be introduced through legislation.

The industry has instead developed two recruitment protocols to achieve a similar objective.

- *Objective* – identify poor conduct among customer facing and non-customer facing bank employees, and minimise movement of people who exhibit poor conduct within the industry.
- *Outcome* – two recruitment protocols have been developed (one for financial advisers and one for bank employees) to make it easier for bank employers to check for instances of misconduct or poor behaviour in previous jobs in the industry. The protocols set up a mechanism for checking references and sharing information amongst banks, through a set of standardised questions and record keeping practices.

- **A STRONG REGULATOR**: Strengthening ASIC's ability to enforce good conduct.
- The industry wanted to ensure that ASIC has the resources to be an effective regulator of market conduct and to fulfil its role in administering the law and protecting the interests of consumers.
    - *Objective* - demonstrate banks' commitment to a well-regulated banking and financial services industry. The industry is supporting a new industry funding model to increase resources to ASIC. Banks initially contributed an additional $121 million to boost ASIC's surveillance and enforcement activities in the areas of financial planning, responsible lending, life insurance, misconduct and breach reporting. This provided additional resources, until a new industry funding model commenced in July 2017. The industry is also supporting the Federal Government's review of ASIC's enforcement powers.
    - *Outcome* – the new industry funding model is in place and banks are working with ASIC and Treasury to enhance the current breach reporting framework.
- **CUSTOMERS IN FINANCIAL HARDSHIP** : Supporting customers experiencing financial difficulty through the establishment of a new debt repayment service
- While banks have a range of measures in place to support customers experiencing financial difficulty, the industry wanted to explore further industry wide support by providing an alternative to commercial debt consolidation services.
    - *Objective* - to assist customers experiencing financial difficulty through help with managing multiple debts.
    - *Outcome* – an industry wide debt repayment service is in design phase with Social Ventures Australia having provided a model for implementation

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- **BETTER SUPPORT FOR FARMERS AND SMALL BUSINESSES** : Providing better support for farmers and small businesses[14] by introducing new standards on valuation practices and how banks appoint receivers.
- Industry acknowledged community concern that farmers, and small businesses, were given insufficient time to resolve issues and were operating in an environment where there was an imbalance of power.
  - *Objective* – to develop tools and resources to help small businesses and farmers maintain and grow their business.
  - *Outcome* – better support for farmers through new and stronger provisions in the Banking Code as well as the development of new industry guidelines on: Appointing investigating accountants and insolvency practitioners to small businesses and primary producers; and appointing property valuers when lending to small businesses and primary producers .[15]
- **ACCOUNT SWITCHING**: Making account switching easier.
- Industry acknowledged that consumers should be able to switch between providers more easily to facilitate greater consumer choice and ensure customers are able to choose products with the features that best meet their financial requirements.
  - *Objective* - helping customers better understand how they can switch accounts.
  - *Outcome* - banks are working with government to develop open banking as a key way of making switching easier. New provisions have been included in the Banking Code and further work is been undertaken on cancellation of recurring payments to facilitate switching.

Independent oversight of initiatives

2.8 The industry appointed Gina Cass-Gottlieb, from Gilbert + Tobin Lawyers, to lead the work on establishing the governance arrangements around implementation, monitoring and reporting on the initiatives, and the selection of an independent expert to oversee the reform program.

2.9 The ABA appointed former Commonwealth Auditor-General, Mr Ian McPhee AO PSM, to oversee the implementation of the initiatives announced in 2016. Mr McPhee was asked to publish quarterly reports on progress of the initiatives to ensure the industry is held accountable to its promises, and is transparent about processes and outcomes.

2.10 The intention of independent oversight is to ensure total transparency over how the industry and individual banks are implementing the reform measures and to ensure that the community can have confidence in the reform process. It is also intended to hold banks publicly accountable to deliver the reform program on time.

2.11 Mr McPhee has published 7 quarterly progress reports, with the latest released on 18 January 2018.[16] Progress reports are available at: https://www.betterbanking.net.au/accountability/

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[14] Banks have also made a number of commitments in response to the *Small Business Loans Inquiry* conducted by the Australian Small Business and Family Enterprise Ombudsman (ASBFEO). Most of these have been incorporated into the revised Banking Code. See: https://www.ausbanking.org.au/images/uploads/ArticleDocuments/127/Small_Business_Loans_Inquiry_-_ABA_Response%20April%202017.pdf

[15] https://www.ausbanking.org.au/images/uploads/ABA-132352-v1-Industry_guideline_-_Appointing_IAs_and_insolvenc y_practitioners.PDF

https://www.ausbanking.org.au/images/uploads/ABA-132351-v1-Industry_guideline_-_Appointing_property_valuers.PDF

[16] https://www.betterbanking.net.au/accountability/ . See: https://www.betterbanking.net.au/wp-content/uploads/2018/01/McPhee-Report-7.pdf p iii.

2.12 The latest report highlights that six of 13 planned measures have been completed and that "in the main, good progress has been made by the industry to date, with stakeholders consulted as part of this review particularly welcoming the transparency shown by the banks in their reporting of progress in implementing revised remuneration policies."

2.13 The banking reform program phase of design and review; identifying areas for improvement; and setting reform in train is nearing completion, two years after the initial industry announcement. The initiatives are ongoing. Mr McPhee is due to release his final report in April 2018.

Banking Reform Program – individual initiatives

Remuneration review (Sedgwick Review)

2.14 In April 2017, Mr Stephen Sedgwick AO completed an independent review of product sales commissions and product-based payments in retail banking (Sedgwick Review).[17]
The Sedgwick Review covered retail bank staff and third parties who receive payments for selling banking products, such as deposit accounts, mortgages and credit cards.

2.15 The aim of the Sedgwick Review was to assess whether, and how, product sales commissions and product-based payments in retail banking could lead to poor customer outcomes.

2.16 The objective was to build on FOFA reforms to strengthen the alignment of remuneration and incentives with customer outcomes.

2.17 Mr Sedgwick concluded that while there are not systemic issues warranting the outright banning of product based payments, some practices need to be changed because they could promote behaviour inconsistent with customer interests. Mr Sedgwick made 21 recommendations for change in relation to the remuneration structures of customer-facing staff and their supervisors and managers, governance and performance management systems that apply across the bank, and payments to third parties, including mortgage brokers.

2.18 A finding of the Sedgwick Review was "that some practices of some banks entail an unacceptably high risk of incentivising poor selling practices, potentially leading to poor customer outcomes. The need to address those risks is heightened in the current climate of poor trust in the industry". A key recommendation of the Sedgwick Review was to stop linking variable rewards directly to sales. That is, direct links between incentives and sales (including for example sales targets, cross sales, and referral targets) should be removed. Front line staff[18] should be rewarded through a balanced scorecard where the majority of performance measures are based on customer satisfaction/customer service and other measures.

ACTION

2.19 The banking industry has committed to implementing all of the recommendations of the Sedgwick Review - covering changes to remuneration and incentives for bank employees, governance and performance management systems, and payments to third parties, including mortgage brokers as recommended by 2020. As noted by Mr Sedgwick, the implementation period reflects that the timing of the performance cycles in any calendar year vary between the banks. He further noted that a three-year adjustment period is consistent with the original intent of the FOFA reforms.

2.20 In addition to changes to remuneration in banks the ABA convened the Combined Industry Forum (**CIF**) bringing bank representatives together with representatives of the mortgage broking industry. The objective of the forum is to address the recommendations of the

[17] http://retailbankingremreview.com.au/

[18] Described as tellers, sellers and their managers.

Sedgwick Review and ASIC Report 516 review as they relate to mortgage broker remunerations. In December 2017, the CIF outlined a set of reforms including changes to remuneration and the introduction of a system of governance, monitoring and reporting to ensure that customer outcomes can be continuously assessed.[19]

2.21 The latest McPhee report indicated that good progress has been made on meeting the recommendations of the Sedgwick Review.[20]

2.22 The McPhee report acknowledged that “changes to remuneration and incentive arrangements are a complex and significant undertaking… While some banks are more advanced than others, not all banks started from the same position and the extent of change required by individual banks is likely to vary significantly. As a result it is not appropriate to draw early conclusions on the status of individual banks’ implementation programs, aside from noting that all banks have advised they are progressing work required to meet their commitments to the Sedgwick Review recommendations and progressing action plans to deliver changes, where necessary.”

Code of Banking Practice Review (Khoury Review)

2.23 The ABA appointed Mr Phil Khoury to conduct an independent review of the Code of Banking Practice (Banking Code). Mr Khoury is a former ASIC Executive General Manager and governance expert.

2.24 While the review of the Banking Code was originally scheduled to take place in 2017, the industry decided to bring it forward to 2016. Bringing forward the review provided an opportunity to make changes to practices across the banks in a considered and consistent way and to address community concerns more quickly. It also provided a mechanism to make a number of different changes through one process.

2.25 The Khoury Review started on 8 July 2016 and was completed on 20 February 2017 with a final report released on that date. The industry response to the inquiry was published on 28 April 2017.[21]

2.26 Mr Khoury conducted two rounds of consultation as well as receiving public submissions. Consultations with stakeholders included regulators, ombudsmen, government representatives, consumer and community groups, small business and farming representatives, politicians and other stakeholders.

2.27 Mr Khoury made 99 recommendations for reform. Recommendations ranged from form and structure, such as changing the way the Banking Code is written, to substantive changes such as having a dedicated section on small business and extending the Banking Code to a broader range of small business customers, introducing a deferred sales model for the sale of consumer credit insurance, and a range of credit card reforms among other areas.

2.28 The industry supported 96 of the 99 recommendations in full, in principle or in part.[22]

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[19] The report of CIF is available at: https://www.ausbanking.org.au/images/uploads/CIF_Report_Submitted_281117.pdf

[20] See: https://www.betterbanking.net.au/wp-content/uploads/2018/01/McPhee-Report-7.pdf

[21] See: https://www.ausbanking.org.au/images/uploads/ArticleDocuments/113/Banking%20Industry%20response%20to%20Khoury%20Review.pdf

[22] These three recommendations were not supported in the Khoury Review:

- Rec 35 – code to specify that a loan is unenforceable if a co-borrower was not receiving a substantial benefit in the loan and the bank should have known
- Rec 44 – code to specify that a guarantee is unenforceable if bank fails to comply with execution requirement
- Rec 63 – requiring banks to set default fees that are reasonable having regard to their costs

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2.29 Since the publication of the final report, the industry has undertaken a comprehensive rewrite of the Banking Code. This has included restructuring the Banking Code and converting it into plain language to make it easier for customers to use as well as including new commitments.

ACTION

2.30 The Banking Code was lodged with ASIC in December 2017 for its approval. This is the first Financial Services sector industry Code submitted to ASIC for consideration under its Code approval powers.

2.31 While the new Banking Code is due to come into effect one year following ASIC approval, some banks have already implemented the new small business obligations and are due to implement the deferred sales model for the sale of consumer credit insurance on credit cards by July 2018.

2.32 Given the significant number of changes contained in the Banking Code, banks will require extensive changes to bank systems, policies and processes as well as the need to conduct staff training. Banks will require a one year implementation period to undertake these changes.

Customer advocates

2.33 A small number of banks have had a Customer Advocate or similar position for some time. In 2016 all retail member banks of the ABA committed to introduce a new senior position – a Customer Advocate.[23] The appointment of a Customer Advocate was considered an important opportunity to give customers a greater voice when things go wrong, improve customer experience and minimise the likelihood of future problems.

2.34 Part of the Customer Advocate's role is to ensure customer concerns that are not resolved through the internal dispute resolution process are afforded a final opportunity to be resolved by the bank.

2.35 Reporting lines for customer advocates depend on the internal structure of each bank, but each customer advocate has an 'executive champion' and has regular access to the CEO, senior executives and/or the Board. The Customer Advocate function in each bank has been structured to be independent of the bank to the extent reasonably possible as suggested in the ABA guidelines published for the role in September 2016.

ACTION

2.36 All member banks of the ABA have appointed a Customer Advocate.

2.37 Guidelines have been published.

Support for employees who blow the whistle on inappropriate conduct

2.38 The industry acknowledged there was growing community concern about the treatment of whistleblowers and wanted to ensure that protections for whistleblowers in bank policies translated into practice.

2.39 On 21 December 2016, the ABA published new Guiding Principles – Improving Protections for Whistleblowers to help banks ensure their whistleblower policies met the highest standard.[24]

2.40 Promontory Australasia conducted a review of whistleblower programs in Australia and internationally, including United States, Canada, United Kingdom and parts of Europe. The review identified core elements of a best practice whistleblower program. The review also found

[23] Further information on customer advocates is available at: https://www.bankers.asn.au/images/uploads/ArticleDocuments/149/ABA-Customer%20Advocate%20Guiding%20Principles-FINAL.pdf

[24] Available at: https://www.ausbanking.org.au/images/uploads/ArticleDocuments/149/Final_Whistleblower_Guiding_Principles-Dec-2016.pdf

Australia's banks have whistleblower programs that in most cases meet or exceed global best practice.[25]

2.41 Banks have identified that in order to improve their whistleblower protections and encourage a 'speak up' culture, they needed to ensure policies translate into practice. This means, among other things, a banks' whistleblower policy is endorsed by the Board and supported by an 'executive champion'. The policy should cover a broad range of disclosures, provide anonymity and be monitored and evaluated for effectiveness. The policy must also provide procedural fairness and a zero tolerance of retaliation against whistleblowers. The Guiding Principles were developed following consultations with stakeholders, including ASIC, Governance Institute, Finance Sector Union (**FSU**) and individuals with experience as whistleblowers.

ACTION

2.42 The original implementation date was 30 June 2017 for all banks, however, the major banks implemented the Guiding Principles by 31 March 2017.

Removing individuals from the industry for poor conduct (recruitment protocols)

2.43 The industry originally announced the implementation of an industry register or mechanism to identify individuals who have breached the relevant law or codes of conduct so employers could make their own informed recruitment decisions. While significant work was undertaken to meet this initiative it was clear there were complex legal issues such as provisions under the Privacy Act which would require Government legislation to set up a register. The industry has instead developed a protocol to assist in the recruitment process.

2.44 The Conduct Background Check Protocol (**recruitment protocol**) protocol is designed to be used during the recruitment process. This protocol applies to bank employees (non-financial advisers) across the banks. The ABA has completed a privacy impact assessment for this protocol.

2.45 This complemented the Reference Checking & Information Sharing Protocol for financial advisers introduced from 1 March 2017. This is for banks who have staff that provide financial advice. The protocol is based on a series of fact-based questions about the performance history of financial advisers focusing on compliance, risk management and advice quality. The protocol aims to promote better information sharing, improve reference checking, and help employers make informed recruitment decisions about financial advisers.

2.46 Both protocols are intended to assist hiring banks through their recruitment process. The objective is to identify job applicants who have a history of poor behaviour in order to prevent them moving around the industry.

2.47 The protocols make it easier to check how staff have performed in previous jobs. The protocol sets minimum standards for checking references and sharing information, through a series of standardised questions and record keeping practices.

ACTION

2.48 To date 19 banks have implemented the recruitment protocol.[26]

2.49 The federal Government has also recently enacted the Banking Executive Accountability Regime and the industry is working to ensure that the new regime is fully implemented on scheduled timeframes.

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[25] Further detail and the Promontory report is available at: https://www.betterbanking.net.au/better-culture/protecting-whistleblowers/

[26] https://www.betterbanking.net.au/wp-content/uploads/2018/01/McPhee-Report-7.pdf , p 23.

Support for ASIC as a strong regulator

2.50 The industry wanted to ensure that ASIC has the resources to be an effective regulator of market conduct.

2.51 As part of the industry commitment the industry supported a new ASIC Industry Funding Model to make sure the regulator has the resources needed to administer the law. The new “user pays” model will ensure that the costs of regulation are borne by those entities that have created the need for it.

2.52 Banks contributed an initial additional $121 million to boost ASIC’s surveillance and enforcement activities to funding in line with the level and intensity of ASIC’s regulatory effort and risk, prior to the federal Government legislating a new funding regime for ASIC.

ACTION

2.53 Funding provided.

2.54 The industry is continuing to work with the Federal Government on the ASIC Enforcement Review. Banks support greater clarity around the breach reporting regime.

Debt Repayment Service

2.55 Banks, through the ABA, are working with financial counsellors to establish a new debt repayment service for people struggling with multiple debts. Unlike commercial debt consolidation services, this new service will be free for people to access and get assistance to put in place a repayment plan to pay off their debts with banks and other lenders and creditors.

2.56 The industry commissioned Social Ventures Australia to develop a company structure and implementation model that will include an independent Board with both bank and consumer groups represented.

2.57 The industry is also improving financial hardship measures with new commitments included in the new Banking Code.

2.58 For example, banks will proactively identify if someone is at risk of getting into financial difficulty so they can work with their customer to help prevent a situation worsening.[27]

ACTION

2.59 The industry expects that the service will be up and running in 2018 for four major banks with a view to expanding to include other banks and other sectors (eg utilities).

Small Business

2.60 The new Banking Code includes a separate section for small businesses with commitments to simplify terms and conditions and give more notice when loan contracts change. Major banks have also introduced simplified standard small business lending contracts; other banks will make similar reforms as part of the implementation of the Banking Code.

2.61 This section of the Code implements the recommendations of the Review of Small Business Lending conducted by the Small Business and Family Business Ombudsman accepted by the banking industry.

2.62 The industry has also developed new industry guidelines on how and when banks can appoint investigative accountants and receivers, administrators or liquidators for a small business or

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[27] Detailed information about banks’ financial hardship assistance programs is available at https://www.ausbanking.org.au/

farm property and the use of valuation practices. These new guidelines were developed in consultation with small business representatives and have been published.

2.63 Banks will also continue to advocate with the Federal and State governments for a national mandated farm debt mediation scheme. Farm debt mediation is a simple, structured and confidential negotiation process where an independent mediator assists the farmer and the bank or other lender to reach agreement about current and future debt arrangements, before a matter goes into a formal court process. Farm debt mediation is mandated in Queensland, New South Wales and Victoria but not in the others.

ACTION

2.64 Guidelines published.

2.65 New measures in Banking Code which is currently with ASIC for approval.

Switching

2.66 The ability to easily and cheaply switch between institutions is key to consumers accessing the benefits of competition in financial services. It helps ensure financial institutions offer competitive pricing and a competitive standard of service. And the ability to access a better deal ensures customers are able to reap the fruits of a competitive market place.

2.67 Facilitating easy and cheap bank account switching helps improve competition in financial services.

2.68 The ABA is incorporating a number of reforms into the new Banking Code of Practice as well as separately working on reforms to facilitate easier bank switching. These new Code obligations include:

- Accounts to be closed when requested without delay
- Banks to provide a list of recurring payments on all accounts to the customer on request
- The provision of clearer and more accessible information on how to close accounts across channels, such as online and in branches. The banking industry has introduced or is working on a number of reforms to make switching easier.

2.69 These new obligations complement the existing Code obligations on banks to promptly process cancellations for direct debits on banking accounts.

2.70 The ABA is also working with card schemes to identify potential solutions to remove impediments to enable banks to carry out customer requests to cancel recurring payment transactions on credit cards.

2.71 In addition, the Australian Payments Network has put in place measures to reduce the turnaround time to three days for the switching facility under which a new financial institution will do the work of switching regular direct debits and credits from the old account.

2.72 The New Payments Platform (**NPP**), largely funded by banks, which has recently become operational, will enable the roll out of additional services to make it easier for customers to switch their accounts between banks.

2.73 Open Data will also facilitate switching between banks by allowing customers to easily use their financial data to “shop around” and obtain the best combination of products and services to meet their financial needs.

ACTION

2.74 New obligations in Banking Code currently with ASIC for its approval.

2.75 NPP introduced.

2.76 Open data consultation closes on 23 March 2018.

3. Banking reform – Government initiatives

3.1 As noted, there have been a number of inquiries that have highlighted cases of conduct that have led to poor customer outcomes in the financial services sector.[28]

3.2 The banks involved in these cases have acknowledged they have failed to meet customer and community expectations and have made mistakes in some cases;[29] and that they can do better. At an industry level, all member banks have acknowledged the need for the industry as a whole to work together to address community expectations. Banks have been working hard to improve customer outcomes, restore community trust and better align with customer and community expectations.

3.3 Not only has the industry led intensive reforms as outlined above, but successive Federal Governments have also implemented reforms to banking and the financial services sector more broadly.

3.4 The current and previous Federal Government has introduced approximately 44 measures for reform of the financial services sector. A list of these measures is attached at Appendix 1. These measures have been extensive in nature. They have included broad measures to enhance consumer protection through:

- The introduction of a national Australian Consumer Law[30] which created a national legislative scheme incorporating: restrictions on the use of unfair contract terms and provisions; statutory consumer guarantees; and consumer product safety among other areas.[31]
- The introduction of national consumer credit regime to protect consumers when applying for credit through the *National Consumer Credit Protection Act 2009* (NCCP Act)[32]. The regime commenced in July 2010. The new regime contains licensing requirements; credit assessment and responsible lending requirements.[33]
- The introduction of comprehensive financial advice reform laws (FOFA) through amendments to the *Corporations Act 2001* to: introduce a best interest duty for financial advisers and ban conflicted remuneration among other areas.

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[28] See for example: Senate Economics References Committee, *Inquiry into the Scrutiny of Financial Advice* https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Scrutiny_of_Financial_Advice; Senate Economics References Committee, *Inquiry into consumer protection in the banking, insurance and financial sector;* Joint Committee on Corporations and Financial Services, *Financial Products and Services in Australia (Ripoll Inquiry)*.

[29] See for example: https://www.commbank.com.au/about-us/news/media-releases/2016/ian-narev-ceo-statement-on-life-insurance.html; https://www.commbank.com.au/about-us/news/media-releases/2014/statement-to-our-customers-from-ian-narev.html . See also evidence before the House of Representatives Standing Committee on Economics, *Annual review of Australia's four major banks*, on 4, 5 and 6 October 2016: https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/Four_Major_Banks_Review/Public_Hearings

[30] *Competition and Consumer Act 2010* (Cth)

[31] See the explanatory memorandum of the Trade Practices Amendment (Australian Consumer Law) Bill (no.2) 2010 at: http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4335_ems_8a3cd823-3c1b-4892-b9e7-081670404057/upload_pdf/340609.pdf;fileType=application%2Fpdf . The Australian Consumer Law is administered by the ACCC as well as state and territory consumer agencies although in the case of financial products and services these are regulated by the ASIC Act not the ACL (Division 2, Part 2 of the *Australian Securities and Investments Commission Act 2001*)

[32] The NCCP Act replaced the Uniform Consumer Credit Code (UCCC). Prior to July 2010 each state had individual consumer credit protection legislation. The NCCP Act includes the National Credit Code (NCC) as Schedule 1 to the Act.

[33] As part of the requirements, credit licensees can only provide credit if after undertaking an assessment as to whether the credit product is 'not unsuitable' for the consumer before entering into the credit contract. As part of the assessment the credit licensee must make reasonable enquiries about the consumers' requirements and objectives as well as their financial situation and take reasonable steps to verify the financial situation.

3.5 More recent Government measures include:

- Competition reforms, including allowing wider use of the term 'bank' so that more lenders are able to market themselves as banks and compete with existing banks; enhanced regulatory sandbox; and requiring banks to report credit data.[34]
- Improved professional standards for financial advisers.[35]
- Improved dispute resolution through the establishment of the Australian Financial Conduct Authority as a new one stop shop for aggrieved customers of all financial services with enhanced jurisdiction and powers.[36]
- Strengthened funding and capability for ASIC.
- Strengthened executive accountability through the Banking Executive Accountability Regime (BEAR). BEAR is intended to increase accountability of senior executives and directors by raising standards of behaviour in line with community expectations. APRA will have the power to remove or disqualify individuals where expectations are not met.[37]
- Introduced a product design and distribution obligation and provided ASIC with a product intervention power.
- Strengthened whistleblower protection laws.

[34] These are through a range of measures including: allowing wider use of the term 'bank' so that more lenders are able to market themselves as banks to compete with existing banks; enhanced regulatory sandbox; and requiring banks to report credit data. See: http://sjm.ministers.treasury.gov.au/media-release/044-2017/

[35] See Appendix 1

[36] See: https://treasury.gov.au/consultation/c2017-232832/

[37] In addition to BEAR, the Government has consulted on potential expansion of ASIC's powers by giving them the power to ban senior managers of financial services and credit companies from the industry.

4. Australian Banking in Context

The role of banks

4.1 The Australian banking system is strong with a significant number of players and a wide variety of products and services available to consumers.[38]

4.2 Australia's banks recognise they benefit from a privileged place in the Australian economy and community, as the primary keeper of the community's savings and as a principal provider of the loans that finance the houses we live in, the places we work and the goods and services that we buy.

4.3 Banks facilitate wide access to finance, with a particular role in providing financing options to segments of the community that could not otherwise directly access finance from the markets, including households and small business. In this way Australia's banks support the growth of business and jobs, and assist households to realise their aspirations.

4.4 Banks fund investment of both small and large businesses, helping to build the infrastructure which boosts economic activity today and lifts overall productive potential to create an efficient modern economy in the future.

4.5 Banks are also large investors in their own right with strong investment in IT and new products and services. Banks' strong technology spend helps drive overall growth in productivity. Over the past five years banks have spent $30 billion on technology. [2] A recent Productivity Commission draft report into Competition in the Australian Financial System acknowledged that "the level of technical innovation in service provision is indicative of a strong and adaptive system that has the capacity and motivation to innovate. From 'tap and go' payments with near real time payment clearance, high uptake of online retail banking, and product comparison websites, Australians are, for the most part, at the forefront internationally of innovative banking services and payments systems." [39]

4.6 Banks provide a lot of jobs for Australians. In 2017 banks employed 132,000 people across Australia[40] and the main retail banks paid $25 billion in wages to staff.[41]

4.7 Banks make a significant financial contribution to the economy beyond their contribution to gross domestic product. Banks are Australia's largest tax payer, paying over $14 billion in taxes to all levels of government in 2016, including more than $11 billion in company income tax. Australian banks also paid nearly $26 billion in dividends, three quarters of which was paid to Australian shareholders, which includes those who own shares in banks directly or indirectly through their superannuation funds.

4.8 Banks are secure and stable. Banks keep deposits and personal information secure. Research shows that Australians trust their banks with personal information. Banks are more trusted with personal information than online retailers, social media companies and government agencies.[42]

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[38] There are 83 banks and 140 ADIs (Authorised Deposit-taking Institutions) in Australia. Customers can access a wide choice of financial institutions and a wide range of financial products and services. See Appendix 2 for the range of deposit products, lending products and credit cards in the market. Source: APRA

[39] Productivity Commission, *Competition in the Australian Financial System*, p 14

[40] Banks - Annual Reports, 2017

[41] Banks - Annual Reports, 2017

[42] Internal polling conducted by Galaxy on behalf of ABA

Self-regulatory framework

4.9 Banking regulation is supplemented by self-regulation in the form of industry codes, standards and guidelines. This provides standards of industry practice over and above the law.

4.10 There are a number of industry codes of conduct in the financial services sector. Each is typically developed by an industry body.

Code of Banking Practice (Banking Code)

4.11 The Banking Code, first created in 1993[43], complements the broader consumer protection framework, and often extends beyond legislated requirements. It is incorporated into all banking service and guarantee contracts, offering an effective mechanism for consumers to seek redress.[44]

4.12 There are 15 ABA member banks with retail banking businesses who have signed the current version of the Banking Code. Signing the new Banking Code, in effect in early 2019, will be compulsory for all ABA members with retail banking businesses[45].

4.13 The Banking Code is overseen by the Code Compliance Monitoring Committee (to be renamed the Banking Code Compliance Committee).[46]

4.14 The Banking Code has undergone three reviews (2001, 2007 and 2016) to ensure the standards it contains remain appropriate and respond to emerging issues and changing consumer needs. The new Banking Code, redrafted following the 2016 review, was lodged with ASIC for approval in December 2017.[47]

4.15 The new Banking Code has been simplified and made more customer focused through new plain language. It is also broader and stronger in its commitments to customers.[48]

4.16 It will:

- have an explicit commitment to ethical behaviour
- be extended to a broader range of small business customers
- require that small business customers will be provided with a longer notice periods for changes to loan terms and conditions – changing this from 10 days to 30 days

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[43] This was as a response to a recommendation of the Federal House of Representative's Standing Committee on Finance and Public Administration's report on the inquiry into banking and deregulation titled *A pocket full of change* https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=reports/1991/1991_pp290report.htm

The Committee was chaired by Stephen Martin. Recommendation 76 (in recommendations on retail banking) stated that "a code of banking practice, contractually enforceable by bank customers and subject to ongoing monitoring by the Trade Practices Commission, be developed as a result of a process of consultation between the banking industry, consumer organisations, Commonwealth regulatory agencies and relevant state Government authorities. The consultative process should take place under the auspices of the Trade Practices Commission. Monitoring should have regard to the degree of compliance with the Code and to the ongoing appropriateness of the provisions of the Code in the light of changing circumstances." P lviii. The Banking Code commenced in 1994.

[44] When the Code was first published, there was no Uniform Consumer Credit Code, National Consumer Credit Code, Unfair Contract Terms legislation or Financial Services Reform Act . The Financial Services Reform Act (FSRA) amended the Corporations Act 2001 to introduce a new regime for the regulation of financial products and services. This included enhanced consumer protection through new disclosure obligations, among other things. See second reading speech of the Financial Services Reform Bill 2001 at http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r1256_ems_086741c1-ddf9-4c92-b391-895cbd2a8504/upload_pdf/39202.pdf;fileType=application%2Fpdf.

[45] At present the Banking Code is voluntary. The ABA Council has resolved to change the membership eligibility rules of the Association to require all members with retail banking businesses to be signatories to the Banking Code of Practice.

[46] Further information on the CCMC is available at: http://www.ccmc.org.au/

[47] https://www.bankers.asn.au/media/media-releases/media-release-2017/customers-set-to-benefit-from-new-banking-code

[48] The new Banking Code is at Appendix 2.

- ensure there is better communication and greater transparency by banks in the use of external property valuers, investigative accountants and insolvency practitioners. For example copies of property valuations and valuer instructions will be provided except when default based action has already commenced; and appointing appropriately qualified and experienced valuers who are members of professional organisations which abide by a similar code of conduct
- prevent the cross-selling of consumer credit insurance for credit cards at the point of sale in bank branches and over the phone (through a deferred sales model)
- provide additional protection to guarantors through a three day cooling off period to consider the terms of a loan before signing up to be a guarantor (replacing the existing one day in the current Banking Code)
- contain a range of credit card reforms including the ability to easily cancel credit cards, and notifying customers before their introductory credit card interest free period for balance transfers expires (these have since been legislated)
- provide that statement fees can be waived or refunded for customers who do not have access to electronic statements
- provide more powers to the Banking Code Compliance Committee to enforce the Code and remedy breaches (see below).

4.17 The Government has recently conducted a review of industry codes in the financial services sector. It canvassed a range of options including making code subscription a condition of licence as well as[49] the content and governance arrangements be subject to ASIC approval. The review has not yet published its report.

Banking Code Compliance Committee

4.18 The Banking Code Compliance Committee (BCCC)[50] was established in 2004 to monitor compliance with the Code.

4.19 Although it does not provide an avenue for compensation for consumers, it can apply sanctions to Code subscribers and thereby supports compliance and remediation actions.

4.20 The BCCC powers will be bolstered as a result of changes made to its Charter following the recent Banking Code review. The Charter has also been redrafted and provided to ASIC. Through strengthening the powers of the BCCC, new sanctions include:

- Requiring the bank to rectify or take corrective action on an identified breach
- Requiring a bank to undertake a compliance review of their remediation actions
- Formally warning a bank
- Requiring a bank to undertake a staff training program on the Banking Code
- Naming a bank in the BCCC annual report or website; and
- Reporting serious, systemic and ongoing instances where a bank has been non-compliant to ASIC.

[49] https://treasury.gov.au/consultation/industry-codes-in-the-financial-sector/

[50] The BCCC was originally called the Code Compliance Monitoring Committee. The name was changed in 2017.

Industry standards, guidelines and protocols

4.21 In addition to the Banking Code, the ABA publishes a number of industry standards, guidelines and protocols that allow the industry respond to emerging issues.[51] Current standards, guidelines and protocols include:

- Conduct background checking protocol
- Customer advocate guiding principles
- Guiding principles – improving protections for whistleblowers
- Guiding principles for accessible authentication
- Branch closure protocol
- Financial abuse guidelines
- Promoting understanding about banks' hardship programs
- Appointing property valuers when lending to small businesses and primary producers
- Appointing investigating accountants and insolvency practitioners to small businesses and primary producers

Adequacy of industry self-regulation, including industry codes of conduct

4.22 The Financial System Inquiry, Interim Report noted that the financial system plays a central role as an enabler of economic activity. It is through a combination of mechanisms, notably competition, innovation and effective regulatory regimes (including self-regulation) that the system can continue to deliver these outcomes for Australians.[52]

4.23 Self-regulation is an integral component of the consumer protection framework. Self-regulation can provide real benefits to individuals, entities and society. The industry recognises the importance of self-regulation and supports the continuous improvement of industry codes and other mechanisms to supplement the regulatory and consumer protection framework.

4.24 Self-regulation has a number of advantages, including that it:

- Is responsive – enabling changes to practice which keep pace with changing consumer expectations and preferences as well as technological change
- Is not a cost burden on Government
- Provides a mechanism for industry to engage with key stakeholders (including consumer advocates and regulators) to understand emerging issues and establish and promote good practice
- Sets higher standards than the regulatory framework and demonstrates leadership across the financial services industry
- Delivers additional benefits and protections to customers
- Allows for continuous improvement.

4.25 Improved consumer outcomes can be achieved through targeted changes to the existing regulatory framework, including self-regulatory measures, a good example being the product and outcome of the reviews of the Banking Code.

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[51] See: http://www.bankers.asn.au/Industry-Standards

[52] *FSI Interim Report*, July 2014, pp3-49. Available at: http://fsi.gov.au/publications/interim-report/

Australian Banking Association

Appendix 1 - Federal Banking Reforms: 2008 – 2018

Improving Professional Standards

Measures		Description
1.	Professional standards for financial advisers: raise the education, training and ethical standards of financial advisers.	Legislation enacted in February 2017 and a new standards body, the Financial Adviser Standards and Ethics Authority (FASEA), has been established. The new education standards come into force from 1 January 2019 and from this date all new advisers will be required to pass an independent exam.
2.	External Dispute Resolution Review (Ramsay Review)	The Government commissioned the Ramsay Review to make recommendations to improve the external dispute resolution framework. The Government released the final report on 9 May and accepted all 11 recommendations, including the establishment of a one-stop shop for all financial disputes – the Australian Financial Complaints Authority – by 1 July 2018.
3.	ASIC capability – funding	The Government is strengthening ASIC's capability through adopting the recommendations of the ASIC capability review, providing additional funding and announcing additional powers. New user pays industry funding regime commenced 1 July 2017.
4.	ASIC Enforcement Review Taskforce – powers	The Government has commissioned a detailed assessment of the suitability of ASIC's existing enforcement toolkit including breach reporting, corporate penalties and industry codes in the financial sector. The taskforce was due to report to Government by the end of 2017.
5.	Bank CEO attendance before HoR Standing Committee on Economics	Require the major banks' CEOs to regularly appear before the House of Representatives Standing Committee on Economics to explain pricing decisions and to discuss their progress in responding to various issues raised in previous Parliamentary inquiries.
6.	Banking Executive Accountability Regime (BEAR)	The Government has introduced legislation to enact the BEAR to increase accountability of senior executives and directors of ADIs, including all banks. Where community expectations are not met, APRA will be empowered to more easily remove or disqualify individuals, ensure that ADIs' remuneration policies result in financial consequences for individuals, and seek substantial fines for ADIs. A registration regime for senior executives and directors of ADIs will also apply.

7.	Internal dispute resolution	To increase accountability, the Government will legislate to require financial firms to report to the Australian Securities and Investments Commission (ASIC) on internal dispute resolution outcomes. Legislation was introduced on 14 September 2017.
8.	Strengthen product issuer and distributor accountability	Introduce a targeted and principles-based product design and distribution obligation that will require issuers of financial products to take steps to ensure products are reaching their intended target market. Consultation process underway. Exposure draft legislation released 21 Dec 2017.
9.	Introduce a product intervention power for ASIC	Introduce a proactive product intervention power for ASIC to enable them to take action such as banning or restricting the distribution of a financial product where ASIC identifies the risk of significant consumer detriment to be legislated.
10.	Whistle-blower protections	New arrangements will be introduced to protect individuals who disclose information about tax misconduct to the ATO and enhance protections for whistle-blowers in the corporate sector. Legislation has been introduced.

Action to reduce consumer costs

Measures		Description
11.	Surcharging regulation	Banned excessive card payment surcharging through new legislation enacted in February 2016 and the RBA's new surcharging standards in May 2016. Ban applied to large merchants from 1 September 2016 and applied to smaller merchants from 1 September 2017.
12.	Interchange fee regulation	Improved interchange fee card payment regulation through new RBA standards. There is now a 0.8 per cent ceiling on credit card interchange fees and the debit card (average) benchmark has fallen to 8 cents. Commenced on 1 July 2017.
13.	Unclaimed monies	Return the time definition of unclaimed bank accounts and life insurance policies to being inactive after seven years and better protect personal details, as recommended by the Financial System Inquiry. Legislation enacted in December 2015.
14.	Introducing an Open Banking Regime	The Government has commissioned a review to recommend the best approach to implement an Open Banking regime in Australia. Productivity Commission's Final Report released on 8 May 2017. Farrell Report released 9 February 2018. Government is considering its response.

15.	Mandatory comprehensive credit reporting	The Government will legislate for a mandatory comprehensive credit reporting regime to come into effect for the four major banks by 1 July 2018, to ensure good customers are rewarded with better deals. Exposure draft legislation has been released
16.	Small Amount Credit Contracts (SACCs) Review	The Government will introduce legislation to increase protections for consumers of Small Amount Credit Contracts and leases of household goods.
17.	Credit card reforms	The Government will legislate to improve consumer outcomes and enhance competition in the credit card market. Legislation introduced into Parliament in October 2017, expected to pass February 2018.

Action to strengthen the stability of the financial system

Measures		Description
18.	Bank capital levels	In response to the Government commissioned Financial System Inquiry, APRA is ensuring that Australian authorised deposit-taking institutions (ADIs) have capital ratios that are 'unquestionably strong', protecting the stability of Australia's financial system. APRA has also adjusted mortgage risk weights required for our larger, internal ratings based, banks, raising their capital levels.
19.	Introduced a major bank levy on banks	Introduction of bank levy on banks with liabilities of at least $100 billion, raising around $1.5 billion per year. From 1 July 2017.
20.	Crisis management toolkit	The Government will strengthen the crisis management powers of financial regulators to ensure stability now and into the future. Legislation introduced into Parliament in October 2017.
21.	Regulation of payments systems, including digital currency	Ensure the RBA and ASIC have the power to regulate new payment systems, including digital currencies, as they emerge.
22.	Strengthening APRA's ability to address financial stability risks	The Government will provide APRA with new a rulemaking power over the lending activities of non-ADI lenders. This is a reserve power to be used by APRA if it determines that these activities are materially contributing to financial stability risks. Rules made by APRA will be enforced through directions and appropriate penalties.

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Action to create competition that helps consumers

Measures		Description
23.	Regulatory sandbox introduction	ASIC launched its regulatory sandbox on 15 December 2016, permitting eligible businesses to test financial and credit services without facing the full requirements of regulatory licensing by ASIC. The Government will introduce legislation to expand the sandbox.
24.	Competition reviews	The Government has tasked the PC to review the state of competition in the financial system. The Government has also provided $13.2 million over four years to the ACCC to establish a dedicated unit to undertake regular inquiries into specific financial system competition issues. The ACCC was provided with a further $7.9 million funding in order to undertake a three year inquiry, commencing 1 July 2017, into the supply of residential building, contents and strata insurance in northern Australia.
25.	Review of the legal frameworks for mutual and cooperative entities	In November the Government accepted all recommendations of a review led by Greg Hammond into the legislation and Corporations Act treatment of cooperative and mutual enterprises. The recommendations will increase competition and consumer choice in the banking and financial services sector.
26.	NISA insolvency reform	Improve our insolvency regime to provide additional flexibility for businesses in financial difficulty. This will provide a safe harbour for directors from personal liability for insolvent trading and from 1 July 2018 places a stay on the operation of ipso facto clauses. Legislation received Royal Assent on 18 September 2017.
27.	Reducing barriers for new banks	The Government and APRA will reduce barriers for innovative new entrants into the banking sector by addressing current obstacles: the limitation on closely-held ownership in the Financial Sector (Shareholdings) Act 1998 (FSSA); the prohibition on the use of the word 'bank' by certain ADIs; and burdensome bank licensing processes. Legislation in Parliament.

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Action to assist small business and farmers

28.	Unfair Contract Terms	Extended Consumer Unfair Contract Terms to cover standard form small business contracts from 12 November 2016.
29.	Small Business and Family Enterprise Ombudsman	Legislation received Royal Assent September 2015. The Ombudsman has been instrumental in a range of reforms to small business lending.
30.	Various measures to enhance Farm Management Deposit Scheme and concessional loans	
31.	Changes to make it easier to establish and close a business.	Changes to safe harbour and bankruptcy provisions. Became law on 18 Sept 2017. Relevant to banking because it reduced the default period of bankruptcy from 3 years to 1 year and the Ipso Facto reforms introduce a stay on the enforcement of contractual rights when a company has entered a formal insolvency process to restructure.

Competitive and sustainable banking system

Banking reform package announced on 12 December 2010. Aimed at:

- empowering consumers to get a better deal;
- positioning smaller lenders as safe and competitive alternatives to the big banks; and
- securing the long-term safety and sustainability of the financial system so it can continue to provide reasonably-priced credit to Australian households and small businesses.

Stream 1 – Empower consumers to get a better deal

	Measure	Description
32.	Ban exit fees for new home loans	Exit fees banned from 1 July 2011.
33.	Boost consumer flexibility to transfer deposits and mortgages	Bank account switching reforms: • Introduction of the APCA switching initiative from 1 July 2012. • The introduction of ASIC's MoneySmart website and booklet to raise consumer awareness of switching options.

34.	Introduce mandatory key fact sheets for new home loan customers	National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill, 2011. Requirement for Key Facts Sheet to be provided to consumers from 1 January 2012.
35.	Empower ACCC to investigate and prosecute anti-competitive price signalling	New laws prohibiting anti-competitive price signalling and information disclosures came into effect on 6 June 2012.
36.	Fast-tracking legislation to get a better deal for Australians with credit cards	National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill.
37.	Establish taskforce with Reserve Bank to monitor and enhance ATM competition reforms	Reported 30 June 2011.
Stream 2 – Support smaller lenders to compete with the big banks		
38.	Build a new pillar in the banking system by supporting the mutual sector	Ongoing
39.	Confirm Financial Claims Scheme as a permanent feature of our financial system	In place
40.	Introduce a third tranche of support for the RMBS market	Complete
41.	Accelerate development of bullet RMBS market for smaller lenders	
Stream 3 – Secure the long-term safety and sustainability of our financial system		
42.	Allow Australian banks, credit unions and building societies to issue covered bonds	*Banking Amendment (Covered Bonds) Act 2011*
43.	Develop a deep and liquid corporate bond market	▶ Encouraged increased issuance of corporate bonds through simplification of prospectus requirements ▶ Increased range of eligible securities issuable by Australian banks with the introduction of covered bonds ▶ Increased retail investor participation through facilitating the trading on the ASX of retail corporate bonds – XTBs.

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Other – Financial Advice

44.	Future of Financial Advice (FOFA)	▶ A ban on conflicted remuneration ▶ Best interest obligations for financial advisers ▶ Opt-in obligation requiring advisers to periodically renew client's agreements ▶ Annual fee disclosure statement ▶ Enhanced powers for ASIC. *Corporations Act 2001* amended in 2012 and 2016.

Appendix 2 - Banking Code of Practice

The Banking Code is attached here - as at 9 March 2018 at 4:00pm:

https://drive.google.com/open?id=1x4Ir8IakBObPBZVZ2WBTofUanThYsNTp

Note, this is subject to potential change following the outcome of ASIC consideration.

About the ABA

With the active participation of 24 member banks in Australia, the Australian Banking Association 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 works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.