



Australian Banking  
Association

# Submission on Round 4 Hearings and Other Issues

**03 August 2018**





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## Executive Summary

Banks have a responsibility to retain the trust and confidence of customers and the broader community. Customers and the community expect that high ethical standards will not be compromised in the pursuit of profit and shareholder returns.

Round 4 of the hearings focused on issues affecting Australians who live in remote and regional communities. Part 1 of this submission provides a response to related issues raised by the Counsel Assisting's Round 4 general questions. These include:

- How banks manage risk in the context of natural disasters and external events;
- What farmers in financial hardship and experiencing enforcement can expect from banks; and
- Improving access to financial services for indigenous communities.

Many of the poor outcomes experienced by consumers in the Round 4 case studies are likely to be improved with the implementation of industry reforms currently in train. The banking reform program has been an intensive and accelerated process of industry transformation. Self-initiated reform on this scale has never before been undertaken by the banking sector. This includes the implementation and support of:

- The new ASIC approved Banking Code of Practice (the new Code), a form of self-regulation for ABA members. Banks will implement the new Code by July 2019.
- 21 Sedgwick recommendations around changes to the way banks remunerate their staff. These changes include removing direct sales incentives, abolishing mortgage broker commissions directly linked to loan size, and introducing balanced scorecards in each bank. The review set a deadline for these changes to be completed by 2020 however banks are already well underway in implementing these reforms.<sup>1</sup>
- Amendments to the current mandatory farm debt mediation processes in each state where available. Banks are working closely with government to ensure farm debt mediation processes are improved, implemented and accessible.

Progress on implementing these reforms is on track and well progressed as reported by independent governance expert Ian McPhee.<sup>2</sup>

Part 2 of this submission considers some high-level themes which have arisen from the four rounds of hearings. These themes may provide useful context when assessing the impacts of any reforms proposed by the Royal Commission. These include:

- **Maintaining the flow of credit.** Growth of credit in Australia is slowing. The impact of further constraints on lending will need to be carefully assessed.
- **The role of self-regulation.** The existing Code of Banking Practice is an effective complement to the regulatory framework. The new Code will deliver improvements to consumer outcomes by addressing many of the issues raised by the Commission's case studies.
- **Responsible lending.** Prospective reforms in open data and consumer credit reporting will help banks make better informed lending decisions.
- **Financial advice.** There are questions around whether the current regulatory framework for financial advice provides sufficient clarity on what constitutes personal and general financial advice and whether these distinctions are properly understood by consumers.
- **Importance of competition.** Effective competition is the most efficient method to ensure banks provide products and services that meet the requirements of customers. Proposed

<sup>1</sup> [https://www.betterbanking.net.au/wp-content/uploads/2018/04/McPhee-Report-8\\_Final\\_17-4-18.pdf](https://www.betterbanking.net.au/wp-content/uploads/2018/04/McPhee-Report-8_Final_17-4-18.pdf)

<sup>2</sup> <http://www.ausbanking.org.au/media/media-releases/media-release-2018/final-mcphee-report-shows-reform-well-underway>



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reforms should carefully analyse the impacts on competition and the benefits and costs to individuals and small business customers, as well as the broader economy.

## 1. Round 4 general questions

### 1.1 Lending risks

#### 1.1.1 Alignment of borrower and bank interests

##### **(Questions at T4108:16-19 and T4126:15-18)**

These questions are premised on the notion that the interests of agribusiness customers and banks are somehow in competition. The ABA considers that the interests of the bank and borrower are generally aligned.

Banks have to balance the interests of three groups – borrowers, depositors and shareholders. Banks want financially healthy borrowers (in this case agribusiness customers) to generate the income they need to pay returns to depositors and shareholders. Banks also need to ensure that borrowers repay the borrowed funds.

No one benefits from a borrower in financial difficulty. A financially troubled borrower may be unable to fully service the interest payments on a loan, and in the extreme, may be unable to repay some or all of the borrowed funds. This is not in the interests of borrowers, depositors or shareholders. It is also not in the interests of the wider community if businesses in financial difficulty are not able to pay other creditors, such as local businesses.

Banks need to be alert to signs of emerging financial distress of borrowers. Banks will endeavour to address emerging issues and will help to put a troubled business back on a firm financial footing. Such actions are in the best interests of the borrower by contributing to the longevity of the business, and are also in the best interests of depositors and shareholders in underpinning required returns and the repayment of capital. In this environment, the interests of borrowers, depositors and shareholders are aligned – there is no “competition” or conflict of interests.

In a small number of cases banks may assess that a business is no longer viable. In this instance, it may be in the commercial interests of all parties for the business to further consider its future. This may provide the best chance of preserving some equity at least for the business customer and provide the best opportunity for some servicing and repayment of the borrowed funds. There is no advantage to any party for a failing business to continue operating to the point where all business equity is lost. That is the worst-case outcome for the business customer, and also not in the interests of depositors or shareholders of the bank.

The ABA acknowledges that the assets used to secure a small business loan can have a value to the business owners above and beyond their commercial value. The assets used to secure small business loans are often the family home and farm. When these assets need to be sold to repay a debt, it can seem from the borrower’s perspective that the bank and borrower interests do not align.

Banks need to treat customers with care, fairness and compassion during what is a very difficult time. For this reason any foreclosure action should be taken according to the Code, industry guidelines and relevant legislation.

Clause 9 of the new Code specifically addresses how banks should address financial hardship. It requires banks to work with small business and consider putting in place arrangements for those experiencing financial difficulty to make repayments more manageable, for example the deferral of scheduled loan repayments, waiving of fees and charges, restructuring of loans and debt consolidations. These arrangements are assessed on a case-by-case basis by banks according to their own practices and by the unique circumstances of their customers.

#### 1.1.2 Natural disasters and external events

##### **(Questions at T4122:3-9 and T4122:11-15, question)**

These questions address the actions of banks regarding agribusiness customers in the event of natural disasters and external events.

The broad underlying issue is who should bear and manage the risk attached to a business venture – the business customer or the bank.

Business risk is two sided.

A business can be impacted by favourable events, for example higher than expected agricultural yields or higher than expected commodity prices. This “positive” risk endows greater than expected financial benefits on the business. All of these positive gains are reaped by the business itself. The best outcome for a bank, irrespective of business conditions, is simply that the business customer services the loan, as agreed, and repays the loan in full according to the agreed schedule.

A business can also be impacted by unfavourable events, for example, lower than expected yields or prices, or natural disasters such as drought, floods, and cyclones. This “negative” risk imposes lower than expected financial benefits or in extreme circumstances losses on the business. Such negative events can cause financial stress for the business. In these circumstances banks will assess the financial viability and riskiness of the business – essentially, they will re-evaluate the probability of loss attached to the loan – and may take steps to protect the loan, including higher interest rates or enforcement of the loan.

Banks are unable to completely eliminate downside risk in the event that customers are simply unable to fully service or repay loans. In effect, the spectrum of risk faced by banks on loans is tilted to the downside.

### 1.1.3 Moratorium on default interest and enforcement

#### (Questions at T4122:3-9, T4122:11-15)

These questions raise the issue of whether banks should forgo some actions to protect their debt in the event of natural disasters - a moratorium on default interest or enforcement. These questions ask whether banks should accept more of the negative business risk.

As noted in their submissions, many banks already offer moratoriums on enforcement and default interest in the event of natural disasters.

- ANZ implemented a moratorium for customers in crisis through the December 2014 support package offered to farmers in Queensland and NSW impacted by drought. ANZ also offered a dairy industry relief package in 2016 and a drought support package for all declared drought areas in July 2018.<sup>3</sup>
- The Commonwealth Bank (CBA) extends all relevant natural disaster relief offerings to its affected customers.<sup>4</sup> In June 2018 CBA made available a drought assistance package for impacted customers that provided extended special assistance measures that, amongst other things, included a business loan repayment pause for an agreed term (within the original contracted term remaining), an extension to a customer's business loan term for an agreed period, waiving fees and charges related to business loan structures and cash management options.
- NAB utilises the resources of dedicated agribusiness bankers to consider the individual circumstances of the relevant agricultural customer and develop a bespoke strategy. The strategy developed may include the provision of additional financial accommodation or the provision of temporary relief including relaxation of covenants, the deferral of amortisation or interest payment relief.<sup>5</sup> For example, in July 2018 a drought assistance package was introduced for NSW and Queensland farmers.<sup>6</sup> Also in July 2018, NAB announced that

<sup>3</sup> <https://financialservices.royalcommission.gov.au/public-hearings/Documents/Round-4-written-submissions/ANZ-written-submission.pdf>

<sup>4</sup> <https://financialservices.royalcommission.gov.au/public-hearings/Documents/Round-4-written-submissions/CBA-case-study-submission.pdf>

<sup>5</sup> <https://financialservices.royalcommission.gov.au/public-hearings/Documents/Round-4-written-submissions/NAB-written-submission.pdf>

<sup>6</sup> <https://news.nab.com.au/nab-supports-customers-affected-by-drought-in-nsw-and-qld/>

customers in Government declared drought areas who fall into arrears will not be charged a higher default interest.<sup>7</sup>

- Westpac also has a comprehensive disaster relief package to assist eligible customers through unforeseen events such as floods, drought and fire.<sup>8</sup> The package is designed to ensure that viable operators are able to stay on their properties, underpinning the long-term sustainability of their farms.<sup>9</sup>

These actions by banks are voluntary, and tailored to meet the particular circumstances faced by customers. Such tailored moratoriums allow the customer time to wait out the adverse events, until business conditions improve and facilitate the return of the business to financial health.

Ultimately, it must be the commercial decision of individual banks as to whether, and when, moratoriums on charging default interest and enforcement should be applied. The ABA does not support legislative or regulatory prescriptions as this would impede the flexibility that needs to be exercised by banks in what are difficult circumstances for agribusiness customers.

## 1.2 Financial hardship and enforcement

The industry is currently involved in two policy initiatives which will impact how and when enforcement is undertaken by banks. These are:

- The new Code; and
- Supporting the development and implementation of a mandatory, national Farm Debt Mediation regime.

### 1.2.1 New ASIC approved Banking Code of practice

#### (Questions at T4108:13-16, T4126:23-24)

The new Code expresses the banking industry's key commitments and obligations to individual and small business customers (including agribusiness customers) on standards of practice, disclosure and principles of conduct for their banking services.<sup>10</sup> Banks that adopt the new Code must reflect this in the terms and conditions of their individual and small business lending contracts.

These commitments and obligations apply to all businesses that:

- Had an annual turnover of less than \$10 million in the previous financial year; and
- Have fewer than 100 full-time equivalent employees; and
- Have less than \$3 million total debt to all credit providers.

For most agribusinesses,<sup>11</sup> the new Code will provide additional protections which limit the circumstances of enforcement actions, improve transparency, and clarify the minimum standards to be applied to borrowers in times of financial difficulty.<sup>12</sup> These include:

- Removing non-monetary defaults with limited exceptions.
- Additional protections for guarantors.
- Increasing the notice period for renewal or rollover of credit facilities from one month to three months.

<sup>7</sup> <https://news.nab.com.au/backing-rural-and-regional-australia/>

<sup>8</sup> <https://www.westpac.com.au/business-banking/industries/agribusiness/disaster-relief/>

<sup>9</sup> <https://financialservices.royalcommission.gov.au/public-hearings/Documents/Round-4-written-submissions/Westpac-written-submission.pdf>

<sup>10</sup> Exhibit 3.144 Statement of Ms Bligh with its exhibits

<sup>11</sup> The bulk of agribusiness customers are likely to meet the debt test, with most average farm debt (total credit outstanding) per business entity being under \$500,000 as at 30 June 2017 (ABARE data). Most would qualify as small businesses as they would also meet the employee and turnover thresholds.

<sup>12</sup> Exhibit 3.144 Statement of Ms Bligh with its exhibits

- 30-day notice period for unilateral variation of terms in small business loans or other credit agreements (except for interest rate changes).
- Requirements of a bank when a small business customer experiences financial difficulty and requires assistance.
- Requirements for banks to be fair and transparent when using an external property valuer or appointing an investigating accountant or insolvency practitioner.<sup>13</sup>

The attached Appendix provides additional detail on these protections.

### 1.2.2 Farm debt mediation

#### **(Questions at T4114:25-29, T4122:15-18 and T4122:18-20)**

Banks make substantial efforts to work with agribusiness customers in financial difficulty and encourage farmers to contact their bank to discuss arrangements as soon as possible. The Commission's case studies show that banks can still be working with customers for many years after the first signs of financial difficulty appear.

In addition to the protections offered under the new Code, the banking industry has strongly advocated for a nationally consistent and mandatory approach to farm debt mediation to ensure all farmers are treated fairly across Australia. Farm Debt Mediation (FDM) can help farmers in financial difficulty to re-establish financial viability or exit the industry with dignity.

The ABA supports the consistency that a national regime would provide. A national system will assist in more efficient resolution of disputes where the farmer operates in more than one state. Importantly, related federal legislation will also enable speedy resolution of conflicts when they arise.

The case studies focusing on the Queensland cattle industry presented at the Commission were subject to the voluntary Queensland Farm Finance Strategy. Since then, a mandatory Farm Business Debt Mediation Scheme (FDMS) in Queensland has been introduced which is administered under the *Farm Business Debt Mediation Act 2017 (Qld)*. The FDMS provides farmers with the ability to negotiate with their bank or enter into an agreement with their bankers about the management of the debt before the bank can commence debt recovery proceedings including taking possession of the property.

#### Documentation required under Queensland FDM

The Commission questioned whether further documentary requirements are needed for FDMS. The ABA considers that the current Queensland FDMS documentary requirements are significant. The mandatory Queensland FDMS has clear requirements on banks and farmers to provide documents. To comply with the good faith requirements of the Act banks are required to provide farmers with:

- The farmer's application for the farm business debt and farm mortgage, and any variation of the debt or mortgage.
- The contractual relationship between the farmer and the mortgagee, including any loan or mortgage documents.
- Correspondence between the farmer and the mortgagee about changes to the farm business debt or the farm mortgage.
- The farmer's default under the farm mortgage and any action taken by the mortgagee in relation to the default; and
- Any other matter prescribed by regulation.

The bank has 30 business days after receiving the notice to provide the documentation.

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<sup>13</sup> Statement at [72]

## NSW Scheme should be rolled out nationally

The ABA considers that the recently reviewed NSW scheme should be adopted as the national model. This will provide more regulatory certainty. The NSW model has been in place since 1994 and has an established track record of decision making, streamlined processes and a cooling off period.

Amendments to the NSW Act will be proclaimed in September 2018. These amendments will provide amongst other things:

- Allowing mediators to facilitate the exchange of documents.
- Increasing convenience. Mediations will be required to be held in convenient locations for the farmer where possible.
- Reducing cross-border property legal issues. It will recognise farm debt mediation in another state where properties are on the border.
- Improving fairness by providing access to an appeal system.
- Accessing external dispute resolution services through the Australian Financial Complaints Authority (AFCA). Complaints against lenders can be taken to AFCA (even after a mediation has taken place).

## 1.3 Remuneration and incentive policies

The issue of remuneration policies and the incentives for employee behaviour has been raised in a number of the case studies over the four rounds of hearings.

The issue was broached again in Round 4. The industry is addressing this issue through its implementation of the Sedgwick Review Recommendations<sup>14</sup>

### 1.3.1 The Sedgwick Review

#### (Question at T4118:24-32)

In April 2017, Mr Stephen Sedgwick AO completed an independent review of product sales commissions and product-based payments in retail banking (the Sedgwick Review). The review considered whether remuneration and incentives were drivers of poor consumer outcomes.

The Sedgwick Review examined and made recommendations on product sales commissions and product based payments received directly or indirectly by people selling retail banking products. A key point is that products that were in scope **encompassed small business lending, including agribusiness**.

The Sedgwick Review found “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”. Mr Sedgwick concluded that some practices need to be changed because they could promote behaviour inconsistent with customer interests. A key recommendation of the Sedgwick Review is to cease linking variable rewards directly to sales targets for individual employees. Front line staff should be rewarded through a balanced scorecard where the majority of performance measures are based on customer satisfaction/customer service and other measures.<sup>15</sup>

Adoption of the Sedgwick recommendations will mean in respect of retail bank staff and managers:<sup>16</sup>

- Incentives are no longer paid to any retail staff based directly or solely on sales performance (see Recommendations 2 and 7).

<sup>14</sup> [https://www.betterbanking.net.au/wp-content/uploads/2018/01/FINAL\\_Rem-Review-Report.pdf](https://www.betterbanking.net.au/wp-content/uploads/2018/01/FINAL_Rem-Review-Report.pdf)

<sup>15</sup> Described as tellers, sellers and their managers.

<sup>16</sup> [https://www.betterbanking.net.au/wp-content/uploads/2018/01/FINAL\\_Rem-Review-Report.pdf](https://www.betterbanking.net.au/wp-content/uploads/2018/01/FINAL_Rem-Review-Report.pdf)

- Instead, eligibility to receive any personal incentive payments will be based on an assessment of that individual's contribution across a range of measures, of which sales (if included at all) will not be the dominant component (Recommendations 3, 4, 5, and 6); and the maximum available payments will be scaled back significantly for some roles (Recommendation 8).
- Retail bank culture will be demonstrably ethically and customer oriented (Recommendation 9).
- A significant investment will have been undertaken, as necessary, to ensure that performance is managed consistently with such a philosophy, supported by proactive steps to develop leadership and management skills at all levels so that management practices match the intent of the recommendations (Recommendations 10,11, and 12). and
- With clear and consistent leadership shown by the Board and the most senior managers of the bank (Recommendations 13 and 14).

All 21 recommendations were accepted by banks and banks committed to implementing them in full as quickly as possible. All banks have agreed the reforms will be in place no later than the performance cycle which falls in 2020. After that point, the incentives for bank employees engaged in small business lending including agribusiness will be in line with those for employees selling other retail products.

## 1.4 Issues faced by Indigenous people accessing banking services

Banks are working towards raising cultural awareness and improving services to indigenous communities and vulnerable customers.

### 1.4.1 Overcoming obstacles

#### (Question at T4148:6-13)

The Commission questioned what policies may be in place to assist customers with overcoming the common obstacles faced by indigenous bank customers.

The ABA's current Code contains specific requirements to improve access for indigenous customers. Clause 8 *Customer in remote Indigenous communities* requires banks to do the following:

*If you are a member of a remote Indigenous community, we will take reasonable steps to:*

- make information about banking services that may be relevant to you available in an accessible manner;*
- at your request, provide you with details of accounts which may be suitable to your needs, including in a remote location. This information may include details of our accounts which attract no or low standard fees and charges;*
- assist you with meeting identification requirements (having regard to our obligations under the Anti Money Laundering and Counter Terrorism Financing Act 2006);*
- appropriately train staff who are regularly dealing with you in a remote location to be culturally aware; and*
- consider publicly-announced key Commonwealth, State and Territory government programs, such as income management programs, that may be relevant in providing our banking services to you.*

In regard to front-line implementation, Clause 9 *Staff training and competency* of the current Code requires bank staff to be trained in the Code requirements as follows:

*We will ensure our staff (and our authorised representatives) will be trained so that they:*

- can competently and efficiently discharge their functions and provide the banking services they are authorised to provide in compliance with this Code; and*
- have an adequate knowledge of the provisions of this Code and its application to banking services.*

Chapter 13 of the new Code *Being inclusive and accessible* demonstrates banks commitment to being inclusive and providing accessible banking services. It has been specifically developed with consideration for older customers, people with disabilities and indigenous Australians. This section is worded as follows:

*We believe in inclusive banking services.*

32. *We are committed to providing banking services which are inclusive of all people including:*

- a) *older customers;*
- b) *people with a disability; and*
- c) *Indigenous Australians, including in remote locations.*

33. *We will train our staff to treat our diverse and vulnerable customers with sensitivity, respect and compassion.*

*We are committed to providing banking services which are accessible*

34. *We are committed to improving the accessibility of our banking services for people with a disability and older customers. We will take reasonable measures to enhance their access to those services.*

*When providing banking services to Indigenous customers*

35. *If you tell us you are an Indigenous customer, we will take reasonable steps to make information about our banking services accessible to you. We will also:*

- a) *tell you about any accounts and services that are relevant to you;*
- b) *tell you about any accounts or services that have no, or low standard fees, if our enquiries indicate you may be eligible for these and help you transfer to another account you want; and*
- c) *help you meet any identification requirements.*

*When providing banking services to remote customers.*

36. *We will take reasonable steps to make information about our banking services accessible to customers in remote communities, including remote Indigenous communities.*

37. *We will provide cultural awareness training to staff who regularly assist customers in remote Indigenous communities.*

In addition to the existing and new provisions in the new Code, the industry has worked to address the key issues for ADIs identified by the Commission which are:

- Fees and practices associated with ATM and informal overdrafts;<sup>17</sup> and
- Meeting identity requirements.<sup>18</sup>

These issues are considered below.

## 1.4.2 Fees and practices

### ATM Fees

Counsel Assisting noted that remote and regional communities have reduced access to bank branches and rely more on ATM's to access cash withdrawals and account balances.<sup>19</sup> Counsel Assisting noted that submissions from community representatives, consumer organisations and ASIC considered ATM fees to be a significant issue faced by indigenous people accessing financial services.

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<sup>17</sup> T3695:35

<sup>18</sup> T3695:40

<sup>19</sup> T3692:31

Many banks have recognised that ATM withdrawal fees is an issue for all in the community.

- ANZ, the Commonwealth, NAB, Westpac and Suncorp abolished withdrawal fees from their branded ATMs for both customers and non-customers in 2017.<sup>20 21 22 23</sup> This is likely to provide a significant benefit to those communities relying on ATMs provided by these banks.
- Macquarie platinum accounts and digital banks, ING Direct and ME, have for many years waived ATM fees for their customers.

Using ATMs provided by other banks and independent ATM networks (such as those available in convenience stores, petrol stations, clubs and pubs) can still incur fees.<sup>24</sup>

Customers in very remote communities may not have access to a fee-free ATM. In these cases, the ABA's implementation of the fee-free ATM agreement can provide fee relief. The implementation involved the provision of 84 ATMs by certain banks across very remote communities at which cash withdrawals and balance inquiries could be made without charge. ASIC told the Commission that the fee-free ATM trial has significantly reduced the impact of transaction fees in communities where a fee-free ATM is located.<sup>25</sup>

## Overdrawn fees

### (Questions at T4151:32-33, T4146:36-41)

Counsel Assisting noted that overdrawn fees from informal overdrafts were raised as an issue by community groups.

This issue is addressed through the new Code which requires members to assist indigenous customers to access appropriate accounts. Clause 35 *When providing banking services to Indigenous customers* requires the following:

*If you tell us you are an Indigenous customer, we will take reasonable steps to make information about our banking services accessible to you. We will also:*

- *Tell you about any accounts and services that are relevant to you;*
- *Tell you about any accounts or services that have no, or low standard fees, if our enquiries indicate you may be eligible for these and help you transfer to another account you want;*  
*and*
- *Help you meet any identification requirements.*

The ABA does not support the banning of overdrawn fees for informal overdrafts.

## Fee-free accounts

### (Question at T4147:47-4148:1)

For those customers wishing to avoid incurring informal overdraft fees, banks offer fee-free accounts to customers in receipt of Centrelink payments and in some cases, offer an informal overdraft opt-out on their existing account.<sup>26</sup>

As noted above, banks are required to assist self-identified indigenous customers with accessing appropriate accounts including fee-free accounts under the current and new Code.

<sup>20</sup> <https://www.commbank.com.au/cs/newsroom/commonwealth-bank-cuts-atm-withdrawal-fees-201709.html>

<sup>21</sup> <https://news.nab.com.au/nab-removes-atm-withdrawal-fees/>

<sup>22</sup> <http://www.abc.net.au/news/2017-09-24/commonwealth-bank-and-westpac-axe-atm-fees-for-non-customers/8979250>

<sup>23</sup> <https://www.suncorp.com.au/about-us/news/media/suncorp-removes-atm-fees.html>

<sup>24</sup> <https://www.finder.com.au/australian-bank-atm-fees-charges>

<sup>25</sup> T3697:9

<sup>26</sup> T4150:46

## Code of Operation

### **(Question at T4151:33-35)**

The collection of fees may be limited for those in receipt of Centrelink payments by the application of the Code of Operation. The ABA is a co-signatory to the revised Code of Operation, released in June 2015 by the Department of Human Services and the Department of Veteran's Affairs. The Code of Operation is referenced in the Code and recognised as an industry standard. Information on this standard is available on the ABA's website.<sup>27</sup>

### 1.4.3 Identity requirements

#### **(Question T4148:1-4)**

Banks recognise that some indigenous customers and other customers have difficulty providing identification documentation and need alternative identification options to access financial services. The identification required by banks to open or access a bank account is largely driven by Australian Transaction Reports and Analysis Centre (AUSTRAC) anti-money laundering requirements.

AUSTRAC have developed a guide to overcome difficulties faced by indigenous customers in providing identification documents.<sup>28</sup> AUSTRAC recommends that, where appropriate, reporting entities consider adopting a flexible approach to the identification and verification of persons of Aboriginal and/or Torres Strait Islander heritage, while remaining mindful of social and cultural sensitivities. This may include using 'reliable and independent' means of alternative identification.

The ABA continues to work with AUSTRAC on its regular reviews of its Compliance Guide including the current consultation on the AUSTRAC Compliance Guide on *Self-attestation of identity* and *Independent review of Part A of the AML/CTF Program*.

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<sup>27</sup> <https://www.ausbanking.org.au/industry-standards>

<sup>28</sup> <http://www.austrac.gov.au/aboriginal-andor-torres-strait-islander-people>

## List of questions answered

### Farming Finance

#### ANZ acquisition of Landmark loan book

- T4108:13-16 What does it mean for a bank to act fairly and reasonably towards a customer in a consistent and ethical manner? What does that obligation require of a bank in relation to agribusiness customers in an enforcement context?
- T4108:16-19 What weight should a bank give to the interests of the customer when making decisions about agribusiness customers experiencing financial difficulty? How should a bank balance the competing interests of the customer and the bank in that context?

#### Internal valuations - Rabobank and Bankwest case study

- T4114:25-29 Are the legislative obligations on financial services entities to provide documents prior to a farm debt mediation, such as the obligation in section 21 of the Farm Business Debt Mediation Act in Queensland, sufficient? Should they be extended to oblige financial services entities to provide information on request, as well as documents?

#### Bankwest case study

- T4118:24-32 Do remuneration and incentive policies that reward bank employees for the volume of loans sold create an unacceptable risk that bank employees will prioritise the sale of loan products over the bank's responsible lending obligations; over the bank's statutory obligations, including to provide loans in a manner that is efficient, fair and honest, and to have in place adequate arrangements to ensure that customers are not disadvantaged by any conflict of interest that may arise in relation to the provision of loans; and over the bank's obligations to act fairly and reasonably towards customers in a consistent and ethical manner?

#### NAB case study

- T4122:3-9 Should there be a moratorium on the charging of default interest in respect of farm debts secured by farm debt mortgages during periods when the farm property is affected by natural disaster? If so, how should such a moratorium be implemented? By legislation, by an industry code, or by some other means? In what circumstances should the moratorium come into effect? In what circumstances should the moratorium be lifted?
- T4122:11-15 Should there be a moratorium on the taking of enforcement action in respect of farm property while that property is, or soon after that property has been, affected by natural disaster? If so, how should such a moratorium be implemented, in what circumstances should it come into effect, and in what circumstances should it be lifted?
- T4122:15-18 Should provision be made in the farm debt mediation Acts or another legislative instrument or binding code to facilitate earlier discussion between financial services entities, farmers, and third parties such as rural financial counsellors in cases where farmers face actual or probable financial distress?
- T4122:18-20 Should there be a uniform Farm Debt Mediation Act? If so, is any of the current Acts in a suitable form for uniform adoption?



## Loans made by Rural Bank to Queensland cattle industry farmers that became non-performing over the past 10 years

- T4126:15-18 How should banks' balance the competing interests of strengthening the long-term relationships with their customers and being prepared to act decisively, where necessary, particularly to safeguard shareholder interest?
- T4126:23-24 Do banks have appropriate policies in place for dealing with external events that may impact an agribusiness loan portfolio? If not, what should those policies entail?

## Interactions between Aboriginal and Torres Strait Islander people and financial services entities

### Access to bank services – ANZ case studies

- T4147:47-4148:1 Do banks take sufficient steps to promote the availability of fee free accounts to eligible customers?
- T4148:1-4 Are banks identification requirements appropriate for Aboriginal and Torres Strait Islander customers? If so, are they sufficiently understood and implemented by staff on the ground?
- T4148:6-13 Do financial services entities have in place appropriate policies and procedures to assist Aboriginal and Torres Strait Islander people to overcome obstacles associated with geographical remoteness, to address the cultural barriers to engagement that some of these people face, to address the linguistic barriers to engagement that some of these people face, and to address the obstacles posed by the financial literacy levels of some of these people? And, if appropriate policies and procedures are not in place, what changes should be made to those policies and procedures to deal with those matters?
- T4151:33-35 Do ADI's have adequate policies in place for the implementation of the Code of Operation?
- T4146:36-41 In what circumstances, if any, is it appropriate for a bank to challenge directly or indirectly a customer's expressed wish to have a basic account? If the customer comes in, especially if the customer comes in with a support person, and the request is made for a basic account, in what circumstances, if any, is it appropriate for the bank to challenge that request?

## 2. Other issues

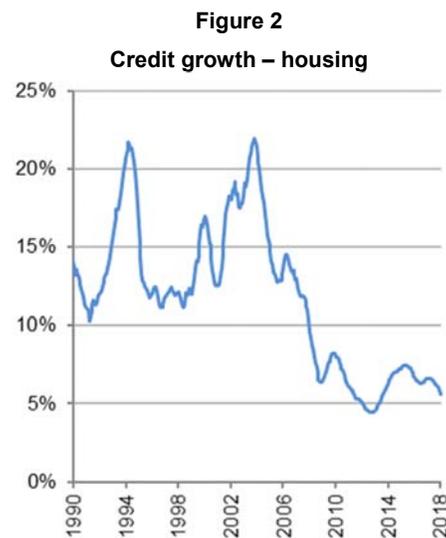
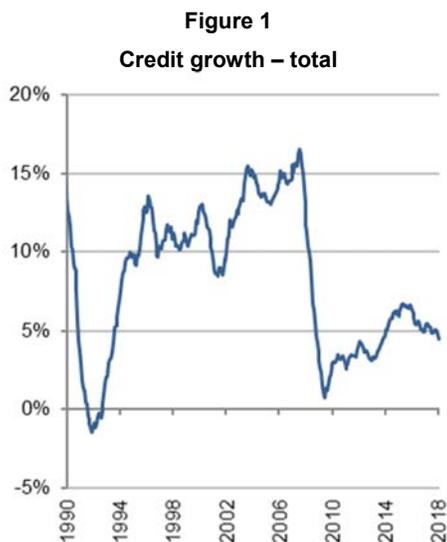
This section canvasses some high-level themes which have arisen in the four rounds of hearings.

- Maintaining the flow of credit.
- The role of self-regulation.
- Responsible lending.
- Clarifying the definition of financial advice.
- Competition and consumer outcomes.

### 2.1 Maintaining the flow of credit

The critical role of the financial system in underpinning the Australian economy is acknowledged in the terms of reference for the Commission.

There are a number of indicators that suggest momentum in the provision of credit is slowing.<sup>29</sup> Overall growth in credit outstanding is softening, now down to a four year low (Figure 1). Personal credit (personal loans, credit cards and so on) is actually falling (Figure 3), while growth in housing loans is decelerating (Figure 2). Growth in business credit is off its highs and is trending sideways at a moderate pace (Figure 4).



<sup>29</sup> Data sourced from RBA and APRA with ABA own analysis.



**Figure 3**  
**Credit growth – personal**



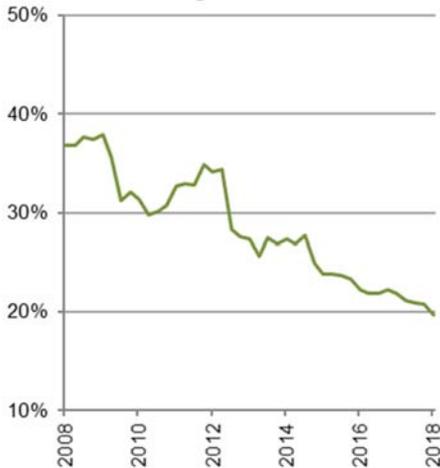
**Figure 4**  
**Credit growth – business**



Banks are responding to stricter regulatory requirements and changing economic conditions in their lending.

- The proportion of high loan to value housing loans is continuing to decline, with loan to value ratios (LVRs) above 80% down to 20% of loans (Figure 5) and LVRs above 90% down to below 7% (Figure 6).
- Interest only (IO) loans are down to 15% of total housing loan commitments (Figure 7).

**Figure 5**  
**Housing – LVR 80%+**



**Figure 6**  
**Housing - LVR**

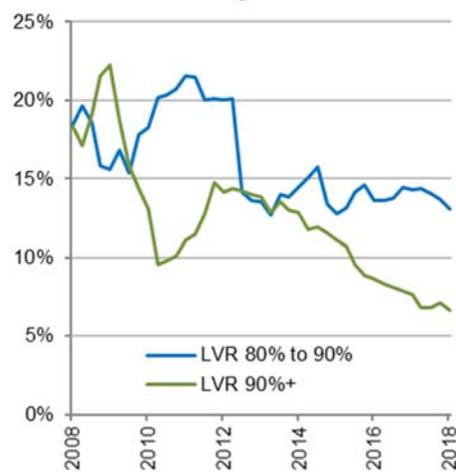


Figure 7

**Banks IO commitments as % housing commitments**



It is difficult to attribute causation to these trends and the ABA is not suggesting that the Commission has been a material influence.

The ABA would suggest however that a core expectation of the Australian community is that banks will continue to provide readily available and affordable credit to enable bank customers to support their business needs, achieve financial security and fulfil their life's goals. The community would expect that the flow of credit will be maintained to underpin economic growth and jobs.

In the context of slowing credit, changes to the existing regulatory framework need to be approached with caution.

## 2.2 The role of self-regulation

A common theme in the ABA Royal Commission submissions is the constructive role played by industry self-regulation. The ABA considers that self-regulation complements the regulatory framework by setting a higher minimum standard in many areas.

The Code expresses the banking industry's key commitments and obligations to individual and small business customers on standards of practice, disclosure and principles of conduct for their banking services.

Self-regulation has a number of advantages:

- It is responsive – enabling changes to practice which keep pace with changing consumer expectations and preferences as well as technological change.
- It is not a cost burden on government.
- It 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.
- It allows for continuous improvement.
- It provides another avenue for industry buy-in and engagement.

We consider the Commission has recognised the relevance of industry self-regulation through its various references to the Code setting standards of conduct for the industry and identifying instances where the standards may not have been met.

The new Code will raise the bar for the industry in delivering better outcomes for bank customers.

- First, it improves and extends customer protections in a range of areas.
- Second, ASIC approval of the new Code demonstrates it is effective and enforceable and provides additional credibility for customers.<sup>30</sup>
- Third, commitment to the new Code will be a mandatory requirement for membership of the ABA.

The new enhanced, ASIC approved, and mandatory Code will provide an effective and credible supplement to the regulatory framework by addressing alleged misconduct identified by the Commission and will underpin higher standards of conduct in the future to meet community expectations.

## 2.3 Responsible lending

A constant theme throughout the Commission hearings has been the responsible lending obligations of banks.

### 2.3.1 Meeting responsible lending obligations

A core constraint on banks achieving their responsible lending obligations is the quality of the information they receive from prospective borrowers or third parties. A bank's efforts to meet its responsible lending obligations centre around the questions asked and checking the information for accuracy and completeness. The borrower is in the best position to know and understand their income and expenditure. To the extent that a lender cannot fully replicate this knowledge there can be a mispricing and misallocation of credit.

The good news is that change is underway. The process of discovery and verification of customer's information will be expedited through two upcoming reforms - Comprehensive Credit Reporting and Open Data.

### 2.3.2 Comprehensive Credit Reporting

The Government announced on 2 November 2017 that it would legislate for a mandatory comprehensive credit reporting regime to come into effect by 1 July 2018, requiring the big four banks to participate fully in the credit reporting system and provide comprehensive credit information on open and active consumer credit accounts to credit reporting bodies.<sup>31</sup>

This measure will give lenders access to a deeper, richer set of data on consumers.

A partial credit reporting system has been in place for some time. Prior to March 2014, the information that could be shared by credit providers was limited to 'negative information'. This includes details of a person's overdue payments, defaults, bankruptcy or court judgments.

Since March 2014, the Privacy Act has allowed licensed credit providers and credit reporting bodies to use and disclose 'positive credit information' or 'comprehensive credit information' about a consumer. This includes information about the number of credit accounts a person holds, the maximum amount of credit available to a person and repayment history information. However, provision of such "positive" information has been voluntary.

The move to compulsory comprehensive credit reporting for the four major banks will lead to "positive" information becoming more widely available. Non-major bank credit providers will be able to participate in the system on a reciprocal basis – that is, they will be able to obtain positive credit information if they supply their own equivalent data on their customers. Over time this should lead to the bulk of credit providers participating in the system.

Once it is fully operational, comprehensive credit reporting will enable lenders to more efficiently and more completely assess a borrower's true credit position, and their ability to service and repay a loan.

<sup>30</sup> <https://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-223mr-asic-approves-the-banking-code-of-practice/>

<sup>31</sup> <https://treasury.gov.au/consultation/c2018-t294037/>

This will enable a credit provider to better meet its responsible lending obligations and price credit according to a consumer's credit history.

### 2.3.3 Open Banking

Open Banking will give customers the right to direct their banks to share their financial transaction data with other financial service providers.

The introduction of open banking is designed to benefit customers – by allowing the sharing of information with other providers. This will give consumers more choice in their banking and more convenience in managing their money. Importantly, data sharing will only take place at the customer's direction.

Open banking will also benefit credit providers by granting them access to more detailed and verified information on a prospective borrower's financial history. For example, access to customer's transaction account data will enable a new credit provider to better verify income, expenses and credit repayment history. Access to accurate customer data will assist credit providers to meet their responsible lending obligations.

Open Banking is being introduced as part of the Government's Consumer Data Right. This right will enable consumers to access and use their personal data held by industries including energy, telecommunications and banking under a single broad framework.<sup>32</sup>

Banking is the first sector where this right will be applied. The Treasurer has announced that the phased introduction of open banking will begin on 1 July 2019 when customers of the four major banks will be able to direct their banks to share their deposit account, transaction account and credit card data.<sup>33</sup>

To give some context to the significance of these reforms, in a recent speech APRA Chairman Wayne Byres reflected on areas where banks had worked to improve lending practices, including:

- More accurately assessing borrower's income and expenses.
- Improving the way in which borrower's pre-existing debt commitments are checked and verified, to ensure lending decisions are not based on an incomplete view of a borrower's circumstances.<sup>34</sup>

Both these areas will benefit from greater access to customer's financial data facilitated by comprehensive credit reporting and open banking. These initiatives are important to take into account in any consideration of future responsible lending requirements.

### 2.3.4 Achieving greater certainty

Through its case studies the Commission has identified examples of where banks may have breached their responsible lending obligations.

In some cases, it could be argued that the alleged breaches reflected a difference of opinion on the processes and actions that were necessary and sufficient to satisfy the obligations. Banks go to considerable lengths to ensure they meet their obligations, but in practice it is an ex-post opinion from ASIC that determines whether those obligations have been satisfied. There is a sense that perhaps the goal posts on what constitutes responsible lending move over time, or perhaps there has been a lack of clarity.

One example is the use by some banks of standard indicators such as the ABS Household Expenditure Measure (HEM) to estimate loan applicant expenditure.

Consideration could be given to more proactive specification ex-ante of the actions that would meet the responsible lending obligations. This should involve close consultation with the industry.

<sup>32</sup> <https://treasury.gov.au/publication/p2018-t286983/>

<sup>33</sup> <http://sjm.ministers.treasury.gov.au/media-release/049-2018/>

<sup>34</sup> <https://www.apra.gov.au/media-centre/speeches/preparing-rainy-day>

While not committing the banks to any particular requirements, available actions could include CCR checks to ascertain existing credit exposures and credit worthiness, and sourcing of information on existing banking relationships under the umbrella of open banking. Insights on the use of standard indicators could also be beneficial.

Greater certainty would benefit banks and ensure adequate protections and desired outcomes for bank customers.

This should be in the form of guidance; the ABA would not support mandatory requirements. Any guidance needs to provide for technical innovation and facilitate the continued efficient assessment of credit applications.

## 2.4 Financial advice

The second round of hearings addressed case studies of misconduct in the area of financial advice.

In this context, the Commission could consider whether the current regulatory framework for financial advice provides sufficient clarity on:

- What constitutes personal and general financial advice and the distinction with the provision of factual information.
- Whether these distinctions are properly understood by consumers.
- Whether the current framework is adequate to drive financial innovation, provide consumer protection and meet community expectations around financial advice.

The adequacy of the current regulatory framework for advice on financial products was considered at length by the Financial System Inquiry (the Inquiry).

It should be noted that the framework makes an important distinction between personal and general advice:

- Personal advice takes account of a person's needs, objectives or personal circumstances, whereas general advice does not.
- General advice includes guidance, advertising, and promotional and sales material highlighting the potential benefits of financial products. It comes with a disclaimer stating that it does not take a consumer's personal circumstances into account.

However, the Commission observed that consumers may misinterpret, or excessively rely on guidance, advertising and promotional and sales material when it is described as 'general advice'. The use of the word 'advice' may cause consumers to believe the information is tailored to their needs.

The Inquiry believed greater transparency regarding the nature of advice and the ownership of advisers would help build confidence and trust in the financial advice sector. In particular, it recommended<sup>35</sup> 'general advice' should be replaced with a more appropriate, consumer-tested term to help reduce consumer misinterpretation and excessive reliance on this type of information. The ABA would support a reconsideration of terms to improve consumer outcomes.

## 2.5 Competition and good consumer outcomes

Australia has a strong and competitive banking industry that underpins the stability of the financial system, supports the economy, and provides Australians with the financial products and services they need. A large number of financial entities offer a wide variety of financial services and products.

The ultimate aim of competition is to efficiently provide customers with choice so they can access the best products and services appropriate for their needs and circumstances. Competition also places efficient discipline on banks to serve their customers well and to drive better customer outcomes.

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<sup>35</sup> Recommendation 40 – Provision of financial advice and mortgage broking, Financial System Inquiry, Final Report, November 2014.

Proposed reforms should carefully analyse the impacts on competition by assessing the benefits and costs likely to accrue to individual and small business customers as well as the broader economy. Regulation can impact differently across large and small organisations.

### 2.5.1 Regulation

The ABA CEO, Anna Bligh, noted in her Round 3 hearing appearance that bank size can be a factor in determining APRA risk weights requirements. (T2916:14). An internal ratings based bank (IRB) has approval from APRA to use internally calculated risk weights within certain parameters. Such banks must be able to demonstrate a very deep capability and sophisticated assessment of risk. At present, it is the four largest banks, Macquarie and ING who are approved to use this method.

In contrast, non-IRB banks must use the standardised method for risk weights.

These two approaches can lead to significant differences in risk weights for similar assets. For example, on a small business loan, the standardised method allocates a 100% risk weighting, whereas an IRB bank is likely to be able to apply a lower 50-60% risk weight. This difference between the IRB and standardised method confers a cost advantage on IRB banks. This lowers the relative cost of lending for IRB banks.

APRA has already taken action to narrow the risk weights for mortgage lending between IRB and standardised banks and is examining the regulatory capital requirements for small and medium business lending exposures between the standardised and IRB approaches. The revised risk weight framework is likely to lessen, but not eliminate, the impacts on competition from differing regulatory capital requirements.<sup>36</sup>

### 2.5.2 Mortgage brokers

The Commissioner questioned the importance of mortgage brokers to banks in the context of trailing commissions and the implementation of the Sedgwick recommendations (T243:19). Mortgage brokers are a significant distribution channel for mortgages across large banks, digital banks and banks with a small or limited branch network.

- Mortgage brokers originated 55.7% share of new residential property loans as at September 2017.<sup>37</sup>
- Consumers primary preference is to use mortgage brokers to obtain a home loan.<sup>38</sup> KPMG research shows that more consumers prefer brokers over bank proprietary channels or newer online lending models. KPMG considers that consumers perceive they get the best deal through brokers, as they are able to aggregate many options for the customer (thereby reducing customer search costs) and provide a perceived unbiased view.

The need for large branch networks for distribution of banking services can still be a significant barrier to the expansion of banks with small or limited branch networks and can limit competition. While the importance of branches for customers is declining with the advent of technology, a ‘bricks and mortar’ distribution network (outside of mortgage brokers) continues to be the primary channel for customer acquisition.<sup>39 40</sup>

The ABA considers that mortgage brokers help increase competition in the mortgage market by providing greater market access to banks with small or limited branch networks, thereby providing greater incentives for all banks to supply better value products that meet consumer needs. Any regulatory changes affecting mortgage brokers need to assess the potential competition impacts on the wider mortgage market, paying particular attention to the differences between providers with limited or no branch networks and those with a large branch footprint.

<sup>36</sup> <https://financialservices.royalcommission.gov.au/public-hearings/Documents/Round-3-written-submissions/APRA-written-submission.pdf>

<sup>37</sup> [https://www.mfaa.com.au/sites/default/files/users/user133/\\_Value\\_of\\_mortgage\\_broking\\_Web\\_version.pdf](https://www.mfaa.com.au/sites/default/files/users/user133/_Value_of_mortgage_broking_Web_version.pdf)

<sup>38</sup> <https://assets.kpmg.com/content/dam/kpmg/au/pdf/2017/australian-home-loan-market-survey-analysis-may-2017.pdf>

<sup>39</sup> [https://assets.publishing.service.gov.uk/media/55cdf841ed915d5343000038/Branches\\_working\\_paper\\_v2.pdf](https://assets.publishing.service.gov.uk/media/55cdf841ed915d5343000038/Branches_working_paper_v2.pdf)

<sup>40</sup> <https://assets.kpmg.com/content/dam/kpmg/au/pdf/2017/australian-home-loan-market-survey-analysis-may-2017.pdf>

### 2.5.3 Non-bank lenders

The ABA considers that there is a gap in consumer protection between ABA members and non-ABA members.

Non-ABA members are not required to meet the same full suite of consumer protections as ABA members, including regulatory requirements and self-regulation through the Code.

This creates uncertainty for consumers as to what protections are available to them and potentially could lead to poorer outcomes for consumers.

The ABA considers that consumer expectations would be better met if uniform consumer protections, equivalent to those in the regulatory framework and the Code, were applied to all providers of credit to retail and small business customers.

## Appendix – The new Banking Code of Practice provisions and guidelines protecting business

### Non-monetary default

The current Code has no limits on the use of non-monetary defaults as a trigger for enforcement action.

The new Code will limit a bank's ability to enforce non-monetary defaults. For example, a bank will not be able to rely on a non-material negative change in financial indicators such as loan-to-value ratios. While financial indicators will no longer form part of the standard contract as a trigger for enforcement action, they may still be used by the bank to monitor the health of the business.

Such indicators determine if the business proposition is viable and the loan can be serviced. The indicators are also monitored throughout the life of the loan and can help both the bank and the business to identify emerging stresses and allow early intervention and support.

New Code Clause 80 lists a limited number of specific events where non-monetary default could be relied upon to reflect legal obligations. These comprise:

- Where a guarantor is insolvent, goes into bankruptcy, voluntary administration, other insolvency process or arrangement, or no longer has legal capacity.
- Enforcement proceedings are taken against you or a guarantor, or your or their assets by another creditor.
- Early repayment is required under a separate financing arrangement you or a guarantor has with us or default-based action is taken against you or a guarantor by us, due to an event of default which is described in this chapter.
- We believe on reasonable grounds that you, your agent or a guarantor has not complied with the law or any requirement of a statutory authority, or it becomes unlawful for you or us to continue with the loan.
- You or a guarantor gives us information or makes a representation or warranty to us which is materially incorrect or misleading (including by omission).
- You use the loan for a purpose not approved by us.
- Your assets or a guarantor's assets are dealt with, or attempted to be dealt with in breach of the loan, or any security or other agreement with us without our consent.
- You or a guarantor do not provide financial information required by your agreement with us.
- You or a guarantor do not maintain a licence or permit necessary to conduct your business.
- You or a guarantor do not maintain insurance required by your agreement with us.
- Legal or beneficial ownership, or management control of a borrower or guarantor or their business changes without our consent; or
- The status, capacity or composition of you or a guarantor changes without our consent.

Taking default-based action is further limited by the following conditions:

- Clause 81 provides that a bank, where reasonable, provides an opportunity for the customer to resolve a breach.
- Clause 82 requires that the event should be material, or the bank reasonably considers the event has had, or is likely to have, a material impact on the business or its guarantor's ability to meet their financial obligations, credit or security risk or legal or reputational risk.

## Personal guarantees

The Khoury Review identified guarantors as an important issue which needed to be addressed as part of the Code.<sup>41</sup> As a result, new provisions specifically protecting guarantors have been developed as Part 7 of the new Code.

There are provisions in the Code that protect prospective guarantors to ensure they are informed about the guarantee and the borrower's loan contract.

In the **Current Code** there are substantive disclosure requirements which are:

- Guarantor should seek legal and financial advice.
- Guarantor can refuse to sign the guarantee.
- There are financial risks involved with the guarantee.
- Information can be requested about the transaction or the loan.
- Bank will tell the guarantor:
  - About any notice of demand they have made on the borrower for the guaranteed loan, or any loan the borrower has (or has had), within the previous two years; and
  - If any existing loan the bank has given the borrower will be cancelled if the guarantee is not provided.
- Bank will provide the following documents to the guarantor: loan contract, list of related security contracts, any related credit report, current insurance contracts, financial accounts or statement of financial position that the borrower has given the bank, latest statement of account relating to the loan for a period which a notice of demand was made by the bank and any other information reasonably requested.
- During the guarantee, the bank is required to give the guarantor information about the borrower's deteriorating financial position within 14 days:
  - A copy of any formal demand or default notice.
  - Notice if the borrower is experiencing financial difficulty which has resulted in a change to their loan.
- There are also specific execution requirements that if a bank attends signing of the guarantee, this will be done in the absence of the borrower. Guarantee documents will be given to the guarantor directly.

The **new Code** extends these protections in the following ways. It provides:

- Notice if the borrower is in continuing default for more than two-months.
- Without independent legal advice, the bank will not accept a guarantee until three days after the information has been provided.

<sup>41</sup> Ex 3.144.30 AB-1-58 [ABA.001.001.5280 at 106] (Khoury review)

## Rolling over or renewing business facilities

Currently, the Code requires banks to give 30 days' notice of a decision not to extend the loan where the loan is not in default. The new Code, Chapter 23, increases this notice period to three months, to be given prior to the expiry of a loan term.<sup>42</sup> The increase in the notice period will provide small businesses with more time to arrange alternate financing.

The ABA considers the three-month notice period to be a minimum requirement. Individual ABA members may provide longer notification periods.

## Unilateral variation of loan terms

Chapter 38 of the new Code outlines when a bank may change arrangements with their customer. In summary, these provide that apart from changes to interest rates, where a bank believes a change is unfavourable to a small business customer, then it will provide notice of at least 30 days, unless it believes that doing so is necessary to avoid, or to reduce, a material increase in its credit risk or loss; or there is a change to, or introduction of a government charge that a customer pays directly, or indirectly, as part of their banking service.

## Financial difficulty requirements

As noted earlier, banks want to work with its agricultural borrowers that are in financial difficulty.<sup>43</sup> Financial difficulty occurs when a small business is unable to repay what is owed and the small business experiences difficulty meeting their repayment obligations.

The new Code Part 9 specifically requires banks to:

- Encourage small businesses to contact their bank as early as possible.
- Work with small business and consider putting in place arrangements for those experiencing financial difficulty to make repayments more manageable, for example the deferral of scheduled loan repayments, waiving of fees and charges, restructuring of loans and debt consolidations. These arrangements are assessed on a case-by-case basis by banks according to their own practices and the unique circumstances of their customers.
- Have processes in place that would assist with proactive identification of financial difficulty where necessary. This is to be done on a case-by-case basis.

## Valuation guidelines

The Commission considered the role of valuers in its case studies. While the ABA does not provide guidelines on internal valuations, it does have external valuation guidelines. In addition, Chapter 24 of the new Code requires banks to be fair and transparent when using an external property valuer or appointing an investigating accountant or insolvency practitioner.<sup>44</sup>

The ABA published industry guidelines on 24 November 2017 to introduce fairer and more transparent practices in the appointment and use of third party experts.<sup>45</sup> While guidelines are not enforceable, and their implementation is voluntary, guidelines provide an industry benchmark which will be considered by FOS in its decision-making.

The two relevant industry guidelines are:

- Industry guideline for appointing external property valuers when lending to small businesses and primary producers.

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<sup>42</sup> Exhibit 3.144 Statement of Ms Bligh with its exhibits

<sup>43</sup> <https://www.ausbanking.org.au/media/media-releases/media-release-2018/help-on-offer-for-drought-affected-farmers>

<sup>44</sup> Statement at [72]

<sup>45</sup> Statement at [69]-[71]

- Industry guideline for appointing insolvency practitioners and investigating accountants to small business and primary producers.

The guidelines reflect significant changes in industry practices. The industry guidelines emphasise:

- Improved communication and engagement with the customer, for example, by ensuring that the purpose and reasons that banks use independent third-party experts is clearly explained and roles understood.
- Greater transparency:
  - Allowing the customer to select a valuer from a subsection of a qualified panel of valuers who have provided estimates
  - Providing customers with copies of instructions and valuations (except where enforcement action has commenced)<sup>46</sup>
  - Ensuring only qualified and experienced experts are used by banks. The experts are required to be members of professional organisations with Codes and monitoring procedures e.g. the Australian Property Institute, Royal Institution of Chartered Surveyors, CPA Australia, the Australian Restructuring and Turnaround Association (ARITA).
- Measures to reduce perceived conflicts of interest - valuers:
  - A customer can select from the bank's panel of approved expert valuers
  - If the customer queries a valuation – a review of the valuation with the option of a new valuation if the customer is not satisfied (paid for by the customer)
- Measures to reduce conflicts of interest around the appointment of investigative accountants as subsequent receivers include:
  - Investigating accountants can by law be appointed as the subsequent receiver and there can be cost and efficiency advantages to the customer in this.
  - The industry guideline includes procedures to reduce the potential conflicts of interest including:
    - : Only appointing qualified practitioners who are members of professional organisations with appropriate codes of conduct
    - : Requiring an additional internal oversight of the appointment of investigating accountants as receivers, to ensure that the decision is necessary and to review the circumstances leading to the appointment
    - : If the relationship between the bank customer and the investigating accountant has deteriorated (for example has become unworkable) the guideline recommends that the bank considers the appointment of an alternative qualified practitioner.

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<sup>46</sup> The security assessment and findings section includes sensitive commercial and legal information which is provided to the bank on a confidential basis. Examples include assessments of the competence of the management or indications of criminal activity such as fraud, misappropriation, and compliance issues with anti-money laundering or counter terrorism obligations. These sections may be provided to the customer at the discretion of the bank but the ABA does not support this being mandatory.



Australian Banking  
Association

## 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.