



**AUSTRALIAN BANKERS'
ASSOCIATION INC.**

Strong banks – strong Australia

Code of Banking Practice

Response by Australian Bankers' Association to Review Final
Recommendations

28 March 2017



Review of the Code of Banking Practice – Industry Response

Introduction

The Australian Bankers’ Association (**ABA**) welcomes the release of the Final Report on the review of the Code of Banking Practice (**Code**) conducted by independent consultant, Mr Philip G. Khoury, Managing Director of Cameronralph Navigator.¹

The terms of reference for the review were deliberately broad. The review was conducted over a period of approximately seven months, with the Final Report containing 99 recommendations. Mr Khoury consulted extensively with a wide range of stakeholders, including consumer and community groups, small business and farming representatives, banks, regulators, ombudsmen, government representatives, politicians and other stakeholders.

The ABA would like to thank all stakeholders who have made valuable contributions to the review.

Industry commitment

Customers expect banks to keep working hard to make sure they have the right culture, the right practices and the right behaviours.

In April 2016, the banking industry announced a comprehensive package of reforms to protect consumer interests, increase transparency and accountability, and build trust and confidence in banks.²

As part of this reform program, the industry committed to bringing forward the review of the Code with the aim of strengthening our commitments to customers and improving the standards of practice and service in the Australian banking industry.

While the Code is a well-regarded customer charter on banking standards, the industry accepts that parts of the Code may no longer be fit for purpose and need to evolve to reflect the changing needs of our customers and the wider community as well as the banks.

The industry has heard our customers and stakeholders that banks need to change how they go about doing their business. This is an important and substantive review to deliver on our commitment to make banking better.

The industry will be making fundamental changes to the Code to fulfil this objective and we are determined to deliver change fast, while taking care to get it right.

Response to recommendations

The industry has closely examined the Final Report and the recommendations. This paper contains the banking industry’s response to the 99 recommendations, with Appendix 1 providing the detailed response.

The following table provides a summary of how the industry has responded to the recommendations.

Recommendation supported	61
Recommendation supported in principle	19
Recommendation supported in part	10

¹ <http://cobpreview.crkhoury.com.au/>

² <http://www.bankers.asn.au/media/media-releases/media-release-2016/banks-act-to-strengthen-community-trust>

Industry requires additional time to consider	4
Recommendation not supported	5
Total	99

The vast majority of the recommendations are accepted by the industry.

First and foremost, the Code will articulate the values of the banking industry, expanding on and explaining the commitment to act fairly and reasonably, and in a consistent and ethical manner. The Code will contain a more prominent and clear commitment to ethical behaviour.

The industry recognises the Code is a long and detailed document and customers find it difficult to relate to. In the past, the Code was primarily directed to the banks to make sure they had in place the right compliance systems and practices. Now, the Code needs to be directed to our customers to make sure the way they transact and interact with their bank is supported by best practices in banking. The industry is committed to ensuring the Code is written in plain English and presented in a consumer-friendly manner. It is important our customers find the Code easy to read and navigate, and easy to understand their banking rights and responsibilities.

As a self-regulatory tool, the Code is important in that it covers matters not contained in the law, reflecting best practice and creating higher standards for banks. In adopting a number of the recommendations and for the purposes of clarity, the Code will need to ensure there is no duplication with the law. The industry also recognises the role, and further development, of industry guidelines. These guidelines seek to provide greater explanation of particular commitments in the Code.

The industry recognises that banking standards need to reflect changes in access, product and service delivery as well as changing customer preferences. Credit card lending practices have received a lot of attention. Through the Code, banks will make it easier for customers to reduce a credit card limit or cancel a credit card. In parallel, we will be working with the Government to ensure these changes are widely adopted across the credit card market.

Changes will be also made to the Code to promote and improve banks' financial hardship programs, including helping customers who are experiencing financial difficulty and customers who are at risk of financial difficulty, so they can take control of their finances.

Through our conversations with representatives of small businesses and the review of the Code, the industry has heard we need to do more to help these customers through good times and bad and support them in growing their businesses. Many small businesses rely on finance to keep things running smoothly through variable business cycles. Changes to the Code will include a dedicated section for small businesses, with commitments to improve transparency, plain-English documentation, and help ensure fairer practices. The industry is committed to simplifying terms and conditions in loan contracts.

The industry will expand the coverage of small businesses in the Code by including a business with total credit facilities up to \$3 million.³ The industry is confident that a \$3 million lending threshold will capture around 97 per cent of bank business customers. Larger businesses with credit facilities above \$3 million tend to be more sophisticated businesses, with complex lending needs and business arrangements, and not fit for the purposes of the Code. It would be appropriate to utilise a standard definition across the various small business frameworks.

³ Total credit exposure of the business group, including related entities.



The industry will work with the Code Compliance Monitoring Committee (**CCMC**) on strengthening the governance of the Code. The CCMC mandate will be redrafted to make it clearer, ensuring there is greater awareness of, and understanding of, the CCMC and its role. The CCMC will have greater powers to monitor compliance and investigate breaches. The role of the CCMC will also need to be examined as part of working with the Australian Securities and Investments Commission (**ASIC**) on approving the new Code.⁴

The Final Report has raised many complex, diverse and technical issues. There are nine recommendations which either require additional time for us to work through in consultation with our stakeholders or are not able to be supported due to the potential for them to negatively impact on customer choice and competition in banking. Where possible, the industry has considered alternative options that would address the underlying issue and deliver the right outcome for customers.

Furthermore, there are currently a number of Federal Government reviews that have direct implications for a number of the recommendations, including the Carnell Inquiry into small business lending, the Ramsay Review into external dispute resolution and the Treasury consultation on credit card reforms.⁵ These reviews are being considered as part of the industry response.

Next steps

The ABA will conduct stakeholder engagement meetings and consultations to discuss the industry response and identify a plan for the redraft of the Code. This includes areas that were not addressed in the Final Report but we consider important to be in the new Code, such as farming issues.

An independent consultant will be appointed to work with the ABA to redraft the Code.

The industry will also be working with ASIC on approving the Code, and the CCMC on its future role.

The industry recognises the importance of making sure the views of our stakeholders are taken into account in the redrafting process, particularly where we need to do further work to identify the right path forward. As with the review process, the ABA will ensure there continues to be full consultation with our stakeholders and other interested parties through the drafting process for the new Code.

Interested parties are invited to express their interest in being involved in this consultation by contacting the ABA.

The industry is aiming to publish a new Code of Banking Practice by the end of 2017. This timetable is ambitious, but it is recognised that our stakeholders, customers and the wider community expect the banks to make these changes as soon as possible.

Implementation

Banks that subscribe to the new Code of Banking Practice will need to adopt the changes made to the Code.

The transitional period for implementation of the new Code by banks will depend on the extent of the changes that need to be made to banks' policies, procedures, systems, staff training and internal communications. Some changes will take longer than others.

At this stage, the industry anticipates a 12 month transition period for implementation. However, once the extent of the changes are completely worked through, implementation will be revisited.

Quarterly reports will be published to provide updates on progress to ensure those less close to the drafting and implementation process for the new Code are kept informed of progress, and customers have confidence the banks are delivering on their commitments.

⁴ *Regulatory Guide 183: Approval of financial sector codes of conduct* [RG 183]. <http://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-183-approval-of-financial-services-sector-codes-of-conduct/>

⁵ *Credit Cards: Improving Consumer Outcomes and Enhancing Competition*. <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2016/Credit-card-reforms>



Appendix 1: Detailed industry response to the recommendations in the Final Report

No.	Recommendation	Industry response
The New Code		
1)	<p>The Code should be substantially revised and should:</p> <ul style="list-style-type: none"> a) Be re-drafted in a modern structure and style b) Be drafted in layers that address the differing needs of its multiple audiences – i.e. Preamble, Principles, Obligations and Industry Guidelines c) Cover all banking services offered to retail and small business customers d) Use plain, accessible language and a warmer tone as part of making the document more customer-focused and accessible e) Be as straightforward as possible with the minimum of qualification and ‘fine-print’ f) Avoid duplicating the law g) Put complex implementation detail in Industry Guidelines h) Include an accompanying Guide to the relevant parts of the Code for Small Business 	<p>Recommendation supported.</p> <p>The industry agrees that the Code of Banking Practice (the Code) should be a clear, plain English statement of banks’ commitments to their individual and small business customers.</p> <p>The Code will be redrafted to ensure it is written in plain English, the structure is amended to address the differing needs of its multiple audiences, and is improved by removing duplication. The aim is for the new Code to be more customer-focused and accessible.</p> <p>The industry is committed to ensuring the Code is easy to read and navigate and it is easy for customers to understand their rights and responsibilities when dealing with their bank.</p>
2)	<p>The advent of the new Code should be used by signatory banks as an opportunity demonstrate and reinforce internal values and culture settings.</p>	<p>Recommendation supported.</p> <p>The industry believes that the Code should not operate in isolation of bank values and culture, with the culture framework being the setting in which the Code operates.</p> <p>The Code will be redrafted to articulate the values of the banking industry, expanding on, and explaining the commitment to act fairly and reasonably, and in a consistent and ethical manner.</p>



No.	Recommendation	Industry response
3)	<p>The Code should oblige signatory banks to have in place systems to identify persisting issues from enquiries, customer service and internal complaints information that may indicate that revised procedures, system changes or some additional or reinforcing training is required – and to deliver that continuous improvement as appropriate.</p>	<p>Recommendation supported.</p> <p>The industry is committed to continuously improving their processes and practices.</p> <p>The Code will include a commitment that banks will undertake the proposed activities and ensure compliance mechanisms are in place to deliver continuous improvement as appropriate.</p>
4)	<p>Signatory banks' websites should provide an easily navigable, clear link to the Code, with links from the obvious places such as customer service and complaints information.</p> <p>In order to maximise the message of change to customers, signatory banks should look at ways of coordinating publicity and messaging about the implementation of the new Code.</p>	<p>Recommendation supported.</p> <p>The industry believes that better access and use of the Code by customers is necessary. Promotion and raising awareness activities are necessary to achieve this.</p> <p>Code subscribers will include a link to the Code on their website to assist with better access to the Code, and the industry will conduct promotional activities to inform the public about the Code.</p>
Small Business		
5)	<p>a) The Code definition of “small business” (other than for the purposes of financial products or services regulated by the Corporations Act 2001) should be amended to mean a business that employs fewer than 100 full time equivalent employees or, in the case of a business that is part of a group of companies, the group employs fewer than 100 full time equivalent employees.</p> <p>b) The provisions of the Code that relate to credit should apply to a small business credit facility only if below \$5 million.</p>	<p>Recommendation supported in principle.</p> <p>The industry supports an expanded definition of small business, noting there are a number of small business tests used for legal and commercial purposes.</p> <p>For the purpose of expanding the small business jurisdiction, the ABA proposes the following small business test.</p> <p>A business is not a small business if one of the following conditions is met:</p> <ul style="list-style-type: none"> a) The number of employees is 20 people or more, or 100 people or more if the business is or includes the manufacture of goods (full-time equivalent); or b) Annual business turnover is \$5 million or more; or c) Size of loan for business purposes is \$3 million or more; or d) Total credit exposure of the business group, including related entities, to all credit providers is \$3 million or more.



No.	Recommendation	Industry response
		<p>The industry does not support a \$5 million credit facility threshold and believes total business lending across a business group of up to \$3 million is more appropriate.</p> <p>Based on bank lending data, the ABA estimates this definition would capture 97% of bank business customers. Businesses with total lending above \$3 million tend to be larger and more sophisticated businesses, with more complex lending needs and arrangements and contractual obligations. It is not suitable for these types of businesses to be included within the definition of small business.</p>
6)	<p>A new clause should be included in the Code applying to a credit facility, below the specified monetary threshold, that is provided for a small business purpose. The clause should oblige banks to explain:</p> <ul style="list-style-type: none"> a) The requirements needed to obtain bank credit b) Additional information requirements where the lending decision cannot be made and how long a lending decision is likely to take; and c) Where possible, the main reason for a refusal to lend and the requirements to enable the bank to reconsider the application. 	<p>Recommendation supported in principle.</p> <p>The industry supports the need for improved information to small businesses about credit products and lending decisions, including information about how banks assess small business lending and timeframes for decisions. It should be recognised that specialised lending can take longer to assess. Where appropriate, banks will advise customers of the general reason that a loan has been declined.</p> <p>The industry has also announced that it will work with small business representatives on enhancing the website Financing Your Small Business, and strategies for promoting this information resource.</p>
7)	<p>A new clause should be included in the Code that obliges signatory banks to provide a written pre-contractual summary statement before providing a credit facility for a small business purpose, below the specified monetary threshold. The key terms and conditions must be summarised in an accessible way, for example, a table format that includes:</p> <ul style="list-style-type: none"> a) The credit period b) Repayment obligation c) Applicable interest rates or how these are calculated (specifying the current rate) d) Fees and charges (flat fee where possible or otherwise how calculated) 	<p>Recommendation supported in principle.</p> <p>The industry supports the provision of simpler information on the terms and conditions for loans to small business customers, and commits to making the summary as brief as practically possible.</p>



No.	Recommendation	Industry response
	<p>e) Events of default and any increased costs associated with default, again with specification of what the current rate is where a formula applies, and the signatory bank's entitlement to change terms and conditions and the notice of change that will be given.</p>	
8)	<p>Clause 20.4 of the Code should be amended to require 30 business days (rather than 10 business days) where a bank exercises the power to unilaterally vary a particular small business's credit contract in a way that is materially adverse if the credit facility is below \$5 million.</p> <p>Instead of the current carve out where the signatory bank considers this is necessary to avoid or reduce the increase in credit risk, the only carve out should be where the small business is in default under the credit contract.</p>	<p>Recommendation supported in principle.</p> <p>The industry supports increasing the minimum notice period to 30 calendar days. We do not support 30 business days (given differences in the dates of public holidays in different states and to ensure consistency for banks which operate across state boundaries).</p> <p>This approach would ensure small businesses have additional notice of changes but doesn't result in unnecessary confusion for customers and inconsistency.</p> <p>This notice would be provided for a customer with aggregated credit facilities under \$3 million.</p> <p>Importantly, there would need to be a list of exemptions where more rapid alteration to clauses was permitted, for example, if the business goes into voluntary liquidation, or third parties move to wind up the company, or there are animal welfare issues.</p> <p>In certain circumstances, banks recognise letting a business run for 30 days after an issue requiring an amendment to a clause or covenant has arisen can mean a bad situation can significantly deteriorate even further for their small business customer.</p>
9)	<p>The Code should be amended to require a signatory bank to provide a small business customer that is not in default under a term credit facility below \$5 million, with 90 business days' notice of a decision by the bank not to extend the loan for a further term.</p> <p>The ABA should consult with signatory banks about whether any types of term credit facilities should be excluded or subject to a varied rule, but with the aim for the notice requirement to apply as consistently as possible.</p>	<p>Recommendation supported.</p> <p>The industry supports a 90 calendar day notification period, other than where the loan term is less than 90 calendar days. We don't support 90 business days given differences in the dates of public holidays in different states and so customers understand it is around 3 months rather than a more complicated calculation.</p> <p>This notice would be provided for a customer with aggregated credit facilities under \$3 million.</p>



No.	Recommendation	Industry response
		<p>Banks would need to retain the option to set an alternative maturity period or new covenants for the rolled over loan – that is, they would not be required to rollover the loan on the same terms.</p> <p>Banks recognise the unique circumstances facing farmers and primary producers. The industry is open to applying a longer period for agricultural loans and will give this careful consideration.</p> <p>The ABA will consult with banks about whether any types of term credit facilities should be excluded or subject to a varied rule to minimise adverse and unintended consequences for the price and availability of credit.</p>
10)	<p>Clause 28 of the Code should be rewritten to separate out more clearly the commitments that signatory banks are making to assist a customer with a small business credit facility below the specified monetary threshold that is in financial difficulty. In redrafting the clause, regard should be had to the language used in the United Kingdom’s The Lending Code. The provision should build in relevant protections that apply to consumer credit, including restrictions on signatory banks instituting or continuing with enforcement action.</p>	<p>Recommendation supported.</p> <p>The industry supports the Code including a dedicated section for small business lending, outlining banks’ commitment to assisting small business customers that are experiencing financial difficulty.</p> <p>The industry will consult on the appropriate drafting of this clause to ensure it is relevant and appropriate.</p> <p>The industry supports more prominence about the availability of assistance for small businesses experiencing financial difficulty. The earlier customers contact their bank and discuss the situation, typically the more options are available.</p>
11)	<p>The Code should be amended to require a signatory bank to provide a customer, in default under a small business credit facility below \$5 million, with 30 days’ notice before beginning enforcement proceedings. An exception should apply where the bank reasonably believes that more urgent action is necessary to recover the debt or avoid loss in value of the security for the credit.</p>	<p>Recommendation supported.</p> <p>The industry supports providing a small business customer with 30 calendar days’ notice before beginning enforcement action.</p> <p>This notice would be provided for a customer with aggregated credit facilities under \$3 million.</p>
12)	<p>The Code should be amended to require a signatory bank to have in place adequate arrangements to address potential conflicts of interest issues when appointing investigating accountants and receivers.</p>	<p>Recommendation supported.</p> <p>The industry will develop best practice industry guidelines on banks’ appointment of investigative accountants and receivers, administrators and liquidators for small businesses. These will</p>



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No.	Recommendation	Industry response
		include adequate arrangements to reduce perceived conflicts of interest.
13)	The Code should be amended to oblige signatory banks to provide all Code customers that have a banking services dispute with access to internal dispute resolution processes that meet the standards set out by the Australian Securities and Investments Commission in Regulatory Guide 165.	<p>Recommendation supported.</p> <p>Clause 37.2(b) of the Code currently provides all Code customers that have a banking services dispute with access to internal dispute resolution processes that meet the <i>Regulatory Guide 165: Licensing: Internal and external dispute resolution</i> [RG 165].</p> <p>The industry will redraft the clause to clarify this commitment.</p>
14)	<p>The Code should include the following new obligations on signatory banks:</p> <ul style="list-style-type: none"> a) When informing Code customers of mediation options, signatory banks must also provide information about the customer’s entitlement to access the bank’s internal and then external dispute resolution process; and b) Signatory banks must consent to their external dispute resolution scheme having jurisdiction to decide a dispute with a Code customer that has been the subject of mediation but has failed to settle. 	<p>Recommendation supported.</p> <p>Banks currently provide information about the customer’s entitlement to access the bank’s internal complaints process, and if this is unable to resolve the complaint, then the external dispute resolution process.</p> <p>The industry supports including an obligation in the Code requiring banks to provide information on the entitlement to dispute resolution, including where previous mediation has failed to settle.</p>
Responsible Lending		
15)	The Code should give prominence to the banks’ commitment to lend responsibly by including this in Principles that appear at the front of the Code.	<p>Recommendation supported.</p> <p>The industry agrees that more prominence should be given to banks’ commitment to lend responsibly.</p>
16)	<p>The Code should rename current clause 27 as “A responsible approach to lending” and redraft it to use clearer, more modern language. The new clause should oblige banks:</p> <ul style="list-style-type: none"> a) To review the applicant’s financial information, situation and requirements carefully and prudently and consider the application on its merits; and 	<p>Recommendation supported in principle.</p> <p>The industry supports a clause that refers to responsible lending and will work on developing information to assist banks with meeting this obligation for both their individual and small business customers.</p>



No.	Recommendation	Industry response
	<p>b) In general, only lend amounts that the bank believes the applicant can reasonably afford to pay.</p>	<p>Small business</p> <p>The industry agrees that the National Credit Code responsible lending concepts and <i>Regulatory Guide 209: Credit licensing: Responsible lending conduct</i> [RG 209] should not be extended to small business lending.</p> <p>As per recommendation 6, the industry will consider the application of lending responsibly to small businesses and will tailor a standard relevant to small businesses.</p>
<p>17)</p>	<p>The Code should make explicit that the obligation in current clause 27 is owed to a guarantor not just the borrowing customer.</p>	<p>Recommendation supported.</p> <p>The industry supports incorporating the decision in <i>Doggett v Commonwealth of Australia</i> (2015) VSCA 351.</p> <p>Clause 27 should be redrafted to make it clear that a bank can owe a contractual obligation to both its customer and any guarantor of the customer's debts, to exercise the care and skill of a diligent and prudent banker in selecting and applying the bank's credit assessment methods and forming an opinion about a borrowing customer's ability to repay.</p>
<p>18)</p>	<p>The Code should be amended to include a new provision that obliges signatory banks to provide an applicant for consumer credit with the bank's 'not unsuitable assessment' prepared in accordance with National Consumer Credit Protection Act 2009 Part 3-2. This document should be provided free of charge, and as a matter of course, prior to the customer signing the credit contract.</p>	<p>Recommendation supported in principle.</p> <p>The industry is conscious of criticisms about information overload for customers. Therefore, we support notifying customers that the bank's 'not unsuitable assessment' is available to them free of charge upon request, rather than a mandatory obligation requiring banks to provide to every customer.</p> <p>Greater levels of disclosure have not necessarily resulted in better customer outcomes or improved understanding by customers of the banking services and products they are utilising.</p> <p>The industry is working on trying to simplify processes and information for customers, and this recommendation would appear to introduce more complexity, added cost and potentially unnecessary disclosure.</p> <p>Furthermore, the provision of this document would not have a material change on the provision of the credit.</p>



No.	Recommendation	Industry response
19)	The Code should be amended to include protections for reverse mortgage customers that match those set out in clause 8 of the Customer Owned Banking Code of Practice.	<p>Recommendation supported.</p> <p>The industry notes that reverse mortgages are adequately dealt with by ASIC guidance and the law, and care will need to be taken to ensure that protections included in the Code are consistent with existing legislative requirements.</p>
Credit Card Lending		
20)	The Code should be amended to include a new obligation that applies to signatory banks when undertaking a ‘not unsuitable’ assessment in relation to a consumer credit card (new credit card or credit increase). The bank should assess the consumer’s capacity to pay the full amount of the card credit limit in a reasonable time period.	<p>Recommendation supported in principle.</p> <p>The industry supports including a commitment in the Code whereby a bank assesses the consumer’s capacity to pay the full amount of the card credit limit in a reasonable time period, subject to further definition of what is a “reasonable” time period.</p> <p>The industry will develop guidance to assist with the interpretation of this clause and will work with Treasury as part of its consultation, <i>Credit Cards: Improving Consumer Outcomes and Enhancing Competition</i>.⁶</p>
21)	The Code should be amended to include a new obligation that prohibits signatory banks from providing a customer with a credit card credit limit that is more than that applied for by the customer or more than the cost of goods purchased in a linked credit transaction.	<p>Recommendation supported in part.</p> <p>The industry supports provision of a credit card credit limit in line with the customer’s request.</p>
22)	The Code should be amended to include a new obligation that prohibits banks from offering a credit card credit limit increase to a Code customer, other than in response to a customer-initiated specific request for a higher credit limit. The drafting should make it clear that the requirement for a customer-initiated specific request is not met by the customer ‘opting in’ to the bank making credit limit increase offers to the customer.	<p>Recommendation not supported.</p> <p>The industry does not support an obligation prohibiting banks from offering a credit card limit increase to a customer.</p> <p>Under legislative arrangements customers have two options;</p> <ul style="list-style-type: none"> i) Opt out of invitations to increase their credit limit, or ii) Elect to receive offers. <p>This approach preserves the ability of customers to be made aware of their options, and allows them access to credit if their</p>

⁶ <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2016/Credit-card-reforms>



No.	Recommendation	Industry response
		<p>circumstances change. Furthermore, this approach ensures the preservation of customer choice and preference.</p> <p>It is important to note that there are already legislative restrictions to ensure an offer of credit must be responsible and prudent. Specifically, the responsible lending obligations must be met before a credit card or credit limit increase is approved.</p> <p>Alternative industry led solution</p> <p>The industry is committed to ensuring customers experiencing financial difficulty do not receive credit card limit increase offers under the opt-in provisions. For this reason, the industry will further improve how customers displaying characteristics of financial difficulty are identified and will not send credit card limit increases to those customers. The industry will work with relevant stakeholders to develop an industry guideline to assist with the interpretation of this new clause in the Code.</p> <p>The underlying policy objective that the Treasury reforms and Mr Khoury are trying to address is that banks are not applying ‘pressure’, ‘tempting’ or marketing to customers who display characteristics of ‘financial difficulty’. This alternative industry led solution will deliver on this policy objective.</p>
23)	<p>The Code should be amended to include:</p> <ul style="list-style-type: none"> a) A prohibition on signatory banks charging Code customers interest on the portion of their credit card balance that is paid off by the due date; and b) An obligation on signatory banks to specify on a statement the amount of the interest charges that are being conditionally waived, explain that the waiver only applies if the payment is made on time and that interest charges will be reinstated and added to future statements for any portion of the monthly balance not paid on time. 	<p>Recommendation supported in part.</p> <ul style="list-style-type: none"> a) The industry does not support the Code prescribing how interest is charged. Competition in pricing policies is a core element of a competitive financial system and differences in pricing is one way in which financial institutions can distinguish their product and service offerings and achieve a competitive advantage. b) The industry supports greater transparency to ensure customers understand and have sufficient information to know how they will be charged interest to aid effective consumer choice. The industry will, through further consultation, determine how and what information will be useful for customers.



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No.	Recommendation	Industry response
24)	The Code should be amended to include a new obligation that signatory banks apply Code customer credit card payments so that higher interest debts are discharged first – applying to all cards.	<p>Recommendation supported.</p> <p>The industry supports requiring higher interest debts to be discharged first, applying to all credit card payments.</p>
25)	The Code should be amended to include a new obligation that signatory banks provide their Code customers with notice (in the form preferred by the customer) at least 30 days prior to expiry of an introductory offer period during which no or low interest accrues on all or a portion of the account balance.	<p>Recommendation supported.</p> <p>The industry agrees balance transfer notifications should be sent at least 30 calendar days prior to the expiry of an introductory offer. This will allow customers time to establish alternative options, if desired. Banks will have to determine how this is implemented depending on the functionality available to each institution.</p>
26)	The Code should be amended to include a new obligation that wherever there is functionality (electronic or otherwise) for a customer to alter a credit card limit, this must (equally and as prominently) include the ability to reduce the credit limit or to cancel a Code customer’s credit card.	<p>Recommendation supported.</p> <p>The industry supports making it easier for customers to reduce a credit card limit or cancel a credit card. Banks will have to determine how this is implemented depending on the functionality available to each institution.</p> <p>Altering a credit card limit does not involve the same process as cancelling a credit card, so “equally” cannot mean the same process.</p> <p>For example, there are operational complexities associated with cancelling a card (recurring payments, outstanding payments, and outstanding balance) that may require direct communication with a customer to resolve. Depending on the circumstances, without resolving these matters a customer could be left with debts continuing to accrue on the card.</p>
27)	The Code should be amended to include a new obligation that requires a signatory bank to notify a Code customer in writing if the bank exercises its right to cancel the customer’s credit card. The notification should, where possible, include an explanation of the reasons for the cancellation and provide contact details should the customer wish to complain.	<p>Recommendation supported.</p> <p>The industry supports, where appropriate, providing general reasons for a decision to cancel a credit card in certain circumstances, but not all. The specific channel of communication (for example, in writing) should be appropriate and in the form preferred by the customer or available in the terms and conditions of the product.</p>



No.	Recommendation	Industry response
Credit Contracts and Borrower Default		
28)	<p>The Code should be amended to prohibit a signatory bank from enforcing a credit facility against:</p> <ul style="list-style-type: none"> a) a customer who is an individual; or b) a small business customer where the credit facility is below \$5 million, <p>if the customer has complied with loan payment requirements and has acted lawfully.</p> <p>The ABA should consult with stakeholders including the Australian Small Business and Family Enterprise Ombudsman about any exceptions, for example, to permit enforcement of a small business credit facility where an insolvency event has occurred.</p>	<p>Industry requires additional time to consider.</p> <p>The industry supports increased transparency and simplicity in terms and conditions for loans to individual and small business customers.</p> <p>The industry agrees that covenants should be explained in plain language and loans should include a summary of covenants.</p> <p>The industry is seeking to ensure that:</p> <ul style="list-style-type: none"> a) All covenants are clearly explained b) The number of specific event non-monetary covenants is reduced, and c) Disclosure is improved with banks specifying circumstances in which covenants will be used. <p>The underlying objective of the reforms should be to enhance transparency and certainty for customers while ensuring that lending remains affordable and accessible and supports them in growing their business.</p> <p>Credit contracts include both monetary and non-monetary covenants (specific event and financial indicator). While it has been recommended that the only form of default should be monetary or unlawful acts, there are legitimate reasons for specific event non-monetary defaults, for example, bankruptcy, voluntary administration, fraud, significant changes in management, loss of trading licence and changes to the underlying security.</p> <p>In addition, financial indicator covenants, for example, financial ratios, provide early indicators of business viability and are used to encourage a business to work with the bank on ways to turn the business around.</p> <p>Removing non-monetary covenants from all loan contracts and credit products for individual and small business customers could have adverse and unintended consequences for all borrowers and impact the price and availability of credit.</p>



No.	Recommendation	Industry response
		<p>Individual banks require more time to consider the potential consequences of removing certain covenants and events of default for small business customers with aggregated credit facilities under \$3 million.</p> <p>Interim industry position</p> <p>The industry supports:</p> <ul style="list-style-type: none"> ▶ Removing general catch all ‘material adverse changes’ clauses from loan contracts for small businesses, and ▶ Explaining covenants in plain language and including a summary of covenants with loan contracts for small businesses. <p>The Code will be amended to include these commitments in a new clause in the section on small business.</p> <p>The industry does not support a \$5 million credit facility threshold and believes small business customers with aggregate credit facilities under \$3 million (total business lending across a business group up to \$3 million) is more appropriate.</p> <p>Based on bank lending data, the ABA estimates this definition would capture 97% of business customers. Businesses with total lending above \$3 million tend to be larger and more sophisticated businesses, with more complex lending needs and arrangements and contractual obligations. It is not suitable for these types of businesses to be included within the scope of this recommendation.</p>
29)	<p>a) The Code should be amended to require signatory banks processes in relation to expert valuations and investigating accountants’ reports to be fair and transparent. In the case of small business, this obligation should apply to a credit facility below \$5 million.</p> <p>b) Signatory banks should develop an Industry Guideline that sets out in some detail fairness and transparency issues. Interested stakeholders including the Australian Small Business and Family Enterprise Ombudsman should be closely involved in the development of the Guideline.</p>	<p>Recommendation supported.</p> <p>The industry will work with relevant stakeholders and develop an industry guideline explaining valuation practices and an industry guideline for the appointment of receivers, administrators and liquidators for small businesses and farmers.</p> <p>This would be provided for an aggregated credit facility under \$3 million.</p>



No.	Recommendation	Industry response
30)	<p>a) The Code should be amended to require signatory banks to disclose in individual customers' bank statements if the bank reported adverse repayment history information to a credit reporting body in connection with the customer's account during the period of the statement.</p> <p>b) The ABA and signatory banks should develop an Industry Guideline to assist banks to provide disclosure in a way that is consistent and comprehensible for customers. Proposed wording should be consumer tested.</p>	<p>Recommendation supported in principle.</p> <p>a) The industry agrees with the principle of this recommendation, particularly given that the more information that can be provided to consumers about their credit history, the more opportunities consumers have to better understand the impact of their behaviours.</p> <p>There are practical issues with being able to implement this recommendation, because systems that are used to generate account statements don't currently contain this information. Statements are mass produced communications that are sent less frequently (monthly, quarterly or yearly). There is a potential that a notification could be delayed or even overlooked by the customer given the level of detail in statements.</p> <p>Alternative industry led solution</p> <p>The industry supports providing a customer with a separate and timely communication, in the form preferred by the customer, that the bank has reported adverse repayment history information to a credit reporting body. This approach will be more effective and targeted for the customer.</p> <p>b) Comprehensive credit reporting is covered by Part IIIA of the Privacy Act and the Privacy Credit Reporting Code. The industry will consult with relevant stakeholders on the development of an industry guideline. This will need to be considered, and form part of, the comprehensive credit reporting framework.</p>
31)	<p>The Code should be amended to include an obligation on signatory banks to comply with the Department of Human Services' Code of Operation – and to make this clear to customers and creditors.</p>	<p>Recommendation supported.</p> <p>The industry worked with the Federal Government when the Code of Operation was last reviewed and supported improvements to consumer protections. Banks are committed to continue supporting low income earners and take into consideration the burden of debt repayments on their ability to manage day-to-day living expenses.</p>



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No.	Recommendation	Industry response
32)	The Code should be amended to include an obligation on a signatory bank, where a Code customer's debt has been assigned and the bank will not be the future contact with the customer about their debt, to arrange for a written notice advising of the change to be sent to the customer on the bank's letterhead. The notice should set out details of the debt including the amount currently owing and the name and contact details of the purchaser of the debt.	<p>Recommendation supported.</p> <p>Where a customer's debt has been assigned and the bank will not be the future contact with the customer about their debt, the industry supports the bank arranging a written notice advising of the change to be sent to the customer on the bank's letterhead.</p>
33)	<p>a) The Code should be amended to require signatory banks to develop processes to monitor compliance by their debt assignees with legislation, ASIC's Debt Collection Guidelines and the Code Principles.</p> <p>b) The ABA and signatory banks should develop a scalable Industry Guideline to shape expectations as to reasonable conduct by debt assignees and a robust monitoring program for them.</p>	<p>Recommendation supported in part.</p> <p>a) Banks manage the disputes about the contingent debt and/or allegations about the loan origination, but would not manage complaints or disputes about the sold debt.</p> <p>The industry does not support requiring banks to monitor compliance of third party assignees.</p> <p>Debt assignees do not act as a bank's agent and it is clear that the debt is assigned as part of an arm's length commercial transaction. Debt assignees are required to have an appropriate licence. They are responsible for their own compliance and are subject to regulatory oversight by ASIC. An expectation that banks monitor their compliance would be inefficient and is a regulatory function beyond what can reasonably be expected to be within the competencies or responsibilities of the bank.</p> <p>b) The industry supports developing an industry guideline and will consult with relevant stakeholders, including the Australian Collectors and Debt Buyers Association. Banks expect debt assignees to meet their legal obligations and ASIC's Debt Collection Guidelines.</p>
Joint Account Holders		
34)	Clause 29 of the Code should be redrafted to require a co-debtor to receive a "substantial benefit" under the credit facility and a signatory bank to make reasonable enquiries to ensure that this is the case (thereby reversing the position currently achieved by the words "it is clear, on the facts known to us"). In the case of a credit facility for the	<p>Industry requires additional time to consider.</p> <p>The industry requires additional time to consider this recommendation in order to ensure that the proposed change protects vulnerable customers and does not preclude lending to all customers, for example, a parent borrowing to purchase a motor</p>



No.	Recommendation	Industry response
	purpose of a small business, the clause 29 obligation should only apply to a credit facility below \$5 million.	<p>vehicle for a child, or someone who is financing a loan for a non-income earning partner.</p> <p>The ‘substantial benefit test’ carries with it a number of ambiguities. Whether there is a substantial benefit is a subjective value judgement for the bank, and therefore, would lack necessary certainty if the co-debtor is, as is proposed, to be discharged because no substantial benefit is identified.</p> <p>The industry will seek legal advice on the use of the phrase ‘substantial benefit’ and will work with relevant stakeholders on developing a position that works for customers and banks.</p>
35)	Clause 29 of the Code should specify that a credit facility is unenforceable against a person who is accepted as a co-debtor but who, the signatory bank should have known, was not receiving a substantial benefit under the credit facility. In the case of a credit facility for the purpose of a small business, the clause 29 obligation should only apply to a credit facility below \$5 million.	<p>Recommendation not supported.</p> <p>The industry does not agree with imposing a strict penalty on a requirement that is significantly difficult to verify.</p>
36)	<p>Clause 30 of the Code should include a new provision committing signatory banks to act upon instructions from a joint account holder either:</p> <ul style="list-style-type: none"> ▶ to amend the account operating instructions to “two to operate”; or ▶ to place a hold on the account. <p>A footnote to the provision should refer to the ABA Industry Guideline on Financial Abuse and Family and Domestic Violence, November 2016 for more explanation.</p>	<p>Recommendation supported.</p> <p>The industry supports including a provision in the Code committing banks to amend account operating instructions of a jointly held account:</p> <ul style="list-style-type: none"> ▶ To “two to operate”, and ▶ Only allowing debits from the account on the instructions of both account holders <p>following receipt of the same instructions from either account holder.</p>
Guarantors		
37)	<p>Clause 31 of the Code should be should be redrafted so as to deal separately with:</p> <ul style="list-style-type: none"> ▶ guarantors of credit to an individual other than a sole trader; and ▶ guarantors of a credit facility below the specified monetary threshold provided for a small business purpose. 	<p>Recommendation supported.</p> <p>The industry supports redrafting clause 31.</p>



No.	Recommendation	Industry response
38)	<p>A signatory bank should be obliged to provide a guarantor with the signatory bank’s assessment that credit is “not unsuitable” for the debtor, where the signatory bank is required by National Consumer Credit Protection Act 2009 to prepare this.</p>	<p>Recommendation supported in principle.</p> <p>As per recommendation 18, the industry supports notifying guarantors that the bank’s ‘not unsuitable assessment’ is available to them free of charge upon request, rather than a mandatory obligation requiring banks to provide to every guarantor.</p>
39)	<p>The Code should be amended to prohibit signatory banks from signing a guarantor, who has not been legally advised, until at least the third day after the provision of all required information to the guarantor.</p> <p>This provision should also apply to a guarantor of a small business credit facility below \$5 million with an exception at the election of a sole director guarantor, a trustee guarantor or a commercial asset financing guarantor.</p>	<p>Recommendation not supported.</p> <p>The industry recognises the importance of guarantors understanding their responsibilities.</p> <p>The industry is concerned that extending the next day requirement to three days will not support the objective of this recommendation and will be unworkable. Customers may be frustrated by the time delay, or by the additional expense of legal advice.</p> <p>It should be noted that the industry has supported recommendation 42.</p>
40)	<p>Before an existing guarantee is extended to cover a new credit contract, the Code should require the signatory bank to provide the guarantor with any relevant updated information available to the signatory bank as to the current financial situation of the debtor.</p> <p>This provision should only apply to a guarantor of a small business credit facility below the specified monetary threshold with an exception for a sole director guarantor who has chosen not to receive this information, a trustee guarantor or a commercial asset financing guarantor.</p>	<p>Recommendation supported.</p> <p>The industry supports alignment with the Customer Owned Banking Association (COBA) Code of Practice.</p> <p>The information provided should include updated information available to the bank on the financial position of the debtor that the bank considers that a guarantor would expect to consider before agreeing to the extension of the guarantee.</p>
41)	<p>The Code should include a new provision obliging signatory banks to inform a guarantor where the debtor has been in continuing default for more than 2 months or where the debtor’s credit contract has been changed because the debtor has encountered financial hardship.</p> <p>This provision should only apply to a guarantor of a small business credit facility below \$5 million.</p>	<p>Recommendation supported in part.</p> <p>Under the <i>National Consumer Credit Protection Act 2009</i> (Cth) a guarantor would receive a copy of the default notice, but notification is not received for a hardship application.</p> <p>The industry supports providing this additional notification to the guarantor when the hardship application has been processed and when the bank obtains consent from the borrower. This will be limited to continuing monetary default and over a two month period.</p>



No.	Recommendation	Industry response
42)	<p>In consultation with consumer representatives, signatory banks should enhance Industry Guidelines to assist bank staff to identify when a guarantee should be viewed as financial abuse and accordingly when the signatory bank should exercise its discretion not to accept a guarantee as security for credit.</p> <p>The guidance should cover the factors that might be suggestive of financial abuse and what further steps a signatory bank should take in response, including enquiries about the guarantor’s financial position to assess the extent of hardship that would result if the guarantee is enforced by the signatory bank.</p>	<p>Recommendation supported.</p> <p>The industry supports enhancing existing financial abuse guidelines and will consult with relevant stakeholders and legal experts.</p>
43)	<p>The Code should be amended to require signatory banks to have recourse to security provided by an individual customer borrower, before the signatory bank has recourse to the guarantor’s security, unless the guarantor and individual customer borrower agree otherwise.</p>	<p>Recommendation supported in principle.</p> <p>The industry supports the principle of recourse against the borrower where the borrower has part or sufficient security to repay the liability.</p> <p>However, in certain circumstances the borrower’s security may be inadequate and could risk further financial detriment, increasing the guarantor’s liability. In these circumstances the requirement should not prohibit banks from also pursuing the guarantor.</p> <p>Clause 31.14 will need to be amended to adequately reflect this recommendation.</p>
44)	<p>The Code should specify that a guarantee is unenforceable if the signatory bank fails to comply with the pre-execution requirements. Similarly non-compliance with a post execution requirement means that the guarantee is unenforceable in relation to debt or costs that accrue after that time.</p>	<p>Recommendation not supported.</p> <p>This recommendation does not consider the materiality or relevance of the breach. These components are important as with any other breach of contract.</p> <p>The industry considers it more appropriate for the courts to determine remedies on a case-by-case basis.</p>
45)	<p>The ABA and signatory banks should agree a monetary limit up to which signatory banks must consent to the Financial Ombudsman Service having jurisdiction to decide a claim about a guarantee to secure a home loan to an individual customer. The monetary limit should be at least \$1 million and should be determined taking into account the average housing costs in Australian capital cities and</p>	<p>Recommendation supported in principle.</p> <p>The industry supports expanding the general jurisdiction for the Financial Ombudsman Service (FOS) so:</p> <ul style="list-style-type: none"> ▶ Customers can bring disputes up to the value of \$1 million; and ▶ The external dispute resolution scheme is able to make awards up to \$1 million.



No.	Recommendation	Industry response
	FOS's small business monetary limit once that limit is announced. The Code should be amended to include this commitment.	The industry awaits the outcomes of the Ramsay Review regarding this recommendation.
Financial Difficulty		
46)	The Code should give prominence to signatory banks' commitment to support customers facing financial difficulty by including this in Principles that appear at the front of the Code.	<p>Recommendation supported.</p> <p>The industry agrees that more prominence should be given to banks' commitment to supporting customers facing financial difficulty.</p>
47)	The Code should explain the concept of financial difficulty and, for consumer customers, the extent of overlap with the legislative financial hardship requirements. A diagrammatic presentation of the categories of financial difficulty, with examples, along the lines of the ABA Industry Guideline Promoting understanding about banks' financial hardship programs would be helpful. The description in the ABA Industry Guideline diagram of late payment assistance should, however, be revisited to ensure that it does not encompass situations that are properly within the legislative concept of financial hardship.	<p>Recommendation supported.</p> <p>The industry supports clarifying the Code provisions on financial difficulty and the extent of overlap with the requirements in section 72 of the National Credit Code.</p>
48)	<p>The Code should include a new clause that obliges signatory banks to establish systems and processes to identify and contact individual customers at high risk of future financial difficulty and to try and assist those customers. The clause could include a non-exclusive list of factors that could be taken into account for the purposes of determining customer risk, for example:</p> <ul style="list-style-type: none"> ▶ the customer repeatedly exceeding the credit facility credit limit; ▶ multiple requests by the customer to increase their credit facility credit limits; ▶ high or increasing numbers of default charges being incurred by the customer; ▶ regular returned items or refused authorisations in respect of point of sale or ATM transactions; ▶ frequent use of cash advance facility; ▶ failure to reduce outstanding balance over time; and 	<p>Recommendation supported in part.</p> <p>The industry supports including a provision in the Code that requires banks to identify and contact individual customers at risk of financial difficulty to try and assist those customers.</p> <p>The industry will need to consider the definition of 'future financial difficulty', and how this recommendation will be applied in practice. Banks will need to assist these customers in a manner that is constructive and effective, while considering the sensitives around forming assumptions about potential vulnerability.</p> <p>The industry does not consider it appropriate for the Code to prescribe a non-exclusive list of factors. This approach could inadvertently lead to less flexibility and options for customers. It is important that banks exercise judgement on a case-by-case basis with their customer.</p> <p>The industry believes the list of factors would be better placed in the <i>Industry Guideline: Promoting understanding about banks' financial</i></p>



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No.	Recommendation	Industry response
	<p>▶ a customer known to have a significantly deteriorating credit rating as identified by a credit reporting body.</p>	<p><i>hardship programs</i>.⁷ The industry will revise the existing industry guideline to incorporate these factors.</p>
49)	<p>Clause 28 of the Code should be rewritten using language that is simpler and warmer in tone. For example, clause 28.5 could “encourage” customers to “let us know” about financial difficulty. Signatory banks should commit to considering cases of financial difficulty “sympathetically and positively”.</p>	<p>Recommendation supported. The industry will consider improving the language in clause 28 as part of the redrafting process for the Code.</p>
50)	<p>In place of existing clause 28.9(b), the Code should include a simple statement that in appropriate cases signatory banks will refer Code customers in financial difficulty to financial counselling organisations.</p>	<p>Recommendation supported. The industry supports referring customers to financial counselling organisations where appropriate, however, we consider it more appropriate that clause 28 be broader to capture other support services that are available and relevant for the individual customer.</p>
51)	<p>The ABA and signatory banks should continue to regularly review ABA Industry Guideline Promoting understanding about banks’ financial hardship programs. The next version of the Guideline could usefully address the importance of signatory banks ensuring that restructured arrangements are sustainable and sufficiently take account of affordability for the customer.</p> <p>It would also be useful to address what a customer should do if they find that they cannot comply strictly with an agreed financial difficulty assistance arrangement. When developing the next iteration of the Guideline, the ABA and signatory banks should work closely with consumer advocates.</p>	<p>Recommendation supported. The industry supports a regular review of the industry guideline to ensure it remains relevant and meets the changing nature of banking. The industry will consult with relevant stakeholders as part of the review. The industry guideline was originally published in 2013, and has been amended once since and in consultation with relevant stakeholders.</p>
52)	<p>Clause 28.2 of the Code should be amended to contemplate assistance by a signatory bank to help a Code customer to overcome short term or longer term (but nevertheless finite) financial difficulties with a credit facility provided by the signatory bank.</p>	<p>Recommendation supported in principle. Banks will assist customers overcome their short term or longer term financial difficulties with a credit facility on a case-by-case basis, and to the extent possible without contravening responsible lending obligations. The industry recognises financial difficulties can be caused by different factors, including unemployment, illness, relationship breakdown or a natural disaster. Longer term financial difficulties are</p>

⁷ <http://www.bankers.asn.au/Consumers/Are-you-experiencing-financial-difficulty->



No.	Recommendation	Industry response
		<p>challenging, but banks want to work with their customers to restore their financial situation. Where this isn't possible and hardship assistance options may not be suitable, other arrangements will be needed.</p> <p>The industry will also enhance the information available about financial hardship assistance provided by banks, including the website Doing It Tough.</p>
53)	<p>Clause 28 of the Code should be amended to include a new provision that a signatory bank may, at its discretion, decide to waive a small unsecured debt if the bank is provided with evidence that the person is in long term financial hardship and the circumstances warrant a compassionate approach.</p>	<p>Recommendation not supported.</p> <p>The industry does not consider it appropriate for the Code to include this provision because it could create unrealistic customer expectations.</p> <p>Instead, the industry believes this commitment would be better placed in the <i>Industry Guideline: Promoting understanding about banks' financial hardship programs</i>.</p> <p>It is important to note that hardship arrangements will vary depending on a number of factors (including the individual customer's personal circumstances, needs and financial situation) and are assessed on a case-by-case basis. In exceptional circumstances, a bank may reduce or waive debts where standard hardship assistance options may not be suitable, as outlined in the industry guideline.</p> <p>As with recommendations 51 and 52, the industry will continue to work with relevant stakeholders, including financial counsellors, on the challenges associated with longer term hardship.</p>
54)	<p>Clause 28 of the Code should acknowledge that financial difficulty assistance may be sought by a co-debtor, in the absence of agreement from the other co-debtor, and that signatory banks will try to assist particularly in situations of financial abuse or family violence. The clause should have a footnote referring to the ABA Industry Guideline Financial Abuse and Family and Domestic Violence, November 2016 for more explanation.</p>	<p>Recommendation supported.</p> <p>The industry supports the Code acknowledging that financial difficulty assistance may be sought by a co-debtor in the absence of agreement from the other co-debtor, and that banks will try to assist particularly in situations of financial abuse or family violence.</p>
55)	<p>Clause 28.8 of the Code should be amended to require a signatory bank to provide written notification of financial difficulty assistance that it has agreed to provide this to an individual customer if:</p>	<p>Recommendation supported.</p> <p>The industry supports providing written notification of financial difficulty assistance. Customers often need this written</p>



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No.	Recommendation	Industry response
	<ul style="list-style-type: none"> ▶ the customer so requests; or ▶ the assistance will span a period of 30 days or more. <p>The notice should include the details of the repayments required, what will happen at the end of the arrangement and any adverse consequences for the customer in accepting the arrangement, such as, whether the account will be listed as overdue on the customer's credit report, whether default interest rates or fees will apply and whether the customer's credit card will be cancelled.</p> <p>This provision should also apply where financial difficulty assistance is provided to a small business in respect of a credit facility of below \$5 million.</p>	<p>documentation as part of managing and keeping track of their records.</p>
56)	<p>The Code should be amended to introduce a financial difficulty assistance regime for guarantors of guarantors of Code customers who are in debt to a signatory bank because the bank has made a demand under the guarantee. The ABA and signatory banks, working with consumer representatives, should develop industry guidance as to the options for assistance.</p>	<p>Recommendation supported.</p> <p>The industry supports extending financial difficulty assistance to guarantors.</p> <p>The industry will work with relevant stakeholders and develop an industry guideline on options for assistance.</p>
57)	<p>Clause 28.10 of the Code should be extended to incorporate the additional commitments:</p> <ul style="list-style-type: none"> ▶ information about the availability of financial difficulty assistance should be “prominently” displayed on each signatory bank’s website and a search for the words “hardship” and “financial difficulty” must find the relevant information; ▶ each branch should display a poster and brochures about the availability of financial difficulty assistance and how to inquire about this; and ▶ account statements, default notices and collections letters should advise that financial difficulty assistance is available and how to inquire about this. 	<p>Recommendation supported.</p> <p>The industry supports raising awareness of the availability of financial hardship assistance and the industry’s efforts to help customers experiencing financial difficulties.</p> <p>Based on our experience with the industry commitments in the existing industry guidance, we consider that a technology neutral and non-prescriptive approach should be fostered in this promotion.</p>
Terms and Conditions, Direct Debits and Chargebacks		
58)	<p>The redrafted Code should include clause 3.1(d) as an obligation that is capable of being monitored and enforced by the CCMC.</p>	<p>Recommendation supported in part.</p>



No.	Recommendation	Industry response
		<p>The industry supports the CCMC monitoring clause 3.1(d) with a view of making a recommendation to improve the clarity of customer facing terms and conditions or other disclosures in response to a particular complaint.</p> <p>The CCMC should not have the power to enforce or mandate how a clause should be drafted or how a disclosure to a customer should be made through any communications channels. Banks should retain responsibility for how they communicate with their customers.</p>
59)	<p>Signatory banks' Customer Advocates should be tasked with championing better customer service in relation to direct debit cancellation requests. They should work with internal management to achieve this, using all the resources and tools that they will need to be effective in their roles over the long term.</p> <p>Signatory banks' Customer Advocates should report regularly to the CCMC as to the steps the signatory bank is taking to enhance compliance by staff with customer direct debit cancellation requests and the impact those steps are having.</p> <p>The CCMC should publicly report on signatory banks' progress in improving compliance with direct debit cancellation requests, including by releasing signatory banks' data on an anonymised basis, together with the CCMC's trend analysis and assessment of the adequacy of signatory banks' efforts.</p>	<p>Recommendation supported in principle.</p> <p>The industry believes the Customer Advocate should be championing all aspects of the Code and it should not be specific to direct debit cancellation requests.</p> <p>While the industry is supportive of engagement between the Customer Advocate and the CCMC, we do not support a formal reporting requirement.</p>
60)	<p>Signatory banks should work with card scheme companies to build functionality and processes to enable signatory banks to carry out customer requests to cancel card recurring payment arrangements. The aim should be to put this in place within two years. The CCMC should be kept apprised of progress in relation to this and should report about this in its Annual Reports. Once the required functionality and processes are in place, signatory banks should undertake to carry out their customers' recurring payment arrangements cancellation requests free of charge.</p>	<p>Recommendation supported in principle.</p> <p>The industry supports finding a solution that enables banks to carry out customer requests to cancel card recurring payment arrangements.</p> <p>The industry will work with the card schemes on determining the system build, cost, and time required to implement this solution.</p>
61)	<p>a) Clause 22.1 of the Code should be amended to prevent signatory banks from imposing a shorter timeframe for</p>	<p>Recommendation supported.</p> <p>a) The industry notes that the card schemes set the rules for a chargeback claim. The card schemes have different</p>



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No.	Recommendation	Industry response
	<p>making a chargeback claim than that available under the credit card scheme rules.</p> <p>b) Clause 22.2 of the Code should be amended to require signatory banks to provide clear and prominent information to card holders about what they should do about unauthorised card transactions. This information should be provided both at the time of issue of a card and at regular intervals thereafter.</p> <p>c) Once the National Credit Card Chargeback Project findings are available in full, the ABA and signatory banks should develop and implement a plan of action to make Code customers more aware of their chargeback rights and to better help them to access those rights. The CCMC should be kept informed about progress and publicly report about this work.</p>	<p>chargeback timeframes depending on the ‘reason’ for the chargeback (and these reasons and timeframes can change from time to time at the discretion of the card scheme).</p> <p>To avoid duplication, this should be incorporated by way of reference.</p> <p>b) This is covered by ASIC’s ePayments Code. To avoid duplication, this should be incorporated by way of reference.</p> <p>c) The industry supports the proposal to develop and implement a plan of action to make customers more aware of their chargeback rights and to better help them to access those rights. Clause 22.2 of the Code already includes a requirement for banks to make general information about chargebacks available on their website or by electronic communication to customers, and to notify customers of the availability of this information on or with the relevant account statement at least once every 12 months.</p>
Fees		
62)	<p>Clause 17 should be redrafted to apply more generally to banking service transaction fees. The general principle should be that the amount of the fee is disclosed (or, where the fee is referable to the size of the transaction, the method of calculation of the fee) each time that the customer is invited to use the banking service.</p>	<p>Recommendation supported in principle.</p> <p>The industry supports making fee disclosure more transparent and easily understood.</p> <p>It would not be practical to disclose in all situations all fees to customers at the time (or just before) the fee is incurred. For example, credit or debit card fees (if any) could not be disclosed by the bank when purchases are made in store with the card or made online – the disclosure of the fees would be up to the relevant merchant.</p> <p>The industry will need to consider carve outs to cover those situations where it is impractical to expect the requirement to apply.</p>
63)	<p>The Code should include a new provision that obliges a signatory bank to set default fees that are reasonable having regard to the signatory bank’s costs. A broad definition of default fees should be included in the Code to give this provision a wide reach.</p>	<p>Industry requires additional time to consider.</p> <p>The industry appreciates that further work will be required to define and scope this recommendation.</p>



No.	Recommendation	Industry response
		The industry will need to be mindful of its legal obligations, including competition law. For example, inclusion of any provision of this nature may require regulatory approval.
64)	Clause 13.7 of the Code should be amended by adding in the words “but we will waive our right to a fee where we think your circumstances warrant this”.	<p>Recommendation supported.</p> <p>The industry notes that banks exercise their discretion to waive fees in certain circumstances.</p> <p>The industry supports this recommendation with an amendment to “but we <i>may</i> waive our right to a fee where we think your circumstances warrant this.”</p>
Sales Practices Including Insurance Cross-Selling		
65)	The Code should require signatory banks to ensure that their staff and authorised representatives, when promoting or selling financial services or products to Code customers, do this in a fair and ethical manner, without engaging in pressure sales techniques.	<p>Recommendation supported.</p> <p>The industry supports ensuring staff, when promoting or selling financial services or products to customers, do this in a fair and ethical manner, without engaging in pressure sales techniques.</p>
66)	The Code should prohibit a signatory bank from charging a Code customer for the acquisition of a financial product or service from or through the signatory bank unless the signatory bank is able to evidence that the customer’s explicit consent was obtained at the time of the acquisition.	<p>Recommendation supported.</p> <p>The industry supports ensuring that a customer’s consent has been obtained at the time of acquisition of a financial product or service. This record should be kept in a manner consistent with the bank’s record keeping policy.</p>
67)	<p>The Code should include a new provision that applies to signatory bank distribution of consumer credit insurance. This should specify:</p> <ul style="list-style-type: none"> a) A signatory bank’s representative must not promote consumer credit insurance to an individual customer where the signatory bank’s representative should have been aware that the individual is not suited to the policy. b) A signatory bank must provide an individual customer with prominent, timely and sufficient information to make an informed decision as to whether or not to purchase the product. 	<p>Recommendation supported in part.</p> <ul style="list-style-type: none"> a) To the extent that this recommendation would result in the inability to sell consumer credit insurance under a general advice or no advice model, the industry does not support this recommendation. Consumer credit insurance is a low cost insurance option (compared to an underwritten insurance option) that provides easy and immediate insurance for customers who wish to have protection for their debt but who do not have the time or money to spend on personal advice. <p>The industry supports the proposition that customers should be provided adequate information for them to be able to make an informed decision about whether the product is right for</p>



No.	Recommendation	Industry response
	<p>c) Signatory banks should ensure that their consumer credit insurance sales processes are tailored appropriately to meet the needs of a wide range of customers, including those not familiar with consumer credit insurance.</p> <p>A signatory bank must not complete an individual customer’s application for consumer credit insurance earlier than the day after information is provided to the customer about consumer credit insurance. Moreover the sale may only be completed if the customer contacts the signatory bank to proceed with the application – a signatory bank representative must not follow up the customer to see if the customer wants to proceed.</p>	<p>them, as the appropriate control against mis-selling, rather than requiring individualised or tailored sales processes which could only be delivered under a personal advice model.</p> <p>b) The industry agrees that there is benefit in providing the customer with adequate information so that the customer can make an informed decision whether or not to purchase the product. Care would need to be taken to ensure that “timely” is not inconsistent with existing legislative requirements for delivery of disclosure documents (for example, PDS).</p> <p>c) The industry supports this proposal on the understanding that it is not necessarily requiring different sales processes for different customers – rather, it allows for a single general advice sales model, provided that that model is designed to provide sufficient information for a wide range of customers, including those not familiar with consumer credit insurance.</p> <p>The industry does not support the proposal that the bank must not complete an individual customer’s application for consumer credit insurance earlier than the day after information is provided to the customer about consumer credit insurance. For personal loans and credit cards, the end to end process can be fulfilled the same day (applying for the loan and the insurance) and the inability to fulfil the insurance, may be regarded as a poor customer experience and lack of convenience for the customer.</p> <p>The industry does not support the proposal that ‘a bank representative must not follow up the customer to see if the customer wants to proceed’. It is important that banks are able to contact customers who may not have had a previous conversation to discuss protection options. This poses significant risks for customers who may unknowingly proceed unprotected.</p> <p>The industry understands the general insurance industry is undertaking a number of projects to improve the offer of consumer credit insurance. We will consult with the Insurance Council of Australia (ICA) and ASIC on implementing good practices across the industry.</p>



No.	Recommendation	Industry response
68)	<p>The ABA and signatory banks should develop a fact sheet that explains lenders mortgage insurance to home loan borrowers. The Code should require this to be provided to a Code customer who is required by a signatory bank, as a condition of their home loan, to obtain lenders mortgage insurance.</p>	<p>Recommendation supported in principle.</p> <p>The industry supports providing home loan borrowers with information explaining lender's mortgage insurance (LMI).</p> <p>However, a uniform fact sheet (even with some ability to customise) is not recommended. The preference is for signatories to be able to design and maintain LMI customer fact sheets individually and independently given the nuances that will exist across the industry.</p> <p>The industry will also consult with the ICA and ASIC on implementing good practices across the industry.</p>
69)	<p>The Code should either:</p> <ul style="list-style-type: none"> a) restrict signatory banks from charging a home loan customer for lenders mortgage insurance more than the actual cost incurred by the signatory bank net of any discount or commission paid by the insurer to the signatory bank and require a signatory bank to pass on to a home loan customer any rebate of premium that the signatory bank receives if the customer repays or refinances their loan; or b) impose a disclosure regime whereby signatory banks disclose to their customers any discount, commission or rebate obtained by the bank at the inception of the policy and at the time of cancellation of the policy. 	<p>Industry requires additional time to consider.</p> <p>The industry requires additional time to consider options a) and b) as these recommendations imply that these discounts and rebates exist at an individual policy level. It is imperative that no ambiguity exists regarding the objective of this recommendation.</p> <p>The industry will need to be mindful of its legal obligations, including competition law. For example, inclusion of any provision of this nature may require regulatory approval.</p>
Customers with Special Needs		
70)	<p>As one of the Principles set out at the front of the Code, there should be a commitment by signatory banks to financial inclusion and recognition of the special needs of some customer groups.</p> <p>To implement this Principle, the Code should oblige signatory banks to design and make available their banking services in a way that is inclusive and has regard to the needs of customers taking into account factors and circumstances including work status, age, gender, geographic distance, language, indigenous status, health and disability and experience of trauma, abuse or disadvantage</p>	<p>Recommendation supported.</p> <p>The industry supports a commitment by banks to financial inclusion and recognition of the diverse needs of some customer groups.</p> <p>The ABA's Position on Financial Inclusion outlines the industry's efforts and commitments to address financial exclusion.</p>



No.	Recommendation	Industry response
	<p>including a natural disaster, family violence or socio-economic disadvantage.</p> <p>The ABA and signatory banks should continue to develop Industry Guidelines to give further depth and specificity to this obligation.</p>	
71)	<p>Redrafted clause 8 should apply to all indigenous Australians, not just those in remote communities. It should use clear and direct language to create meaningful obligations, thereby providing substance to the Principle of financial inclusion.</p>	<p>Recommendation supported.</p> <p>The industry agrees with the broadening of terminology to include all Indigenous Australians, not just those in remote communities.</p>
72)	<p>The Code should include a new provision headed “Customers with disability” obliging signatory banks to develop policies and procedures recognising:</p> <ul style="list-style-type: none"> a) that customers should be presumed to have the ability to make decisions about access to banking services; b) that customers may be capable of making and communicating decisions concerning banking services, where they have access to necessary support; c) that customers are entitled to support in making and communicating decisions; and d) signatory banks should recognise supporters and respond to their requests, consistent with other legal duties. 	<p>Recommendation supported.</p> <p>The industry is committed to ensuring the accessibility of banking products and services for all Australians, including people with a disability.</p> <p>The industry agrees that the Code should be clearer about commitments to customers with disabilities.</p> <p>Additionally, the ABA is currently working with relevant stakeholders on the review of the electronic banking standards and the development of Accessibility Guiding Principles for banking services.</p>
73)	<p>The Code should specify that if a signatory banks offers a fee-free transaction account to eligible customers (a basic bank account), the signatory bank may only refuse to allow an eligible person to open an account of this type if:</p> <ul style="list-style-type: none"> a) the opening of the account would be unlawful; or b) the person has conducted themselves in relation to signatory bank staff in a way that amounts to an offence under legislation (whether or not the person has been charged with committing an offence). 	<p>Recommendation supported in part.</p> <p>The industry supports the provision of basic bank accounts to eligible customers. We consider that this recommendation should be premised on the bank complying with their Anti-Money Laundering and Counter-Terrorism Financing obligations in relation to opening an account.</p>



No.	Recommendation	Industry response
74)	<p>The Code should oblige signatory banks that offer a basic bank account to include in their bank account application forms:</p> <ul style="list-style-type: none"> ▶ Information about the basic bank account; and ▶ targeted questions to test the eligibility of an applicant for an account of this type, <p>so that the signatory bank can offer a basic bank account to the applicant if eligible for this product.</p>	<p>Recommendation supported.</p> <p>The industry supports offering information about a basic bank account to eligible customers.</p>
75)	<p>The Code should oblige a signatory bank that offers a basic bank account to take the opportunity of contact with individual customers:</p> <ul style="list-style-type: none"> ▶ at high risk of future financial difficulty; or ▶ in financial difficulty, <p>to make those customers aware of the option of transferring to a basic bank account.</p>	<p>Recommendation supported.</p> <p>The industry supports identifying and contacting individual customers at high risk of future financial difficulty to offer assistance and provide information about a basic bank account.</p> <p>The industry will need to consider the definition of ‘future financial difficulty’, and how this recommendation will be applied in practice. Banks will need to assist these customers in a manner that is constructive and effective, while considering the sensitivities around forming assumptions about potential vulnerability.</p>
76)	<p>Clause 16 of the Code should be redrafted to remove repetition and to create meaningful obligations using clear and direct language. The obligation to publicise the availability of basic bank accounts should be strengthened, for example, the information should be “prominently” displayed on the bank’s website and website navigation should reliably lead to the relevant information.</p>	<p>Recommendation supported.</p> <p>The industry supports additional promotion of basic bank accounts.</p> <p>As with recommendation 57, based on our experience with the industry commitments to better promote the availability of financial hardship assistance, we consider that a technology neutral and non-prescriptive approach should be fostered in this promotion.</p> <p>The industry will work with relevant stakeholders on how we can improve the level of awareness of basic bank accounts.</p> <p>The industry will also enhance the information available about basic bank accounts provided by banks, including the website Affordable Banking.</p>
77)	<p>The Code should require a signatory bank, that charges a fee where a customer elects to receive post mailed account statements rather than emailed statements, to waive those fees for a customer who does not have a home internet connection.</p>	<p>Recommendation supported.</p> <p>The industry supports extending this to focus on disadvantaged customers. Furthermore, the underlying circumstances for this request (in this recommendation, a customer does not have a home</p>



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No.	Recommendation	Industry response
		internet connection) should not be prescribed. The focus should be on lack of access where not having a home internet connection may be an example.
Complaints Handling		
78)	<p>Any new obligation on signatory banks to appoint a Customer Advocate should be included in the new Code. While there will need to be flexibility in how the positions are implemented, for external credibility any specification in the Code should include:</p> <ul style="list-style-type: none"> a) a commitment to an independent perspective – ideally by appointing from outside the banking sector (although they may have previous banking experience); b) a commitment to proper resourcing and effective reporting lines that maintain effective separation; c) a high level articulation of the role of the Customer Advocate that includes: <ul style="list-style-type: none"> ▶ enhancing the overall customer-responsiveness and effectiveness of internal dispute resolution; ▶ assisting the signatory bank to identify and address systemic issues that become apparent as a consequence of complaints; ▶ liaising with external stakeholders including customer advocates, the signatory bank’s external dispute resolution scheme and the CCMC to improve customer experience; and ▶ providing a customer “voice” within the signatory bank. 	<p>Recommendation supported in part.</p> <p>The industry supports including in the Code the new industry commitment for each bank to have a Customer Advocate.</p> <p>The appointment of a Customer Advocate is an important initiative to make it easier for customers when things go wrong and reach fairer customer outcomes.</p> <p>The industry does not consider it appropriate for the Code to prescribe the appointment of the Customer Advocate. The Code should refer to the guiding principles that were developed to assist banks with the implementation of a Customer Advocate within their bank.</p>
Code Monitoring and Compliance		
<p>The industry will work with the CCMC on the following recommendations. Consideration will also need to be given to the requirements of the CCMC for the purposes of ASIC approval (RG 183).</p>		
79)	<p>The Code and the CCMC Mandate should be redrafted to make it clear that the primary focus of the CCMC should be its monitoring and public assurance – with the areas of greatest value-adding activity being:</p>	<p>Recommendation supported.</p> <p>The industry supports redrafting the CCMC Mandate.</p>



No.	Recommendation	Industry response
	<ul style="list-style-type: none"> a) Taking a risk-based approach to prioritise investigative effort on systemic non-compliance (common problems, complaint and reported breach trends, etc); b) Transparency – providing industry and community with information demonstrating compliance with the Code and identifying trends and potential problem areas; and c) Supporting continuous improvement of banking practice by providing feedback on implementation, identifying and promoting good practice conduct and compliance, and identifying areas for new and strengthened Code provisions or industry guidelines. 	
80)	Promotion of awareness of the CCMC should be focused on points of advocacy, such as industry associations, consumer advocates and other lobby organisations. The purpose here is to provide assurance that the Code is being monitored and that the CCMC is being active in its role.	<p>Recommendation supported.</p> <p>The industry supports promotion of the CCMC focusing on points of advocacy.</p>
81)	The CCMC should be renamed the “Banking Code Monitoring Panel”.	<p>Recommendation supported.</p> <p>The industry supports renaming the CCMC, and will consult with the CCMC and relevant stakeholders on the most appropriate name for the organisation.</p>
82)	The CCMC Mandate should explicitly recognise the CCMC role in promoting transparency and trust in signatory banks’ compliance with the Code and embed a responsibility for publishing information about the effectiveness of and compliance with the Code, including statistics, results of inquiries, determinations and case studies as appropriate.	<p>Recommendation supported.</p> <p>The industry supports the CCMC mandate recognising the CCMC’s role in promoting transparency and trust in banks’ compliance with the Code.</p>
83)	The Code should oblige signatory banks to be proactive in providing information to the CCMC including regular engagement between their internal Customer Advocates and the CCMC.	<p>Recommendation supported.</p> <p>The industry supports engagement between the Customer Advocate and the CCMC, however, we do not support a formal reporting requirement.</p> <p>The guiding principles for the Customer Advocate include reporting about the Customer Advocate. Banks will identify the best way to</p>



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No.	Recommendation	Industry response
		<p>make information available to their customers and stakeholders about their Customer Advocate.</p> <p>Individual banks should consider arrangements for their Customer Advocate, including engagement with relevant stakeholders.</p>
84)	<p>The Code and the CCMC Mandate should explicitly set out its role and responsibility to proactively gather relevant information about the effectiveness of and compliance with the Code – including from sources external to the banks such as bank customers, Australian Small Business Ombudsman, consumer advocacy groups, financial counsellor networks, Legal Aid organisations, community legal centres, consumer affairs departments and other government regulators.</p>	<p>Recommendation supported.</p> <p>The industry supports the CCMC mandate explicitly setting out its role and responsibilities.</p>
85)	<p>The Code and CCMC Mandate should make it clear that referrals from external dispute resolution schemes, the ABA, regulators, consumer or other stakeholder organisations will similarly be fed into CCMC priority setting, but will not necessarily be automatically investigated, however in each case, the CCMC will provide a written explanation of the reasons for any decision not to pursue a referred matter.</p>	<p>Recommendation supported in principle.</p> <p>The CCMC should set its priorities commensurate with the matters, and significance of the matters, raised and consistent with a risk-based approach, as per recommendation 89.</p> <p>However, the industry does not support further reporting requirements or duplication with existing regulatory work (for example, where ASIC is already conducting an investigation).</p>
86)	<p>The Code should oblige signatory banks to report breach information as required by the CCMC on a quarterly basis.</p>	<p>Recommendation supported.</p> <p>The industry supports reporting more regularly to the CCMC.</p> <p>Given the frequency, the reporting process will need to be considered.</p>
87)	<p>CCMC should work towards an agreement with signatory banks' EDR schemes to establish an explicit responsibility for the scheme's Systemic Issues Team to refer to the CCMC any Code compliance issues the team identifies through its own work.</p> <p>The arrangements should be set out in writing between the EDR scheme and CCMC.</p>	<p>Recommendation supported in principle.</p> <p>The industry supports the banks' EDR schemes referring any Code compliance issues to the CCMC. However, this should not result in both organisations investigating the same matter as this would cause inefficiencies and unnecessary confusion between the role of the CCMC and the EDR schemes.</p> <p>The industry also awaits the outcomes of the Ramsay Review.</p>



No.	Recommendation	Industry response
88)	<p>The CCMC and signatory banks' EDR schemes should develop protocols for appropriate exchange of information and access to relevant EDR data, subject to safeguards that include:</p> <ul style="list-style-type: none"> a) Explicit consent from EDR scheme complainants; b) Restricting access only to CCMC staff and authorised contractors; c) CCMC staff subject to the same audit and security controls as EDR staff; and d) EDR costs are met. <p>The arrangements should be set out in writing between the EDR scheme and CCMC.</p>	<p>Recommendation supported.</p> <p>The 'relevant' data will need to be defined.</p> <p>The industry awaits the outcomes of the Ramsay Review.</p>
89)	<p>The CCMC should adopt a risk-based approach to focus its effort, including:</p> <ul style="list-style-type: none"> a) selecting which individual or small business reports of suspected breaches are formally investigated; b) where an individual or small business reports a suspected breach to CCMC and has not been to EDR, CCMC should refer them to the appropriate scheme; and c) selecting which referrals from other organisations it makes the subject of an own-motion-inquiry. 	<p>Recommendation supported.</p> <p>The industry supports the CCMC adopting a risk-based approach.</p>
90)	<p>The Code, CCMC Mandate and CCMC communications material should adopt language that echoes the risk-based approach to be taken by the CCMC, including:</p> <ul style="list-style-type: none"> a) that individuals that take their matter to CCMC are "reporting a suspected breach"; b) that there should be clear information that CCMC will use this 'report' information to inform its risk assessments – but will only investigate selected individual matters; and c) that referrals from EDR, the ABA, regulators or consumer organisations will similarly be fed into CCMC priority setting, but will not necessarily be automatically investigated. 	<p>Recommendation supported.</p> <p>The industry supports improving the Code, CCMC Mandate and CCMC communications material.</p>



No.	Recommendation	Industry response
91)	<p>The Code, CCMC Mandate and CCMC communications material should adopt language that emphasises the difference between EDR and Code monitoring, including:</p> <ul style="list-style-type: none"> a) language in the Code, Mandate and public information should eliminate reference to ‘determinations’ and any other EDR-like terms; b) reduce the degree of detail and specificity regarding investigations in the Code, allowing the CCMC to tailor the process used to the matter at hand. 	<p>Recommendation supported.</p> <p>The industry supports improving the Code, CCMC Mandate and CCMC communications material.</p>
92)	<p>The CCMC should be empowered to investigate breaches of the Code for up to two years after the individual or organisation reporting the suspected breach became aware of the events in question or reported the matter to a relevant EDR organisation.</p>	<p>Recommendation supported.</p> <p>The industry supports the CCMC investigating breaches of the Code for up to two years.</p>
93)	<p>The CCMC mandate should be redrafted along the lines recommended for the Code, in plain language and with a minimum of qualifiers and caveats.</p>	<p>Recommendation supported.</p> <p>The industry considers it important for the CCMC mandate to be clear and in plain language.</p>
94)	<p>The CCMC Panel should have a fourth member with small business and/or agribusiness skills and experience along with other relevant skills.</p> <ul style="list-style-type: none"> a) This member should be appointed by the Chief Ombudsman of FOS and a consumer advocate member of the FOS Board, consulting with representative organisations from the small business and farming sectors. b) The Panel should have the option of sitting with 3 or 4 members depending on the matter being considered, however the Independent Chair of CCMC should have an additional casting vote to ensure against deadlock in a 4 person Panel. 	<p>Recommendation supported in part.</p> <ul style="list-style-type: none"> a) The industry believes the appointment of the small business representative should involve consultation with small business representatives, similar to the appointment of the consumer and bank representatives. b) The relevant panel specialist should be sitting to consider a specific issue, for example, the small business panel member is there only for any small-business related case.
95)	<p>The CCMC permanent staff mix should explicitly include strong data analytics skills.</p>	<p>Recommendation supported.</p> <p>The industry supports CCMC staff having strong data analytics skills.</p>



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No.	Recommendation	Industry response
96)	The CCMC resourcing should allow for the ability to temporarily hire in specialist expertise for specific investigations or projects.	<p>Recommendation supported.</p> <p>The industry supports the CCMC hiring experts for specific investigations or projects.</p>
97)	The CCMC should be explicitly tasked with progressively working with industry to develop the ability to publicly report on relevant signatory bank data and statistics, including acting as the trusted 'translator' of disparate bank information, producing equivalent information to enable broader reporting.	<p>Recommendation supported.</p> <p>The industry will consider how best to ensure consistency in the information requested from banks. An example could include standardised template reporting.</p>
98)	<p>The Code should strengthen the powers of CCMC, including the ability to:</p> <ul style="list-style-type: none"> a) require rectification or implementation of CCMC recommendations from own motion inquiries within a reasonable period of time (to be specified by the CCMC after consultation with the signatory bank); b) require corrective advertising and/or publication of information; c) require an independent compliance audit of the signatory bank's remediation actions; and d) suspend or terminate status as a signatory to the Code. 	<p>Recommendation supported in principle.</p> <p>The industry supports strengthening the powers of the CCMC, however, the powers will need to be considered in light of the requirements for ASIC approval of the new Code.</p> <p>The industry believes it is important for the role of the CCMC to be clear and distinct from ASIC and the EDR schemes. Each of these organisations have a particular role to play in Code compliance, dispute resolution, and regulation.</p>
ASIC Approval of Code		
99)	Once it has been re-drafted, the Code should be submitted to ASIC for approval under Corporations Act section 1101A and Regulatory Guide 183.	<p>Recommendation supported.</p> <p>The industry will be working with ASIC on getting the new Code approved under section 1101A of the Corporations Act and RG 183.</p>

About the ABA

With the active participation of 25 member banks in Australia, the Australian Bankers' 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.

