

2021 Independent Review of the Banking Code of Practice Final Report

ABA response to recommendations

The ABA's response to the Final Report of the 2021 Independent Review of the Banking Code of Practice is based on a number of overarching response principles. These principles are:

1. the Code should aim to express important customer protections that operate *in addition* to the law, therefore, the Code should minimise restatement of existing consumer rights under the law and/or other regulatory obligations;
2. the Code should be expressed as simply as possible to avoid unnecessary length or complexity;
3. recommendations that already reflect banks' existing practice should not require amendments to the Code; and
4. recommendations that address areas that are subject to ongoing consultation such as proposed changes to the law, regulatory obligations, or other Codes will be considered once those consultations are resolved.

No.	Recommendation	ABA Response
1	The ABA should use this triennial review to maintain the momentum coming from the Royal Commission in terms of improving Code awareness and compliance. The Code does not need a complete overhaul, but to maintain momentum there should be no preconceived view to keep change to a minimum. The objective of the Code and enforceability of commitments needs to be clear. Consumer benefits and protections need to be strengthened and clarified, and the commitment to compliance made more tangible.	Recommendation supported. The ABA will reinforce objectives, enforceability of commitments and consumer benefits in a revised introduction.
2	Banks should view the Code as important in outlining the customer focus that is central to the overall long-term success of their organisation, rather than a regulatory burden. Senior leadership in the banks should send a clear message to staff as to the importance of the Code.	Recommendation supported and is consistent with the current practices of banks. The ABA will continue to promote the Code within banks through events such as "Code awareness weeks". Banks will retain flexibility to tailor promotion of the Code to meet individual objectives.
3	While the Code should be accessible to as broad an audience as possible, the primary audience should be the banks and bank staff. It is the rule book for the banks. It should be drafted with sufficient detail, either in the Code or related industry guidelines, to facilitate the implementation of the commitments by bank staff and to allow consumer representatives help customers pursue their rights.	Recommendation supported.
4	There should be a separate consumer friendly and readily accessible document that highlights consumers have rights in their dealings with banks, along with indicating that the detail of their rights is in the Code as well as advising who can assist them in any dispute with their banks. This should be a standard document across all ABA member banks. There should be a commitment in the Code that this document will be given to consumers when they make a complaint to their bank. 'Easy Read' versions of this document should be available. The Code would remain the document that contains the rights of consumers, the commitments made by banks, the reference for the BCCC in monitoring bank compliance with those commitments, and for AFCA when considering complaints.	Recommendation supported in part. The ABA will produce a separate 1-2 page "flyer" style document that complements the Code's commitments to consumer rights including the role of AFCA and the BCCC, which can be accessed by a consumer at any time. The ABA does not accept the need for this document to be given to customers when making a complaint consistent with its response to recommendation 100, noting that customers are already given information when making a complaint as required by ASIC Regulatory Guide 271 (Internal Dispute Resolution) (RG 271). The ABA will ensure the flyer is easy to understand, to avoid the need for multiple iterations of this document.
5	The factors to consider in the process of identifying provisions to be designated under the enforceable code regime should include: - The extent to which a provision can be legally enforceable - The extent to which a breach is likely to result in significant detriment to a consumer - Existing enforceability of provisions under contract law and legislation, such as the Corporations Act and Credit Act. In balancing these factors, provisions which are already enforceable under contract or existing law should not be designated under the enforceable code provision regime.	Recommendation supported. The ABA agrees that provisions which are already enforceable at law should not be designated under the enforceable code provision regime. The ABA will take into account the factors set out in ASIC Regulatory Guide 183 and the <i>Corporations Act 2001</i> (Cth) (Corporations Act) in considering what provisions should be enforceable code provisions.
6	The designation of enforceable provisions should support the overall enforceability of the Code. It should not create confusion that there are enforceable and non-enforceable provisions. To avoid such confusion, the Code should specifically refer to how all the provisions can be enforced. The 'layers' of enforceability	Recommendation supported in part.

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	include contract law, Code obligations being considered by the Australian Financial Complaints Authority (AFCA) in resolving customer disputes, and the breaches of some provision resulting in a penalty under legislation.	<p>The ABA supports clarity as to how Code provisions are enforceable by the customer (including through AFCA and the courts) and will include clarity in a revised introduction, consistent with its response to recommendation 1.</p> <p>For this update, the ABA does not intend to propose "enforceable code provisions", a breach of which attracts a civil penalty under section 1101AC of the Corporations Act, relating to recommendations 7, 8, 10, 29 and 108, but will work with ASIC to agree the best approach for identifying any enforceable Code provisions moving forward.</p>
7	The wording of Clause 10 should be aligned with the similarly worded obligation banks must meet under section 912A of the Corporation Act. If it is aligned, the Code should state that the obligation on banks to act efficiently, honestly and fairly is enforceable under the Corporations Act. If Clause 10 is not aligned with Section 912A, then Clause 10 would be suitable for designation as an enforceable code provision.	<p>Recommendation not supported at this point in time.</p> <p>The ABA notes the review undertaken by the Australian Law Reform Commission (ALRC) and Proposal A20 in Interim Report A to amend Section 912A(1)(a) of the Corporations Act by separating the words 'efficiently', 'honestly', and 'fairly' into individual paragraphs and amending the obligation to act 'efficiently' to an obligation to act 'professionally'.</p> <p>The ABA will revisit this recommendation once the Government's position on the Corporations Act wording is finalised.</p>
8	A new commitment should be added to the Code for banks to take all reasonable steps to have in place the appropriate systems, processes, and programs to support an integrated approach to compliance. Banks should commit to a program of periodically reviewing the effectiveness of their compliance framework through their internal and external audit arrangements and to reporting the detail of the outcomes of these audits to the BCCC. A summary of the audits should be included in each banks published annual reports. This commitment would be suitable for designation as enforceable under the enforceable code provision regime.	<p>Recommendation not supported for the following reasons:</p> <ol style="list-style-type: none"> 1. banks already have existing obligations to maintain adequate systems, processes and programs including under various APRA Prudential Standards and under the general licensing conduct obligations in section 47 of the <i>National Consumer Credit Protection Act 2009</i> (Cth) (NCCP Act) and section 912A of the Corporations Act, which are overseen by ASIC. Therefore, including this as an enforceable provision would introduce unnecessary duplication and overlap with existing legislation, and may expose banks to 'double penalties' for the same conduct; 2. in identifying enforceable provisions, Commissioner Hayne stated that the focus should be on identifying provisions that govern or are intended to govern the terms of the contract between the bank and customer. This recommendation does not meet this test because it is focused on internal bank operations rather than a direct commitment to customers; and 3. in respect of the BCCC and bank annual reports, reporting of internal and external audit outcomes conducted by banks is not considered necessary, given that Code breaches are already identified and reported to BCCC through its biannual compliance statements (including breaches identified via internal or external audits).
9	The Code should begin with a clear statement of the Code's overall objective, then each part of the Code should start with the outcome sought for customers from that part, and the provisions flow from and consistent with achieving that outcome.	<p>Recommendation supported in part.</p> <p>Consistent with its response to recommendation 1, the ABA will reinforce the Code's objective in a revised introduction.</p> <p>To avoid duplication and complexity, the ABA does not consider it appropriate to repeat these objectives in each part of the Code.</p>
10	The industry guidelines should be considered as Code related documents and not as outside the Code and voluntary. Banks should take into account industry guidelines in assessing whether they are complying with Code commitments. If they are not following the best practice outlined in the guidelines, banks will have to demonstrate they are following comparable processes in meeting the commitments. There should be greater transparency in the Code over the role of industry guidelines. They should be specifically referenced in the Code.	<p>Recommendation supported in part.</p> <p>The ABA supports clarity as to the role of industry guidelines and will include reference to ABA's industry guidelines in a revised introduction to the Code. The ABA will also include hyperlinks to the guidelines in the digital version of the Code to give readers easier access.</p> <p>In line with the review observation that "[t]he relationship between the ABA industry guidelines and the Code needs to be clarified", the ABA will also include an explanation of the status of these guidelines. This will clarify that they do not form part of the Code, nor are they contractually enforceable.</p>

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11	References in the Code which simply refer to complying with the law, legislation or a regulation, should be expanded to provide some clarity as to what they mean for consumers in their relationship with their bank. Issues around the complexity and burden on banks responding to multiple monitoring arrangements should be addressed through rationalising and streamlining the banks' reporting obligation to the BCCC.	<p>Recommendation supported in part.</p> <p>For simplicity, customer rights and obligations in existing legislation should avoid being duplicated within the Code. Where there is clear duplication of the law, legislation or a regulation, the ABA will consider removing the duplication from the Code.</p> <p>The ABA supports the second part of the recommendation and has commenced discussions with the BCCC to identify opportunities to rationalise and streamline reporting obligations for banks, including the introduction of a materiality threshold, consistent with recommendation 106.</p>
12	The Code should target areas where there are current problems for customers and key aspects of the relationship with their bank where customers are likely to be exposed to loss or distress.	<p>Recommendation supported.</p> <p>The ABA notes the role of independent Code reviews in assisting to identify areas of increased customer focus in the Code.</p>
13	The ABA should assess the extent to which the Code may need to be changed in response to the introduction of the Mandatory Credit Reporting regime after completion of the Credit Reporting Code. This should include amending Clause 178(c) to make it clear that banks will tell customers what the impact on their credit report will be when they accept or refuse a hardship or collections arrangement. The ABA should clarify Clause 179.	<p>Recommendation supported in part.</p> <p>The ABA has assessed the extent to which the Code may need to be changed and considers, in light of existing Code obligations and legal requirements, that no further amendment or clarification is required.</p> <p>For example, the ABA considers there is no need to clarify Clause 179 in this respect as it reflects the obligation to notify customers of a payment default report as required by law.</p>
14	It should be made clear that the references in the ABA guidelines that banks should not enter negative credit information if a customer is affected by family and domestic violence, so far as the bank is able to avoid doing so under the law, are part of the Code.	<p>Recommendation supported in principle.</p> <p>In late 2021, the ABA submitted a request to the Office of the Australian Information Commissioner (OAIC) for permanent relief from adversely reporting against customers in family and domestic violence situations.</p> <p>If the OAIC grants suitable and permanent relief, the ABA will consult with banks to agree a solution for customers affected by family and domestic violence so that negative credit information is not recorded against them. As part of this consultation, the ABA will consider changes for a subsequent Code update.</p>
15	Chapter 35 of the Code should reference that a customer has the right to remove a joint account from the Consumer Data Right and banks will be proactive identifying vulnerable customers and alerting them to this right.	<p>Recommendation not supported.</p> <p>The right to remove a joint account from the Consumer Data Right is provided to consumers under the <i>Competition and Consumer Act 2010 (Cth)</i> (Competition and Consumer Act). The ABA does not support the duplication of this right in the Code.</p> <p>Further, there are constraints within the existing <i>Privacy Act 1988 (Cth)</i> (Privacy Act) regime relating to proactive identification of vulnerable customers.</p>
16	In order to clarify the rights of customers, the Code should include the statement that if a customer suffers loss or damage because a bank contravenes the Design and Distribution Obligations, the customer may recover the loss or damage from the bank.	<p>Recommendation not supported.</p> <p>The ABA notes that under section 994M of the Corporations Act, if a consumer suffers loss or damage due to a bank's breach of design and distribution obligations, they can seek to recover that loss or damage against the bank, including by lodging a complaint with AFCA or commencing proceedings in court.</p> <p>To ensure the Code remains clear and concise for customers, the Code should avoid duplicating consumer rights enshrined in law. This also minimises frequent changes to the Code where relevant legislation is subject to amendment independent of the Code.</p>
17	The Code should include a commitment that Buy Now Pay Later (BNPL) products issued by banks will be subject to credit checks and eligibility requirements to ensure the products are suitable for consumers.	Recommendation not supported at this point in time.

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		<p>The ABA notes the Government's consultation on the introduction of BNPL regulation, meaning the commitment in the recommendation is likely to be the subject of specific regulation.</p> <p>The ABA will revisit this recommendation once the Government's position is finalised.</p>
18	<p>The Code should include a commitment that banks commit only to partner with BNPL providers that are members of ACFA and agree to meet ASIC guidance on dispute resolution.</p>	<p>Recommendation not supported</p> <p>Due to restrictive trade practices prohibitions under the Competition and Consumer Act, the ABA is unable to accept a recommendation that would result in banks agreeing upon the terms in which they engage third parties.</p> <p>The ABA also notes the Government's consultation on the introduction of BNPL regulation, meaning the commitment in the recommendation is likely to be the subject of specific regulation.</p>
19	<p>References in Clause 28(b) to 'special clearance 'processes for cheques is obsolete and Clause 28(b) should be removed.</p>	<p>Recommendation supported.</p>
20	<p>The definition of 'devices' should be aligned with the definition in ASIC's ePayments Code.</p>	<p>Recommendation supported.</p>
21	<p>The acronym 'BSB' should be moved from the 'Acronym' section to the 'Definition' section and be defined as 'a digital address that identifies a financial institution and its particular administration centre, processing centre, branch or office'.</p>	<p>Recommendation supported.</p>
22	<p>Where possible, the Code should be technology neutral. When changes are made to the Code, the opportunity should be taken to ensure the terminology in the Code is up to date.</p>	<p>Recommendation supported.</p>
23	<p>ABA banks should commit to subscribing to the ePayments Code and complying with the consumer protections in the ePayments Code.</p>	<p>Recommendation supported.</p> <p>The ABA notes that the majority of member banks are already subscribers to the ePayments Code, and that certain obligations under the ePayments Code are already enforceable under that code, so considers amendment to the Banking Code is unnecessary.</p>
24	<p>Part 1 should start with a succinct statement as to the objective of the Code, along the lines that it sets out the commitment by ABA member banks to deliver the high standard of banking services expected by customers and the Australian community.</p>	<p>Recommendation supported in part.</p> <p>Consistent with the response to recommendation 1, the objective of the Code will be included in a revised introduction, rather than in Part 1 of the Code.</p>
25	<p>Part 1 should state that the banks commitments in the Code are enforceable, and outline how they can be enforced, consistent with Recommendation 6.</p>	<p>Recommendation supported in part.</p> <p>Consistent with the response to recommendation 6, these commitments will be included as part of a revised introduction instead of Part 1.</p>
26	<p>Part 1 should outline that industry guidelines are Code-related documents consistent with Recommendation 10.</p>	<p>Recommendation supported in part.</p> <p>Consistent with its response to recommendation 10, the ABA will reference guidelines in a revised introduction, rather than Part 1.</p>
27	<p>Consistent with Recommendation 4, Part 1 should include a commitment to give customers a simple, easily understandable document that advises them: - they have rights in their dealings with their banks - how they can access what are these rights under the Code - where they can get assistance if they have a</p>	<p>Recommendation supported in part.</p> <p>The Code is intended to be a customer friendly and readily accessible document that details customer rights, including where they can get assistance if they have a problem with their bank.</p>

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<p>problem with their bank, and - how they can make a complaint to their bank. An easy read version of the document should be available.</p>	<p>Consistent with recommendation 4, the ABA agrees to create an additional flyer, which can be accessed by a customer at any time, but considers that an additional commitment in Part 1 to be duplicative and unnecessary.</p>
<p>28 The commitment for banks to engage with customers in a fair reasonable and ethical manner (or if aligned with the Corporations Act – efficiently, honestly and fairly) underpins all Code commitments and should be prominently positioned in the Code. The Code should state the commitment is enforceable under the law (the Corporations Act if aligned, if not, Clause 10 is a suitable candidate to be designated under the enforceable code regime).</p>	<p>Recommendation not supported at this time. Consistent with its response to recommendation 7, the ABA will revisit this recommendation once the Government's position on the wording of section 912A(1)(a) of the Corporations Act is finalised.</p>
<p>29 The commitment that banks will comply with their obligations under the Code should be strengthened. Consistent with Recommendation 8, Part 2 of the Code should include a commitment that banks will have in place appropriate frameworks and systems to support compliance with the Code, and the effectiveness of the components of their frameworks will be subject to a rolling audit program using internal and external audit arrangements. This is an appropriate candidate to be designated under the enforceable code regime.</p>	<p>Recommendation not supported. Consistent with its response to recommendation 8:</p> <ol style="list-style-type: none"> 1. banks already have existing obligations to maintain adequate systems, processes and programs including under various APRA Prudential Standards and under the general licensing conduct obligations in section 47 of the NCCP Act and section 912A of the Corporations Act. Therefore, the ABA considers including this as an enforceable provision would introduce unnecessary duplication and overlap with existing legislation and so does not consider this an appropriate candidate to be designated as an 'enforceable code provision'; 2. the ABA also considers that this type of assessment may be completed by methods other than periodic audits; and 3. in identifying enforceable provisions, Commissioner Hayne stated that the focus should be on identifying provisions that govern or are intended to govern the terms of the contract between the bank and customer. This recommendation does not meet this test because it is focused on internal bank operations rather than a direct commitment to customers.
<p>30 It should be made clear that the commitment to have trained and competent staff that understand the Code and how to comply with it, covers staff at all levels, including management. The banks should develop industry wide standards for competency and conduct for bank staff. The Code should also state that staff will be supported by appropriate systems and technology to support compliance with the Code.</p>	<p>Recommendation not supported. Consistent with the ABA response to recommendation 8, the ABA does not support this recommendation for the following reasons:</p> <ol style="list-style-type: none"> 1. banks already have existing obligations to have trained and competent representatives and maintain adequate systems, processes, and programs including under various APRA Prudential Standards and under the general licensing conduct obligations in section 47 of the NCCP Act and section 912A of the Corporations Act; and 2. to ensure the Code remains clear and concise for consumers, consumer rights enshrined in law should avoid duplication in the Code. This also minimises frequent changes to the Code where relevant legislation is subject to amendment independent of the Code.
<p>31 The ABA protocol on branch closures needs to be updated and strengthened. It should apply whenever a branch closure takes place. Banks should reinforce their commitment to consult with communities where branches will be closed, and where they have already been closed, to develop ways to facilitate access to banking services. This should include banks being innovative in how they can deliver banking services in the absence of branches, such as using technology for identification purposes rather than a customer being required to visit a branch.</p>	<p>Recommendation supported in part. Subsequent to this recommendation, the Regional Banking Taskforce made a number of recommendations relating to branch closures. The ABA is working constructively to implement these recommendations and will update the Branch Closure Protocol in 2023. The ABA notes that the recommendations do not include a commitment to apply the protocol whenever a branch closure takes place.</p>
<p>32 The Code should reflect that it is the customers perspective that will determine whether information provided by the bank is clear and useful. Clause 17 should say that the customer will receive information that is 'clear and useful to you'.</p>	<p>Recommendation not supported.</p>

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		Banks have existing processes in place to ensure that the information they provide is clear and appropriate for different customer groups and a diverse audience. The standard of what is "clear and useful to you" from a customer's perspective is, however, subjective and therefore an impractical obligation to impose upon banks.
33	Banks should specifically offer to respond to customers' queries about the terms and conditions of the banks' products and services, including if appropriate, suggesting the customer seek independent advice.	<p>Recommendation supported in part.</p> <p>The ABA believes that the Code already commits banks to respond to customers' queries regarding terms and conditions of banks' products and services, without needing an additional commitment to specifically offer to respond to customers' queries.</p> <p>The ABA will consider changes to the Code relating to customers seeking independent advice, where appropriate.</p>
34	To deal with customer concerns over delays when banks send information by post, banks should commit to send any communication by post also electronically, where appropriate having regard to security and privacy considerations.	<p>Recommendation not supported.</p> <p>The ABA considers that to "also" send notices electronically that have been sent by post creates unnecessary duplication and may not be preferred by customers.</p> <p>The ABA considers clause 18 and obligations at law in relation to privacy and confidentiality remain sufficient to meet this recommendation.</p>
35	The Code should adopt the UK Financial Conduct Authority's definition of a vulnerable customer – 'someone who, due to their personal circumstances, is especially susceptible to harm- particularly when a firm is not acting with appropriate levels of care'. While some customers may be more likely to be vulnerable, it is important for banks to be alert to the circumstances of each and every customer in identifying vulnerability.	<p>Recommendation supported in part.</p> <p>The ABA will develop an enhanced vulnerability definition, having regard to the UK Financial Conduct Authority's definition, that recognises that a person's circumstances may require specific support, and that these circumstances may change over time and in response to situations.</p>
36	The specific circumstances of customers who may be vulnerable listed in Clause 38, and the groups of customers listed in Clause 32 as a focus for inclusive banking services, should specifically state that the list 'includes but not limited to'.	Recommendation supported.
37	The examples of groups of vulnerable customers in the Code should include people in prison (and those in transition) to bring attention to a group currently under recognised.	<p>Recommendation supported in part.</p> <p>Clause 38 of the Code recognises that anyone can experience vulnerability and includes characteristics broad enough to cover all vulnerable customers without the need to specify particular groups, such as prisoners.</p> <p>The ABA is consulting with industry stakeholders to produce meaningful outcomes for prisoners (and those in transition into and from prison) outside of the Code itself.</p>
38	The commitment in Clause 32 to provide banking services which are inclusive of all people, should be extended to provide that the vulnerabilities of both individuals and small businesses should be taken into account.	<p>Recommendation not supported.</p> <p>Clause 38 of the Code recognises that anyone, including small business owners, can experience vulnerability and includes characteristics broad enough to cover all vulnerable customers without the need to specify particular groups.</p> <p>The ABA notes the specialist support currently provided by banks to small businesses such as dedicated business bankers.</p>
39	The wording in Clause 38 that the bank 'may only become aware of your circumstances if you tell us' should be removed and replaced with wording along the lines of Clause 93 in the 2020 General Insurance Code. Similarly, the wording in Clause 43 that the bank 'may become aware if you are a low-income earner only if you tell us about it' should be amended. While customers should be encouraged to tell their	<p>Recommendation supported in part.</p> <p>The ABA will develop an enhanced vulnerability definition in clause 38 having regard to clause 93 in the 2020 General Insurance Code.</p>

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	bank if they are a low- income earner, banks should commit to proactively identify customers who may be eligible for basic accounts.	In respect of clause 43 of the Code, the ABA notes that ACCC Authorisation (AA1000441-1) issued in November 2019 requires banks to proactively identify customers who may be eligible for basic accounts. To avoid duplication with this requirement, the ABA does not consider an update to the Code is required.
40	Following on from Recommendation 8, banks should commit to periodically auditing the effectiveness of staff training and systems for identifying vulnerable customers.	<p>Recommendation supported in principle.</p> <p>The ABA continues to engage with stakeholders to develop solutions to enable banks to identify customers experiencing vulnerability. Once solutions are finalised there are likely to be significant staff training and system changes that need to occur before this recommendation could be adopted as a Code commitment. This will be considered in a subsequent Code review, along with any commitment to periodically audit effectiveness.</p>
41	Banks should have public-facing family violence policies on their web sites, including an easy- to- understand outline of their commitment to help.	<p>Recommendation supported in part.</p> <p>The ABA agrees that banks should have public facing information for customers in family and domestic violence situations, including information about the type of help banks provide. Further, banks may provide this information in many ways and should not be limited to using websites to disseminate this information.</p> <p>The ABA considers these existing bank policies are easily understandable and as such, a requirement to create additional 'easy-to-understand' versions is unnecessary.</p>
42	Clause 40 should be amended to include that if a vulnerable customer tells their bank about their personal or financial circumstances, subject to the customer's agreement, the bank will record this information so as to minimise the number of times the customer has to provide this information.	<p>Recommendation supported in principle.</p> <p>The ABA notes that banks must comply with the Privacy Act, including obligations regarding the collection, use and maintenance of "sensitive" (including "health") information.</p> <p>The ABA is currently engaged in the Attorney General's Review of the Privacy Act and, is advocating for changes that would make adoption of this recommendation permissible under the Privacy Act. Should the privacy laws be changed, the ABA will revisit this recommendation. For these reasons the ABA does not propose to amend clause 40 at this time.</p>
43	The commitment in Clause 41 should be 'to make it easier' for a vulnerable customer to communicate with their bank, rather than 'to try and make it easier'.	<p>Recommendation not supported.</p> <p>While banks make reasonable efforts to provide assistance to all customers, it is impractical given the subjective nature of the phrase 'to make it easier' to accept this recommendation.</p>
44	There should be a commitment that the bank will keep a vulnerable customers information secure and confidential.	<p>Recommendation supported.</p> <p>Clause 41(a) of the Code and existing laws which protect confidentiality apply to vulnerable customers.</p>
45	The definitions at the end of Clause 47 should say 'low income includes no income'. Eligibility for basic accounts should be available to customers with no income, as well as low-income earners.	<p>Recommendation supported in part.</p> <p>The ABA considers the current eligibility criteria for clause 47 does not limit availability of basic accounts to 'no' income earners and does not need to change. The current definition of 'eligible customer' captures all individuals who hold a government concession card and does not reference 'low income'.</p> <p>The ABA will however make changes to the Code to reflect the discretion available to banks to offer other accounts with some or all of the special features of basic banking accounts listed in clause 44B to customers without a government concession card that have low or no income.</p>
46	Banks should commit to helping to protect customers from abusive transactions.	<p>Recommendation supported.</p> <p>The ABA notes current bank commitments to helping protect customers from abusive descriptions in transactions, including procedures to respond to inappropriate language or abuse in the free text description fields of electronic</p>

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		transactions, where they become aware of it. The ABA does not consider an update of the Code is necessary to address this commitment.
47	As part of the extra care banks provide to vulnerable customers, they should commit to facilitating and minimising delays in the authorisation of a third party, such as Legal Aid lawyer or financial counsellor, to act on behalf of the customer, where the customer has provided appropriate consent.	<p>Recommendation supported.</p> <p>The Code will be amended to clarify banks' commitment to try and make it easier for customers to appoint third parties (such as a lawyer or financial counsellor) to act on their behalf where customers have provided appropriate consent.</p>
48	Where requested by the customer or bank staff consider it will assist the customer, the bank should commit to making interpreter services available, where practicable, and free of charge. This should include, as required and where reasonably available, interpreters for Aboriginal and Torres Strait Islander customers. To help achieve consistency across banks, an industry guideline on helping people of non-English background should be prepared.	<p>Recommendation supported.</p> <p>The ABA will include a commitment to make interpreter services available free of charge to all customers, where practicable.</p> <p>The ABA will include a commitment to assist people with limited English in an updated vulnerability guideline.</p>
49	Banks should offer to communicate with customers having hearing difficulties through the National Relay Service, and for those customers who use it, Auslan interpreters.	Recommendation supported.
50	The Code should refer to the ABA Accessibility Principles along with a commitment that banks will make banking services accessible to customers with a disability in line with the Principles.	<p>Recommendation not supported.</p> <p>The ABA Accessibility Principles represent non-binding, best practice design principles for banks to consider when designing and procuring technology, hardware and physical assets. Therefore, a corresponding Code commitment is not appropriate.</p> <p>These principles are non-binding on banks because uplifting these principles in practice requires innovation and investment by individual banks, who have progressed at different stages.</p>
51	The commitments in Clauses 35 to 37 should not be limited to customers who tell the bank that they are of Aboriginal and Torres Strait Island heritage. At a minimum, the fact that there is tailored assistance available for Aboriginal and Torres Strait Islander people should be advertised, and preferably, bank staff should ask customers whether they have Aboriginal and Torres Strait Islander heritage.	<p>Recommendation not supported.</p> <p>The ABA does not support a commitment to ask customers whether they have Aboriginal or Torres Strait Islander heritage.</p> <p>Under Australia Privacy Principle 3.3, banks are prohibited from collecting sensitive information (including racial or ethnic origin) unless the information is reasonably necessary for one or more of the entity's functions or activities.</p> <p>The ABA notes its responses to recommendations 52, 53, 54 and 55 as being consistent with the objective of removing barriers in the provision of banking services to Aboriginal and Torres Strait Islander customers. The ABA also notes its response to recommendation 48, and the access to interpreter services for Aboriginal and Torres Strait Islander customers.</p> <p>While the ABA considers that "tailored assistance" for Aboriginal and Torres Strait Islanders is both available and advertised, it does not accept the proposed extension beyond the "if you tell us" commitment within clause 35 of the Code for the reason stated above.</p>
52	The Code should recognise that Aboriginal and Torres Strait Islander peoples can have challenges in accessing banking services wherever they live, it is not just those living in remote areas.	<p>Recommendation supported.</p> <p>Clause 35 of the Code already covers the provision of banking services to Aboriginal and Torres Strait Islanders in all locations.</p>
53	The commitment in Clause 35c should be clarified such that for Aboriginal and Torres Strait Islander customers who cannot meet the standard identification requirements, banks will help them with the	Recommendation supported.

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	AUSTRAC guidance for an alternative identification approach for Aboriginal and Torres Strait Islander peoples.	<p>The ABA notes that clause 35 already references that banks will help customers to meet identification requirements by following AUSTRAC guidance and the 'reasonable steps we will take to make our banking services accessible to you.'</p> <p>The ABA will amend clause 35(c) to clarify that the AUSTRAC guidance relates to individuals who are unable to meet standard identification requirements, recognising that the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth) allows Aboriginal and Torres Strait Islander groups to form corporations.</p>
54	The ABA Indigenous Statement of Commitment should be updated, referred to in the Code, along with a commitment that it will be followed.	<p>Recommendation supported in part.</p> <p>The "ABA Industry Statement: Supporting Aboriginal and Torres Strait Islander Peoples" (previously referred to as the Indigenous Statement of Commitment), was updated in March 2022 and outlines how the banking industry provides inclusive and accessible banking services.</p> <p>It is implicit in the Statement that banks' commitments will be followed, without the need to include this in the Code.</p>
55	Cultural awareness training should be generally available and not limited to bank staff regularly assisting Aboriginal and Torres Strait Islander customers in remote locations.	<p>Recommendation supported.</p> <p>Banks have training for staff likely to have interactions with Aboriginal and Torres Strait Islander customers, regardless of location.</p>
56	A tailored range of measures to assist prisoners (and those in transition) should be included in an industry guideline.	<p>Recommendation supported in principle.</p> <p>The ABA recognises there can be challenges for prisoners accessing banking services, and is working with industry stakeholders, including via its Consumer Outcomes Group, to identify and address the banking needs of prisoners (and those in transition into and from prison).</p> <p>The ABA will revisit this recommendation subject to the outcome of these discussions, which will consider the appropriate vehicle, such as an industry guideline, for adopting any measures.</p>
57	An industry guideline should cover the vulnerabilities facing LGBTIQ+ customers, along with measures to assist access to banking services. Bank forms should be updated to provide for customers with non-binary gender and/or gender dysphoria.	<p>Recommendation supported in principle.</p> <p>The ABA and member banks are considering the needs of LGBTIQ+ customers and consulting with industry stakeholders to produce meaningful outcomes.</p> <p>The ABA will revisit this recommendation once solutions are finalised.</p> <p>Any updates to bank forms will also be considered at this point.</p> <p>The ABA intends to redraft Clause 32 to explicitly recognise people of diverse sexual orientations and gender identities including lesbian, gay, bisexual, trans and gender diverse, intersex, queer and asexual.</p>
58	A customer should not be denied a banking service, or have an account closed, without the bank raising it with the customer and giving the customer an opportunity to respond, where consistent with AUSTRAC guidance. If the service is denied, or account closed, the bank should give a reason, where appropriate. Such decisions should be on a case-by-case basis. The BCCC should consider undertaking an inquiry into banks' performance in accordance with these commitments.	<p>Recommendation not supported at this point in time.</p> <p>The ABA notes that:</p> <ol style="list-style-type: none"> 1. banks need the ability to use discretion depending on the circumstances. In some cases, it is not appropriate or lawful to give the customer reasons for its decision (including the imposition of criminal penalties for breaches); 2. clause 143 of the Code already imposes a reasonable notice period where appropriate. Where a different notice period is required by terms and conditions, legislation, or industry codes, banks comply with these requirements; 3. in August 2022, the Government released advice provided to it by the Council of Financial Regulators (and also AUSTRAC and ACCC) examining the drivers of debanking and potential policy options. The ABA will

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		<p>further consider this recommendation once the Government has had an opportunity to consider and consult on the Council of Financial Regulators' recommendations; and</p> <p>4. any future BCCC inquiry should only be considered if and when the recommendations in 3. above have been implemented.</p>
59	<p>Irrespective of whether announced changes to the National Consumer Credit Protection Act 2009 eventuate, the principle of responsible lending (the 'care and skill of a diligent and prudent banker'), should be set out in the Code. This should incorporate, consistent with the law, that the commitment for responsible lending for individuals is that banks will undertake reasonable inquiries to assess a borrower's capacity to repay the loan without substantial financial hardship and in doing so to consider the borrowers income, debt and expenses and the purpose for which the borrower is seeking the loan.</p>	<p>Recommendation supported in principle.</p> <p>The ABA notes that proposed changes to the NCCP Act by the former Government lapsed in the last Parliament.</p> <p>The ABA also notes that clause 49 of the Code already states that banks "...will exercise the care and skill of a diligent and prudent banker". The ABA does not propose to amend clause 49 in this Code update.</p> <p>With respect to detailing current or proposed legislative obligations, the ABA does not support this. Consistent with other responses to recommendations, the Code should not duplicate the law.</p>
60	<p>Banks should commit to assess all the information they have as to whether a co-borrower is receiving a substantial benefit under the loan.</p>	<p>Recommendation not supported.</p> <p>The current drafting in clause 54 is considered appropriate as:</p> <ol style="list-style-type: none"> 1. it incorporates a "reasonableness" test; 2. it is consistent with customer understanding that some information previously disclosed to a bank may not be relevant to a loan application, including 'sensitive' information that may have been previously disclosed for a different purpose. Retaining and using this information could also breach privacy laws; and 3. the purpose disclosed in the loan application is a relevant basis for assessing whether the customer is receiving a substantial benefit.
61	<p>The protections in the Code in Clauses 64 to 66 with respect to consumer credit insurance should be applied to all sales of credit insurance and not just limited to those sold via digital channels.</p>	<p>Recommendation supported.</p>
62	<p>Banks should commit not to sell consumer credit insurance with low claim to premium ratios.</p>	<p>Recommendation not supported.</p> <p>The ABA does not believe it is necessary to amend the Code to address this commitment, as banks have broader obligations under the Design and Distribution Obligations regime to ensure that products are designed so they are likely to be consistent with the target market's objectives, financial situation and needs.</p> <p>To ensure the Code remains clear and concise for consumers, consumer rights enshrined in law should avoid being duplicated in the Code. This also minimises frequent changes to the Code where relevant legislation is subject to amendment independent of the Code.</p>
63	<p>The ABA's Lender Mortgage Insurance – Guiding Principles should be referenced in the Code.</p>	<p>Recommendation supported.</p> <p>Reference to the ABA's Lender Mortgage Insurance – Guiding Principles will be included in a revised introduction section in the Code, but not included as obligations in the Code for the reasons set out in the ABA's response to recommendation 10.</p>
64	<p>Part 6 should be extended from referring to 'lending to small business' to cover 'providing banking services to small business'. The first commitment in this part should be for banks to assist small businesses with their banking services that are suitable to their circumstances.</p>	<p>Recommendation supported in part.</p> <p>The ABA notes that many of the provisions in Part 6 of the Code are specific to lending to small business and do not have application to other banking services.</p>

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		<p>Other parts of the Code apply to small business customers as well as individual customers. To avoid any confusion that obligations outside of Part 6 do not apply to small business, the ABA will instead develop a solution to improve clarity about which parts of the Code apply to small business customers.</p> <p>Banks have an existing obligation in clause 15 to provide clear information to customers so that they can make an informed decision about which product or service is suitable to them. The ABA does not agree that this obligation should be extended to assisting small business customers make that decision.</p>
65	While it will take time to incorporate the Pottinger Review recommended changes to the definition of small business in a revised Code following the triennial review, ABA banks should commit to introduce the changes as soon as possible.	Recommendation supported.
66	To help clarify what parts of the Code apply to small business, and to recognise there is a difference in the requirements for lending to small business and lending to individuals, the references to small business lending in Part 5 should be shifted to part 6 of the Code.	<p>Recommendation supported in part.</p> <p>Consistent with recommendation 64, the ABA will develop a solution to improve clarity about which parts of the Code apply to small business customers.</p>
67	The Code should specify that future earning capacity is taken into account when assessing a small business's capacity to repay a loan.	<p>Recommendation supported in part.</p> <p>The ABA will amend clause 51 to also include taking into account future cash flows where relevant as per APRA Prudential Standard APS 220.</p>
68	The Code should clarify that a bank's approval of a small business loan will not be dependent on a third party (such as the small business's accountant) certifying the capacity of the small business to repay the loan.	<p>Recommendation supported.</p> <p>The ABA proposes to enhance clause 51 to note that banks may rely on third parties to validate information, including but not limited to, the accuracy of prepared financial statements.</p>
69	Banks should advise a small business if there is likely to be a delay in the initial indication of how long it would take for a decision, the reason for the delay, and give an estimate when a decision is likely.	<p>Recommendation not supported.</p> <p>Banks have an obligation under clause 49 of the Code to ensure that when considering providing a small business customer with a new loan, or an increase in a loan limit, the bank will exercise the care and skill of a diligent and prudent banker. In executing this obligation, banks may need to make further requests for information or conduct thorough enquiries.</p> <p>In addition to the obligation above, the ABA considers that a specific Code commitment is not appropriate as there are many variables that will affect the timing of a decision, including those outside the control of banks such as delays from customers in providing the necessary information, that make it impracticable to provide an estimate of when a decision is likely in all circumstances.</p> <p>Further, lending to small business is highly specialised and the unique nature of these customers makes it impractical to adopt this commitment.</p>
70	Banks should commit that if they require additional information when considering a loan application, they will endeavour to ensure that this does not delay how long it will take for the bank to make a decision.	<p>Recommendation supported in principle.</p> <p>Banks will endeavour to ensure that any additional information they receive when assessing a loan application will not delay their decision. However, consistent with the response to recommendation 69, banks may need to make further requests for information or conduct thorough enquiries when exercising their obligation to act with the care and skill of a diligent and prudent banker.</p> <p>Accordingly, the ABA considers that a specific Code commitment to make a decision consistent within a previously communicated timeframe is not appropriate as there are many variables that will affect how long it will take for a bank to make a decision.</p>

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71	Banks should commit to tell small business the reason, if appropriate, as to why a loan was declined, along with what would be needed for the application to be reconsidered.	<p>Recommendation supported in part.</p> <p>The ABA supports banks telling a small business the general reason for why a loan was declined, and this is already captured as a requirement in clause 74 of the Code which states "[i]f we decide not to approve a loan to a small business we will tell the small business the general reason why unless it is reasonable for us not to do so". Accordingly, the ABA does not believe that a Code update is required to reflect this commitment.</p> <p>The ABA does not accept the second part of the recommendation as factors in the credit assessment process such as Credit Risk Policies and external economic or geographical conditions change over time and make it impractical to provide this information in relation to future applications. Providing a specific reason for declining a loan may also lead to a breach of the tipping off prohibition in the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> (Cth).</p>
72	Given the Payments System Board's recent review of Retail Payments Regulation which covers the issue of least cost routing, there does not appear to be a need for this issue to be covered in the Code.	Recommendation supported.
73	Consistent with Recommendation 8, banks should commit to periodically audit the effectiveness of their processes and systems to support compliance with the guarantee provisions under the Code.	<p>Recommendation not supported.</p> <p>Consistent with the ABA response to recommendation 8, banks already have existing obligations under the NCCP Act, the Corporations Act and various APRA Prudential Standards relating to the adequacy of processes and systems to support compliance with the guarantee provisions under the Code. This assessment may be completed by methods other than periodic audits.</p>
74	Banks should commit to proactively identifying guarantors who may require additional support to understand the guarantee information provided to them.	<p>Recommendation not supported.</p> <p>While banks have a number of existing processes to identify guarantors who may require support to understand the nature and effect of the guarantee, the ABA considers that an obligation to proactively identify guarantors that may require additional support would create uncertainty where it is not readily ascertainable what additional support may be required.</p>
75	Banks should commit to tailoring their approach to providing the information required to be given to the guarantor in a meaningful and accessible way to suit the needs of the guarantor, including where the guarantor's first language is not English.	<p>Recommendation not supported.</p> <p>The ABA agrees with the principle that guarantors should be properly informed about the guarantee. However, the ABA notes that banks already provide the information required to be given to guarantors as set out in clauses 96 and 99 of the Code.</p> <p>The ABA considers the above Code clauses to be sufficient to meet the "meaningful and accessible" requirement of the recommendation but does not support the requirement to tailor the approach to each guarantor. Rather, banks will refer guarantors to receive independent advice, including in their own language, where it is apparent their English is limited.</p>
76	Banks should commit to maintain records of any indicators that a guarantor may be vulnerable.	<p>Recommendation not supported.</p> <p>The ABA notes that banks already have obligations to comply with record keeping and the consumer protection provisions in the <i>Australian Securities and Investments Commission Act 2001</i> (Cth) (ASIC Act), such as unconscionable conduct and undue influence.</p> <p>The ABA also notes the privacy obligations imposed on banks to only retain personal information where necessary, especially where the indicators of vulnerability reflect sensitive personal information.</p>
77	Banks should commit, unless impractical to do so, to meet either face-to-face, video conference or other means with the guarantor before accepting the guarantee, and particularly where the guarantor has not	Recommendation supported in principle.

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	sought independent legal or financial advice. Banks should meet with the guarantor without the borrower being present.	<p>The ABA notes that the Code includes a number of requirements which endeavour to ensure the guarantor understands and is voluntarily entering into the guarantee. These include providing prominent notices and warnings, a 3-day deferral period before accepting a guarantee unless specific criteria have been met and, ensuring that the guarantee is signed in the absence of the borrower where the bank attends the signing in person.</p> <p>Any meeting obligation requires consideration of matters such as how the obligation applies to all distribution models used by banks including digital and, third party channels such as mortgage brokers. The ABA will consult further with industry including mortgage broker associations such as the MFAA and FBAA before any implementation of this recommendation.</p>
78	Banks should commit to conducting a pre-enforcement review of a guarantee to ensure that it has been obtained in accordance with the Code before commencing enforcement action.	<p>Recommendation not supported.</p> <p>The ABA recognises in some circumstances that a pre-enforcement review of a guarantee should be undertaken to ensure it has been obtained in accordance with the Code before commencing enforcement action. However, it does not agree that a change to the Code is necessary to require a guarantee in all cases to be obtained in accordance with the Code before commencing enforcement action for the following reasons:</p> <ol style="list-style-type: none"> 1. a pre-enforcement review of guarantees could be superseded by circumstances including court enforced judgments under clause 114 or agreement in writing by a guarantor after a default notice is issued under clause 115(a); 2. other non-Code obligations may apply with respect to enforcement of guarantees; and 3. as noted on page 55 of the 11 August 2021 BCCC Inquiry Report: Bank's compliance with the Banking Code's guarantee obligations, banks will consider enforcement of any non-compliant guarantee on a case-by-case basis as part of their standard enforcement protocols.
79	Banks should commit to explore all alternative options with a guarantor before a guarantor is forced to sell their principal place of residence.	<p>Recommendation supported in part.</p> <p>The ABA will amend the Code to emphasise that a guarantor's principal place of residence will not be sold unless banks have first sought to enforce any mortgage or other security that the borrower has provided.</p> <p>The ABA does not accept the commitment to explore "all alternative options", as the Code already contains a commitment in clause 160 which states "[i]f you are a guarantor and we have made a demand for you to pay under a guarantee and you are experiencing financial difficulty, then contact us as soon as possible and we will discuss your options".</p>
80	Banks should commit to provide clear, simple advice to customers, both on their websites and in person, how to cancel direct debits and recurring payments.	<p>Recommendation supported.</p> <p>Banks already provide this advice in clear and simple terms, whether in person or via their websites. The ABA also notes that banks provide this guidance to cover both 'direct debits' and 'recurring payments'. Accordingly, the ABA does not believe that a Code update is required to reflect this commitment.</p> <p>Banks are able to cancel direct debits at the request of the customer, but are unable to cancel recurring payments at the request of the customer, who instead needs to contact the merchant or service provider directly.</p>
81	Clause 144 should be extended to state that if a bank is going to cancel a credit card it will offer to discuss this with the customer, and if appropriate, give the customer the general reason for doing so.	<p>Recommendation not supported.</p> <p>Consistent with the ABA position in response to recommendation 58, banks need the ability to use discretion depending on the circumstances and in some cases, it is not appropriate or lawful to discuss the cancellation with the customer.</p> <p>Clause 144 of the Code already provides customers with the commitment that "[i]f we cancel your credit card we will tell you. If appropriate, we will give you the general reasons for doing so".</p>

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82	The Code should state that loan default fees and late payments fees will be reasonable having regard to all costs to the bank associated with customers not meeting their repayments on time.	<p>Recommendation not supported.</p> <p>The 2015 High Court decision of <i>Paciocco v Australia and New Zealand Banking Group</i> [2016] HCA 28 sets out rules of general application for how the contract law doctrine of penalties applies to fees of this type. A fee will be considered unreasonable where it is out of all proportion to the interests of the party charging the fee. These rules apply to all Australian contracts and establish a common standard. The ABA does not support the use of different rules outlined in the recommendation for banking services.</p>
83	The ABA Guidelines on 'Sale of unsecured debt' and 'Promoting understanding about banks financial hardship programs' should be considered as Code related documents and are considered by banks in assessing whether they are complying with their commitments under the Code. They should be referenced in Part 9.	<p>Recommendation supported in part.</p> <p>Consistent with its response to recommendation 10, the ABA supports clarity as to the role of industry guidelines and will include references to ABA's industry guidelines in a revised introduction to the Code. The ABA will also include hyperlinks to the guidelines in the digital version of the Code to give readers easier access.</p> <p>In line with the review observation that "[t]he relationship between the ABA industry guidelines and the Code needs to be clarified", the ABA will also include an explanation of the status of these guidelines. This will clarify that they do not form part of the Code, nor are they contractually enforceable.</p> <p>The ABA supports inclusion of certain provisions of the ABA Guidelines, as per recommendation 84.</p>
84	Chapter 43 should be extended to include the following commitments: - When contracting with debt buyers for the sale of unsecured debt, banks should have processes in place to monitor how debt buyers are undertaking their collection activities. - Where a debt buyer believes that commencing bankruptcy proceedings is necessary to recover an unsecured debt, banks should require the debt buyer consults with them prior to commencing these proceedings. - If a debt relates to a customer experiencing vulnerability and the bank is of the view that the vulnerability is likely to be ongoing and there is no reasonable prospect of the debt being recovered, then the bank should not sell that debt to a third party.	<p>Recommendation supported.</p>
85	Banks should commit to provide readily accessible information and guidance about how to access hardship assistance that is appropriate to Aboriginal and Torres Strait Islander peoples, people where English is not their first language, and people with low levels of financial literacy.	<p>Recommendation supported.</p> <p>The ABA considers that banks already provide appropriate and accessible materials addressing these requirements. Accordingly, the ABA does not believe that a Code update is required to reflect this commitment.</p>
86	Banks should commit to provide more guidance to customers on the information they will need to give their bank when seeking hardship assistance along with what the bank will consider in deciding whether to assist a customer. There should be consistency in the use of the term 'financial hardship' with the National Credit Act.	<p>Recommendation supported in principle.</p> <p>Significant guidance is already provided to customers seeking hardship assistance, including bank websites and the ABA's own Financial Assistance Hub. This guidance includes informing the customer of what banks need to consider in assessing a financial hardship application. Accordingly, the ABA does not believe a change to the Code is required to provide "more" guidance to customers.</p> <p>A distinction between 'financial difficulty' which is covered in the Code under Chapter 39 and 'financial hardship', as covered in the NCCP Act, is already made in the Code. By including the concept of 'financial difficulty' in the Code, banks assist more customers than those who are eligible for financial hardship under the NCCP Act.</p>
87	Clause 168 should be amended to making 'suitable, accessible, and comprehensive information on financial hardship assistance prominent and easily identifiable on banks websites, in branches and periodically on account statements'	<p>Recommendation supported in part.</p> <p>Banks support the provision of readily accessible information regarding services available to customers via a range of methods including websites and branches.</p> <p>However, the ABA does not propose to amend clause 168 as:</p> <ol style="list-style-type: none"> 1. clause 168 already requires banks to provide publicly available information about their processes for working with customers in financial difficulty;

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		<p>2. the ABA does not support the inclusion of 'suitable, accessible and comprehensive information on financial hardship assistance' on account statements. Account statements required to be generated by law must include prescribed information. For practical reasons, there is limited space and positioning available on account statements to include comprehensive hardship information in addition to the prescribed information; and</p> <p>3. the ABA considers that bank websites and/or branches remain the appropriate mechanisms for providing this information to customers.</p>
88	Clause 176 should be amended such that in all situations banks will advise customers what independent help they can access when facing financial difficulty, e.g. financial counselling organisations.	<p>Recommendation supported in part.</p> <p>After consultation with Financial Counselling Australia, the ABA will amend clause 176 to reference 'appropriate referrals' to financial counselling organisations, as not all customers require the assistance of financial counsellors.</p>
89	Banks should commit to having robust identification and communication systems to assist customers in, or likely to be facing, financial hardship. The Code should be expanded to cover customers who anticipate they will soon be unable to meet their financial commitments – they do not have to wait until they miss repayments.	<p>Recommendation supported in part.</p> <p>The ABA will reference financial difficulty rather than financial hardship for the reasons stated in its response to recommendations 86 and 87.</p> <p>The ABA will amend clause 157 to include an expected inability to make upcoming repayments as a form of financial difficulty.</p> <p>Banks have existing obligations to maintain adequate systems, including under various APRA Prudential Standards and under the general licensing conduct obligations in section 47 of the NCCP Act and section 912A of the Corporations Act, which are overseen by ASIC. In line with the ABA's overarching response principles, the ABA does not believe that restating legal obligations in the Code is necessary.</p> <p>With respect to identification systems, the ABA notes the existing commitment in clause 165 of the Code to identify common indicators of financial difficulty.</p> <p>With respect to communication systems, the ABA notes its position in response to recommendation 87, being that banks and the ABA already provide readily accessible information regarding services (e.g., loan repayment deferrals) available to customers via a range of methods.</p>
90	The reference to 'unsecured personal loan or credit card' should be removed from Clause 172 so as not to exclude other forms of debt.	<p>Recommendation not supported.</p> <p>The discretion in clause 172 relates only to unsecured personal loan or credit card debt and, obligations in relation to secured debt are covered elsewhere in the Code (e.g., Chapter 29 and Part 9) and the NCCP Act.</p> <p>Banks continue to work with customers on a case-by-case basis to help find sustainable solutions to their financial difficulties, such as those listed in the table on page 47 of the Code.</p>
91	The Code should be amended so that it is clear that small businesses are covered under the hardship assistance arrangements in Part 9.	<p>Recommendation supported.</p>
92	Customers should be advised where they can access their rights under the Code and National Credit Code with respect to financial hardship assistance when they approach their bank seeking assistance. The Code should also stipulate the loan types that come under the hardship provisions of the National Credit Code.	<p>Recommendation supported in part.</p> <p>The ABA will reinforce in a revised introduction where customers can enforce their rights under the Code. The National Credit Code (NCC) also requires banks to provide information to customers with respect to financial hardship assistance including where customers approach their bank seeking assistance (section 72(2)).</p> <p>The ABA considers that stipulating loan types is not required given that neither the NCC nor the Code do so.</p>

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93	The BCCC should publish data on the percentage of requests for financial assistance granted by banks.	<p>Recommendation not supported.</p> <p>The provision of financial assistance data by banks to the BCCC does not meet the BCCC's role of monitoring Code compliance.</p>
94	The Code should include a commitment by banks that they will support customers facing financial hardship in emergencies or special circumstances, such as significant financial shocks, droughts, fires, flood, and earthquakes.	<p>Recommendation supported in part.</p> <p>The ABA will amend clause 157 to address unexpected events or unforeseen changes outside the customer's control, including impacts from natural disasters such as droughts, fires, floods and earthquakes.</p> <p>The terms "financial shock" and "special circumstances" however are unclear for customers and will not be included.</p>
95	Chapter 45 should be amended to incorporate the Law Council's proposals to clarify the provisions dealing with deceased estates. The detail could be included in an industry guideline, which is referenced in the Code.	<p>Recommendation supported in principle.</p> <p>The ABA will consult further with industry stakeholders, including the Law Council and the BCCC who are currently undertaking a targeted inquiry into the Code provisions dealing with deceased estates.</p> <p>The ABA will revisit this recommendation once the BCCC inquiry is completed (expected in late 2022).</p>
96	Rather than saying banks 'will comply with ASIC guidelines' on internal dispute resolution processes, the Code should reference that the ASIC regulatory guides impose enforceable requirements regarding the promotion, accessibility, timeframes, and processes for handling customer complaints.	<p>Recommendation supported in part.</p> <p>The ABA will consider how to appropriately incorporate reference to ASIC guidelines on internal dispute resolution.</p> <p>In line with the ABA's overarching response principles, the ABA does not consider that restating legal obligations in the Code is necessary.</p>
97	The Code should be expanded to include some of the important requirements in ASIC regulatory guides. Specifically, that banks will: - treat complaints involving hardship notices or requests to postpone enforcement proceedings as urgent matters - the internal dispute resolution processes will be easy to understand, including by people with a disability and language difficulties - the dispute resolution processes will be free to customers - staff will have the knowledge, skills and attributes to effectively, and efficiently, deal with complaints - conduct regular compliance audits to identify and address non-conformity with regulatory guides and internal requirements for complaints handling.	<p>Recommendation not supported.</p> <p>Consistent with its response to recommendation 96, restating requirements in ASIC guidelines is considered unnecessary duplication.</p>
98	Banks should commit to assisting, without seeking to influence, vulnerable customers with their complaints through both internal and external dispute resolution processes. For example, this could include offering to explain, as required, how the dispute resolution process operates.	<p>Recommendation supported.</p> <p>The ABA considers banks are already compliant with this recommendation under Part 10 of the Code. Accordingly, the ABA does not believe that a Code update is required to reflect this commitment.</p> <p>In relation to external dispute resolution processes, the ABA notes that AFCA has processes specifically tailored to ensure vulnerable and disadvantaged people are appropriately assisted in making a complaint.</p>
99	The definition of complaint in the Code should be aligned with the definition in ASIC Regulatory Guide 271.	<p>Recommendation supported.</p>
100	Consistent with Recommendation 4, there should be a commitment in the Code that when a customer makes a complaint to their bank, the bank will give the customer a simple, easily understandable document that advises them they have rights in their dealings with their bank which are outlined in the Code along with how they can access the Code.	<p>Recommendation supported in principle.</p> <p>The ABA supports the provision of information to customers upon making a complaint to the bank that advises them of their rights and dealings with the bank and how they can access the Code. However, the ABA does not support including an additional commitment in the Code requiring the provision of information in an additional document because:</p> <ol style="list-style-type: none"> 1. it would create unnecessary duplication with ASIC guidelines; and

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		2. the information is unnecessary where banks are able to resolve complaints on the spot or in a method agreed with the customer, including verbal communication.
101	To clarify what are customers' rights, the Code should include the statement that banks are bound to cooperate with AFCA in dealing with a customer's complaint and are bound by any determination by AFCA.	<p>Recommendation supported in part.</p> <p>The ABA will include information about the role of AFCA and the requirement for banks to comply with its binding determination of complaints in a revised introduction, rather than the Code.</p>
102	Given the role of the Customer Advocate as an avenue for escalating a complaint in the bank will be curtailed given the reduced timeframe for concluding the internal dispute resolution process, the reference to Customer Advocates should be removed from Part 10 of the Code.	<p>Recommendation supported.</p> <p>The ABA will consider the appropriate location for the Customer Advocate clause.</p>
103	The broader role of the Customer Advocate in representing the customers perspective in shaping remediation programs, influencing product development and distribution processes, should be included in Part 1 'How the Code works.	<p>Recommendation not supported.</p> <p>Firstly, consistent with its response to recommendation 102, the ABA will consider the appropriate location for the Customer Advocate clause. Part 1 is largely a definition section and is an inappropriate location to describe the Customer Advocate role.</p> <p>Secondly, as individual banks retain flexibility in determining the role of the Customer Advocate, the inclusion of role functions at an industry level as suggested in the recommendation is inappropriate.</p>
104	The BCCC should maintain its role of overseeing compliance with a Code based on self-regulation and promoting best practice in helping banks achieve good outcomes for their customers. The BCCC is not a regulator enforcing compliance with the law.	Recommendation supported.
105	The BCCC should review its information requests from banks in the context of ASIC's new breach reporting arrangements and outline why it requires the information, how it is used, and whether it is necessary for the BCCC to fulfil its role. The BCCC should explain to banks why it requires the information.	<p>Recommendation supported.</p> <p>The BCCC Charter will be amended to address this recommendation.</p>
106	A materiality threshold for banks' breach reporting to the BCCC should be introduced to reduce the reporting burden on banks and to better focus the activities of the BCCC. The nature of the threshold of materiality – whether based on number of customers affected, dollar impact of the breach, importance of the provision, whether the breach is wilful as opposed to inadvertent- could be settled in consultation with the banks.	Recommendation supported.
107	Proposals to reduce banks compliance reports to the BCCC to the provisions in the Code which are largely prescriptive or transactional should be rejected.	<p>Recommendation supported.</p> <p>Compliance reports to the BCCC will not be reduced to provisions that are largely prescriptive or transactional. However, consistent with recommendation 106, bank compliance reporting will be subject to a materiality threshold.</p>
108	Consistent with recommendation 8, there should be an enforceable provision that banks commit to take all reasonable steps to have the appropriate framework, processes and procedures in place to support an integrated approach to Code compliance. The effectiveness of the components of this framework should be periodically audited through the banks internal and external audit arrangements, with the results provided to the BCCC. A summary of each bank's audit reports should be included in their published annual report. There should be an exchange of information agreement with ASIC for the BCCC to report to ASIC if there are serious or systemic deficiencies in a bank's compliance framework.	<p>Recommendation not supported.</p> <p>Consistent with the ABA's response to recommendation 8, the ABA does not support this recommendation for the following reasons:</p> <ol style="list-style-type: none"> 1. banks already have existing obligations to maintain adequate systems, processes and programs including under the NCCP Act, the Corporations Act and various APRA Prudential Standards. Many of these obligations are subject to civil penalties. The ABA position is that including such a provision and making it an enforceable provision introduces duplication with existing legislative obligations;

No.	Recommendation	ABA Response
		<ol style="list-style-type: none"> 2. in identifying enforceable provisions, Commissioner Hayne stated that the focus should be on identifying provisions that govern or are intended to govern the terms of the contract between the bank and customer. This recommendation does not meet this test because it is focused on internal bank operations rather than a direct commitment to customers; 3. in respect of the BCCC and bank annual reports, reporting of internal and external audit outcomes conducted by banks is not considered necessary, given that Code breaches are already identified and reported to BCCC through its biannual compliance statements (including breaches identified via internal or external audits); and 4. in its response to the Independent BCCC Review on 21 October 2022, the ABA accepted the recommendation for the BCCC to report to ASIC if there are serious or systemic deficiencies in a bank's compliance framework, subject to the following: <ol style="list-style-type: none"> a. any reporting of non-compliance meets the criteria set out in the BCCC's Compliance Monitoring Framework, specifically that the BCCC make the best use of its resources and focus on industry-wide, serious, or systemic issues; and b. consistent with recommendation 15 of the BCCC Review, that the situations reported relate to findings from targeted BCCC investigations which find serious compliance issues.
109	The BCCC's sanction powers should be consistent with its role and the Code's status of self-regulation. Giving the BCCC the power to impose a financial penalty has the danger of blurring the line between the BCCC and ASIC.	Recommendation supported.
110	The BCCC should have the power to require a bank to publish on the bank's web site that it had breached the Code and the corrective action the bank is taking.	<p>Recommendation not supported.</p> <p>Consistent with its response to recommendation 17 of the Independent BCCC Review on 21 October 2022, the ABA notes the following:</p> <ol style="list-style-type: none"> 1. the recommendation does not align with the Code's status of self-regulation or the BCCC's role in monitoring (but not enforcement) of Code compliance; and 2. the BCCC already has sufficient powers to sanction banks, including publicly naming banks that have breached the Code as set out in clause 215(e) of the Code.
111	The BCCC charter should be part of the Code. It should be referenced in the Code and be annexed to the Code.	<p>Recommendation supported in part.</p> <p>The ABA position is that inclusion of the BCCC Charter in the Code unnecessarily increases complexity and length of the Code. Banks remain bound by the BCCC Charter, notwithstanding that it is separate to the Code.</p> <p>The ABA will include reference to the BCCC Charter in the revised introduction.</p>
112	The provisions in the Code covering the BCCC should be moved from the part of the Code 'Resolving your complaint' to a separate part of the Code dealing with 'Compliance with the Code.'	<p>Recommendation supported in part.</p> <p>The ABA considers that adding the word "compliance" in the sub-heading of Chapter 49 is a simpler way to accept this recommendation rather than adding a separate 'Compliance with the Code' section.</p>
113	Banks should commit to training staff on the indicators of suspicious transactions that may constitute scams, particularly with respect to vulnerable customers.	<p>Recommendation supported.</p> <p>The ABA notes that banks already have a wide-ranging suite of training for relevant staff, including in relation to vulnerable customers and, that a flexible approach to such training is required given the evolving nature of scams. Therefore, the ABA considers no amendment to the Code is required to address this recommendation.</p>

No.	Recommendation	ABA Response
114	Banks should commit to having information on their websites and apps telling customers what to do if they believe they have been scammed. They should include a dedicated scam/fraud telephone line. This information should be in languages other than English.	<p>Recommendation supported in part.</p> <p>Banks already provide substantial information and support in relation to scams and fraudulent activity and will continue to update this as required. Accordingly, the ABA does not believe that a Code update is required to reflect this commitment.</p> <p>Information is provided in languages other than English where appropriate.</p>
115	The requirement for the Code to be independently reviewed every three years remains appropriate.	<p>Recommendation not supported.</p> <p>The ABA notes that under Regulatory Guide 183 (Approval of financial services sector codes of conduct) the three-year review cycle will be retained until both ASIC and industry have sufficient experience with the effective operation of approved codes.</p> <p>Given the previous approval of the Code by ASIC in 2019, in its submission to ASIC for approval of this Code update, the ABA will request that an independent review of the Code is undertaken every 5 years to align with section 1101AB of the Corporations Act.</p>
116	The ABA Consumer Outcomes Group should be used to provide input to the ABA as to whether amendments to the Code are required between triennial reviews, or whether the issue can wait to be considered at the next review.	Recommendation supported.