

10 October 2019

By email: adjudication@acc.gov.au

David Jones
General Manager, Adjudication Branch
ACCC
GPO Box 3131
Canberra ACT 2601

Dear Mr Jones

ACCC Draft Determination AA1000441 – Australian Banking Association application for authorisation of certain amendments to the 2019 Banking Code

Consumer Action Law Centre (**Consumer Action**), Financial Rights Legal Centre (**Financial Rights**) and Financial Counselling Australia (**FCA**) welcome the Australian Competition and Consumer Commission (**ACCC**) Draft Determination in response to the application for authorisation lodged by the Australian Banking Association (**ABA**) in respect to certain amendments of the 2019 Banking Code of Practice (the **Code**).

We strongly support the proposed conditions for authorisation. These conditions and proposed data reporting requirements will lead to transparency and improved access to basic bank accounts for people who would benefit from them. The conditions will also help ensure Code revisions align more closely to the intent of the Banking Royal Commission recommendations¹ on basic bank accounts.

We agree that all or some of the public benefits set out in 4.13 of the Draft Determination and ascribed to the ABA Proposed Conduct² 'will be illusory and unlikely to arise in practice'³ without the incorporation of the ACCC's recommendations.

¹ *Final Report*, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Vol 1 (February 2019) Recommendation 1.8 parts 3 and 4.

² Draft Determination 1.6.

³ Draft Determination 4.16.

In particular, we strongly support the following conditions proposed by the ACCC:

1. that Member Banks do not charge interest on basic banking product informal overdrafts or refund any interest charged at the end of the month⁴
2. that the ABA report to the ACCC on informal overdrafts as proposed⁵
3. that Member Banks which currently offer basic bank accounts continue to do so throughout the authorisation period⁶
4. that Member Banks proactively identify and contact potential eligible customers about basic bank accounts, including through data analysis⁷
5. that Member banks publicly report data to the ACCC on actions taken to identify and contact potentially eligible customers, the number of basic bank accounts opened and actions taken to work with government departments to address technical issues in identifying potentially eligible customers through government payments.⁸ It is crucial that this data be reported publicly for transparency.

Eligibility proposal

We agree with the ACCC's concerns set out at paragraph 4.46 of the Draft Determination. We welcome the clarifications made by the ABA that the definition of 'eligible customer' in paragraph 47 of the Code is meant to be a minimum standard that can be broadened by banks (meaning that banks are not required to limit basic bank accounts to only those individuals with a Government Concession Card). However, we maintain that the revised wording proposed by the ABA on 2 August and 11 September 2019 does not convey this. Instead, it can be easily read as if imposing a condition that a customer must, at the very least, hold a Government Concession Card in order to be eligible. Although this may seem overly semantic, we are concerned that this interpretation, if made by a Member Bank, would have the opposite effect intended. We recommend paragraph 47 be rephrased to something like:

'means *at least any* individual (that is not a business) who holds a current government concession card listed in paragraph 44, although we may offer broader eligibility criteria'.

Minimum standards

We maintain that the community expects widespread access to fee-free ATMs, and that a lack of codified action in relation to third party ATMs will continue to entrench disadvantage.

We agree with the ACCC⁹ that the revision of paragraph 44B of the Code is ambiguous as to whether the customer can choose to have an EFTPOS or scheme debit card, or if this is decided by the Member Bank. If this is intended to be the customer's choice, we recommend clarifying this in paragraph 44B.

⁴ Draft Determination 4.38.

⁵ Draft Determination 4.39.

⁶ Draft Determination 4.57.

⁷ Draft Determination 4.72.

⁸ Draft Determination 4.73.

⁹ Draft Determination 4.63.

Conclusion

We strongly support the ACCC's proposed conditions of authorisation, particularly in relation to proactive access to basic banking products and informal overdrafts, to ensure the Royal Commission Code recommendations can be met in both substance and spirit.

Contact

Please contact Senior Policy Officer **Brigette Rose** at **Consumer Action Law Centre** on [REDACTED] or at [REDACTED] if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE



Gerard Brody | Chief Executive Officer

FINANCIAL RIGHTS LEGAL CENTRE



Karen Cox | Chief Executive Officer

FINANCIAL COUNSELLING AUSTRALIA



Fiona Guthrie | Chief Executive Officer

Appendix A

About Consumer Action Law Centre

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

About Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters. Financial Rights took close to 25,000 calls for advice or assistance during the 2017/2018 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

About Financial Counselling Australia

FCA is the peak body for financial counsellors in Australia. FCA's member groups are the State and Territory financial counselling associations. FCA provides a voice for the financial counselling profession, provides training, support and resources for financial counsellors and advocates for a fairer marketplace for the clients of financial counsellors.