

31 October 2019

By email: adjudication@acc.gov.au

Susie Black
Director, Adjudication
GPO Box 3131
Canberra ACT 2601

Dear Ms Black

Australian Banking Association application for authorisation AA10000441 – joint consumer response to ACCC and ABA

Consumer Action Law Centre (**Consumer Action**), Financial Rights Legal Centre (**Financial Rights**) and Financial Counselling Australia (**FCA**) welcome the opportunity to comment on the Australian Banking Association (**ABA**) submission and further Australian Competition and Consumer Commission (**ACCC**) response to the ACCC draft determination on the ABA application for authorisation of certain amendments of the 2019 Banking Code of Practice (the **Code**).

As stated in our previous submission in response to the draft determination, we strongly supported the ACCC initial proposed conditions for authorisation, which we think would marry the Code revisions more closely with the spirit of the Banking Royal Commission recommendations on basic bank accounts.¹

Having read the ABA submission in response to the draft determination and further correspondence from the ACCC, we remain supportive of the revised ACCC proposed conditions.

Interest on basic bank account informal overdrafts

Implementation time

We support the ACCC's request for further detailed information on the concerns about implementation raised by the ABA. We consider delay until 1 March 2021 for the prohibition of charging of interest on informal overdrafts

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.

on basic accounts to be a lengthy delay during which some consumers would continue to experience further financial harm caused by interest on an informal overdraft. As we stated in previous submissions, while the average amount of interest may seem low, the charge is not insignificant for low-income consumers, the general target market for basic bank accounts.

Australia's banks are profitable businesses that are already investing in data innovation in other areas. We think these investments should be used to support the aims of the Royal Commission recommendations. On the information provided, we do not agree with delay of implementation for this condition for a further year.

Refunding interest "within 3 months" rather than the end of the month

With automated systems calculating fees and interest, we do not currently see evidence of the difficulty and cost of repaying interest at the end of each month if a bank cannot cancel these charges outright at the time.

Even if refunding interest is a manual process, we think that requiring that bank to repay money every month that should not have been charged in the first place to a low income person is not onerous, and is indeed the fair thing to do. However, withholding this refund for an additional two months may be detrimental to a person on a low income.

We note the ACCC's revised condition on the repayment of interest on basic accounts and accept this may be a practical solution for the time being.

Reporting to ACCC

On the information provided, we question how reporting on the types and causes of informal overdrafts would be overly onerous for banks. We note the ABA submission states that 'there is limited scope to reduce the number of informal overdrafts that are 'impossible or reasonably impractical to prevent'. We think the scope to reduce informal overdrafts in the future will remain limited as long as data is not being collected on their types and causes. If data collection could help to pinpoint issues and solutions, consumers would benefit.

However, we accept the ACCC view in the letter to the ABA that the percentage of total basic accounts overdrawn without express agreement and the average number of times these accounts have become overdrawn, will meet the purpose of the proposed condition.

Offers of Basic Bank Accounts

We refer to our initial submission that all ABA Member Banks should be required to offer basic accounts and that it would be unfair to require only those that currently offer them to continue to do so.

However, we support the ACCC proposed condition for the ABA to publicly provide the names of banks that have started, continued and ceased to offer basic accounts and details of other low and no fee accounts offered by ABA Member Banks.

Proactive identification of eligible customers

We disagree with the ABA limiting the description of what a Code does to: setting standards of practice for banks and informing customers of their rights. According to ASIC's regulatory guidance on *Approval of financial services sector codes of conduct* RG 183, a code is "essentially a set of enforceable rules that sets out a progressive model of conduct and disclosure for industry members" and "the primary role of a financial services sector code is to raise

standards” that is it is a set of commitments to consumers.² Committing to proactive identification of potentially eligible customers is well within the scope of a Code. The ABA Code contains many “We will ..” statements that commit banks to act in a proactive manner. This is no different.

Having said this, we support the proposed imposition of the condition whether or not it is required to be part of the Code.

Additional matters raised by the ABA

Although the ACCC has not responded to the following matters raised by the ABA, we feel it is important to note our views on these matters.

Confidentiality

We disagree with the statement from the ABA that a requirement to report to the ACCC on engagement with government departments is inappropriate, or an issue of confidentiality. There are no details provided to support this claim. We think that the ACCC would be able to provide a process to receive any confidential information confidentially when required.

Basic bank accounts limitations to eligible customers as defined in paragraph 47

We are very concerned about the interpretation we understand to be put forward by the ABA regarding the interaction of ‘eligible customers’ and basic accounts. As we read the ABA response, it appears the ABA is claiming that the Royal Commission-related obligations around no informal overdrafts, no fees (and no consequently, no interest) will only apply to basic accounts held by ‘eligible customers’ as defined as holding a Government concession card. The implication of this (as we understand the ABA’s letter) is that if a bank expands its criteria for eligibility for basic accounts, these basic account holders will not receive these benefits. The ABA states:

“Where accounts are offered outside the circumstances in para 47 the obligations around the inclusion of the features outlined in that para will not apply. This will be the case where

- *a customer other than an eligible customer holds a basic, low or no fee account.*
- *An eligible customer, having been offered a basic, low or no fee account that complies with paragraph 47, declines such offer and instead opts for an account with other features - even if that other account has low or no fees.”*

We note the example of the pensioner and their share trading account only applies to the second point and they have no example relating to the first. This seems to be the ABA trying to limit access to basic bank accounts and the new obligations to just those with government cards alone, even if a bank wants to expand its criteria. This seems preposterous.

We want to ensure that:

² ASIC RG 183 *Approval of financial services sector codes of conduct* (March 2013) at 183.2, available at <https://download.asic.gov.au/media/1241015/rg183-published-1-march-2013.pdf>.

- where a basic bank account is offered, the new informal overdraft and no fee obligations apply
- those customers who are eligible should be offered the basic account or encouraged to consider if a basic account will be meet their needs through proactive steps taken by the Bank
- eligibility should be everyone with a government concession card but this is a minimum and banks should be free to offer basic bank accounts to a broader group of people than this cohort – that is a basic bank account should be accessible to people outside of the minimum threshold (as per our original submission, rec 4)
- everyone with a basic account should be able to enjoy the features of a basic banking account and the obligations relating to fees and informal overdrafts.

The Royal Commission’s recommendation is clearly aimed at the bank account – not a subset of people who have one of those accounts.

Conclusion

We support the conditions proposed by the ACCC and raise our concerns at what we understand the ABA’s interpretation of the obligations on basic accounts to be.

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.