

26 July 2023

Mr Anthony Hilton and Ms Penny Bigham
Australian Competition & Consumer Commission

Via email: exemptions@acc.gov.au

Dear Mr Hilton and Ms Bigham

Application for minor variation to the Customer Owned Banking Code of Practice

As contemplated at our meeting on 9 June 2023, the Customer Owned Banking Association (COBA) and its Code subscribers request a minor variation to the ACCC authorisation of certain provisions of our Code of Practice (Code).

Background

COBA is the industry association for customer owned banks and the owner of the Code to which many customer owned banks have voluntarily subscribed. The Code commits Code subscribers to provide customers (individuals and small businesses) with higher standards than the law requires. The Code commenced on 31 October 2022.

In August 2022, the ACCC made a Determination granting authorisation of some 19 provisions of the Code. The ACCC's authorisation is effective until 19 August 2027.

In June 2023, COBA's Board resolved to make a minor amendment to Code paragraph 91 which is one of the authorised provisions. The amendment is to take effect at a date to be resolved by COBA Management.

Application

Our application for a minor variation to the ACCC authorisation is attached to this letter. We also attach a version for publishing on the ACCC's public register with personal information redacted.

Our application also requests an interim authorisation so as to enable COBA to commence amended paragraph 91 as soon as possible. While this is not an urgent matter, there would be administrative advantages that flow from early commencement of the amended paragraph 91. This is explained in our application.

Yours sincerely

MICHAEL LAWRENCE
Chief Executive Officer

Suite 403, Level 4, 151 Castlereagh Street,
Sydney NSW 2000

Suite 4C, 16 National Circuit,
Barton ACT 2600

Application by Customer Owned Banking Association on behalf of Code subscribers for a minor variation of ACCC authorisation and an interim authorisation

Applicants

1 Details

1.1 Name, address (registered office), telephone number and ACN

Customer Owned Banking Association (ACN 137 780 897)
 Suite 403, Level 4, 151 Castlereagh Street
 Sydney NSW 2000
 Ph: (02) 8035 8400
 GPO Box 4686, Sydney, NSW 2001
 (COBA)

Code subscribers

	Name, address (registered office), telephone number and CAN	Contact person's name, telephone number and email address	Description of business activities
1	Australian Military Bank Limited Level 18, 45 Clarence St, Sydney NSW 2000 Ph: (02) 1300 132 328 ACN 087 649 741	[redacted]	Bank – provision of banking services
2	Australian Mutual Bank Limited 59 Buckingham Street, Surry Hills NSW 2010 Ph: 13 61 91 ACN: 087 650 726	[redacted]	Bank – provision of banking services
3	Australian Unity Bank Limited 271 Spring Street, Melbourne Vic 3000 Ph: 1300 790 740 ACN: 087 652 079	[redacted]	Bank – provision of banking services
4	B&E Limited 87 Brisbane Street, Launceston Tas 7250 Ph: 1300 306 716 ACN: 087 652 088	[redacted]	Bank – provision of banking services
5	Bank Australia Limited Level 12, 54 Wellington Street, Collingwood VIC 3066	[redacted]	Bank – provision of banking services

	Name, address (registered office), telephone number and CAN	Contact person's name, telephone number and email address	Description of business activities
	Ph: 132 888 ACN: 087 651 607		
6	Beyond Bank Australia Limited 100 Waymouth Street, Adelaide SA 5000 Ph: 13 25 85 ACN: 087 651 143	[redacted]	Bank – provision of banking services
7	Central Murray Credit Union Limited 58 Belmore Street, Yarrowonga Vic 3730 Ph: 03 5744 3713 ACN: 087 651 812	[redacted]	Credit Union – provision of banking services
8	Central West Credit Union Limited 269 Clarinda Street, Parkes NSW 2870 Ph: 02 6862 2788 ACN: 087 649 885	[redacted]	Credit Union – provision of banking services
9	Coastline Credit Union Limited 64 Elbow Street, West Kempsey NSW 2440 Ph: 1300 361 066 ACN: 087 649 910	[redacted]	Credit Union – provision of banking services
10	Community First Credit Union Limited 67-73 St Hilliers Road, Auburn NSW 2144 Ph: 1300 13 22 77 ACN: 087 649 938	[redacted]	Credit Union – provision of banking services
11	Credit Union Australia Limited Level 27, 300 George Street, Brisbane QLD 4000 Ph: 133 282 ACN: 087 650 959	[redacted]	Credit Union – provision of banking services
12	Credit Union SA Limited Level 3, 400 King William Street, Adelaide SA 5000 Ph: 08 8202 7777 ACN: 087 651 232	[redacted]	Credit Union – provision of banking services

	Name, address (registered office), telephone number and CAN	Contact person's name, telephone number and email address	Description of business activities
13	Defence Bank Limited Level 10, 31 Queen Street, Melbourne Vic 3000 Ph: 1800 033 139 ACN: 087 651 385	[redacted]	Bank – provision of banking services
14	Dnister Ukrainian Credit Co-Operative Limited 912 Mt Alexander Road, Essendon Vic 3040 Ph: 1800 353 041 ACN: 087 651 394	[redacted]	Credit Co-operative – provision of banking services
15	Family First Credit Union Limited 1 Ordnance Avenue, Lithgow NSW 2790 Ph: 1300 369 900 ACN: 087 650 057	[redacted]	Credit Union – provision of banking services
16	Fire Service Credit Union Limited 22 Chancery Lane, Adelaide SA 5000 Ph: 08 8227 2222 ACN: 087 651 152	[redacted]	Credit Union – provision of banking services
17	First Choice Credit Union Limited 2/18 Sale Street, Orange NSW 2800 Ph: 02 6362 2944 ACN: 087 649 867	[redacted]	Credit Union – provision of banking services
18	First Option Bank Limited Level 6, 437 St Kilda Road, Melbourne Vic 3004 Ph: 1300 855 675 ACN: 087 650 735	[redacted]	Bank – provision of banking services
19	Ford Co-Operative Credit Society Limited 107 Gheringhap Street, Geelong Vic 3220 Ph: 1300 361 555 ACN: 087 651 456	[redacted]	Bank – provision of banking services
20	G&C Mutual Bank Limited Level 25, 201 Elizabeth Street, Sydney NSW 2000	[redacted]	Bank – provision of banking services

	Name, address (registered office), telephone number and CAN	Contact person's name, telephone number and email address	Description of business activities
	Ph: 1300 364 400 ACN: 087 650 637		
21	Gateway Bank Limited Level 10, 68 York Street, Sydney NSW 2000 Ph: 1300 302 474 ACN: 087 650 093	[redacted]	Bank – provision of banking services
22	Goulburn Murray Credit Union Co-Operative Limited 91-95 Fryers Street, Shepparton Vic 3630 Ph: 03 5821 9033 ACN: 087 651 509	[redacted]	Credit Union – provision of banking services
23	Heritage and People's Choice Limited 6th Floor, 400 Ruthven Street, Toowoomba QLD 4350 Ph: 13 14 22 ACN: 087 652 024	[redacted]	Bank – provision of banking services
24	Horizon Credit Union Limited 27 Stewart Street, Wollongong NSW 2500 Ph: 1300 366 565 ACN: 087 650 173	[redacted]	Credit Union – provision of banking services
25	Hume Bank Limited 492 Olive Street, Albury NSW 2640 Ph: 1300 004 863 ACN: 051 868 556	[redacted]	Bank – provision of banking services
26	Illawarra Credit Union Limited 38-40 Young Street, Wollongong NSW 2500 Ph: 13 22 49 ACN: 087 650 771	[redacted]	Credit Union – provision of banking services
27	IMB Limited 47 Burelli Street, Wollongong NSW 2500 Ph: 133 462 ACN: 087 651 974	[redacted]	Bank – provision of banking services

	Name, address (registered office), telephone number and CAN	Contact person's name, telephone number and email address	Description of business activities
28	Laboratories Credit Union Limited 1 The Village, 3 Julius Avenue, North Ryde NSW 2113 Ph: 02 9859 0585 ACN: 087 650 217	[redacted]	Credit Union – provision of banking services
29	Macarthur Credit Union Limited 52 Argyle Street, Camden NSW 2570 Ph: 1300 622 278 ACN: 087 650 244	[redacted]	Credit Union – provision of banking services
30	Macquarie Credit Union Limited 23 Hawthorn Street, Dubbo NSW 2830 Ph: 1300 885 480 ACN: 087 650 253	[redacted]	Credit Union – provision of banking services
31	Maitland Mutual Limited 6 Mitchell Drive, East Maitland NSW 2323 Ph: 1300 688 825 ACN: 087 651 983	[redacted]	Bank – provision of banking services
32	Members Banking Group Limited Level 10, 60 Edwards Street, Brisbane QLD 4000 Ph: 07 3877 1908 ACN: 087 651 054	[redacted]	Bank – provision of banking services
33	Newcastle Greater Mutual Group Ltd 307 King Street, Newcastle NSW 2300 Ph: 13 19 87 ACN: 087 651 992	[redacted]	Building society – provision of banking services
34	Northern Inland Credit Union Limited 481 Peel Street, Tamworth NSW 2340 Ph: 02 6763 5111 ACN: 087 650 422	[redacted]	Credit Union – provision of banking services
35	Orange Credit Union Limited 288 Summer Street, Orange NSW 2800 Ph: 02 6362 4466 ACN: 087 650 477	[redacted]	Credit Union – provision of banking services

	Name, address (registered office), telephone number and CAN	Contact person's name, telephone number and email address	Description of business activities
36	Police & Nurses Limited Level 7, 130 Stirling Street, Perth WA 6000 Ph: 13 25 77 ACN: 087 651 876	[redacted]	Bank – provision of banking services
37	Police Bank Limited 25 Pelican Street, Surry Hills NSW 2010 Ph: 131 728 ACN: 087 650 799	[redacted]	Bank – provision of banking services
38	Police Credit Union Limited 17-23 Carrington Street, Adelaide SA 5000 Ph: 1300 131 844 ACN: 087 651 205	[redacted]	Credit Union – provision of banking services
39	Police Financial Services Limited t/a BankVic 3/215 Spring St, Melbourne VIC 3000 Ph: 13 63 73 ACN: 087 651 661	[redacted]	Bank – provision of banking services
40	QPCU Limited 231 North Quay, Brisbane QLD 4000 Ph: 13 77 28 ACN: 087 651 036	[redacted]	Bank – provision of banking services
41	Qudos Mutual Limited Connect Corporate Centre, Level 8, 191 O'Riordan Street, Mascot NSW 2020 Ph: 1300 747 747 ACN: 087 650 557	[redacted]	Bank – provision of banking services
42	Queensland Country Bank Limited 333 Ross River Road, Aitkenvale QLD 4814 Ph: 1800 075 078 ACN: 087 651 027	[redacted]	Bank – provision of banking services

	Name, address (registered office), telephone number and CAN	Contact person's name, telephone number and email address	Description of business activities
43	Railways Credit Union Limited Level 1, Law Society House, 179 Ann Street Brisbane QLD 4000 Ph: 1300 362 216 ACN: 087 651 090	[redacted]	Credit Union – provision of banking services
44	Regional Australia Bank Limited New England Technology Park, Madgwick Drive Armidale NSW 2351 Ph: 132 067 ACN: 087 650 360	[redacted]	Bank – provision of banking services
45	South West Slopes Credit Union Limited 89 Boorowa Street, Young NSW 2594 Ph: 02 6384 1111 ACN: 087 650 673	[redacted]	Credit Union – provision of banking services
46	Southern Cross Credit Union Level 2, 38-42 Pearl Street, Kingscliff NSW 2487 Ph: 1300 360 744 ACN: 087 650 682	[redacted]	Credit Union – provision of banking services
47	Summerland Financial Services Limited 101 Molesworth Street, Lismore NSW 2480 Ph: 1300 802 222 ACN: 087 650 806	[redacted]	Credit Union – provision of banking services
48	Teachers Mutual Bank Limited 28-38 Powell Street, Homebush NSW 2140 Ph: 13 12 21 ACN: 087 650 459	[redacted]	Bank – provision of banking services
49	The Broken Hill Community Credit Union Limited 2 Chloride Street, Broken Hill NSW 2880 Ph: 08 8088 2199 ACN: 087 650 762	[redacted]	Credit Union – provision of banking services

	Name, address (registered office), telephone number and CAN	Contact person's name, telephone number and email address	Description of business activities
50	The Capricornian Limited 157 East Street, Rockhampton QLD 4700 Ph: 1300 314 900 ACN: 087 650 940	[redacted]	Credit Union – provision of banking services
51	Traditional Credit Union Limited 9 Rowling Street, Casuarina NT 810 Ph: 08 8999 0777 ACN: 087 650 922	[redacted]	Credit Union – provision of banking services
52	Transport Mutual Credit Union Limited Ground Floor, 410 Elizabeth Street, Surry Hills NSW 2010 Ph: 02 8202 8555 ACN: 087 650 600	[redacted]	Credit Union – provision of banking services
53	Unity Bank Limited Level 7, 215-217 Clarence Street, Sydney NSW 2000 Ph: 1300 36 2000 ACN: 087 650 315	[redacted]	Bank – provision of banking services
54	Victoria Teachers Limited 117 Camberwell Road, Hawthorn East Vic 3123 Ph: 1300 654 822 ACN: 087 651 769	[redacted]	Bank – provision of banking services
55	Warwick Credit Union Limited 101 Palmerin Street, Warwick QLD 4370 Ph: 1300 72 44 33 ACN: 087 651 116	[redacted]	Credit Union – provision of banking services
56	WAW Credit Union Co-Operative Limited 11 Stanley Street, Wodonga Vic 3690 Ph: 1300 368 555 ACN: 087 651 787	[redacted]	Credit Union – provision of banking services

	Name, address (registered office), telephone number and CAN	Contact person's name, telephone number and email address	Description of business activities
57	Woolworths Team Bank Limited 522-550 Wellington Road, Mulgrave Vic 3170 Ph: 1300 665 553 ACN: 087 651 803	[redacted]	Bank – provision of banking services

1.2 Contact person's name, position, telephone number and email address

Debra Russell
 Consultant
 cameron.ralph.khoury
 [redacted]

Description of business activities

1.3

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies). COBA provides representation and advocacy for its member institutions and also provides them with expert advisory and support services such as in the area of fraud and financial crimes.

Email address for service of documents in Australia.

1.4

[redacted]

Authorisation to be varied

2 Details

2.1 Registration number and date of authorisation

AA1000609 – 9 August 2022 (the ACCC authorisation)

The authorised Code is a voluntary Code. There is no compulsion on COBA members to subscribe to the Code. It came into effect on 31 October 2022.

Please note that the version of the Code that was authorised by the ACCC was re-organised and re-numbered post ACCC authorisation to improve readability. The Code provision that is the subject of this application – paragraph 91 – was referred to as paragraph 57 in our original authorisation application. There were, however, no changes made to the text of the paragraph.

Proposed variation

3 Details

3.1 Description of the proposed variation

The ACCC authorised provisions include the following (Code paragraph 91):

We will dishonour a credit card transaction that would result in you exceeding your credit limit by more than 10%. (This commitment does not restrict us from dishonouring a credit transaction that would result in any exceeding of your credit limit. We may consider that to do so would be consistent with our prudential obligations.)

COBA would like to amend Code paragraph 91 to read as follows (changes marked up):

We will ~~dishonour~~ decline a credit card transaction that would result in you exceeding your credit limit by more than 10% where this option is available under card scheme rules. (This commitment does not restrict us from ~~dishonouring~~ declining a credit card transaction that would result in any exceeding of your credit limit. We may consider that to do so would be consistent with our prudential obligations.)

3.2 Reasons for the proposed variation

Overview

The aim of Code paragraph 91 is to prevent customers from incurring excessive credit card debt, which could lead to customer financial hardship and even default. To fulfil this aim, paragraph 91 requires Code subscribers to dishonour (decline) a credit card transaction that would result in the customer exceeding their credit limit by more than a 10% buffer. This Code provision is in line with ASIC's recommendation in Report 580 Credit Card Lending in Australia.

Code subscribers' ability to comply with paragraph 91 depends on banks having systems in place to:

- identify in real time customer credit card transactions that would result in the customer exceeding their credit limit by more than the 10% buffer (real time vetting of pending credit card transactions); and
- stop a credit card transaction from proceeding in these circumstances.

Code subscribers' systems currently have this capability. However, in the course of implementing the Code, Code subscribers identified some scenarios in which credit card scheme rules deny them the opportunity to undertake real time vetting of credit card transactions. In these scenarios, there is risk that subscribing banks will breach paragraph 91.

To address this, COBA intends to amend paragraph 91 effectively to create an exception to cover situations where Code subscribers are not able to undertake real time vetting of credit card transactions. This would have the advantage for customers of more realistically establishing the extent to which they can rely on their bank (Code subscriber) to ensure that their credit card transactions do not exceed their credit limit by more than the permitted 10% buffer.

Detailed explanation

Credit card scheme rules are extremely detailed and complex. By way of example, the Visa Core Rules and Visa Product and Service Rules (Visa Rules) are 930 pages long <https://www.visa.com.au/content/dam/VCOM/download/about-visa/visa-rules-public.pdf>.

Credit card scheme rules are standard form and apply to all banks issuing the card and all merchants accepting the card as a payment instrument. Code subscribers are not able to negotiate amendments to the rules.

Credit card scheme rules create the following difficulties for Code subscribers in relation to compliance with Code paragraph 91.

1. While less common than used to be the case, some card schemes permit some merchants to proceed without first obtaining authorisation from the card issuer (for present purposes, the Code subscriber) where the credit card transaction is for a small amount (i.e. less than the card scheme-approved floor limit for the merchant type).

See by way of example Visa Rules section 5.7.1.1 which provides: "For Transactions below the Floor Limit, Authorization is not required for a Magnetic Strip Transaction and Offline Authorization is permitted for a Chip-Initiated Transaction" [some exceptions follow].

2. Sometimes merchants obtain the card issuer's authorisation for a credit card transaction, and then are permitted by scheme rules to rely on that initial authorisation to subsequently add to the amounts charged to the consumer. This commonly happens in cases such as credit card payments for hotel accommodation after which additional charges are imposed (e.g. mini-bar or hotel room damage) or credit card car hire payments where the hire company later imposes additional charges (e.g. for petrol, parking fine or damage to the car).

See by way of example Visa Rules section 5.8.8.3 which includes a table that specifies eligible merchants (such as accommodation providers and hire companies) who "may process a Transaction evidencing an amended amount or delayed charge" in specified circumstances.

3. Sometimes normal credit card transaction processes are disrupted by information technology system outages. If the merchant's systems are offline, this may mean that it must process a Deferred Authorisation Requests and subsequently Request an Authorisation within a specified timeframe.

See by way of example Visa Rules section 5.7.4.4 which provides timeframes for post-transaction Request for Approval conditions and timeframes.

4. The Visa Rules permit differences between the authorising amount and the clearing amount processed by a merchant by up to 20% in specified circumstances.

See by way of example Visa Rules section 7.5.6 which provides table 7-5 listing the merchant types and permitted percentage differences between an authorisation and a final transaction amount.

Recognising that these issues arise as consequences of the practical operation of card scheme rules, COBA intends to qualify paragraph 91 so that it applies only where the option of credit card transaction decline is available under the relevant card scheme rules.

3.3 Reasons why the proposed variation is minor

The proposed variation is a single variation of the ACCC authorisation, involving only one of the 19 provisions that the ACCC authorised.

Moreover, there would be no material change in the effect of the authorisation of paragraph 91 in its amended form.

- Post amendment, paragraph 91 will continue (as it does at the moment) to place obligations on Code subscribers to prevent customers from incurring excessive credit card debt. But no new Code subscriber obligations will be created. Accordingly, the authorisation of the amended paragraph 91 will not facilitate any new or additional anti-competitive conduct.
- Post amendment, paragraph 91 will continue (as it does at the moment) to require Code subscribers to provide important protection to credit card customers i.e., protection against incurring excessive credit card debt. Accordingly there will be no material change in the significant public benefit arising from the authorisation of the paragraph 91 in its amended form.

This is the case because the intended amendment to paragraph 91 is minor in nature. Importantly, the intended amendment will not remove or diminish the need for Code subscribers to have systems that enable them to undertake real time vetting of credit card transactions in order to comply with their paragraph 91 obligations. Real time vetting will continue to permit Code subscribers to identify and stop a transaction that would result in the customer exceeding their credit limit by more than the permitted 10% buffer, in the vast majority of credit card transactions of this kind.

The intended amendment of paragraph 91 will, however, recognise issues that arise as a consequence of the practical operation of card scheme rules. Specifically, the intended amendment will address the current conundrum that in a limited range of circumstances credit card scheme rules have the potential to prevent Code subscribers from being able to comply with paragraph 91. Accordingly, the amendment will introduce a qualification into paragraph 91 so that the obligation to decline a credit card transaction only applies “where this option is available under credit card scheme rules”.

Competition effects or net public benefit

4 Effect of proposed variation on:

4.1 Competition in the relevant markets

The Code is a voluntary Code. There is no compulsion on COBA members or non-member customer owned banks to subscribe to the Code. If a customer owned bank does not want to offer the Code protections to their customers they need not do so.

Equally the Code does not prevent customer owned banks, whether or not Code subscribers, from offering their customers greater customer protections than the Code mandates. To apply this to paragraph 91, a Code subscriber could decide to enhance its competitive position to do more to help customers to avoid excessive credit card debt e.g., provide notifications about debt levels, stop credit card transactions where there is any exceeding of the customer's credit limit i.e., without reference to a 10% buffer etc.

As noted earlier, paragraph 91 post amendment will not place any new obligations or restrictions on Code subscribers. Accordingly, its amendment will not facilitate any new or additional anti-competitive conduct.

In any event, the paragraph 91 commitment (whether pre or post amendment) is not a key competitive metric in customer choice or competition between Code subscribers or the broader (and highly competitive) credit card market. Nor does paragraph 91 significantly impact third parties such as merchants (where affordable for the customer, the merchant's supply can be paid using an alternative payment method) or credit card scheme operators.

In view of these matters, we contend that paragraph 91 – both pre and post amendment – does not impede competition in the relevant markets being:

- the market for the supply of retail transaction banking services in Australia;
- the market for the supply of credit cards in Australia; and
- the customer owned banking market.

4.2 Extent to which the benefit to the public outweighs any detriment to the public

Post amendment, paragraph 91 will continue to provide significant public benefit by requiring Code subscribers to commit to providing important protection to credit card customers i.e., protection against incurring excessive credit card debt.

As is the situation under paragraph 91 as currently in operation, it will continue to be the case that Code subscribers will need to have systems that enable them to undertake real time vetting of credit card transactions. Usually this will enable the Code subscriber to identify and decline a credit card transaction that would otherwise result in the customer's credit limit being exceeded by the permitted buffer.

The amendment to paragraph 91 will, however, have the benefit for the public of greater realism as to extent to which the Code subscriber can protect them in this way. The amended paragraph 91 should alert the public to the fact that card scheme rules mean that sometimes Code subscribers cannot stop transactions that result in the customer exceeding their credit limit by more than the permitted buffer. This should put the public on guard that they also need to monitor the extent of their indebtedness against their credit limit in order to stay within their credit limit and the indebtedness that is affordable for them.

In other words, we contend that the intended amendment to paragraph 91 will achieve wording that is reflective of the practical realities of credit card scheme rules and that will be more transparent and better for all concerned i.e., both Code subscribers and their customers.

4.3 Information, data, documents or other evidence relevant to the ACCC's assessment of the competition effects or net public benefit

We sought data from a large Code subscriber to demonstrate the impact of the intended amendment to paragraph 91. We asked them to provide the following data for the period from 1 November 2022 to 31 December 2022:

- an estimate of the number of customer credit card transactions that took place; and

- the number of transactions that were declined because of the customer’s credit card limit; and
- the number of breaches of paragraph 91 that had occurred, i.e., instances in which credit card scheme rules meant that a credit card transaction proceeded that should have been declined under paragraph 91 (‘over credit’ card transactions).

Figure 1: Transactions occurring between 1 November to 31 December 2022.

Type of COBA subscriber	Estimated no. of credit card transactions	No. of credit card transactions declined because would otherwise have exceeded credit limit	No. of transactions that proceeded as per card scheme rules but in breach of Code paragraph 91
Large member	2,129,847	25,360	Not available

The subscriber advised that quantification of the number of transactions that would have overdrawn a credit limit by 10% or more requires a manual review of each transaction for the reporting period but anecdotally, while such transactions are described as rare, the card scheme rules do allow for them to occur.

This data supports our contention that particularly as a percentage of total credit card transactions there are very few ‘over-credit’ card transactions that proceed because of credit card scheme rules limitations on the Code Subscribers’ ability to vet the transaction in real time. Accordingly, this data supports our contention that the request variation of the ACCC authorisation will not result in a material narrowing of the public benefit/competition impact equation.

Interim authorisation

5 Details

We request an interim authorisation to enable COBA to commence the intended amendment to paragraph 91 as soon as possible. Whilst this is not an urgent matter, there would be administrative advantages that flow from early commencement of the amended paragraph 91.

Code subscribers are required to provide annual reporting to the Customer Owned Banking Code Compliance Committee (CCC), the body responsible for monitoring compliance with the Code. Breach reporting is a major focus of the annual reporting to the CCC. Until such time as paragraph 91 is amended, Code subscribers must therefore collate all instances of paragraph 91 breaches that happen as a consequence of credit card scheme rules.

Early commencement of the amended paragraph 91 is desirable to legitimise the status quo and reduce Code subscriber effort collating data as to breaches of paragraph 91 that are a consequence of credit card scheme rules. So far as we are aware, this breach reporting is unlikely to be of benefit to anyone and hence the effort in collating the data would seem not to be justified.

Contact details of relevant market participants

6 Contact details (phone number and email address) for likely interested parties such as actual or potential competitors, key customers and suppliers, trade or industry associations and regulators.

- Jocelyn Furlan, Independent Chair, Customer Owned Banking Code Compliance Committee, [redacted].
- Fiona Guthrie, Chief Executive, Financial Counselling Australia, [redacted].
- Stephanie Tonkin, CEO, Consumer Action Law Centre, [redacted].
- Julia Davis, Senior Policy & Communications Officer, Financial Rights Legal Centre, [redacted]

Additional matters

7 Provide any other information or documents you consider relevant to the ACCC's assessment of the application.

We have consulted extensively with Code subscribers, the CCC and consumer representative organisations about the issues currently posed by paragraph 91 and our proposal to amend it.

There appears to be consensus recognition by these stakeholders of the practical problems that paragraph 91 currently poses. No objection has been expressed to the resolution of those problems by amending paragraph 91. In particular, no stakeholder has suggested that there are any competition issues that arise from the intended minor change in wording or a narrowing of the public benefit/competition equation as a consequence.

Declaration by Applicant(s)

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).

Signature of authorised person

Chief Executive Officer

Office held

Michael Lawrence

Name of authorised person

26/7/2023

Date