



The Australian Banking Association (ABA) on behalf of ABA retail member banks

Application for authorisation by the Australian Banking Association on behalf of its retail member banks (with confidential annexure)

Final

30 March 2020

1 Application for authorisation

The ABA previously sought authorisation on behalf of its retail member banks (**Member Banks**) to implement a small business relief package to support small business customers adversely impacted by the outbreak of COVID-19 for a period of 12 months from the grant of final authorisation.

Given the broad, varied and rapidly evolving impact of COVID-19 and the Government legislated shutdowns, the ABA, on behalf its Member Banks, is now seeking authorisation from the ACCC, subject to the proposed condition in paragraph 3.5 below, to discuss, agree, and give effect to any arrangement between Member Banks that has the purpose of deferring or varying loan facilities for customers, supporting Government initiatives to provide emergency relief for individuals and businesses, or ensuring continued high levels of customer service and accessibility, for a period of 12 months from the grant of final authorisation. The ABA will notify the ACCC of all financial relief programs or other arrangements arising from the proposed conduct, prior to it being implemented, or otherwise given effect to.

The implementation of the proposed conduct, absent authorisation, may give rise to a contravention of sections 45AF, 45AG, 45AJ, 45AK and/or s45 of the *Competition and Consumer Act, 2010*.

In light of the urgency of customers' need for relief and the rapidly evolving crisis associated with COVID-19, the ABA also seeks interim authorisation for the period until the ACCC has granted final authorisation to enable Member Banks to develop, agree and give effect to further relief programs for customers as required.

2 The Applicants

2.1 ABA

The ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA benefits from the active participation of 22 member banks in Australia (**Member Banks**) and works with government, regulators and other stakeholders to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

2.2 ABA member banks seeking authorisation

The ABA seeks authorisation on behalf of its Member Banks (including their suppliers and agents, where relevant) and their subsidiary banks (together, the **Applicants**).

Each Member Bank is listed in **Annexure 1**. The ABA also seeks authorisation on behalf of any banks that may become ABA members in the future.

The ABA has applied for authorisation on behalf of all of its Member Banks to allow them to engage in the proposed conduct if, and when, they elect to do so. The implementation of any Proposed Conduct will not be mandatory for any Member Bank and Member Banks can opt in or out of any particular financial relief programs or other arrangements arising from the proposed conduct at any point during the period of the authorisation.

The ABA has also applied for authorisation on behalf of Member Banks' suppliers and agents as Member Banks anticipate that it is possible that in considering arrangements to allow for the highest levels of customer service and access to banking services,

particularly in regional areas, this may involve third party suppliers or providers of services under agency arrangements. Further information is provided in confidential **Annexure 2**. To the extent that it is anticipated that any agreement, arrangement or understanding will be reached between: two or more Member Banks and a supplier(s) or agent(s) that competes with Member Banks; or with two or more suppliers or agents that compete with each other, the proposed condition under paragraph 3.5 will apply.

3 Proposed conduct to be authorised

3.1 Description of conduct to be authorised

The COVID-19 pandemic continues to increase the financial strain on Australian businesses and citizens, arising from loss of employment, loss of demand for businesses and other economy-wide impacts including the likely impact of the illness itself.

The ABA and Member Banks anticipate that there will be a continued and increasing need to take urgent industry-wide action to minimise the broad, varied and rapidly evolving impact of COVID-19 and the Government legislated shutdowns to protect public health, on their retail and business customers.

The ABA, on behalf of its Member Banks, therefore seeks authorisation to discuss including to share information, agree, and give effect to, any arrangement or understanding between them (and potentially third-party suppliers and/or agents) to benefit their customers that has the purpose of:

- deferring or varying loan facilities for customers in any sector of the economy or any customer segment impacted by COVID-19;
- supporting Government initiatives to provide emergency fiscal stimulus and cost relief for individuals and businesses; or
- ensuring continued high levels of customer service and access to banking services across the broadest possible range of times and locations.

(the **Proposed Conduct**).

It is proposed that authorisation of the Proposed Conduct:

- is subject to the proposed condition in paragraph 3.5 below: and
- includes the notification requirements set out in paragraph 3.2 below.

Authorisation of the Proposed Conduct will permit Member Banks to discuss and work together during the period of the authorisation to:

- discuss and share information regarding:
 - the uptake by customers of the authorised small business relief package and any other hardship or financial relief programs operated by individual Member Banks;
 - the incidence of customer financial difficulties;
 - which customers, classes of customers or sectors would benefit most from further financial relief programs; and

- the short term availability of staff and suppliers and ability of Member Banks (including their agents and/or suppliers, where relevant), to operate in particular locations at particular times during the COVID-19 crisis;
- reach agreement:
 - between Member Banks as to further financial relief programs; and
 - between Member Banks, and their agents and/or suppliers where relevant, as to logistics for service delivery and banking service accessibility;

to be implemented by Member Banks, and their agents and/or suppliers as relevant;
- implement, or otherwise give effect to, those agreements; and
- engage with financial services regulators to ensure continued compliance with regulatory requirements and the protection of the Australian financial system.

It is important to note that:

- the Proposed Conduct will not involve any contract, arrangement, understanding or determination between Member Banks of any element of prices for any service or product for which Member Banks compete;
- the Proposed Conduct is intended to be temporary, and is not intended to endure beyond the current COVID-19 crisis, or, where it relates to financial relief programs, beyond the impact of the crisis (at longest up to the end of the period of the authorisation);
- where any financial relief program involves a deferral of a loan, Member Banks will not apply or require a payment of the capitalised interest in a lump sum at the end of the deferral period;
- as mentioned above, the Proposed Conduct is not mandatory for any Member Bank. Member Banks may choose to participate in any financial relief program arising from the Proposed Conduct and may elect to opt in or out at any point during the period of the authorisation;
- any customer of a Member Bank that is entitled to relief under a Member Bank's existing hardship programs, or the authorised small business relief package, retains that entitlement, in addition to any entitlement arising from the Proposed Conduct;
- the terms of any financial relief program that arises in the context of the Proposed Conduct are intended to provide for the minimum level of relief to be offered to customers by the Member Banks who elect to implement it. Some Member Banks may independently elect to implement more extensive relief measures; and
- in addition to being subject to ACCC authorisation, the impact of any financial relief will be subject to consideration by APRA and ASIC.

3.2 Notification to the ACCC prior to the Proposed Conduct being implemented

The ABA undertakes, on behalf of its Member Banks, to notify the ACCC of any financial relief program or other arrangement arising from the Proposed Conduct (**Particular Conduct**), prior to the Particular Conduct being implemented, or otherwise given effect to.

The ABA will provide the notification to the ACCC as soon as practical after Member Banks have reached agreement on the terms of the Particular Conduct, but not less than 24 hours before the Particular Conduct is implemented, or otherwise given effect to.

The notification to the ACCC will include at a minimum:

- a description of the Particular Conduct, including a description of the customer group/s relevant to the Particular Conduct;
- the Member Banks which, at the time of the notification, have agreed to implement the Particular Conduct; and
- when the Particular Conduct is intended to be implemented.

It is proposed that the ACCC will publish a non-confidential version of the notification on the public register.

3.3 Duration of authorisation

The ABA seeks authorisation for the Proposed Conduct for a period of 12 months from the date on which authorisation granted. This period reflects the uncertainty of the duration of the current crisis, and its impact on Member Banks and their customers. Should that impact endure for a period that is shorter than the requested authorisation period, the ABA would expect to engage further with the ACCC in relation to the term of the Proposed Conduct or aspects of it.

3.4 Urgency requires interim authorisation

The ABA also applies for interim authorisation for the period up until the ACCC has granted final authorisation in light of the rapidly deteriorating global and Australian economic context caused by COVID-19 pandemic and resulting in loss of employment, reduction in supply and demand for goods and services, significant deterioration in cash flow, increases in debt and tightening of credit. Interim authorisation is urgently required to enable Member Banks to develop, agree, and give effect to, further relief packages for customers and/or arrangements to enable the provision of high levels of customer service and accessibility, as required.

3.5 Proposed condition

The ABA proposes that the process set out in this paragraph 3.5 applies where the Proposed Conduct involves:

- an agreement, arrangement or understanding between two or more Member Banks and one or more supplier(s) or agent(s); and
- the supplier or agent competes with Member Banks in relation to any relevant products or services, or where two or more suppliers or agents party to the agreement, arrangement or understanding compete with each other in relation to any relevant products or services,

(Conditional Proposed Conduct).

Where the Proposed Conduct is Conditional Proposed Conduct the following process applies:

- the ABA (on behalf of Member Banks) must seek the approval of the ACCC by sending an email to adjudication@acc.gov.au, identifying the supplier(s) or

agent(s) that will be party to the Conditional Proposed Conduct, detailing the Conditional Proposed Conduct and the reasons for the Conditional Proposed Conduct;

- if the ACCC approves the Conditional Proposed Conduct, the supplier(s) or agents(s) will receive the protection of the interim or final authorisation (as the case may be at that point in time) in relation to the Conditional Proposed Conduct, subject to any conditions imposed by the ACCC, from the time that the ABA is notified of the ACCC's decision;
- when considering the Conditional Proposed Conduct, the ACCC may in its absolute discretion, refuse to approve the Conditional Proposed Conduct or impose conditions which restrict the type or extent of the Conditional Proposed Conduct;
- unless the ACCC approves the Conditional Proposed Conduct, the supplier(s) or agent(s) will not have the protection of the interim or final authorisation in relation to the Conditional Proposed Conduct (as the case may be at that point in time).

The ABA (on behalf of its Member Banks) proposes that the above process is a condition of interim and final authorisation.

For the avoidance of doubt, discussions between two or more Member Banks and a supplier(s) and/or agent(s) within the Proposed Conduct that fall short of a contract, arrangement or understanding are not subject to this condition.

4 Significant public benefits

The COVID-19 pandemic and legislated Government shutdowns to protect public health continue to increase the financial strain on individuals and businesses across the country. The rising loss of employment and demand for products and services offered by businesses, which may be compounded in coming times by the impact of illness, is making it increasingly difficult for individuals and businesses to continue to operate on a business as usual basis and meet their financial obligations.

Member Banks are continuing to individually implement their existing hardship programs as well as the authorised small business relief package and have seen a strong uptake of these initiatives by customers. In particular, one Member Bank has reported receiving 15,000 applications for mortgage repayment deferrals in a 3-day period. Member Banks estimate that the uptake of the small business relief package will reach a significant percentage of their small business loan portfolio. However, Member Banks continue to receive a large volume of requests for relief from customers that are not covered by that program.

Because the impact of COVID-19 and the extent of the legislated Government shutdowns is evolving rapidly, the ABA anticipates that Member Banks will need to be in a position to urgently and, at short notice, implement additional measures as the crisis unfolds to both proactively meet customers' increasing need for financial relief, and to support initiatives that the Government may announce in future.

Similar to the small business relief package, the rationale behind any further financial relief programs arising from Proposed Conduct is to give customers comfort and certainty that Member Banks who elect to implement the further relief packages will, at a minimum, provide them with meaningful and defined short-term relief, while taking care that customers should not be in a worse position longer term than they currently are.

The ABA and Member Banks remain committed to extensively communicate and market all financial relief programs to customers and Member Banks will take steps to ensure that any financial relief programs are as straightforward and accessible to customers as possible. For example, the ABA (in addition to the communications and marketing by individual Member Banks) has led the following marketing and communication initiatives in relation to the authorised small business relief package:

- press conference which led to package being the lead news item Channel Nine News and mentions on all nightly news bulletins;
- media release to media, also sent to every Australian Parliamentarian, State and Federal;
- Anna Bligh and Member Bank CEO interviews with multiple media outlets;
- national print campaign: full page print ad in every major Metro and Regional Newspaper on 23 March 2020;
- national radio campaign: national metro radio campaign in major radio networks on 23 March 2020; and
- extensive social media campaign: including posts and ads across Facebook, LinkedIn, and Twitter.

As mentioned above, any financial relief program or other arrangement that arises from the Proposed Conduct will operate as a minimum requirement for all Member Banks who decide to implement it, providing customers with certainty of minimum terms. Member Banks may independently offer relief that extend beyond the scope of any agreed financial relief program.

During these times, Member Banks recognise the importance of maintaining to the extent possible a physical presence in the community. The ABA expects that given the increasing importance of maintaining social distancing measures, banking services will (consistent with current trends) increasingly be accessed online. However, it is recognised that some members of the community, including in regional areas, either have a strong preference to access physical branches or have a requirement to do so, particularly where they may not have access to an Internet-enabled device in their home. Given a desire to be mindful of the importance of social distancing wherever possible to protect staff and the community, and recognising the uncertainties associated with availability of staff during a pandemic, there is likely to be a significant benefit in enabling coordination in relation to the logistics of maintaining the ability of customers across Member Banks (and their agents and/or suppliers, where relevant) to continue to access high levels of customer service and accessibility at different times and across different locations. Engagement and arrangements with third party suppliers or providers of services under agency arrangements, where required, will enhance Member Banks' ability to maintain the highest possible level of customer service in the circumstances and improve accessibility of banking services both in terms of time and location.

The ABA submits that the Proposed Conduct is manifestly in the public interest.

5 The public benefits outweigh any competitive detriments

For the reasons set out above the ABA and Member Banks submit that any competitive detriments that may arise from the Proposed Conduct will only dampen competitive decision making and result in coordinated conduct between Member Banks (and their

agent/s or suppliers where relevant) for a short period and are significantly outweighed by the public benefits that arise.

All Member Banks will have the opportunity to participate in the Proposed Conduct if, and when, and to the extent they elect to do so.

6 Conclusion

For the reasons set out above, the ABA applies for:

- authorisation of the Proposed Conduct, subject to the proposed condition in paragraph 3.5 above, for a period of 12 months from the date on which authorisation is granted; and
- interim authorisation, subject to the proposed condition in paragraph 3.5 above, until the final authorisation comes into effect to enable the ABA and Member Banks to develop, agree, and give effect to further relief packages for customers and/or logistics to enable ongoing high levels of customer service and accessibility as required.

Annexure 1 – ABA Member Banks with retail banking presence in Australia

- 1 AMP Bank Limited
- 2 Australia and New Zealand Banking Group Limited
- 3 Arab Bank Australia Limited
- 4 Bank Australia
- 5 Bank of China
- 6 Bank of Queensland Limited
- 7 Bank of Sydney
- 8 Bendigo and Adelaide Bank Limited
- 9 Citigroup Pty Ltd
- 10 Commonwealth Bank of Australia
- 11 HSBC Bank Australia Limited
- 12 ING Bank (Australia) Limited
- 13 Macquarie Bank Limited
- 14 ME Bank
- 15 MyState Bank
- 16 National Australia Bank Limited
- 17 Rabobank Australia Limited
- 18 Suncorp Bank
- 19 Westpac Banking Corporation

Confidential Annexure 2 – Potential arrangements with suppliers and agents

[CONFIDENTIAL]

Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

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



The Hon. Anna Bligh AC

Chief Executive Officer

This 30th day of March 2020



Supplementary business lending relief

The ABA notifies the ACCC of certain members' agreement to implement supplementary support measures for Australian businesses affected by COVID19. A list of banks that have agreed to offer the supplementary measures is set out in **Attachment A** (Participating Member Banks).

Supplementary measures

The supplementary measures to be implemented are:

- 1) A deferral of principal and interest repayments for all standard form business loans of a business customer for 6 months (interest will be capitalised).
- 2) Up to 30 September 2020 or for the period of the loan deferral, whichever is later, Participating Member Banks agree to not to enforce business loans for non-monetary defaults, other than as set out in para 80 the March 2020 Banking Code of Practice. These provisions are set out in **Attachment B**.

These supplementary measures will be available to all current business customers of a Participating Member Bank, in all sectors of the economy, and on an opt-in basis, where:

- 1) the customer has advised that its business is affected by COVID-19
- 2) the business has a total business loan facilities of less than \$10M
- 3) the customer was current in terms of existing facilities 90 days prior to the application
- 4) the business is operated in Australia with less than 20% foreign ownership, and
- 5) for commercial property customers with total loan facilities less than \$10M, the customer provides a self-declaration that they will not terminate leases or evict tenants based on non-payment of rent for the period during which the interest is capitalised. On the basis the non-payment of rent is a direct result of the Covid-19 outbreak.

"Interest will be capitalised" means that Participating Member Banks will, based on existing loan terms in the context of customers' requirements, either:

- extend the term of the loan repayment to account for the interest incurred during the deferral period and keep the level of repayments following the deferral the same as that the customer had paid prior to deferral; or
- increase the level of the loan repayments to account for the interest incurred during the deferral period but keep the term of the loan repayment the same as if the deferral had not occurred.

For the avoidance of doubt, Participating Member Banks will not apply or require a payment of the capitalised interest in a lump sum at the end of the deferral period.

For borrowers with total credit facilities above \$10M, relief will be considered on a case by case basis.

The measures can be applied for by customers until 30 September 2020.

Attachment A – List of Participating Member Banks

AMP

ANZ

Bank Australia

Bank of Queensland

Bendigo and Adelaide Bank

CBA

Macquarie Bank

MyState

NAB

Suncorp Bank

Westpac



Attachment B – Banking Code of Practice

Enforcement of small business loans for non-monetary defaults

80. If you are a small business and you have met all your payment obligations under the loan terms, we will not take default based action against you unless:

- a) you or a guarantor is insolvent, goes into bankruptcy, voluntary administration, other insolvency process or arrangement, or no longer has legal capacity;
- b) enforcement proceedings are taken against you or a guarantor or your or their assets by another creditor;
- c) early repayment is required under a separate financing arrangement you or a guarantor has with us, or default based action is taken against you or a guarantor by us, due to an event of default which is described in this chapter;
- d) we believe on reasonable grounds that you or a guarantor has not complied with the law or any requirement of a statutory authority, or it becomes unlawful for you or us to continue with the loan;
- e) you or a guarantor gives us information or makes a representation or warranty to us which is materially incorrect or misleading (including by omission);
- f) you use the loan for a purpose not approved by us;
- g) your assets or a guarantor's assets are dealt with, or attempted to be dealt with in breach of the loan, or any security or other agreement with us without our consent;
- h) you or a guarantor do not provide financial information required by your agreement with us;
- i) you or a guarantor do not maintain a licence or permit necessary to conduct your business;
- j) you or a guarantor do not maintain insurance required by your agreement with us;
- k) legal or beneficial ownership, or management control of a borrower or guarantor or their business changes without our consent; or
- l) status, capacity or composition of you or a guarantor changes without our consent.