

# Form FC

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsection 91C (1)*

## **APPLICATION FOR REVOCATION OF A NON-MERGER AUTHORISATION AND SUBSTITUTION OF A NEW AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Competition and Consumer Act 2010* for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### **1. Applicant**

(a) Name of applicant:

A91593 Australian Bankers' Association Inc. (ARBN 117 262 978) (**ABA**).

This application is to be read and determined together with the submission supporting this application (the **Submission**), which is lodged with this form.

(b) Description of business carried on by applicant:

The ABA is an incorporated association which works with its members to provide analysis, advice and advocacy and contributes to the development of public policy on banking and other financial services.

For more detail please refer to the Submission.

(c) Address in Australia for service of documents on the applicant:

Gilbert + Tobin  
Level 35, Tower Two, International Towers Sydney  
200 Barangaroo Avenue  
Barangaroo NSW 2000

Attention:

Paula Gilardoni  
Tel: 02 9236 4187  
pgilardoni@gtlaw.com.au

Matt Rubinstein  
Tel: 02 9263 4592  
mrubinstein@gtlaw.com.au

### **2. Revocation of authorisation**

(a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:

Revocation is sought of existing authorisation A91312.

(b) Provide details of the basis upon which revocation is sought:

The current authorisation, granted by the ACCC on 8 November 2012, came into effect on 1 December 2012 and expires on 1 December 2017.

### 3. Substitution of authorisation

- (a) Provide a description of the contract, arrangement, understanding or conduct whether proposed or actual, for which substitution of authorisation is sought:

The ABA seeks authorisation to extend the previously authorised Implementation Agreement with minor variations in order to continue providing fee-free access to ATM services in certain very remote Indigenous communities. See attached submission for further details.

- (b) Description of the goods or services to which the contract, arrangement, understanding or conduct (whether proposed or actual) relate:

ATM transaction services to ATM cardholders and the deployment and operation of ATMs in Australia.

- (c) The term for which substitute authorisation of the contract, arrangement or understanding (whether proposed or actual), or conduct, is being sought and grounds supporting this period of authorisation:

Substitute authorisation is sought for a period of 5 years. The grounds supporting this period of authorisation are set out in the Submission.

### 4. Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct:

**Issuers** who are currently parties to the Implementation Agreement proposed to be extended are listed below. Each of these parties is involved in the supply of retail banking services in Australia.

Name and ABN	Address
Australia New Zealand Banking Group Limited ABN 11 005 357 522	7/833 Collins Street Docklands VIC 3008
Bank of Queensland Ltd ABN 32 009 656 740	Level 17, 259 Queen Street Brisbane QLD 4000
Bank of Western Australia Limited ABN 22 050 494 454	Level 4, 600 Bourke Street Melbourne VIC 3000
Bendigo and Adelaide Bank Limited ABN 11 068 049 178	The Bendigo Centre 22-44 Bath Lane Bendigo VIC 3550
Citigroup Pty Limited ABN 88 004 325 080	Citigroup Centre 2 Park Street Sydney NSW 2000
Commonwealth Bank of Australia ABN 48 123 123 124	Level 2A, South Building, 11 Harbour Street Sydney NSW 2000

Name and ABN	Address
HSBC Bank Australia Ltd ABN 48 006 434 162	Level 32, HSBC Centre 580 George Street Sydney NSW 2000
ING Bank (Australia) Limited ABN 24 000 893 292	140 Sussex Street Sydney NSW 2000
Members Equity Bank Pty Ltd ABN 56 070 887 679	Level 28, 360 Elizabeth Street Melbourne Vic 3000
National Australia Bank Limited ABN 12 004 044 937	800 Bourke Street Docklands VIC 3008
Suncorp-Metway Limited ABN 66 010 831 722	GPO Box 1453 Brisbane QLD 4001
Westpac Banking Corporation ABN 33 007 457 141	Level 2, 60 Martin Place Sydney NSW 2000

The **ATM deployer** who is currently party to the Implementation Agreement proposed to be extended is listed below, with one or more additional ATM deployers proposed to become party to the Implementation Agreement. Each of these parties is involved in the supply of ATM transaction services and the deployment and operation of ATMs in Australia.

Name and ABN	Address
Cardtronics Australia Pty Limited ABN 46 157 774 224	DC Payments 87 Corporate Drive Heatherton VIC 3202

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:  
(Refer to direction 5)

See 3(a) above.

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

The supply of retail banking services in Australia, and the supply of ATM transaction services and the deployment and operation of ATMs in Australia.

## 5. Public benefit claims

- (a) Arguments in support of application for substitution of authorisation:

See the Submission.

- (b) Facts and evidence relied upon in support of these claims:

See the Submission.

## 6. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets

including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

See the Submission.

## **7. Public detriments**

- (a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets:

See the Submission.

- (b) Facts and evidence relevant to these detriments:

See the Submission.

## **8. Contracts, arrangements or understandings in similar terms**

This application for substitute authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings (whether proposed or actual) that are, or will be, in similar terms to the abovementioned contract, arrangement or understanding

- (a) Is this application to be so expressed?

No.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which substitute authorisation has been sought and those contracts, arrangements or understandings that are stated to be in similar terms:

Not applicable.

- (ii) Where the parties to the similar term contract, arrangement or understanding(s) are known - names, addresses and description of business carried on by those other parties:

Not applicable

- (iii) Where the parties to the similar term contract, arrangement or understanding(s) are not known — description of the class of business carried on by those possible parties:

Not applicable

## **9. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

Yes

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

No

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable

**10. Further information**

- (a) Name, postal address and telephone contact details of the person authorised by the parties seeking revocation of authorisation and substitution of a replacement authorisation to provide additional information in relation to this application:

Gilbert + Tobin  
Level 35, Tower Two, International Towers Sydney  
200 Barangaroo Avenue  
Barangaroo NSW 2000

Attention:

Paula Gilardoni  
Tel: 02 9236 4187  
pgilardoni@gtlaw.com.au

Matt Rubinstein  
Tel: 02 9263 4592  
mrubinstein@gtlaw.com.au

Dated...1 August 2017

Signed on behalf of the applicant



.....  
Paula Gilardoni

Gilbert + Tobin

Partner

## **DIRECTIONS**

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which substitute authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which substitute authorisation is sought.
  - (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and
  - (c) If substitute authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where substitute authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
6. Provide details of those public benefits claimed to result or to be likely to result from the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for substitute authorisation.
8. Provide details of the detriments to the public, including those resulting from the lessening of competition, which may result from the contract, arrangement or understanding (whether proposed or actual). Provide quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.



**AUSTRALIAN BANKERS'  
ASSOCIATION INC.**

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ATM Fee Arrangement  
between participating Issuers  
and ATM Deployers in remote  
Indigenous communities

Submission in support of application for  
revocation and substitution of  
authorisation A91312

1 August 2017

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## Executive Summary

### Revocation and substitution of authorisation sought for ATM Fee Arrangement

The Australian Bankers' Association Inc. (**ABA**) on behalf of current and future parties to the Agreement dated 4 May 2012 (**Implementation Agreement**) (the **Applicant**) seeks:

- the revocation of authorisation A91312; and
- substitution of the old authorisation with a new authorisation of the Implementation Agreement.

The Implementation Agreement provides customers of participating Issuers<sup>1</sup> access to fee-free ATM transactions at certain ATMs operated by participating ATM Deployers<sup>2</sup> (**ATM Fee Arrangement**).

The Implementation Agreement was originally negotiated by the Issuers and ATM Deployers (together, **Relevant Parties**) at the request of, and in collaboration with, the Australian Government as part of the response to the Government's *Competitive and Sustainable Banking System Reforms* package (**Competition Package**) in 2010. The objectives that were relevant in 2010 continue to be relevant now.

The Implementation Agreement sought to address specific issues affecting very remote Indigenous communities. The Relevant Parties now wish to extend the Implementation Agreement to continue to address these issues. A copy of the Implementation Agreement is attached in **Confidential Annexure A**.

### Rationale for and genesis and extension of the ATM Fee Arrangement

For a number of years, the Australian Government and various community groups have expressed concern that Indigenous people living in very remote communities<sup>3</sup> are paying more than most Australians to access cash due to excessive ATM usage and the cumulative impact of multiple, small transactions and the associated ATM fees. Indigenous people living in these very remote communities are typically recipients of Centrelink payments or other Government benefits and are amongst the most vulnerable and financially disadvantaged groups within the Australian community.

Furthermore, Indigenous people living in these very remote communities are more likely to be paying more to access cash than in other areas of Australia. The remoteness and limited infrastructure and services in these very remote communities means residents typically have limited access to alternative retail banking services, including telephone, Internet and mobile banking, or ATMs provided by their own bank or financial institution providing access to fee-free cash

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<sup>1</sup> Issuers party to the Implementation Agreement include: Australia New Zealand Banking Group Limited (**ANZ**), Bank of Western Australia Limited (**Bankwest**), Bendigo and Adelaide Bank Limited, Bank of Queensland Limited (**BOQ**), Citigroup Pty Ltd (**Citibank**), Commonwealth Bank of Australia (**Commonwealth Bank**), HSBC Bank Australia Limited (**HSBC**), ING Bank (Australia) Limited (**ING DIRECT**), Members Equity Bank Pty Limited (**ME Bank**), National Australia Bank Limited (**nab**), St. George, Suncorp-Metway Limited (**Suncorp**), Westpac Banking Corporation (**Westpac**), Bank of Melbourne (**BOM**) and the Bank of South Australia (**BOSA**)

<sup>2</sup> ATM Deployers party to the original Implementation Agreement were Cashcard Australia Limited (**Cashcard Australia**) and ATM Solutions Australasia Pty Limited (trading as **Customers ATM**). In 2016, Customers ATM's parent company DC Payments acquired the ATM business of Cashcard Australia and Cashcard withdrew from the Implementation Agreement. In January 2017, DC Payments was acquired by Cardtronics. The Applicant and Relevant Parties are now considering additional ATM Deployers to join the ATM Fee Arrangement.

<sup>3</sup> Identification of very remote communities based on indicators of remoteness provided by the Australian Bureau of Statistics (**ABS**) as well as input from other Government agencies and community groups, (ie, Department of Families, Housing, Community Services and Indigenous Affairs (**FaHCSIA**)).

withdrawals and balance inquiries.

As a result, Indigenous people living in these very remote communities generally pay a high level of fees for ATM transactions relative to their incomes,<sup>4</sup> which is generally the result of an accumulation of ATM fees (as opposed to the level of ATM fees per transaction).<sup>5</sup>

In response to the concerns outlined above, in 2010 the Australian Government announced a taskforce with members from the Reserve Bank of Australia (**RBA**) and the Department of the Treasury (**ATM Taskforce**).

The ATM Taskforce worked with the Australian Government, the banking industry and ATM deployers with input from other Government agencies and community groups to address the problems associated with ATM fees in very remote Indigenous communities. The ATM Fee Arrangement was developed as a direct response to these efforts.

While it was initially expected that the ATM Fee Arrangement would only remain in place for up to 5 years, the needs that it sought to address persist to this day. ATM usage in these remote communities has remained steady since the ATM Fee Arrangement came into effect, with no material change in ATM transaction type and only a slight decline in volume. No other arrangements have been put in place to minimise the cumulative impact of ATM fees for individuals living in these communities.

While ongoing financial literacy programs, increased adoption of debit cards and improved access to communications and technology is likely to reduce reliance on ATMs over time, in the short term this reduction is unlikely to occur to a sufficient degree to remove the need for the ATM Fee Arrangement.

Therefore, the Applicant and the Relevant Parties have formed the view that the ATM Fee Arrangement should continue to remain in place.

#### Scope and objectives of the ATM Fee Arrangement

The ATM Fee Arrangement objectives are to:

- ensure that customers of Issuers who live in eligible very remote Indigenous communities are able to conduct cash withdrawals and balance inquiries without incurring an ATM fee; and
- improve and promote access to banking and financial services for Indigenous people living in very remote communities.

These objectives have not changed since the inception of the Implementation Agreement in 2012 and can be seen to have been successful since implementation in 2012.

To deliver these objectives, the ATM Fee Arrangement originally provided for:

<sup>4</sup> Australian Financial Counselling & Credit Reform Association, *ATM Fees in Indigenous Communities* (November 2010) (**FCA Report**) 11-13 <<http://www.financialcounsellingaustralia.org.au/media%20releases%20documents/ATM%20Fees%20in%20Remote%20Indigenous%20Communities.pdf>>.

<sup>5</sup> It should be noted that this was also confirmed by the ATM Taskforce in its review of the ATM reforms.

- identification of the ATMs to which the ATM Fee Arrangement would apply (**Identified ATMs**) by applying the eligibility criteria;<sup>6</sup>
- the ATM Deployers allowing cash withdrawals and balance inquiries at Identified ATMs without imposing an ATM direct charge (but only for those consumers who are customers of the Issuers); and
- the Issuers paying ATM Deployers a certain amount to cover the costs of operating the Identified ATMs during the term of the Implementation Agreement.

The original arrangement was expressed to operate for a maximum period of five years, unless the parties unanimously agreed to extend it.<sup>7</sup> The Relevant Parties have now unanimously agreed to extend the arrangement for a further five years, with a minor variation to establish reviews at the end of the third and fourth additional years. These reviews would be conducted by the Relevant Parties to ensure the ATM Fee Arrangement continues to operate as intended.

While it was hoped that access to banking and financial services and financial literacy and consumer awareness programs would have improved over the last five years, in the view of the Relevant Parties there has not been a material improvement in these conditions, and there is currently no program being implemented by any government or any other regulatory body or authority to address these issues. The Issuers are implementing their own financial literacy programs, including as part of their respective Reconciliation Action Plans, but these programs have not yet significantly affected the need for the ATM Fee Arrangement.

In these circumstances, maintaining the ATM Fee Arrangement through an extension of the Implementation Agreement would provide a significant public benefit compared to the alternative – that is, the reintroduction of ATM fees in the communities in question and the reimposition of a disproportionately high level of cumulative ATM fees to the members of those communities.

**The ATM Fee Arrangement has led to and will continue to lead to significant public benefits**

In granting authorisation A91312, the ACCC considered that there was likely to be significant public benefit from the provision of fee-free ATM withdrawals and balance inquiries from selected ATMs in designated very remote Indigenous communities. The ACCC also considered that this benefit would outweigh any public detriments, which it considered were likely to be minimal.

The public benefits and detriments identified in the ACCC's final determination remain largely unchanged since then.

The immediate public benefits of the ATM Fee Arrangement are to:

- improve and promote fairer access to banking and financial services for Indigenous people living in very remote communities, including access to social security payments (ie, Centrelink payments or other Government benefits);

<sup>6</sup> The eligibility criteria are as follows: each Identified ATM is located in a genuinely very remote community based on indicators of remoteness provided by the ABS; the ATM is located in a community store, which does not provide alcohol or gambling goods or services; and the residents of these very remote communities lack access to an alternative retail banking service, such as a bank branch, post office (Bank@Post) (but not including a community post agency), or Traditional Credit Union (TCU) branch (but not including electronic banking services).

<sup>7</sup> See clauses 15.1 and 15.2 of the Implementation Agreement.

- reduce the financial burden from the cumulative impact of ATM fees for Indigenous people living in very remote communities and free up money in their budgets to spend on essential living expenses, such as food, clothing, education costs, etc;
- reduce the potential for Indigenous consumers living in very remote communities to be overcharged by store owners and traders in relation to access to cash where there are limited alternative means to access cash;
- reduce the financial burden associated with excessive ATM usage and multiple, small transactions – more frequent cash withdrawals and balance inquiries are made by Indigenous people living in very remote communities due to socio-economic, behavioural and cultural factors; and
- provide financial capability associated with balance inquiries – ie, access to account balances can enhance the ability for Indigenous people living in these very remote communities to implement budgets as well as utilise EFTPOS facilities to purchase food and other necessities reducing the need to carry unnecessary cash.

Reauthorisation of the ATM Fee Arrangement will allow these significant public benefits to continue. In the absence of the ATM Fee Arrangement, these benefits could not occur. Withdrawing these benefits would be extremely detrimental to residents in the relevant communities (as these customers significantly benefit from a reprieve from otherwise high total ATM fee expenditure).

ATM fees may become even more of an issue in the event that the Centrelink Cashless Debit Card trials were extended to these remote Indigenous communities.<sup>8</sup> Although the widespread extension of the pilots is likely to reduce the use of cash in the affected communities in the longer term, until that happened there would be an increased need for the ATM Fee Arrangement.

**The ATM Fee Arrangement has not and will not have an adverse effect on competition**

The ATM Fee Arrangement, if reauthorised, will not lessen competition in any relevant market.

Specifically, the ATM Fee Arrangement:

- has not reduced, and will not reduce, the level of competition in the supply of ATM services, given that each Identified ATM is situated in a genuinely very remote location with regular reviews to ensure that Identified ATMs are situated in locations where there is no alternative retail banking service – and in particular no competitive overlap between the operations of the Relevant Parties in any of the Indigenous communities in which an Identified ATM is located. It should be noted that review provisions are contained in the Implementation Agreement to ensure certain events trigger a review (ie, changes in the availability of alternative services or retail banking services for customers to access their bank accounts within the community locality), and the Identified ATMs will be reviewed and reassigned if necessary to ensure they all meet the eligibility criteria before

<sup>8</sup> <https://www.humanservices.gov.au/customer/enablers/cashless-debit-card>

the Implementation Agreement is extended;

- will be of very limited scope with a limit of only 85 ATMs within very remote Indigenous communities operating and having been identified as meeting the eligibility criteria. It should be noted that the Implementation Agreement allows for a maximum of 85 ATMs to be identified as within the category of Identified ATMs (less than 0.3% of all ATMs currently operating in Australia). ATMs can be removed or added within the scope, and to ensure that deployment of ATMs responds to changing community needs;<sup>910</sup>
- allows the addition of other Issuers and ATM deployers to participate in the ATM Fee Arrangement as Relevant Parties and pursuant to the terms; and
- ensures that any adverse impact would be short-lived given the relatively short period of further extension (a maximum of five years) for the ATM Fee Arrangement under the Implementation Agreement.

In addition, the Implementation Agreement contains a review mechanism to ensure that the solution continues to meet the objectives of the agreement and to address the identified problem.

As discussed above, a review may also be triggered by certain events, such as where there has been a material change to Indigenous consumer and/or merchant behaviour in those communities (eg, ATM usage and EFTPOS surcharging respectively) or changes in the commercial arrangements or technologies which impact on the use of the Identified ATMs. If any of these changes occur more quickly than the Applicant and Relevant Parties currently expect, the ATM Fee Arrangement can be altered or concluded accordingly.

#### **Interim authorisation is also sought**

The Applicant seeks interim authorisation on behalf of the Relevant Parties to enable them to continue providing fee-free ATM services pursuant to the ATM Fee Arrangement.

Having regard to the factors set out above, it is appropriate for the ACCC to grant interim authorisation in relation to the current regime established by the Implementation Agreement, while the ACCC considers the application.

The Relevant Parties are currently providing fee-free ATM access at Identified ATMs for customers of the Issuers, and have been doing so since 1 December 2012.

The Applicant considers there are no risks associated with the grant of the interim authorisation, particularly as the same conduct has already been the subject of authorisation since 8 November 2012.

Interim authorisation will make it possible to continue to operate the

<sup>9</sup> According to Australian Payment Clearing Association (**APCA**), as at December 2016, there were 32,879 ATMs deployed across Australia. See, APCA, *ATM & Eftpos* <<http://www.apca.com.au/payment-statistics/transaction-statistics/atm-and-eftpos>>.

<sup>10</sup> The proposed Implementation Agreement also provides a limited mechanism for a potential increase in the number of Identified ATMs above 85.

ATM Fee Arrangement without interruption, allowing fee-free ATM services to continue until the ACCC makes its final determination.

**Term of  
authorisation**

The original term of the Implementation Agreement was five years. Authorisation was granted until 1 December 2017.

It is proposed that the Implementation Agreement now be extended by a further five years, with a review period following the third and fourth years to be conducted by the Relevant Parties.

The Applicant, therefore, submits that the Australian Competition and Consumer Commission (**ACCC**) should authorise the extension of the Implementation Agreement for a further period of five years.

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## 1 Relevant parties

### 1.1 ABA

The ABA is an incorporated association under the provisions of the *NSW Associations Incorporation Act 1984*. There are 25 banks that are members of the ABA.<sup>11</sup> The ABA is governed by a Council which comprises the Chief Executive Officers of member banks. There are currently 15 members of the ABA Council.

The ABA works with its members to provide analysis, advice and advocacy and contributes to the development of public policy on banking and other financial services. The ABA works to ensure the banking system can continue to deliver the benefits of competition to Australian bank customers.

In particular, the ABA works to ensure that the Australian banking industry's views are represented in public policy contexts. In communicating the industry's views, the ABA works with the Commonwealth and State and Territory Governments, regulators, other industry associations, the community and community groups, as well as the media.

In 2011, the ATM Taskforce approached the ABA and selected ATM deployers (with a significant presence in remote Indigenous communities) to identify a solution to address community concerns regarding the impact of ATM fees on Indigenous people living in very remote communities, given that limited or no alternative retail banking facilities are generally available in these areas of Australia.

In collaboration with the ATM Taskforce, the ABA sought negotiations with the banking industry and ATM Deployers to develop an appropriate solution. The ABA and the Relevant Parties ultimately concluded an Implementation Agreement.

The ABA was key in engaging in discussions with relevant banks and ATM Deployers, obtaining relevant information from various parties, including the Australian Government (and on behalf of community groups), and facilitating the negotiation process. The ABA, while not a party to the Implementation Agreement, was instrumental in coordinating and conducting this process and administering the Implementation Agreement, and it remains the key contact. The ABA is making this application for reauthorisation on behalf of the Relevant Parties, who are discussed below.

### 1.2 Issuers

At the time of this Application, the issuers participating in the ATM Fee Arrangement include: ANZ, Bankwest, Bendigo and Adelaide Bank, BOQ, Citibank, Commonwealth Bank, HSBC, ING DIRECT, ME Bank, NAB, St George, Suncorp, Westpac, Bank of Melbourne and Bank of South Australia (the **Issuers**).

These Issuers have been identified as having customers using the eligible ATMs, and are members of the ABA.

The Applicant envisages that other issuers may choose to participate in the ATM Fee Arrangement over the term of the Implementation Agreement, especially if customers of other issuers commence using, or are otherwise identified as using, the Identified ATMs.

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<sup>11</sup> The members of the ABA are: AMP Bank Limited; ANZ; Arab Bank Australia Limited; Bank Australia; Bank of America; Bank of China; Bank of Queensland; Bank of Sydney; Bendigo and Adelaide Bank Limited; BNP Paribas; Citigroup Pty Ltd; Commonwealth Bank; Defence Bank; HSBC; ING DIRECT; Macquarie Bank Limited; ME Bank; MyState Bank; National Australia Bank; Qudos Bank; Rural Bank Limited; Rabobank Australia Limited; Suncorp; United Overseas Bank Limited, and Westpac. See, Australian Bankers' Association Inc., *Members* <<http://www.bankers.asn.au/About-Us/Members>>.



The Implementation Agreement, therefore, allows for the addition of other issuers (or the removal of participating issuers) to the ATM Fee Arrangement.<sup>12</sup>

### 1.3 ATM Deployers

The ATM Deployers party to the Implementation Agreement as authorised were Cashcard Australia Limited and ATM Solutions Australasia Pty Limited (trading as Customers ATM) (**ATM Deployers**).

In 2016, Customers ATM's parent company DC Payments acquired Cashcard Australia's ATM business and Cashcard Australia ceased to be an ATM Deployer party to the Implementation Agreement. In January 2017, DC Payments was acquired by Cardtronics. All Identified ATMs under the ATM Arrangement are now operated by Cardtronics Australasia Pty Limited, trading as **DC Payments**.

The Implementation Agreement provides for variation to the participating ATM deployers on an annual basis in certain circumstances (ie, where an ATM Deployer ceases to operate an Identified ATM, or where a new Identified ATM is operated by another ATM deployer, subject to the consent of the parties).

The mechanism to add or remove ATM Deployers is contingent on certain conditions being met.<sup>13</sup> These include that:

- the person must operate ATMs that satisfy the applicable criteria concerning ATM location and lack of alternative ATM access; and
- the number of identified ATMs or the total costs payable by the Issuers must not increase above the maximum number of Identified ATMs permitted and the total costs payable as at the date of the Implementation Agreement (being amounts which have been negotiated in consultation with Government).

A person is not able to become an ATM Deployer if the addition of that person will increase the number of Identified ATMs or the total costs payable by the Issuers under the Implementation Agreement, without prior approval of each Issuer.<sup>14</sup>

Each new ATM Deployer must sign a deed of accession agreeing to be bound by the Implementation Agreement.

Since the merger of the ATM Deployers under the original Implementation Agreement in September 2016, there is now one ATM Deployer, DC Payments, responsible for all 82 of the current Identified ATMs. However, the Applicant has received confirmation from the present ATM Deployer that it will agree to the introduction of new ATM Deployers to the Implementation Agreement in order to promote additional competition in the supply of ATM deployment services. A number of ATM deployers have expressed an interest in participating in the ATM Fee Arrangement.

See **Annexure B** for a list of all proposed participating Issuers and ATM Deployers.

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<sup>12</sup> Subject to approval by the Relevant Parties, the proposed Implementation Agreement provides for variation to the participating issuers on a quarterly basis. This process is intended to provide flexibility to respond to changes in usage at the Identified ATMs. Thirteen banks have currently been identified as having customers using the Identified ATMs. Issuers may be other banks or credit unions. This process is set out in clause 9.2 of the proposed Implementation Agreement.

<sup>13</sup> See cl 9 of the Implementation Agreement

<sup>14</sup> See cl 9.3(b) of the Implementation Agreement

## 1.4 The Government and the ATM Taskforce

In December 2010, the ATM Taskforce was established by the Australian Government. See **Annexure C** for the ATM Taskforce's terms of reference.

As part of its review of the cost of ATM access in remote Indigenous communities, the ATM Taskforce broadly identified two possible complementary strategies to reduce the impact of ATM fees on residents living in these areas, namely:

- reduce ATM fees in these communities, which may require external subsidisation from the banking sector and /or the public sector; and
- reduce ATM usage, potentially through the expansion of existing educational and housing programs; implementing telecommunications strategies and reviewing the transparency and timing of payments from payment providers such as Centrelink.

The Australian Government asked the ATM Taskforce to work with the banking industry and selected ATM deployers to assist in developing a solution to community concerns with ATM fees in very remote Indigenous communities and find a mechanism for facilitating the provision of ATM services to Indigenous people living in very remote communities.

As part of this work, the ATM Taskforce, with input from the industry, other Government agencies and community groups, determined the criteria for identifying a number of ATMs eligible for inclusion in the arrangement.

The ATM Taskforce also engaged with the ABA, the banking industry and the ATM deployers to develop the ATM Fee Arrangement. The ATM Fee Arrangement was been developed as a direct response to these efforts to address the problems associated with ATM fees in very remote Indigenous communities.

While the ATM Fee Arrangement has successfully reduced ATM fees in these communities, the efforts to reduce ATM usage contemplated by the ATM Taskforce have not eventuated. The Applicant and the Relevant Parties have observed no material change in ATM transaction type or volume and there are no current programs being implemented or proposed by any government or regulatory body or authority or any other relevant stakeholder. The ATM Taskforce is no longer operational.

In these circumstances, since ATM usage in very remote Indigenous communities remains steady and there are no alternative retail banking services and limited electronic banking services in these communities, a reduction in ATM fees remains essential to avoiding the accumulation of fees. The ATM Fee Arrangement remains as essential as it was when it was first proposed.

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## 2 ATM Fee Arrangement

### 2.1 Outline

The Applicant, on behalf of the Relevant Parties, is seeking reauthorisation (including revocation of authorisation A91312 and substitution with a new authorisation) to extend the ATM Fee Arrangement, which provides for:

- ATM Deployers providing customers of the Issuers with access, at no cost, to ATM services at the Identified ATMs, including balance inquiries and cash withdrawals;
- Issuers paying subsidies to the ATM Deployers to contribute to the fixed and variable costs of operating the Identified ATMs;

- Issuers paying an amount to an ATM Deployer for any hardware and software changes or reconfigurations required to their ATMs included as Identified ATMs, in order to carry out their obligations under the Implementation Agreement; and
- ATM Deployers continuing to operate the Identified ATMs on a business-as-usual basis. Branding of the outside of these ATMs will not be altered.<sup>15</sup>

The selection of Identified ATMs to which the ATM Fee Arrangement will apply will continue to be made by the Relevant Parties by applying the eligibility criteria developed by the ATM Taskforce (see discussion below).

## 2.2 The Implementation Agreement

The Relevant Parties entered an Implementation Agreement on 4 May 2012 in relation to the ATM Fee Arrangement, subject to regulatory approvals being granted.

On 8 November 2012, the ACCC granted authorisation until 1 December 2017 in respect of the Implementation Agreement. The Implementation Agreement was also granted an exemption from the interchange requirements of the ATM Access Regime by the RBA, which operates for five years after the commencement date of the Implementation Agreement. The Applicant has applied to the RBA to renew this exemption.

Key terms of the Implementation Agreement are summarised below.

### (a) Term

Unless extended by unanimous agreement of the parties, the original Implementation Agreement runs for a maximum period of five years (an Initial Term of two years commencing on 1 December 2012 and up to three Subsequent Terms of one year each). Subject to authorisation, the term will be extended for a further period of up to five years.

In particular, Clause 15.2 of the Implementation Agreement provides that:

- (a) *At any time, not more than one year and not less than six months, before the end of the Initial Term and, if applicable, the first and second Subsequent Terms, the parties will meet to consider:*
  - (i) *whether there is a practical alternative available to the parties to achieve the Solution; and*
  - (ii) *any variations which are required to this agreement during a Subsequent Term to better give effect to the Solution, if there is no agreement on the alternative means of achieving the Solution.*
- (b) *If the parties are not able to agree on the alternative means of achieving the Solution, this will not be a Dispute for the purposes of clause 13 and the Term will be extended for the Subsequent Term.*
- (c) *Unless the parties unanimously agree otherwise, there will be no more than three Subsequent Terms, with the effect that the maximum Term will be five years.*

<sup>15</sup> The ATM deployers will continue to operate the ATMs; however, there will be a screen message to distinguish the Identified ATMs from other ATMs across the ATM network (**Unique Identifier**).

The Parties have unanimously agreed to extend the Implementation Agreement for a further period of up to five years and to amend clause 15.2 of the Implementation Agreement to better give effect to the ATM Fee Arrangement.

The amendment will reflect the Parties' view that the ATM Fee Arrangement is likely to be necessary for at least the next three years, but that after that the Parties need to retain the flexibility to agree to terminate or extend the Implementation Agreement for up to two Subsequent Terms of one year each.

A copy of the Implementation Agreement as executed is set out in **Confidential Annexure A**. Further information on some key aspects of the Implementation Agreement is provided below.

(b) Criteria for selecting Identified ATMs

In 2012, the ATM Taskforce determined the eligibility criteria for selecting the Identified ATMs with input from other Government agencies and community groups, including FaHCSIA<sup>16</sup>, as well as the banking industry and the ATM deployers. The criteria are as follows:

- each Identified ATM is located in a genuinely very remote community based on indicators of remoteness provided by the ABS;
- the ATM is located in a community store (and not in a venue that provides alcohol or gambling goods or services); and
- the residents of these very remote communities lack access to an alternative retail banking service, such as a bank branch, bank ATM, post office (Bank@Post) (but not including a community post agency), or TCU branch (but not including electronic banking services).

At the time, the ATM deployers used the eligibility criteria to assess their existing ATM fleet and have indicated that 82 ATMs currently satisfy the criteria. See current list of ATMs (based on community locality) in **Annexure D**.

The Relevant Parties envisage the possibility of variation in the list of Identified ATMs over the term of the Implementation Agreement (up to a maximum number of 85 ATMs).<sup>17</sup> For example, a variation may occur in circumstances where an Identified ATM is removed from a community locality, replaced in the same locality, ceases to be operated by an ATM Deployer or ceases and/or commences to meet the eligibility criteria.<sup>18</sup> This will ensure the ATM Fee Arrangement continues to meet the needs of the communities.

There may be a minor variation to the eligibility criteria if necessary to allow additional ATM Deployers to participate in the Implementation Agreement.

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<sup>16</sup> The ATM Taskforce worked with FaHCSIA to ensure community sector input has been taken into account with the determination of the eligibility criteria and the Identified ATMs.

<sup>17</sup> The Implementation Agreement contains a cap of 85 ATMs effectively representing the maximum number of ATMs that the current Issuers will finance as part of the ATM Fee Arrangement. The cap was determined on the basis that there are currently 76 ATMs that meet the eligibility criteria. A cap of 85 ATMs therefore allows some flexibility in the application of the eligibility criteria and overall operation of the ATM Fee Arrangement.

<sup>18</sup> Subject to approval by the Relevant Parties and the availability of additional funding (ie, other than from the Issuers), and in consultation with the Australian Government, the proposed Implementation Agreement provides for a possible increase in the number of Identified ATMs beyond the maximum number of 85 ATMs. However, the Relevant Parties note that there is no immediate expectation or plan for a further increase in ATM numbers. There are currently 85 ATMs in operation.

(c) Operation of the Identified ATMs

The Identified ATMs will continue to provide customers of the Issuers with access to fee-free ATM transactions, including cash withdrawals and balance inquiries.

The existing ATM Deployers of the Identified ATMs will continue to operate the Identified ATMs on a business-as-usual basis. The costs of operating those ATMs will continue to be subsidised by the Issuers pursuant to the fee calculation and cost allocation mechanism contained in the Implementation Agreement.

The Identified ATMs will be distinguished via a text-based screen message (the **Unique Identifier**). Other than the Unique Identifier, there will be no branding arrangements for the Identified ATMs (ie, branding of the outside of these ATMs will not be altered).

(d) Issuers

There are provisions in the Implementation Agreement for the removal and addition of participating issuers on a quarterly basis.

(e) ATM Deployers

There are provisions in the Implementation Agreement for:

- the removal of an ATM Deployer. However, removal requires the prior written consent of all parties to the agreement, which may be given or withheld in their absolute discretion. This is because the Relevant Parties recognise that a reduction in the number of ATM Deployers or in the number of Identified ATMs could have a material adverse effect on their ability to achieve the objectives of the ATM Fee Arrangement; and
- the addition of ATM Deployers, where the eligibility criteria for Identified ATMs is satisfied. The prior approval of each Issuer (which may be given or withheld in the discretion of each Issuer) will be required where the addition of that ATM Deployer will increase the number of Identified ATMs above the maximum number permitted under the agreement (or the total costs payable by the Issuers as at the date of the agreement beyond the pre-determined baseline referable to the fee calculation and cost allocation mechanism and as contained in the Implementation Agreement).

(f) Payments to the ATM Deployers

The Issuers will each contribute an amount to cover the operating costs of the ATM Deployers incurred while performing their obligations under the Implementation Agreement (including servicing, maintenance, depreciation and capital allowances, administration, invoicing, merchant rebates and modest margin). The total fixed payment will be adjusted for CPI at the annual review. An ATM Deployer will also be paid a one off implementation cost for any required upgrades to their ATMs included as Identified ATMs.

The total amount payable by each Issuer will be calculated on the basis of transactions undertaken by their customers at the Identified ATMs (ie, the total number of transactions undertaken at the Identified ATMs by customers of the Issuer over the preceding period calculated as a percentage of the total transactions).

The cost allocation mechanism in the Implementation Agreement will be reviewed to ensure the solution is working well, delivering expected outcomes, and cost apportionment is accurate. Thereafter, the apportionment will be reviewed annually and implemented for the following 12 month period.

(g) Monitoring and review

The Implementation Agreement contains a review mechanism<sup>19</sup> to ensure that the solution continues to meet the objectives of the agreement and to address the identified problem.

A review may also be triggered by certain events, such as:

- a variation impacting the operation of the Identified ATMs, such as transaction volumes, operational costs;
- a material and sustained change in the population of communities in the locations of Identified ATMs;
- a change impacting the administration of the Identified ATMs, such as ownership, contractual arrangements and/or legal or regulatory requirements of the payment system;
- a change in the availability of alternative services or retail banking facilities for customers to access their bank accounts within the local community, including another ATM, bank branch, post office, remote delivery site, and TCU branch;
- a material change in merchant behaviour, including, without limitation, merchant fee arrangements, EFTPOS surcharging, or excessive increase in usage;
- a material change in Indigenous customer behaviour, including, without limitation, a decrease in usage of an Identified ATM or an excessive increase in usage; and
- a change in the commercial arrangements or technologies impacting on the payment system, including, without limitation, the availability of new technology and/or innovation in e-transaction and payment services, which may impact on the use of Identified ATMs.

The review mechanism will ensure that the ATM Fee Arrangement continues to achieve its objectives and operates as intended.

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## 3 Rationale for the ATM Fee Arrangement

### 3.1 Background

In October 2000, the RBA and ACCC released a report into interchange fees and access and recommended the elimination of interchange arrangements and the introduction of ATM direct charging.<sup>20</sup>

In March 2009, the RBA put in place a package of reforms to the ATM system.<sup>21</sup> The new rules ensured that consumers would be charged directly by ATM owners rather than being charged through their financial institutions indirectly as had been done in the past for a “foreign ATM transaction”.<sup>22</sup> The new rules also required ATMs to display the cost of the transaction and give consumers an opportunity to cancel the transaction if they did not wish to proceed.

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<sup>19</sup> Quarterly review for the first year after the commencement date, then annual reviews thereafter.[check currency]

<sup>20</sup> Reserve Bank of Australia and Australian Competition and Consumer Commission, *Debit and Credit Card Schemes in Australia: A Study of Interchange Fees and Access* (October 2000) <<http://www.rba.gov.au/payments-system/resources/publications/payments-au/interchg-fees-study.pdf>>

<sup>21</sup> See, Reserve Bank of Australia, *ATM Fee Reforms* <<http://www.rba.gov.au/payments-system/reforms/atm-fee-reforms.html>>.

<sup>22</sup> A ‘foreign ATM transaction’ refers to a cash withdrawal or balance inquiry conducted at an ATM that is not part of a network belonging to the consumers’ Authorised-Deposit Taking Institution (ADI).

The ATM reforms were designed to improve competition and efficiency in the Australian ATM system. There were several anticipated benefits of the move to ATM direct charging, including increased transparency of ATM fees, greater competition in the setting of ATM fees, and increased ATM deployment. The ATM reforms came into effect on 3 March 2009.

### 3.2 Community concern

#### 3.2.1 NIMMA Report

In November 2007, the Indigenous Banking Reference Group (**IBRG**) prepared a report as part of the National Indigenous Money management Agenda (**NIMMA**) project entitled: "Banking for the Future" (**NIMMA Report**).

The NIMMA Report identified lack of access to ATMs operated by Indigenous people's own bank or financial institution and poor financial literacy and customer banking behaviour can lead to unnecessary fees and charges.<sup>23</sup>

Participants in community consultations a part of the NIMMA project indicated that some Indigenous people spent \$70-\$80 per month on ATM fees. Additionally, very few Indigenous people were aware of banking behaviour that contributed to, or generated, substantial fees.

The NIMMA report recommended that financial institutions and independent ATM deployers should be encouraged to introduce practices and policies that minimise ATM fees for Indigenous consumers in remote communities where there is limited access to alternative banking channels.

#### 3.2.2. FCA Report

In December 2010, FCA (formerly the Australian Financial Counselling and Credit Reform Association) released a report entitled: "ATM Fees in Indigenous Communities" (**FCA Report**).

The FCA Report concluded that the cost of ATM fees was having a "significant and detrimental impact on Indigenous people living in remote communities."<sup>24</sup> In particular, FCA identified that there were a number of factors contributing to high expenditure on ATM fees in remote Indigenous communities, including:

- *Lack of alternatives:* There is generally only one ATM available in each community, which charges ATM fees, and store owners also charge fees for accessing cash via EFTPOS. While the majority of Australian consumers can choose to avoid ATM fees by using an ATM owned by their bank or financial institution, this option is not available for Indigenous consumers living in certain very remote communities. Alternative options (ie, telephone or Internet banking) are not realistic as services and infrastructure is limited in remote areas (ie, few, if any, homes are connected to the Internet and not many have landlines).
- *High fees:* While it commonly costs \$2.00/\$2.50 per transaction to check an account balance or withdraw cash from an ATM, there are concerns that ATM fees and other charges (ie, EFTPOS fees imposed by store owners) in remote communities are higher.<sup>25</sup>

<sup>23</sup> Indigenous Banking Reference Group, *Banking for the Future* (November 2007). (**NIMMA Report**) 32.

<sup>24</sup> FCA Report, 3.

<sup>25</sup> FCA Report, 12.



- *Nature of living in remote areas:* There is limited services and infrastructure in remote areas, which means Indigenous people make more frequent purchases. Housing and food storage can be problematic which means food is purchased daily contributing to more frequent use of ATMs. Additionally, limited alternative banking channels (ie, telephone or Internet banking) means the only option for people to check their account balance is at the ATM.
- *Different patterns of ATM usage:* There is a tendency for Indigenous consumers to withdraw small amounts of cash, and thereby incur more ATM fees than most Australians. Multiple, small transactions can happen for a number of reasons, including socio-economic, behavioural or cultural reasons. Limited financial understanding about Centrelink payments or the impact of ATM fees can contribute to excessive ATM usage.

The FCA report claimed that accumulation of ATM fees of around \$20–\$40 per fortnight (or around 20% of a Centrelink payment) are not uncommonly incurred by Indigenous consumers on the day these payments are due (and thereafter), as Indigenous people repeatedly check whether they have been paid their Centrelink benefit (and to make sure that the money is still in their account).<sup>26</sup>

The FCA report recommended that there should be no charge to use ATMs in remote Indigenous communities, along with a number of other initiatives, including regulatory intervention, in order to achieve a more lasting solution to the underlying causes of the problems facing Indigenous people living in remote communities.<sup>27</sup>

The Applicant notes that while community concerns about high ATM fees (as opposed to an accumulation of standard fees) in these remote communities has not been substantiated,<sup>28</sup> the banking industry recognises that ATM fees can have a material impact on these remote communities because the large majority of Indigenous people living there are on very low incomes and rely on receipt of social security payments (ie, Centrelink payments or other Government benefits). As a result, residents in these communities can spend a high proportion of their incomes on ATM fees exacerbating social, economic and financial disadvantage.

While the FCA Report was released in 2010, many of the issues it highlights, including the lack of services, infrastructure and financial and consumer protection advice available to residents in very remote areas, as well as a lack of alternative access to banking and financial services, remain prevalent today.

As further discussed in section 3.5, on 5 July 2017 FCA wrote to the ACCC strongly supporting the continuation of the ATM Fee Arrangement for a further five years:

*FCA's 2010 report "ATM Fees in Indigenous Communities" documented the significant harm occurring in remote Indigenous communities as a result of the high cost of ATMs...*

*The agreement between the banking industry to subsidise the cost of ATMs addressed these problems by removing this cost imposition. In many ways this has meant that Indigenous people and others living in remote communities have the same opportunities to access their funds as people in cities, who can generally find an ATM owned by their bank that does not charge a fee...*

<sup>26</sup> FCA Report, 7; Peter Martin, 'Probe on high ATM fees', *The Age*, 21 January 2011, 3.

<sup>27</sup> FCA Report, 18-19.

<sup>28</sup> The ATM Taskforce did not find evidence of higher ATM fees in remote communities or systemic overcharging by merchants in relation to ATMs or EFTPOS.



*The current agreement needs to continue as conditions in the affected remote communities have not substantially changed. We base our views on feedback from financial counsellors and financial capability workers that work with clients in these communities.*

A copy of that letter is attached at **Annexure E**.

### 3.3 The ATM Taskforce

As part of its Competition Package, the Australian Government established the ATM Taskforce to monitor and enhance the current implementation of ATM reforms.

The ATM Taskforce was asked to conduct two reviews for the Australian Government, one of which included a report on appropriate action for dealing with issues specifically affecting Indigenous communities in relation to ATMs and cash supply.<sup>29</sup> As part of the work of the ATM Taskforce, the ABA and relevant banks and ATM deployers were approached by the ATM Taskforce to develop a solution to the issue of the cost of ATM access and the impact of high expenditure on ATM fees by Indigenous people living in very remote communities.

The ABA held various discussions with relevant retail banks and ATM deployers nominated by the ATM Taskforce (being Customers ATM and Cashcard Australia, now both part of DC Payments) to discuss a potential solution and to develop a proposal that would ultimately become the ATM Fee Arrangement.<sup>30</sup>

The ATM Fee Arrangement was introduced as a direct response by the banking industry and ATM deployers to the Government's policy initiatives. There are no other commercial drivers for the ATM Fee Arrangement for the Issuers and ATM deployers.

The needs and objectives underpinning the ATM Fee Arrangement remain as relevant today as at the time of its release (see issues discussed in Section 3).

### 3.4 Alternative solutions considered

The Applicant notes that as part of the work conducted by the banking industry and ATM deployers, several alternative approaches to addressing the ATM fees issue were considered, including:

- *Removal or reduction of ATM fees:* Introducing a certain number of fee-free ATM transactions, removing ATM fees on balance inquiries or implementing a transaction rebate scheme via existing payment or product solutions. These alternative approaches, however, would not have addressed the inherent issue regarding excessive ATM usage by some Indigenous people – that is, where a high number of transactions continued to be made, there would still be ATM fees incurred. Additionally, removal of ATM fees or introduction of fee rebates could have distorted competitive dynamics in the overall provision of ATM services in the market.

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<sup>29</sup> Treasury, *ATM Taskforce* < [http://www.treasury.gov.au/banking/content/reports/announcement/report\\_09.asp](http://www.treasury.gov.au/banking/content/reports/announcement/report_09.asp)>.

<sup>30</sup> These discussions were subject to a communication protocol that, amongst other things, places restrictions on the confidential and sensitive information that can be shared and the obligations on each of the respective parties in relation to confidential and sensitive information received. A copy of the communication protocol is set out in **Confidential Annexure E**.

- *Provision of computer terminals:* Providing a free computer terminal in community stores so that Indigenous people could access their bank account and check account balances or make money transfers. This alternative approach would have required reliable infrastructure and telecommunications services as well as other support logistics, such as stores that accommodated an area to place a computer, stores that were able to provide adequate privacy for computer usage, and community education officers to support completion of transactions. It should be noted that many Indigenous people living in very remote communities have limited English proficiency, as well as limited literacy and numeracy skills which impact on the ability to use computers as well as the preference to use 'face to face banking' options.
- *EFTPOS as an alternative:* Utilising EFTPOS as the primary point of access to cash. This alternative approach would not have provided Indigenous people with information to allow better budget planning, ie, account balances, and would not have dealt with the risk of possible overcharging by store owners and traders.
- *Regulation of ATM fees:* Imposing price controls or intervening by imposing a cap on ATM fees. Apart from this being inconsistent with the findings of the ATM Taskforce, this alternative approach would likely have resulted in the removal of ATM services in these very remote communities as ATM services would not be commercially viable.
- *Provision of financial education:* Providing Indigenous people with financial education about the transfer of social security payments to the electronic payments network, access to bank accounts and use of ATMs. This alternative approach could build on extensive financial literacy initiatives and programs undertaken by the Government, banks and community groups, however, would not have provided an immediate response or addressed the inherent issue regarding high expenditure on ATM fees by recipients of Government benefits.
- *Transparency of Centrelink payments:* Alerting recipients of Government benefits about their payments. While this alternative approach may reduce the incidence of excessive balance inquiries, it would not have provided a direct response regarding excessive ATM usage associated with cash withdrawals.

Therefore, the Relevant Parties formed the view that the ATM Fee Arrangement was the best solution to the issues identified in this Section 3.

### **3.5 The continued need for the ATM fee arrangement**

The ATM Fee Arrangement was envisaged to last for a maximum five years because it was envisaged that improved access to banking and financial services and financial literacy and consumer awareness programs, along with telecommunications and housing services, would help to reduce the frequency of ATM transactions and the need for the ATM Fee Arrangements to mitigate the accumulation of ATM fees.

However, with the dissolution of the ATM Taskforce and a shift in government priorities, these programs have not been pursued, and the factors that underlie the need for the ATM Fee Arrangement persist. The type, frequency and value of ATM transactions have not materially decreased in the remote communities covered by the ATM Fee Arrangement.

While ATM use in most parts of Australia has declined on average 5% each year since 2012 due to the steady increase in debit and credit cards – and in particular contactless cards – for small purchases, and the use of ATMs for balance inquiries is also reducing due to internet and mobile banking, these changes have not been observed to the same extent in remote indigenous communities. Total ATM transactions in the communities covered by the ATM Fee Arrangement declined by only 2.4% between 2015 and 2017,

with ATM balance inquiries declining by 3.5% and ATM withdrawals declining by only 1.6%.

It is likely that over the next five years there will be further reduction in ATM use in these remote indigenous communities as mobile and internet coverage improves (including Telstra initiatives to provide coverage to remote communities and the NBN's Sky Muster satellite broadband service), smartphone and tablet adoption continues to increase and new services such as the New Payments Platform make person-to-person transfers faster and more convenient than cash for more Australians.

ATM use may also decline if the Centrelink Cashless Debit Card trials are extended to the remote Indigenous communities targeted by the ATM arrangements. Trials are currently operating in Ceduna in South Australia and in Kununurra and Wyndham in the East Kimberly region of Western Australia. The 2017–2018 Commonwealth Budget includes an extension to these trials and the addition of two new locations yet to be determined.<sup>31</sup>

In the longer term, if these pilots were extended throughout the very remote Indigenous communities identified, this could drive a reduction in ATM use and an increase in alternative forms of payment in these communities.

Furthermore, the banks continue to provide a range of financial literacy programs for indigenous communities including through their respective Reconciliation Action Plans (**RAPs**). For example:

- CBA has partnered with the Indigenous Consumer Assistance Network (**ICAN**) to provide financial literacy programs; created an Indigenous Financial Counselling Mentorship Program, launched an Indigenous Customer Assistance Line (**ICAL**) for remote customers. In 2016, CBA launched a new financial literacy program with the Australian Indigenous Mentoring Experience (**AIME**) to provide 10,000 students with strong financial skills; and it conducted a cricket masterclass and financial literacy workshops for Aboriginal and Torres Strait Islanders in February 2017.<sup>32</sup>
- WBC is committed to improving the banking experience for remote Indigenous customers, improving financial understanding and accessibility to its products and services, and partnering with the community to better meet specific banking needs. One of its recent initiatives is Banking Story, a printed brochure that uses iconography and imagery to communicate Westpac's banking services to customers who do not have English as a first language. It has a focus on improving its phone-based customer contact support for customers in remote areas who can find it difficult to access a branch or ATM and may not have access to digital channels such as online or mobile banking.<sup>33</sup>
- ANZ has partnered with the Australian Government and local communities to operate MoneyBusiness, a money management and financial literacy program that has been delivered to 55,100 Aboriginal and Torres Strait Islander peoples nationwide. All customer contact staff complete training to ensure they provide culturally aware and responsive service to indigenous customers.<sup>34</sup>
- NAB provides an Indigenous Money Mentor (**IMM**) program to build financial capability for indigenous clients and address gaps in financial services provision for

<sup>31</sup> Department of Social Services, *Cashless Debit Card – Overview*, at <<https://www.dss.gov.au/families-and-children/programmes-services/welfare-conditionality/cashless-debit-card-overview>>

<sup>32</sup> CBA Reconciliation Action Plan FY2017–FY2019.

<sup>33</sup> WBC Reconciliation Action Plan FY2018–FY2020.

<sup>34</sup> ANZ Reconciliation Action Plan FY2016–FY2019.

indigenous communities. It notes that improving financial capability results in empowered indigenous clients who are confident using their money skills.<sup>35</sup>

Improved financial literacy and access to telecommunications and technology is eventually likely to result in a change in circumstances that would constitute a review trigger under the Implementation Agreement or a reason for the parties to reconsider the continued need for the ATM Fee Arrangement after the first three years. However, there is no guarantee that these changes will have advanced enough to remove the need for fee-free ATM transactions during the next five years.

Furthermore, the banking industry recognises the unique challenges faced by very remote indigenous communities in terms of infrastructure and services. These challenges, in addition to social, economic and financial issues, contribute to potential exclusion. The ATM Fee Arrangement is designed to help alleviate the impact of these challenges and assists in supporting individual and community wellbeing.

Accordingly, for the next five years the Applicant and the Relevant Parties believe that there will be a continued need for the ATM Fee Arrangement to provide the public benefits identified when the ATM Fee Arrangement was established and authorised.

As noted in section 3.2, on 5 July 2017 Financial Counselling Australia wrote to the ACCC strongly supporting the continuation of the ATM Fee Arrangement for a further five years, noting that:

*Access to the internet, another option for checking account balances, remains limited. Many Indigenous people in these communities, even if they had the internet, do not have a sufficient understanding of how internet banking works in order to adequately use it.*

*Access to cash also continues to be an important vehicle for exchange. In many of the remote communities, the ATMs are the only access to cash for hundreds of miles.*

*Financial counsellors and capability workers tell us that there is still a long way to go to raise awareness of ATM fees. They are still seeing Indigenous people using the ATMs multiple times on pay days and days following. They say, overwhelmingly, that the free ATM agreement should stay in place because when they are not charged the fees, they have more money to purchase food and pay for essentials...*

*It is therefore extremely important to continue the arrangement to provide fee free ATMs in remote indigenous communities in order to provide them with the same access to free ATMs enjoyed in other areas and to alleviate this one element of disadvantage. As remote indigenous communities already struggle with higher costs for basic necessities, the added burden of ATM fees will add significant hardship to an already difficult situation.*

A copy of the letter is attached at **Annexure E**.

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<sup>35</sup> NAB Reconciliation Action Plan FY2015–FY2017.

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## 4 Revocation and substitution

### 4.1 Revocation and substitution sought

The ACCC issued a final determination granting authorisation in respect of the Implementation Agreement (A91312) on 8 November 2012. Authorisation was granted until 1 December 2017.

Revocation and substitution is sought by the Applicant to give effect to the extension and minor variation of the Implementation Agreement, which will provide for the continuation of the ATM Fee Arrangement.

Although the Implementation Agreement has not had, and is not likely to have, the effect of a substantial lessening of competition in any relevant market, the ATM Fee Arrangement necessitates a number of joint activities relating to:

- fee setting (ie, effectively setting the fee for ATM withdrawals and balance inquiries for the Identified ATMs at zero); and
- cost bearing (ie, requiring the sharing of aggregate information on customer numbers in order to calculate the contributions required by each Issuer),

between parties that may be relevantly competitive with each other, which may as a result constitute cartel conduct as defined in section 44ZZRD of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

The ATM Fee Arrangement may also result in the disclosure of pricing information between competitors, prohibited under section 44ZZW of the CCA, which remains in force until the *Competition and Consumer Amendment (Competition Policy Review) Bill 2017* is passed and comes into effect.

The Applicant notes that the extension of the ATM Fee Arrangement is contingent on the Relevant Parties gaining the necessary regulatory approvals including authorisation. Without authorisation, the Relevant Parties would not continue to give effect to the Implementation Agreement (or any other alternative solutions). Absent the ATM Fee Arrangement, customers of the Issuers who live in certain remote Indigenous communities will again be charged for conducting a 'foreign ATM transaction' (ie, a reversion to the status quo prior to the existing authorisation).

Therefore, revocation of an authorisation and substitution of a new authorisation is sought under section 91C of the CCA to give effect to the extension of the Implementation Agreement, which would enable the current (and future) parties to maintain the most effective solution to the ATM fee issues as identified by the Australian Government.

As noted previously, the term of the Implementation Agreement is proposed to be extended by up to five years.<sup>36</sup> The Applicant, therefore, submits that the ACCC should authorise the Implementation Agreement for a period of five years.

### 4.2 Interim authorisation sought

The Applicant also seeks interim authorisation as discussed in more detail in section 6.

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<sup>36</sup> Unless the parties identify and agree upon an alternative arrangement before the end of the five year term.

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## 5 Analysis of public benefits and detriments

### 5.1 Authorisation test

Sections 90(5A) and 90(6) of the CCA provide that the ACCC must not make a determination granting an authorisation in respect of a provision of a proposed contract, arrangement or understanding unless it is satisfied that the provision would result, or be likely to result, in a benefit to the public, and that the benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, from the proposed contract, arrangement or understanding or the proposed provision.

Section 91C(7) provides that the ACCC must not make a determination revoking an authorisation and substituting another authorisation unless it is satisfied that it would not be prevented under subsection 90(5A), (5B), (5C), (5D), (6), (7), (8), (8A), (8B) or (9) from making a determination granting the substituted authorization, if it were a new authorisation sought under section 88.

The CCA does not define “public benefit”, but the ACCC has traditionally given a broad interpretation to the term.<sup>37</sup> The Australian Competition Tribunal (**Tribunal**) has also defined it as “anything of value to the community generally, any contribution to the aims pursued by the society including as one of its principal elements (in the context of trade practices legislation) the achievement of the economic goals of efficiency and progress.”<sup>38</sup>

### 5.2 Significant public benefits

The ATM Fee Arrangement as permitted by the current Authorisation has proven to deliver significant and substantial public benefits.

In its Final Determination to grant the current Authorisation, the ACCC found that the “ATM Proposal provides a way of directly addressing the issue of the disproportionate impact of ATM fees in people living in very remote Indigenous communities”.<sup>39</sup> The extension of the ATM Fee Arrangement will continue to directly address this ongoing issue.

Through the ATM Fee Arrangement, the Relevant Parties have been able to (and hope to continue to) provide customers of Issuers who live in very remote Indigenous communities with fee-free ATM access. The direct and immediate beneficiaries of the ATM Fee Arrangement are the existing and future cardholders of the participating Issuers who live in the communities where the Identified ATMs are located, as well as the Australian community more generally.

Further discussion of these benefits is set out below.

- (a) A solution to address community concerns with ATM fees in very remote Indigenous communities

The ATM Fee Arrangement is a solution developed in response to community concerns about high expenditure on ATM fees by Indigenous people living in very remote Indigenous communities. It was initially intended to operate for an initial period of two

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<sup>37</sup> ACCC Authorisation Guidelines 2013

<sup>38</sup> *Re 7-Eleven* (1994) ATPR 41-357 at 42,677. See also, *Re VFF Chicken Meat Growers' Boycott Authorisation* (2006) ACompT 9 at 75; *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17, 242; *Re Qantas Airways Limited* [2004] ACompT 9 at 163.

<sup>39</sup> ACCC Authorisation A91312 at 9



years, and possibly a further three years, pending the development of a sustainable and longer term solution to the underlying causes that are contributing to excessive ATM usage in these remote Indigenous communities. Since these underlying causes persist, the Applicant and the Relevant Parties seek to extend the ATM Fee Arrangement for a further period of up to five years.

While the Applicant recognises that many challenges faced by Indigenous communities require longer term solutions, it considers that the ATM Fee Arrangement also provides an effective and immediate response to deal with the impact of the accumulation of ATM fees and the proportion of income spent on access to cash. Since the ATM Fee Arrangement has been operating, the Applicant has not observed any material change in the type or volume of ATM transactions, suggesting that the ATM Fee Arrangement has not had any distortionary effect on ATM use. As a result, in the view of the Applicant and the Relevant Parties, the extension of the ATM Fee Arrangement for up to a further five years will continue to be the most effective response to the issue over this timeframe.

Continuing to provide fee-free ATM access also demonstrates the Relevant Parties' ongoing commitment to improving access to banking and financial services for Indigenous people as well as their commitment to fulfil their social responsibility obligations by working to improve the lives and livelihood of Indigenous people and communities.<sup>40</sup>

(b) A solution to improve and promote fairer access to financial services

The ATM Fee Arrangement has improved and promoted fairer access to banking and financial services for Indigenous people and residents living in very remote Indigenous communities identified as meeting the eligibility criteria. As discussed above, Indigenous people living in these areas are among the most vulnerable and financially disadvantaged groups within the Australian community. Additionally, due to the remoteness of these areas, Indigenous people living in very remote communities do not have access to ATMs provided by their own bank or financial institution, which would usually allow fee-free cash withdrawals and balance inquiries.<sup>41</sup>

While there are a number of socio-economic, behavioural and cultural factors which underpin excessive ATM usage, and therefore high expenditure on ATM fees, Indigenous people living in very remote communities are unable to avoid paying ATM fees due to the lack of alternative retail banking services or due to a limited infrastructure and service delivery (ie, telecommunications which support electronic banking, eg, telephone, Internet or mobile banking services).

The impact of ATM fees on Indigenous people living in very remote communities is exacerbated because these people have different banking needs compared with other communities in Australia. For example, infrastructure and service delivery which would be considered basic in other areas of Australia can be problematic (ie, there is limited capacity for food storage in some remote communities, which then requires daily purchases of food).

Additionally, it has been recognised that there are a number of socio-economic, behavioural and cultural factors which impact on the budgeting and banking needs of Indigenous people living in very remote communities. For example, language barriers and low literacy and numeracy skills can be due to lower levels of education, which

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<sup>40</sup> Australian Bankers' Association Inc., *Indigenous Statement of Commitment*, (May 2007) <<http://www.bankers.asn.au/Banks-of-Australia/Industry-Standards>>.

<sup>41</sup> Although a small number financial institutions offer fee-free ATM withdrawals from independent ATMs, customers in very remote Indigenous communities have limited access to these offers. For example, the ING Direct offer requires a minimum deposit of \$1000 per month to qualify; the Macquarie Bank offer is limited to the rediATM network; and the ME Bank has no branch network, making it difficult to open an account where internet and communications infrastructure and use are limited.

contribute to inefficient banking behaviours. Family responsibilities, attitudes to sharing resources and “humbugging” (ie, asking people for money or obliging people to provide goods to family, relatives or friends within the community) can also add to financial pressures faced by some Indigenous people.

For these reasons, Indigenous consumers tend to withdraw small amounts of cash more frequently and so incur more ATM fees.<sup>42</sup>

The Applicant believes that providing fee-free ATM access will remove a significant financial burden for Indigenous people who are typically recipients of Government benefits and free up money in their Centrelink payment to budget and spend on essential living expenses, such as food, clothing, education, etc. Indigenous people living in these very remote communities are typically dependent on welfare payments, and the impact of excessive ATM usage, and therefore high expenditure on ATM fees, is more significant and a higher proportion of their income.<sup>43</sup>

ATM fees may become even more of an issue in the event that the Centrelink cashless welfare card trials were extended to these remote Indigenous communities, at least in the short to medium term. Since these schemes only allow 20% of welfare payments to be withdrawn as cash, the accumulation of ATM fees would have an even greater impact on welfare recipients who are part of these schemes – unless and until cashless card initiatives succeeded in displacing cash substantially or completely.

Additionally, the Applicant believes that continuing to provide fee-free ATM access will help to address the broader challenges facing very remote Indigenous communities which underpin certain money management behaviours (eg, budgeting). However, it is also recognised that further Government action will be needed pursuant to financial literacy, inclusion and Indigenous consumer protection policies.

(c) The solution to reduce the incidence of possible overcharging by traders

The ATM Fee Arrangement is also likely to reduce possible exploitative practices by store owners, traders, and fringe lenders in relation to the imposition of other fees and charges to access cash in these communities where there are no alternative means of accessing cash. Further, by providing better access to information about account balances, Indigenous people can better manage their budgets and are less vulnerable to these practices, such as ‘Book Up’ and other fringe lending.<sup>44</sup>

It should be noted that practices by store owners and traders are not always verified and/or widespread. The FCA has reported that some traders impose restrictions and fees on accessing cash or making money transfers. For example, a trader in a remote Indigenous community was charging fees of up to \$5 per \$50 withdrawn for EFTPOS cash-outs.<sup>45</sup>

The Applicant believes that providing fee-free ATM access removes the opportunity for other fees and charges to be imposed. However, it is also recognised that where such trader behaviour persists, regulatory action will be needed pursuant to various fair trading laws and consumer credit laws.

(d) The solution is a proven cost effective option to address the issues

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<sup>42</sup> Indigenous Financial Services Network (IFSN), *Banking for the Future* (November 2007) (IFSN Report) 24 <<http://www.reconciliation.org.au/home/projects/ifsn>>.

<sup>43</sup> FCA Report, 7.

<sup>44</sup> ASIC and other regulatory agencies have taken action against certain traders for exploitation, and in particular ‘Book Up’.

<sup>45</sup> IFSN Report, 30; FCA Report, 10; Economics References Committee, Senate, *Competition within the Australian banking sector* (2011) (Senate Economics Committee Report) [14.29].



The Senate Economics Committee has previously recommended that where there are unmet demands for basic banking services, the Australian Government should tender to have these services provided and the Government should pay to ensure these services are provided.<sup>46</sup>

The Applicant notes that the ATM Fee Arrangement involves the Issuers subsidising the ATM Deployers for the costs associated with operating the Identified ATMs. As such, rather than the Government using taxpayers' monies to provide these services as part of the social security system, the banking industry and the ATM Deployers are providing ATM services and carrying the costs of the solution for the direct benefit of those people living in the relevant communities, and in effect, for the benefit of the Australian community at large. The Applicant estimates that the banks will have contributed a total of between \$12 million and \$13 million during the first five years of the ATM Fee Arrangement,<sup>47</sup> most or all of which would otherwise have been recovered from customers in remote indigenous communities in the form of ATM fees.

### 5.3 No impact in any relevant market

In considering which relevant markets could potentially be affected by the ATM Fee Arrangement, it is worth noting that the ACCC has previously considered the following relevant markets:

- local markets for the supply of ATM transaction services to ATM cardholders;<sup>48</sup>
- a national wholesale market for the deployment and operation of ATMs;<sup>49</sup> and
- national retail banking markets.<sup>50</sup>

The impact of the ATM Fee Arrangement in each of these markets is considered below.

#### (a) Local market for the supply of ATM transactions

The ATM Fee Arrangement involves joint activities and agreement between the Relevant Parties with respect to the supply of ATM transaction services provided in very remote Indigenous communities. However, the Relevant Parties' operations do not currently overlap with respect to the provision of these ATM services in the communities identified as meeting the eligibility criteria (ie, the criterion that there is no access to an alternative retail banking service in that specified community locality).

It should be noted that Indigenous people living within these very remote communities are generally unable to access an alternative cash service without incurring ATM fees.

Additionally, there will not be an overlap with the provision of these ATM services and TCU branches. As noted in other sections of this submission document, the eligibility criteria specifically provides that the ATM Fee Arrangement will not apply in communities where there is a TCU branch. Regular reviews will be implemented to ensure that if TCU were to start providing services in a new community, that community would be

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<sup>46</sup> Senate Economics Committee Report [14.46]. Recommendation 32 states that 'The Committee recommends that the government deal with the problem of excessive ATM fees in remote indigenous communities by tendering for an ATM provider to install a network of ATMs in these areas which make specified minimal charges for balance enquiries and low charges for cash withdrawals'.

<sup>47</sup> An estimated cost has been provided as the 5<sup>th</sup> year of operation will be completed on the expiry of the Agreement in December 2017.

<sup>48</sup> ACCC, *Determination, Application for authorisation lodged by Cashcard Australia Limited and Bank of China Limited in respect of a 'Feesmart' joint venture agreement between participating financial institutions not to charge each others cardholders direct fees for ATM withdrawals*, 4 June 2009 (**Feesmart JV Determination**) [6.6-6.8].

<sup>49</sup> Feesmart JV Determination [6.3; 6.5; 6.9-6.10].

<sup>50</sup> Feesmart JV Determination [6.3; 6.11-6.14].

reassessed to determine whether it would continue to meet the eligibility criteria. The current ATM Deployer is also assessing all of the Identified ATMs against eligibility criteria ahead of the extension of the ATM Fee Arrangement (subject to authorisation).

Therefore, the ATM Fee Arrangement should have no impact on the level of competition in any local market for the supply of ATM services.

(b) Wholesale market for the deployment and operation of ATMs

There would not be a reduction in incentives to invest in ATM infrastructure in the wholesale market for the deployment and operation of ATMs across Australia. The review mechanism will ensure that no disincentives are created for ATM deployers who see a commercial opportunity and wish to install an ATM in those communities with an Identified ATM.

The review mechanism would be triggered if an additional ATM were installed in that community locality. The Relevant Parties would then need to consider whether the Identified ATM would continue to meet the eligibility criteria and whether Indigenous consumers would be able to access alternative retail banking services, including conducting fee-free ATM transactions.

It should also be noted that the scope of application of the solution is very limited. Only certain very remote Indigenous communities will benefit from the program. Currently 82 ATMs have been identified as meeting the eligibility criteria and only 85 ATMs (as a maximum) can fall within the category of Identified ATM (representing less than 0.3% of all ATMs currently operating across Australia).<sup>51</sup>

(c) Retail banking markets

There would not be a reduction in incentives to provide retail banking services in the communities where the Identified ATMs are located, or elsewhere in Australia.

Specifically, the Issuers will continue to compete with one another for the provision of retail banking services to people living in Indigenous communities, and to the community in general, in the same way these financial institutions do now. In fact, the existence of the ATM Fee Arrangement will help create incentives for Issuers to develop longer term solutions to the problem of access to services in very remote Indigenous communities.

In granting authorisation to the ATM Fee Arrangement in 2012, the ACCC considered whether the provision of fee-free access to the Identified ATMs might have an impact on local providers of retail banking services such as TCU, which relied on customer fees including ATM fees to support its activities. The ACCC considered that:

- the ATM Fee Arrangement would be unlikely to result in significant customer switching from TCU to the banks participating in the ATM Fee Arrangement;
- the ATM Fee Arrangement could delay the expansion of TCU into a local area but was unlikely to prevent it.

At the time of the ACCC's Final Determination 2012, the ACCC noted that TCU had eleven branches and only one ATM. The Applicant and Relevant Parties understand that TCU now operates 16 branches and 21 ATMs across the Northern Territory, and that it no longer charges its customers transaction fees for using those ATMs.

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<sup>51</sup> APCA, *ATM and Eftpos* <<http://www.apca.com.au/payment-statistics/transaction-statistics/atm-and-eftpos>>.

TCU has also opened a new branch (with an ATM) on Bathurst Island, where three ATMs covered by the ATM Fee Arrangement are currently located. These three ATMs will now be reassessed against the eligibility criteria along with all other Identified ATMs.

The ATM Fee Arrangement does not appear to have prevented the expansion of TCU and should not prevent entry or expansion of any other provider of financial services into areas that could support a branch or ATM. TCU has provided a letter in support of the extension of the ATM Fee Arrangement, which is attached at **Annexure F**.

#### **5.4 No detriments to the public**

The ATM Fee Arrangement will not result in any lessening of competition in any relevant markets or hinder or prevent competition in the very remote communities where the Identified ATMs are located. There will be no change to the incentives for ATM Deployers (or their competitors) to operate new ATMs in those communities in the foreseeable future. The ATM Fee Arrangement, in itself, does not create inefficient incentives to install ATMs in those community localities because the subsidies received from the Issuers are not commercially attractive or sufficient to justify the installation of a new ATM purely for the purpose of getting those subsidies. Additionally, only 85 ATMs (as a maximum) can fall within the category of Identified ATM.

It should be noted that the review mechanism is subject to a number of triggers related to certain events. The Implementation Agreement, therefore, ensures that the solution continues to meet the objectives of the agreement and to address the identified problem, in the absence of any alternative arrangement which can deliver similar outcomes and benefits.

The Applicant believes that the significant public benefits that will continue to result from the ATM Fee Arrangement will far outweigh any potential public detriments that may arise from the extended operation of the solution.

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## **6 Interim authorisation**

Given that there is no competitive detriment that has resulted (or will result) from the continuation of the ATM Fee Arrangement, and real and substantial public benefits that will be continue to be generated, the Applicant submits that the authorisation test is clearly satisfied.

The Applicant seeks interim authorisation on behalf of the Relevant Parties to ensure that they can maintain the ATM Fee Arrangement without interruption.

The existing authorisation will expire on 1 December 2017, which falls within the statutory maximum six month time limit for the authorisation process set out in the CCA (which may itself be extended if a pre-decision conference is called following the draft determination).

The Applicant expects that the ACCC may be able to reach a final determination that will take effect before 1 December 2017 due to the clear public benefits and minimal detriments identified in its final determination in relation to the current authorisation, the minimal changes to the ATM Fee Arrangement and the absence of any material change to the competitive, economic and social conditions relevant to the ATM Fee Arrangement.

However, to preserve the current status quo and avoid a disruptive situation where ATM fees may need to be introduced while ensuring that the ACCC can give the issue all due attention, the Applicant considers that interim authorisation would be prudent.

Subject to interim authorisation being granted, the Relevant Parties propose to continue to provide fee-free ATM access to Identified ATMs for customers of participating Issuers.

## 6.1 Interim authorisation test

The factors that the ACCC considers in assessing whether interim authorisation should be granted are as follows:<sup>52</sup>

- the degree to which the arrangements appear to be anti-competitive;
- the level of urgency of the request;
- the impact (if any) on the relevant markets;
- the possible harm to the applicant if the request for interim authorisation is denied;
- the possible harm to other parties (such as customers or competitors) if the request for interim authorisation is granted or denied; and
- any other possible benefits or detriments to the public.

Further discussion of these factors, as relevant to this application, is set out below.

### (a) The arrangements are not anti-competitive

The Applicant believes that the Implementation Agreement does not, and will not in future, hinder or prevent competition in the communities where the Identified ATMs are located. As discussed in Section 5, it will not add or remove incentives for the ATM Deployers or their competitors to compete in those communities in the foreseeable future.

### (b) The urgency of the request remains clear

The continuation of the Implementation Agreement and the ATM Fee Arrangement will allow Indigenous people and residents living in certain very remote communities to continue to benefit from access to fee-free ATM transactions along similar lines as people living in other areas of Australia.

Interim authorisation will therefore enable the Relevant Parties to continue providing certain fee free ATM services

If interim authorisation is not granted, this would likely result in substantial detriments to those living in the identified very remote Indigenous communities.

### (c) There is no impact in any relevant market

The Applicant believes that the grant of interim authorisation is no risk given that there is no material competitive overlap between the operations of the Relevant Parties in the relevant Indigenous communities.

Furthermore, given the limited scope and application of the ATM Fee Arrangement as well as the remoteness of the community localities there will be little (if any) impact on other participants in any relevant market should interim authorisation be granted.

### (d) Conclusions

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<sup>52</sup> ACCC, *Guide to Authorisation*, June 2013, 71.

In light of the above factors, the Applicant considers that the grant of interim authorisation will not lessen competition or harm the public. On the contrary, it will ensure the continuation of the current status quo in offering significant benefits to some of Australia's most vulnerable communities.

The ACCC has previously granted interim and final authorisations for other proposals with respect to ATM fees. In conjunction with previous related regulatory experience and the limited scope of the ATM Fee Arrangement, the Applicant has provided this submission and stands ready to provide any additional information the ACCC should require in order to make its determinations and grant an interim authorisation.

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## 7 Conclusion

The Applicant submits that the ATM Fee Arrangement has resulted in significant public benefits for Indigenous people and residents living in remote communities where ATM fees have an impact on the living standards and wellbeing of these people, as well as the Australian community more generally.

The continuation of the currently authorised arrangements will ensure that the identified remote communities are able to access ATM services in the most equitable manner currently available.

In comparison, the public detriments will be minimal (if there are any) due to the limited scope and application of the solution as well as the remoteness of the community localities. For these reasons, it is submitted that the ACCC should grant revocation and substitution of authorisation, and interim authorisation, in accordance with the Application.

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## Confidential Annexure A –Implementation Agreement

Provided separately.

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## **Annexure B – Parties to the Implementation Agreement**

### **Issuers**

Australia and New Zealand Banking Group Limited

Bank of Melbourne

Bank of Queensland Limited

Bank of South Australia

Bank of Western Australia Limited

Bendigo and Adelaide Bank Limited

Citigroup Pty Ltd

Commonwealth Bank of Australia

HSBC Bank Australia Limited

ING Bank (Australia) Limited

Members Equity Bank Pty Limited

National Australia Bank Limited

St George Bank Limited

Suncorp-Metway Limited

Westpac Banking Corporation

### **ATM Deployers**

Cardtronics Australasia Pty Limited, trading as DC Payments

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## Annexure C – ATM Taskforce: Terms of Reference<sup>53</sup>

### ATM Taskforce

The Reserve Bank of Australia (RBA) and Treasury have established a joint ATM Taskforce.

The Taskforce has been asked to conduct two reviews for the Australian Government.

- It has been asked to report by end-June 2011 on the need for further action to enhance implementation of ATM reforms introduced in March 2009 to boost competition and transparency.
- It has also been asked to report by end-February 2011 on appropriate action for dealing with issues specifically affecting Australian Indigenous and other remote communities in relation to ATMs.

### Terms of Reference

The Taskforce will consider the impact of the ATM reforms on:

- the transparency and level of ATM fees;
- consumer behaviour;
- competition in the ATM market; and
- the deployment of ATMs.

The report will include recommendations on the need for further measures to enhance competition and transparency in Australia's ATM industry.

The Taskforce will examine issues relating to the cost of ATM access for Indigenous and other remote communities.

Recent reports have suggested that ATM fees can impact disproportionately on residents of remote Indigenous communities. Accordingly, the taskforce will examine:

- provision of ATM services in remote communities;
- fees for ATM services in remote communities;
- the impact of these fees on residents in remote communities; and
- alternatives to current arrangements and practices for accessing cash and account balance information in remote communities.

The report will include appropriate actions for dealing with issues that are identified by the taskforce.

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<sup>53</sup> Treasury, *ATM Taskforce* < [http://www.treasury.gov.au/banking/content/reports/announcement/report\\_09.asp](http://www.treasury.gov.au/banking/content/reports/announcement/report_09.asp)>.



## Annexure D – List of identified communities (Identified ATMs)

	Site name	Community locality	State
1	Aherrenge Community Store	Aherrenge via Alice Springs	NT
2	Ali Curung Store	Ali Curung	NT
3	Mount Liebig	Mount Liebig	NT
4	Aputula Store	Aputula via Alice Springs	NT
5	Areyonga Supermarket	Areyonga	NT
6	Arlparra Community Store	Utopia	NT
7	Atitjere Homelands Store Aboriginal Corporation	Atitjere	NT
8	Barunga Store	Barunga via Katherine	NT
9	Bawinanga Aboriginal Corporation #1	Maningrida	NT
10	Bawinanga Aboriginal Corporation #2	Maningrida	NT
11	Belyuen Store	Cox Peninsula	NT
12	Canteen Creek Store	Davenport	NT
13	Croker Island Store	Minjilang (Crocker Island)	NT
14	Docker River Store	Kaltukatjara (Docker River)	NT
15	Engawala Store	Engawala	NT
16	Finke River Mission Store	Hermannsburg via Alice Springs	NT
17	Gunbalanya Council Community Store	Oenpelli	NT
18	Imanpa General Store	Imanpa WA via Alice Springs NT	NT
19	Ininti Store	Mutitjulu via Yulara	NT
20	Jilkminggan Store	Mataranka	NT
21	MacDonnell Shire Titjikala Store	Titjikala via Alice Springs	NT
22	Maningrida Progress Association	Maningrida	NT
23	Milikapiti Store #1	Milikapiti, Melville Island	NT
24	Milikapiti Store #2	Milikapiti, Melville Island	NT
25	Naiyu Store	Daly River	NT
26	Nguiu Ullintjinni Ass #1	Bathurst Island	NT
27	Nguiu Ullintjinni Ass #2	Bathurst Island	NT
28	Nguiu Ullintjinni Ass #3	Bathurst Island	NT
29	Nguru Walalja	Yuendumu	NT
30	Nyirripi Community Store	Nyirripi	NT
31	Papunya Store	Papunya via Alice Springs	NT
32	Pirlangimpi Store	Melville Island	NT
33	Pulikutjarra Aboriginal Corporation	Pulikutjarra	NT
34	Santa Teresa Community Store	Santa Teresa	NT

	Site name	Community locality	State
35	Ti Tree Community Store	Ti Tree	NT
36	Umbakumba Store	Umbakumba	NT
37	Walangeri Ngumpinku Community Council	Yarralin via Katherine	NT
38	Warakurna Community Store	Petermann via Alice Springs	NT
39	Warte Alparayetye Aboriginal Store	Alpurrurulam Lake Nash NT via Mt Isa QLD	NT
40	Watinuma Roadhouse	Fregon SA via Alice Springs NT	NT
41	Wetenngerr Store	Barkley Homestead	NT
42	Wirliyajarrayi Store	Willowra via Alice Springs	NT
43	Ayton Iga	Ayton	QLD
44	Doomadgee Retail Store #1	Doomadgee	QLD
45	Doomadgee Retail Store #2	Doomadgee	QLD
46	Hopevale Supermarket – Island and Cape	Hope Vale	QLD
47	Badu Island Supermarket	Badu Island	QLD
48	Mapoon Aboriginal Council Store	Mapoon	QLD
49	Palm Island Retail Store #1	Palm Island	QLD
50	Palm Island Retail Store #2	Palm Island	QLD
51	Umagico Supermarket	Cape York	QLD
52	Woorabinda Retail Store	Woorabinda	QLD
53	Wujal Wujal Store	Wujal Wujal	QLD
54	Amata Community Store #1	Amata SA via Alice Springs NT	SA
55	Amata Community Store #2	Amata SA via Alice Springs NT	SA
56	Amata Community Store #3	Amata SA via Alice Springs NT	SA
57	Intalka Store	Iwantja SA via Alice Springs NT	SA
58	Kaltjiti Community Store	Fregon SA via Alice Springs NT	SA
59	Kanypyi Store	Kanypyi SA via Alice Springs NT	SA
60	Mimili Community Store	Mimili	SA
61	Oak Valley Store	Oak Valley (Maralinga Tjarutja)	SA
62	Pipalyatjara Store	Pipalyatjara SA via Alice Springs NT	SA
63	Pukatja Supermarket	Pukatja SA via Alice Springs NT	SA
64	Yalata Community Store	Yalata	SA
65	Beagle Bay Community Store	Beagle Bay	WA
66	Bidyadanga Store #1	Bidyadanga via Broome	WA
67	Bidyadanga Store #2	Bidyadanga via Broome	WA
68	Blackstone Store	Papulankutja (Blackstone) WA via Alice Springs NT	WA
69	Illawarra Store	Jigalong Community via Newman	WA

	Site name	Community locality	State
70	Irrunytju Store	Wingellina WA via Alice Springs NT	WA
71	Kiwirrkurra Roadhouse and Community Store	Kiwirrkurra	WA
72	Kundat Djaru Community Store	Kundat Djaru via Halls Creek	WA
73	Kururrungku Store	Billiluna Station via Halls Creek	WA
74	Mulan Community Store	Mulan via Halls Creek	WA
75	Tjukurla Store	Tjukurla Community	WA
76	Uraro Community Store	Kalumburu via Wyndham	WA
77	Wanarn Store	Wannan Community via Alice Springs	WA
78	Warburton Store	Warburton WA via Alice Springs	WA
79	Warrunyunna Store	Jameson Community WA via Alice Springs NT	WA
80	Wirrimanu Community Store #1	Wirrimanu via Halls Creek	WA
81	Wirrimanu Community Store #2	Wirrimanu via Halls Creek	WA
82	Wungkul Store	Wungkul via Kununurra	WA

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## Annexure E – Letter from Financial Counselling Australia



Level 6, 179 Queen Street  
Melbourne Victoria 3000  
03 85543 6979

5th July 2017

Mr David Jones  
General Manager  
Adjudication  
Australian Competition and Consumer Commission  
Canberra

Dear Mr Jones

### **Extension of authorisation re Agreement to reduce ATM fees in remote communities**

In 2012, FCA made submissions to the ACCC in support of authorisation A91312 in relation to the provision of fee-free ATMs in a number of remote Indigenous communities.

We are writing now to strongly support the continuation of this arrangement for a further five years.

#### *Background*

FCA's 2010 report "ATM Fees in Indigenous Communities"<sup>54</sup> documented the significant harm occurring in remote Indigenous communities as a result of the high cost of ATMs. That report documented that:

- ATM fees are unavoidable in remote communities where the ATM is privately owned;
- there are generally no alternative ways to access the banking system. Internet and phone banking are generally not available and stores also charge for EFT transactions;
- residents living in remote ATSI communities spend a significant proportion of their incomes on ATM fees. Estimates provided by financial counsellors and money management workers suggest that a loss of up to 20% of a person's income in ATM fees each fortnight is not uncommon;

this high pattern of usage occurs because ATSI people check their account balances frequently. This

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<sup>54</sup> <https://www.financialcounsellingaustralia.org.au/getattachment/Corporate/Publications/Reports/ATM-Fees-in-Remote-Indigenous-Communities.pdf>

is often because they are waiting for a Centrelink payment to arrive. They also tend to withdraw smaller amounts of cash more frequently. This is for budgeting reasons or because of the need to buy food more often due to a lack of refrigeration or for cultural reasons.

As a result of this combination of factors, many residents of remote communities did not have enough money to meet basic living expenses. The problem therefore became a spiral – if a person is short of cash one week because of ATM fees, they will be caught short in subsequent weeks. There is never an opportunity to catch up.

The agreement between the banking industry to subsidise the cost of ATMs addressed these problems by removing this cost imposition. In many ways this has meant that Indigenous people and others living in remote communities have the same opportunities to access their funds as people in cities, who can generally find an ATM owned by their bank that does not charge a fee.

#### *Need for continuation of the authorisation*

The current agreement needs to continue as conditions in the affected remote communities have not substantially changed. We base our views on feedback from financial counsellors and financial capability workers that work with clients in these communities.

Access to the internet, another option for checking account balances, remains limited. Many Indigenous people in these communities, even if they had the internet, do not have a sufficient understanding of how internet banking works in order to adequately use it.

Access to cash also continues to be an important vehicle for exchange. In many of the remote communities, the ATMs are the only access to cash for hundreds of miles.

Financial counsellors and capability workers tell us that there is still a long way to go to raise awareness of ATM fees. They are still seeing Indigenous people using the ATMs multiple times on pay days and days following. They say, overwhelmingly, that the free ATM agreement should stay in place because when they are not charged the fees, they have more money to purchase food and pay for essentials.

Financial Counsellors and Financial Capability Workers are still advising that in some stores Indigenous people are still being charged to withdraw cash from EFTPOS. A Story from Maningrida is as follows;

One of the FCWs went into a Good Food Store in Maningrida to use the ATM to get money out but the ATM had a sign that said “no money left”. The FCW had to spend minimum of \$30 in the store to get money from EFTPOS.

Another advised that the store owner in Fregon has the ATM right next to the cash register and if people owe him money through book up, he demands the money on the spot. People are afraid to use the ATM as he makes them give the money to him.

It is therefore extremely important to continue the arrangement to provide fee free ATMs in remote indigenous communities in order to provide them with the same access to free ATMs enjoyed in other areas and to alleviate this one element of disadvantage. As remote indigenous communities already struggle with higher costs for basic necessities, the added burden of ATM fees will add significant hardship to an already difficult situation.

Yours sincerely

A handwritten signature in black ink, appearing to read "Fiona Guthrie". The signature is fluid and cursive, with a small dot at the end.

Fiona Guthrie  
CEO

## Annexure F – Letter from Traditional Credit Union



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Diane Tate  
Australian Bankers Association  
PO Box  
Sydney NSW 2001

14<sup>th</sup> July 2017

Dear Diane

### RE: FEE FREE ATMS IN REMOTE COMMUNITIES

We refer to the above agreement which is due to expire on the 1<sup>st</sup> December 2017.

Traditional Credit Union's (TCU) vision is to be the leading provider of banking to First Nations people and organisations.

The challenge for the TCU is that the provision of 3rd party fee free ATM's provides access to a completely free ATM services to remote Australians, excluding TCU members. TCU aims to provide services to indigenous peoples broader than just ATM's, such as remote indigenous employment, specialised banking services and financial literacy.

The current ABA sponsored remote ATM deal, providing fee free access to remote Australians, overlaps with some of TCU services but we feel there would be a negative impact for TCU and more importantly remote Indigenous Australians if these ATM's were now removed.

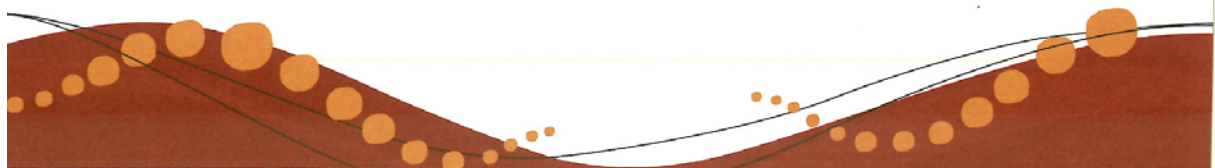
We feel it would be detrimental for the communities involved and go against our core values of:

- Respect Culture
- Walk together
- Care for members

We therefore support the extension of the Fee Free ATM agreement.

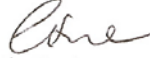
TCU would like to explore broader opportunities with the Industry. There is much work to do on promoting financial and digital literacy, and most importantly behavioural change to utilise digital channels. Remote Australia presents many unique cultural challenges, where phone numbers frequently change, and phones are shared across families and communities. The majority of our customers also hold other financial institution accounts to be able to transfer money for both convenience, and cultural pressures. Cultural pressures ("humbug") also drives the high use of remote ATM facilities today.

We also see an opportunity to become a conduit between Industry and their consumers in the remote areas where we operate.



Core to the TCU is that we walk together into the future, and so we would welcome the opportunity to meet and discuss this more fully with you.

Kind Regards



Cathy Hunt  
CEO  
Traditional Credit Union Limited