

19 August 2016

Mr Phil Khoury
Independent Reviewer – Code of Banking Practice
Email at: banking.code.review@cameronralph.com.au

Dear Mr Khoury

Review of Code of Banking Practice

The Australian Bankers' Association (**ABA**) welcomes the review of the Code and is pleased to provide its submission (copy attached) on the matters covered by the Terms of Reference.

With the active participation of 24 member banks in Australia, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services.

The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

Industry reforms

On 21 April 2016, the banking industry announced a package of reforms to further protect consumer interests, increase transparency and accountability and build trust and confidence in banks.

As part of this package of reforms, the industry has committed to bringing forward the review of the Code of Banking Practice (**the Code**) with the overall objective of strengthening its current commitment to customers and improving the standards of practice and service in the banking industry.

The Code is the banking industry's customer charter on best banking practice standards. The Code sets out the banking industry's key commitments and obligations to customers on standards of practice, disclosure and principles of conduct for their banking services.

Customers expect banks to keep working hard to make sure they have the right culture, the right practices and the right behaviours in place. The banking industry is committed to strengthening its current commitment to customers, making sure that the Code improves and continues to set standards of good banking practice for banks in the offering of their products and services, and evolves to reflect the changing needs of banks, their customers and the wider community.

The ABA looks forward to ongoing consultation with you, banks and other key stakeholders in the course of this Code review.

I would be pleased to clarify or expand upon the matters raised in this submission and where necessary arrange a meeting with you and member banks.

Yours sincerely



Steven Münchenberg
Chief Executive Officer
(02) 8298 0401
smunchenberg@bankers.asn.au



AUSTRALIAN BANKERS'
ASSOCIATION INC.

Strong banks – strong Australia

Code of Banking Practice

ABA Submission

19 August 2016





Strong banks – strong Australia

This page is intentionally blank



Strong banks – strong Australia

1. Introductory remarks

The banking industry believes that the Code of Banking Practice (**Code**) is a well-regarded customer charter on best banking practice standards. Notwithstanding, the Australian Bankers' Association (**ABA**) acknowledges the need to strengthen banks' commitments to customers and accepts that certain standards of practice and services found in the Code requires improvement, change, more prominence and better clarity.

The banking industry is keen to identify ways to improve the Code for customers and banks.

The ABA's submission is premised on:

- Continuous improvement in the provision of banking services
- Making banking rights and responsibilities clear while preserving the legal nature of the contractual relationship between banks and customers, and
- Making it easier for customers, especially when things go wrong.



Strong banks – strong Australia

2. Terms of Reference

The ABA will address each item of the Terms of Reference and any additional matters considered to be relevant by the banking industry.

a) **Purpose and role of the Code in setting the standards for good banking practices and the benefits that the Code provides to banks and their individual and small business customers.**

Purpose

The Code sets standards of good banking practice for banks that have adopted the Code for their individual and small business customers and their guarantors. The Code seeks to align the provision of banking services with the conduct and behaviours expected by customers.

The ABA supports the current purpose of the Code, and considers its purpose is clear.

However, there have been suggestions that the Code and its purpose is not well understood by the public and that further promotion will assist in addressing this issue. This point will be elaborated on in Terms of Reference d) ix).

Role

There have been suggestions from some stakeholders that the role of the Code is unclear and often misconstrued. The ABA believes the Code not only sets standards for good banking practices for subscribing banks, but also sets out the rights and responsibilities of customers.

Therefore, the ABA recognises that the Code has a dual role of setting standards and communicating those standards with both customers and banks.

Banks that adopt the Code (refer to Appendix 1) are required to include in their written terms and conditions for banking services, a statement that the relevant provisions of the Code apply to their banking services without the need to set out those provisions in the terms and conditions document (as per clause 12.3 of the Code).

Courts have held that by a bank incorporating by reference the relevant provisions of the Code in its banking services contract with the customer, those relevant provisions incorporated may be legally enforceable as a contract.

b) **Structure of the Code and clarity in communicating the standards for good banking practices to banks and their individual and small business customers.**

Structure

The ABA supports retaining a single Code for individual and small business customers. The Code provides comprehensive coverage for both individual and small business customers within one Code. Many small business customers use retail products, and splitting the Code may be difficult to achieve and cause unnecessary complexities.

However, the current structure of the Code could be improved to ensure a more logical flow of commitments and areas of focus. For example, Part C of the Code contains commitments that are to be observed by banks through their conduct and behaviour, and should be highlighted accordingly. Parts D, E, and F, are focused around the provision of information, banking practices and approaches to dispute resolution respectively, and are intended to be binding. The ABA seeks to clarify the language in the relevant sections where appropriate.



Strong banks – strong Australia

Further, the length and complexity of some clauses with multiple sub-paragraphs could be addressed to improve readability. This review presents an opportunity to make targeted changes to the Code to eliminate this difficulty with the aim of making the Code more user-friendly, without compromising the intent of the Code.

Communication

The ABA believes that the Code should be a clear, plain English statement of banks' commitments to their customers.

The ABA notes this review presents an opportunity to amend a number of existing clauses to simplify, minimise the use of legal language, and improve the clarity of communicating the standards for good banking practice to banks and their individual and small business customers.

The ABA does not support a rewrite of the entire Code or the inclusion of a separate document explaining certain clauses. The former is a lengthy and complex task, while the latter is unnecessary. The ABA supports clarifying certain clauses identified as being unclear and by making sure these clauses are in plain English.

Duplication

The Code is intended to cover matters not contained in the law, reflecting best practice and creating higher standards for banks. As a self-regulatory tool, the Code is important in that it covers matters which are not legal obligations or areas not covered by the law.

However, the ABA acknowledges that the evolution of the Code and related law means that the Code covers areas that are also in legislation or regulatory guidance. For these clauses, the reason for duplication is that the banking industry wants to ensure that customers are aware of their legislative rights when they are engaging with banks, while simultaneously making it clear to customers that banks go beyond their legislative requirements.

The ABA believes the Code would benefit from greater articulation of those standards that are not obligations based in law and that exceed legal obligations. This approach would not only make the operation of the Code clearer for customers, but also assist banks in the interpretation of their obligations.

The Code should be amended to more clearly articulate what the legislative obligations are and where the Code extends above and beyond the law.

The ABA also recognises the role of industry guidelines. These guidelines seek to provide greater explanation of particular commitments. For example, the Industry Guideline on Financial Hardship explains the various legal obligations on banks and captures the industry's additional commitments to customers experiencing financial difficulty.¹

c) The extent to which the Code demonstrates banks' commitment to putting their individual and small business customers first.

The Code outlines banks' key commitments to their customers with the overarching aim of demonstrating that banks' put their customers first. These key commitments are found in clause 3 of the Code.

The ABA considers that this overarching aim is not communicated with sufficient prominence and clarity. This commitment continues to be of utmost importance for the banking industry, particularly as a way of strengthening the Code commitments. There are a range of ways the Code could be strengthened to reinforce bank's commitments to their customers.

¹ <http://www.bankers.asn.au/Consumers/Are-you-experiencing-financial-difficulty->



Three possibilities are:

- 1) Refine Part C of the Code to focus more on the commitments (clauses 3, 7 and 8) and separate the general obligations and other sections addressing the operation of the Code.
- 2) Include an additional preamble to the Code. A preamble could include an explanation of the role of banks and how the banking system contributes to the economy by delivering balanced outcomes for customers, investors, employees and the broader community. This preamble could build understanding of the role of banks as well as highlight the purpose of the Code and the rights afforded to customers.
- 3) Articulate the values of the banking industry expanding on, and explaining the commitment to act fairly and reasonably, and in a consistent and ethical manner. An explanation could cover concepts like fair and transparent, accessible and inclusive, protection of customers' money and personal information, support for customers and the economy, suitable and affordable products and services, and a stable and sustainable banking system.

The ABA believes that the Code must be clear, and any changes need to be meaningful and not cause misconceptions about banks' key commitments. In summary the ABA considers that:

- Part C of the Code could be restructured, separating banks' commitments from general obligations
- Banks' commitments to customers should be made more prominent, and
- Banks' commitments to ethical behaviour made clearer and more prominent.

Additionally, Terms of Reference d) illustrates how further changes to Part C could be strengthened to ensure customers are clear about bank's commitments, and for banks to better understand their obligations.

d) The effectiveness of the key commitments of banks and whether these commitments meet consumer and community expectations to

The key commitments found in the Code are an important feature of its structure, and are general principles intended to guide banks in the provision of banking services.

The ABA supports retaining these principles in the Code.

i) Promote better informed decisions about banking services.

The ABA notes that although there is legislation² in this regard, a commitment to better inform consumers is essential, not only as an obligation or a requirement by law, but because it serves as a core purpose for banks in delivering products and services to their customers.

The ABA supports retaining this clause.

The ABA also recognises the importance of financial literacy initiatives offered by the banking industry and support further promotion of these initiatives to assist customers with making better informed decisions about their banking services, not just through regulated disclosures.

² Corporations Act 2001 (Cth) and National Consumer Credit Protection Act 2009 (Cth).



ii) Provide information about the rights and obligations of banks and their individual and small business customers in relation to banking services, including raising awareness of the legal and regulatory frameworks governing banks.

The ABA supports retaining this clause with an amendment to reflect the new commitment for each bank to have a customer advocate.³

In addition, the ABA supports the development of easy to read educational resources to raise awareness of the legal and regulatory frameworks governing banks. For example, the ABA's *Smarter Banking: Know your banking rights and responsibilities*⁴ provides a general overview of customers' rights and responsibilities when dealing with their bank. The ABA is looking at ways to provide this information in shorter, simpler formats.

The ABA does not support including additional and detailed explanation of the legal and regulatory frameworks governing banks in the Code.

iii) Act fairly and reasonably towards individual and small business customers in a consistent and ethical manner.

Clause 3.2 states that banks will "... act fairly and reasonably towards you [customers] in a consistent and ethical manner."

The ABA would support elevating this clause as the opening paragraph for the key commitments section of the Code. This suggestion will need to be considered in light of the response provided above for Terms of Reference c). A suggested amendment for consideration is:

We will act fairly and reasonably towards you in a consistent and ethical manner, meeting all the commitments and standards in this Code taking into account all circumstances of your case. Our key commitments include:

*The Lending Code*⁵ in the United Kingdom adopts this approach.

Clause 36(b) (iii) of the Code prevents the Code Compliance Monitoring Committee (**CCMC**) from monitoring, investigating or reporting breaches of clause 3 unless a breach of clause 3 is also a breach of another provision of the Code.

The CCMC, Code of Banking Practice 2014–15 Annual Report notes that there were a total of 615 breaches of clause 3 (key commitments), including 375 breaches with no corresponding breaches of other provisions of the Code.⁶ The key commitments of 'fair and reasonable' and financial difficulty obligations remain the primary sources of Code breach allegations received by the CCMC.

The ABA welcomes the CCMC working with banks to better understand the underlying causes of breaches of the key commitment, 'fair and reasonable'.

iv) Comply with all relevant laws and regulations relating to banking services.

The ABA supports retaining clause 4, however, we recommend clause 4.1 should also include a statement that where applicable, relevant laws and regulatory obligations prevail over Code commitments to the extent of any inconsistency. This approach may be useful in ensuring changes to the legal and regulatory framework governing banks does not disrupt the operation of the Code or impede the protections for customers.

³ <http://www.bankers.asn.au/media/media-releases/media-release-2016/banks-act-to-strengthen-community-trust>

⁴ <http://www.bankers.asn.au/Consumers/Financial-Literacy-Program/Booklets/Smarter-Banking---Know-your-banking-rights-and-responsibilities>

⁵ <https://www.bba.org.uk/policy/retail/credit-and-debt/lending-standards-and-guidelines/the-lending-code/>

⁶ Code Compliance Monitoring Committee, Code of Banking Practice 2014-15 Annual Report 10



To assist with clarification and as a suggestion, clause 4 should be moved out of Part C to apply to Part D and Part E either as an “interpretation” clause at the beginning of these sections or in the definition clause.

A suggested amendment for consideration is below:

We will comply with all relevant laws relating to the provision of banking services.

If this Code imposes an obligation on us that is inconsistent with a relevant law, we will comply with the relevant law to the extent of that inconsistency, rather than this Code.

v) Take reasonable measures to provide relevant information and enhance accessibility for people in remote Indigenous communities, older persons and customers with a disability.

Banks recognise the needs of customers in remote Indigenous communities, older customers and customers with a disability, and take reasonable measures to provide relevant information and enhance accessibility. This is captured in clauses 7 and 8 of the Code.

The ABA supports retaining these clauses.

The ABA is currently finalising its *Position on Financial Inclusion*, which captures the various activities of the banks, illustrates the banking industry’s commitment to promoting financial inclusion, and contains renewed commitments to improving the level of financial inclusion of all Australians. The ABA considers that banks and others, including governments, businesses and community organisations, should work together and towards ensuring all Australians have opportunities for economic, financial and social inclusion. For banking and financial services, this means access to, and use of, a number of safe, affordable and appropriate banking and financial products and services.

Consideration should be given to a key commitment that banking will be inclusive, and banks will be required to behave ethically towards all customers. Such a commitment would ensure banks provide assistance and information appropriate to customers with special needs, including, but not limited to, customers in remote Indigenous communities, older customers, customers with a disability as well as other customers who may be vulnerable or who have experienced an event, including newly arrived Australians, customers with English as a second language, customers who are the victims of domestic violence, and customers living in an area where there has been a natural disaster.

Banks recognise they have an important role in assisting their customers and their communities.

vi) Provide hardship assistance to individual and small business customers experiencing financial difficulties.

Clause 28 of the Code requires a bank, with the agreement and cooperation of an individual or small business customer, to try and help the customer overcome difficulties with its credit facility, including working with the customer to develop a repayment plan.

There are currently no legislative provisions in place requiring banks to assist small business customers experiencing financial difficulties.⁷ The Code provides comprehensive coverage of small business banking facilities and articulates how a bank should work with a small business customer in financial difficulty without overly limiting a bank’s legal right to enforce a contract:

⁷ The National Credit Code does not apply to credit obtained for commercial or business purposes



- Clause 20.4: that a bank will normally give reasonable notice of at least 10 business days' (i.e. at least 14 days) to a small business customer before making changes to the terms and conditions of the small business customer's credit facility which the bank reasonably considers will be materially adverse to the customer, unless the bank considers a shorter notice is necessary to avoid or reduce an increase in credit risk to the bank.
- Clause 28: hardship arrangement to assist small business customers who experience financial difficulties with their credit facilities.

The obligations under the Code demonstrate banks' commitments to assisting customers who are experiencing financial difficulty.

Banks have comprehensive financial hardship programs and dedicated teams who work with customers to understand their situation and find the most appropriate way to help them control and manage their financial obligations.

The ABA's *Doing It Tough* website⁸ provides information about financial hardship assistance and contact details for the hardship teams in the banks.

The CCMC Financial Difficulty Own Motion Inquiry acknowledges that banks have worked to improve outcomes for customers experiencing financial difficulty.⁹

The ABA supports retaining the existing Code provisions that require banks to work with their customers in hardship. However, we suggest that clause 28 be clarified in relation to the operation of hardship under the *National Consumer Credit Protection (NCCP) Act 2009* (Cth), specifically section 72.¹⁰

vii) Resolve complaints and disputes between banks and their individual and small business customers.

Under the *Corporations Act 2001* (Cth), an Australian Financial Services (AFS) licensee must have a dispute resolution system available for retail clients that meet certain requirements.¹¹ This dispute resolution system must consist of:

- a) Internal Dispute Resolution (IDR) procedures that:
 - i) comply with the standards and requirements made or approved by Australian Securities and Investment Commission (ASIC);
 - ii) cover complaints made by retail clients in relation to the financial services provided; and
- b) Membership of one or more ASIC-approved External Dispute Resolution (EDR) schemes that cover – or together cover – complaints made by retail clients in relation to the financial services provided.¹²

Under section 47 of the NCCP, credit licensees must have a dispute resolution system that consists of:

- a) IDR procedures that comply with the standards and requirements made or approved by ASIC and that cover disputes in relation to the credit activities engaged in by them or their credit representatives; and
- b) Membership of one or more ASIC-approved EDR schemes.¹³

⁸ <http://www.doingittough.info/>

⁹ <http://www.ccmc.org.au/cms/wp-content/uploads/2015/11/CCMC-Inquiry-Report-Financial-Difficulty-November-2015.pdf>

¹⁰ *National Consumer Credit Protection Act 2009* (Cth) s 72

¹¹ Australian Securities & Investments Commission, Regulatory Guide 165 Licensing: Internal and external dispute resolution, 165.1

¹² Australian Securities & Investments Commission, Regulatory Guide 165 Licensing: Internal and external dispute resolution, 165.2

¹³ Australian Securities & Investments Commission, Regulatory Guide 139 Approval and oversight of external dispute resolution schemes, 139.7



Clauses 37, 38 and 39 currently reflect the law in relation to resolving complaints and disputes. These clauses could be put in a standalone section to provide greater prominence to dispute resolution. It may also be possible to simplify the drafting of these clauses.

As noted earlier, for Term of Reference d) ii), the ABA would support amending clause 37 to highlight that banks will have their own customer advocate.

The ABA supports retaining these clauses.

viii) Provide appropriate staff training, including on discharging their functions, providing banking services and knowledge of the Code.

The ABA understands that concerns have been previously raised about a lack of awareness of the Code by bank employees, and staff in branches not implementing obligations in relation to functions, such as the cancellation of direct debits and informing customers of basic accounts.

The ABA considers that improvements in staff training and competency is needed, and would appreciate receiving further information, evidence and examples to assist the banks identify how to improve training activities and programs.

Individual banks will need to assess their staff training needs. However, it may be useful for the industry to identify areas for specific attention. For example, the ABA could develop a training framework relating to the Code in consultation with member banks and consumer representatives to ensure consistent application across the industry. This training framework could be delivered through induction and ongoing training programs and via different training modules and modes by subscriber banks.

ix) Promote the existence of the Code.

The Code is currently required to be displayed at subscribing bank branches as well on their websites. The ABA is also required to promote the Code. There is a dedicated section on the ABA website¹⁴ on the Code which provides information about the Code, and identifies the banks that have adopted the Code.¹⁵

The ABA believes there is scope for broader promotion of the Code, both by the ABA and subscribing banks. In addition, it would also be worth considering how promotional activities could be improved to accommodate for changing customer experiences, to ensure the Code is accessible and that awareness of the Code works for customers and is useful and meaningful.

The ABA supports changing clause 11 of the Code, by removing the channel in which the Code is to be made available (for example, 11(a) display at our branches). This recognises changing customer preferences and the way banks are interacting with their customers. It is preferable that the promotion of the Code is not channel specific, rather channel agnostic.

Banks recognise a better understanding of access and use of the Code by customers would be beneficial for the industry in order to meet their commitment around promotion. For example, consumer research should be conducted to determine what forms of promotion and channels will most likely benefit customers and their awareness and responsiveness about the Code. Based on experience, the ABA is concerned that relying on branch and hard copy disclosures will undermine awareness raising activities.

e) The role and mandate of the Code Compliance Monitoring Committee (CCMC), the appropriateness of the differences between the CCMC mandate and clause 36 of the Code, and incentives for compliance by banks with the Code.

¹⁴ <http://www.bankers.asn.au/Industry-Standards/ABAs-Code-of-Banking-Practice/Code-of-Banking-Practice>

¹⁵ <http://www.bankers.asn.au/Industry-Standards/ABAs-Code-of-Banking-Practice/Banks-that-have-adopted-versions-of-the-Code-of-Banking-Practice>



The CCMC was established in 2004 and is an important component in the Code framework. It is responsible for monitoring compliance with the Code, publicly reporting on Code compliance, dealing with allegations of breaches and working with subscriber banks on compliance with the Code.

The CCMC Mandate and clause 36 of the Code should be read together to understand the CCMC's jurisdiction or Terms of Reference. The Mandate contains some qualifications on the CCMC's exercise of its compliance monitoring and investigation powers.

These qualifications are not considered by the ABA to be inappropriate, rather they are based on practical considerations which would apply to a body of this type including how the matters within its scope might also be considered in other forums.

Some of these qualifications were guided by limitations found in the Terms of Reference of the former Banking and Financial Services Ombudsman (**BFSO**) scheme (and its predecessor scheme Australian Banking Industry Ombudsman), recognising the difference between the role and function of a dispute resolution body and the CCMC as a compliance monitoring body.

The role of the Financial Ombudsman Service (**FOS**) is to seek to resolve a dispute on law, applicable industry codes or guidelines, good industry practice and fairness in all the circumstances. The role of the CCMC is not as a dispute resolution body, but as a decision maker solely to determine whether a bank has breached the Code.

Relevantly, qualifications on the power of the Ombudsman to consider a dispute which have been applied to the CCMC include:

- A bank's commercial judgment about lending or security, but not in cases of maladministration in lending.
- A dispute that is or became the subject of proceedings in another forum such as in a court or tribunal (with discretion to consider a dispute based on the same event and facts which was the subject of a dispute lodged with the BFSO), and
- Frivolous and vexatious disputes.

There is a one year time limit in subclauses 6.2.vi and vii of the Mandate within which a person alleging that a bank may have breached the Code must submit that allegation to the CCMC. The ABA acknowledges this differs from the previous BFSO and the current position under FOS where the time limit is 6 years.

The ABA considers this qualification on the CCMC's jurisdiction should be replaced, extending the time limit to two years.

Further, the CCMC plays an important role in the administration of the Code. Independent oversight of compliance with the Code is an important part of the Code's governance framework and contributes to the credibility of the Code. The ABA looks forward to providing its views about the activities of the CCMC to the separate review of the CCMC.

f) The operation of the Branch Closure Protocol, taking into account the recent review and changes made to ensure the effective operation of the Protocol.

In 2004, the ABA developed the *Transactions Services and Branch Closure Protocol (the Protocol)* committing the industry to providing rural and remote areas with ongoing face-to-face banking services after branch closures.¹⁶

¹⁶ The Protocol was developed as a response to a Parliamentary inquiry calling for banks to give attention to service delivery standards when considering the closure of a branch in remote and rural areas



Due to a number of banks raising particular operational and interpretation concerns, the ABA reviewed the Protocol in 2015. Various changes were made to the Protocol with the intent of clarifying existing definitions, addressing some practical difficulties with the standard, ensuring consistent application across the industry, ensuring the standard remains relevant with changes in retail banking, and helping position the banking industry for future developments.

The following review clause was also incorporated in the Protocol:

The Australian Bankers' Association will conduct a review of this Protocol together with the regular review of the Code of Banking Practice. This will involve consultation with member banks and other stakeholders.

This clause requires the Protocol to be reviewed in line with the Code of Banking Practice. Given the review of the Code has been brought forward, the ABA considers it unnecessary to review the Protocol at this stage. Overall, the ABA supports the changes made to the Protocol in 2015.

Appendix 2 provides a summary of the changes that were made to the Protocol.

g) Definitions, including practical definitions of banking services and small business.

Small business

“Small business” is currently defined in the Code as:

- a) A business having fewer than 20 full time (or equivalent) employees unless the business includes the manufacture of goods and it has fewer than 100 employees.
- b) If the banking service is a financial product or service regulated under Chapter 7 of the *Corporations Act*, then the Code applies to the small business if the small business is a ‘retail client’ within the meaning of the Act.

[Note: If the banking service is not a financial product or service regulated under Chapter 7 of the *Corporations Act*, for example a credit facility, then the definition in a) above will apply].

The ABA believes the review should consider the suitability of the definition of ‘small business’.

Currently, there is no standard definition of small business used by the financial services industry. Small business can be defined by full time equivalent employee head count, turnover and credit facility. The different definitions are usually fit for purpose and intended to ensure customers receive the best and most appropriate products and services for their banking needs. We note that various definitions of small business are also used by government authorities, regulators and within different legislative instruments. These definitions are considered fit for purpose in these contexts.

The ABA believes the definition used within the Code needs to be appropriate for the purpose and operation of the Code, namely to provide appropriate consumer protections for small businesses with less complex facilities and less sophisticated banking and lending needs and is intended to apply only to all individual and properly defined small business customers, including those without debt. We note that there have also been a number of changes to laws and regulations, company structures and employment conditions that need to be considered in order to identify a meaningful definition of small business.

The ABA notes that the FOS is currently working with ASIC on a review of the expansion of FOS's small business jurisdiction. The FOS defines small business as less than 20 employees or less than 100 employees if the business includes manufacturing. The FOS is not considering a substantive change to the definition of small business, but is reviewing certain threshold limits for small business disputes.



Strong banks – strong Australia

Banking service

“Banking service” is currently defined as:

- a) Any financial product or service provided by the bank in Australia to the customer directly or through an intermediary.
- b) Any product or service of a third party which is distributed by the bank to the customer in which case the Code applies to the bank’s conduct in distributing or supplying the product or service and not to the product or service itself.

The current definition of banking service is broadly defined and will need to be closely examined. Banks are no longer the only providers of many of these products and services, and while the Code represents the banking industry’s higher commitments to their customers, this can also create anomalies within various product offerings, service innovations and markets, which can undermine consumer protection and competition. The ABA envisages that a clearer definition of a banking service will be needed.

Further, consideration should be given to the definitions within the *Corporations Act 2001* (Cth) and the *Australian Securities and Investments Commission Act 2001* (Cth) and a focus on the provision of financial services.

h) Recognition of the needs of communities in remote, rural and regional areas.

The *Branch Closure Protocol* includes an industry commitment to provide individual and small business customers in rural and remote areas with ongoing face-to-face banking services.

The ABA thinks it is unnecessary for the Code to specifically call out one geographical area over another and provide additional commitments beyond those contained in the Protocol.

Individual banks have policies, statements and commitments regarding the provision of services to rural and regional communities. These policies can be found on individual bank websites. It is also important to acknowledge and highlight some of the benefits technology offers customers in rural and regional areas, such as the ability for face-to-face services via video conferencing.

At an industry level, the ABA has a number of policies that are important for regional and rural communities, for example, working with farmers and customers in hardship, support for rural financial counselling, as well as a commitment to mandatory farm debt mediation. The ABA acknowledges that farm debt mediation processes are not consistent across Australia. However, the ABA does not believe the Code is the appropriate mechanism to address farm debt mediation, rather we support the introduction of a national framework which seeks to harmonise State-based legislation.

i) Dealing with the particular needs of agricultural small businesses with respect to banking services.

The Code provides comprehensive coverage of small business banking facilities and how a bank should work with a small business customer in financial difficulty.

For the reasons explained in Terms of Reference h), the ABA considers it unnecessary for the Code to specifically call out one industry over another.

j) Direct debits and recurring payments made using a debit or credit card.

Consumer representatives have raised concerns with the ABA about the differences between the practices for cancelling a direct debit request on a bank account, and cancelling a recurring payment on a credit card or debit card. There is a view that the same process should be applied irrespective of the type of account because different processes can cause confusion for some consumers.



When setting up a direct debit, the customer will provide their bank and account details, including BSB and account number. A direct debit is defined as “an amount debited to a specified account of a customer with the customer’s financial institution, as requested and authorised in writing by the customer, to and in favour of a debit user (or to a third party in its capacity as agent for that named debit user) which is processed through the Bulk Electronic Clearing System (**BECS**).”

When setting up a recurring payment, the customer will provide the service provider with the 16 digit card number, expiry date and security code. A recurring payment is a regular payment made using a credit card or a debit card and is processed through the card scheme (for example, Visa, MasterCard and American Express). The card issuer does not see the cardholder authorisation for the payment unless a dispute about the legitimacy of the transaction is initiated.

Due to the different systems, there are different processes and rules applicable to direct debits and recurring payments across banks and financial institutions. For example, pursuant to clause 21 of the Code, a bank will cancel a direct debit request. This does not apply to a payment service relating to a credit card account. Card scheme rules cover credit cards and debit cards and typically a customer must cancel a recurring payment with the service provider, not through their bank.

In addition to the different processes and rules applicable, there are potential issues with regards to the interpretation of, and compliance with, the Code.

To address the lack of readily available information about cancelling direct debits and recurring payments, the ABA has developed a fact sheet.¹⁷ The ABA appreciates that while this will improve consumer education, it will not address concerns about the different processes from a customer perspective. We have investigated whether changes can be made to align the payment systems, however, currently this is not feasible. Therefore, we recognise that further efforts should be made to promote greater awareness to customers of their payment choices, and the implications of those choices.

The ABA recommends amending clause 21 of the Code to clarify the difference between direct debits and recurring payments.

k) Notice provided by banks with regards to any changes with a banking service.

In response to recommendation 9.1 of the November 2012 report by the Senate Economic References Committee into the *Post-GFC Banking Sector*, the Code was amended to provide that a bank will normally give at least 10 business days’ notice to its small business customer before making any one-off necessary change to a small business customer’s terms and conditions of their credit facility which may be materially adverse for the customer (clause 20.4).

The Final Report of the Financial System Inquiry (**FSI**) proposed as follows:

More broadly, the Inquiry encourages the banking industry to adjust its code of practice to address non-monetary default covenants. The Code of Banking Practice and the Customer Owned Banking Code of Practice could require banks to give borrowers sufficient notice of changes to covenants and of an intention to enforce—which could give a borrower reasonable time to obtain alternative financing. Such adjustments to industry practice would also provide greater scope and guidance for the Code Compliance Monitoring Committee and the Financial Ombudsman Service to deal with relevant complaints.

This aspect is addressed in Terms of Reference t). In addition, the ABA notes that the unfair contract terms provisions for standard form small business contracts commences on 12 November 2016.

¹⁷ <http://www.bankers.asn.au/ArticleDocuments/192/Direct%20debits%20Jan%202016.pdf.aspx>



Strong banks – strong Australia

l) Guarantees provided by a person for the purpose of securing finance or a facility for another individual or small business customer and joint debts.

Guarantees

The Code's protections for prospective and existing guarantors are extensive and reach much further than in any existing legislation. The ABA considers these provisions should remain a key part of the Code.

The ABA recommends this clause be redrafted to address the complexity and length of the clause and to clarify the banks' obligation,¹⁸ while maintaining the substantive protections for guarantors.

Joint debts

Consumer representatives have raised concerns with the ABA about joint debts, particularly in circumstances involving family and domestic violence. As part of the development of the ABA's *Financial Abuse Industry Guideline* to recognise customers affected by family and domestic violence, elaborated on further in Terms of Reference r), the ABA is consulting on the splitting and/or apportioning of joint debts, particularly where there is no agreement between the parties. Banks recognise that significant issues can arise when joint accounts and/or joint liabilities are involved as these finances can be used as another avenue to intimidate or control individuals.

The ABA welcomes the views of the Code reviewer in how banks can meet their legal obligations to all parties and help alleviate what can be a very difficult situation. In addition, the ABA also recognises the importance of improving awareness and understanding of joint obligations and specifically what role the Code can play in better informing customers.

m) Laws and regulations covering banking services to individual and small business customers and the extent to which new legal obligations to act in the client's best interest and responsible lending principles are addressed or require any amendment to the Code.

The ABA does not believe that matters, including obligations for a financial adviser to act in the client's best interest and responsible lending principles for retail customers, which are addressed in legislation should be replicated in the Code.

However, the ABA recommends the Code be amended to clarify clause 27 by setting out what a 'diligent and prudent banker' means and in what respect this may apply. We note that the *Banking Act 1959* (Cth) sets out that a bank should conduct its affairs with integrity, prudence and professional skill¹⁹.

Additionally, in light of the recent *Doggett v Commonwealth of Australia* (2015) VSCA 351, this clause should be clarified to make it clear that a bank can owe a contractual obligation to both its customer and any guarantor of the customer's debts, to exercise the care and skill of a diligent and prudent banker in selecting and applying the bank's credit assessment methods and forming an opinion about a customer's ability to repay.²⁰

¹⁸ See *National Australia Bank Ltd v Rose* (2016) VSCA 169

¹⁹ *Banking Act 1959* (Cth) s 5

²⁰ *Doggett v Commonwealth of Australia* (2015) VSCA 351



- n) **Treatment of disclosures and communications between banks and their individual and small business customers about products, services, and the costs of these products and services and the evolving technological developments in banking services and electronic communications, including the provision of bank statements to customers.**

Disclosure

The ABA observes that greater levels of disclosure have not necessarily resulted in better outcomes for customers, or improved understanding by customers of the banking services and products they are utilising. Therefore, requiring greater disclosure in the Code may not be beneficial.

Electronic communication

For electronic communications, clause 35 of the Code currently applies the ePayments Code as a default, even where the product in question would not usually come within the scope of the ePayments Code.

Recommendation 23 in the Final Report of the FSI states that the Federal Government should amend the law to remove regulatory impediments to innovative product disclosures and communication with consumers, and improve the way risk and fees are communicated to consumers.²¹ ASIC's *Regulatory Guide 221: Facilitating digital services disclosures* [RG 221], also states that one way to make disclosure more effective and efficient is by encouraging and facilitating the use of digital disclosure.²²

The ABA acknowledges and supports the Government's response that regulatory impediments to innovative product disclosures should be removed. Changes to the consumer credit provisions and the *Electronic Transactions Act* regime to further harmonise requirements across all financial services is strongly supported.

Further, the ABA supports recommendation 39 in the Final Report of the FSI on the importance of technology neutrality in stipulating communications standards with customers.²³

The desire for electronic communication is largely being driven by the preference of consumers and how they are choosing to interact with their financial services provider. The banking industry believes that better understanding and easier access will result in better informed consumer decision making and will promote access to financial products and services.

The ABA will give consideration to how these recommendations can be incorporated in the Code.

- o) **Sales and distribution and advertising and marketing practices of banks.**

The ABA does not support incorporating clauses in relation to the sales and distribution, and advertising and marketing practices of banks. These matters are generally and specifically addressed in legislation, including provisions relating to misleading and deceptive statements or conduct, and should not be replicated in the Code.

Additionally, ASIC's *Regulatory Guide 234: Advertising financial products and services (including credit): Good practice Guide* [RG 234]²⁴ provides further guidance on meeting advertising and marketing standards as well as details the various other guides applicable to disclosure standards.

²¹ <http://fsi.gov.au/publications/final-report/executive-summary/>

²² ASIC Regulatory Guide 221, Facilitating digital financial services disclosures.

²³ <http://fsi.gov.au/publications/final-report/executive-summary/>

²⁴ <http://download.asic.gov.au/media/1246974/rq234.pdf>



Strong banks – strong Australia

p) The extent the Code covers the practices and qualifications of intermediaries and others banks use in the course of providing banking services.

The Code currently covers bank practices when dealing with persons who are, or who may become individual and small business customers and their guarantors. The scope of the Code is limited in application. The ABA notes concerns have been expressed in relation to the activities of third parties. The industry considers these are important issues to be examined through further discussion.

The ABA does not believe that banks should be responsible for the practices and qualifications of third parties, beyond what would reasonably be expected where these third parties are used by banks and are agents of the bank. For example, where there is a formal service agreement entered into and the party is acting on behalf of the bank, with the bank holding legal responsibility for their actions. We note that receivers and external valuers are not agents of a bank.

Third party providers would be expected to act in a reasonable and ethical manner towards customers. Therefore, banks would have relevant frameworks and monitoring processes in place to ensure that suppliers or third party providers are complying with obligations relevant to the services they are providing on the bank's behalf.

q) Commitments to accessibility and financial inclusion, including account suitability and basic bank accounts, financial literacy and the implications of technology developments on banking services.

The ABA notes that the current Code does not incorporate specific commitments to accessibility and financial inclusion.

Financial inclusion

The banking industry is committed to addressing financial inclusion with a number of banks having programs in place demonstrating action on this commitment.

As noted in our response to Terms of Reference d) v), the ABA suggests including a key commitment that banking will be inclusive.

Accessibility

Section 24 of the *Disability Discrimination Act 1992* (Cth) states that it is "unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's disability or a disability of any of that other person's associates".²⁵

The banking industry is committed to ensuring the accessibility of banking products and services and a number of banks have action plans which reflect this commitment.

At an industry level, in 2002, the ABA in collaboration with the disability community, produced voluntary industry standards which aimed to improve the accessibility of electronic banking channels: Automated Teller Machines (**ATMs**), Electronic Funds Transfer at the Point of Sale (**EFTPOS**), telephone and Internet banking. The ABA is currently reviewing these standards to ensure the rapidly changing technology and the various changes in service delivery models in banking are reflected in this commitment to accessibility.

As part of this review, the ABA is considering disbanding the standards in their existing form and adopting a set of principles which could be incorporated by way of reference in the Code. Aligning them with the Code would give them force and strengthen our commitment. However, the ABA does not believe the standards should be prescribed in the Code, and considers adopting guiding principles would allow changes to be made more easily to reflect developments as they evolve.

²⁵ *Disability Discrimination Act 1992* (Cth) s 24



The ABA welcomes the views of the Code reviewer in relation to how this may be effectively captured in the Code. This will be explored further in Terms of Reference r) below.

Account suitability

Clause 16 of the Code has limited application and focuses on the availability of basic bank accounts to low income retail customers.

The ABA does not believe this clause should be expanded, noting legal obligations more broadly about account suitability. The ABA suggests this section would benefit from a new heading more appropriate to the industry's commitment, aligning with broader commitments on financial inclusion and accessibility.

The ABA's *Affordable Banking* website²⁶ contains information about basic banks accounts. These are fee free bank accounts available to eligible customers. This website also contains a list of those banks which offer a basic bank account.

r) **The desirability for the Code to provide for banks to develop standards for communicating and dealing with vulnerable customers including older persons, customers with a disability and Indigenous customers.**

The ABA works with our member banks on the development of industry standards, guidelines and protocols in a range of areas. The following have been developed, or are currently being developed, by the ABA:

- **Industry guideline – Protecting vulnerable customers from potential financial abuse:** This guideline explains what financial abuse can look like, how it can impact customers and the bank's relationships with their customers, and how banks' staff can respond.²⁷
- **Industry guideline – Responding to requests from a power of attorney or court-appointed administrator:** This guideline explains how these different arrangements work legally across Australia, how they are used by bank customers and their substitute decision-makers, and provides a framework for how banks should respond to these arrangements.²⁸
- **Industry guideline on financial hardship:** This guideline provides practical guidance on how banks can support customers in ways that meet, and in some areas, exceed their existing legal obligations. More importantly, the guideline outlines a framework for banks which balances standardised access to financial hardship assistance with the need for flexibility when responding to customers' individual circumstances.²⁹
- **Indigenous Statement of Commitment:** To continue to demonstrate the industry's commitment to Indigenous accessibility and to reflect the changing nature of retail banking and access to banking products, services and technologies, the ABA has revised its Indigenous Statement of Commitment. This renewed commitment builds on existing actions, with the ABA and member banks being committed to exploring additional efforts to address the social, economic and financial disadvantage of Indigenous Australians.³⁰

²⁶ <http://www.affordablebanking.info/>

²⁷ http://www.bankers.asn.au/ArticleDocuments/207/Industry_Guideline_Responding_to_requests_from_a_power_of_attorneys_or_court-appointed_administrator2.pdf.aspx

²⁸ http://www.bankers.asn.au/ArticleDocuments/207/Industry_Guideline_Protecting_vulnerable_customers_from_potential_financial_abuse2.pdf.aspx

²⁹ <http://www.bankers.asn.au/Consumers/Are-you-experiencing-financial-difficulty->

³⁰ <http://www.bankers.asn.au/ArticleDocuments/113/ABA%20Indigenous%20Statement%20of%20Commitment.pdf.aspx>



- **Position on Financial Literacy:** The ABA's *Position on Financial Literacy* supports the National Financial Literacy Strategy 2014-2017. It outlines the banking industry's principles on financial literacy and the key actions Australia's banks will pursue to help raise levels of financial literacy in Australia.³¹
- **Industry guideline – Promoting understanding about banks' financial abuse and family and domestic violence policies:** The ABA is currently working with our member banks on developing financial abuse guidelines to recognise customers affected by family and domestic violence. This outlines a framework for banks to raise awareness and promote consistent arrangements to support customers who may be impacted by financial abuse and family and domestic violence.
- **Position on Financial Inclusion:** As noted above in our response to Terms of Reference d) v), the ABA is finalising its *Position on Financial Inclusion*.

The package of reforms announced on 21 April 2016 also contains a number of initiatives. The banking industry is working on the implementation of these initiatives.

The ABA believes this self-regulatory approach has proven to be very effective, and has delivered substantial benefits to banks and their customers. The development of industry standards, guidelines and protocols should remain separate to the Code, but refer to, or build on, our key commitments in the Code. It is important that these standards developed for communicating and dealing with vulnerable customers remain flexible for the purposes of accommodating any changes and evolving needs. It is also important to ensure that the Code does not become cumbersome with too much detail.

The ABA acknowledges that there is an opportunity for banks to explain and raise awareness of the considerable work done by banks with vulnerable customers, particularly with the development of these standards. The industry would be open to incorporating these standards into one document that could be referred to in the Code and will build on the industry's commitment. This reference will include where the standards can be located, for example, the ABA website.

The ABA would be pleased to discuss with the Code reviewer how these industry commitments may be effectively captured in the Code.

- s) **The desirability of the Code to include minimum standards for working with small business customers in financial distress. For example, customer communication; notice period for enforcement actions; on request by the customer, disclosing independent valuation reports of its small business customer obtained by the bank and paid for by their customer; and ethical standards of receivers/ managers (particularly for rural properties with livestock).**

The ABA believes the review should consider the appropriateness of minimum standards for banks for working with a small business customer in financial distress. For example:

- Improving customer communication i.e. providing a reminder notice to a borrower (where there is no default) prior to the expiry of a commercial loan term.
- Providing reasonable notice periods where a bank decides not to roll over the loan (and there is no default).
- Providing copies of valuations to a customer where a customer has paid for the valuation, the customer is not in default and the bank has the consent of the valuer.
- Clearly outlining in the loan terms and conditions the types of changes that a bank can make and the period of notice a bank will give to the customer in relation to each of those changes.

³¹ http://www.bankers.asn.au/ArticleDocuments/118/ABA_Position_on_Financial_Literacy.PDF.aspx



However, the ABA does not consider it appropriate that the conduct or ethical standards of receivers and managers is considered within the Code. The Code is focused on the conduct of banks and not third parties, many of whom will have their own legal, regulatory and self-regulatory obligations.

The ABA notes that the Code reviewer will need to consider the implications of changes to the unfair contract terms provisions with respect to small business contracts.

t) The desirability of the Code to set a reasonable compliance timeframe for a small business customer to comply with a bank’s notice of demand and circumstances in which a minimum timeframe should not apply having regard to the provisions of clause 28 of the Code for the bank to work with the customer to try and help their customer overcome its financial difficulties with its credit facility.

The ABA supports including a clause in the Code dealing with an appropriate period of notice following default by the debtor where there is no applicable legislative obligation, such as in the case of small business customers.

The requirement for consumer credit facilities under the *National Credit Code* is 30 days from the date of the notice for the customer to remedy the default.

There are court decisions requiring the debtor to be allowed a reasonable time to satisfy the demand.³²

The ABA considers that for small business credit facilities, taking into account the greater financial vulnerability of small businesses’ financial positions, the speed with which a business can deteriorate, the variety of circumstances which can present, and the risks posed by other creditors of the business, that it would be appropriate to provide for this in the Code.

On this basis, the court has held that the interests of the parties would be adequately protected by observing the principle that the debtor must be allowed a reasonable opportunity to comply with a demand for repayment of the amount owing under the credit contract taking into account the circumstances of the case.

u) The desirability of the Code to include minimum standards for the offer of credit cards, and specifically whether minimum repayment requirements or alternatives should be prescribed.

On 18 December 2015, the Senate Committee released its report entitled *Interest Rates and Informed Choice in the Australian Credit Card Market*.³³ The Government has considered the recommendations made by the Senate Committee and is currently consulting on a set of proposed reforms. The ABA lodged its submission to the Government on 1 July 2016.

Given the current Government’s consideration of credit card reforms, the ABA does not believe the Code should prescribe or include standards specific to the provision of credit cards. Banks are not the only credit card providers - with around 140 providers across the credit card market, including banks, credit unions and building societies, and others, including credit card companies and retailers. If there are to be any changes to credit card products, disclosures or other practices, these should apply to all credit card providers.

³² *Bunbury Foods Pty Ltd v. National Australia Bank Ltd (1984) HCA 10*

³³ The ABA provided a submission to the Senate Standing Committee on Economics inquiry into matters relating to credit card interest rates in August 2015; appeared before the Committee on 22 September 2015, and provided a supplementary submission to the Committee on 11 November 2015



Strong banks – strong Australia

The ABA does not support mandating a standardised, alternative calculation for the minimum monthly repayment and does not believe the Code should cover industry standards on minimum repayment requirements. The ABA provided details to the Government about the potential adverse implications for all consumers where a minimum repayment requirement is mandated. The ABA has also indicated that based on industry data, around 3 to 4 per cent of credit card customers over the past year have made a minimum monthly repayment in any given month, and around 0.1 per cent of credit card customers paid only the minimum monthly repayment over the past year.

A copy of the ABA's submission to the Government is available upon request.



Strong banks – strong Australia

3. Additional items

In addition, the Code reviewer is asked to consider whether the Code ought to comply, and whether it does comply with, ASIC's *Regulatory Guide 183: Approval of financial sector codes of conduct* [RG 183]³⁴.

The ABA does not believe that the Code requires additional oversight by ASIC. The incorporation of the Code into the terms and conditions of subscriber banks, its periodic independent reviews in consultation with the key stakeholders, and the role of the CCMC as a dedicated monitoring body is sufficient to ensure and demonstrate enforceability of the Code.

Additionally, the Codes that would normally be approved under RG 183 relate to financial services under the *Corporations Act*. The Code is much broader extending to credit and covers small business credit which is currently not regulated. It also touches broadly on conduct by banks under the *Banking Act 1959* (Cth). It would not seem appropriate to give ASIC oversight of this area without a detailed consideration of the impact of that oversight on an area where there are currently no legislative requirements.

The ABA believes that the Code is an important self-regulatory tool. However, we are interested to hear whether there are views to the contrary and reasons or additional benefits in seeking ASIC's approval.

³⁴ <http://download.asic.gov.au/media/1241015/rq183-published-1-march-2013.pdf>



Strong banks – strong Australia

4. Conclusion

The banking industry is committed to the Code remaining an important self-regulatory tool and an important part of the consumer protections afforded to bank customers.

The ABA is also committed to strengthening the banking industry's current commitment to customers, making sure that the Code improves and continues to set standards of good banking practice for banks in the offering of their products and services, and evolves to reflect the changing needs of banks, their customers and the wider community.

The ABA looks forward to the outcomes of this Code review.



Appendix 1

Banks that have adopted versions of the Code of Banking Practice

Dates of adoption

Bank	Code of Banking Practice 2013	Modified Code of Banking Practice 2004	Revised Code of Banking Practice 2003	Code of Banking Practice 1993*
Adelaide Bank Limited (a division of Bendigo and Adelaide Bank as of 1 December 2008)	1 February 2014	4 April 2005	12 August 2003	✓
AMP Bank Limited	1 February 2014	10 December 2010		✓
Arab Bank Australia Limited				✓
Australia and New Zealand Banking Group	1 February 2014	16 August 2004	15 August 2003	✓
Bank of Melbourne (a division of Westpac Banking Corporation as of 25 July 2011, see Westpac Bank)				
Bank of Queensland Limited	1 February 2014	6 December 2004	7 October 2003	✓
Bank of Sydney	10 February 2014	1 January 2012		
BankSA (a division of Westpac Bank, see Westpac Bank)		1 June 2004	12 August 2003	✓
Bank of Western Australia (a division of Commonwealth Bank as of 1 October 2012, see Commonwealth Bank)		1 April 2005	7 September 2006: Full adoption 19 January 2004: Conditional adoption	✓



Strong banks – strong Australia

Bank	Code of Banking Practice 2013	Modified Code of Banking Practice 2004	Revised Code of Banking Practice 2003	Code of Banking Practice 1993*
Bendigo Bank (a division of Bendigo and Adelaide Bank as of 1 December 2008)	1 February 2014	1 July 2005		
Citigroup Pty Limited	1 February 2014	14 October 2004	5 April 2004	✓
Commonwealth Bank of Australia	1 February 2014	22 July 2004	12 August 2003	✓
HSBC Bank Australia Limited	31 January 2014	5 July 2004	10 May 2004	✓
ING Bank (Australia) Limited	1 February 2014	15 June 2004	3 November 2003	✓
Macquarie Bank				✓
National Australia Bank Limited	1 February 2014	31 May 2004	29 August 2003	✓
Rabobank Australia Limited	1 February 2014	22 September 2008		✓
St George Bank Limited (a division of Westpac as of 1 March 2010, see Westpac Bank)		1 June 2004	12 August 2003	✓
Suncorp Metway Limited	1 December 2013	30 June 2004		✓
Westpac Banking Corporation	1 February 2014	1 June 2004		✓



Appendix 2

Summary of technical changes to the Branch Closure Protocol

Change	What does this mean?
<p>Definition</p> <p>Specifically, ‘rural’ and ‘remote’ has been clarified with reference to the ABS Australian Statistical Geography Standard. The Protocol now applies to the closure of branches in the Inner Regional, Outer Regional, Remote, Very Remote and Migratory classes only if there is not another branch of the same brand within 20 kilometres by road.</p>	<p>Banks will be using standardised categorisation and interpretation for the remote and rural areas. This approach is intended to have greater consistency of application of the standard.</p>
<p>Notice requirement</p> <p>Specifically, a two-tiered approach for notice of branch closure to ensure clarity around process.</p>	<p>Twelve week notice period where there is access to alternative banking services. This approach deals with some problems banks encountered with staff retention following a 24 week branch closure announcement. This approach is also intended to ensure banks look more closely at alternative service options and assisting customers with the transition period.</p>
<p>Community consultation</p> <p>Community impact statement replaced by direct community engagement</p>	<p>Banks will engage with customers and the community and formally respond to queries and concerns raised about the closure of the branch, and in doing so directly address community expectations. This approach is intended to make sure community consultation is not generic and addresses matters raised and are specific for the circumstance.</p>
<p>Exception – safety</p> <p>Inclusion of a clause which exempts banks from complying with the notice requirement, where a branch must close due to major structural defects or property damages and these circumstances pose a risk to bank customers, staff and the community.</p>	<p>Banks are clear that where there are safety concerns for employees and customers with the premises, banks do not have to adopt the standard.</p> <p>It should be noted that it was not intended that safety issues be ignored in such circumstances. In practice, some banks were being sensible with their decision to close the branch without meeting the standard. However, some banks have been advised by their lawyers that in the absence of an explicit exception, the standard should be adopted. Safety has unfortunately been an issue due to natural disasters, even termites, more recently.</p>
<p>Review</p> <p>Inclusion of a review clause that requires the Protocol to be reviewed in line with the Code of Banking Practice.</p>	<p>The Protocol will now be reviewed along with the Code of Banking Practice. The Protocol has not been reviewed since it was implemented even though it is referred to, and part of the commitments in the Code.</p> <p>It should be noted that even though we have fixed some interpretation problems and operational issues, we think the Protocol would benefit from a broader review conducted regularly to ensure it remains relevant for banks and their customers. This review would involve formal consultation with stakeholders similar to the Code.</p>