



ASIC
Australian Securities &
Investments Commission

Attachment 4 to CP 373: Proposed Customer Guide

ASIC is seeking feedback on proposed changes to the Australian Banking Association's Banking Code of Practice (Code) in response to an independent review of the Code in 2021: see Consultation Paper 373 *Proposed changes to the Banking Code of Practice* ([CP 373](#)).

As part of our public consultation, the ABA has provided ASIC with a new customer-facing document, 'Banking with confidence: your key rights and protections as a customer' (proposed Customer Guide).

The proposed Customer Guide does not form part of the Code and is not a document that ASIC will consider for approval. However, we are publishing the proposed Customer Guide as part of our consultation because we consider it will assist stakeholders in forming views on whether the Code strikes the right balance in terms of weighing the goals of simplicity and avoidance of regulatory duplication against consumers' ability to understand the rights that apply to their banking relationship.

For more information about our consultation, see [CP 373](#) and the following accompanying documents:

- a comparison of the provisions in the current Code with the equivalent provisions in the proposed Code (see Attachment 1 to CP 373);
- the draft revised Code (see Attachment 2 to CP 373); and
- a revised Banking Code Compliance Committee Charter (see Attachment 3 to CP 373).

Stakeholder feedback on these documents, including the proposed Customer Guide, will help ASIC form our views about whether to approve the revised Code.



Banking with confidence: your key rights and protections as a customer

The Banking Code of Practice (the **Banking Code**) sets out standards of practice and service in the Australian banking industry for individual and small business customers, and their guarantors. The Banking Code provides safeguards and protections not set out in the law. While the Banking Code complements the law and, in some areas, sets higher standards than the law, it is not the source of all protections available to customers. For more information regarding your rights and protections available under the Banking Code, please see the Banking Code available here: [\[insert link\]](#)

This guide is a summary of some key customer rights and protections under Australian law, which operate separate to the Banking Code. This guide has been prepared by the ABA and its members to help you understand your key rights and protections at law. However, this guide is not legal advice and does not form part of the Banking Code. To fully understand what rights you have in your specific situation, you may wish to seek independent legal advice.

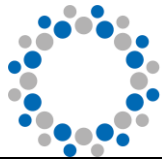
Australian law

You have rights and protections under Australian law. The rights and protections that apply to you in relation to your banking service depends on a number of factors including the type of customer or guarantor you are and what type of banking service you have. Various regulators and bodies monitor and enforce these laws including:

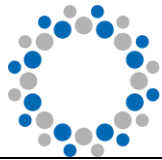
- Australian Securities and Investments Commission (ASIC)
- Australian Prudential Regulation Authority
- Australian Competition and Consumer Commission
- Office of the Australian Information Commissioner.

The rights and protections that may be applicable to a banking service under Australian law include, but are not limited to:

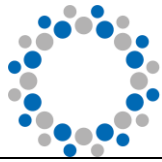
<p>Australian Financial Complaints Authority (AFCA)</p> <p>Corporations Act 2001 (Cth)</p> <p>National Consumer Credit Protection Act 2009</p>	<p>AFCA is a free, independent complaints scheme. It provides a way of resolving disputes without having to go to court. Banks are required to be members of AFCA. AFCA's decision is binding on the bank.</p> <p>AFCA generally hears claims for under \$1 million for individual customers (or under \$5.425 million for small business loan claims).</p> <p>AFCA makes its determination on the basis of what it considers fair, having regard to laws (including the laws mentioned below), the Banking Code, and good industry practice.</p> <p>For more information on AFCA and how to enforce your rights generally, please refer to page [insert] below.</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



<p>Responsible Lending Conduct National Consumer Credit Protection Act 2009 (Cth)</p>	<p>Where a bank provides consumer credit (such as a home loan, personal loan, or credit card) to individuals, the National Consumer Credit Protection Act may apply. This Act requires banks to assess whether the credit or credit limit increase is not unsuitable for a customer. This Act includes obligations on banks to:</p> <ul style="list-style-type: none"> • assess a customer’s requirements and objectives • ask a customer about their financial situation and take reasonable steps to verify their financial situation • assess whether it is likely that a customer will not be able to repay the credit or will not be able to repay without substantial hardship.
<p>Consumer Credit Protections National Consumer Credit Protection Act 2009 (Cth) <i>National Credit Code</i></p>	<p>Where a bank provides consumer credit (such as a home loan, personal loan, or credit card) to consumers, the National Credit Code may apply.</p> <p>The National Credit Code contains a number of protections including:</p> <ul style="list-style-type: none"> • precontractual disclosure requirements, contract form and content requirements; • rules in relation to mortgages and guarantees • rights in relation to hardship and unjust transactions (including certain unconscionable fees and charges) • rules on default and enforcement.
<p>Customer protections for electronic payments ePayments Code</p>	<p>The ePayments Code is a voluntary code of practice which regulates electronic payment transactions including ATM, EFTPOS and credit card transactions, online payments, internet and mobile banking, and BPAY. Banks who subscribe to the ePayments Code are required to (amongst other things):</p> <ul style="list-style-type: none"> • give customers clear and unambiguous terms and conditions • comply with requirements for terms and conditions changes, receipts and statements of account. <p>The ePayments Code complements other regulatory requirements, including financial services and consumer credit licensing, advice, training and disclosure obligations under the <i>Corporations Act 2001</i> and the <i>National Consumer Credit Protection Act 2009</i>.</p>
<p>Credit Reporting Privacy Act 1988 (Cth)</p>	<p>A credit report is a detailed record of your credit history. Some organisations such as banks, credit providers, credit card providers, store card issuers and other businesses that you have accounts with can list defaults on your credit report. Some credit providers, like banks and store card issuers also list whether you have made your payments on time.</p>



	The Privacy Act and the Credit Reporting Code sets out how this information may be used and imposes protections to safeguard personal information within credit reports.
Credit Cards National Consumer Credit Protection Act 2009	Banks have specific obligations relating to credit cards including how payments are applied to credit card balances, how limits can be increased, and how credit contracts can be cancelled by customers.
Privacy and confidentiality Privacy Act 1988 (Cth)	<p>The Privacy Act regulates the way personal information is collected, used and disclosed.</p> <p>The Act includes Australian Privacy principles which govern standards, rights and obligations around:</p> <ul style="list-style-type: none"> • The collection, use and disclosure of personal information • an organisation's governance and accountability relating to personal information • integrity and correction of personal information • the rights of individuals to access their personal information. <p>Banks have privacy policies available on their websites.</p>
Misleading or deceptive conduct Corporations Act 2001 (Cth) Australian Securities and Investments Commission Act 2001 (Cth) National Consumer Credit Protection Act 2009 Australian Consumer Law	There are a number of Australian laws that contain various prohibitions including on misleading or deceptive conduct, false or misleading representations, unconscionable conduct, harassment, and coercion, in relation to consumer credit, financial products and services, and other products and services.
Product design and distribution obligations Corporations Act 2001 (Cth)	The Corporations Act includes design and distribution obligations. These laws are designed to make banks design and distribute their products with a customer centric approach that considers the objectives, financial situation and needs of the customers for whom the product is intended for.
Anti-hawking Corporations Act 2001 (Cth)	Where a bank is an issuer or seller of a financial product, they are generally not allowed to offer customers financial products during unsolicited contacts (e.g. cold calls), if you have not consented to such offers.



Unfair contract terms

[Australian Securities and Investments Commission Act 2001 \(Cth\)](#)

These laws apply to certain ‘standard form’ contracts that are intended to protect customers from terms and conditions in those contracts that are unfair. Under these laws, a term is unfair if it causes a significant imbalance in rights and obligations that is detrimental to the customer, and where it is not reasonably necessary to protect a legitimate interest of the bank.

How you can enforce your rights

The types of protections that apply to you depend on what type of customer or guarantor you are, and what type of banking service you have. If you have a complaint about a banking service or you think an obligation has not been met under the Banking Code or under Australian law you may be able to hold your bank to these commitments in a variety of ways including:

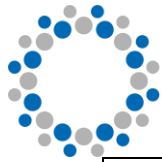
Internal Dispute Resolution

If you have a dispute, you should contact your bank in the first instance. Banks will try to resolve your concern internally – this process is known as internal dispute resolution (**IDR**). Each bank has contact information for their complaints area on their website.

For the following types of complaints, ASIC Regulatory Guide 271 Internal Dispute Resolution sets out the relevant timeframes which a bank is required to seek to resolve your complaint through their IDR process¹:

Complaint type	Timeframe
Standard complaints	No later than 30 calendar days after receiving the complaint.
Credit-related complaints involving default notices	No later than 21 calendar days after receiving the complaint.
Credit-related complaints involving hardship notices or requests to postpone enforcement proceedings	No later than 21 calendar days after receiving the complaint. However: Insufficient information <ul style="list-style-type: none"> • if your bank does not have sufficient information about your hardship notice, your bank will request further information within the 21 calendar days; • you must provide the requested information within 21 calendar days of receiving the request from us; • upon receipt of your further information, your bank will respond no later than 21 calendar days.

¹ These timeframes are prescribed by ASIC RG 271 Internal Dispute Resolution and are accurate as at the published and effective date of this guide. They may not reflect guidelines applicable to your situation. Please refer to ASIC RG 271 for further information.



	<p>Agreement reached</p> <ul style="list-style-type: none">• if an agreement is reached about your hardship notice or request to postpone enforcement proceedings, your bank will confirm the terms and conditions no later than 30 calendar days from the date the agreement is reached.
--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Your bank is not required to resolve your complaint within the maximum time frame set out in the table above if they have not had a reasonable opportunity to respond because:

- your complaint is particularly complex; and/or
- circumstances beyond the bank's control are causing delays.

Before the maximum time frame expires, your bank will give you an 'IDR delay notification' setting out the reasons for the delay and your right to complain to AFCA.

Australian Financial Complaints Authority

In many cases, your complaint will be resolved between you and your bank with no further action needed. If you're not satisfied, you can take your complaint to the AFCA, if your complaint fits within their rules. AFCA is a free, independent complaints scheme. It provides a way of resolving disputes without having to go to court. AFCA's decisions are binding on the bank.

AFCA only deals with complaints if you've first given the bank a chance to help you.

Court Action

You may also be able to bring a court action to enforce your rights. You may wish to seek independent legal advice about this. However, you may wish to first attempt resolving your dispute via IDR or AFCA as these options are free and easy to access.

Where customers can get more information

More information about your rights and how to enforce them can be found here:

- **ASIC Moneysmart** website offers financial guidance for all Australians – with simple tools, tips and calculators. - <https://moneysmart.gov.au/>
- **AFCA** website - <https://www.afca.org.au> or call 1800 931 678
- The **National Debt Helpline** offers a free, independent and confidential service to help people who are having trouble with their money. Financial counsellors are qualified professionals. Call 1800 007 007 or visit their website (<https://ndh.org.au/>) to [talk to a financial counsellor](#).
- **Legal Aid** is a government service in each state and territory that provides free legal services (<https://www.nationallegalaid.org/>).



Australian Banking
Association

- **Community Legal Centres** provide legal services to socially and economically disadvantaged people. [Find a Community Legal Centre near you \(https://clcs.org.au/legal-help/\)](https://clcs.org.au/legal-help/).

DRAFT