

Banking Code Consultation Team
Regulation & Supervision
Australian Securities and Investments Commission
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By email: BankingCode@asic.gov.au

Dear Banking Code Consultation Team

PROPOSED CHANGES TO THE BANKING CODE OF PRACTICE

The Mortgage and Finance Association of Australia (**MFAA**) appreciates the opportunity to review and make comment on ASIC's Banking Code of Practice Consultation Paper (**the Consultation**).

As context to this submission, the MFAA is the peak industry body for the mortgage and finance broking industry with circa 15,000 members. Our members include mortgage and finance brokers, aggregators, lenders, mortgage managers, mortgage insurers and other suppliers to the mortgage and finance broking industry. Brokers play a critical role in intermediated lending, providing access to credit and promoting choice in both consumer and business finance. Brokers facilitate more than two thirds of all new residential home loans¹ and approximately four out of ten small business loans² in Australia.

The MFAA's role, as an industry association, is to provide leadership and to represent its members' views. We do this through engagement with governments, financial regulators and other key stakeholders on issues that are important to our members and their customers. This includes advocating for balanced legislation, policy and regulation and encouraging policies that foster competition and improve access to credit products and credit assistance for all Australians.

OUR SUBMISSION

The MFAA welcomes the Consultation and is pleased to be provided with the opportunity to respond. It is important to note for completeness, that many Code subscribers are MFAA members.

With 97% of MFAA members being small broking businesses and 71.5%³ of all home loans distributed through the broking channel, it is equally important to note that our submission focuses on how to best support the mutual customers of both our bank and broker members.

As background to this submission, it is important to note that last year, the MFAA participated in the ABA consultation on proposed changes to the Code (**ABA consultation**). Our observations of that consultation conducted by our ABA colleagues was that it was both thorough as it was professional.

¹ [MFAA Industry Intelligence Service Report 16th Edition](#) pp 4.

² Productivity Commission research paper [Small business access to finance: The evolving lending market](#) pp 44.

³ MFAA Quarterly survey of broker market share, July to September 2023, 28 November 2023 media release [Mortgage broker market share rebounds](#).

We were pleased to see several of the recommendations we made to that consultation recognised, these were specifically with respect to vulnerable customers, co-borrowers, and guarantors.

In saying this, and as we discussed with the ABA, we believe there is scope for further changes to the Code for the benefit of the mutual customers of both banks and brokers. To that end, we believe the Code should:

- outline bank obligations to customers to switch home loan providers in line with the ACCC Home Loan Price Inquiry recommendations,
- ensure there is channel parity by requiring banks to provide the same terms, offers, discounts, product benefits and services to home loan customers irrespective of whether they choose to go directly to the bank or through a broker, and
- manage cybersecurity risk and the risk of scams across the ecosystem through implementing good practices with respect to customer personal information.

Refinancing or switching

For the benefit of the mutual customers of both brokers and banks, we believe there is opportunity for the Code to make it easier for customers to switch home loans. To that end we make the following recommendations:

- recognising that brokers provide expert advice and support to home loan customers, where relevant, making it a requirement for bank staff to, in addition to recommending a customer seek the advice of an accountant, solicitor or financial planner to also seek the assistance of a mortgage broker,⁴
- making it an obligation on banks to prompt customers with variable rate home loans⁵ to consider whether alternative products may better suit their needs, regardless of whether it is with the incumbent bank, or switching to a new one, and
- where the customer chooses to switch home loan providers, implementing a commitment to making it easier and simpler for consumers to do so – including to allow for brokers to represent customers in the discharge process, mandating discharge timeframes and ensuring one consistent, standard process.

While we recognise that many of the recommendations above will be the subject of the Government's response to the ACCC Home Loan Price Inquiry Report,⁶ there is an opportunity the Code to pre-emptively address the recommendations made in that Report in support of both competition and choice for consumers.

Channel parity

It is important for reasons of consumer protection and preserving market integrity and competition that the consumer experience is consistent regardless of whether a consumer chooses to access finance directly with a bank or through a mortgage or finance broker.

To that end, and recognising that 71.5% of all home loan customers are choosing to use a broker, we recommend implementing an obligation that irrespective of whether a customer chooses to go through a broker or go directly to a bank, the customer should be able to access that product on the same and equal terms – this includes the same interest rate, cashback offer, discount, product benefit, credit risk criteria and/or service level.

Cybersecurity, privacy and scams

⁴ We therefore recommend amending paragraph 10 of the Code to include the opportunity for bank customers to be referred to a mortgage and finance broker and read as follows "*If you ask us for advice on any of our Banking Services, then we will provide it to you through staff who are authorised and trained to give you that advice. We may also suggest you see someone else who can provide independent advice, such as a lawyer, accountant, financial adviser, mortgage and finance broker, or financial counsellor.*"

⁵ Recommendation 1, ACCC [Home loan price inquiry - final report](#).

⁶ Media release, [Australian Competition and Consumer Commission retail deposit inquiry | Treasury Ministers](#), 15 December 2023.

ANNEXURE A

#	Question	MFAA Response
C1	Do you think the proposed Code contains an appropriate range of commitments by the banks to prevent consumer harm that go beyond what is required by the law?	<p>We believe the Code can do more and expand its range of commitments, in particular, to support home loan borrowers who seek to switch lenders. The ACCC Home loan price inquiry final report found pain points in the discharge process can cause consumer harm and impede competition,⁸ further stating that ‘when borrowers decide to complete a switch to a new lender for a cheaper or more suitable product, they will still incur a cost, financial or otherwise, for each day of delay during the discharge process.’</p> <p>The MFAA ran a series of member roundtables⁹ across Australia in August 2023 to gather insights from members on the barriers faced by them and their customers in the home loan discharge process. The following themes emerged:</p> <ul style="list-style-type: none"> • lenders are making it more difficult for people to switch and achieve a discharge, including requiring customers to make in-person contact with lenders, • discharge timeframes continue to be lengthy, causing customers to miss settlements, pay more in fees and interest, • increasingly, lenders are using retention tactics to try and save the customer from discharging their mortgage, and • the lengthy and complex process creates confusion in the consumer’s mind and leads to uncertainty to who to trust – their lender or their broker. <p>MFAA data shows that borrowers continue to exhibit significant signs of stress.¹⁰ More so than ever, there needs to be a good, easy process to assist them to switch lenders so that they can benefit from more competitive offers that help to improve their household finances.</p> <p>We note that paragraphs 38 to 40 of the Code describe customers can close any of their banking services and in particular, paragraph 39 commits to enabling customers to close their accounts quickly and easily. By way of a practical suggestion, this section could be extended to specifically require banks to make it easy for home loan customers seeking to close their home loan accounts and discharge their mortgage with the bank (i.e., for the purposes of a refinance). Alternatively, the Code’s section <i>B4 Lending to Individuals</i> which is currently written for how “banks provide loans or credit to individuals”, could be enhanced to include obligations on banks to assist customers seeking to leave, or switch, their home loan.</p>

⁸ ACCC [Home loan price inquiry - final report](#), pp 57.

⁹ Member roundtables were held in Sydney NSW, Melbourne VIC, Adelaide SA, and Perth WA between 1 and 7 August 2023, capturing feedback from over 35 number of brokers.

¹⁰ MFAA Mortgage and Finance Stress sentiment survey, [Media release](#), August 2023.

#	Question	MFAA Response
C2	Are there other areas of potential consumer harm that the Code should address?	Refer response to C1.
C3	Do you think any of the consumer protections in the current Code intended to prevent harm have been reduced in the proposed Code?	For consumers, choice and competition are important and suggests there is an opportunity to recognise the importance of channel parity in the Code i.e., whether a consumer chooses to engage with a lender directly or via a broker, that consumers should be offered the same product on the same terms and with the same benefits. It is obvious that home loan customers are choosing brokers more and more therefore the same levels of support, service and product benefits should be provided to broker customers as to direct-to-bank customers.
C4	Are there any commitments in the proposed Code relating to the prevention of consumer harm that would benefit from further clarity or robustness to facilitate their enforceability?	In relation to paragraphs 106 and 107, newly added to the Code to protect vulnerable guarantors, it is important to be clear that this is a lender's obligation only. When providing credit assistance, brokers will be key in delivering information about this lender obligation and it will be important that sufficient training be provided to brokers to ensure guarantors know their rights. On this point we look forward to working with the ABA on relevant implementation and training for our members.
C5	Are there areas of the proposed Code that, if removed, would result in the withdrawal of protections that are not otherwise contained in the legislation? If yes, please provide examples.	Not that we are aware.
C6	Do you have any concerns with Code commitments being subject to the qualification of consistency with regulatory guidance? Does this qualification raise uncertainty about whether Code commitments are actually capable of being enforced?	As far as practicable, it makes sense for Code commitments to be consistent with regulatory guidance. The Code review process should determine if there is any inconsistency and remediate such inconsistencies so that there is no uncertainty as to whether Code commitments are capable of enforcement or not.
C7	Do you have any concerns about the removal of provisions limiting the BCCC compliance reporting? If so, please explain your concerns	No comment.
C8	In your view how would the proposed removal of provisions from the Code affect its utility and readability?	The ABA sought to remove provisions from the Code that duplicated regulation. We think that makes sense and improves utility and readability.
C9	Is the proposed Customer Guide likely to be useful in assisting customers to understand their rights? Why or why not?	In its current form, it contains a complex list of rights and protections that vary depending on the legislation and financial product the consumer holds. There is opportunity to include more easy-to-understand language. Customers already obtain several precontractual disclosure documents for the financial products they seek to engage with. It will be important to consider how this Customer Guide is made available to customers – at a time that is appropriate so that it allows for greatest understanding.
C10	Do you think a commitment to take all reasonable steps to have in place appropriate systems, processes and programs to support an integrated approach to compliance would result in meaningfully improved customer protections? Why or why not?	While the MFAA supports this commitment, we acknowledge and support the ABA's view that similar principles-based requirements exist in legislation. Therefore, we do not believe such a commitment reflected in the Code will result in more meaningful customer protections or better customer outcomes than what already currently exists resulting from bank compliance with existing law.

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C11	Would the removal of any provisions from the current Code reduce the scope of the BCCC's oversight of key areas of banking that are higher standards than those set under existing laws?	No comment.
C12	Would a reduction in the level of provisions that are subject to the BCCC's oversight reduce the operational benefits that are likely to arise through the Compliance Statement reporting process to the BCCC (as noted in Chapter 6 of the final report of the BCCC review)?	No comment.
C13	Based on the proposed Charter, does the BCCC have the right powers and responsibilities and is it adequately resourced to achieve the objective prescribed in the legislation—that is, effective administration systems for monitoring compliance with the Code and making information obtained as a result of monitoring publicly available?	We are unable to comment if the BCCC is adequately resourced.
C14	Do you have any other feedback on the ABA's response to the recommendations relating to enforceable code provisions?	No further comment.
C15	How accessible and well known are the Industry Guidelines? Should anything be done to make the Industry Guidelines more accessible?	We were not aware of the Industry Guidelines therefore we suggest these are not well known. If the Code references Industry Guidelines, and the intention of the Industry Guidelines are to assist Code subscribers to meet their obligations, then yes, the Industry Guidelines should be made more accessible, perhaps through links from the Code.
C16	Are there any parts of the Industry Guidelines that would be best placed in the Code? Or is simply including a reference sufficient? Please explain which parts of the Industry Guidelines and the rationale for this	We suggest including a reference to the Guidelines in the Code through the use of links should be sufficient.
C17	Should any of the Industry Guidelines be treated as Code-related documents? Please explain which Industry Guidelines and the rationale for this.	Industry Guidelines should be treated as intended, to be the guidance for how Code subscribers can best meet the obligations of the Code. By their very nature, the Industry Guidelines are intended to be iterative, reflecting evolving practice. In determining whether to treat Industry Guidelines as Code related (or not), the Guidelines need to continue to be easy and simple to update to reflect evolving best practice.
C18	Does Part B6 of the proposed Code provide an appropriate balance between protecting vulnerable guarantors and not impeding the role of guarantees in supporting the flow of credit?	We think it does. In relation to paragraphs 106 and 107, newly added to the Code, it is important to note this is a lender's obligation only. In saying this, brokers are integral in both delivering information to guarantors and meeting with guarantors

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		<p>(where reasonable and practicable to do so) in relation to this lender obligation. It is therefore important that sufficient training and information be provided to brokers. The instructions must be clear, and the broker cannot be expected to report on anything not obvious to the broker (such as duress, vulnerability, or abuse indicators) that is not explicitly stated by the guarantor, or obvious from the circumstances.</p> <p>As noted in the BCCC Guarantees Follow Up Report 2023, whilst there has been progress to improve processes to help protect vulnerable individuals, more could be done to improve the governance in place to ensure the improvements are working as intended.¹¹ However we caution against implementing requirements such as broker attestations as to fitness of mind or signs of vulnerability or other such indicators.</p> <p>Mortgage brokers have a significant role to play in protecting vulnerable customers, but mental health and family violence are complex areas. While both the MFAA and mortgage aggregators provide extensive training on identifying customer vulnerability and other stress indicators, small business brokers cannot be expected to conduct a professional assessment of a customer's potential vulnerability nor sign declarations that there are no signs of financial abuse. In addition, if a mortgage broker were to sign declarations regarding whether there is abuse, it is likely this would not be covered by their professional indemnity policies.</p> <p>This point has been acknowledged and accepted by the ABA.</p>
C19	If you consider that an appropriate balance has not been achieved in the proposed Code, how could a better balance be achieved?	Refer response to C18.
C20	Do you have any concerns with how the ABA has addressed any of the Code reviewer's recommendations as they relate to customers who are experiencing vulnerability?	The MFAA supports how the ABA has addressed the recommendations as they relate to customers who are experiencing vulnerability. We note in correspondence with the MFAA, the ABA welcomes the opportunity to work with the MFAA on relevant implementation and training matters for how brokers can assist their customers in accessing these [bank] services, as well as any expectations that brokers will have to notify lenders of any special assistance the customer requires. As noted above, brokers should not be obliged to notify the lender of any special circumstances impacting the borrower beyond what is disclosed to the broker or is obvious from the circumstances.
C21	Do you have any concerns with how the ABA has addressed any of the Code reviewer's recommendations as they relate to inclusive and accessible banking services?	It is important to note that consumers rely on mortgage brokers for the choice, experience, and convenience that a broker provides, with brokers providing significant support and service to those that have complex or difficult circumstances and have greater challenges in accessing credit. As trusted finance experts, brokers are also critical in assisting their customers through their financial journey to achieve financial wellbeing through financial literacy support and importantly brokers assist customers to refinance to better and more suitable products.

¹¹ [BCCC Follow-up inquiry: Guarantee Compliance](#), August 2023, pp 5.

#	Question	MFAA Response
		Recognising these significant benefits for customers to engage with a broker, we suggest, where relevant, when recommending a customer seek the advice of a third-party representative, that a broker be included in addition to a lawyer or financial counsellor. ¹²
C22	Do you think it provides an appropriate balance for the ABA to rely on reporting required to be provided to the ACCC (in relation to making eligible customers aware of basic accounts) when addressing recommendation 39?	Yes.
C23	What are the benefits and limitations of subscribing banks proactively identifying and transitioning eligible customers to basic bank accounts?	We note the ACCC Retail deposits inquiry final report includes Recommendation 5 ¹³ to be considered by Government in its response to the Report. ¹⁴
C24	Does the proposed Code provide sufficient detail for bank staff to understand their complaints handling obligations?	No comment.
C25	Do the proposed Code and proposed Customer Guide provide sufficient information that is clear and accessible to all banking customers to understand their rights if they are unsatisfied with a bank or its service?	As noted in our response to C9, there is opportunity for the Customer Guide to be more practical and written in easy-to-understand language. Further, the Code and proposed Customer Guide should be both easy to find and accessible when the customer needs it.

¹² We therefore recommend amending paragraph 51(c) of the Code to include the opportunity for bank customers to be referred to a mortgage and finance broker and read as follows “*where possible and appropriate, make it as simple as possible for you to appoint a third-party representative (such as a lawyer, mortgage and finance broker, or financial counsellor) to deal with us on your behalf.*”

¹³ ACCC [Retail-deposits-inquiry-final-report.pdf \(accc.gov.au\)](#), December 2023, pp 117.

¹⁴ Media release, [Australian Competition and Consumer Commission retail deposit inquiry | Treasury Ministers](#), 15 December 2023.

