



ASIC
Australian Securities &
Investments Commission

CONSULTATION PAPER 373

Proposed changes to the Banking Code of Practice

November 2023

About this paper

This consultation paper seeks stakeholder views 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.

In particular, we are seeking feedback to assist us in considering whether ASIC should approve the proposed Code under Pt 7.12, Div 2, Subdiv A of the Corporations Act or Pt 5-5, Div 1A, Subdiv A of the National Credit Act.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 17 November 2023 and is based on the legislation as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive, or as other circumstances change.

Contents

| | |
|--|-----------|
| The consultation process | 4 |
| A Background | 6 |
| About the Banking Code of Practice | 6 |
| ASIC’s approach to industry codes | 7 |
| Independent reviews of the Code and Charter | 9 |
| ASIC’s consultation and next steps | 10 |
| B ASIC’s consultation on the proposed Code | 11 |
| The focus of ASIC’s consultation | 11 |
| Summary of changes under the proposed Code | 12 |
| Making a submission on the proposed Code | 14 |
| C Key topics for consultation | 15 |
| Addressing consumer harm | 15 |
| Code provisions removed as restatements of the law | 16 |
| Supporting an approach to Code compliance | 19 |
| Clarifying the role of industry guidelines | 22 |
| Enhancing guarantor protections | 24 |
| Inclusive and accessible banking and customers experiencing vulnerability | 25 |
| Handling complaints | 29 |
| D Regulatory and financial impact | 30 |
| Key terms | 31 |

The consultation process

The Australian Banking Association (ABA) has stated its intention to apply for ASIC approval of a revised Banking Code of Practice. Before formally seeking approval, the ABA has provided ASIC with the draft revised Code (proposed Code), the Banking Code Compliance Committee Charter (proposed Charter) and a new customer-facing document, 'Banking with confidence: your key rights and protections as a customer' (proposed Customer Guide) so that we can undertake a public consultation on these documents. This consultation will help us form our views about whether to approve the proposed Code.

You are invited to comment on the proposed Code, proposed Charter and proposed Customer Guide, with particular focus on the topics set out in this paper. These topics are only an indication of the matters we will take into account in considering whether to approve the proposed Code and do not indicate our final view. As well as responding to the specific topics and questions, we ask you to describe any alternative approaches or considerations that you think would help us in our decision whether to grant Code approval.

We are keen to fully understand and assess the financial and other impacts of the proposed Code, proposed Charter and proposed Customer Guide on consumers, small business, dispute resolution bodies and industry and any alternative approaches. Therefore, we ask you to comment on:

- the likely prevention and/or remediation of consumer harm;
- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important and relevant to this consultation.

Your comments will help us develop our views on whether we should approve the proposed Code. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare an Impact Analysis (or Impact Analysis Equivalent): see Section D, 'Regulatory and financial impact'.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous, we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at www.asic.gov.au/privacy for more information on how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by **15 January 2024** to:

Banking Code Consultation Team
Regulation & Supervision
Australian Securities and Investments Commission
GPO Box 9827
Brisbane QLD 4001
email: BankingCode@asic.gov.au

What will happen next?

| | | |
|----------------|--------------------|------------------------------------|
| Stage 1 | 17 November 2023 | ASIC consultation paper released |
| Stage 2 | 15 January 2024 | Comments on the consultation paper |
| Stage 3 | First half of 2024 | ASIC decision on Code approval |

A Background

Key points

The Code is a contractually enforceable industry code developed by the ABA. It contains a range of protections that are intended to complement and set higher standards than the law.

In 2021, the ABA arranged for an independent review of the Code, which led to the formulation of the proposed Code in Attachment 2 to this paper.

ASIC may approve, on application, a code of conduct. We are issuing this paper to invite feedback on the proposed Code, the proposed Charter and the proposed Customer Guide, which will assist us in deciding whether to approve the proposed Code.

About the Banking Code of Practice

The Code

- 1 The [Banking Code of Practice](#) (Code) is an industry code developed by the Australian Banking Association (ABA). It has been in place, in various forms, since 1993. The current Code contains a set of contractually enforceable standards that customers and small business, and their guarantors, can expect from subscribing banks.
- 2 The Code contains a range of protections that are intended to complement, and set higher standards than, the law. It covers topics such as:
 - (a) opening accounts and using banking services;
 - (b) inclusive and accessible banking;
 - (c) applying for loans;
 - (d) specific rules for lending to small business;
 - (e) guaranteeing a loan;
 - (f) managing and closing banking services;
 - (g) when things go wrong (e.g. financial difficulty, loan defaults, debt recovery and helping with deceased estates); and
 - (h) complaints handling.
- 3 The ABA's 18 consumer-facing member banks have adopted the current version of the Code. For a list of those banks, see [Code signatories](#) on the ABA website.

Note: There is a separate Customer Owned Banking Code of Practice, administered by the Customer Owned Banking Association. This is the code of practice for Australia's mutual banks, credit unions and building societies and is not the subject of this paper.

4 The Code’s provisions form part of the contractual terms and conditions applicable to the subscribing banks’ banking services and guarantees.

The Charter

5 The Banking Code Compliance Committee (BCCC) is an independent body that monitors compliance with the Code by the subscribing banks and drives best practice.

6 The BCCC’s functions and powers are set out in its Charter. The Charter empowers the BCCC to carry out its monitoring function, including investigating alleged breaches of the Code, collecting data, providing guidance to industry, making findings and recommendations and reporting externally. In some circumstances the BCCC also has the power to apply sanctions to a Code subscriber for a breach of the Code.

7 The BCCC publishes a range of reports, including:

- (a) annual reports about their activities;
- (b) 6-monthly reports outlining compliance with the Code and reported breaches of the Code during the relevant period; and
- (c) findings of investigations and targeted inquiries.

8 Further information about the BCCC’s activities can be found on the [BCCC website](#).

ASIC’s approach to industry codes

9 The owner of an industry code (in this case the ABA) can choose to submit the code to ASIC for approval. It is not mandatory for a financial services sector to develop a code or to have their code approved by ASIC. However, our approval is a signal to consumers that a code is one in which they can have confidence because it responds to current and emerging consumer issues and delivers substantial benefits to consumers.

10 Under Pt 7.12, Div 2, Subdiv A of the *Corporations Act 2021* (Corporations Act) and Pt 5-5, Div 1A, Subdiv A of the *National Consumer Credit Protection Act 2009* (National Credit Act), ASIC may approve, on application, a code of conduct. Our approach for approving industry codes is set out in Regulatory Guide 183 *Approval of financial services sector codes of conduct* ([RG 183](#)).

11 We consider that industry codes, as an industry self-regulatory initiative, can play an important role in how financial products and services and consumer credit are regulated in Australia. If they are supported by the sponsoring industries, codes can deliver real benefits to consumers, small business and subscribing entities. Codes should therefore improve confidence in a particular industry.

- 12 As detailed in RG 183.5, ASIC expects effective industry codes to do at least one of the following:
- (a) address specific industry issues and consumer problems not covered by legislation;
 - (b) elaborate on legislation to deliver additional benefits to consumers; and/or
 - (c) clarify what needs to be done from the perspective of a particular industry, practice or product to comply with legislation.
- 13 We must not approve a code of conduct unless we are satisfied that:
- (a) to the extent that the code is inconsistent with the Corporations Act, the National Credit Act or any other law of the Commonwealth under which ASIC has regulatory responsibilities—the code imposes obligations on subscribers that are beyond (more onerous than) those imposed by those laws;
 - (b) each enforceable code provision has been agreed with the applicant and is legally effective; and
 - (c) it is appropriate to approve the code, having regard to whether:
 - (i) the obligations of subscribers to the code are capable of being enforced;
 - (ii) the applicant has effective administrative systems for monitoring compliance with the code and making information obtained as a result of monitoring publicly available; and
 - (iii) the applicant has effective systems for maintaining, and making publicly available, an accurate list of subscribers to the code.
- 14 ASIC approval of an industry code does not generally give us regulatory responsibility for administering the code, monitoring code compliance, or enforcing the code. In this case, the BCCC is established as an independent body responsible for compliance monitoring and enforcement of the Code. Generally, consumers and guarantors protected under the Code can take alleged breaches of the Code through their subscribing bank’s internal dispute resolution process and, if dissatisfied with the outcome, to external dispute resolution by the Australian Financial Complaints Authority (AFCA). The ABA is also required to arrange periodic independent reviews of the Code.
- 15 In the context of the financial services sector, we see the Code as having the potential to consolidate standards and commitments to produce high quality banking services, provide flexibility to deal with changing and emerging trends in products and technology, set a necessary standard for accessible and inclusive banking services, and help build and maintain trust in the banking industry.

Independent reviews of the Code and Charter

- 16 ASIC first approved a previous version of the Code in July 2018. It was the first broad-based industry code that we had approved using our relevant powers. Further revisions to the Code have since been approved, including updates to reflect recommendations from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission).
- 17 In 2021, the ABA arranged for an independent review of the Code (Code review). The review was undertaken by Mr Mike Callaghan AM PSM (Code reviewer) over a period of approximately 6 months. It involved consultation meetings and written submissions from a number of different stakeholders, as well as a public consultation process.
- 18 The [final report of the Code review](#) was published on 26 November 2021 and contains 116 recommendations, to which the ABA formally responded: see [ABA response to the Code review](#) (PDF, 319 KB). The Code review also led to the formulation of the proposed Code in Attachment 2 to this paper.
- Note: Under s1101AB of the Corporations Act and s238C of the National Credit Act, the applicant of an approved code of conduct must ensure that an independent review is undertaken every 5 years on the operation of the approved code, and the review must make provision for public consultation.
- 19 The ABA set the following key principles to guide its response to the Code review recommendations:
- (a) The Code should aim to express important consumer protections that operate in addition to the law and, therefore, the Code should minimise restatement of existing consumer rights under the law and/or other regulatory obligations.
 - (b) The Code should be expressed as simply as possible to avoid unnecessary length or complexity.
 - (c) Recommendations that reflect banks' existing practices should not require amendments to the Code.
 - (d) Recommendations addressing areas that are subject to ongoing consultation such as proposed changes to the law, regulatory obligations or other codes will be considered once those consultations are resolved.
- 20 The ABA supported many recommendations from the Code review, in full or in part. Key recommendations the ABA did not fully support include:
- (a) designation of enforceable code provisions into the Code (see recommendations 6, 7 and 8);
 - (b) inclusion of commitments that would involve restating existing laws (see recommendations 15, 16, 29, 30, 59, 62 and 73);
 - (c) inclusion of commitments relating to matters that are currently the subject of Government consultation, such as regulation of buy now pay later arrangements (see recommendations 17, 18, 28, 42 and 58);

- (d) inclusion of certain enhancements to guarantor protections (see recommendations 73, 74, 75, 76 and 78);
 - (e) inclusion of certain enhancements to how banks approach customer vulnerability (see recommendations 35, 38, 42, 43 and 51); and
 - (f) inclusion of certain enhancements to how banks facilitate accessibility to banking services (see recommendation 50).
- 21 The Code review coincided with a separate independent review of the BCCC undertaken by Mr Phil Khoury. Mr Khoury released the [final report of the BCCC review](#) in December 2021 with 19 recommendations. The ABA was generally supportive of the BCCC review recommendations, but did not fully support recommendation 17 that banks named by the BCCC for serious breaches also publish this fact on their website: see [ABA response to review of the BCCC](#) (PDF, 146 KB).
- 22 The ABA revised the current Code and the current Charter in line with their responses to both reviews. Following recent stakeholder engagement, the ABA has presented the proposed Code and proposed Charter to ASIC: see Attachments 2 and 3 to this paper. The ABA also presented to ASIC the proposed Customer Guide, designed to help consumers understand their rights applicable to their banking relationships: see Attachment 4 to this paper.

ASIC's consultation and next steps

- 23 We are issuing this paper to invite feedback on the proposed Code. We are also publishing the proposed Charter and proposed Customer Guide for stakeholders to review and consider in their submission on the proposed Code. This paper seeks feedback on a range of topics.
- 24 After our public consultation, we will engage with the ABA to seek any improvements to the proposed Code, where appropriate. We anticipate that the ABA will then lodge a formal application for our approval of the Code.
- 25 While the Charter is related to the Code, it does not form part of the Code and is therefore not part of the document that ASIC considers for approval. However, because the Charter contains information relating to our legislative approval criteria for compliance monitoring, it is relevant to our consideration of the Code approval application and is included in our public consultation.
- 26 The proposed Customer Guide also 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.

B ASIC's consultation on the proposed Code

Key points

Although certain criteria must be met before ASIC may approve a code, we can take a range of matters into consideration in reaching a decision.

This section outlines the focus of our consultation and summarises the most significant changes under the proposed Code: see Table 1.

To make a considered submission on the proposed Code, we recommend that stakeholders review the documents and resources listed in paragraph 31 and, in particular, the comparison of the current Code and proposed Code in Attachment 1 to this paper.

The focus of ASIC's consultation

- 27 The Code review in 2021 involved a substantial public consultation process. Our intention is not to duplicate that process. We invite feedback on the ABA's responses to the Code review recommendations. We are particularly interested in stakeholders' views on the topics in Section C, which are intended to guide the focus of submissions.
- 28 In addition to the mandatory requirements for Code approval in s1101A(3) of the Corporations Act and s238A(3) of the National Credit Act, we will also take into account the effect on competition on the financial system and other matters which are relevant to the decision whether to approve the proposed Code. It is an important part of our considerations to seek views from a diverse range of stakeholders (including industry, dispute resolution bodies and consumer and small business organisations). We will consider all feedback and, to the extent we deem it relevant or appropriate, we may incorporate aspects of the feedback into our ongoing discussions with the ABA and into our final decision on approving the proposed Code.
- 29 For these reasons, our consultation focuses on:
- (a) whether the proposed Code imposes obligations on subscribers that are beyond (more onerous than) those required by the law and, in doing so, addresses key potential consumer harms;
 - (b) whether the proposed Code provides for effective administrative systems for monitoring compliance and whether the obligations are capable of being enforced;
 - (c) whether any Code review recommendations that the ABA has not supported should be included in the proposed Code;

- (d) whether the recommendations accepted by the ABA are appropriately reflected in the proposed Code and proposed Charter;
- (e) whether the proposed Code strikes an appropriate balance between simplifying the Code and minimising regulatory duplication on the one hand, and promoting consumer awareness of protections applicable to their banking relationship on the other; and
- (f) the role of industry guidelines.

Summary of changes under the proposed Code

30 Table 1 summarises the most significant changes under the proposed Code. This is not an exhaustive list and we encourage stakeholders to read the proposed Code closely, together with the documents and resources listed in paragraph 31 and the comparison of the current Code and proposed Code in Attachment 1 to this paper.

Table 1: Summary of significant changes

| Proposed change | Explanation |
|--|---|
| Updated introduction to the Code | <p>The revised introduction contains:</p> <ul style="list-style-type: none"> • a new section titled ‘Your rights and how to enforce them’ intended to educate customers by outlining how they can resolve their complaints, in place of Part 10 of the current Code; and • a simplified explanation of the role of the BCCC, including an overview of the role and powers of the BCCC and information about how a customer can make a complaint to the BCCC about a potential breach of the Code. |
| Revised structure | The proposed Code is restructured, having 5 parts rather than 10 parts. |
| Updated conduct standard | The proposed Code amends the wording of the conduct standard from ‘fair, reasonable and ethical’ (paragraph 10 of the current Code) to ‘efficiently, honestly and fairly’ (paragraph 5 of the proposed Code) to use language consistent with s912A(1)(a) of the Corporations Act and s47(1)(a) of the National Credit Act. |
| Change to diligent and prudent banker requirements | <p>The obligation to exercise the care and skill of a diligent and prudent banker in providing a new loan or an increase in a loan limit to an individual borrower that is not a business has been removed under the proposed Code, as the ABA considers it to be duplicative of responsible lending obligations under Ch 3 of the National Credit Act. However, the proposed Code retains the diligent and prudent banker obligation for small business loans.</p> <p>A new provision is also proposed that would extend the obligation to exercise the care and skill of a diligent and prudent banker to loans that are not regulated by the National Credit Code.</p> |

| Proposed change | Explanation |
|--|--|
| Updated guarantor provisions | The proposed Code includes new provisions requiring that reasonable steps be made to ensure a meeting is held with a guarantor before they sign their guarantee. The ABA did not support or implement most of the Code review's recommendations on guarantees. |
| Updated definition of 'financial difficulty' | The definition of 'financial difficulty' under the proposed Code has been updated to include customers who are likely, or expecting, to be unable to meet future repayments. It also includes further examples of causes of financial difficulty. |
| Updated definition of 'vulnerability' | The proposed Code contains an updated definition of 'vulnerability', which recognises that a customer may be vulnerable at any point in time. Further (non-exhaustive) examples of categories of vulnerability are included. New language has been introduced to encourage customers to tell banks about their circumstances. |
| New inclusive and accessibility commitment | The proposed Code introduces new language and a new commitment to refer customers to support services (where appropriate and practical), free of charge. These include interpreter and translation services, Auslan, National Relay Services and accessible documentation. |
| Removal of potential legislative or regulatory duplication | The proposed Code seeks to minimise legislative or regulatory duplication. Some provisions of the current Code have been removed from the proposed Code on the basis that the ABA considers them to be duplicative of other legislative or regulatory obligations. |
| Updated definition of 'small business' | The proposed Code contains an updated definition of small business, which increases the upper limit of aggregate borrowings from \$3 million to \$5 million, resulting in a greater number of small businesses having protections under the Code. |
| Relocated complaints information | The complaints section in the current Code has been revised and largely removed on the basis that it is considered to duplicate ASIC's regulatory guidance in Regulatory Guide 271 <i>Internal dispute resolution</i> (RG 271). The complaints process is now referred to in both the introduction to the proposed Code and the proposed Customer Guide. |
| BCCC mandate information relocated | The proposed Code contains simplified provisions on the role, powers, available sanctions and resourcing of the BCCC. This information has been relocated to the introduction to the Code, recognising that these provisions are not contractually enforceable by customers against subscribing banks. A revised version of the BCCC Charter is provided as Attachment 3 to this paper. |
| Code review process | The proposed Code will be reviewed at least every 5 years (instead of every 3 years), consistent with s1011AB of the Corporations Act and s238C of the National Credit Act. |
| Drafting updates | The proposed Code includes capitalised defined terms and an updated index of definitions to ensure effective signposting for ease of reference. |
| New customer guide | A new customer guide will accompany the proposed Code. The proposed Customer Guide in Attachment 4 to this paper is intended to be a separate, customer-facing document that complements the Code by outlining other protections that apply to the banking relationship available under Australian law. This includes how customers can enforce their rights. |

Making a submission on the proposed Code

- 31 In making a submission on the proposed Code, stakeholders should review and take into account the following documents:
- (a) [current Code](#);
 - (b) [current Charter](#) (PDF, 1.58 MB);
 - (c) proposed Code (see Attachment 2 to this paper);
 - (d) proposed Charter (see Attachment 3 to this paper);
 - (e) proposed Customer Guide (see Attachment 4 to this paper);
 - (f) [final report of the Code review](#);
 - (g) [final report of the BCCC review](#); and
 - (h) [ABA response to the Code review](#) (PDF, 319 KB) and [ABA response to the BCCC review](#) (PDF, 146 KB).
- 32 In addition, ASIC has provided a comparison of the provisions in the current Code with the equivalent provisions in the proposed Code to help stakeholders to navigate these documents: see Attachment 1 to this paper. The comparison also cross-references the recommendations of the Code review with the relevant provisions and indicates whether those recommendations were supported by the ABA. Some recommendations are not linked to specific provisions of the Code; these are listed at the end of Attachment 1.

C Key topics for consultation

Key points

This section sets out the key topics in the proposed Code where ASIC is particularly interested in stakeholder feedback.

This consultation is an opportunity for stakeholders to bring certain issues to our attention when we are considering whether to approve the Code.

Addressing consumer harm

- 33 The objective of the Code is to provide customers with safeguards and protections not set out in law. Industry codes must respond to emerging issues and the changing needs of customers to ensure that they remain relevant. The Code review process is an opportunity to assess the adequacy of the Code in dealing with emerging and recognised issues.
- 34 Since the Financial Services Royal Commission, Australia’s financial services laws have undergone numerous reforms. Section 9 of the [final report of the Code review](#) considered whether the Code needed to be amended in response to those reforms—including, for example, reforms relating to mandatory credit reporting, the Consumer Data Right, regulation of buy now pay later arrangements, and design and distribution obligations.
- 35 In its response to the Code review, the ABA noted that a number of the review recommendations are subject to consideration or external review (including in some cases, ongoing law reform). On this basis, the ABA suggested that it may be premature to implement these changes in the proposed Code, or that these areas are currently adequately regulated under existing laws.
- 36 These topics cover a range of areas that can involve significant consumer harm. Examples include:
- (a) the ABA’s request to the Office of the Australian Information Commissioner (OAIC) for permanent relief from adversely reporting against customers in family or domestic violence situations (see the ABA’s response to recommendation 14);
 - (b) the Attorney-General’s review of the *Privacy Act 1988* (Privacy Act) (see the ABA’s response to recommendation 42);
 - (c) the Government’s consideration of the Council of Financial Regulators’ recommendations (from August 2022) on potential policy responses to de-banking in Australia (see the ABA’s response to recommendation 58);

- (d) the Government’s consideration of reforms introducing a regulatory framework for buy now pay later arrangements (see the ABA’s response to recommendation 17); and
- (e) the completion of the BCCC’s inquiry (published June 2023) into Code provisions dealing with deceased estates (see the ABA’s response to recommendation 95).

Note: For more information, see [ABA response to the Code review](#) (PDF, 319 KB).

37 Another example of an area of significant consumer harm identified in the Code review was scams. Redress under the Code was considered as part of the Code review in recommendations 113 and 114. ASIC notes that the Government will consult on new anti-scam obligations for key sectors including banks, telecommunications and digital platforms in the near term.

Inviting submissions

- 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?
- c2 Are there other areas of potential consumer harm that the Code should address?
- c3 Do you think any of the consumer protections in the current Code intended to prevent harm have been reduced in the proposed Code?
- 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?

Code provisions removed as restatements of the law

- 38 We consider that the primary role of an industry code is to raise standards and to complement the legislative requirements that already set out how industry participants must deal with consumers. Effective codes should address specific industry issues and consumer problems not covered by legislation, elaborate on legislation to deliver additional benefits to consumers and/or clarify what needs to be done to comply with legislation: see RG 183.4–RG 183.5.
- 39 In responding to the Code review’s recommendations, the ABA is guided by principles of expressing banks’ commitments as simply as possible and minimising restatements of consumer rights that exist under the law.
- 40 The ABA has identified the following commitments as legislative or regulatory duplication and proposes to remove them from the current Code:
 - (a) the commitment to exercise the care and skill of a diligent and prudent banker when considering providing a new loan or an increase in a loan

limit to an individual customer that is not a business (paragraphs 49 and 50 of the current Code), which the ABA considers duplicates the responsible lending obligations in Ch 3 of the National Credit Act;

- (b) commitments relating to a deferred sales period for the sale of consumer credit insurance with credit cards and personal loans sold in branches or over the phone (paragraphs 67 and 68 of the current Code), which the ABA considers duplicate financial services laws for the sale of consumer credit insurance (e.g. anti-hawking, deferred sales model requirements and the design and distribution obligations under Pt 7.8A of the Corporations Act);
- (c) commitments relating to credit cards in Chapters 33 and 36 of the current Code (e.g. the requirement in paragraph 125 for banks to apply customer repayments to amounts with the highest interest rate first), which the ABA considers duplicate obligations in the ASIC Act or the National Credit Act;
- (d) privacy commitments (in particular, provisions in Chapters 5 and 42 of the current Code), which the ABA considers duplicate rights under the Privacy Act and the Australian Privacy Principles;
- (e) commitments relating to dispute resolution in Part 10, which the ABA considers duplicate requirements in [RG 271](#); and
- (f) commitments relating to customers experiencing financial difficulty (in particular, provisions in Chapters 39–41 of the current Code), which the ABA considers duplicate provisions in the National Credit Code.

41 ASIC draws attention to the proposed removal of these potential duplications for the following reasons:

- (a) We wish to obtain a broad perspective on whether the provisions being removed are the same or less than the protections in legislation.
- (b) We understand that some commitments in the current Code have developed their own interpretations over time (e.g. judicial or AFCA consideration) that differ to the legislation.
- (c) A customer should have no doubt about the extent to which obligations are contractually enforceable against banks (as opposed to obligations that are enforceable by regulators).
- (d) Removal of certain commitments could affect the scope of matters that subscribing banks must report to the BCCC as the code monitoring body, noting that codes are intended to complement and set higher standards than what is in the law.

The Code as a tool to assist consumers to enforce rights

- 42 It is generally accepted that there is no simple way to summarise Australia's complex financial services laws for customers and their representatives. The Code interacts with many different regulatory requirements, including relevant ASIC guidance. We recognise that there are tensions in:
- (a) seeking to accommodate as broad an audience as possible while ensuring that the needs of the primary audience are met; and
 - (b) including all relevant information while seeking to avoid unnecessary length or complexity of the Code.
- 43 The Code review found that while the Code should be accessible to as broad an audience as possible, the primary audience should be the banks and bank staff. There should be sufficient detail, either in the Code itself or in related industry guidelines, to facilitate the implementation of Code commitments by bank staff and to allow consumer representatives to help consumers pursue their rights (recommendation 3).
- 44 The Code review noted that there should be a separate consumer friendly and readily accessible document highlighting that customers have rights in their dealings with banks (recommendation 4). This document should indicate that the detail of customers' rights is in the Code and advise who can assist them in any dispute with their bank. It should be a standard document across all ABA member banks. There should be a commitment in the Code that this document will be given to customers when they make a complaint to their bank. 'Easy Read' versions of this document should also be available. The Code would remain the document that contains the rights of customers and commitments made by banks, and the reference for the BCCC in monitoring bank compliance with those commitments and for AFCA when considering complaints.
- 45 In its response to the Code review, the ABA supported recommendation 3 in full and recommendation 4 in part: see [ABA response to the Code review](#) (PDF, 319 KB). The ABA did not accept the need for a consumer friendly and accessible document to be given to customers when making a complaint, noting that customers are already given information when making a complaint as required by [RG 271](#).
- 46 The ABA has produced the proposed Customer Guide as a separate, customer-focused document that complements the Code by outlining other protections available to consumers under Australian law.
- 47 Paragraph 13 of the proposed Code states that subscribing banks will comply with the Code unless doing so would lead them to breach the law or a relevant regulatory obligation or guidance. Regulatory guidance is generally an explanation of how regulators will use specific powers and how they interpret the law, and provides practical guidance on how entities may

decide to meet their obligations. We are interested to obtain feedback on whether the reference to ‘regulatory guidance’ is ambiguous or potentially unhelpful or refers to things which are not a strict requirement of the law.

Inviting submissions

- 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.
- 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?
- c7** Do you have any concerns about the removal of provisions limiting the BCCC compliance reporting? If so, please explain your concerns.
- c8** In your view how would the proposed removal of provisions from the Code affect its utility and readability?
- c9** Is the proposed Customer Guide likely to be useful in assisting customers to understand their rights? Why or why not?

Supporting an approach to Code compliance

- 48 The Code review recommended that the Code contain a commitment to appropriate systems, processes and programs to support an integrated approach to compliance (recommendation 8).
- 49 The ABA did not support this recommendation, noting the existing obligations under various prudential standards established by the Australian Prudential Regulation Authority and the general conduct obligations in the Corporations Act and the National Credit Act.
- 50 Under s1101A of the Corporations Act and s238A of the National Credit Act, in deciding whether to approve a code, ASIC must be satisfied that:
 - (a) the obligations of subscribers to the code can be enforced; and
 - (b) the applicant has effective administration systems for monitoring compliance with the code and making information obtained as a result of monitoring publicly available.
- 51 The scope of the responsibilities and powers of the BCCC is key in this regard both in terms of:
 - (a) the provisions that are contained in the Code—the commitments that are made which are intended to be contractually enforceable and subject to compliance monitoring; and
 - (b) the Charter—which sets out how compliance monitoring will occur.

- 52 The BCCC review made a total of 19 recommendations. While noting that some recommendations are within the BCCC’s remit, the ABA accepted or supported all of the recommendations, except recommendation 17 (a power for the BCCC to compel a signatory bank to publish information about a breach of the Code on its website). A revised Charter (the proposed Charter) is included as Attachment 3 to this paper.
- 53 The revisions in the proposed Charter include:
- (a) responses to the Code review recommendations;
 - (b) changes such as removing Code paragraphs that do not represent direct contractual commitments from subscribing banks to customers (for example, the powers of the BCCC have been added to the proposed Charter); and
 - (c) changes to cover the introduction of a materiality threshold for breach reporting, the settings for which are yet to be agreed upon.

Enforceable code provisions

- 54 As part of the process of considering a code for approval, ASIC may identify a provision of the code as an ‘enforceable code provision’ if we consider that, among other things, a breach of that particular commitment by the subscriber may result in significant and direct detriment to a consumer. Our ability to designate enforceable code provisions in industry codes was introduced when the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* came into force on 17 December 2020, alongside changes to the Corporations Act and National Credit Act.
- 55 A breach of an enforceable code provision attracts potential civil penalty consequences, in relation to which ASIC may take action. Before an enforceable code provision can be included in an ASIC-approved code, the provision must be agreed with the applicant.
- 56 During the Code review, the Code reviewer consulted widely with stakeholders to help inform his views on whether there were any provisions in the Code that ASIC and the ABA should consider designating as enforceable code provisions. This involved receiving submissions from stakeholders on what types of provisions should be considered as candidates for designation as enforceable code provisions.
- 57 Ultimately, the Code reviewer made recommendations for two areas that would be suitable for designation as enforceable code provisions:
- (a) the commitment in paragraph 10 of the current Code to ‘engage with [customers] in a fair, reasonable and ethical manner’—if it is not aligned with the obligation in s912A(1)(a) of the Corporations Act and

s47(1)(a) of the National Credit Act to act ‘efficiently, honestly and fairly’ (recommendations 7 and 28); and

- (b) a new commitment for banks to take all reasonable steps to have in place the appropriate systems, processes, and programs to support an integrated approach to compliance (recommendations 8 and 29).

58 Designating paragraph 10 as an enforceable code provision is no longer an issue as the ABA has changed the wording of this paragraph in line with s912A of the Corporations Act and s47(1)(a) of the National Credit Act. In relation to recommendations 8 and 29, the ABA noted Commissioner Hayne’s statement that the focus should be on identifying enforceable code provisions that govern or are intended to govern the terms of the contract between the bank and customer. The ABA observed that recommendations 8 and 29 do not meet this test because they are focused on internal bank operations rather than a direct commitment to customers.

59 While we do not propose to duplicate the review and consultation process undertaken by the Code reviewer, we welcome stakeholder feedback on the ABA’s responses to the recommendations from the Code review relating to enforceable code provisions.

Inviting submissions

- 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?
- 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?
- 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](#))?
- 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?
- c14** Do you have any other feedback on the ABA’s response to the recommendations relating to enforceable code provisions?

Clarifying the role of industry guidelines

60 The ABA has developed several industry guidelines, protocols and principles (collectively referred to in this paper as Industry Guidelines) that set out good practice guidance to banks on specific topics.

61 The Code review identified 12 Industry Guidelines considered relevant to the Code:

- (a) Accessibility Principles for banking services
- (b) Guiding Principles: Accessible authentication
- (c) Guiding Principles: Customer advocate
- (d) Guiding Principles: Debt management firms
- (e) Guiding Principles: Lenders mortgage insurance
- (f) Industry Guideline: Banks' financial difficulty programs
- (g) Industry Guideline: Preventing and responding to family violence and domestic violence
- (h) Industry Guideline: Preventing and responding to financial abuse
- (i) Industry Guideline: Responding to requests from a power of attorney or court-appointed administrator
- (j) Industry Guideline: Sale of unsecured debt
- (k) Industry Protocol: Branch closures
- (l) Statement: ABA Indigenous statement of commitment

Note: These Industry Guidelines are referred to in the [final report of the Code review](#). They have been updated, revised or retired as necessary over time. There may be others in existence at the date of this paper. This list is not exhaustive.

62 In relation to the role of the Industry Guidelines, the Code review:

- (a) found that the status of these Industry Guidelines was unclear; and
- (b) recommended that the Industry Guidelines should be considered Code-related documents, rather than outside the Code and voluntary.

63 Recommendation 10 of the Code review stated:

Banks should take into account industry guidelines in assessing whether they are complying with Code commitments. If they are not following the best practice outlined in the guidelines, banks will have to demonstrate they are following comparable processes in meeting the commitments. There should be greater transparency in the Code over the role of industry guidelines. They should be specifically referenced in the Code.

64 The ABA supported the recommendation of the Code review that the Code is the rule book for the banks and should be drafted with sufficient detail to facilitate the implementation of the commitments by bank staff and to allow consumer representatives help customers pursue their rights (recommendation 3).

65 The Code reviewer made specific recommendations that four of the Guidelines should be included in the Code: Industry Statement Supporting Aboriginal and Torres Strait Islander People (recommendation 54), the ABA Accessibility Principles (recommendation 50), Sale of unsecured debt guideline and promoting understanding about banks financial hardship programs (recommendation 83).

66 In its response to the Code review, the ABA resolved to:

- (a) make clear in the proposed Code that the Industry Guidelines do not form part of the Code and are not contractually enforceable; and
- (b) refer to the guidelines in the introduction to the proposed Code.

67 We note that, although the introduction to the proposed Code refers to the branch closure protocol and guiding principles for customer advocates, it does not appear to mention any of the other Industry Guidelines. There is also scope for further Industry Guidelines to be developed by the ABA in response to issues as they arise; therefore, the list of Industry Guidelines will never be exhaustive.

68 The reasons for our focus on the role of the Industry Guidelines are as follows:

- (a) Bank staff and consumer representatives need to be aware of and have easy access to the Industry Guidelines to assist customers. For this purpose, they must be easy to locate. Generally, the Industry Guidelines can be found by searching for them by name on the ABA website; however, this limits accessibility to people who know what to search for.
- (b) If the subject matter of the Industry Guidelines is critical to the delivery of high-quality banking services that meet the expectations of the community and provide significant benefits, there may be grounds for reflecting this as a commitment in the Code.
- (c) Alternatively, consideration could be given to whether there are grounds for treating the Industry Guidelines as Code-related documents. A key advantage of having Industry Guidelines treated as Code-related documents is that they enshrine protections which have a level of flexibility because the Guidelines can be subject to changes between iterations of the Code review and approval process.

Note: We understand that a number of the Industry Guidelines have been developed over time to respond to wider interventions and specific harms identified outside of the Code review and approval process.

- (d) Customers should have no doubt about the extent to which obligations are enforceable against banks.

Inviting submissions

- c15** How accessible and well known are the Industry Guidelines? Should anything be done to make the Industry Guidelines more accessible?
- 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.
- c17** Should any of the Industry Guidelines be treated as Code-related documents? Please explain which Industry Guidelines and the rationale for this.

Enhancing guarantor protections

- 69 The Code review found that the guarantee provisions should be strengthened, particularly to protect vulnerable guarantors: see Section 16 of the [final report of the Code review](#).

Note: The Code reviewer also stated on page 125 of the report that a balance has to be achieved between protecting vulnerable guarantors and not impeding the important role of guarantees in supporting the flow of credit.

- 70 The Code review noted the 2021 BCCC inquiry into compliance by four banks with the guarantee provisions under the Code. The BCCC's inquiry found the banks consistently failed to fully disclose key information to prospective guarantors and had poor record keeping. The BCCC made recommendations to address these concerns and some of those recommendations were replicated in the Code review.
- 71 The ABA agreed to address the concerns for vulnerable guarantors in the Code by having banks commit to taking reasonable steps to meet with the guarantor face-to-face or by video conference without the borrower present: see paragraphs 106 and 107 of the proposed Code.
- 72 The ABA did not support recommendations for banks to:
- (a) periodically audit the effectiveness of their processes and systems to support compliance with the guarantee provisions under the Code (recommendation 73);
 - (b) proactively identify guarantors who may require additional support and provide them with information in a meaningful and accessible way (recommendations 74 and 75);
 - (c) maintain records of indicators that a guarantor may be vulnerable (recommendation 76); and
 - (d) conduct a pre-enforcement review of a guarantee to ensure it has been obtained in accordance with the Code before commencing enforcement action (recommendation 78).

- 73 The ABA did not support these recommendations on the basis that:
- (a) banks have existing legal obligations that address these key concerns;
 - (b) pro-actively identifying guarantors who need additional support could create uncertainty where it is not clear what additional support may be required; and
 - (c) adopting the recommendations may hinder a bank’s ability to respond flexibly to a guarantor’s circumstances on a case-by-case basis.

Note: See [ABA response to the Code review](#) (PDF, 319 KB), pages 12–13.

Inviting submissions

- 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?
- c19** If you consider that an appropriate balance has not been achieved in the proposed Code, how could a better balance be achieved?

Inclusive and accessible banking and customers experiencing vulnerability

- 74 The Code reviewer considered the extent to which the Code contributes to banking services being inclusive, affordable and accessible for all customers and whether the Code meets community standards for banks to support customers experiencing vulnerability.
- 75 The Code reviewer made a series of recommendations aimed at strengthening Code commitments on inclusive and accessible banking in Part 4 of the current Code (Chapters 13 and 14). The ABA did not accept all recommendations of the Code reviewer.

Defining customers who are experiencing vulnerability

- 76 The Code reviewer recommended that the Code adopt the UK Financial Conduct Authority’s definition of a vulnerable customer—‘someone who, due to their personal circumstances, is especially susceptible to harm’—particularly when a firm is not acting with appropriate levels of care’ (recommendation 35). The ABA did not adopt this definition of customer vulnerability. It amended paragraph 38 of the current Code to acknowledge that a customer’s circumstances may change over time and in response to particular situations, and broadened the groups of people who may be at risk of experiencing vulnerability: see paragraph 49 of the proposed Code.
- 77 The Code reviewer recommended that the Code should specifically state that the list of groups of customers as a focus for inclusive banking services (see

paragraph 32 of the current Code) and the list of specific circumstances of customers who may be vulnerable (see paragraph 38 of the current Code) are non-exhaustive and should include prisoners (and those transitioning out of prison). The ABA agreed that the lists should be considered non-exhaustive but did not include prisoners. The ABA noted that it was consulting separately to improve outcomes for prisoners.

Recording customer circumstances

78 The Code reviewer made the following recommendations about collecting and recording customer information to facilitate providing a tailored service:

- (a) Banks should record when customers experiencing vulnerability tell them about their personal or financial circumstances (subject to the customers agreement) to minimise the customer having to repeat this information (recommendation 42).
- (b) Banks should ask customers whether they have Aboriginal and Torres Strait Islander heritage (recommendation 51).
- (c) Banks should record indicators that a guarantor may be vulnerable (recommendation 76).

The ABA declined to commit to these recommendations, in part, on the basis that the Privacy Act limits the circumstances in which banks can collect, use, and maintain sensitive personal information. We note that the ABA has advocated for law reform as part of the review of the Privacy Act that would remove legal barriers for corporate entities to assist vulnerable customers (including limits on what sensitive information can be collected).

Family violence or financial abuse

79 The Code reviewer recommended specific additions to the Code in relation to people experiencing family violence:

- (a) The Code should require banks to have family violence policies on their websites and in branches including an easy-to-understand outline of their commitment to help (recommendation 41).
- (b) Banks should commit to helping to protect customers from abusive transactions (recommendation 46).

The ABA noted that the banks' current practices meet the recommended commitments and that, in its view, these matters do not need to be included in the Code.

80 The Code reviewer also recommended that it should be made clear that the references in the ABA guidelines that banks should not enter negative credit information if a customer is affected by family and domestic violence, in so far as the bank is able to avoid doing so under the law, are part of the Code (recommendation 14). The ABA stated that it is awaiting a decision from the OAIC on this matter.

Accessibility and use of third-party representatives

- 81 The ABA made the following changes to Chapter 13 of the current Code with a view to improving accessibility and inclusivity:
- (a) extending the commitment to take reasonable measures to enhance access to services to people of diverse sexual orientations, gender identities and sex characteristics;
 - (b) referring customers to support services (where appropriate and practical), free of charge, including interpreter and translation services, Auslan, National Relay Services and accessible documentation (recommendation 49); and
 - (c) where possible and appropriate, making it as simple as possible for a customer to appoint a third-party representative (such as a lawyer or financial counsellor) to deal with the bank on the customer's behalf (recommendation 47).

Note: While these changes were made to paragraph 41 of the current Code, other elements of the current wording were removed: see Attachment 1 to this paper for a comparison of the current and proposed provisions.

Proactive identification of customers eligible for basic accounts

- 82 Under Chapters 15 and 16 of the current Code, banks are required to offer affordable banking services to lower-income customers. They are obliged to:
- (a) provide information about accounts with low or no fees to lower-income customers or prospective customers (see paragraph 42 of the current Code); and
 - (b) provide information about a basic account for which there are no account keeping, overdrawn or dishonour fees to holders of a Commonwealth seniors health card, a health care card or a pensioner concession card (eligible card) when the customer applies for a new transaction account (see paragraph 44 of the current Code).
- 83 These obligations are framed to only apply when the customer tells the bank they are lower-income earners or hold an eligible card. Banks are required to ask customers if they hold an eligible card when they apply for a new transaction account. Banks are also required to raise awareness of affordable banking products and services under paragraph 45 of the current Code.
- 84 Paragraph 47 of the current Code confirms that banks can offer low-fee basic accounts flexibly and broadly, including to customers without an eligible card.
- 85 The Code reviewer recommended that the Code be amended so that banks proactively identify customers who are eligible for basic accounts, rather than the onus being on customers to tell the bank that they are lower-income earners or eligible card holders (recommendation 39).

- 86 The ABA declined to amend the Code to require the proactive identification of eligible customers for basic accounts. The ABA pointed to the subscribing banks' obligations under an Australian Competition and Consumer Commission (ACCC) authorisation ([AA1000441-1](#)), which requires banks to, at least once annually, take reasonable steps to identify and contact existing customers who are, or may be, eligible for a basic account in line with paragraph 47 of the current Code and who do not already hold accounts with the special features detailed in that paragraph.
- 87 Under this authorisation (as amended 3 December 2020), the ABA must report annually to the ACCC on:
- (a) action taken by a subset of subscribing banks to make eligible customers aware of the basic accounts; and
 - (b) the number of basic accounts that were opened for eligible customers by each bank for a subset of banks.
- 88 Individual banks are not identified in these reports. The ACCC authorisation is effective until 12 December 2024.
- 89 We note that since the ABA published its response to the Code review, ASIC has conducted a review (involving four banks and their sub-brands) of banking data on fees charged to consumers in locations with higher-than-average proportions of Indigenous people and for customers receiving ABSTUDY payments. ASIC found that many consumers identified in the data were experiencing high fees, despite being eligible for a low-fee 'basic' account. Additionally, the review found that banks' processes to promote and move eligible customers to low-fee accounts were ineffective with migration rates between 0.5% and 3%. One of the more effective processes only saw a 47% migration rate.

Note: For more information on this review, see [Media Release \(23-183MR\)](#) *ASIC acts to ensure better banking outcomes for Indigenous consumers* (5 July 2023).

Inviting submissions

- 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?
- 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?
- 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?
- c23** What are the benefits and limitations of subscribing banks proactively identifying and transitioning eligible customers to basic bank accounts?

Handling complaints

90 The Code review identified that, while the Code should be accessible to as broad an audience as possible, the Code's primary audience is banks and bank staff. It found that there should be sufficient detail in the Code or related industry guidelines to facilitate the implementation of the commitments by bank staff and allow consumer representatives to help customers pursue their rights: see recommendation 3, and Sections 6.4 and 6.5 of the [final report of the Code review](#).

91 The Code review also recommended that there be:

- (a) a separate consumer friendly and readily accessible document that highlights the rights consumers have when dealing with banks; and
- (b) a commitment that this document will be given to consumers when they make a complaint to their bank: see recommendation 4.

92 The ABA proposes to remove Part 10 from the current Code. In its place, the proposed Code will contain Part D2, which commits subscribing banks to compliance with ASIC's guidance in [RG 271](#).

Note: RG 271 provides guidance for ASIC's regulated population, specifically Australian financial services (AFS) licensees, unlicensed product holders, unlicensed secondary sellers, trustees of regulated superannuation funds (other than self-managed superannuation funds), trustees of approved deposit funds, retirement savings account providers, Australian credit licensees and unlicensed carried over instrument lenders. RG 271 explains what these firms must do to have an internal dispute resolution system in place that meets ASIC's standards and requirements. It was not primarily designed for a consumer audience.

93 The proposed Code will also be accompanied by the proposed Customer Guide (see Attachment 4 to this paper), which contains some of the information formerly contained in Part 10 of the current Code. The proposed Customer Guide does not form part of the Code or contract with consumers and is not binding on the subscribing banks.

94 We understand that the proposed changes will mean there is no longer a standalone commitment for banks to handle complaints according to standards set under the Code. Instead, the subscribing banks are committed to compliance through RG 271 and their general obligations as AFS licensees and credit licensees.

Note: For details of these obligations, see s912A(1)(g) and 912A(2) of the Corporations Act, and s47(1)(h) and 47(3) of the National Credit Act.

Inviting submissions

c24 Does the proposed Code provide sufficient detail for bank staff to understand their complaints handling obligations?

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?

D Regulatory and financial impact

95 In developing these areas of focus and questions in this paper, we seek to obtain information from stakeholders that will allow us to carefully consider the regulatory and financial impact of the Code’s provisions that ASIC ultimately considers for approval.

96 As part of this process, we will consider each stakeholder submission and engage with the ABA to encourage further improvements to the draft Code where appropriate. Our aim will be to ensure the Code takes into account important consumer protection needs, while keeping in mind the regulatory burden on subscribers.

97 Before settling on a final decision, we will comply with the Australian Government’s Policy Impact Analysis (PIA) requirements by:

- (a) considering all feasible options, including examining the likely impacts of the range of alternative options that could meet our objectives;
- (b) if regulatory options are under consideration, notifying the Office of Impact Analysis (OIA); and
- (c) if our proposed option has more than a minor or machinery impact on business or on the not-for-profit sector, preparing an Impact Analysis (IA) or an IA equivalent.

98 All IAs are submitted to the OIA for approval before we make any final decision, or if an IA equivalent—to the OIA for agreement. Without an approved IA or agreed IA equivalent, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation, or in this case approving an industry code.

99 To ensure that we are in a position to properly complete any required IA or IA equivalent, please give us as much information as you can about the matters covered in this paper or any alternative approaches, including:

- (a) the likely compliance costs;
- (b) the likely effect on competition; and
- (c) other impacts, costs and benefits.

See ‘The consultation process’ on page 4.

Key terms

| Term | Meaning in this document |
|------------------|---|
| ABA | Australian Banking Association |
| ACCC | Australian Competition and Consumer Commission |
| AFCA | Australian Financial Complaints Authority |
| AFS licensee | An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A. |
| ASIC | Australian Securities and Investments Commission |
| ASIC Act | <i>Australian Securities and Investments Commission Act 2001</i> |
| BCCC | Banking Code Compliance Committee |
| BCCC review | The independent review of the BCCC undertaken in 2021 by Mr Phil Khoury in consultation with banks, consumer groups and regulators |
| Charter | The BCCC's charter that explains the BCCC's role, functions and powers to monitor banks' compliance with the Code |
| Code | The ABA's Banking Code of Practice to which banks subscribe |
| Code review | The independent review of the Code undertaken in 2021 by Mr Mike Callaghan AM PSM in consultation with consumer representatives, small business organisations and other stakeholders |
| complaint | An expression of dissatisfaction made to or about an organisation—related to its products, services, staff or the handling of a complaint—where a response or resolution is explicitly or implicitly expected or legally required. Note: This is the definition given in AS/NZS 10002:2014 |
| Corporations Act | <i>Corporations Act 2001</i> , including regulations made for the purposes of that Act |
| credit | Credit to which the National Credit Code applies Note: See s3 and 5–6 of the National Credit Code |
| credit licensee | A person who holds an Australian credit licence under s35 of the National Credit Act |
| current Code | The current version of the Code approved by ASIC and released on 5 October 2021 |

| Term | Meaning in this document |
|-------------------------------------|---|
| customer | A person to whom the Code applies under paragraph 1 of the Code (both individuals and small business), including a prospective customer |
| final report of the Code review | The final report of the Code review published on 26 November 2021 and containing 116 recommendations |
| Financial Services Royal Commission | Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry |
| IA | Impact Analysis as required by the OIA |
| National Credit Act | <i>National Consumer Credit Protection Act 2009</i> |
| National Credit Code | National Credit Code at Sch 1 to the National Credit Act |
| OAIC | Office of the Australian Information Commissioner |
| OIA | Office of Impact Analysis |
| Privacy Act | <i>Privacy Act 1988</i> |
| proposed Charter | The revised version of the BCCC Charter provided to ASIC by the ABA (see Attachment 3 to this paper) |
| proposed Code | The revised version of the Code provided to ASIC by the ABA (see Attachment 2 to this paper) |
| proposed Customer Guide | A new Customer Guide provided to ASIC by the ABA (see Attachment 4 to this paper) |
| RG 271 (for example) | An ASIC regulatory guide (in this example numbered 271) |
| s1101A (for example) | A section of the Corporations Act (in this example numbered 1101A) |