

Wednesday, 27 November 2024

Online submission only

Tony Hilton
Director | Competition Exemptions
Australian Competition & Consumer Commission

Dear Director

Application by the Australian Banking Association (ABA) to revoke Authorisation AA1000441-2 (2019 Authorisation) and substitute Authorisation AA1000683 (New Authorisation)

Thank you for providing Consumer Action with the opportunity to respond as an interested party. This response is also supported by the Financial Rights Legal Centre and CHOICE.

We recommend that the conduct in the New Authorisation is granted. However we strongly recommend that the same conditions as the 2019 Authorisation must continue to apply (as amended upon application by the ABA in 2020). We do not support reducing the reporting condition from annually to every second year.

There is no justification for lightening requirements on the member banks given the systemic failings to identify and migrate eligible customers, particularly First Nations customers, outlined in ASIC's 2024 *Better Banking for Indigenous Consumers Project* report (REP 785). In one 12-month period, ASIC identified over \$6 million charged in unnecessary fees to eligible customers,¹ and the participating banks have committed to refunding \$28 million to customers as a result of the report.²

Basic bank accounts are a valuable product and essential to the financial wellbeing of low- and no-income customer groups. We are strongly supportive of the ABA and its members meeting their obligations under the Banking Code of Conduct (**the Code**) to offer no fee accounts to eligible customers.

¹ [23-183MR ASIC acts to ensure better banking outcomes for Indigenous consumers | ASIC](#)

² [24-153MR Big banks to refund millions in fees to low-income customers following ASIC report | ASIC](#)

Removal of eligible customer identification and reporting conditions

We **strongly oppose** the ABA's request that the New Authorisation be issued *without* the conditions imposed by paragraphs 5.8(c) and (d) of the 2019 Authorisation determination.

Paragraph 5.8(c) of the 2019 Authorisation requires ABA member banks to proactively identify existing customers who are, or may be, eligible for basic bank accounts (**Eligible Customer Condition**). Paragraph 5.8(d) requires the ABA to report to the ACCC on the actions taken in line with the Eligible Customer Condition (**Eligible Customer Reporting**). We note these conditions were amended to exclude 'Category B' banks that only offered accounts that met the requirements of BBAs, in order to reduce reporting and compliance costs on those banks.

We disagree with the claim in the ABA's Application that there is no longer a need for banks to meet the Eligible Customer Condition. We urge the ACCC to consider ASIC's REP 785 when making this decision.³

REP 785 reviewed the efforts of five ABA member banks to comply with the Eligible Customer Condition in 2021-22. ASIC identified serious failings in those banks' processes to transition eligible customers in regional and remote areas to basic bank accounts (**BBAs**), particularly among First Nations customers. While banks were mostly successful at identifying customers that were eligible for BBAs, ASIC found that some migration rates were as low as 0.5%. The ABA notes that 30-60% of BBAs offered by the major banks were opened in the last three years – an increase that coincides with three of the major banks being reviewed in REP 785. The excluded major bank, NAB, was not included on the basis it does not charge overdraft, dishonor or account keeping fees on their transaction accounts.

After years of considerable engagement with ASIC's Indigenous Outreach Program, the four participating banks have programs to improve practices in this area. However, we understand this work is still ongoing even for the banks examined in REP 785.

The ABA's most recent data report on the Eligible Customer Condition indicates that two banks (identified as Bank 1 and Bank 4) merely provide information about BBAs on their website (and Bank 1 in biannual customer statements). ASIC's REP 785 was clear that banks should be proactively identifying and migrating eligible customers as best practice, however this is clearly not consistently implemented across the industry. It is possible that we may see a decline in proactive identification and migration campaigns if the reporting condition is removed.

In our view, REP 785 clearly demonstrates that there are serious questions about the past efforts and future ability and appetite of ABA members to meet the Eligible Customer Condition. Given the recent evidence of systemic failures resulting in significant harm to low-income customers, it is our view that it would be remiss to remove the reporting conditions.

³ Available at: <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-785-better-banking-for-indigenous-consumers/>

Opportunity to enhance meaningful reporting

We also recommend that the ACCC take steps to require a higher standard of reporting under the Eligible Customer Reporting than was provided under the 2019 Authorisation. The documents published are not insightful and limit the effectiveness of the condition. Member banks should be required to publicly report the number of customers they have identified as eligible for BBAs and their migration rates.

If the ACCC approves the New Authorisation without the 2019 Conditions, it will significantly reduce regulatory oversight of banking fees unnecessarily charged to low- and no-income customers. The Eligible Customer Condition and Reporting are not replicated in the same way in the Code, or elsewhere. While the Banking Code Compliance Committee (**BCCC**) has oversight of the Code, it does not require any such data to be reported to it annually. Para 60 of the 2025 Code only requires members to raise awareness of BBAs and does not commit them to proactively identifying and migrating eligible customers (despite the Independent Review recommending banks commit to proactive identification in the Code).⁴ For these reasons, we recommend that the conduct in the New Authorisation is granted only if the same conditions as the 2019 Authorisation continue to apply.

Overdraft Condition

The 2019 Authorisation included condition 5.8(a) that member banks must not charge interest on informal overdrafts where a customer has not agreed to having that facility; and where it is impossible to prevent a charge resulting in an informal overdraft, refund any interest charged within 1-3 months.

The 2025 Code requires that eligible customers who request a BBA, low or no fee account will be provided with one that has no informal overdraft facility, except where it is impossible or reasonably impracticable to prevent the overdraft. It does allow member banks to charge interest on unpreventable informal overdrafts (but not dishonour or overdraft fees).⁵

The ABA's application notes that of the 15 member banks that offer BBAs, six do not have overdraft facilities at all, eight do not charge interest on unavoidable overdrafts, and one advises that 'if interest is charged, it is their policy to refund it'.⁶

Given these positions, the Overdraft Condition has little impact on the member banks and it is not clear what benefit removing it may have, other than minimising the resources involved in ordinary data collection and reporting. Maintaining it will incentivise the remaining nine member banks to uplift their systems to prevent 'unavoidable' overdrafts.

The 2020 amendment excluded 'Category B' banks that only offer accounts that have the features of a BBA, regardless of customer eligibility, from annual reporting to the ACCC on overdrawn BBAs.

⁴ Independent Review of The Banking Code of Practice 2021 Final Report, recommendation 39.

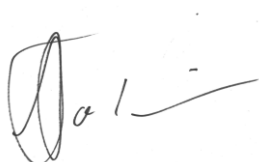
⁵ Paragraph 65, 2025 Banking Code of Practice.

⁶ Application for Authorisation AA1000683 [4.2].

Given the Overdraft Condition provides greater protections for customers with very limited funds and very limited access to banking services than the 2025 Code, and we strongly recommend that this condition also be maintained in the New Authorisation.

Please contact Policy Officer Rose Bruce-Smith at rose@consumeraction.org.au if you have any questions about this submission.

Yours sincerely,



Stephanie Tonkin
CEO

