

Tuesday, 11 February 2025

Banking Code Compliance Committee  
Melbourne  
VIC 8001

Dear Banking Code Compliance Committee (BCCC)

### **Compliance priorities for 2025-6**

Thank you for the opportunity to respond to the Committee's priorities for the upcoming year. The BCCC's administration and enforcement of the Banking Code of Practice is a key aspect of regulatory oversight in the banking sector. The BCCC's monitoring and enforcement activities have helped improve consumer experiences in recent years.

### **About Consumer Action Law Centre**

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

### **Are there any particular aspects of these focus areas that you would like to raise with us to help inform our monitoring work?**

We strongly support the BCCC examining Code compliance through Bank@Post closely. We frequently hear anecdotal issues with accessing banking services at Australia Post, due to the limited range of services, poorly trained and supervised staffed, and physical limitations (for example, no private spaces to discuss your needs in a small community where people generally know each other). The trend in branch closures means higher reliance on Bank@Post and we believe the BCCC will find increasing noncompliance or poor practices. We are concerned by the ABA's application to the ACCC to remove reporting requirements from their authorisation for Basic Bank Accounts (BBAs), particularly given the same conditions were considered unnecessary to codify because of the ACCC requirements.

We urge the BCCC to look at compliance with the 'Eligible Customer Condition' to proactively identify customers who are eligible for BBAs. ASIC's REP 785 identified systemic failings at significant cost to customers experiencing vulnerability. The starkest failing was in migrating customers to BBAs. ASIC's report looked only at four banks and we encourage the BCCC to look across its subscribers. We note that the ABA stated in its 2024



application that the 'significant uptake' of BBAs means there is no public benefit in maintaining the obligation. This ignores the continuous emergence of new eligible customers including young adults, new migrants, and those experiencing financial hardship for the first time, as well as customers who switch banks into a high-fee account. We agree that compliance with the BBA Code obligations is an important priority to monitor closely because if the ACCC determines to remove the requirements, then there will be reduced oversight. We are concerned that the obligations may be watered down or removed in the next Code Review. Our submission to the ACCC is available on our website.

We note the BCCC compliance report to June 2024 shows significant increases in Code breaches in relation to 'Taking extra care with customers who may be vulnerable' (46%), and 'Being inclusive and accessible' (72%). ASIC's May 2024 financial hardship report (REP782) also found that they should be doing much more to support Australians who were struggling to meet their repayments. The report states that more than one in three (35%) dropped out of the hardship process due to inaccessibility. These findings align with what our financial counsellors on the NDH report over the last year when speaking to people navigating requests for financial hardship assistance. Poor responses include

- 3 months or less in financial hardship assistance as a standard response, despite being on notice of significant customer vulnerability;
- Failing to tailor responses to individual circumstances;
- Referring customers to the NDH without first attempting to provide appropriate financial hardship assistance, or even explaining the NDH's service. This remains a persistent problem despite our ongoing engagement with hardship teams and leaders in the major banks:
- Refusing to discuss capitalising arrears;
- Continuing to push people in desperate circumstances to enter into payment arrangements, even for \$10 a fortnight, for debts that will never realistically be repaid;
- Making it onerous to obtain a compassionate waiver in compelling circumstances.

One such case reported to us involved a pensioner experiencing terminal cancer and struggling with unmanageable credit card debt. We also continue to hear issues from victim-survivors of domestic and family violence. We recently assisted a victim-survivor of serious family violence who was provided an unsuitable loan by a major bank, despite the bank being on notice of her vulnerabilities. The bank initially agreed to a full waiver of a debt for a loan that she received no benefit from, but only if she agreed to withdraw her complaints. They have since require more conditions and meetings despite her difficult circumstances.

### **Are there any areas or obligations in the new Code that you think we could support compliance through targeted guidance?**

Targeted guidance is critical to improve how banks assist individuals who are particularly vulnerable to the rapidly increasing movement toward digital only banking. Additional hurdles to access essential banking seem to be emerging daily. We recently spoke to an 88-year-old CBA customer, who despite having her app PIN, has been unable to access her CommBank app as it is requesting her to upgrade the app via the App Store. She is unable to do this as it requires her Apple ID Password, which she has lost as it was stored in a disposed device.



She has also experienced extreme difficulty in trying to regain access to her Apple ID with Apple. The CommBank App message currently reads: "Error. To continue banking on your mobile you'll need to get the latest version of the CommBank App."

As she only has her phone, and no computer to access online banking, she has been unable to for pay many urgent online bills, which can only now be done in person at the bank or at the post office via cash. This is extremely difficult for her, as she requires a walking frame to assist her mobility. This issue is likely impacting many other customers in similar circumstances, who have been given no prior warning. CBA has not proactively reached out to support our client or provided interim support to help her access her online banking.

**Are there any areas or obligations in the new Code that you think we could support compliance through enhanced or focused monitoring or oversight?**

In line with our submission to the review of the new Banking Code, and our comments above, other protections to assist customers experiencing vulnerability and disadvantage that could benefit from greater BCCC scrutiny include:

- Treatment by banks of customers affected by family violence, particularly in the absence of family violence specific protections being made mandatory in the Code;
- Ensuring banks are reducing barriers that prisoners and recently released prisoners face in accessing banking services;
- Whether banks are genuinely exhausting all alternatives before forcing guarantors to sell their home;
- Ensuring banks are providing interpreters free of charge to culturally and linguistically diverse clients who need it, including for Aboriginal and Torres Strait Islander customers, especially when dealing with serious, complex or sensitive matters. Family members, and especially children, should never be relied upon as a translator.

Despite the recent work by the BCCC in this area, our frontline workers (lawyers and financial counsellors) also continue to find it difficult to have third party authorities accepted by banks in order to provide assistance for vulnerable clients. This includes recent occurrences with a major bank, where our lawyers have had to wait up to 6 months to receive the documents requested, and which were only provided after the request was escalated through multiple channels at the bank. On other occasions, the same bank has indicated a third party authority could only be used to speak to one bank team, and would not be recognised if required to speak to another team within the bank.

This conduct in relation to third party authorities has been happening for well over a decade at least. It specifically disadvantages vulnerable customers accessing free services like financial counsellors and community lawyers for help. In our experience banks do not require such authorisation from private law firms, only community services that are using public money to operate. The conduct presents a major impost on our caseworkers' time and limits our availability to support the long line of consumers experiencing vulnerability that need our help.

We believe we are seeing more breaches of the Code, particularly in response to financial hardship requests, on our frontlines. We need increased compliance with protections in the Banking Code to address this. The BCCC



with its oversight position is well-placed to tackle this longstanding problem experienced by advocates across the country.

**Are there any other issues or emerging areas of consumer detriment that you think we should prioritise?**

In addition to our answers above, we also think the BCCC should prioritise assessing whether banks are complying with the AUSTRAC guidance for supporting customers without standard identification, particularly First Nations customers. This should be captured by the obligation to providing accessible and inclusive banking services. In our work with clients, we continue to hear reports of ongoing challenges that consumers face when attempting to have their identities verified using non-standard forms of identification. In our experience customer service staff within banks are commonly either applying the Guide with a very narrow lens, or lack knowledge of and confidence in decision-making under the Guide and therefore decline to assist customers with non-standard identification to open accounts. The harm that noncompliance causes was outlined in several client stories in our [recent joint submission to AUSTRAC](#).

**Scams**

Scams remain at epidemic levels of harm and every scam in Australia involves an Australian bank account. In 2025-26, new dedicated scams legislation will not yet be in place, therefore, obligations under the Banking Code, ePayments Code and at general law will be relevant to a bank's liability to reimburse their customers. Given the widespread and harmful nature of scams, and banks being in the unique position to stop them (unlike their customers), we suggest the BCCC should take a more proactive monitoring approach to banks' scams prevention and disruption activities, and banks' conduct when their customers fall victim to a scam.

The following is a typical experience reported by our clients, published in our [submission to the Scams Consultation Paper in January 2024](#):

*"I felt so embarrassed and ashamed that it had happened, I didn't tell anyone but my husband. I've spent many months and hours trying to get to the bottom of this, I've submitted so many complaints, I've written hundreds of emails, I've made so many calls, my bank always says "it's nothing to do with us, you transferred the money to a different bank, we can't help you", and the other bank says 'you're not our customer, we can't help you...' "You are just sent around in circles, it's like they do their best not to help you. "To me, it feels like they are aiding the scammers, the banks like to make you feel like it's your fault, and that's really hard when you are already feeling so dumb... "It's actually more traumatic -dealing with the banks and getting nowhere- than the actual scam itself."*

Subscribers' responses to scams can be explored through Code commitments to take extra care with customers experiencing vulnerability, financial hardship responses and exercising the care and skill of a diligent and prudent banker.

We look forward to the Committee's work in the forthcoming year.

Yours faithfully,

**Stephanie Tonkin**

CEO

