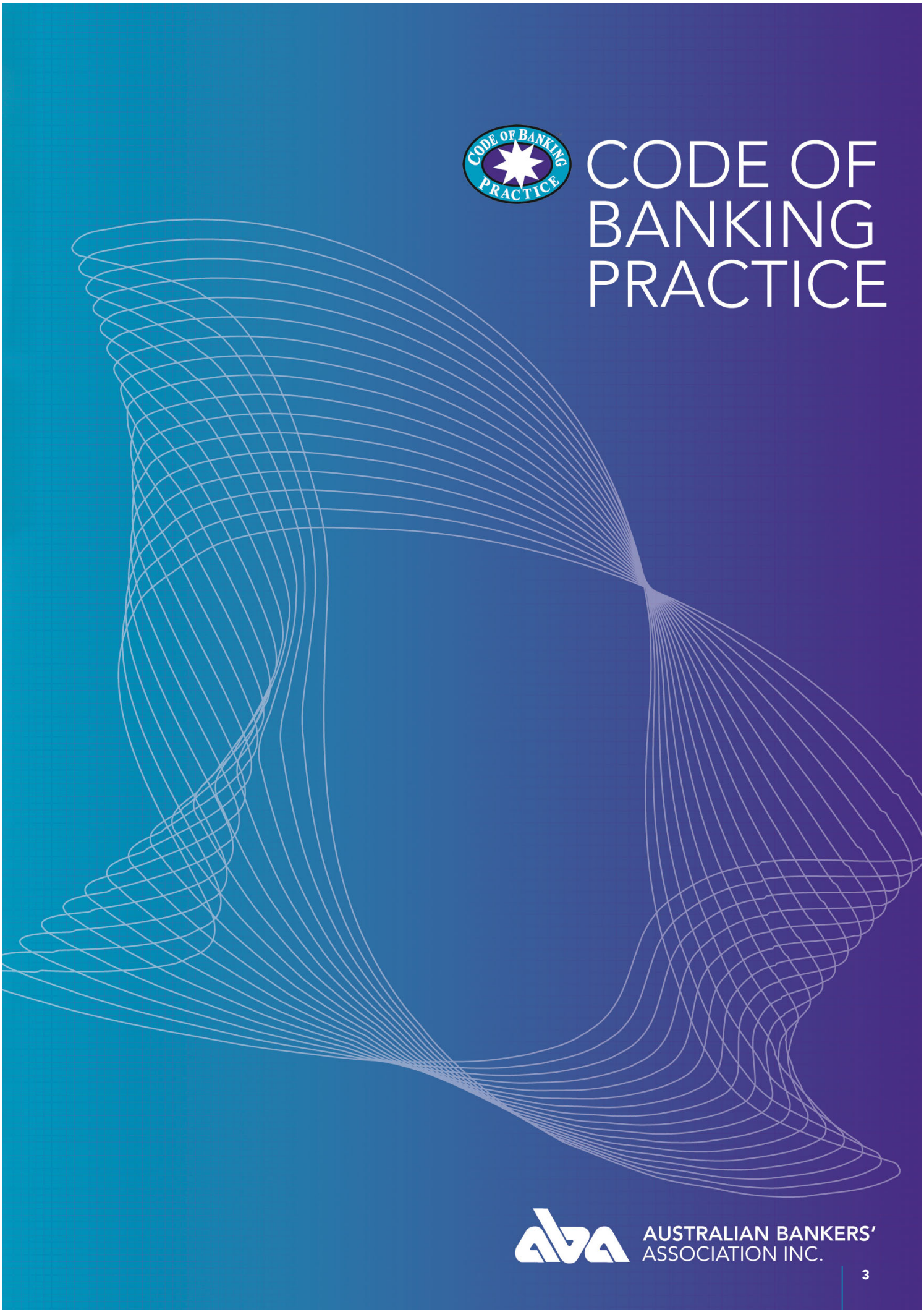
CODE OF BANKING PRACTICE

AND

CODE COMPLIANCE MONITORING COMMITEE MANDATE

AUSTRALIAN BANKERS' ASSOCIATION INC.



CODE OF BANKING PRACTICE

AUSTRALIAN BANKERS' ASSOCIATION INC.

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PART A

INTRODUCTION

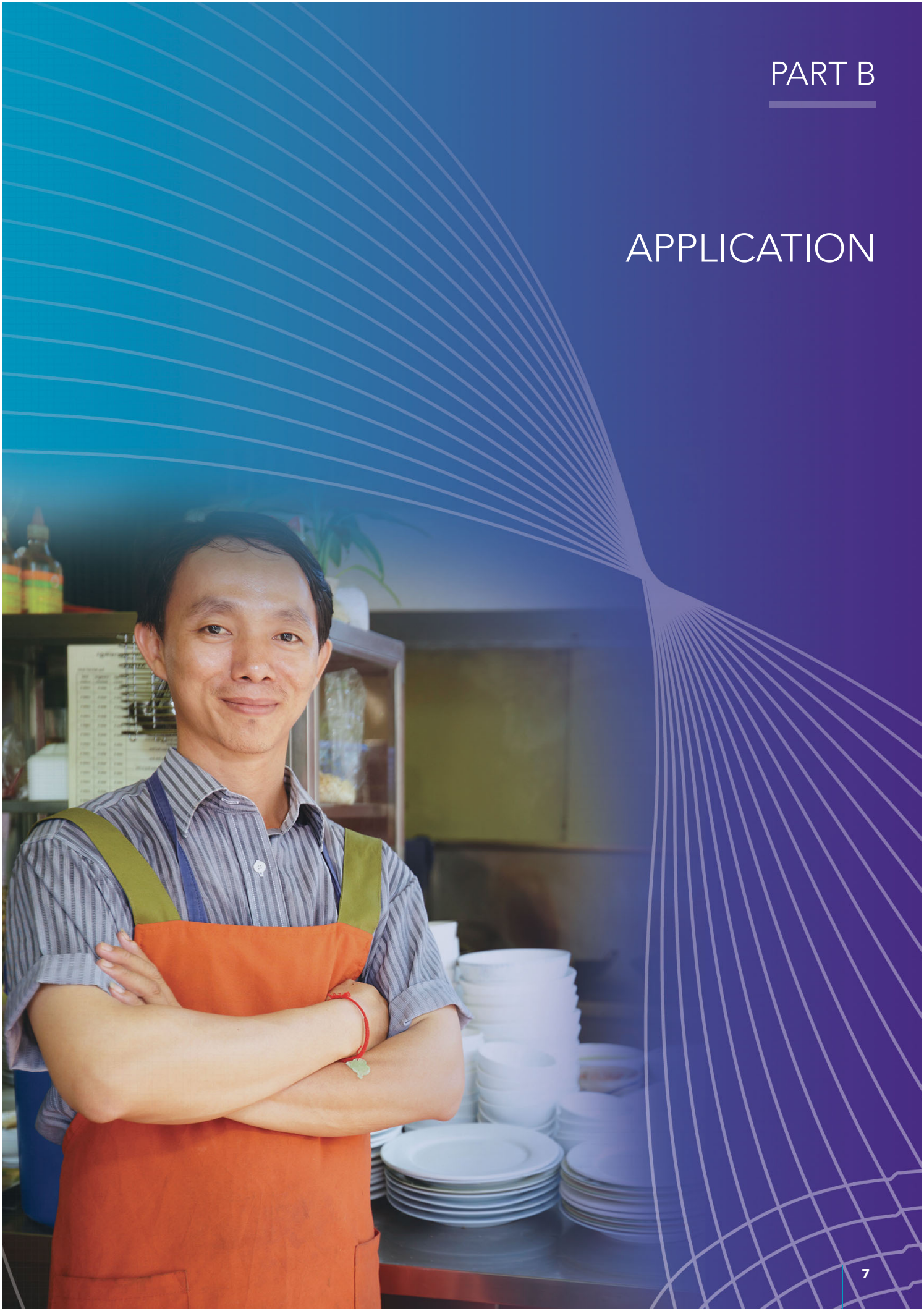
PART A: INTRODUCTION

1. Introduction

This **Code** is a voluntary code of conduct which sets standards of good banking practice for **us** to follow when dealing with persons who are, or who may become, **our** individual and **small business** customers and their guarantors.

PART B

APPLICATION



PART B: APPLICATION

2. Application of this Code

2.1. This version of the **Code of Banking Practice** commences on the **2013 transition date**, and **we** will generally apply this **Code** to:

(a) new **banking services we** provide to **you** on or after that date;

(b) new **Guarantees we** take from **you** on or after that date; and

(c) things **we** do on or after that date in respect of some pre-existing **banking services** and **Guarantees**.

2.2. There are some exceptions to these general principles. Please see clause 41 for more details of how the **Code** will apply in relation to **your** existing and new **banking services** or **Guarantees**.

PART C

OUR KEY COMMITMENTS AND GENERAL OBLIGATIONS

PART C: OUR KEY COMMITMENTS AND GENERAL OBLIGATIONS

3. Our key commitments to you

3.1. **We** will:

(a) through the **ABA**, consult with **small business** and consumer organisations, to continuously work towards improving the standards of practice and service in the banking industry (see also clause 6.3);

(b) promote better informed decisions about **our banking services:**

i. by providing effective disclosure of information;

ii. by explaining to **you**, when asked, the contents of brochures and other written information about **banking services**; and

iii. if **you** ask **us** for advice on **banking services**:

A. by providing that advice through **our** staff authorised to give such advice;

B. by referring **you** to appropriate external sources of advice; or

C. by recommending that **you** seek advice from someone such as **your** legal or financial adviser;

(c) provide general information about the rights and obligations that arise out of the banker and customer relationship in relation to **banking services**;

(d) provide information to **you** in plain language;

(e) communicate with **you** and/or **your** representatives in a timely and responsible manner whether by written or **electronic communications** (including by telephone); and

(f) monitor external developments relating to banking codes of practice, legislative changes and related issues.

3.2. **We** will act fairly and reasonably towards **you** in a consistent and ethical manner. In doing so **we** will consider **your** conduct, **our** conduct and the contract between **us**.

3.3. In meeting **our** key commitments to **you, we** will have regard to **our** prudential obligations.

4. Compliance with laws

4.1. **We** will comply with all relevant laws relating to **banking services**.

4.2. If this **Code** imposes an obligation on **us**, in addition to obligations applying under a relevant law, **we** will also comply with this **Code** except where doing so would lead to a breach of a law (for example, a privacy law).

5. Retention of your rights

In addition to **your** rights under this **Code, you** retain any rights **you** may have under Federal, State and Territory laws.

6. Review of this Code

6.1. **We** will require the **ABA** to commission an independent review of this **Code** every 5 years after

the commencement date of this **Code**, or earlier at **our** request, with the review to be conducted in consultation with:

(a) **banks** which adopt this **Code**;

(b) small business and consumer organisations;

(c) other interested industry associations;

(d) relevant regulatory bodies; and

(e) other interested stakeholders.

6.2. **We** will participate in any such review and co-operate with the person conducting it.

6.3. **We** will require the **ABA** to establish, and **we** will support, a forum (including consumer, **small business** and banking industry representatives) for the exchange of views on:

(a) banking issues; and

(b) the effectiveness of this **Code**.

We will also require the **ABA** to ensure that these views are taken into account in the next review of this **Code**.

6.4. **We** will require the **ABA** to promptly publish on its website:

(a) the recommendations and report arising from a review of this **Code** (and to make them available to the public in hard copy on request);

(b) reasons why any such recommendation has not been accepted; and

(c) progress reports on the implementation of those recommendations which have been accepted, until the implementation process is complete.

7. Customers with special needs

We recognise the needs of older persons and customers with a disability to have access to transaction services, so **we** will take reasonable measures to enhance their access to those services.

8. Customers in remote Indigenous communities

If **you** are a member of a remote Indigenous community, **we** will take reasonable steps to:

(a) make information about **banking services** that may be relevant to **you** available in an accessible manner;

(b) at **your** request, provide **you** with details of accounts which may be suitable to **your** needs, including in a remote location. This information may include details of **our** accounts which attract no or low **standard fees and charges**;

(c) assist **you** with meeting identification requirements (having regard to **our** obligations under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006);

(d) appropriately train staff who are regularly dealing with **you** in a remote location to be culturally aware; and

(e) consider publicly-announced key Commonwealth, State and Territory government programs, such as income management programs, that may be relevant in providing **our banking services** to **you**.

9. Staff training and competency

We will ensure **our** staff (and **our** authorised representatives) will be trained so that they:

(a) can competently and efficiently discharge their functions and provide the **banking services** they are authorised to provide in compliance with this **Code**; and

(b) have an adequate knowledge of the provisions of this **Code** and its application to **banking services**.

10. Promotion of this Code

We will require the **ABA** to:

(a) promote this **Code**; and

(b) clearly make public:

i. which **banks** subscribe to this **Code**; and

ii. how **you** can get a copy of this **Code**.

11. Availability of copies of this Code

We will:

(a) display, at **our** branches, a copy of this **Code** in a readily visible manner;

(b) make this **Code** available on request;

(c) publish this **Code** on **our** website; and

(d) send this **Code** to **you** by **electronic communication** or mail on request.

PART D

INFORMATION WE WILL GIVE YOU ABOUT OUR BANKING SERVICES

PART D: INFORMATION WE WILL GIVE YOU ABOUT OUR BANKING SERVICES

12. Terms and conditions

12.1. **We** will expeditiously provide to **you**, or any person, on request:

(a) the **terms and conditions** of any ongoing **banking service we** currently offer;

(b) full particulars of **standard fees and charges** that are, or may become, payable for any **banking service we** currently offer; and

(c) particulars of the interest rates applicable to any **banking service we** currently offer.

12.2. The **terms and conditions** of **our banking services** will:

(a) be distinguishable from marketing or promotional material;

(b) be in English and any other language **we** consider to be appropriate;

(c) be consistent with this **Code**;

(d) be provided at the time of, or before the contract for an ongoing **banking service** is made, except where it is impracticable to do so, in which case they will be provided as soon as practicable afterwards; and

(e) draw attention to the availability of the general descriptive information referred to in clauses 15.1 and 15.2 if it is relevant, and where relevant, will specifically mention the availability of information about:

i. account opening procedures;

ii. **our** obligations regarding the confidentiality of **your** information;

iii. complaint handling procedures;

iv. **bank** cheques;

v. the advisability of **you** informing **us** promptly when **you** are in financial difficulty; and

vi. the advisability of **you** reading the **terms and conditions** applicable to the relevant **banking service**.

12.3. Any written **terms and conditions** will include a statement to the effect that the relevant provisions of this **Code** apply to the **banking service** but need not set out those provisions.

12.4. **We** will include (where relevant) the following in, or with, **our terms and conditions** applying to a **banking service**:

(a) the **standard fees and charges** that then apply;

(b) the method by which interest, if any, is calculated and the frequency with which it will be credited or debited;

(c) the manner in which **you** will be notified of changes to:

i. the **terms and conditions**;

ii. fees and charges; and

iii. interest rates;

(d) if appropriate, the fact that more than one interest rate may apply;

(e) any minimum balance requirement or restriction on depositing money in, or withdrawing money from, an account;

(f) for term deposits:

i. how **we** will pay interest and repay the principal;

ii. how funds may be dealt with at maturity; and

iii. details of any fee or charge or change in an interest rate resulting from a withdrawal in advance of maturity;

(g) in respect of a loan to **you** which is not regulated by the **National Credit Code**, the repayment details;

(h) subject to clause 26, the frequency with which statements of account will be provided;

(i) a statement that information on current interest rates and **standard fees and charges** is available on request;

(j) how **we** will process the cancellation of a **direct debit request** relevant to a **banking service**, in accordance with clause 21 of this **Code**; and

(k) how **you** or **we** may alter or stop another payment service.

12.5. **We** will include in, or with, the **terms and conditions** for **our** credit cards and, where relevant, debit cards:

(a) general information on chargeback rights;

(b) a prominent statement:

i. that you should report a disputed transaction to **us** as soon as possible (so that we may reasonably ask for a chargeback where such a right exists); and

ii. which refers you to the specific reporting requirements for disputed transactions in **your** credit card **terms and conditions** and that time limitations may not apply in circumstances where the **ePayments Code** applies; and

(c) a warning that the ability to **dispute** a transaction may be lost if it is not reported within the timeframes **we** specify or describe.

12.6 If **you** have a credit facility secured over **your** primary place of residence or **your** residential investment property with **us**, **we** will remind **you** annually of **your** obligations to insure the property under the **terms and conditions** of **your** relevant mortgage. **Our** reminder to **you** will also include:

(a) a general statement to make inquiries with **your** insurer about **your** cover; and

(b) a reference to **ASIC**'s MoneySmart website (www.moneysmart.gov.au) for information on property insurance.

13. Copies of documents

13.1. If **you** request a copy of a document, **you** may have rights in respect of that request under the National Consumer Credit Protection Act 2009 or Chapter 7 of the Corporations Act 2001, which are greater than those which apply under this **Code. We** will

comply with the relevant law when it applies. Otherwise this clause 13 applies.

13.2. At **your** request, **we** will give **you** a copy of any of the following documents that **we** have retained in accordance with relevant legislation for the retention of documents, relating to a **banking service you** have, or had, with **us**:

(a) a contract (including **terms and conditions, standard fees and charges** and interest rates);

(b) any mortgage or other **security** document;

(c) a statement of account; and

(d) a notice previously given to **you** relevant to **us** exercising **our** rights.

13.3. **We** will, subject to clauses 13.4 and 13.5, provide **you** with a copy of a document:

(a) within 14 days, if the original came into existence 1 year or less before the request is given;

(b) within 30 days, if the original came into existence more than 1 year but less than 7 years before the request is given; and

(c) otherwise within a reasonable time.

13.4. **We** do not have to give **you** a copy of a notice which requires **you** to take action if **we** receive the request more than 2 years after discharge or termination of the original contract to which the notice is related.

13.5. **We** do not have to give **you** another copy of a statement of account within 3 months after **we** have given **you** a copy of the same statement of account.

13.6. A copy of a document provided to **you** under this **Code** may be in electronic form containing the same information as the original or in any other form as mutually agreed.

13.7. **We** may charge **you** a reasonable fee for providing **you** with a copy of a document under this **Code**.

14. Cost of credit

We will make available to **you**, a prospective customer or an appropriate external agency the interest rates and **standard fees and charges** applicable to a **banking service** that is a credit facility offered by **us**, for use in the preparation of a comparison rate.

15. Operation of accounts

15.1. **We** will provide to **you** or a prospective customer, on request, general descriptive information concerning **our banking services**, including where appropriate:

(a) account opening procedures;

(b) **our** obligations regarding the confidentiality of **your** information;

(c) complaint handling procedures;

(d) **bank** cheques;

(e) the advisability of **you** informing **us** promptly when **you** are in financial difficulty so that we may discuss your situation; and

(f) the advisability of **you** reading the **terms and conditions** applying to the relevant **banking service**.

15.2. When **you** open an account with cheque access, and on request, **we** will provide **you** with general descriptive information on:

(a) the time generally taken for clearing a cheque and how a cheque may be specially cleared;

(b) the effect of crossing a cheque, the meaning of "not negotiable" and "account payee only" and the significance of deleting "or bearer" when any of these expressions appear on a cheque;

(c) how and when a cheque may be stopped;

(d) how a cheque may be made out so as to reduce the risk of unauthorised alteration; and

(e) the dishonour of cheques, including post-dated and stale cheques.

16. Account suitability

16.1. Clause 16 does not apply if **you** are a **small business**.

16.2. If **you** tell **us** that:

(a) **you** are a low income earner or a disadvantaged person (regardless of whether **you** are an existing or prospective customer); or

(b) **you** would like factual information about accounts which attract no or low **standard fees and charges**,

we will provide **you** with factual information about any of **our** accounts which may be suitable to **your** needs. That information may include details of **our** accounts which attract no or low **standard fees and charges**.

16.3. If in the course of speaking with **you**, in relation to **your** accounts, **we** become aware that **you** may be the holder of a Commonwealth Seniors Health Card, Health Care Card or Pensioner Concession Card (regardless of whether **you** are an existing or prospective customer), **we** will provide **you** with factual information about **our** accounts which attract no or low **standard fees and charges**.

16.4. Please note that **we** will not assess continuously whether **you** may be a low income earner or a disadvantaged person, but **we** encourage **you** to let **us** know at any time if this is the case.

16.5. **We** will make information publicly available about accounts which attract low or no **standard fees and charges** on **our** website and through other means.

16.6. **We** will train staff to help them to recognise a customer that may qualify for an account which attracts no or low **standard fees and charges**.

16.7. Information disclosed under this clause 16 will include:

(a) **terms and conditions** of relevant accounts; and

(b) **fees and charges** for relevant accounts.

PART E

BANKING SERVICES PRACTICES

PART E: BANKING SERVICES PRACTICES

17. Bank cheques and inter-bank transfers

Where **we** charge **you** for the provision of a **bank** cheque, an inter-**bank** transfer or like service, **we** will disclose the fee or charge to **you** when the service is provided, or at any other time on request, except where the relevant **banking service** is regulated by Chapter 7 of the Corporations Act 2001.

18. Pre-contractual and new account information

18.1. **We** will disclose to **you** the existence of any application fee or charge and whether the fee or charge is refundable if **your** application is rejected or not pursued. This will be done before **you** are liable to pay any such fee or charge.

18.2. **We** will provide to **you** or a prospective customer on request, general descriptive information (which may consist of, or include, material made available by a government) about:

(a) the identification requirements of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006; and

(b) the options available to **you** or a prospective customer under tax file number legislation.

18.3. When **you** already have an account with **us** and **we** open a new account for **you**, **we** will state in writing:

(a) whether the new account may be combined with the existing account; and

(b) what the consequences are if the accounts are combined.

19. Account combination

19.1. **We** will inform **you** promptly after exercising **our** right to combine **your** accounts. In exercising a right to combine accounts, **we** will comply with any applicable requirements of the Code of Operation for Department of Human Services and Department of Veterans' Affairs Direct Credit Payments.

19.2. **We** will not exercise **our** right to combine **your** accounts in connection with amounts **you** owe in respect of **your** credit facility with **us** which is regulated by the **National Credit Code**:

(a) while **we** are actively considering **your** financial situation under clause 28 or under the hardship provisions of the **National Credit Code**. **We** may ask **you**, as a condition of not exercising **our** right to combine **your** accounts, that **you** agree to retain funds in an account until **our** decision on **your** application has been made; or

(b) while **you** are complying with an agreed arrangement with **us** resulting from **our** considerations referred to in clause 19.2(a).

20. Changes to terms and conditions

20.1. When, in relation to a **banking service**, **we** intend to:

(a) introduce a fee or charge (other than a government charge referred to in clause 20.2);

(b) vary the minimum balance to which an account keeping fee applies;

(c) vary the method by which interest is calculated;

(d) vary the balance ranges within which interest rates apply to a deposit account; or

(e) vary the frequency with which interest is debited or credited,

we will provide written notice of the introduction or variation to **you** at least 30 days before the change takes effect except where this notice is not required, where **you** cannot reasonably be located or **you** have engaged in the transaction or procured the service anonymously.

20.2. **We** will notify **you** of the introduction or variation of a government charge payable directly, or indirectly, by **you** by advertisement in the national media or local media or in writing to **you**, unless the introduction or variation is publicised by a government, government agency or representative body.

20.3. **We** will notify **you** of variations to the **terms and conditions** (other than a variation referred to in clause 20.1 or clause 20.2) in relation to a **banking service** by advertisement in the national media or local media or in writing to **you**, no later than the day on which the variation takes effect.

20.4. If:

(a) **you** are a **small business** with a **banking service** being a credit facility; and

(b) **we** make a variation (other than a variation referred to in clause 20.1 or 20.2) to only the **terms and conditions** of **your** credit facility (and not to the **terms and conditions** of the credit facilities of other **small business** customers), and **we** reasonably consider the variation will be materially adverse to **you**,

we will give **you** a reasonable period of notice (not less than 10 business days) in writing of that variation, unless **we** consider a shorter notice period is necessary for **us** to avoid or reduce an increase in the credit risk to **us**.

20.5. In both clauses 20.3 and 20.4, for the avoidance of doubt, a variation to the **terms and conditions** includes a variation of **standard fees and charges** or of an interest rate, but does not include changes to an interest rate linked to money market rates or some other external reference rate, changes of which **we** cannot notify **you** of in advance.

20.6. Clauses 20.1 to 20.4 do not apply to a **banking service** regulated by:

(a) the **National Credit Code**; or

(b) Chapter 7 of the Corporations Act 2001.

This is because these laws have their own notice requirements.

21. Direct debits

21.1. **We** will take and promptly process **your**:

(a) instruction to cancel a **direct debit request** relevant to a **banking service we** provide to **you**; and

(b) complaint that a **direct debit** was unauthorised or otherwise irregular.

21.2. **We** will not direct or suggest that **you** should first raise any such request or complaint directly with the **debit user** (but **we** may suggest that **you** also contact the **debit user**).

21.3. Clause 21.1 does not apply to a payment service relating to a credit card account (see clause 22).

22. Chargebacks

22.1. If **you** have disputed a card transaction with **us** within the required timeframe, **we** will, in relation to a credit card or, where relevant, a debit card transaction (including an unauthorised payment debited to **your** card account pursuant to a recurring payment arrangement):

(a) claim a chargeback right, where one exists, for the most appropriate reason; and

(b) not accept a refusal of a chargeback by a merchant's financial institution unless it is consistent with the relevant card scheme rules.

22.2. **We** will make available general information about chargebacks on **our** website or by **electronic communication** to **you** and **we** will notify **you** of the availability of this information on or with the relevant card statement of account at least once every 12 months.

23. Information relating to foreign exchange services

23.1. In providing a foreign exchange service, other than by credit or debit card or travellers' cheque, **we** will provide to **you**:

(a) details of the exchange rate and commission charges that will apply or, if these are not known at the time, details of the basis on which the transaction will be completed if they are known to **us**; and

(b) an indication of when money sent overseas on **your** instructions would normally arrive at the overseas destination.

23.2. Prior to advancing a foreign currency loan in **Australia**, **we** will provide to **you** in **our** letter of offer, loan **terms and conditions** (which may be in the form of a master agreement) or other relevant document, a general warning in writing of the risks arising from exchange rate movements and will inform **you** generally of the availability of mechanisms, if they exist, for limiting such risks.

24. Privacy and confidentiality

We acknowledge that, in addition to **our** duties under the Privacy Act 1988, **we** have a general duty of confidentiality towards **you**, except in the following circumstances:

(a) where disclosure is compelled by law;

(b) where there is a duty to the public to disclose;

(c) where **our** interests require disclosure; or

(d) where disclosure is made with **your** express or implied consent.

25. Payment instruments

25.1. **We** will inform **you** of the advisability of safeguarding payment instruments such as credit and debit cards, cheques and passbooks.

25.2. **We** may require **you** to notify **us**, as soon as possible, of the loss, theft or misuse of **your** payment instruments.

25.3. **We** will inform **you** of:

(a) the consequences arising from **your** failure to comply with any requirement referred to in clause 25.2 that **we** impose on **you**; and

(b) the means by which **you** can notify **us** of the loss, theft or misuse of **your** payment instruments.

26. Statements of account

26.1. **We** will give **you** a statement of all transactions relating to **your** deposit account since the last statement at least every 6 months unless:

(a) the deposit account is a passbook account; or

(b) it has been agreed that:

i. some other method will be used to record the transactions; or

ii. a statement need not be provided; or

(c) no amount has been debited or credited to the account during the statement period (other than debits for government charges, or duties, on receipts or withdrawals); or

(d) **we** are unable, after taking reasonable steps, to locate **you**; or

(e) the transaction information has already been provided to **you**.

26.2. You may ask for more frequent statements of account on a deposit account.

26.3. Even if **you** are in default, **we** will:

(a) if it is practicable for **us** to do so, give **you** a statement on a loan account; or

(b) if it is not practicable (for example, because automatic statement generation is not available on defaulted accounts) **we** will inform **you** about the availability of statements and the method for requesting them and provide **you** with statements, on request, in a timely manner.

26.4. If **you** are a **small business**, or an individual and the **National Credit Code** statement of account provisions do not apply to **your** loan or other credit account, **we** will give **you** a statement of transactions on **your** account consistent with the content and timing requirements of the **National Credit Code** except where the

nature of the **banking service** is such that it would be impractical to apply the **National Credit Code** statement of account provisions to the **banking service**.

27. Provision of credit

Before **we** offer, give **you** or increase an existing, credit facility, **we** will exercise the care and skill of a diligent and prudent banker in selecting and applying **our** credit assessment methods and in forming **our** opinion about **your** ability to repay the credit facility.

28. If you are experiencing financial difficulties with your credit facility

28.1. This clause 28 applies to a credit facility **you** have with **us**.

28.2. With **your** agreement and co-operation, **we** will try to help **you** overcome **your** financial difficulties with any credit facility **you** have with **us**. **We** could, for example, work with **you** to develop a repayment plan.

28.3. **We** will deal with **you** or, at **your** request, with **your** authorised financial counsellor or representative where **you** have given **us** their correct contact details. If **our** reasonable attempts to contact or otherwise deal with **your** financial counsellor or other representative are unsuccessful, **we** will revert to dealing with **you**.

28.4. If, in the course of **our** personal dealings with **you**, **we** identify that **you** may be experiencing difficulties in meeting **your** repayments under the credit facility, **we** may decide to contact **you** and invite **you** to discuss **your** situation with **us** and the options available to assist **you** in meeting **your** obligations in these circumstances.

28.5. If, at any time **you** consider **you** are, or expect to be, experiencing difficulties in meeting **your** repayments to **us**, **you** should make contact with **us** as soon as possible to discuss **your** situation with **us** and the options available to assist **you** in meeting **your** obligations.

28.6. **We** will respond promptly (for example, within the timeframes prescribed by the **National Credit Code**, if it applies) to any requests for assistance from **you**, or **your** authorised representative, in relation to **your** financial difficulties with a credit facility **you** have with **us**. **We** will take into account the information available to **us**, including the information **you** provide to **us**, about **your** financial situation in determining whether or not **we** are able to provide assistance and the nature and extent of any assistance.

28.7. If, when **you** contact **us** in any of the circumstances described in clauses 28.5 and 28.6 or when **you** discuss **your** situation with **us** as a result of an invitation described in clause 28.4, **we** think that the hardship provisions of the **National Credit Code** could apply to **your** circumstances, **we** will inform **you** about them.

28.8. **We** will inform **you** in writing of **our** decision whether or not to provide **you** with any assistance if **you** are in financial difficulty with

a credit facility **you** have with **us** and the reasons for **our** decision. If **we** agree to provide **you** with assistance, **we** will confirm in writing the main details of the arrangements.

28.9. **We** will:

(a) not require **you** to apply for early release of **your** superannuation benefits to repay the whole or any part of **your** credit facility with **us**; and

(b) recommend that **you** seek independent advice on the option of applying for early release of **your** superannuation benefits, for example, from a financial counsellor or financial adviser.

Information on having **your** superannuation benefits released early is available from the Department of Human Services (www.humanservices.gov.au).

28.10. **We** will make information about **our** processes for dealing with customers in financial difficulty with a credit facility available on **our** website (including relevant contact numbers). **We** will inform **you** at **your** request about how to find this information on **our** website and **we** will make this information available in another format if **you** tell **us you** do not have access to **our** website.

28.11. **We** will take reasonable steps to ensure that relevant staff, who are responsible for dealing with **you** about **your** financial difficulties with a credit facility **you** have with **us**, are trained in relation to the hardship provisions of this **Code** and the **National Credit Code**.

29. Joint debtors

29.1. **We** will not accept **you** as a co-debtor under a credit facility where it is clear, on the facts known to **us**, that **you** will not receive a benefit under the facility.

29.2. **We** will, before signing **you** up as a co-debtor, take all reasonable steps to ensure that **you** understand that **you** may be liable for the full amount of the debt and what **your** rights are under clause 29.3.

29.3. If **you** are jointly and severally liable under a credit facility, **we** will allow **you** to terminate **your** liability in respect of future advances or financial accommodation on giving **us** written notice. This right only applies where **we** can terminate any obligation **we** have to provide further credit to any other debtor under the same credit facility.

30. Joint accounts and subsidiary cards

30.1. If **you** are opening a joint account, **we** will provide **you** with general descriptive information on:

(a) how funds may be withdrawn from the joint account, having regard to the instructions given by **you**;

(b) the manner in which such instructions can be varied; and

(c) **your** potential liability for debts incurred on the joint account.

30.2. When accepting **your** instructions to issue a subsidiary credit or debit card, **we** will:

(a) provide general descriptive information to **you**, as the primary cardholder, on **your** potential liability for debts

incurred by the subsidiary cardholder using the card; and

(b) inform **you**, as the primary cardholder, of the means by which a subsidiary card may be cancelled or stopped and the fact that this may not be effective until the subsidiary card is surrendered or **you** have taken all reasonable steps to have the card returned to **us**.

30.3. If **you** are a primary cardholder, **you** will not be liable for the continuing use of a subsidiary card from the later of:

(a) the date **you** request **us** (as the issuing **bank**) to cancel the subsidiary card; and

(b) when **you** have taken all reasonable steps to have the subsidiary card returned to **us**.

31. Guarantees

31.1. This clause 31 applies to every guarantee and indemnity obtained from **you** (where **you** are an individual at the time the guarantee and indemnity is taken) for the purpose of securing any financial accommodation or facility provided by **us** to another individual or a **small business** (called a "**Guarantee**"), except as provided in clauses 31.15 and 31.16.

31.2. **We** may only accept a **Guarantee** if **your** liability:

(a) is limited to, or is in respect of, a specific amount plus other liabilities (such as interest and recovery costs) that are described in the **Guarantee**; or

(b) is limited to the value of a specified **security** at the time of recovery.

31.3. A **Guarantee** must include a statement to the effect that the relevant provisions of this **Code** apply to the **Guarantee** but need not set out those provisions.

31.4. **We** will do the following things before **we** take a **Guarantee** from **you**:

(a) give **you** a prominent notice that:

i. **you** should seek independent legal and financial advice on the effect of the **Guarantee**;

ii. **you** can refuse to enter into the **Guarantee**;

iii. there are financial risks involved;

iv. **you** have a right to limit **your** liability in accordance with this **Code** and as allowed by law; and

v. **you** can request information about the transaction or facility to be guaranteed ("**Facility**") (including any facility with **us** to be refinanced by the **Facility**);

(b) tell **you**:

i. about any notice of demand made by **us** on the debtor, and any dishonour on any facility the debtor has (or has had) with **us**, which has occurred within 2 years before **we** tell **you** this; and

ii. if there has been an excess or overdrawing of $100 or more on any facility the debtor has (or has had) with **us** which has occurred within 6 months before **we** tell **you** this, and **we** will give **you**

a list showing the extent of each of those excesses or overdrawings;

(c) tell **you** if any existing facility **we** have given the debtor will be cancelled, or if the **Facility** will not be provided, if the **Guarantee** is not provided;

(d) provide **you** with a copy of:

i. any related credit contract together with a list of any related **security** contracts which will include a description of the type of each related **security** contract and of the property subject to, or proposed to be subject to, the **security** contract to the extent to which that property is ascertainable and **we** will also give **you** a copy of any related **security** contract that **you** request;

ii. the final letter of offer provided to the debtor by **us** together with details of any conditions in an earlier version of that letter of offer that were satisfied before the final letter of offer was issued;

iii. any related credit report from a credit reporting agency;

iv. any current credit-related insurance contract in **our** possession;

v. any financial accounts or statement of financial position given to **us** by the debtor for the purposes of the **Facility** within 2 years prior to the day **we** provide **you** with this information;

vi. the latest statement of account relating to the **Facility** (and any other statement of account) for a period during which a notice of demand was made by **us**, or a dishonour occurred, in relation to which **we** are required to give **you** information under clause 31.4(b)(i); and

vii. any unsatisfied notice of demand made by **us** on the debtor in relation to the **Facility** where the notice was given within 2 years prior to the day **we** provide **you** with this information; and

(e) give **you** other information **we** have about the **Facility** (including any facility with **us** to be refinanced by the **Facility**) that **you** reasonably request, but **we** do not have to give **you our** own internal opinions.

31.5. **We** will not ask **you** to sign a **Guarantee**, or accept it, unless **we** have:

(a) provided **you** with the information described in clause 31.4 to the extent that that information is required by this **Code** to be given to **you**; and

(b) allowed **you** until the next day to consider that information.

We do not have to allow **you** the period referred to in clause 31.5(b) if **you** have obtained independent legal advice after having received the information required by clause 31.4

31.6. **We** will:

(a) not give the **Guarantee** to the debtor, or to someone acting on behalf of the debtor, to arrange the signing (except if they are a legal practitioner or financial adviser); and

(b) ensure that **you** sign the **Guarantee** in the absence of the debtor where **we** attend the signing of the **Guarantee**.

31.7. **We** will also provide **you**, on request, with additional copies of any information described in clause 31.4(d) that **we** have given **you** and will do so:

(a) within 14 days, if the original came into existence 1 year or less before the request is given; or

(b) within 30 days, if the original came into existence more than 1 year before the request is given,

except **we** do not need to do so if **we** have given the requested information within 3 months prior to the request.

31.8. **We** will ensure that a warning notice (substantially in the form required by section 55 of the **National Credit Code**, and detailed in Form 8 of the National Consumer Credit Protection Regulations 2010 and which is consistent with this **Code**) appears directly above the place where **you** sign.

31.9. **You** may, by written notice to **us**, limit the amount or nature of the liabilities guaranteed under the **Guarantee**, except that **we** do not have to accept such a limit if:

(a) it is below the debtor's liability under the relevant credit contract at the time plus any interest or fees and charges which may be subsequently incurred in respect of that liability; or

(b) **we** are obliged to make further advances or would be unable to secure the present value of an asset which is **security** for the loan (for example, a house under construction).

31.10. **You** may, at any time, extinguish **your** liability to **us** under a **Guarantee** by paying **us** the then outstanding liability of the debtor (including any future or contingent liability), or any lesser amount to which **your** liability is limited by the terms of the **Guarantee**, or by making other arrangements satisfactory to **us** for the release of the **Guarantee**.

31.11. **You** can, by written notice to **us**:

(a) withdraw from the **Guarantee** at any time before the credit is first provided under the relevant credit contract; or

(b) withdraw after credit is first provided, if the credit contract differs in a material respect from the proposed credit contract given to **you** before the **Guarantee** was signed,

(c) but only to the extent the **Guarantee** guarantees obligations under the credit contract.

31.12. A third party mortgage will be unenforceable in relation to a future credit contract or future **Guarantee** unless **we** have:

(a) given the mortgagor a copy of the future credit contract document or future **Guarantee** document; and

(b) subsequently obtained the mortgagor's written acceptance of the extension of the third party mortgage.

31.13. A **Guarantee** given by **you** will be unenforceable in relation to a future credit contract unless **we** have:

(a) given **you** a copy of the future credit contract document; and

(b) subsequently obtained **your** written acceptance of the extension of the **Guarantee**.

However, a **Guarantee** given by **you** will be enforceable to the extent the future credit contract (together with all other existing credit contracts secured by that **Guarantee**), is within a limit previously agreed in writing by **you** and **we** have included in the notice **we** give **you** under clause 31.4(a) a prominent statement that the **Guarantee** can cover a future credit contract in this way.

31.14. **We** will not, under a **Guarantee**, enforce a judgment against **you** unless:

(a) **we** have obtained judgment against the principal debtor for payment of the guaranteed liability which has been unsatisfied for 30 days after **we** have made written demand for payment of the judgment debt;

(b) **we** have made reasonable attempts to locate the debtor without success;

(c) the debtor is insolvent;

(d) a court, tribunal or other body with relevant jurisdiction has relieved **us** of the obligation to proceed first against the principal debtor;

(e) **you** have provided a mortgage or other **security** for **your** liability under the **Guarantee** and the principal debtor has not provided a mortgage or other **security** for the guaranteed liability; or

(f) the principal debtor has provided a mortgage or other **security** for the guaranteed liability and **we** have enforced that mortgage or other **security** or reasonably expect that the proceeds of its enforcement will not be sufficient to repay the guaranteed liability,

but these rules in clause 31.14 do not apply where the principal debtor is a **small business**.

31.15. Where **you** are a **commercial asset financing guarantor, sole director guarantor** or **trustee guarantor** clauses 31.4(b) to (e) (inclusive), 31.5, 31.6 and 31.7 do not apply.

31.16. If **you** are a **director guarantor** clauses 31.4(d) and 31.5 apply as follows:

(a) **we** will tell **you** that:

i. **you** have the right to receive the documents described in clause 31.4(d); and

ii. those documents contain important information that may affect **your** decision to give a **Guarantee**;

(b) **you** may choose not to receive some or all of the documents described in clause 31.4(d);

(c) **we** will tell **you** how **you** can make these choices;

(d) **we** will provide **you** with a copy of any document described in clause 31.4(d) that **you** have requested;

(e) **you** can tell **us** that **you** do not wish to have the benefit of the period referred to in clause 31.5(b); and

(f) apart from telling **you** the things set out in clauses (a) and ii, 31.16(b) and 31.16(c) and as required under other provisions of this **Code**, **we** will not attempt to influence **your** choices under clauses 31.16(b) and 31.16(e).

32. Debt collection

32.1. **We** and **our** collection agents will comply with the **ACCC**'s and **ASIC**'s "Debt Collection Guideline: for Collectors and Creditors" (the "**Debt Collection Guideline**") dated May 2010 (as amended or replaced from time to time) when collecting amounts due to **us** and **we** will take all reasonable steps to ensure that **our** representatives do likewise. If **we** become aware that **our** collection agents or representatives are not complying with the **Debt Collection Guideline** **we** will direct them to comply.

32.2. If **we** sell a debt to a third party, **we** will choose a third party that agrees to comply with the **Debt Collection Guideline** referred to in clause 32.

32.3. **We** will not assign **your** debt, except as part of a funding arrangement such as securitisation or the issue of covered bonds, while **we** are:

(a) actively considering **your** financial situation under clause 28 of this **Code** or under the hardship variation provisions of the **National Credit Code**; or

(b) while **you** are complying with an agreed arrangement with **us** resulting from **our** considerations referred to in clause 32.3(a).

33. Closure of accounts in credit

33.1. Subject to the **terms and conditions** of any relevant **banking service** and any related **security**, **we**:

(a) will, at **your** request, close an account of yours that is in credit;

(b) may close an account of yours that is in credit by giving **you** reasonable notice and paying **you** the amount of the credit balance; and

(c) may charge **you** an amount that is **our** reasonable estimate of the costs of closure.

34. Branch closure protocol

We will comply with the **ABA**'s protocol on branch closures, published by the **ABA** from time to time. This protocol is available from the **ABA**'s website: www.bankers.asn.au.

35. Electronic communications

35.1. If a legislative electronic communications regime also applies to any information which this **Code** requires **us** to provide (by writing or other means) **we** may provide **you** with that information by **electronic communication** in accordance with that regime. Otherwise, provided it is not prohibited by legislation, **we** may provide this information to **you** consistently with the requirements for electronic communications specified in the **ePayments Code** (regardless of whether that code applies to the communication).

PART F

RESOLUTION OF DISPUTES, MONITORING AND SANCTIONS

PART F: RESOLUTION OF DISPUTES, MONITORING AND SANCTIONS

36. Monitoring and sanctions

We agree:

(a) that the Code Compliance Monitoring Committee ("**CCMC**"), that has been established under the Code, comprises:

i. 1 person with relevant experience at a senior level in retail banking in **Australia** as **our** representative, to be appointed by the **ABA** on **our** behalf ;

ii. 1 person with relevant experience and knowledge as **your** representative, to be appointed by the consumer representatives on the Board of Directors of the **FOS**; and

iii. 1 person with experience in industry, commerce, public administration or government service as the **Independent Chairperson** of the **CCMC**, to be appointed jointly by the Chief Ombudsman of the **FOS** and the **ABA** on **our** behalf;

(b) that, subject to the **CCMC Mandate** referred to in subclause 36(c), the **CCMC**'s functions will be:

i. to investigate, and to make a determination on, any allegation from any person, including the **FOS**, that **we** have breached this **Code** but the **CCMC** will not resolve, or make any determination on, any other matter;

ii. to monitor **our** compliance under this **Code**, which includes conducting its own motion inquiries into **our** compliance with the **Code**; and

iii. to monitor any other aspects of this **Code** that are referred to the **CCMC** by the **ABA**. The **CCMC**'s compliance monitoring, investigation and reporting functions and powers do not extend to clauses 3 and 4 of the **Code** unless a breach of clause 3 or 4 is also a breach of another provision of the **Code**;

For the avoidance of doubt, the **CCMC**'s functions only relate to the **Code** as it has applied since the **CCMC** was established. In particular the **CCMC**'s functions do not extend to investigating, monitoring and making determinations in relation to the **Code** as it applied before this time.

(c) to require the **ABA**, in consultation with the **CCMC**, to provide to the **CCMC** and publish on the **ABA**'s website a mandate ("**CCMC Mandate**") setting out in further detail the **CCMC**'s **Code** compliance monitoring, investigation and determination processes and other relevant matters. This clause 36 is to be read together with the **CCMC Mandate** as amended from time to time;

(d) to ensure that the **CCMC** has sufficient resources and funding to carry out its functions satisfactorily and efficiently;

(e) to include in the **CCMC Mandate** an indemnity by **us** to release and indemnify the **CCMC**, its officers and employees (**CCMC**'s personnel) in respect of their **Code** compliance monitoring activities;

(f) to annually lodge with the **CCMC** (in a form acceptable to the **CCMC**) an annual compliance statement on **our** compliance with this **Code**;

(g) to co-operate and comply with all reasonable requests of the **CCMC** in pursuance of its functions;

(h) to require the **CCMC** to arrange a regular independent review of its activities and to ensure a report of that review is lodged with **ASIC.** This review is to coincide with the periodic reviews of this **Code** (see clause 6 unless the **ABA** determines otherwise);

(i) to empower the **CCMC** to carry out its functions and to set operating procedures dealing with the following matters, first having regard to the operating procedures of the **FOS** and then consulting with the **FOS** and the **ABA**:

i. receipt of complaints;

ii. privacy requirements;

iii. civil and criminal implications;

iv. timeframes for acknowledging receipt of a complaint, its progress, responses from the parties to the complaint and for recording the outcome;

v. use of external expertise; and

vi. fair recommendations, undertakings and reporting.

(j) to empower the **CCMC** to name **us** on the **CCMC**'s website, in the next **CCMC** annual report, or both, in connection with a breach of this **Code**, where it can be shown that **we** have:

i. been guilty of serious or systemic non-compliance;

ii. ignored the **CCMC**'s request to remedy a breach or failed to do so within a reasonable time;

iii. breached an undertaking given to the **CCMC**; or

iv. not taken steps to prevent a breach reoccurring after having been warned that **we** might be named.

37. Internal dispute resolution

37.1. **We** will have an internal process for handling **disputes** with **you** which is free and accessible.

37.2. If **you** are:

(a) an individual, and not a **small business**; or,

(b) a **small business** to which any relevant internal complaints handling standard or guideline which **ASIC** publishes for application to Australian financial services and credit licensees ("**Approved Standard**") applies,

our internal process will meet the standards set out in the **Approved Standard** (for example, as at the date of the publication of this **Code**, Regulatory Guide 165).

37.3. If clause 37.2 does not apply to **you**, then, clauses 37.3(a) to 37.3(g) apply to **you**.

(a) **We** will notify **you** of the name and contact number of the person who is investigating **your dispute**;

(b) Within 21 days of becoming aware of a **dispute**, **we** will:

(i) complete the investigation and inform **you** of the outcome of the investigation; or

(ii) inform **you** of **our** need for more time to complete **our** investigation.

(c) Unless there are exceptional circumstances, **we** will complete **our** investigation within 45 days of receipt of the **dispute**.

(d) If **we** are unable to resolve a **dispute** within 45 days, **we** will:

i. inform **you** of the reasons for the delay;

ii. provide **you** with monthly updates on progress with the **dispute**; and

iii. specify a date when a decision can reasonably be expected,

unless **we** are waiting for a response from **you** which **we** have told **you we** require.

(e) If the rules of an external **dispute** resolution scheme of which **we** are a member, provide that a matter may be referred to it if a decision is not made within a specified time period, then **we** will inform **you**, no more than 5 **business days** after the expiry of that time period, that a **dispute** may be lodged with the scheme.

(f) Our **dispute** resolution process is available for all complaints other than those that are resolved to **your** satisfaction at the time they are drawn to **our** attention.

(g) **We** will provide **you** with the above information in writing unless it has been mutually agreed that it can be given verbally.

38. External dispute resolution

38.1. **We** will have available for **you** an external process for resolving **disputes**. This process will be:

(a) free of charge; and

(b) consistent with any external **dispute** resolution standard or guide that **ASIC** publishes for application to Australian financial services and credit licensees (for example, as at the date of the publication of this **Code**, Regulatory Guide 139) where this applies to **you**; and

(c) available to **you** in accordance with its terms of reference.

39. Availability of information about dispute resolution processes

39.1. **We** will prominently publicise the availability and accessibility of both **our** internal and external processes for resolving **disputes** through **our** points of contact with **you** where **we** control that point of contact including:

(a) branches;

(b) internet sites; and

(c) telephone-based banking services.

39.2. **We** will also provide **you** with information about:

(a) **our** internal process for dealing with a **dispute** at the time the **dispute** arises; and

(b) the external process, at the same time as **you** are told about the final outcome of the internal process, if **your** complaint is not wholly satisfied.

40. Family law proceedings

Guidelines setting out the manner in which **we** will:

(a) deal with applications for transfers of mortgage and consents to transfer of title pursuant to a Family Court determination or approval; and

(b) otherwise enforce debts affected by a family law property settlement,

are available on **our** website.

PART G

TRANSITION

PART G: TRANSITION

41. Transitional provisions

41.1. On and after the **2013 transition date we** will be bound by this **Code** in respect of:

(a) any **banking service** that **we** commence to provide to **you**; and

(b) any **Guarantee** (as described in clause 31) **we** obtain from **you**,

on or after that date.

41.2. On and after the **2013 transition date**, **we** will be bound by this **Code** in respect of any ongoing **banking service we** were providing to **you** at the **2013 transition date** and continue to provide afterwards except for:

(a) clauses 12.2 to 12.5 of this **Code**, by which **we** shall only be bound when **we** provide **you** with a revised and updated version of the **terms and conditions**;

For the avoidance of doubt, this means that **terms and conditions** applying to existing banking services do not need to be re-issued because of the commencement of this **Code** (subject to clause 41.5).

(b) clause 23 (Information relating to foreign exchange services);

(c) in respect of banking services which **we** commenced to provide to **you** before the **2003 transition date** – clauses 26.2 and 26.4 (Statements of Account) and clause 31.12 (Third Party Mortgages);

(d) in relation to a commercial asset financing facility where the **banking service** is provided before June 2004, and **we** were not disclosed as the provider of that **banking service**; and

(e) as otherwise provided for below,

and the equivalent provisions of the 2003 **Code** [and if relevant, the **Code of Banking Practice** November 1993], shall cease to apply to such banking services from that date.

41.3. On and after the **2013 transition date**, **we** will be bound by this **Code** in respect of **Guarantees** as follows:

(a) in respect of any **Guarantee we** obtain from **you** on or after the **2013 transition date we** will be bound by all applicable provisions of this **Code**;

(b) in respect of any **Guarantee** taken on or after the 2003 transition date and subject to the 2003 **Code**, **we** will be bound by all applicable provisions of this **Code** relating to Guarantees, and the equivalent provisions of the 2003 **Code** shall cease to apply to such Guarantees;

(c) for the avoidance of doubt, in respect of any **Guarantee** in relation to a **commercial asset financing facility** where the **banking service** or **Guarantee** is provided or taken before 1 June 2004, and **we** are not disclosed as the provider of that **banking service** or as the person taking the **Guarantee we** will not be bound by this **Code**; and

(d) **we** will be bound by clauses 31.9, 31.11(a) and 31.13 of this **Code** in respect of any **Guarantee**:

i. subject to the **Code of Banking Practice** November 1993 and taken prior to the 2003 transition date; and

ii. if **we** had not adopted the 2003 **Code** by 1 January 2005, any guarantee taken on or after the 2003 transition date which would have been subject to the 2003 **Code** had **we** been subject to the 2003 **Code**,

(except that the reference to the notice **we** give **you** under clause 31.4(a) in clause 31.13 shall be deemed not to have been made in respect of any such guarantee).

41.4. For the avoidance of doubt, if:

(a) a thing was done (or not done) in respect of a **banking service** or a **Guarantee** prior to the **2013 transition date**; and

(b) doing (or not doing) that thing did not breach a provision of the **Code of Banking Practice** as it applied to the **banking service** or **Guarantee** at the time the thing was done (if any) (for example because the obligation did not exist or the equivalent obligation was performed as it applied at the time):

i. having done (or not done) that thing does not result in a breach of this **Code** on or after the **2013 transition date**; and

ii. **we** are not obliged to do the thing or do it again, on or after the **2013 transition date**,

even if this **Code** would, on or after the **2013 transition date**, require the thing to have been done (or not done or done differently) in otherwise similar circumstances, or before doing something else.

Example

If **we** entered into a **Guarantee** in 2005 the relevant behaviour in entering into that **Guarantee** will be assessed by reference to the **Code** as it applied at that time.

If **we** commenced to provide a **banking service** in 2001 the **terms and conditions** provided at that time and any assessment made in relation to that service shall be assessed by reference to the rules applying in the **Code** as it applied at that time.

41.5. If **you** have a credit card account with **us** on the **2013 transition date**, **we** will give **you** a statement containing the information described in clause 12.5 no later than 12 months after the **2013 transition date** (unless already provided).

41.6. Except as expressly stated in this clause, the application of the **Code of Banking Practice** November 1993 and the 2003 **Code** are not altered by the provisions in this clause 41.

41.7. To the extent of any inconsistency, this **Code** is to be read subject to the **ePayments Code**.

PART H

DEFINITIONS

PART H: DEFINITIONS

42. Definitions

In this **Code** any words in bold **like this** have the following meanings:

2003 Code means the Code of Banking Practice August 2003 as it has applied to **us** from time to time since the day on which **we** publicly announced that **we** had adopted it.

2003 transition date means:

i. the date from which **we** publicly announced that **we** had adopted the **Code of Banking Practice** August 2003; or

ii. if (a) does not apply, 1 January 2004.

2013 transition date means:

(a) the day on which the **ABA** has published on its website **our** subscription to this **Code**, which will be no later than 1 February 2014; or

(b) if **we** are not a signatory to this **Code** as at 1 February 2014, then **commencement date** means the date from which **we** have publicly announced **we** have adopted this **Code**.

ABA means the Australian Bankers' Association.

ACCC means the Australian Competition and Consumer Commission.

Approved Standard has the meaning given in clause 37.2(b).

ASIC means the Australian Securities and Investments Commission.

Australia includes the coastal sea of each jurisdiction but does not include an external territory.

bank means a corporation authorised by law to carry on the general business of banking in **Australia** and that is authorised under the Banking Act 1959 to use the word "bank" or a similar expression in its name.

banking service means any financial service or product provided by **us** in **Australia** to **you**:

(a) including any financial service or product provided by **us** whether supplied directly or through an intermediary; and

(b) in the case of a financial service or product provided by another party and distributed by **us**, extends only to **our** distribution or supply of the service or product to **you** and not to the service or product itself.

business day means a day that is not a Saturday, a Sunday or a public holiday in **Australia**.

CCMC has the meaning given in clause 36(a).

Code of Banking Practice means the Code of Banking Practice as it has applied to **us** from time to time since the commencement date and including, where relevant, the Code of Banking Practice November 1993, 2003 Code (including as amended in 2004) and this **Code**.

Code and "**this Code**" means this Code of Banking Practice as published by the **ABA** at the **2013 transition date** and, for the avoidance of doubt, includes any subsequent amendments from time to time which have been published by the **ABA** and publicly adopted by **us**.

commencement date means the date that **we** first subscribed to the **Code of Banking Practice**. However, see the definition of **2013 transition date**.

commercial asset financing facility means a lease, rental, hire purchase, bill of sale, chattel mortgage facility or a related insurance premium funding facility provided to a company.

commercial asset financing guarantor means a guarantor where the **Guarantee** is to be taken for a **Facility** that is a **commercial asset financing facility** and:

(a) the guarantor is a director, shareholder or **manager** of the company, and:

  i. the guarantor has not given **security** to support the **Guarantee**; or

  ii. where the guarantor has previously given **security**, the guarantor has been notified in writing that the previous **security** may extend to liabilities under the **Guarantee**; and

(b) apart from guarantees and any **security** referred to in (a)(ii) given by directors, shareholders or managers of the company, only the asset financed secures the **commercial asset financing facility**.

credit-related insurance contract means a contract for insurance of any of the following kinds in connection with a credit contract:

(a) insurance over mortgaged property;

(b) consumer credit insurance;

(c) insurance that is a "credit-related insurance contract" for the purposes of section 142(1)(c) of the **National Credit Code**.

debit user means a person who, by agreement with the customer, issues debit payment instructions through their financial institution for distribution to the relevant customer's financial institution.

debt collection guidelines has the meaning given in clause 32.1

direct debit means an amount debited to a specified account of a customer with the customer's financial institution, as requested and authorised in writing by that customer, to and in favour of a **debit user** (or to a third party in its capacity as agent for that named **debit user**) which is processed through the Bulk Electronic Clearing System.

direct debit request means an authority and request to debit amounts to a specified account of a customer with the customer's financial institution, given in writing by that customer to and in favour of a **debit user** or their agent.

director guarantor means a guarantor of a **Facility** who is a director of a company which is to be the debtor for the **Facility** other than a **sole director guarantor** or a **commercial asset financing guarantor**.

dispute means a complaint by **you** in relation to a **banking service**, that has not been immediately resolved when **you** bring the complaint to **our** attention.

electronic communication means:

(a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both; or

(b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system.

ePayments Code means the industry code named the e-Payments Code issued by **ASIC** and available at www.asic.gov.au, and includes, while it continues to apply to **us** and remains in force, its predecessor the Electronic Funds Transfer Code of Conduct.

Facility has the meaning given in clause 31.4.

FOS means Financial Ombudsman Service Ltd (ABN 67 131 124 448).

Guarantee means a guarantee described in clause 31.1.

manager means a person who is actively involved in the day-to-day running of a business and who makes, or participates in making, decisions that affect the whole, or a substantial part of the business or who has the capacity to affect significantly the business's financial standing.

National Credit Code means the **National Credit Code** set out in Schedule 1 of the National Consumer Credit Protection Act 2009.

security includes, without limitation, a security interest within the meaning of the Personal Property Securities Act 2009.

small business means a business having:

(a) less than 100 full time (or equivalent) people if the business is or includes the manufacture of goods; or

(b) in any other case, less than 20 full time (or equivalent) people,

unless the **banking service** is provided for use in connection with a business that does not meet the elements of (a) or (b) above.

sole director guarantor means a guarantor of a **Facility** who is a director of a company that has only one director, and that company is to be the debtor for the **Facility**.

standard fees and charges means fees and charges normally charged by **us** in respect of a **banking service**.

terms and conditions means those **terms and conditions** specifically applied by **us** to a **banking service**, but does not include any other **terms and conditions** that may apply by operation of law.

third party mortgage means a mortgage or charge given for the purpose of securing:

(a) any financial accommodation provided by **us** to an individual or a **small business**; or

(b) a **Guarantee**,

other than such a **security** which contains a personal undertaking by the mortgagor to pay the secured money.

trustee guarantor means a guarantor of a **Facility** where:

(a) the guarantor and the debtor are the same person; and

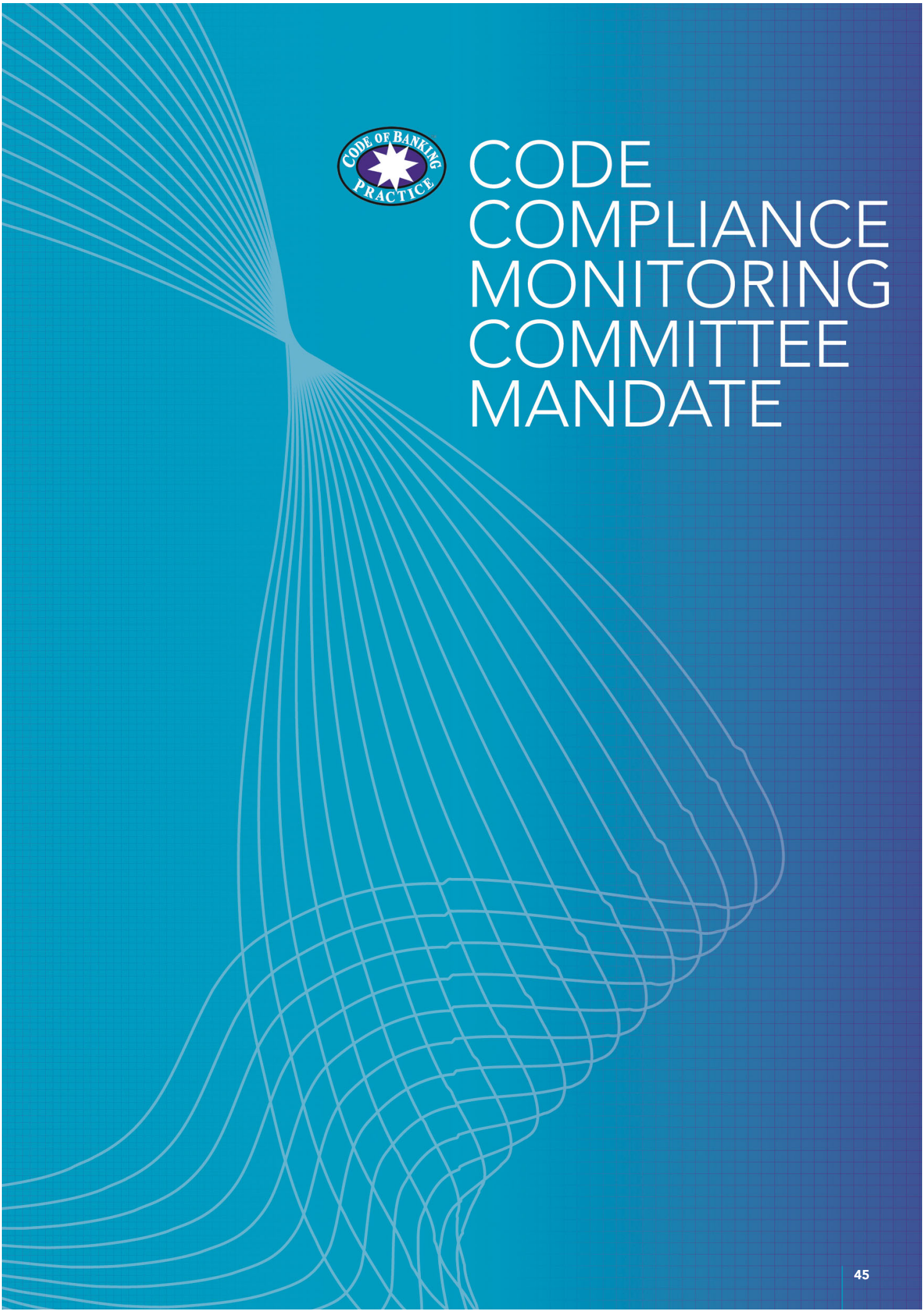
(b) that person is acting as trustee of a trust in one of these roles and is acting in their personal capacity in the other role.

URL means a Universal Resource Locator.

we, **us** and **our** means the **bank** that **you** deal with that has adopted this **Code**.

you and **your** means a person who, at the time the **banking service** is provided, is an individual or a **small business** that is **our** customer (or, where this **Code** specifically applies to prospective customers, a prospective customer) and includes, in clauses 31, 35 and 2, any individual from whom **we** have obtained, or propose to obtain, a **Guarantee**. However, where this **Code** applies in relation to a **banking service** which is a "financial product" or a "financial service" for the purposes of Chapter 7 of the Corporations Act 2001, then **you** means a person who, as a "retail client" as described in Chapter 7 of the Corporations Act 2001, enquires about or is, or may be, provided with that **banking service**. Therefore this **Code** does not apply to a person who is a "wholesale client" in respect of such products and services.

A reference in this Code to any law or binding code or standard includes a reference to any such law or binding code or standard as amended from time to time.



CODE COMPLIANCE MONITORING COMMITTEE MANDATE

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SECTION A

PRELIMINARY MATTERS

1. Introduction

1.1. Scope of this document

This mandate is made in pursuance of the **Code of Banking Practice** (the **Code**). Together with the **Code**, this mandate sets out the terms, to which the **Code Subscribers** have agreed, that govern the functions and operations of the Code Compliance Monitoring Committee (**CCMC**) contemplated in the **Code**.

This mandate must be published on the website of the Australian Bankers' Association (the **ABA**).

1.2. Functions of the CCMC

The **CCMC** is established in pursuance of clause 36 of the **Code** and in accordance with the terms of this mandate:

(a) to investigate, and make a **Determination** on, any allegation from any person that a **Code Subscriber** has breached the **Code** (however the **CCMC** will not investigate, or make any **Determination** on, any other matter);

(b) to monitor **Code Subscribers**' compliance with the **Code**, which includes conducting its own motion inquiries into one or more **Code Subscribers**' compliance with the **Code**; and

(c) to monitor any other aspects of the **Code** that are referred to the **CCMC** by the **ABA**.

For the avoidance of doubt, the **CCMC**'s functions only relate to the **Code** as it has applied since the **CCMC** was established. In particular the **CCMC**'s functions do not extend to investigating, monitoring and making Determinations in relation to the **Code** as it applied before this time.

1.3. Principles that underpin the CCMC's operation

(a) The **CCMC** must act reasonably in carrying out its responsibilities to (as relevant) monitor, investigate, determine and report on compliance by **Code Subscribers** with the **Code**.

(b) When monitoring, investigating, determining and reporting on compliance with the **Code**, the **CCMC** must:

i. act with independence and do what in the **CCMC**'s opinion is appropriate having regard to the nature of its functions and activities;

ii. be fair;

iii. proceed efficiently and with the minimum necessary formality and technicality; and

iv. be as transparent as possible, whilst also acting in accordance with its confidentiality and privacy obligations.

1.4. **CCMC** Operating Procedures

(a) The **CCMC** must set operating procedures, in accordance with clause 36(i) of the **Code** and this mandate, first having regard to the operating procedures of the **FOS** and then by consulting with the **FOS** and the **ABA**.

The **CCMC** will advise **Code Subscribers** of these operating procedures prior to their taking effect or, if any are already in effect at the time this mandate first comes into effect and the **CCMC** has not already advised **Code Subscribers** of them, as soon as practicable after that time.

(b) Any proposed changes to those operating procedures which, in the opinion of the **CCMC**, are material will be developed by first having regard to the operating procedures of the **FOS** and then by consulting with the **FOS** and the **ABA**. The **CCMC** will advise **Code Subscribers** of such changes prior to their taking effect.

1.5. Supplementary procedures

As is deemed appropriate by the **CCMC**, the operating procedures may be supplemented with more detailed procedures of a less material nature. Where the **CCMC** reasonably expects it is necessary to do so, the **CCMC** will advise **Code Subscribers** of these supplementary procedures prior to their taking effect.

1.6. Annual business plan

The **CCMC** must develop an annual business plan and provide a copy of the annual business plan to the Chief Ombudsman of the **FOS** and to the **ABA** prior to the commencement of the relevant **Financial Year** for which the plan has been developed.

1.7. Memorandum of Understanding

The **CCMC** may enter into a Memorandum of Understanding with the **FOS** for the purpose of facilitating:

(a) referrals to the **CCMC** of an allegation that a **Code Subscriber** has breached the **Code**; and

(b) information exchanges between the **FOS** and the **CCMC** relevant to the **CCMC**'s functions, as described in clause 1.2.

1.8. Funding

The **CCMC** will be funded and resourced by **Code Subscribers** in accordance with clause 36(d) of the **Code**.

2. CCMC Members

2.1. Composition of the **CCMC**

The **Code** specifies that the **CCMC** shall be comprised of 3 members (each a **CCMC Member**):

(a) 1 person, as representative of **Code Subscribers** with relevant experience at a senior level in retail banking in **Australia**, to be appointed by the **Code Subscribers**;

(b) 1 person, as representative of individual and small business customers (as defined in the **Code**) with relevant experience and knowledge, to be appointed by the consumer representatives on the Board of Directors of the **FOS**; and

(c) 1 person to be the **Independent Chairperson** of the **CCMC** with experience in industry, commerce, public administration or government service, to be appointed jointly by the Chief Ombudsman of the **FOS** and by the **ABA** on behalf of the **Code Subscribers**.

2.2. Tenure

Subject to clause 2.5, a **CCMC Member** (including the **Independent Chairperson**) holds office for a 3 year term.

2.3. Re-appointment

A person who was, or is currently, a **CCMC Member** is eligible for re-appointment to the **CCMC**.

2.4. Resignation

A **CCMC Member** may resign from the office during their term by notifying the relevant appointor(s) of that **CCMC Member** (see clause 2.1) in writing with at least 7 days' notice.

2.5. Termination

The appointment of a **CCMC Member** may be terminated in writing by the relevant appointor(s) of that **CCMC Member** (see clause 2.1) in writing with at least 7 days' notice.

2.6. Casual vacancies

A person may be appointed by the relevant appointor(s) under clause 2.1 to fill a casual vacancy in the office of a **CCMC Member**, other than the position of the **Independent Chairperson**. A person appointed under this clause:

(a) must fulfil the experience requirements of the relevant paragraph of clause 2.1 as if the appointment were an ordinary appointment for that role under clause 2.1; and

(b) shall hold office until the casual vacancy ceases or the period during which their predecessor **CCMC Member** would have held office expires, whichever occurs first.

2.7. Automatic vacancies

The office of a **CCMC Member** (including the **Independent Chairperson**) will be automatically vacated if the person:

(a) becomes bankrupt or makes any arrangement or composition with creditors;

(b) becomes prohibited by law from being a director;

(c) becomes of unsound mind;

(d) resigns from the office during their term; or

(e) has their appointment terminated by their relevant appointors.

3. Organisational structure

3.1. Staffing and administrative support

(a) The **CCMC** may create the position of a Chief Executive Officer (**CEO**) and may appoint a person with relevant skills, experience and knowledge to that position.

(b) The **CEO** will, if appointed, be under the supervision and direction of the **CCMC**.

(c) The **CCMC** will be supported by staff led by the **CEO** (or if a **CEO** is not appointed, the **Independent Chairperson**), who shall carry out administration and management, within the funding and resource constraints in the annual budget, of the **CCMC** office and staff.

(d) The **CCMC** may proceed on the basis that the **FOS** will provide administrative and staffing services to the **CCMC**. The provision of those services may be reviewed by the **FOS** in consultation with the **ABA** and the **CCMC**.

3.2. Independent Chairperson

(a) The **Independent Chairperson** shall do all such things as are reasonable for the **CCMC** to perform its functions and activities and shall exercise such powers or perform such duties as the **CCMC** may from time to time delegate to the **Independent Chairperson**.

(b) The **Independent Chairperson** may take action, in accordance with a resolution of the **CCMC**, including but not limited to:

i. engaging and dismissing staff;

ii. entering into, varying and terminating leases;

iii. operating **bank** accounts;

iv. negotiating and entering into contracts with the **FOS** including, without limitation, contracts for staff, equipment and facilities;

v. negotiating and entering into such other contracts or commitments as are necessary or desirable for the **CCMC** to enter, having regard to the nature of its functions and activities; and

vi. signing, or otherwise executing, all such documents or instruments as may be required for any of the foregoing.

3.3. Delegation of **CCMC** powers

(a) The **CCMC** will exercise the power to make **Determinations** and may not delegate this power.

(b) The **CCMC** may delegate any of its other powers to the **CEO** (either generally or in specific cases and either with or without conditions or restrictions). For example, the **CCMC** may delegate to the **CEO** the power:

i. to undertake a compliance investigation (whether as

a result of an allegation by any person that a **Code Subscriber** has breached the **Code**, a referral by the **ABA** or the **CCMC**'s compliance monitoring process); and

ii. to request a **Code Subscriber** or any person making an allegation that a **Code Subscriber** has breached the **Code** to provide information to, or to procure information for, the **CCMC**.

4. Meeting of CCMC Members

4.1. Meetings and proceedings of CCMC

The **CCMC** will meet, discharge its responsibilities and convene, adjourn and otherwise regulate its meetings and proceedings in such manner as it may from time to time determine.

4.2. Quorum

A quorum for a meeting of the **CCMC** shall be the 3 persons comprising the **CCMC** at the time of the meeting.

4.3. Voting

At a meeting of the **CCMC**:

(a) each **CCMC Member** has one vote; and

(b) decisions are made on the basis of a simple majority of votes:

i. subject to clause 4.3(b)(ii), on a show of hands; or

ii. where a meeting is conducted by teleconference, on the voices of each **CCMC Member**.

4.4. Conflicts of interest

If a **CCMC Member** has a material personal interest in relation to a matter that is being considered at a meeting of the **CCMC**, in relation to the institution, conduct or conclusion of any compliance investigation and any **Determination**, the **CCMC Member** must not:

(a) be present while the matter is being considered at the meeting; or

(b) vote on the matter, unless:

i. the **CCMC Member** has declared the material personal interest in relation to the matter that is being considered by the **CCMC** to the other **CCMC** Members;

ii. the other **CCMC** Members are satisfied the material personal interest should not disqualify the **CCMC Member** from voting on the matter;

iii. a proper minute is made including details of the material personal interest and the circumstances in which it was disclosed to the other **CCMC** members; and

iv. any minute, **Determination** or other report on the matter are made available for inspection on request by any **Code Subscriber** affected.

For the avoidance of doubt, a material personal interest for the purposes of this clause does not arise solely by reason of a **CCMC Member**'s current or previous employment with a **Code Subscriber**, or by reason of the financial institution of which a **CCMC Member** is a customer.

4.5. Alternate representative

(a) Each of the **CCMC** Members, other than the **Independent Chairperson**, may nominate an alternate person for a specified meeting, provided that the **CCMC Member** has asked the person whom the relevant **CCMC Member** proposes to nominate as an alternate if that person has any material personal interest in relation to a matter that is being considered at the relevant meeting of the **CCMC**, and the person has declared to have had no such interest.

(b) A person nominated as an alternate may exercise all the powers of the **CCMC Member** by whom the person is nominated to be an alternate, other than the power to nominate an alternate, and is subject to all the requirements applying to the office of their nominator at the meeting which they attend at which their nominator is not present.

SECTION B

CCMC'S COMPLIANCE MONITORING PROCESS

5. Compliance monitoring process

5.1. Methods

The **CCMC** may for the purpose of monitoring compliance with the **Code**:

(a) issue one or more **Code Subscribers** with a questionnaire to gather information about practices and procedures and undertake onsite testing procedures to verify that information;

(b) request a **Code Subscriber** or the person that has made a relevant allegation to provide information to, or to procure information for, the **CCMC**;

(c) conduct market research to assess compliance with the **Code** by one or more **Code Subscribers**, including through mystery shopping activities;

(d) conduct own motion inquiries for the purpose of monitoring one or more **Code Subscribers**' compliance with the **Code**, such as by conducting, by prior arrangement with the **Code Subscriber**, a compliance visit at the premises of a **Code Subscriber** including interviewing representatives of the **Code Subscriber**; and

(e) request each **Code Subscriber** to lodge an Annual Compliance Statement (**ACS**) with the **CCMC**.

5.2. Annual Compliance Statement

(a) Each **Code Subscriber** must lodge an **ACS** with the **CCMC** reporting on the **Code Subscriber**'s compliance with the **Code** during the previous 12 months (or, if the **Code Subscriber** has adopted the **Code** during that 12 month period, the **Code Subscriber** must report how it plans to achieve compliance with the **Code** during the next 12 month period).

(b) The **ACS** must be in the form that has been approved by the **CCMC** from time to time for use by all **Code Subscribers**.

SECTION C

CCMC'S COMPLIANCE INVESTIGATION PROCESS

6. Institution of a compliance investigation

6.1. Commencement of a compliance investigation

A **CCMC** compliance investigation may commence in any of the following ways:

(a) in response to an allegation by any person, including a referral by **FOS**, that a **Code Subscriber** has breached the **Code** (see clause 1.2(a)); or

(b) as an outcome of the **CCMC**'s monitoring process if the **CCMC** has reason to suspect that a **Code Subscriber** may have breached the **Code** (see clause 1.2(b));

(c) in response to a referral from the **ABA** (see clause 1.2(c)).

6.2. Matters outside the scope of **CCMC**'s investigative powers

(a) The **CCMC** must not commence a compliance investigation in the following circumstances:

i. to the extent that the allegation relates to a **Code Subscriber**'s commercial judgment in decisions about lending or **security**. However, the **CCMC** may consider an allegation that a **Code Subscriber** has breached the **Code** arising from maladministration by the **Code Subscriber** in arriving at a commercial judgment. "Maladministration" refers to an act or omission contrary to or not in accordance with a duty owed at law or pursuant to the terms (expressed or implied) of the contract between the **Code Subscriber** and its customer;

ii. if the **CCMC** is, or becomes, aware that the allegation is being or will be heard by another forum (whether as a standalone matter or as part of any process or proceeding) and the forum may make a final **Determination** as to whether a breach of the **Code** has occurred. In such a case the **CCMC** must not consider the relevant allegation until the relevant forum has determined, or declined

to determine (for whatever reason), whether a breach of the **Code** has occurred. If the forum determines whether a breach of the **Code** has or has not occurred, the **CCMC** must adopt the forum's finding;

iii. if the **CCMC** is, or becomes, aware that the allegation has been heard (whether as a standalone matter or as part of any process or proceeding) by another forum, and the forum has determined whether a breach of the **Code** has or has not occurred. In such a case the **CCMC** must adopt the finding of the relevant forum as to whether a breach of the **Code** has or has not occurred;

iv. if the allegation to the **CCMC** is based on the same events and facts as a previous allegation to the **CCMC** by the person making the new allegation, unless there is new information;

v. if the events to which the allegation relates occurred before the **Code Subscriber** to which the allegation relates became a **Code Subscriber** or in relation to an entity which was not a **Code Subscriber** at the time of the events to which the allegation relates and was subsequently acquired by a **Code Subscriber**;

vi. if the person making the allegation was aware of the events to which the allegation relates, or would have become aware of them if they had used reasonable diligence, more than 1 year before the person making the allegation first notified the **CCMC** in writing (unless the person making the allegation had lodged within that 1 year period a dispute with **FOS** about those events and **FOS** considered there may have been a breach of the **Code**);

vii. If the investigation is an outcome of the **CCMC**'s monitoring process more than 1 year after the **CCMC** had reason to suspect that the **Code Subscriber** may have breached the **Code**.

The **CCMC** may request, in relation to a particular allegation or outcome of the **CCMC**'s monitoring process referred to in clauses 6.2(a)(vi) or (vii) above, that a **Code Subscriber** extend the relevant time limit. The **Code Subscriber** retains the discretion whether to agree to such a request for an extension of the limit.

(b) Whilst a **CCMC** compliance investigation may be commenced as a result of an allegation by any person and may comprise determining whether a **Code Subscriber** has breached the **Code**, the **CCMC**'s role does not include determining what redress should be provided to a person affected by non-compliance with the **Code**. A **Code Subscriber** has internal complaints handling

arrangements to consider redress and its membership of an external dispute resolution scheme provides an avenue for redress if a **Determination** concludes that there has been a breach of the **Code**.

6.3. **CCMC**'s discretion in relation to compliance investigations

(a) Further to clause 6.2, the **CCMC** may decide, at any stage prior to the making of a **Determination**, that it is not appropriate to investigate or to continue to investigate a matter commenced under clause 6.1. In making this decision, the **CCMC** may take into account anything it considers reasonable and appropriate including:

i. the nature of the allegations made against the relevant **Code Subscriber**, including the significance of the issues raised;

ii. the period of time that has elapsed since the alleged event occurred;

iii. whether a court or other forum would be a more appropriate forum to consider the matter;

iv. whether the matter is frivolous or vexatious; and

v. previous work undertaken by the **CCMC** to monitor or review practices and procedures of the **Code Subscriber** that are relevant to the allegations made.

(b) If in the course of conducting a compliance investigation the **CCMC** considers that 6.3(a)(iii) or 6.3(a)(iv) apply, the **CCMC** must not continue to investigate the allegation.

7. Compliance investigations approach

7.1. Approach

(a) When conducting a compliance investigation, the **CCMC** must take into account the relevant provisions of the **Code** and any applicable laws. If in the course of conducting a compliance investigation, the **CCMC** decides whether to make a **Determination**, clause 10.2 provides for what the **CCMC** must have regard to.

(b) The **CCMC** will ensure, as far as practicable, that monitoring and investigations do not:

i. disrupt **Code Subscribers**' business unduly; nor

ii. inconvenience **Code Subscribers**' customers unduly.

7.2. Provision of information by **Code Subscribers**

(a) The **CCMC** may make reasonable requests for a **Code Subscriber** to provide, or provide access to, information, documents or systems, which are in the possession or power of the **Code Subscriber**, that the **CCMC** considers necessary in order to discharge its functions.

(b) The **CCMC** may require the **Code Subscriber** to comply with the **CCMC**'s request within 21 business days or such longer timeframe where the **Code**

Subscriber satisfies the **CCMC** that additional time is needed, except where the **Code Subscriber** satisfies the **CCMC** that:

i. to comply with the request would breach a law (including, without limitation, any law relating to confidentiality or privacy) and that, where a third party's consent to the **Code Subscriber** complying with the request would avoid a breach of that law, the **Code Subscriber** has taken reasonable steps to obtain the appropriate consent and such consent was not provided;

ii. to comply with the request would breach a duty of confidentiality to a third party and the **Code Subscriber** has taken reasonable steps to obtain consent to the **Code Subscriber** complying with the request and such consent was not provided;

iii. to comply with the request would breach a Court order or prejudice a current investigation by the police or other law enforcement agency;

iv. legal professional privilege attaches to the relevant information, documents or systems; or

v. the information, documents or systems do not exist or no longer exist.

(c) Where the information, document or system is claimed by the **Code Subscriber** to be commercially sensitive, the **CCMC** may agree with the **Code Subscriber** to receive it or have access to it on a conditional basis, including on terms that preserve confidentiality.

7.3. Other obligations required of **Code Subscribers**

(a) The **CCMC** may require a **Code Subscriber** to do anything else that the **CCMC** reasonably considers may assist a compliance investigation into the **Code Subscriber**'s compliance with the **Code** undertaken by the **CCMC**. This may include requiring:

i. the **Code Subscriber** to provide an appropriate representative to attend an interview; or

ii. the **Code Subscriber** to investigate and report back to the **CCMC** on relevant matters (including, where appropriate, with the assistance of external expertise).

(b) Where the **CCMC** makes a request of a **Code Subscriber**, the **CCMC** may require its request to be complied with within 21 business days or such longer timeframe where the **Code Subscriber** satisfies the **CCMC** that additional time is needed.

(c) In concluding a compliance investigation or making a **Determination**, the **CCMC** will take into account any undertaking by the **Code Subscriber** as to action it will take, or has taken, in relation to the matter.

7.4. Other information

Where a compliance investigation is instituted as a result of an allegation by any person pursuant to clause 6.1(a), the **CCMC** may request the person making the allegation to provide or procure information that the **CCMC** reasonably considers may assist the **CCMC**'s investigation of the matter.

7.5. Consequences of non-compliance with a **CCMC** request

Where a **Code Subscriber**, or any person alleging a **Code Subscriber** has breached the **Code** without reasonable excuse, fails to comply with a **CCMC** request within the timeframe specified by the **CCMC**, the **CCMC** may take steps it considers reasonable in the circumstances to conclude the compliance investigation, including proceeding with a **Determination** of the matter.

8. Other matters

8.1. Rules of evidence

The **CCMC** is not bound by any legal rule of evidence or by its previous **Determinations**.

8.2. External consultation

(a) In discharging its functions, the **CCMC** may consult with independent external experts as the **CCMC** thinks reasonably appropriate and necessary, provided that the **CCMC** takes reasonable steps to ensure that:

i. the identities of any parties involved in an alleged breach of the **Code** are not disclosed to any relevant external expert unless disclosure is material to the matter and each relevant party, in each case, has consented to the disclosure;

ii. any such external expert maintains confidentiality of the information provided to it, including any information claimed to be commercially sensitive, and that the external expert acts in accordance with the **CCMC**'s privacy obligations, and other duties of confidentiality, on the basis that it is deemed to be bound in each case; and

iii. any such external expert otherwise complies with these requirements so far as reasonably relevant.

(b) The reasonable steps to be taken by the **CCMC** under clause 8.2(a) extend to ensuring those requirements are also observed by the external expert's employees and contractors.

9. Process for concluding compliance investigations without a Determination

9.1. Process

Subject to clause 6, the process for concluding a compliance investigation without a **Determination** is as follows:

(a) The **CCMC** must give the **Code Subscriber** a reasonable opportunity to respond to an allegation that the **Code Subscriber** has breached the **Code**.

(b) If the **CCMC** considers that:

i. there is no basis to determine a breach of the **Code** has occurred; or

ii. the **Code Subscriber** has acknowledged that it has, or may have, breached the **Code**, and the **Code Subscriber** has taken, or proposes to take, appropriate action to remedy any breach or potential breach or to prevent a reoccurrence,

then the **CCMC** may decide to conclude the matter without further investigation or proceeding to a formal **Determination**.

(c) Where the **CCMC** concludes a compliance investigation without a **Determination**, the **CCMC** will inform the **Code Subscriber** of the outcome, and where a compliance investigation was commenced in response to an allegation that a **Code Subscriber** has breached the **Code**, the person who made the allegation will also be informed of the outcome.

10. Process for concluding compliance investigations by way of Determination

10.1. Reasonable opportunity to be heard

The **CCMC** must give the **Code Subscriber** a reasonable opportunity to respond to an allegation that the **Code Subscriber** has breached the **Code**.

10.2. Criteria for **Determination**

When deciding whether to make a **Determination**, the **CCMC** will do what is reasonable in all the circumstances, having regard to:

(a) legal principles relevant to the decision making process;

(b) applicable **Code** provisions; and

(c) any **CCMC** guidance as to **Code** requirements.

10.3. Notice of **Determination**

The **CCMC** may conclude a compliance investigation by way of a **Determination** only after adhering to the following process:

(a) before the **Determination** is made, the **CCMC** must give at least 21 business days written notice to the relevant **Code Subscriber** and, if applicable, the person that has made a relevant allegation, about the **CCMC**'s intention to make a **Determination**. The notice must include:

i. a brief description of what **Determination** and findings the **CCMC** intends to make and its reasons;

ii. if applicable, a brief description of any finding the **CCMC** intends to make that the **Code Subscriber** is responsible for serious or systemic non-compliance with the **Code**, where the **CCMC** reasonably suspects that this is the case;

iii. in the case of a compliance investigation commenced in response to an allegation, a statement about any conclusions the **CCMC** has formed regarding the merits of the allegation;

(b) the **CCMC** must then seek final comments on the matter from the **Code Subscriber** and, in the case of a compliance investigation commenced in response to an allegation by any person that the **Code Subscriber** has breached the **Code**, from the person making the allegation; and

(c) the **CCMC** must give a reasonable opportunity for the relevant parties to make final comments.

10.4. Determination

(a) After the **CCMC** has given the relevant parties a reasonable time within which to make final comments, the **CCMC** may make a **Determination** if it continues to consider that this is appropriate.

(b) Each **Determination** must:

i. be in writing;

ii. include a brief description of the issues;

iii. set out the **CCMC**'s findings and views. In the case of a compliance investigation instituted in response to an allegation, the **Determination** will include the **CCMC**'s views as to whether the alleged breach was established in whole or in part, or whether the allegation was unfounded;

iv. if applicable, include any minutes or other reports made relating to a material personal interest of a **CCMC Member**;

v. if applicable, state any finding by the **CCMC** that the **Code Subscriber** is responsible for serious or systemic non-compliance with the **Code**; and

(vi) include brief reasons for the conclusions and findings of the **CCMC** including, if applicable, the conclusions and findings that support the **CCMC**'s intention to name the **Code Subscriber** (see clause 11.1) in its next **Annual Report** or on the **CCMC** website, or both.

(c) After the **Determination** is made the **CCMC** must inform the **Code Subscriber** of the **Determination** and, in the case of a compliance investigation commenced in response to an allegation by any person that a **Code Subscriber** has breached the **Code**, the **CCMC** must inform the person making the allegation of the **Determination**.

SECTION D

SANCTIONING CODE SUBSCRIBERS

11. Public naming of a Code Subscriber

11.1. Grounds for public naming of a **Code Subscriber**

The **CCMC** may name a **Code Subscriber** in accordance with clause 36(j) of the **Code** in its next **Annual Report** or on the **CCMC** website, or both.

12. Collection of information by the CCMC

12.1. Data collection

The **CCMC** must, for each period for which it must prepare an **Annual Report** (see clause 12.2), collect and record information in relation to its operations for inclusion (in all cases de-identified except as contemplated in clause 11.1) in the **Annual Report** for the period including:

(a) information about the **CCMC**'s monitoring activity and the results of that activity;

(b) the **ACS** from each of the **Code Subscribers** on their compliance with the **Code**;

(c) information about referrals from the **ABA** to the **CCMC** and the results of those referrals;

(d) the number of compliance investigations it has commenced, the source of information for those investigations and the status of those investigations, including:

i. where a compliance investigation is open, the age and status of the investigation; and

ii. where a compliance investigation has been concluded, whether or not a **Determination** was made;

(e) the time taken to conclude compliance investigations;

(f) details of allegations which were determined to be outside the **CCMC**'s responsibilities and why;

(g) the demographics of persons alleging that a **Code Subscriber** has breached the **Code** (where practicable);

(h) the level of compliance with the **Code** which the **CCMC** has ascertained as a result of its monitoring activity and compliance investigations; and

(i) a profile of current and completed compliance investigations that identifies, where relevant or necessary:

i. the relevant provisions of the **Code**;

ii. the type of products or services involved;

iii. any underlying cause of the non-compliance with the **Code**;

iv. any compliance measures implemented by relevant **Code Subscribers**; and

v. any systemic breaches or other trends.

The **CCMC** may in its discretion also collect, for inclusion in its **Annual Report**, information about benefits and disadvantages to customers resulting from **Code Subscribers**' compliance with the **Code**.

12.2. Publication of data

(a) The **CCMC** must publish an **Annual Report** within 6 months of the end of each **Financial Year** and:

i. provide a copy of the **Annual Report** to each **Code Subscriber**, the **ABA** and to the **FOS**; and

ii. make copies of the **Annual Report** available to the public on its website and on request.

(b) Each **Annual Report** must be a fair and adequate summary and analysis of the information specified in clause 12.1, the financial affairs of the **CCMC** and any other matters the **CCMC** thinks appropriate that are consistent with the functions of the **CCMC** under the **Code** and this mandate.

SECTION E

INTERPRETATION

13. Interpretation

13.1. Defined terms

The following words have the following meanings where they appear in this mandate:

ABA means the Australian Bankers' Association.

ACS means Annual Compliance Statement. See clause 5.2.

Annual Report means the report specified in clause 12.2.

ASIC means the Australian Securities and Investments Commission.

CCMC means the Code Compliance Monitoring Committee established pursuant to clause 36 of the **Code** and in accordance with this mandate.

CCMC Member means a member of the **CCMC**. See clause 2.1.

CCMC Personnel means the officers (including the **CEO**) and employees of the **CCMC**. See clause 14.2.

CEO means the person appointed to the role in clause 3.1.

Code means the Code of Banking Practice.

Code Subscriber means a **bank** that has adopted the **Code**.

Determination means a decision in accordance with clause 10 as to whether there has been a breach of the **Code** by a **Code Subscriber** and if so whether the **Code Subscriber** should be named in accordance with clause 11.

Financial Year means the 12 months ending 30 June in any calendar year.

Forum means any court, tribunal, arbitrator, mediator, independent conciliation body, dispute resolution body, complaint resolution scheme (including, for the avoidance of doubt, the **FOS**) or statutory Ombudsman, in any jurisdiction.

FOS means Financial Ombudsman Service Limited ACN 131 124 448 or its successor entity.

Independent Chairperson means the Chair of the **CCMC** specified in clause 2.1(c).

13.2. General

a) A reference to the singular includes the plural and vice versa.

(b) The words "including", "such as" or "for example", when introducing an example, does not limit the meaning of the words to which the example relates, that example or examples of a similar kind.

(c) A reference to an employee of the **CCMC** shall be construed as including a reference to a person who is contracted as an employee of the **FOS** to act solely for the **CCMC** as if that person were an employee of the **CCMC**, and includes each **CCMC Member**.

(d) Where a term is used in this document that is not defined in clause 13.1, the term is to be interpreted as having, if applicable, the same meaning as in the **Code**, and otherwise its everyday meaning and usage, unless the context otherwise requires.

(e) References to clauses are to clauses of this document unless stated otherwise.

(f) A reference to a statute, ordinance, Code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

(g) Headings are inserted for convenience only and do not affect the interpretation of this document.

(h) A reference to a clause or provision of the **Code** includes the clause or provision of the **Code** and any amendment to, restatement of, or substitution for that clause or provision in the **Code** and in any succeeding version or revision of the **Code** resulting from any review of the **Code** as in effect in relation to the relevant **Code Subscriber** from time to time.

i. This mandate will apply to all new **CCMC** compliance monitoring or compliance investigations commenced after the date this mandate comes into effect, which is the published date agreed to between the **CCMC** and the **ABA**, on behalf of **Code Subscribers**.

SECTION F

GENERAL

14. Confidentiality and other matters

14.1. **CCMC**'s confidentiality obligations

(a) All information provided by or on behalf of a party (including a **Code Subscriber**) to the **CCMC** (including, for the avoidance of doubt, to any employee, consultant, independent contractor or agent of the **CCMC** acting in that capacity) and designated as confidential, and all information provided by or on behalf of the **CCMC** to a **Code Subscriber** being, in either case, information that is not in the public domain (otherwise than by breach of this clause), shall be deemed confidential.

(b) The **CCMC** must return or, with the consent of the relevant party, permanently delete, any item containing confidential information as soon as practicable after an investigation is resolved, withdrawn or concluded. If an allegation is sent to another forum then the **CCMC** must, unless the **CCMC** is compelled by law to provide the information, obtain the consent of the relevant party before forwarding any information to the new forum.

(c) The **CCMC** and the **Code Subscriber** (as recipients of any such information) shall take reasonable steps to ensure that the confidentiality of such information is maintained, including taking reasonable steps to ensure that their employees, consultants, independent contractors or agents, abide by the same obligation. This does not, however, restrict the **CCMC** from using or disclosing information:

i. to the extent reasonably necessary to carry out the **CCMC**'s responsibilities, including under this mandate or for any incidental purpose; or

ii. as required or permitted by law.

14.2. Immunity from liability

(a) The **Code** Subscribers agree to release and indemnify (to the extent the assets of the **CCMC**

are inadequate), the **CCMC** and its officers and employees (**CCMC Personnel**) and to hold them harmless against all losses, damages, costs (including, without limitation, legal costs), actions, claims, demands and liabilities incurred or suffered by the **CCMC** or **CCMC Personnel** arising out the **CCMC**'s performance of its functions and activities in accordance with this mandate, other than with respect to any wilful or reckless acts, omissions or gross negligence on the part of the **CCMC** or **CCMC Personnel**.

(b) The **CCMC** must effect and maintain at all relevant times the following insurance, which must in all circumstances fully cover any claim made at any time in respect of an event occurring:

i. professional indemnity insurance; and

ii. insurance against any liability which may arise under the general law, including, without limitation, any relevant workers' or accident compensation legislation, with respect to any of **CCMC Personnel**.

(c) Each **CCMC Personnel** shall be indemnified out of the assets of the **CCMC** and (to the extent that they are inadequate) by each **Code Subscriber** against all liabilities arising out of their responsibilities as **CCMC Personnel**.

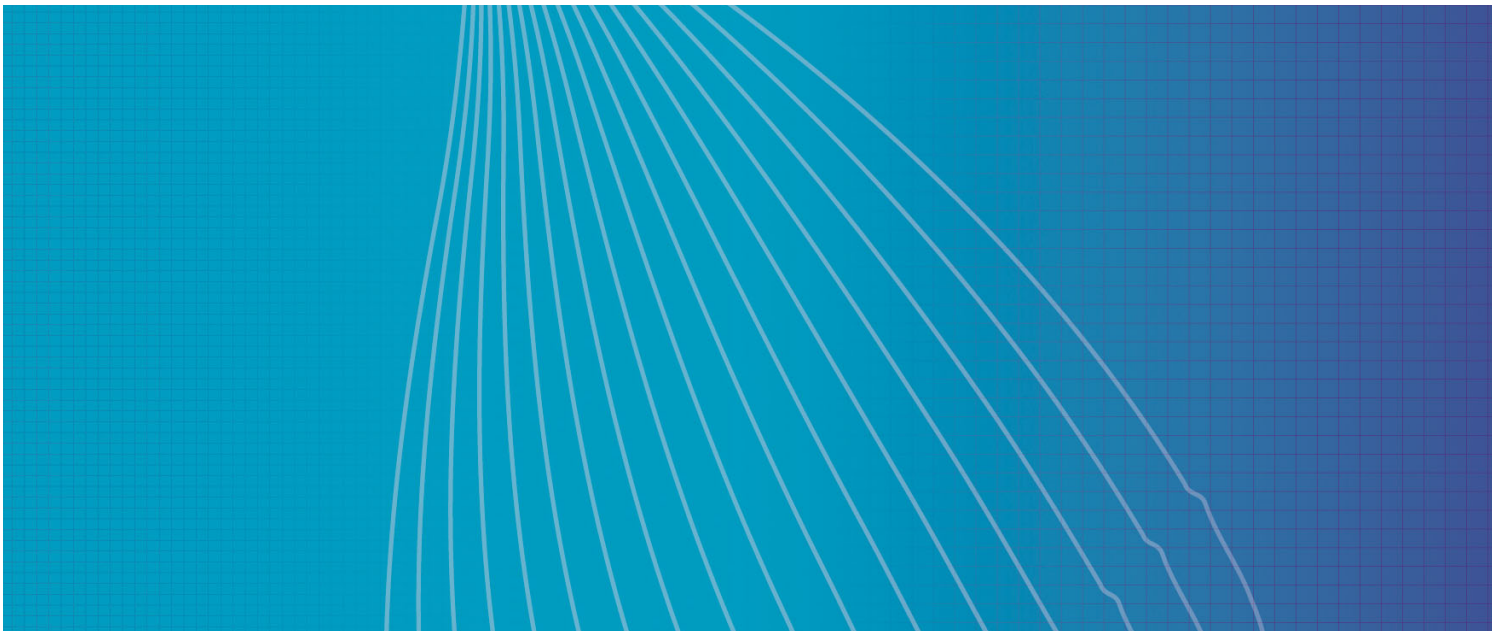
14.3. Review

The **CCMC** will arrange a periodic review of its activities, coinciding with the periodic review of the **Code** by the **ABA**, in consultation with **Code Subscribers**, and will provide a copy of each review report to the **Code Subscribers**, the **ABA**, the **FOS** and **ASIC**.

14.4. Amendment of the **Mandate**

The **ABA**, after consultation with the **CCMC**, may amend the **Mandate** including, but not limited to, the need to take account of external developments, changes affecting or made to the **Code**, the **CCMC**'s relationship with the **FOS** and other matters related to the operations of the **CCMC**. The **Code Subscribers** agree to be bound by any such amendment.

NOTES



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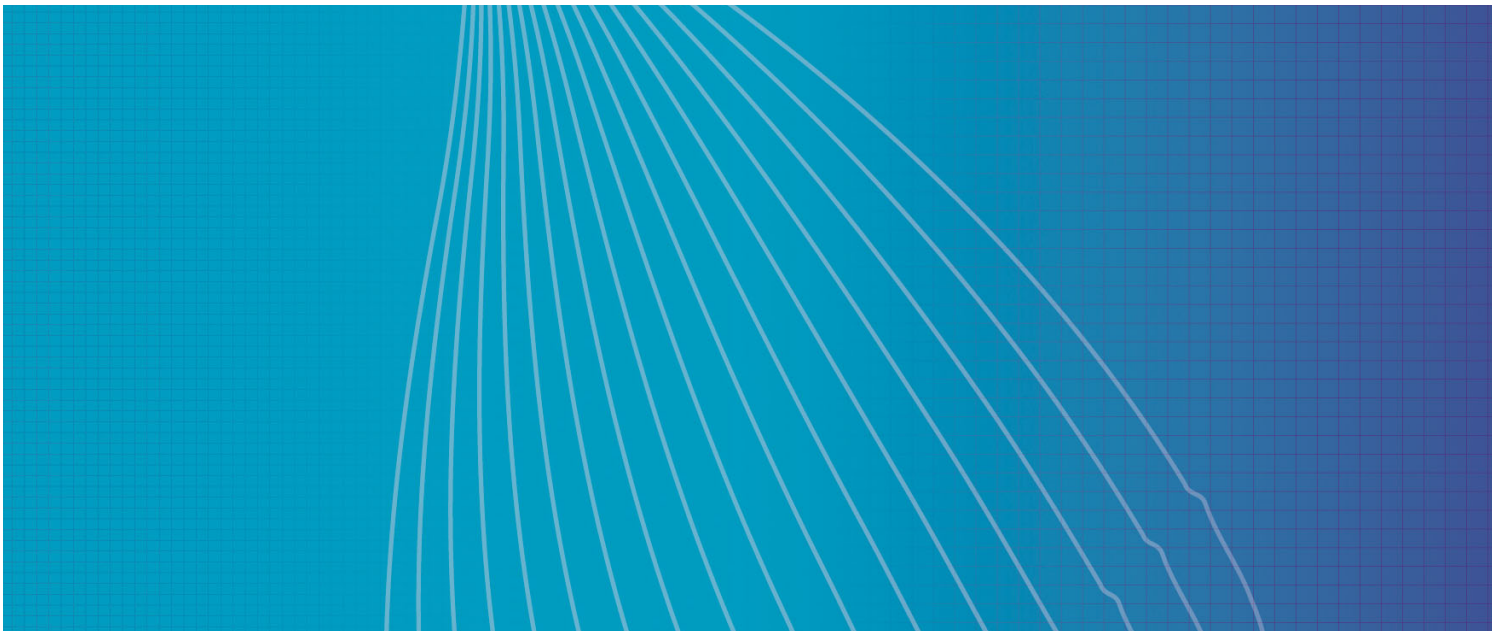

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