



**CONSUMERS'
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

PO Box 16193
Collins Street West VIC 8007
email: info@consumersfederation.org.au

Australian Banking Association (financial relief programs) - AA1000482

Joint Consumer Group Submission to ACCC

Introduction

1. This submission is made by the Consumer' Federation of Australia (CFA) with support and input from Financial Counselling Australia, Financial Rights Legal Centre, Consumer Action Law Centre and Consumer Credit Legal Service WA. CFA is the peak body for consumer organisations in Australia. Information about the other organisations that have contributed to this submission is set out in the Attachment.
2. This submission is in response to the ACCC's invitation to interested parties to make a submission in response to the application by the Australian Banking Association (ABA) and its Member Banks made on 26 March 2020 and the ACCC's interim authorisation made on 30 March (the interim authorisation).
3. We are generally supportive of the ABA's application and the interim authorisation. In particular, we think that the interim authorisation includes some important limitations and conditions that we would like to see carried through to the final authorisation. In addition, we propose a couple of enhancements, as explained below.

Consumer benefit

4. The ABA's application seeks authorisation for two purposes. First, to establish minimum standards for customer financial relief arrangements offered by Member Banks who choose to implement those arrangements. Secondly, to promote customers' access to banking services in an environment where social distancing is important and staff availability may be problematic.
5. Both objectives are expressed in terms of the interests of consumers. The interim authorisation underlines this to the extent that "Proposed Conduct" is defined in the interim authorisation as conduct "to benefit ..customers". We submit that this wording is very important and should be replicated in the ACCC's final authorisation.

Financial relief programs

6. We are supportive of consistent financial relief programs, provided that these programs establish a reasonable minimum standard.
7. To that end, we submit that consumer representative groups should be consulted about the design of financial relief programs. So that this occurs, the ACCC's authorisation should amend the condition in paragraph 26(2) of the interim authorisation (and ultimately the final authorisation) to also require the ABA to set out:
 - i. what consumer representative consultation has been undertaken; and
 - ii. a summary of the consumer representative views expressed through that consultation process,when the ABA provides notification to the ACCC of a financial relief program.
8. In proposing this, we are not suggesting that Member Banks should have to accede to consumer representative views. But we think that the ACCC should be informed about whether consumer representative consultation has occurred and the views that have been expressed. If, in fact, Member Banks consult effectively with consumer representatives, we submit that this should add to the ACCC's confidence that the financial relief program has the required purpose of benefiting consumers.
9. We note that the ABA has established a Consumer Outcomes Group (the COG), which is a joint bank and consumer representative forum comprising seven representatives from consumer groups and seven representatives from member banks. The COG meets quarterly to discuss and respond to existing and emerging issues.¹ The COG is an appropriate forum for consultation with consumer representatives.
10. Since the onset of COVID19, the COG has met and discussed Member Bank financial relief programs, including how financial relief would be represented on consumer credit reports. Following this, the ABA announced an agreed approach by Member Banks.² It has not been clear, however, that this occurred within the scope of the interim authorisation. If this was within the scope of the interim authorisation, we would have expected that the ABA would have notified the agreed approach to the ACCC as per paragraph 26(2) of the interim authorisation and the ACCC would have published this notification on its ABA (financial relief programs) webpage. It seems that this has not occurred. In order to permit the public to understand the impact of the authorisation and whether it is achieving a public benefit, we submit that it is vital that there is transparency to the public as to what financial relief programs or other arrangements are being given effect to.
11. In addition, we submit that there should be public transparency as to the general outcomes from the financial relief programs or other arrangements being given effect to. This could be achieved by periodic reporting by the ABA to the ACCC as to such matters as how many customers are being assisted, the type of assistance and so on. Again, reporting could be made public via the ACCC's Public Register. In our view, some basic metrics of this type

¹ <https://www.ausbanking.org.au/policy/customers/consumer-outcomes-group/>

² <https://www.ausbanking.org.au/a-covid-19-mortgage-deferral-wont-affect-your-credit-rating/>

would help assessment of whether the authorisation has delivered a public benefit. We submit that the interim authorisation (and ultimately the final authorisation) should require this by way of additional condition.

12. A further issue is that the interim authorisation appears to contemplate that “suppliers and/or agents” may be a party to a financial relief program. This is notwithstanding that the ABA application explains the need for suppliers and agents to have the benefit of the authorisation only in relation to the second aspect of the interim authorisation, i.e. access to banking services. If it is not intended that suppliers and agents will be party to a financial relief program, we submit that the scope of the interim authorisation (and ultimately a final authorisation) should be narrowed accordingly.

Access to banking services

13. We are also supportive of the ACCC authorising Member Banks to enter arrangements to benefit customers by ensuring high levels of customer service and access to banking services. The ABA application explains this particularly in the context of customers (including regional customers) without internet access.
14. We place importance on the interim authorisation condition requiring Member Banks to obtain the ACCC’s agreement in order for a Member Bank supplier or agent to share in protection under the authorisation, as a party to such an arrangement. We are concerned, however, that the interim authorisation does not require the documentation seeking the ACCC’s agreement to be placed on the ACCC’s Public Register. This can be contrasted with the approach taken to notification of an arrangement that does not involve suppliers or agents (see paragraph 19 of the interim authorisation). We submit that the interim authorisation (and ultimately the final authorisation) should require this.
15. Again we submit that it is important that customer representatives are consulted and that the request to the ACCC for approval sets out customer representative views. So, as for the interim authorisation paragraph 26(2) condition, we submit that the paragraph 26(1) condition should be modified to require this.

Response to ACCC questions

16. By way of conclusion we respond to the specific questions set out in the ACCC’s letter of 3 April inviting comment.

1. Firstly, if you have been directly impacted by the conduct authorised under the interim authorisation granted by the ACCC on 30 March, what is your experience to date.

Our understanding is that Member Banks have relied upon ACCC authorisation to jointly put together a small business assistance package. CFA members, in the main, do not provide advice and assistance with respect to small business matters.

We also understand that Member Banks have relied upon the ACCC authorisation to agree not to make an adverse credit report for a consumer who has been granted a 6 month loan payment deferral if the consumer was up to date before

COVID-19. We have been told by financial counsellors that they have positive experience of this very welcome assurance being provided to consumers.

So far as we are aware, the ACCC has not, however, placed on its Public Register ABA notifications to it of financial relief programs or other arrangements arising from the conduct authorised by the interim authorisation. This is notwithstanding that the interim authorisation states that the ACCC will publish a non-confidential version of a notification. If there has been a breakdown in the notification process, this is of concern to us.

2. Secondly, do you have any comments in relation to the likely public benefits and detriments should the ACCC authorise the conduct for a further 12 months, and whether any conditions should be placed on the authorisation.

We are supportive of the interim authorisation, and the ACCC authorising Member Banks for a further 12 months, provided that:

- a) The final authorisation requires authorised conduct to “benefit customers” (as the interim authorisation currently does in paragraph 8)
- b) If, as would appear to be the case, it is not contemplated that suppliers and agents will be a party to a financial relief program arrangement, the ACCC’s interim authorisation (and ultimately final authorisation) should be limited accordingly
- c) The interim authorisation (and ultimately final authorisation) specifies that the ACCC will place on the public register a request as per paragraph 26(1) of the interim authorisation that the ACCC agree to a Member Bank supplier or agent sharing in protection under the authorisation, i.e. paragraph 19 of the interim authorisation is expanded to apply to both paragraphs 26(1) and (2)
- d) The condition in paragraph 26(1) of the interim authorisation (and ultimately the final authorisation) is amended to also require the ABA to set out in an approval request to the ACCC:
 - i. what consumer representative consultation has been undertaken; and
 - ii. a summary of the consumer representative views expressed through that consultation process
- e) The condition in paragraph 26(2) of the interim authorisation (and ultimately the final authorisation) is amended to also require the ABA to set out in a notification to the ACCC:
 - i. what consumer representative consultation has been undertaken; and
 - ii. a summary of the consumer representative views expressed through that consultation process
- f) A new condition is included that requires the ABA to periodically report to the ACCC as to such matters as how many customers are being assisted pursuant to a financial relief program or other arrangement arising from the authorised conduct, the type of assistance and so on and that this reporting is made public via the ACCC’s Public Register.

Attachment

Financial Counselling Australia is the national voice of the financial counselling profession in Australia. It is a not-for-profit organisation that:

- Provides resources and support for financial counsellors;
- Advocates to increase access to financial counselling;
- Works to raise the profile of financial counsellors;
- Advocates for a fairer marketplace; and
- Works to improve hardship processes for people in financial difficulty.

There are about 800 financial counsellors working in Australia to provide advice and assistance to Australians seeking to overcome financial hardship.

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

Financial Rights Legal Centre is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.

Consumer Credit Legal Service WA is a not-for-profit charitable organisation which provides legal advice and representation to consumers in WA in the areas of credit, banking and finance. CCLSWA also takes an active role in community legal education, law reform and policy issues affecting consumers. The organisation is funded by the Commonwealth and Western Australian governments through the Community Legal Services Program to provide free legal advice to the Western Australian public, including those residing in rural and remote regions.