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# Unhappy Banking

CODE OF BANKING PRACTICE

### **Publication History**

First published by the Australian Bankers' Association in August 2003. Subsequent amendments published in May 2004. For details of these amendments see [www.bankers.asn.au](http://www.bankers.asn.au) under “*Code of Banking Practice*”. This version of the Code of Banking Practice includes these amendments.



# CODE OF BANKING PRACTICE

## Contents

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<b>PART A: INTRODUCTION</b>	<b>1</b>
1 Introduction	1
<b>PART B: OUR KEY COMMITMENTS AND GENERAL OBLIGATIONS</b>	<b>1</b>
2 Our key commitments to you	1
3 Compliance with laws	2
4 Retention of your rights	2
5 Review of this Code	2
6 Elderly customers and customers with a disability	3
7 Staff training and competency	3
8 Promotion of this Code	3
9 Availability of copies of this Code	3
<b>PART C: DISCLOSURES</b>	<b>4</b>
10 Terms and conditions	4
11 Copies of documents	6
12 Cost of credit	6
13 Operation of accounts	7
14 Account suitability	7
<b>PART D: PRINCIPLES OF CONDUCT</b>	<b>8</b>
15 Pre-contractual conduct	8
16 Opening of accounts	8
17 Account combination	8
18 Changes to terms and conditions	8
19 Direct debits	9
20 Chargebacks	9
21 Foreign exchange services	10
22 Privacy and confidentiality	10
23 Payment instruments	10

<b>24</b>	<b>Statements of account</b>	<b>11</b>
<b>25</b>	<b>Provision of credit</b>	<b>11</b>
<b>26</b>	<b>Joint debtors</b>	<b>12</b>
<b>27</b>	<b>Joint accounts and subsidiary cards</b>	<b>12</b>
<b>28</b>	<b>Guarantees</b>	<b>12</b>
<b>29</b>	<b>Debt collection</b>	<b>16</b>
<b>30</b>	<b>Advertising</b>	<b>17</b>
<b>31</b>	<b>Closure of accounts in credit</b>	<b>17</b>
<b>32</b>	<b>Branch closure protocol</b>	<b>17</b>
<b>33</b>	<b>Electronic communications</b>	<b>17</b>
	<b>PART E: RESOLUTION OF DISPUTES, MONITORING AND SANCTIONS</b>	<b>18</b>
<b>34</b>	<b>Monitoring and sanctions</b>	<b>18</b>
<b>35</b>	<b>Internal dispute resolution</b>	<b>20</b>
<b>36</b>	<b>External dispute resolution</b>	<b>21</b>
<b>37</b>	<b>Availability of information about dispute resolution processes</b>	<b>21</b>
<b>38</b>	<b>Family law proceedings</b>	<b>21</b>
	<b>PART F: APPLICATION AND DEFINITIONS</b>	<b>22</b>
<b>39</b>	<b>Application and transitional provisions</b>	<b>22</b>
<b>40</b>	<b>Definitions</b>	<b>23</b>

# CODE OF BANKING PRACTICE

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## PART A: INTRODUCTION

### 1 Introduction

- 1.1 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: OUR KEY COMMITMENTS AND GENERAL OBLIGATIONS

### 2 Our key commitments to you

#### 2.1 We will:

- (a) continuously work towards improving the standards of practice and service in the banking industry;
- (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; and
- (e) monitor external developments relating to banking codes of practice, legislative changes and related issues.

- 2.2 **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.

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

# CODE OF BANKING PRACTICE

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## 3 Compliance with laws

- 3.1 **We** will comply with all relevant laws relating to **banking services**, including those concerning:
- (a) consumer credit products;
  - (b) other financial products and services;
  - (c) privacy; and
  - (d) discrimination.
- 3.2 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).

## 4 Retention of your rights

In addition to **your** rights under this **Code**, **you** retain any rights **you** may have under Federal laws, especially the Trade Practices Act 1974, the Australian Securities and Investments Commission Act 2001 and Chapter 7 of the Corporations Act 2001, and under State and Territory laws, especially the Uniform Consumer Credit Code and Fair Trading Acts.

## 5 Review of this Code

- 5.1 **We** will require the **ABA** to commission an independent and transparent review of this **Code** every 3 years or sooner if appropriate, with the review to be conducted in consultation with:
- (a) **banks** which adopt this **Code**;
  - (b) consumer organisations;
  - (c) other interested industry associations;
  - (d) relevant regulatory bodies; and
  - (e) other interested stakeholders.
- 5.2 **We** will participate in any such review and co-operate with the person conducting it.
- 5.3 **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**.

# CODE OF BANKING PRACTICE

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

5.4 **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) quarterly progress reports on the implementation of those recommendations which have been accepted, until the implementation process is complete.

## 6 **Elderly customers and customers with a disability**

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

## 7 **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; and
- (b) have an adequate knowledge of the provisions of this **Code**.

## 8 **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**.

## 9 **Availability of copies of this Code**

**We** will:

- (a) display, at **our** branches, a copy of this **Code**;
- (b) make this **Code** available on request;
- (c) display this **Code** on **our** website; and

# CODE OF BANKING PRACTICE

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

## PART C: DISCLOSURES

### 10 Terms and conditions

10.1 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.

10.2 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 13.1 and 13.2 if it is relevant and 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** applying to the relevant **banking service**.

10.3 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.

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

# CODE OF BANKING PRACTICE

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- (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 Uniform Consumer Credit Code, the repayment details;
- (h) subject to clause 24, 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 19 of this **Code**; and
- (k) how **you** or **we** may alter or stop another payment service.

10.5 **We** will include in or with the **terms and conditions** for **our** credit cards:

- (a) general information on chargeback rights;
- (b) a prominent statement of the time frames within which **you** should report a disputed transaction (so that **we** may reasonably ask for a chargeback where such a right exists) and a note to the effect that, where the Electronic Funds Transfer Code of Conduct applies, there may be no such time frames in certain circumstances; and

# CODE OF BANKING PRACTICE

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

## 11 Copies of documents

- 11.1 If **you** request a copy of a document, **you** may have rights in respect of that request under the Uniform Consumer Credit Code or Chapter 7 of the Corporations Act 2001, which are greater than those which apply under this **Code**. **We** will comply with that law when it applies. Otherwise this clause 11 applies.
- 11.2 At **your** request, **we** will give **you** a copy of any of the following documents **we** have 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.
- 11.3 **We** will, subject to clauses 11.4 and 11.5, 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.
- 11.4 **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.
- 11.5 **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.
- 11.6 A copy of a document provided to **you** under this **Code** may be in the form of a computer-generated facsimile containing the same information as the original or in any other form as mutually agreed.
- 11.7 **We** may charge **you** a reasonable fee for providing **you** with a copy of a document under this **Code**.

## 12 Cost of credit

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

# CODE OF BANKING PRACTICE

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## 13 Operation of accounts

13.1 We will provide to **you** or a potential customer, upon 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; and
- (f) the advisability of **you** reading the **terms and conditions** applying to the relevant **banking service**.

13.2 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.

## 14 Account suitability

If **you** tell **us** that **you** are a low income earner or a disadvantaged person (regardless of whether **you** are an existing or prospective customer but not if **you** are a **small business**), **we** will provide **you** with details of accounts which may be suitable to **your** needs. **We** will also do this if **you** ask for this information or if, in the course of dealing personally with **you**, **we** become aware that **you** are in receipt of Centrelink or like benefits.

# CODE OF BANKING PRACTICE

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## PART D: PRINCIPLES OF CONDUCT

### 15 Pre-contractual conduct

- 15.1 **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.
- 15.2 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.

### 16 Opening of accounts

- 16.1 **We** will provide to **you** or a potential customer upon request, general descriptive information (which may consist of or include material made available by a government) about:
- (a) the identification requirements of the Financial Transaction Reports Act 1988; and
  - (b) the options available to **you** or a potential customer under tax file number legislation.
- 16.2 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.

### 17 Account combination

- 17.1 **We** will inform **you** promptly after exercising **our** right to combine **your** accounts.
- 17.2 In exercising a right to combine accounts, **we** will comply with any applicable requirements of the Code of Operation for Centrelink Direct Credit Payments.

### 18 Changes to terms and conditions

- 18.1 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 18.2);
  - (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

# CODE OF BANKING PRACTICE

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- (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 that such notice is not required where **you** cannot reasonably be located or **you** have engaged in the transaction or procured the service anonymously.

- 18.2 **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.
- 18.3 **We** will notify **you** of other variations to the **terms and conditions** (including a variation of **standard fees and charges** or of an interest rate) 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, except where the interest rate is linked to money market rates or some other external reference rate, changes to which **we** cannot notify **you** of in advance.
- 18.4 Clauses 18.1 to 18.3 do not apply to a **banking service** regulated by:
- (a) the Uniform Consumer Credit Code; or
- (b) Chapter 7 of the Corporations Act 2001 so far as the relevant change is a change to fees and charges.

This is because these laws have their own notice requirements.

## 19 Direct debits

- 19.1 **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,
- and 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**).
- 19.2 Clause 19.1 does not apply to a payment service relating to a credit card account (see clause 20).

## 20 Chargebacks

**We** will, in relation to a credit card transaction:

- (a) claim a chargeback right where one exists and **you** have disputed the transaction with **us** within the required time frame;
- (b) claim the chargeback for the most appropriate reason;

# CODE OF BANKING PRACTICE

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- (c) not accept a refusal of a chargeback by a merchant's financial institution unless it is consistent with the relevant card scheme rules; and
- (d) include general information about chargebacks with credit card statements at least once every 12 months.

## 21 Foreign exchange services

- 21.1 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.
- 21.2 Prior to granting a foreign currency loan in **Australia**, **we** will provide to **you** a general warning in writing of the risks arising from exchange rate movements and will inform **you** of the availability of mechanisms, if they exist, for limiting such risks.

## 22 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; or
- (b) where there is a duty to the public to disclose; or
- (c) where **our** interests require disclosure; or
- (d) where disclosure is made with **your** express or implied consent.

## 23 Payment instruments

- 23.1 **We** will inform **you** of the advisability of safeguarding payment instruments such as credit and debit cards, cheques and passbooks.
- 23.2 **We** may require **you** to notify **us**, as soon as possible, of the loss, theft or misuse of **your** payment instruments.
- 23.3 **We** will inform **you** of:
- (a) the consequences arising from **your** failure to comply with any requirement referred to in clause 23.2 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.

# CODE OF BANKING PRACTICE

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## 24 Statements of account

- 24.1 **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**.
- 24.2 **You** may ask for more frequent statements of account on a deposit account.
- 24.3 Even if **you** are in default, **we** will give **you** a statement on a loan account if it is practicable for **us** to do so. However, 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 of requesting them, and **we** will provide **you** with statements on request, in a timely manner.
- 24.4 If **you** are a **small business**, or an individual, whose loan or other credit account is not regulated by the Uniform Consumer Credit Code, **we** will give **you** a statement of transactions on **your** account in accordance with the Uniform Consumer Credit Code:
- (a) if that Code would have applied to the provision of credit to **you** had **you** been an individual and acquired the credit wholly or predominantly for personal, domestic or household purposes; and
  - (b) unless the nature of the **banking service** is such that it would be impractical to apply the Uniform Consumer Credit Code provisions to the facility.

## 25 Provision of credit

- 25.1 Before **we** offer or give **you** a credit facility (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 it.
- 25.2 With **your** agreement, **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. If, at the time, the hardship variation provisions of the Uniform Consumer Credit Code could apply to **your** circumstances, **we** will inform **you** about them.

# CODE OF BANKING PRACTICE

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## 26 Joint debtors

- 26.1 **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 any direct benefit under the facility.
- 26.2 **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 26.3.
- 26.3 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.

## 27 Joint accounts and subsidiary cards

- 27.1 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.
- 27.2 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**.
- 27.3 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**.

## 28 Guarantees

- 28.1 This clause 28 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 28.15 and 28.16.

# CODE OF BANKING PRACTICE

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28.2 **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.

28.3 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.

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

- (a) **we** will 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) from 1 June 2004 **we** will 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 12 months before **we** tell **you** this, and from 1 June 2005 within 2 years before **we** tell **you** this;
  - (ii) if there has been an excess or overdrawn 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 from 1 February 2005 **we** will give **you** a list showing the extent of each of those excesses or overdrawings;
- (c) **we** will 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) **we** will 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;

# CODE OF BANKING PRACTICE

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- (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 28.4(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) **we** will 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.

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

- (a) provided **you** with the information described in clause 28.4 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 28.5(b) if **you** have obtained independent legal advice after having received the information required by clause 28.4.

28.6 **We** will:

- (a) not give the **Guarantee** to the debtor, or to someone acting on behalf of the debtor, to arrange the signing (except a legal practitioner or financial adviser who is working for **you**); and
- (b) ensure that **you** sign the **Guarantee** in the absence of the debtor where **we** attend the signing of the **Guarantee**.

28.7 **We** will also provide **you**, on request, with additional copies of any information described in clause 28.4(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,

# CODE OF BANKING PRACTICE

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

- 28.8 **We** will ensure that a warning notice (substantially in the form required by section 50 of the Uniform Consumer Credit Code, and detailed in Form 4 of the Uniform Consumer Credit Code Regulations and which is consistent with this **Code**) appears directly above the place where **you** sign.
- 28.9 **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).
- 28.10 **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**.
- 28.11 **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,
- but only to the extent the **Guarantee** guarantees obligations under the credit contract.
- 28.12 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 contract document of the future credit contract or future **Guarantee**; and
  - (b) subsequently obtained the mortgagor's written acceptance of the extension of the **third party mortgage**.
- 28.13 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 contract document of the future credit contract; and
  - (b) subsequently obtained **your** written acceptance of the extension of the **Guarantee**,

# CODE OF BANKING PRACTICE

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except 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 28.4(a) a prominent statement that the **Guarantee** can cover a future credit contract in this way.

28.14 **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; or
- (b) **we** have made reasonable attempts to locate the debtor without success; or
- (c) the debtor is insolvent,

but these rules in clause 28.14 do not apply where the principal debtor is a **small business**.

28.15 Where **you** are a **commercial asset financing guarantor** or **sole director guarantor** clauses 28.4(b) to (e) (inclusive), 28.5, 28.6 and 28.7 do not apply.

28.16 If **you** are a **director guarantor** clauses 28.4(d) and 28.5 apply as follows:

- (a) **we** will tell **you** that:
  - (i) **you** have the right to receive the documents described in clause 28.4(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 28.4(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 28.4(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 28.5(b); and
- (f) apart from telling **you** the things set out in clauses 28.16 (a)(i) and (ii), 28.16(b) and 28.16(c) and as required under other provisions of this **Code**, **we** will not attempt to influence **your** choices under clauses 28.16(b) and 28.16(e).

## 29 Debt collection

**We** and **our** collection agents will comply with the Australian Competition and Consumer Commission's guideline "Debt Collection and the Trade Practices Act" dated June 1999

# CODE OF BANKING PRACTICE

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when collecting amounts due to **us**, and **we** will ensure that **our** representatives do likewise.

## 30 Advertising

30.1 **We** will ensure that **our** advertising and promotional literature drawing attention to a **banking service** is not deceptive or misleading.

30.2 In any advertising in the print-media and any promotional literature that draws attention to a **banking service** and includes a reference to an interest rate, **we** will also indicate whether other fees and charges will apply and that full details of the relevant **terms and conditions** are available on request.

## 31 Closure of accounts in credit

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** notice that is reasonable in all the relevant circumstances 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.

## 32 Branch closure protocol

**We** will comply with the **ABA's** protocol on branch closures, as publicised by the **ABA** from time to time. This protocol is available from the **ABA's** website: [www.bankers.asn.au](http://www.bankers.asn.au).

## 33 Electronic communications

33.1 Unless prohibited by legislation, **you** may agree that any information which this **Code** requires **us** to provide (by writing or other means) may be provided:

- (a) by **electronic communication** to **your** nominated electronic address (i.e. email address); or
- (b) subject to clause 33.4 by being made available at **our** website for retrieval by **electronic communication** to **you**, on the condition that **we**:
  - (i) promptly notify **you** by **electronic communication** under clause 33.1(a) that the information is available for retrieval at **our** website, and the nature of the information; and
  - (ii) provide **you** with the ability to readily retrieve the information by **electronic communication** (for example, by providing an electronic link to the relevant information on **our** website, or the **URL** of **our** website).

# CODE OF BANKING PRACTICE

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- 33.2 **Your** agreement to the provision of information under clauses 33.1(a) or 33.1(b) or both, will be by a specific positive election, after receiving an explanation of the implications of making such an election.
- 33.3 **We** will inform **you** of **your** right to:
- (a) vary **your** nominated electronic address (by notice to **us**); or
  - (b) terminate the agreement to the provision of information under clauses 33.1(a) or 33.1(b) or both.
- 33.4 Except if there is an agreement that satisfies clause 33.1(b), and subject to clause 33.5, making information available at **our** website does not satisfy any requirement of this **Code** that the information be provided to **you**.
- 33.5 Where **you** have viewed information available at **our** website and **you**:
- (a) have been given the opportunity to retain that information for subsequent reference (for example, by printing or saving it); and
  - (b) specifically agreed that **you** have been given the opportunity to retain that information and that **you** will not be otherwise provided with a copy of the information by **us** (without a separate request by **you** under clause 33.6),
- we** are to be treated as having provided that information to **you** at the time **you** specifically agreed.
- 33.6 Where **we** have provided, or are treated as having provided, information to **you** under clauses 33.1 or 33.5, **we** will provide a paper copy of that information to **you**, if **you** so request, within 6 months of the receipt of the **electronic communication**.

## PART E: RESOLUTION OF DISPUTES, MONITORING AND SANCTIONS

### 34 Monitoring and sanctions

**We** agree:

- (a) to participate in establishing a Code Compliance Monitoring Committee (“**CCMC**”) comprising:
  - (i) 1 person with relevant experience at a senior level in retail banking in **Australia**, to be appointed by **banks** that adopt this **Code**;
  - (ii) 1 person with relevant experience and knowledge as **your** representative, to be appointed by the consumer and small business representatives on the Board of Directors of the **BFSO**; and
  - (iii) 1 person with experience in industry, commerce, public administration or government service, appointed jointly by the **BFSO** and **banks** that adopt this **Code** (this person is to be the Chairperson of the **CCMC**);

# CODE OF BANKING PRACTICE

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- (b) that the **CCMC's** functions will be:
  - (i) to monitor **our** compliance under this **Code**;
  - (ii) to investigate, and to make a determination on, any allegation from any person that **we** have breached this **Code** but the **CCMC** will not resolve, or make any determination on, any other matter; and
  - (iii) to monitor any other aspects of this **Code** that are referred to the **CCMC** by the **ABA**;
- (c) to ensure that the **CCMC** has sufficient resources and funding to carry out its functions satisfactorily and efficiently;
- (d) to annually lodge with the **CCMC** (in a form acceptable to the **CCMC**) a report on **our** compliance with this **Code**;
- (e) to empower the **CCMC** to conduct its own inquiries into **our** compliance with the **Code**;
- (f) to co-operate and comply with all reasonable requests of the **CCMC** in pursuance of its functions;
- (g) 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** which review is to be initially held after the first year in which the **CCMC** operates after which it is to coincide with the periodic reviews of this **Code** (see clause 5);
- (h) 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 **BFSO** and then consulting with the **BFSO** and the **ABA**:
  - (i) receipt of complaints;
  - (ii) privacy requirements;
  - (iii) civil and criminal implications;
  - (iv) time frames 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; and
- (i) to empower the **CCMC** to name **us** in connection with a breach of this **Code** or in the **CCMC's** report, where it can be shown that **we** have:
  - (i) been guilty of serious or systemic non-compliance;

# CODE OF BANKING PRACTICE

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- (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.

## **35 Internal dispute resolution**

35.1 **We** will have an internal process for handling **disputes** with **you**. This process will:

- (a) be free of charge;
- (b) meet the standards set out in Australian Standard AS4269-1995 or any other industry dispute standard or guideline which **ASIC** declares to apply to this **Code**;
- (c) adhere to the timeframes specified in this clause 35; and
- (d) require **us** to provide written reasons for **our** decision on a **dispute**.

35.2 **We** will notify **you** of the name and contact number of the person who is investigating **your dispute**.

35.3 Within 21 days of becoming aware of a **dispute**, **we** will:

- (a) complete the investigation and inform **you** of the outcome of the investigation; or
- (b) inform **you** of **our** need for more time to complete **our** investigation.

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

35.5 If **we** are unable to resolve a **dispute** within 45 days, **we** will:

- (a) inform **you** of the reasons for the delay;
- (b) provide **you** with monthly updates on progress with the **dispute**; and
- (c) 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.

35.6 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.

35.7 **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.

# CODE OF BANKING PRACTICE

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

## 36 External dispute resolution

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

- (a) free of charge; and
- (b) consistent with **ASIC**'s Policy Statement 139 "Approval of External Complaints Resolution Schemes" or any other external complaint resolution policy statement or guideline published by **ASIC**; and
- (c) available to **you** in accordance with its terms of reference.

## 37 Availability of information about dispute resolution processes

37.1 **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**.

37.2 **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 internal process and again at the time that **you** are told about the final outcome of the internal process if **your** complaint is not wholly satisfied.

## 38 Family law proceedings

No later than the **commencement date**, **we** will publish 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.

# CODE OF BANKING PRACTICE

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## PART F: APPLICATION AND DEFINITIONS

### 39 Application and transitional provisions

#### 39.1 On and after the **commencement date**:

- (a) **we** will be bound by this **Code** in respect of:
  - (i) any **banking service** that **we** commence to provide to **you**; and
  - (ii) any **Guarantee** (as described in clause 28) **we** obtain from **you**,  
except as provided for below;
- (b) **we** will be bound by this **Code** in respect of any **banking service we** were providing to **you** at the **commencement date** and continue to provide afterwards except for:
  - (i) clauses 10.2 to 10.5 (Terms and Conditions) (but subject to clause 39.1(d));
  - (ii) clause 21 (Foreign Exchange Services);
  - (iii) clauses 24.2 and 24.4 (Statements of Account);
  - (iv) clause 28.12 (Third Party Mortgages); and
  - (v) clause 33 (Electronic Communications);
- (c) **we** will also be bound by clauses 28.9, 28.11(a) and 28.13 of this **Code** in respect of any guarantee subject to the Code of Banking Practice November 1993 taken prior to the **commencement date** (except that the reference to the notice **we** give **you** under clause 28.4(a) in clause 28.13 shall be deemed not to have been made in respect of any such guarantee);
- (d) if **you** have a credit card account with **us** on the **commencement date**, **we** will give **you** a statement containing the information described in clause 10.5 no later than 12 months after the **commencement date** (unless already provided);
- (e) if **you** have a payment instrument at the **commencement date**, **we** will give **you** the information described in clause 23 no later than 12 months after the **commencement date** (unless already provided);
- (f) the Code of Banking Practice November 1993 will apply only as follows:
  - (i) section 2 (“Terms and Conditions”) which will apply to an existing “Banking Service” subject to that Code;
  - (ii) section 11 (“Foreign Exchange Services”) which will apply to an existing foreign exchange service; and

# CODE OF BANKING PRACTICE

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- (iii) section 17 (“Guarantees”) which will apply to a guarantee subject to that Code;
  - (g) in respect of a **banking service** provided to **you** in relation to a product, the terms and conditions for which are set out in a prospectus or Product Disclosure Statement issued prior to the **commencement date**, **we** are not required to comply with this **Code** until 31 March 2004. However, the Code of Banking Practice November 1993 will continue to apply to such **banking services** until that date; and
  - (h) this **Code** does not apply to any **banking service** or **Guarantee** provided 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**.
- 39.2 To the extent of any inconsistency, this **Code** is to be read subject to the Electronic Funds Transfer Code of Conduct.
- 39.3 This **Code** replaces, from the **commencement date**, the “Banks and Small Business Working Together - A Set of Principles”.

## 40 Definitions

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

**ABA** means the Australian Bankers' Association.

**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** 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.

**BFSO** means Banking and Financial Services Ombudsman Ltd (ABN 48 050 070 034).

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

# CODE OF BANKING PRACTICE

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**CCMC** has the meaning given in clause 34(a).

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

**commencement date** means the date from which **we** have publicly announced **we** have adopted this **Code** and, in relation to any subsequent amendments made to this **Code**, means the date from which **we** have publicly announced **we** have adopted those amendments.

**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 of the company, and:
  - (i) the director has not given security to support the **Guarantee**; or
  - (ii) where the director has previously given security, the director 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 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 132(1)(c) of the Uniform Consumer 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.

**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.

# CODE OF BANKING PRACTICE

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**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.

**Facility** has the meaning given in clause 28.4(a)(v).

**Guarantee** means a guarantee described in clause 28.1.

**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 in (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.

**URL** means a Universal Resource Locator.

# CODE OF BANKING PRACTICE

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**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 potential customers, a potential customer of **ours**) and includes, in clauses 28, 33 and 39, 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** (this **Code** does not apply to a person who is a “wholesale client” in respect of such products and services).