

**EXPLANATORY STATEMENT for**  
**ASIC Corporations (Banking Code of Practice – Revocation of 2018**  
**Approval) Instrument 2019/662 and ASIC Corporations (Approval of**  
**Banking Code of Practice) Instrument 2019/663**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (Banking Code of Practice – Revocation of 2018 Approval) Instrument 2019/662* (the Revocation Instrument) and *ASIC Corporations (Approval of Banking Code of Practice) Instrument 2019/663* (the 2019 Approval Instrument) under paragraph 1101A(4)(a) and subsection 1101A(1) of the *Corporations Act 2001* (the Corporations Act) respectively.

Subsection 1101A(1) of the Corporations Act provides that ASIC may, on application, approve codes of conduct that relate to any aspect of the activities of financial services licensees, authorised representatives of financial services licensees, or issuers of financial products, being activities in relation to which ASIC has a regulatory responsibility. The approval must be in writing.

Paragraph 1101A(4)(a) of the Corporations Act provides that ASIC may, on application by the person who applied for the approval, revoke an approval of a code of conduct.

## **1. Background**

### *ASIC's code approval power*

ASIC must not approve a code of conduct under section 1101A unless it is satisfied that:

- (a) the code is not inconsistent with the Corporations Act or any other law of the Commonwealth under which ASIC has regulatory responsibilities; and
- (b) it is appropriate to approve the code, having regard to the following matters, and to any other matters that ASIC considers are relevant:
  - (i) the ability of the applicant to ensure that persons who hold out that they comply with the code will comply with the code as in force from time to time; and
  - (ii) the desirability of codes of conduct being harmonised to the greatest extent possible.

## *The Australian Banking Association's Banking Code of Practice*

On 19 December 2017, the Australian Banking Association (ABA) applied to ASIC for approval of its Banking Code of Practice (2018 Banking Code) under section 1101A of the Corporations Act. ASIC approved the ABA's 2018 Banking Code by issuing *ASIC Corporations (Banking Code of Practice) Instrument 2018/700* (the 2018 Approval Instrument). The 2018 Banking Code was due to commence operation on 1 July 2019.

Following ASIC's issue of the 2018 Approval Instrument, the ABA proposed a number of changes to the 2018 Banking Code. On 14 December 2018 and 14 May 2019, the ABA applied to ASIC for approval of variations to the 2018 Banking Code. The variations are designed to:

- (a) clarify that a bank will not charge fees for services to deceased customers, where services are no longer being provided to that customer's estate;
- (b) modify banks' commitment to provide a copy of a valuation to a small business borrower to allow banks to place reasonable limitations on the use to which the borrower (or any third parties) can put that valuation;
- (c) clarify the original intention and the position in the ABA's *Industry Guideline: Appointing property valuers when lending to small businesses and primary producers* that a copy of the valuation be provided to a small business borrower only where the loan is secured against commercial or agricultural property;
- (d) reflect ASIC's implementation of law reforms to credit card responsible lending in *ASIC Credit (Unsuitability – Credit Cards) Instrument 2018/753*; and
- (e) make minor and technical corrections throughout the 2018 Banking Code.

The ABA had initially applied under subsection 1101A(2) of the Corporations Act for ASIC's approval of the above variations to the 2018 Code. However, the extent of the textual changes is such that the ABA has since requested that ASIC instead revoke the 2018 Approval Instrument and approve a new 2019 Banking Code (reflecting the above variations) (the 2019 Banking Code) rather than approve a variation (which would need to enumerate all variations).

## **2. Purpose of the instruments**

The purpose of the Revocation Instrument is to revoke the 2018 Approval Instrument, such that the 2018 Banking Code is no longer approved by ASIC.

The purpose of the 2019 Approval Instrument is to provide ASIC's approval of the ABA's 2019 Banking Code, as published on 24 June 2019.

ASIC has assessed the 2019 Banking Code and is satisfied that it meets the requirements of subsection 1101A(3) of the Corporations Act.

### **3. Operation of the instrument**

Section 2 of the Revocation Instrument provides that the Revocation Instrument commences on the day after it is registered on the Federal Register of Legislation. Section 5 provides that approval of the 2018 Banking Code is revoked.

Section 2 of the 2019 Approval Instrument provides that the 2019 Approval Instrument commences on the same day as the Revocation Instrument. Section 5 provides that the 2019 Banking Code is approved.

### **4. Documents incorporated by reference**

The Revocation Instrument incorporates by reference the 2018 Banking Code.

The 2019 Approval Instrument incorporates by reference the 2019 Banking Code.

Both documents are available at <http://www.ausbanking.org.au>.

The Banking Code of Practice (the Code) is a self-regulatory document created by the banking industry, as represented by the ABA, and is administered by an independent Code monitoring body. The Code sets out standards of practice and service in the Australian banking industry for individual and small business customers, and their guarantors. ASIC does not administer the Code.

### **5. Consultation**

ASIC engaged with a targeted range of stakeholders to invite their feedback on the content of the draft 2019 Banking Code. Consultation on the 2018 Banking Code (which was approved by the 2018 Approval Instrument) contributed to ASIC's assessment of the 2019 Banking Code, as the 2019 Banking Code is simply the 2018 Banking Code with updates as described above.

Stakeholders with whom ASIC engaged in relation to the 2018 Banking Code and the 2019 Banking Code included consumer and small business representatives, various industry peak bodies, ombudsmen and the Code monitoring body.

The ABA undertook a substantial stakeholder consultation process as part of the development of the Code.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **ASIC Corporations (Banking Code of Practice – Revocation of 2018 Approval) Instrument 2019/662**

### **ASIC Corporations (Approval of Banking Code of Practice) Instrument 2019/663**

ASIC Corporations (Banking Code of Practice – Revocation of 2018 Approval) Instrument 2019/662 (the **Revocation Instrument**) and ASIC Corporations (Approval of Banking Code of Practice) Instrument 2019/663 (the **2019 Approval Instrument**) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview**

The Revocation Instrument revokes ASIC's approval of the Banking Code of Practice that ASIC had approved by *ASIC Corporations (Banking Code of Practice) 2018/700* in 2018.

The 2019 Approval Instrument approves the Banking Code of Practice that the ABA published on 24 June 2019.

#### **Human rights implications**

The Revocation Instrument and 2019 Approval Instrument do not engage any of the applicable rights or freedoms.

#### **Conclusion**

The Revocation Instrument and 2019 Approval Instrument are compatible with human rights as they do not raise any human rights issues.

**Australian Securities and Investments Commission**