



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Approval of February 2025 Banking Code of Practice) Instrument 2024/523

ASIC Corporations (Revocation of Approval of March 2020 Banking Code of Practice) Instrument 2024/522

This is the Explanatory Statement for *ASIC Corporations (Approval of February 2025 Banking Code of Practice) Instrument 2024/523* (the **New Approval Instrument**) and *ASIC Corporations (Revocation of Approval of March 2020 Banking Code of Practice) Instrument 2024/522* (the **New Revocation Instrument**).

The Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

Summary

1. The Banking Code of Practice (the **Code**) is a self-regulatory document created by the banking industry, as represented by the Australian Banking Association Limited (ACN 117 262 978) (**ABA**), and is administered by an independent Code monitoring body, the Banking Code Compliance Committee (**BCCC**). 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.
2. On 19 December 2017 the ABA first applied to ASIC for approval of its Code (the **2018 Code**) under section 1101A of the *Corporations Act 2001* (the **Corporations Act**). ASIC approved the 2018 Code by issuing *ASIC Corporations (Banking Code of Practice) Instrument 2018/700*.
3. In June 2019, the ABA updated the Code and ASIC approved the updated Code by way of *ASIC Corporations (Approval of Banking Code of Practice) Instrument 2019/663*.
4. In December 2019, the ABA made further updates to the Code to take effect from March 2020 (the **March 2020 Code**). ASIC approved the March 2020 Code by way of *ASIC Corporations (Approval of March 2020 Banking Code of Practice) Instrument 2019/1255* (the **March 2020 Approval Instrument**).

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5. The March 2020 Code is taken to be approved under the transitional provisions contained in section 1672 of the Corporations Act.
 6. The March 2020 Code was varied in response to the COVID-19 Pandemic and ASIC approved that variation by way of *ASIC Corporations (Approval of Variation of March 2020 Banking Code of Practice) Instrument 2020/602*. ASIC approved further minor variations to the March 2020 Code by way of *ASIC Corporations (Approval of Variation of March 2020 Banking Code of Practice) Instrument 2021/11*.
 7. In 2021 the ABA arranged an independent review of the Code (the **Code Review**), which was undertaken by Mr Mike Callaghan AM PSM. A final report of the Code Review was published in November 2021 which contained a number of recommendations.
 8. In 2021 there was also a separate independent review of the BCCC (the **BCCC Review**). A final report of the BCCC Review was published in December 2021, which also contained a number of recommendations.
 9. As a result of the Code Review, the BCCC Review, and further stakeholder submissions received and proposals about the content of the proposed Code, the ABA made a number of updates to the Code. The ABA subsequently made an application seeking that ASIC revoke the approval of the March 2020 Code – with effect from 28 February 2025 – and approve a new revised Code (the **February 2025 Code**), which is set to commence on 28 February 2025.

Purpose of the instrument

10. The purpose of the New Approval Instrument is to provide ASIC’s approval of the February 2025 Code as given to ASIC by the ABA on 24 June 2024.
11. The purpose of the New Revocation Instrument is to revoke approval of the March 2020 Code and revoke the March 2020 Approval Instrument, such that the March 2020 Code as varied is no longer approved by ASIC.
12. ASIC has assessed the February 2025 Code and is satisfied that it meets the requirements of subsection 1101A(3) of the Corporations Act. In particular:
 - (a) to the extent that the February 2025 Code is inconsistent with the Corporations Act or any other law of the Commonwealth under which ASIC has regulatory responsibilities – the Code imposes obligations on subscribing banks that are more onerous than those imposed by the Corporations Act or the other laws (in particular, ASIC considers the February 2025 Code provisions are beneficial, and not detrimental, to consumers and small businesses covered by the Code);
 - (b) it is appropriate to approve the February 2025 Code, having regard to the following:

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- i. the obligations of subscribing banks are capable of being enforced. The Code obligations form contractual promises between the bank and its customer or guarantor, and customers and guarantors may take breaches of the Code through a bank's internal dispute resolution process and then if necessary to the Australian Financial Complaints Authority (*AFCA*) for external dispute resolution);
 - ii. the BCCC has been established as an independent body to monitor subscribers' compliance with the Code. The BCCC has effective administrative systems for monitoring compliance with the Code and making information obtained as a result of monitoring publicly available; and
 - iii. the ABA has effective administrative systems for maintaining, and making publicly available, an accurate list of subscribers to the Code.
- (c) The New Approval Instrument does not identify any 'enforceable code provisions' under subsection 1101A(2). The ABA has not identified any provisions in the February 2025 Code as enforceable code provisions at this time.
- (d) ASIC considers that the February 2025 Code retains existing protections from the March 2020 Code and provides additional benefits for individual and small business customers, and their guarantors. Some of the changes and additional benefits contained in the February 2025 Code include:
- i. The Code is restructured, having 5 parts instead of 10 parts;
 - ii. The Code contains an updated Introduction section which includes information about how eligible individuals, small businesses and their guarantors can enforce their rights;
 - iii. An updated definition of small business, which increases the upper limit of aggregate borrowings from \$3 million to \$5 million, resulting in a greater number of small businesses having protections under the Code;
 - iv. An updated conduct standard, committing subscribing banks to do all things necessary to ensure that banking services provided under the Code are provided efficiently, honestly and fairly. This is the same standard of behaviour that applies under subsection 912A(1)(a) of the Corporations Act and subsection 47(1)(a) of *the National Consumer Credit Protection Act 2009*;
 - v. Clarified commitments for how subscribing banks will improve inclusivity and accessibility for customers including via interpreter services, National Relay Services or accessible information;

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- vi. Clarified commitments in relation to the administration of deceased estates. Subscribing banks commit to make available clear and accessible information about what a representative can do to manage a customer's account in the event of their death and to make this information publicly available;
 - vii. An updated vulnerability definition, including explicitly recognising incarcerated persons as customers at risk of experiencing vulnerability;
 - viii. The financial difficulty definition has been enhanced to include customers who are likely or expecting to be unable to meet future repayments. It also includes more examples of financial difficulty causes;
 - ix. Subscribing banks commit to take reasonable steps to make sure a meeting is held with a prospective guarantor before taking a guarantee, and to discuss customer's circumstances and reasonable alternatives to repay a guaranteed liability before selling a guarantor's primary place of residence;
 - x. The Code contains simplified provisions on the role and powers of the BCCC. Information about the powers of the BCCC and available sanctions have been relocated to the Introduction and the BCCC Charter; and
 - xi. The Code will be reviewed at least every 5 years (instead of every 3 years), consistent with subsection 1101AB of the Corporations Act.

Consultation

- 13. The ABA announced its response to the Code Review in December 2022. Subsequently in August 2023, the ABA provided ASIC with a draft revised Code for consideration.
- 14. On 17 November 2023 ASIC published Consultation Paper 373: *Proposed changes to the Banking Code of Practice (CP 373)*, which sought stakeholder views on the proposed changes to the Code in response to the Code Review and BCCC Review, and in particular sought feedback to assist ASIC make a decision whether to approve the Code.
- 15. In response to CP 373, ASIC received 16 submissions. These submissions were taken into account when making the instrument. The non-confidential submissions are publicly available on ASIC's website.
- 16. Following closure of submissions, ASIC and the ABA discussed the issues raised in stakeholder submissions and proposals to ensure that the Code continues to respond to current and emerging issues and delivers real benefits to consumers, small business and subscribing entities.

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17. During the Code review process ASIC has also engaged with a targeted range of stakeholders to invite further feedback on the new proposed Code. These groups have included the BCCC, AFCA, and consumer representatives.

Operation of the instruments

18. Section 2 of the New Approval Instrument provides that the instrument commences on 28 February 2025. Section 5 provides that the February 2025 Code is approved.
19. Section 2 of the New Revocation Instrument provides that the instrument commences on 28 February 2025. Section 5 provides that the approval of the March 2020 Code, and the March 2020 Approval Instrument, are revoked.

Incorporation by reference

20. The New Approval Instrument incorporates by reference the February 2025 Code given to ASIC on 24 June 2024. The February 2025 Code will be available on the website of the Australian Banking Association Limited (<http://www.ausbanking.org.au>) shortly after the New Approval Instrument is made.
21. The New Revocation Instrument incorporates by reference the March 2020 Code. The March 2020 Code is available at <http://www.ausbanking.org.au>.

Legislative authority

22. 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.
23. Subsection 1101A(3) of the Corporations Act provides that ASIC must not approve a code of conduct under section 1101A unless it is satisfied that:
 - (a) to the extent that the code is inconsistent with this Act or any other law of the Commonwealth under which ASIC has regulatory responsibilities – the code imposes an obligation on a subscriber that is more onerous than that imposed by this Act or any other law of the Commonwealth under which ASIC has regulatory responsibilities; and
 - (b) each enforceable code provision has:
 - (i) been agreed with the applicant; and
 - (ii) is legally effective; and

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- (c) it is appropriate to approve the code, having regard to the following matters:
- (i) whether the obligations of subscribers to the code are capable of being enforced;
 - (ii) whether the applicant has effective administration systems for monitoring compliance with the code and making information obtained as a result of monitoring publicly available;
 - (iii) whether the applicant has effective administration systems for maintaining and making publicly available, an accurate list of subscribers to the code.
24. Subsection 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.
25. Instruments made under subsection 1101A(1) and subsection 1101A(4)(a) of the Corporations Act are disallowable legislative instruments.

Statement of Compatibility with Human Rights

26. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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Overview

1. *ASIC Corporations (Approval of February 2025 Banking Code of Practice) Instrument 2024/523* (the ***New Approval Instrument***) approves the February 2025 Banking Code of Practice as given to ASIC by the Australian Banking Association Limited on 24 June 2024.
2. The *ASIC Corporations (Revocation of Approval of March 2020 Banking Code of Practice) Instrument 2024/522* (the ***New Revocation Instrument***) revokes approval of the March 2020 Banking Code of Practice. The New Revocation Instrument also revokes *ASIC Corporations (Approval of March 2020 Banking Code of Practice) Instrument 2019/1255* which approved the March 2020 Code.

Assessment of human rights implications

3. The New Approval Instrument does not engage any of the applicable rights or freedoms.
4. The New Revocation Instrument does not engage any of the applicable rights or freedoms.

Conclusion

5. The New Revocation Instrument and the New 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*.