

Industry Guideline

Industry guideline: Banks' financial difficulty programs

Purpose of the industry guideline

This industry guideline:

- explains how the Commonwealth consumer protection laws¹ and the Banking Code of Practice apply to banks' financial difficulty programs.
- provides practical guidance on what banks can do to meet these obligations when dealing with customers who may be experiencing financial difficulty.
- outlines a framework for banks that balances the need for consistent, standardised access to financial difficulty assistance with the need for flexibility when responding to customers' unique personal and financial circumstances.
- promotes best practice across the banking industry.

This guideline reflects good industry practice, and the Australian Banking Association (**ABA**) encourages members to use the principles in this guideline to put in place internal processes, procedures, and policies.

The ABA's financial assistance hub provides information for customers about financial difficulty and can be accessed at www.ausbanking.org.au.

About this guidance

The Banking Code of Practice 2019 (the **Banking Code**)² sets out the standards of practice and service in the Australian banking industry for individuals and small business customers, and their guarantors. The Banking Code provides safeguards and protections not set out in the law. It complements the law and, in some areas, sets a higher standard than the law.

The Banking Code is contractually binding on banks that have adopted it. Part 9 of the Banking Code *When things go wrong*, outlines a bank's obligations when an individual or small business customer is experiencing financial difficulty with their credit facility. This guideline complements the provisions of the Banking Code.

The guideline also reflects the provisions of the National Consumer Credit Protection Act 2009 (**NCCP Act**) which apply to the provision of credit to individuals and their guarantors (but do not apply to credit obtained for commercial or business purposes). NCCP Act protections are identified through the guideline. Where obligations outlined in this industry guideline go beyond the Banking Code, they only extend to retail customers (i.e. individuals and their guarantors). Small business customers are encouraged to contact their bank about specific arrangements outside those identified in the Banking Code.

This industry guideline does not have legal force or prescribe binding obligations on individual banks. While the ABA's industry guidelines are voluntary, this industry guideline has been developed with input from, and agreed to by, member banks.

¹ The NCCP Act is the law governing consumer credit in Australia and is designed to protect consumers' interests. The NCCP Act includes the National Credit Code as a schedule to the NCCP Act.

² The Banking Code has been updated since its first release and the current version available at the date of this guideline is the 5 October 2021 variation to the 1 March 2020 release.

What is financial difficulty?

Financial difficulty means you are unable to repay what you owe and are experiencing difficulty meeting your repayment obligations. This can be as a result of an unexpected event or unforeseen changes outside your control (Banking Code of Practice, paragraph 157).

Banks want to help their customers during times of financial difficulty and have adopted policies, programs, practices and support services to do this. Banks recognise that there are different reasons for financial difficulty and have different options to help customers through a difficult period. Guarantors are also eligible for financial difficulty assistance under the Banking Code.

Note, the term “**financial hardship**” is used in this document when referring to the relevant provisions of the National Credit Code (**NCC**), a schedule to the NCCP Act, which requires banks to meet certain minimum requirements in responding to a customer who notifies the bank of their inability to make repayments. Even if the customer is not eligible to change their credit contract under the NCC, the bank may still offer other forms of support and assistance. (Examples of both types of assistance are outlined in Table 1). Further information about bank’s financial hardship processes is outlined on page 8 - Accessing Financial Hardship Assistance.

Good industry practice – How banks will respond to financial difficulty

All banks have internal policies, procedures, and programs for responding to financial difficulty.

Banks encourage customers who are experiencing financial difficulty³ or who think they are, or will be, unable to meet their existing financial obligations, to contact them as soon as possible. The sooner banks are contacted, the sooner they can work with customers to find a solution and try to prevent the situation from deteriorating further.⁴

Importantly, in working to find a sustainable solution to a customers’ financial difficulties, any help will depend on the customers’ individual circumstances and help will be provided on a case-by-case basis.⁵ Part 9 of the Banking Code sets out examples of steps that banks may be able to take based on different categories of financial difficulty. Different banks will have different internal processes and procedures to consider customers’ financial difficulties.

For customers experiencing financial difficulty, banks should ensure policies and procedures set out circumstances when extra care should be offered. Examples of circumstances that indicate a customer may be experiencing vulnerability include where a customer:

- is experiencing age-related impairment or cognitive impairment;
- is experiencing financial abuse, family or domestic violence, or elder abuse;
- is seriously ill, or has a mental illness; or
- is experiencing any other personal, or financial circumstances causing significant detriment⁶ (such as homelessness).

This list is not intended to be exhaustive and banks should consider each customer’s circumstances individually. The actions below demonstrate good industry practice in how banks can implement Part 9 of the Banking Code.

Note, banks follow a similar approach when they assess a request for assistance from a small business, however, the information the bank may need will be different and may be more extensive. Banks may also have additional options available to assist a small business, for example a small business customer may be able to access a temporary increase in an overdraft facility limit, deferment of scheduled repayments consolidation or restructure of facilities.⁷

³ Banking Code paragraph 158.

⁴ Banks should note that where they are contacted by an individual customer (i.e. not a small business) they should be careful to consider whether obligations under the hardship provisions of the NCC apply (as noted further below).

⁵ Banking Code paragraph 167.

⁶ Banking Code paragraph 38.

⁷ The examples relating to small business assistance goes beyond the requirements set out in the Banking Code. The examples reflect good industry practice and are useful examples of how a bank could assist a small business.

How banks may be able to help

Minor individual instances of help

Minor individual instances of help, for example deferrals, refunds or fee waivers, can be provided by banks at their discretion. This can assist customers who need to make a repayment at a later date, or have accidentally missed a payment.

When restoring a customer's financial position is possible

Banks' financial difficulty or hardship arrangements focus on situations from which a customer can recover their financial position if an appropriate arrangement is put in place. Arrangements can be:

- **Short term.** Moving to interest-only or reduced payments for a short period of time.
- **Longer term.** Extending the term of the customer's loan(s), to reduce repayments for the life of the contract. Longer-term arrangements would generally require a change to the conditions of the existing credit contract and a new repayment schedule.
- **Debt reduction.** If the customer is an individual, a bank may, at its discretion, reduce or waive a customer's debt if it is an unsecured personal loan or credit card, on a case by case basis, and on compassionate grounds having regard to the customer's circumstances, the customer's inability to meet repayments now and into the future, whether the hardship is genuine and being caused by factors outside the customer's control and commercial considerations (Banking Code paragraph 172).

When restoring a customer's financial position is unlikely

A permanent change to a customer's financial situation may mean it is unlikely that their financial position can be recovered, even if their existing loan was changed.

The bank may decide it is not appropriate to offer a hardship arrangement under the NCC. However, even in these circumstances, banks may be able to offer help. Options may include agreeing on an alternative arrangement, plan or contract, changing the terms of the loan, giving the customer time to sell the property, or giving information about bankruptcy or insolvency arrangements (Banking Code page 47).

Emergency events or natural disasters

While the Banking Code does not specifically deal with emergency events or natural disasters, during these events banks may want to quickly help customers and their communities. This includes floods, bushfires, cyclones, earthquakes or pandemics.

Banks recognise that customers may not have access to their homes and/or financial records at these times. In these circumstances, banks may not require customers to complete standard financial difficulty under the Banking Code or hardship assessment processes, such as providing information or supporting documentation to obtain assistance. This gives customers the time and headspace to come to terms with their situation without the pressures associated with their debts and financial obligations. Banks will then work with the customer to determine a suitable arrangement when the immediate event has passed, and recovery from the event has commenced.

Banks may also choose to offer wider emergency relief packages (such as food or accommodation services in certain circumstances) to provide immediate support for customers, as well as broader assistance to help communities recover.

Banks will work with governments and authorities to make sure banking infrastructure is restored as quickly as possible.

To communicate in a clear and timely manner to enable our customers to make an informed decision about their options, banks will:

- encourage customers experiencing financial difficulty to contact their bank early.⁸ Customers may not yet be in arrears when they contact their bank. Customers should be referred to the bank's financial hardship team or equivalent team/assigned relationship manager in the case of agribusiness customers.⁹
- make information publicly available about their processes for working with customers in financial difficulty¹⁰ and ensure its processes are accessible, inclusive and provided to customers and others, including older customers, people with disability, Indigenous Australians, including in remote locations, and people with limited English,¹¹ in a fair and ethical manner.¹²
- employ a range of practices that can identify common indicators of financial difficulty. If the bank identifies that a customer may be experiencing difficulty paying what they owe under a loan (or are experiencing financial difficulty), then the bank may contact the customer to discuss the situation and the options available to that customer.¹³ This will be done on a case-by-case basis¹⁴ and with sensitivity, respect and compassion.¹⁵
- respond promptly, and within the timeframes set by the NCC (if it applies),¹⁶ to any written or verbal communication or request from a customer or representative of the customer to discuss financial difficulties¹⁷ (including if the customer is unable to meet their loan repayments or other obligations under the credit contract¹⁸), regardless of who the customer speaks to at the bank¹⁹ – noting that customers can give verbal and written hardship notices under the financial hardship provisions of the NCC.
- inform the customer in writing of the bank's decision whether the bank will provide the customer with help in relation to the financial difficulty and reasons for the decision.²⁰ In the case of financial hardship, specific NCC time periods and processes apply.
- if the bank agrees to provide the customer with help in the form of changes to the agreement with the bank, then the bank will tell the customer in writing about the main details of the arrangements, including:
 - the repayments the customer needs to make under the proposed new arrangement;
 - what will happen at the end of the arrangement; and
 - whether the customer accepting the proposed new arrangement will have any adverse consequences in relation to banking services or credit history.²¹
- the bank will comply with any additional NCC requirements if applicable.
- ensure policies for financial difficulty or hardship matters involving joint borrowers are clear.²²
- if the customer asks, banks should assist a joint borrower without involving the other borrower initially.²³ Banks should advise the customer if and when the bank will notify the co-borrower(s) that hardship assistance has been sought.²⁴

⁸ Banking Code paragraph 158.

⁹ The financial hardship team should be careful when communicating with the customer in respect of financial difficulty as the solution may require a long-term formal solution under the NCC rather than an informal short-term solution.

¹⁰ Banking Code paragraph 168.

¹¹ Banking Code paragraph 32.

¹² Banking Code page 5.

¹³ Banking Code paragraph 165.

¹⁴ Banking Code paragraph 165.

¹⁵ Banking Code paragraph 39.

¹⁶ Banking Code paragraph 164.

¹⁷ Banking Code paragraph 164.

¹⁸ NCC section 72.

¹⁹ Neither the Banking Code nor the NCC limit who the customer speaks to when they contact the bank and as such, banks need to ensure that all staff have had sufficient training and are able to recognise financial difficulty or hardship.

²⁰ Banking Code paragraph 177.

²¹ Banking Code paragraph 178.

²² This is not limited to hardship matters and relates to all products and services (see paragraph 15 of the Banking Code).

²³ Banking Code paragraph 159.

²⁴ Section 194(3) of the NCC provides that a notice must be given to each debtor in a joint debtor situation for e.g. notice of decision on changing credit contract.

- ensure policies give consideration to circumstances of financial abuse and family and domestic violence (Refer *Industry Guideline: Preventing and Responding to family and domestic violence policies*).
- ensure policies regarding the assessment of a claim under a consumer credit insurance policy are clear and processes are in place to alert customers to their potential ability to make a claim.²⁵

To work with customers to agree hardship arrangements that are sustainable, realistic and aim to allow the customer to resolve the financial difficulty banks will:

In agreeing to such an arrangement, banks may:

- take into account the information available, including information the customer has given the bank about the financial situation.²⁶ When considering individual circumstances, banks will consider:
 - the size of the household / number of dependents;
 - the level of debt;
 - the amount of time the customer requires to sustainably repay the debt; and
 - the amount of discretionary spend.
- arrangements may need to be renegotiated if the customer's circumstances change.
- consider making reasonable allowances for discretionary expenditure. This is particularly important for longer term arrangements. Banks should consider discussing appropriate levels of discretionary spending with the customer.
- to allow retail customers flexibility some banks are trialling the option for a customer to make a contribution to a 'savings buffer' for unexpected situations as part of their repayment arrangement.²⁷ By the end of 2023 all banks will consider providing the option of a 'savings buffer' to customers when calculating financial hardship repayment plans. Each bank will determine their own approach and the appropriate amount in consultation with customers.
- adopt an integrated approach to assessment by considering all credit facilities the customer has with the bank when assessing their financial difficulty requests.
- consider the appropriate length of the arrangement, for example, taking into account the customer's circumstances and financial position.²⁸ Longer-term arrangements should not include accumulating default interest, fees and charges.
- where a customer's circumstances indicate that a short-term solution will not help the customer overcome their financial difficulty, but the longer-term solution may be effective, the longer-term solution should be favoured.²⁹ If a bank determines it would not be appropriate to offer a contract variation under the NCC (because the customer's financial situation is unlikely to recover) the customer will need to consider other options.
- where a customer tells a bank that they are a low-income earner, or hold a Commonwealth Seniors Health Card, a Health Care Card or a Pensioner Concession Card, provide the customer with information about basic bank accounts or other banking services the bank can offer that have low or no standard fees and charges³⁰ that may be appropriate to their needs.
- explain whether the customer accepting the proposed new arrangement will have any adverse consequences in relation to banking services or their credit history.³¹ This includes

²⁵ The Banking Code provides that information relating to CCI will be "... clear" and "enable the customer to make an informed decision" (see Banking Code paragraph 62). It does not create a requirement that the bank must notify the customer of their potential ability to make a claim. However, refer to ASIC Report 622 (the **Report**) which sets out ASIC's expectations for banks who sell CCI products. Page 4 of the Report requires banks to notify hardship applicants if they have a CCI policy and provide claim details to the insurer. Page 11 of the Report also refers to the expectation that banks communicate "with consumers regularly to remind them of their cover and their ability to claim".

²⁶ Banking Code paragraph 169.

²⁷ This commitment is designed to capture consumer lending not business lending.

²⁸ See "how banks may be able to help" in the table above.

²⁹ See "how banks may be able to help" in the table above.

³⁰ Banking Code paragraph 42 and 44.

³¹ Banking Code paragraph 178.

how their repayment history information (**RHI**) will be affected while they are in a financial hardship arrangement and that RHI will return to reflecting arrears if they fail to comply with an arrangement and have not made a new arrangement with the bank when an arrangement ends.

- encourage customers to keep in contact with the bank, particularly if their personal circumstances or financial situation changes. Banks may consider agreeing to a check-in date with the customer during the arrangement and/or contacting the customer at the end of the arrangement.
- not sell the debt (except as part of a funding arrangement or sale of business or business restructure) and may cease collections activity or recovery action relating to NCC loans³² if the bank is actively considering the customer's financial situation to find a solution to financial difficulties or as required under the financial hardship variation provisions of the NCC or if the customer is complying with an arrangement.³³
- banks may work with a customer to find other solutions before a debt is sold where a customer is actively engaged with the bank. Banks will only contract debt collectors that follow the *ASIC and ACCC Debt Collection Guideline*,³⁴ other applicable regulatory codes and the bank's own policies for supporting customers in hardship. The bank will require a debt collector to consult with a bank before bankruptcy is initiated, giving the bank an opportunity to repurchase the debt if a vulnerability is identified. For more detail refer to Appendix 2: *Industry Guideline: Sale of unsecured debt*.

Informal Arrangements

There may be minor individual instances of help that banks can provide to the customer informally without the need for formal financial hardship arrangements, such as waiving a fee or providing a short payment grace period. However, where a hardship notice has been received by a bank, and the NCC applies, the processes set out in the NCC will need to be implemented and followed by the bank. Banks should be careful so that staff members are trained to recognise the need for when more formal processes are required.

To ensure good governance of financial difficulty programs banks should:

- have internal policies, procedures and programs for responding to financial hardship consistent with the legal rights and obligations of customers. The goal of banks policies, procedures and programs should be to support customers to resolve the financial difficulty where possible. Where this is not possible, banks should make customers aware of alternative options.
- communicate with customers in a timely manner and ensure information given is useful and clear.
- have training programs in place to equip staff to identify where a customer may be experiencing financial difficulty and refer them to staff who are authorised and trained to give the customer that advice,³⁵ such as the bank's financial difficulty team. Training should extend to all employees and representatives who interact with customers.
- in addition, specialised teams, such as customer assistance, financial difficulty and debt collections teams should receive training about how financial difficulty might occur, how to assess their customer's personal circumstances, how the bank's programs can assist and referring customers to appropriate external assistance, for example, to financial counsellors. Training should also be provided to specialised teams to assist customers experiencing vulnerability. Banks should train staff to treat diverse and vulnerable customers with sensitivity, respect and compassion.³⁶ Training should be provided at induction and refreshed regularly.

³³ Banking Code paragraph 184.

³⁴ Banking Code paragraphs 181 and 182.

³⁵ Banking Code paragraph 23.

³⁶ Banking Code paragraphs 33 and 39.

- work with a customer's financial counsellor or representative,³⁷ such as a lawyer or administrator, and make it as simple as possible for the customer to appoint a representative.
- where a financial counsellor has been appointed by a customer, the bank should accept the agreed industry standardised forms – see Appendix 3 *Financial Counselling Agency Authority Form*.

If a customer has appointed a representative (other than a financial counsellor) and the bank:

- has made reasonable attempts to contact, or deal with, the representative and has been unsuccessful;³⁸ or
 - reasonably believes that the representative is not acting in the customer's best interest, or it is otherwise reasonable to do so in the circumstances;³⁹
 - the bank may communicate directly with the customer. This will ensure that the customer is getting the right information from the bank at the right time. Banks may choose to communicate directly with the customer if they consider that the representative is a debt management firm without an appropriate credit licence.⁴⁰
- where appropriate, advise customers of free alternatives to using a debt management firm, for example bank internal dispute resolution schemes, the National Debt Helpline⁴¹ or Way Forward Debt Solutions.⁴² Refer to Appendix 1 *Industry Guiding Principles on Debt Management Firms (DMFs)*.
 - ensure that all financial difficulty assistance information is prominently presented and readily accessible through multiple channels (including digital platforms and mobile banking applications) to assist with customer/staff awareness and guidance. Bank websites should include promotion of the financial difficulty assistance program on their homepage. The financial assistance page should include links to information including:
 - basic facts about financial difficulty assistance provided by the bank including a toll-free telephone number for the dedicated financial hardship team;
 - details for financial counselling services and the national debt helpline; and
 - emergency support packages and contact numbers following natural disaster events.
 - have processes in place for managing complaints. Banks will publish and make readily available, information about their internal dispute resolution processes and their external dispute resolution provider through branches, telephone banking services, their website and other digital platforms.⁴³ Banks will ensure their processes for handling complaints are fair and reasonable.⁴⁴ If a customer is unable to resolve a complaint to their satisfaction, the bank will provide information on how to take the complaint to the Australian Financial Complaints Authority (**AFCA**) and how to contact it.
 - if a customer wants to report an alleged breach of the Banking Code of Practice, they can also take the matter to the Banking Code Compliance Committee (**BCCC**).⁴⁵ If the customer has a specific dispute with their bank which involves a breach of the Banking Code of Practice, they should first contact their bank and then AFCA.⁴⁶

³⁷ Banking Code paragraph 162.

³⁸ Banking Code paragraph 163.

³⁹ Banking Code paragraph 163(c).

⁴⁰ Refer to the National Consumer Credit Protection Amendment (Debt Management Services) Regulations 2021.

⁴¹ The National Debt Helpline offers a free, independent and confidential service for those experiencing financial troubles. Call 1800 007 007 or visit <https://ndh.org.au/>

⁴² Way Forward is a not-for-profit organisation established to help people manage and repay their debt. Way Forward negotiate arrangements with multiple creditors on behalf of their clients. Their services are funded by voluntary donations and provided at no cost to their clients. <https://wayforward.org.au/>

⁴³ Banking Code paragraph 197.

⁴⁴ Banking Code paragraph 200.

⁴⁵ Banking Code paragraph 209.

⁴⁶ Banking Code paragraph 210.

Background - Accessing financial hardship assistance

Note this section outlines the application of the NCCP Act. The NCCP Act applies to credit provided to individuals but does not apply to credit obtained for commercial or business purposes. NCCP Act protections are noted, where relevant, through the guideline.

What is the financial hardship process?

A customer⁴⁷ can tell their bank, verbally or in writing⁴⁸ of their current or future inability to meet their existing financial obligations (a hardship notice as defined under the NCC). Customers **do not have to use particular terminology or formally apply for hardship** to have their bank take action on their financial hardship notice. If it is unclear whether a customer is providing a financial hardship notice, the bank should check with the customer. Note, customers may react negatively to language like a 'hardship notice' and any such discussions would need to be handled carefully.

Once a customer has notified the bank, the bank may require the customer to provide certain information and supporting documentation.⁴⁹ Banks should try to minimise the information required and only request information relevant to assessing a customer's ability to meet their financial obligations or to changing a customer's contract. For example, the information requested could allow the customer to explain how their personal and financial circumstances have changed and whether they are expected to change and improve in the future. Where possible the bank will accept verbal information.

The type of information and documentation required depends on a number of factors, including the period of time hardship assistance is required, the type of arrangement that may be offered, or whether a third party requires additional information (e.g. a provider of lenders mortgage insurance).

Typically, the information and documentation that **may** be required includes:

- statement of Financial Position – outlining income, expenses, assets and liabilities;
- evidence of employment (e.g. payslips, employment contract, tax return);
- evidence of income (e.g. account statements, Centrelink statement, social security payment details);
- evidence of medical circumstances (e.g. medical certificate from a qualified medical practitioner, proof of assistance via the disability support pension); and
- other evidence (e.g. separation statement, contract of sale, or consent from joint borrower (where required)).

It is important that banks receive copies of the relevant evidence to appropriately consider the circumstances of their customer.

Banks should have a policy on supporting documentation that expressly contemplates circumstances under which documentation requirements may be limited or waived, especially for customers who are experiencing vulnerability.

In assessing the financial hardship application, banks will typically consider:

- the customer's financial position, including income, expenses and equity position (banks will consider any assets and their value and any liabilities and outstanding debts);
- the customer's ability to meet the commitments under the hardship arrangement and future repayments under the contract; and
- the customer's ability to rehabilitate their circumstances (based on whether the hardship assistance will offer genuine relief and whether the customer can restore their financial situation).

⁴⁷ Note that the NCC only applies to individual customers and does not include small businesses.

⁴⁸ In writing includes electronic communication.

⁴⁹ NCC clause 72(2).

Identifying customers in financial difficulty or hardship

By proactively identifying customers experiencing financial difficulty or hardship, banks can start discussing the customer's situation and available options earlier before the customer goes into arrears or the bank starts collections activity or recovery action. A bank can only do this however, with the customer's co-operation.⁵⁰ Once the bank has identified the financial difficulty or hardship, the bank will be able to determine whether the financial hardship provisions under the NCC (as noted above) will apply.

This guidance acknowledges that banks may employ different or more flexible practices as appropriate with their small business or agribusiness clients when providing financial difficulty assistance (see for example Banking Code paragraph 179A).

Potential indicators or signs of when a customer may be in financial difficulty or hardship

There are common signs of financial distress that could alert a bank to ask a customer if they need support. These signs might include a customer:

- consistently making minimum or late payments on a credit card;
- being in arrears with a loan;
- not responding to repeated outbound calls, overdue notices or other bank communications;
- showing evidence of injury or illness;
- experiencing a change in employment circumstances;
- experiencing a change in personal circumstances e.g. change in relationship status through separation, divorce or death;
- having unusual patterns of usage of credit card products and making requests for significant increases in credit card limits;
- carrying persistent balance or regularly exceeding credit limit;
- carrying balance on a credit card with a high interest rate; and
- multiple or excessive use of Buy Now Pay Later (**BNPL**), pay day loans and/or consumer leases.

How do banks confirm the financial hardship arrangement?

If a bank agrees to a financial hardship arrangement in the form of changes to the customer's agreement,⁵¹ the customer must comply with the repayment terms of any new arrangement in order to avoid the resumption of collections activity.⁵² This does not apply to minor individual instances of help banks provide under the Banking Code – for example: deferrals, refunds or fee waivers.⁵³

Banks are required to provide their customers with a written notice where the bank has agreed to change the credit contract in prescribed timeframes unless an exemption applies.⁵⁴

Importantly, banks should provide useful and clear information to their customers about what the customer should provide when seeking a financial hardship arrangement under the NCC.⁵⁵ The bank should confirm the main details of the new arrangement and should include details of:

- amount of outstanding debt;
- key details of the arrangement (such as an alternative arrangement or repayment plan);
- details of whether the arrangement will affect the credit contract or outstanding debt;

⁵⁰ Banking Code paragraph 167.

⁵¹ NCC section 72(4)(a).

⁵² NCC section 88(1), 89A and 94.

⁵³ Banking Code paragraph 178.

⁵⁴ NCC section 73(1) however, see note below (Informal Arrangements).

⁵⁵ NCC section 72(2).

- whether the customer will need to pay interest;
- the duration of the arrangement;
- whether, and at what point, the arrangement will be reviewed;
- the customer's obligations under the arrangement and at the end of the arrangement;
- what happens if the customer cannot make the repayments required under arrangement;
- how the customer will be expected to catch up on accrued arrears (where applicable); and
- implications for a customer's credit reporting including RHI and financial hardship information (FHI).

Banks should notify customers prior to the conclusion of the arrangement and explain the payment options after the arrangement has ended. For example, that arrears may be due, that interest-only payments cease, or repayments increase.

Credit reporting arrangements

Under the current Comprehensive Credit Reporting arrangements, banks that participate in credit reporting have agreed to suppress the RHI of customers in financial hardship (i.e. not report their repayment status to the credit bureaus).

The National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Act 2021 mandates that, from 1 July 2022, lenders must report 'financial hardship information' (FHI) and RHI if they have agreed a hardship arrangement with the customer. Australian Retail Credit Association (ARCA) has been appointed by the Office of the Australian Information Commissioner (OAIC) to consult upon and recommend the changes that need to be made to the Privacy (Credit Reporting) Code to reflect the requirements in the amending Act.

The *ABA Industry Guideline on Financial Difficulty* will be updated and re-issued at that time to bring affect to the necessary NCCP Hardship and Privacy (Credit Reporting) Code obligations and assure alignment for Banks and their customers.

What happens if banks do not agree to provide a financial hardship arrangement under the NCC?

Under the NCC, banks do not have to change their customer's credit contract. For example, where a customer does not provide a reasonable explanation for why they cannot meet their contractual debt obligations, or if the bank reasonably believes their customer couldn't meet their repayment terms even if the credit contract was changed.

Other reasons a bank may refuse to change the credit contract following from a hardship notice by the customer:

- hardship assistance was previously given to the customer but did not improve their financial situation;
- hardship assistance would be detrimental to the customer, for example, it could put the customer in a negative equity position with their property;⁵⁶
- the customer would be unable to meet their financial obligations in the future; and
- based on the information provided the customer can afford the loan and does not appear to be in hardship.

⁵⁶ It may be appropriate for a customer to enter into a temporary position of negative equity. For example, if a property sale is about to occur and/or the period will be short-term and the customer can demonstrate that they will recover and have the capacity to repay.

After a bank has explained why it could not provide hardship assistance,⁵⁷ and the customer is in arrears, it may refer the customer to the collections team and resume normal debt collections processes.⁵⁸

Depending on the circumstances, a bank may exercise its discretion to help customers with an exit strategy or provide other assistance and advice, on a case-by-case basis. A bank may consider other options or approaches noted above, and including:

- giving customers more time to sell a property. Discussing other relevant support measures that might be available (including government programs, such as mortgage assistance schemes); and
- suggesting the customer seek other assistance (including from a professional financial counsellor, financial adviser, legal aid officer or legal practitioner).⁵⁹

If a customer is not satisfied with the response or assistance provided by the bank, customers have the right to make a complaint to their bank and if not satisfied with the outcome, a complaint to AFCA.

Understanding hardship, default and collections

If a hardship arrangement is being actively considered or a hardship arrangement is in place, banks will not:

- undertake collections activity; or
- sell the debt.⁶⁰

However, if after entering into a hardship arrangement the **customer is unable to meet the repayments required**, a bank may exercise its right to issue a default notice and recommence the collections processes in accordance with the NCCP Act and subject to any subsequent hardship notices.

If this happens, the customer will receive a default notice⁶¹ from the bank which must include information about their rights after default, including how to seek a postponement of enforcement proceedings and a review of the bank's decision regarding a hardship notice by raising a complaint through the bank's internal dispute resolution scheme or AFCA (external dispute resolution scheme).⁶²

The NCC provides that if after 30 days the default has not been remedied or a new arrangement has not been agreed, the bank can take enforcement action against the customer.⁶³ In this instance, if the customer's financial situation has deteriorated, the bank and the customer will have to consider alternative actions outlined in Chapter 41 of the Banking Code (see examples above at page 7).

⁵⁷ By way of providing notice under paragraphs 72(4)(b) of the NCC.

⁵⁸ Collections activity will stop when a hardship notice is being considered or a hardship arrangement is in place. There are time periods specified in section 89A of the NCC as to when banks can start or recommence enforcement proceedings following a hardship notice.

⁵⁹ Banking Code page 47.

⁶⁰ Banking Code paragraphs 184 and 185. A bank will only assign the debt in these circumstances as part of a funding arrangement e.g. securitisation or the issue of covered bonds or a sale of business or business restructure. A bank might send a default notice if a hardship arrangement is not agreed to or is not complied with.

⁶¹ Unless not required under section 88(4) of the NCC.

⁶² NCC section 88(3).

⁶³ A bank must not begin enforcement proceedings in relation to a credit contract unless the bank has given the customer (and guarantor) a default notice with 30 days to remedy the default (see section 88 of the NCC).

Simple deferrals and reductions

Under ASIC legislative Instrument [14/41], the financial hardship regime is modified by including an exemption for when an agreement defers or reduces the obligations of a debtor for a period of no more than 90 days. In this case, credit providers are exempt from the requirements in the NCC to record any contractual changes and provide written notice to the debtor. However, the rest of the NCC hardship rules apply, including the time periods for consideration and response. This exemption applies until 1 March 2022.⁶⁴ If the customer is effectively giving a hardship notice, banks will need to go through the hardship process under the NCC even for small or informal concessions, despite not needing to formally record and notify in writing if the exemption applies.

Version: October 2021

⁶⁴ ASIC Credit (Amendment) Instrument 2020/148.

Appendices

Appendix 1: Industry Guiding Principles on Debt Management Firms (DMFs)

Requirement for DMFs to hold credit licenses

In response to concerns about DMFs operating largely within a regulatory void, new regulations came into force on 1 July 2021. The regulations will require DMFs, as providers of 'debt management services', to hold Australian credit licenses under the NCCP Act and meet the ongoing obligations imposed on licensees. These obligations include the requirement for DMFs to meet the 'fit and proper person' test, undertake activities 'efficiently, honestly and fairly', and be members of AFCA. Consumers will be able to seek redress via the more cost-effective AFCA route.⁶⁵

A DMF provides 'debt management services' where it provides debt management or credit reporting assistance to a consumer. This is generally where a DMF suggests or assists a consumer with varying credit contracts, varying guarantees, making complaints (including with AFCA and ASIC), providing hardship notices, instituting proceedings and changing the way information is collected or held by a credit reporting body.

1. Approach to customers represented by DMFs

1.1. Banks may contact a customer directly where the customer requests direct communication with the bank or the bank has a reasonable belief that the DMF:

- a. does not respond to bank communications within a reasonable time (normally seven days);
- b. is providing a 'debt management service' under the NCCP Act or 'financial services' under the Corporations Act without being licensed to do so;
- c. is banned from lodging disputes with AFCA;
- d. is acting and making decisions in a manner that is not in the best interests of the customer;
- e. has not provided the customer with all communication from the bank and informed the customer of all available options, offers of settlement, offers of hardship assistance, potential risks and consequences of a course of action it is pursuing, or any other key information;
- f. has not provided information that is reasonably required by a bank to assess the customer's hardship application or complaint, and has unreasonably refused any such requests;
- g. has engaged in a misleading or deceptive manner with either or both the creditor or the debtor; or
- h. has behaved in a way that creates an unsafe work environment for bank staff, including by using aggressive, intimidating or threatening language or behaviour.

Note: banks may also contact a customer directly where any agents of a DMF have engaged in any of the above conduct.

1.2. Where a bank determines that it is reasonable to contact a customer directly instead of dealing with the customer's appointed DMF, the bank may, depending on the circumstances, give the DMF notice of its intention to contact the customer directly, explain why the bank considers it reasonable to do so and give the DMF the opportunity to address the bank's concerns. If the bank's concerns are not able to be resolved the bank may:

- a. contact the customer directly and provide clear reasons to the customer why it made this decision;

⁶⁵ Explanatory Memorandum, National Consumer Credit Protection Amendment (Debt Management Services) Regulations 2021, <https://www.legislation.gov.au/Details/F2021L00521/Explanatory%20Statement/Text>

- b. discuss the customer's situation with them, including the available options to resolve the matter and their preferred means of communication;
 - c. advise customers of free alternatives to using DMFs, for example:
 - lodging a dispute on their own behalf or through another authorised representative with the bank's Internal Dispute Resolution service;
 - lodging a dispute on their own behalf or through another authorised representative with AFCA, refer to <https://www.afca.org.au/make-a-complaint/financial-difficulty>;
 - community legal services, refer to ASIC moneysmart <https://moneysmart.gov.au/managing-debt/free-legal-advice>;
 - financial counsellors, refer to ASIC moneysmart <https://moneysmart.gov.au/managing-debt/financial-counselling>;
 - National Debt Helpline, refer to <https://ndh.org.au/>;
 - how to check and correct their credit score and report themselves, refer to the ASIC moneysmart website <https://moneysmart.gov.au/managing-debt/credit-scores-and-credit-reports>; or
 - Way Forward Debt Solutions, refer <https://wayforward.org.au/>.
- 1.3. After a bank contacts a customer directly, a customer may confirm that they would like the DMF to continue to represent them and be their point of contact despite the concerns raised by the bank.

This does not prevent a bank contacting the customer directly in the future if the bank considers that the DMF is continuing to engage in conduct set out in part 1.1.

In some cases, a bank may continue to engage with the DMF, at the customer's request, but copy in the customer on all correspondence. Alternatively, a bank may determine, on a case by case basis, that there is a legitimate reason (based on the factors set out in part 1.1) to refuse to deal with the DMF, notwithstanding the customer's request that the DMF continue to represent them. In that case, the bank may elect to only deal with the customer or another appropriately authorised representative.

- 1.4. Banks may report instances of unscrupulous or inappropriate behaviour by a DMF to a relevant regulator, or if relevant, an appropriate professional body, for example:
- a. ACCC for general consumer law, which includes prohibitions against misleading or deceptive conduct and unconscionable conduct;
 - b. ASIC where the DMF is providing a 'debt management service' under the NCCP Act without an Australian credit licence;
 - c. the personal insolvency regulator - the Australian Financial Security Authority - for the administration of debt agreements; or
 - d. a relevant professional body (e.g., Accounting or Legal professional bodies⁶⁶).

2. Proactive and targeted customer communications regarding the risks of dealing with DMFs

In circumstances where the bank thinks the customer is entering or experiencing financial difficulty, the bank may provide information to these customers which:

- a. alerts customers to the costs and potential risks associated with the possibility that a paid representative may not always act in their interests;
- b. explains to customers that they may request direct communication with the bank at any time or revoke their authorisation of a representative if they wish to do so; and

⁶⁶ For example, re Accounting see <https://www.charteredaccountantsanz.com/about-us/complaints/complaints-about-a-member> and re Legal see <https://www.lawsociety.com.au/for-the-public/making-a-complaint/complaint-process>

- c. outlines assistance available from banks and other organisations (both free and paid).

3. Customer's experiencing vulnerability

The bank will seek to make its communications with its customers as clear as possible, particularly when it is aware that a customer is experiencing vulnerability or has limited English.⁶⁷

⁶⁷ In accordance with Chapter 13 of the Banking Code: inclusive and accessible.

Appendix 2: Industry Guideline: Sale of unsecured debt

This voluntary Industry Guideline complements the provisions of the Banking Code of Practice (**Banking Code**) set out in Chapter 14 (Customers who may be vulnerable), Chapter 41 (Financial Hardship) and Chapter 43 (Recovering a Debt). This guideline reflects good industry practice, and the ABA encourages members to use this guideline to set internal processes, procedures and policies.

This Guideline should be read in conjunction with the:

- Banking Code of Practice; and
- ABA Industry Guideline: Financial abuse and family and domestic violence policies.

Implementation

The Industry Guideline: Sale of unsecured debt commenced operation from 1 March 2020. Contractual arrangements with some debt buyers may not be able to be updated until their contracts are renegotiated. Therefore, some necessary changes may not have been made until after the 1 March 2020 implementation date. Where this was the case, banks endeavoured to comply with the guideline on a best endeavours basis in the first instance and where it was brought to their attention that they had not complied with the guideline, promptly rectified the issue for the customer.

Purpose

Chapter 43 of the Banking Code governs what a bank will do when it is recovering a debt. The Banking Code promises that banks will comply with the [ACCC and ASIC's Debt Collection Guideline: for Collectors and Creditors](#) and the [Department of Human Services Code of Operation](#) and, if they sell debt to another party, only choose a party that has also committed to complying with these requirements.

The banking industry has a range of customer safeguards in place when collecting debts. However, the industry understands that customers who are unable to repay their debts may be experiencing vulnerability and/or significant financial hardship and therefore extra care may need to be taken.

This Industry Guideline is intended to outline additional safeguards for customers when banks are selling unsecured debt to another party.

Where this Guideline refers to *debt buyers*, it is intended to refer to any third party a bank sells a debt to.

Policies and contractual arrangements

Each bank should develop an internal policy that documents the matters outlined in this guideline. Each bank should ensure that relevant staff are adequately trained on the provisions of that policy and that adherence to the policy is considered through the bank's internal assurance processes.

Banks should also consider how to include aspects of this guideline in their contractual arrangements with debt buyers.

Prior to sale of unsecured debt

During the collections process, where a bank is able to make contact with the customer and the customer is willing to disclose their total indebtedness with the bank, the bank should consider whether regulation and internal lending criteria allow restructuring of the customer's debt to make repayments more affordable. Banks may only know about a customer's other debts, including other debts with the bank, if the customer tells the bank.

Under the Banking Code (Chapter 43), ABA member banks have committed to not selling the debt of a customer while considering their financial situation, while working with the customer to find a sustainable solution to their financial difficulties or while the customer is complying with a hardship arrangement agreed between the bank and a customer.⁶⁸ This should apply even when the hardship arrangement relates to another debt held with the bank.

ABA member banks will not sell debt if:

- the debt is statute-barred; or
- the customer is in the process of disputing that they owe the debt and the bank has not yet finalised its consideration of the issue.

Selection and monitoring of debt buyers

Bank policies should set out minimum selection criteria for debt buyers and should include:

- stipulations as per paragraphs 180 – 182 of the Banking Code, which require debt buyers used by member banks to comply with the ACCC's and ASIC's debt collection guidelines and the Code of Operation.
- alignment between the individual bank's corporate values and those of the debt buyers they are contracting with and the importance of being customer-focussed, as assessed by the bank during the tender process and during on-going audits. Further to this, banks should reassess their relationships with debt buyers if there is significant evidence of a misalignment between the bank's corporate values and the behaviour of the debt buyer.
- a requirement that debt buyers comply with ASIC Regulatory Guide 165 and are members of AFCA or another external dispute resolution scheme.

When contracting with debt buyers for the sale of unsecured debt, banks should have processes in place to monitor how debt buyers are undertaking their collections activities. These processes should include, at a minimum, mandatory reporting of:

- volumes of and the types/nature of complaints and targeted audit (by the bank) of complaints handling.
- the number and types of actions being taken by the debt buyers including litigation, enforcements (specifying the number and type, including sequestration orders, garnishee orders, charging orders, instalment orders, writs of possession of goods, writs of possession of property etc.) and bankruptcy applications.
- results of annual audits to ensure compliance with regulatory and contractual obligations.
- results of due diligence activities (e.g. internal and/or independent audits, customer surveys/NPS, internal quality control) undertaken to meet and monitor compliance with regulatory and contractual obligations.

On sale of debt

When a debt is sold, the bank will provide the debt buyer, on request, with a copy of the following documents in their possession and within 30 days:

- the contract under which the debt arose – including terms and conditions;
- statement of account evidencing current arrears; and
- details of any hardship arrangements in the preceding 12 months.

⁶⁸ Except as part of a funding arrangement (for example a securitisation or covered bond) or as part of a business sale or restructure.

Bankruptcy proceedings initiated by debt buyers

Banks recognise that initiating bankruptcy proceedings, especially in relation to unsecured debt, is a serious step that has significant repercussions for their customers. Where a debt buyer believes that commencing bankruptcy proceedings is necessary to recover an unsecured debt, banks will require that the debt buyer consults with them prior to commencing these proceedings. As part of this process, the debt buyer should explain to the bank what they know about the customer's circumstances and why they believe bankruptcy is the most appropriate option at this stage. Should the bank identify a vulnerability they will have the option to consider whether to buy back the debt under their contract with the debt buyer.

Threshold for creditor petitions

The Bankruptcy Act 1966 (**Bankruptcy Act**) prescribes a minimum level of debt (\$10,000) for a creditor petition. All ABA member banks should determine and document an appropriate amount of unsecured debt to apply in their business and through arrangements with debt buyers. If the bank considers that a higher minimum debt level is appropriate before a creditor petition should be issued, then they should document that both in their internal procedures and in their contractual arrangements with debt buyers.

Customers experiencing vulnerability

Under the ABA's Industry Guideline: *Financial abuse and family and domestic violence policies*⁶⁹ (the family and domestic violence guideline), banks have committed that where they are made aware that a customer's debt involved family and domestic violence, the debt will not be sold to a debt buyer. If a debt has been sold to a debt buyer and the bank becomes aware that the debt involved family and domestic violence, the bank will work with the debt buyer to provide the best outcome for the customer. This may include repurchasing the debt.

If a debt relates to a customer experiencing vulnerability and the bank is of the view that the vulnerability is likely to be ongoing and that there is no reasonable prospect of the debt being recovered, then the bank should not sell that debt to a third party.

Banks believe that in addition to situations involving family and domestic violence, there are other vulnerable circumstances that a customer may be experiencing where the bank should not sell a customer's debt to a third party, or where they become aware of the situation after selling the debt, they should work with the debt collection agency to ensure a good outcome for the customer.

Banks should ensure their policies and procedures set out under which circumstances they may apply these extra protections to the customer. Examples of circumstances that indicate a customer may be experiencing vulnerability include where a customer:

- is experiencing age-related impairment or cognitive impairment;
- is experiencing financial abuse (including family or domestic violence, financial abuse or elder abuse);
- is seriously ill or has a mental illness; or
- is experiencing personal, or financial circumstances causing significant detriment such as homelessness.

This list is not intended to be exhaustive and banks should consider each customer's circumstances individually. It is important to note however, that the bank may not be aware of a customer's circumstances and therefore unable to take them into account when selling the customer's debt, unless the customer tells the bank.

⁶⁹ http://www.ausbanking.org.au/images/uploads/ArticleDocuments/207/ABA_Industry_Guideline_-_Financial_Abuse_and_Family_and_Domestic_Violence%20Nov%202016.pdf

National Redress Scheme

The National Redress Scheme - for people who have experienced institutional child sexual abuse - started on 1 July 2018 and will run for ten years. Each ABA member bank is treating Scheme payments sensitively. Each bank is also working – on a best endeavours basis – to provide protection for identified Scheme payments, so that customers are not required to use these payments to repay debts owing to that bank, unless the customer wishes to use their payment for that purpose. Banks will, where possible, ensure this approach is also taken by debt buyers they contract with.

Financial Counselling Agency

Authorisation Form

Purpose of the Authority form

By signing this authority, you authorise the financial counselling agency to act on your behalf with the named third party, such as a creditor, debt collector, external dispute resolution scheme or a telecommunications company.

When acting on your behalf, the financial counselling agency may (among other things):

- seek and exchange personal information about you and your account/s;
- negotiate; and
- enter into arrangements.

Authorisation

Third party:	
Reference no.:	

I/We:

Full Name (#1):	
Date of birth:	
Address:	

Full Name (#2):	
Date of birth:	
Address:	

Your Business details (if applicable)

Business name:	
ABN	
Address:	

Authorise:

Name of financial counselling agency: (Authorised Representative)			
Financial counsellor's name:		Registration number:	
Address:			
Phone:		Mobile:	
Email:			

Signature

Name (#1):		Date:	
Name (#2):		Date:	

GUIDE | Financial Counselling Agency Authorisation

Purpose of the authority

The purpose of this form is to have an agreed acceptable authority a financial counsellor can send to a third party. A third party could be a creditor, debt collector, external dispute resolution scheme or a telecommunications company. The authority covers all accounts that a person has with that third party.

It is important that your client is aware of how the authority will work.

The ACCC/ASIC Debt Collection Guideline at Section 9 provides information regarding the expectation of creditors and debt collectors that they will accept this authority.

Using the authority

A client may give a financial counselling agency the authority to act on their behalf with a third party. This means that the third party will deal with the agency.

The financial counselling agency and its representatives must do the following:

1. Include the financial counsellor's national registration number on all correspondence with the third party including the authorisation form (this enables the third party to verify your identity);
2. Notify the third party in writing if the financial counselling agency stops assisting the client (notification is not necessary if the matter has settled); and
3. Notify the third party if the financial counsellor acting on behalf of the client changes.

Separate authorities

A separate authority is required for each third party. You only need one authority for each entity (for example, if a bank has divisions the authority covers the bank and those divisions). A separate form is also required to make a complaint to an external dispute resolution scheme. This is to ensure that:

- Each third party gets a clearly addressed authority; and
- There is no confusion about how many third parties there may be; and
- To avoid explaining the possible privacy implications of sharing this information.

Explaining the authority

You must explain to your client why they are signing the authority form. This information will cover the following:

- The authority is required to access the personal information of the client that is held by the third party. The Privacy Act requires that the third party has the client's consent to access any of the client's personal information.
- The authority also means you can act on behalf of the client to deal with the third party. This means that the third party will deal with the financial counsellor as if it were dealing with the client.
- That you have professional and ethical obligations as a financial counsellor and these include that you will at all times keep the client informed of developments.
- That you will seek instructions from the client when major decisions are required. By then acting on those instructions you are then able to make arrangements or settlements with the third party that are binding (on behalf of your client).
- Explaining that it is important that the information provided to the third party must be true and correct.
- Explain that the third party may still send routine correspondence to the client or correspondence as required by law (for example, account statements). Correspondence relating to the dispute or inquiry must be sent to the financial counselling agency.
- The client can revoke the authority at any time and you will inform the third party accordingly.
- When you close the client's case, you will also revoke the authority with the third party.

Account numbers

Providing at least one account number or a reference number on the form will assist the third party in identifying the client's accounts. If an account number is not available leave this section blank but explain why in any cover letter or email.

Additionally, the account number, product

type and account holders should be included in any cover letter or email.

Client details

You should provide as much information as you can to help the third party identify your client. This information may include your client's full name, date of birth and address, plus the address where the service was provided where relevant.

There may be circumstances where a client cannot provide their address. This could be because, for example, the client is homeless or is escaping family violence. If this situation applies then you should leave this section blank and explain why or provide further information in the cover letter that the third party can use to identify the client.

Revoking the authority

An authority can be revoked at any time and for any reason. Common situations when an authority is revoked are:

- The financial counselling agency ceases to act on behalf of the client,
- The client has not responded within a reasonable period of time, or
- The client puts in place another authority.

You need to revoke the authority in writing when you cease to act for the client. If the matter is settled then there is no need to revoke the authority if it is clear between the parties that the matter has concluded.

Can the third party creditor contact your client directly?

A third party can contact your client directly if:

- Your client requests that the third party contact them;
- You do not respond to communications from the third party within a reasonable time (7 days) and the third party has warned you that they will contact your client if you do not respond in a reasonable time (7 days); and
- The third party asked for written authority and you do not provide that written authority in a reasonable time.

Note: If the third party contacts the client directly it does not revoke this authority.