

2010-2011-2012

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Banking Amendment (Banking Code of
Conduct) Bill 2012**

No. , 2012

(Mr Wilkie)

**A Bill for an Act to amend the *Banking Act 1959*,
and for related purposes**

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1 **A Bill for an Act to amend the *Banking Act 1959*,**
2 **and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Banking Amendment (Banking Code*
6 *of Conduct) Act 2012*.

7 **2 Commencement**

8 This Act commences on the day this Act receives the Royal
9 Assent.

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3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Amendments

Banking Act 1959

1 Subsection 5(1)

Insert:

Banking Code of Conduct means the Banking Code of Conduct made by the Minister under section 36A.

2 Subsection 5(1) (definition of *civil penalty provision*)

Repeal the definition (not including the note), substitute:

civil penalty provision has the following meanings:

- (a) a subsection of this Act (or a section of this Act that is not divided into subsections) is a *civil penalty provision* if:
 - (i) the words “civil penalty” and one or more amounts in penalty units are set out at the foot of the subsection (or section); or
 - (ii) another provision of this Act specifies that the subsection (or section) is a civil penalty provision;
- (b) a standard set out in the Banking Code of Conduct is a *civil penalty provision* if:
 - (i) the words “civil penalty” and one or more amounts in penalty units are set out at the foot of the standard; or
 - (ii) another provision of the Banking Code of Conduct specifies that the standard is a civil penalty provision.

3 At the end of Part II

Add:

Division 6—The Banking Code of Conduct

36A Minister to make Code

- (1) The Minister must, by legislative instrument, make the Banking Code of Conduct (the *Code*).

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- 1 (2) The Code must set out standards to be complied with by ADIs in
2 dealing with their customers (including guarantors).

3 **36B Complaints to APRA**

- 4 (1) A customer of an ADI may complain to APRA that the ADI has
5 failed to comply with the Code in dealing with the customer.
- 6 (2) APRA may accept the complaint.
- 7 (3) APRA must accept the complaint if APRA is satisfied, on evidence
8 provided by the customer:
- 9 (a) that the ADI could have failed to comply with the Code; and
10 (b) that the customer has taken reasonable steps to:
11 (i) bring the failure to the attention of the ADI; and
12 (ii) resolve with the ADI any matters arising from the
13 failure; and
14 (c) that one or more matters arising from the failure might not
15 have been properly resolved.

16 **36C Investigation of complaints**

- 17 (1) If APRA accepts the complaint, APRA must:
18 (a) investigate the complaint; and
19 (b) notify the ADI in writing of:
20 (i) the complaint; and
21 (ii) the findings of the investigation.

22 Note: Section 62 sets out APRA's powers to require information.

- 23 (2) The notice must invite the ADI to provide APRA with a written
24 response to the complaint within the period specified in the notice.
- 25 (3) APRA must give the customer a copy of:
26 (a) the notice; and
27 (b) any response provided by the ADI.

36D APRA to name ADIs

- (1) APRA may name the ADI if APRA is satisfied that the ADI has failed to comply with the Code.
- (2) APRA must name the ADI if APRA is satisfied that the ADI has continued to fail to comply with the Code.
- (3) If APRA decides to name the ADI, APRA must notify the ADI in writing.
- (4) Part VI applies to the decision, and APRA must not name the ADI:
 - (a) within the period of 21 days provided under subsection 51B(1) for requesting APRA to reconsider the decision, or within such further period as APRA allows; or
 - (b) if the ADI requests APRA to reconsider the decision—within the period of 21 days after the day on which APRA received the request.

36E Process of naming

- (1) To name the ADI, APRA must publish the business name of the ADI:
 - (a) on a website managed by APRA; and
 - (b) so that the publication is available throughout Australia in a newspaper.
- (2) The publication must:
 - (a) state that the publication is done under section 36D of the *Banking Act 1959*; and
 - (b) set out the reasons for the publication.

36F Amending the Code

The Minister must not amend the Code without consulting persons or bodies that the Minister is satisfied represent the majority of each of the following:

- (a) Australian customers of ADIs, other than business customers;
- (b) Australian small business customers of ADIs;
- (c) ADIs.

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1 **36G Reviewing the Code**

2 The Minister must:

- 3 (a) review the Code at least every 3 years; and
4 (b) cause a copy of a report of the review to be tabled in each
5 House of Parliament within 15 sittings days of that House
6 after the report is completed.

7 **4 First making of the Code**

- 8 (1) The Minister must make the Banking Code of Conduct (the *Code*)
9 within 3 months after the commencement of this Act.
- 10 (2) As first made, the Code must, and must only, include standards
11 equivalent to those in the Code of Banking Practice published by the
12 Australian Bankers' Association as in force on 1 May 2012.
- 13 (3) However, a standard is not required to be included if the Minister is
14 satisfied that compliance with the standard would be impossible or
15 impracticable to assess.
- 16 (4) In deciding whether compliance with a standard would be impossible or
17 impracticable to assess, the Minister must consult with:
- 18 (a) APRA; and
19 (b) persons or bodies that the Minister is satisfied represent the
20 majority of each of the following:
- 21 (i) Australian customers of ADIs, other than business
22 customers;
23 (ii) Australian small business customers of ADIs;
24 (iii) ADIs.