

# NATIONAL FARMERS' FEDERATION

## SUBMISSION TO THE AUSTRALIAN BANKERS' ASSOCIATION REVIEW OF CODE OF BANKING PRACTICE

### General Comments

- NFF considers that the current code fails to adequately acknowledge that participants do not come to the code on equal terms and that disparate size and financial resources will mitigate against adoption and use of the code.
- NFF also notes that one of the general roles of a code should be to remove practices that are commercially unacceptable yet a range of such practices seem to be encouraged by the code.
- In any review such as this it is vitally important that the review process is seen as both fair and impartial. It may have been useful then to appoint a small panel of consultants with backgrounds not just in banking and finance but also representative of the interest of the users of the code such as small business and consumers. Organisations such as the Australian Consumers Association or NFF could have been consulted to recommend appointments.
- As NFF understands it, the code has not been reviewed since it was initially finalised in November 1993. This period between reviews of almost seven years is too long. Most other codes incorporate much shorter review periods. Indeed it is worth noting that the current formulation of the Retail Grocery Industry Code of Practice incorporates a mandatory review period of three years.
- In most if not all instances the Code provides for information to be given out on request. This of course creates the dilemma of information asymmetry whereby a consumer may not know exactly what information they need to ask for in order to address their issues. Indeed this can be a problem for even learned individuals as was highlighted in the 1980's foreign loan hearings when one bank denied the existence of a "register of assets" requested by legal counsel. It was subsequently discovered that the bank did not keep a "register of assets" but an "asset register".
- Does the ABA consider that customers are fully aware of the existence of the code. NFF suggests that notification of the new code should be provided to all customers and copies of the new code be displayed in all bank branches. Consideration should also be given to general publication of the report on the operation of the code which is currently provided to the RBA.
- A fundamental precept of an economically efficient market is that the price of the goods or services is readily ascertained and understood by the participants.

At present, effective price competition in the provision of financial services is not occurring because it is difficult, if not impossible for most retail customers to compare borrowing costs when the total cost comprises a differing mixture of interest (charged over different periods: quarterly, monthly etc) establishment fees, annual charges (paid in advance or arrears) and line (or transaction) charges. While the banks may claim that the range of charges allows them to charge more precisely for the services provided, it also disguises the total cost of a lending facility.

- The code should look to establish and ensure the adoption of a standard for the quotation of lending costs by the financial industry which would allow the annualised total cost of the loan to be known in advance thereby enabling the customer to accurately compare such loans.

### Specific Comments

1.3 Why are banks who adopt the code specifically excluded from sections 2.1, 2.2, 2.3, 7.1, 11.2 and 17.1 to 17.7. One of two things should happen. If they are specifically excluded from these sections then all these sections should be removed from the code. Alternatively, and preferably, all signatories to the code should be bound by these provisions as well. It is worth noting that the above mentioned sections are amongst the most important provisions of the code and explicit exclusion from these sections renders the code close to ineffective.

9.2 In no other area of business would it be acceptable for one party to a contract to unilaterally impose additional fees, and there is no argument that sustains the need for such retrospective powers in the banking contract. While a customer remains within the terms of a lending contract, they are entitled to expect that variations in the total cost of funds should only arise from variations in the nominal rate of interest. The frequency with which interest is charged, and the margin between a customer's rate and base rate, and the rate at which annual costs are charged should all be kept constant unless loan default occurs or the change is made at a previously agreed review period.

In the case of margins, banks have exercised their right to alter margins in response to events unrelated to the factors implied in the original risk assessment, such as bank profit/loss results and changing market outlook for farm commodities. The underlying risk of loss of principal to the bank is often unchanged, since the security – usually non-depreciable real estate assets – remains intact and valued substantially in excess of the loan amount.

NFF considers that the code should explicitly prohibit banks from seeking to insert clauses which allow imposition, without the agreement of the client, of additional fees, charges and variations to the manner in which interest is calculated. Alternatively if such clauses are to be allowed they must clearly specify the parameters within which such variations will occur.

- 9.3 Variations in Terms and Conditions should be notified to customers in writing or any other mutually agreed medium. The option of doing so only by press release is unacceptable.
- 10.1 At first reading it does not seem fair that a bank should have a unilateral right to combine customers accounts. Can the ABA provide more information on this matter.
- 12.1 While points (i), (ii) and (iv) are acceptable, it does seem unfair that a bank should have the right to disclose customer information simply because it is in the banks interest to do so.
- 12.2 A bank should not have a specific right of disclosure to related entities if it does not have a general right of disclosure. It does not seem sufficient that the bank only has to advise customers of the right to instruct the bank not to disclose this information in order to be able to disclose the information. The bank should not have the right to disclose this information unless specifically requested from and given by the customer.
- 12.6 This is unacceptable. The provision of this information by the customer (at a cost to the customer) clearly provides a major benefit to the bank. If the bank compulsorily acquires this beneficial information it should not be allowed to charge for re-supplying this information.
- 12.7 This section requires some extra details about what recourse a customer may have if the bank does not comply with this request.
- 18.1 The question can be asked as to whether banks are currently complying with this section in their use of an asterisk next to interest rates in newspaper and television advertisements which then lead to the potential of customers to warnings of additional fees and charges.
- 19.1 (iii) If a bank makes a unilateral decision to close a customer's account it is unfair that the bank then ask the customer to bear the cost.

20.2-20.4 This information or a notice that the information is available should be clearly displayed in all bank branches.