



# **SUPPLEMENTARY SUBMISSION OF THE AUSTRALIAN BANKING INDUSTRY OMBUDSMAN TO THE REVIEW OF THE CODE OF BANKING PRACTICE**

**JUNE 2001**

## **SCOPE OF SUBMISSION**

This submission provides responses to the Interim Recommendations and other matters raised in the Issues Paper.<sup>1</sup>

**The matters addressed are:**

- **Fairness**
- **Customer Access to Information Entitlements and Contractual Rights**
- **Timing differences affecting notification of changes**
- **Code Clauses 9.3 – Notification of changes to interest rate for money market products**
- **Copies of Documents**
- **Customers In Financial Difficulties**
- **Privacy and Confidentiality**
- **Electronic Communication**
- **Miscellaneous issues - compliance with other relevant codes**

The headings used are those from the Summary of Interim Recommendations and Miscellaneous Issues on which further views are sought. The responses are in the nature of supplementary information which may assist in the formulation of final recommendations.

## **Fairness**

The dictionary (Oxford Concise) definition of fair is 'just, unbiased, equitable, legitimate, in accordance with rules.' This gives, it is submitted, a good sense of its meaning and how it could be expressed or applied in the Code context. It incorporates the concept of

---

<sup>1</sup> This submission is by the Ombudsman and his office and does not necessarily represent the view of the Board or Council of the ABIO scheme.

procedural fairness (e.g. giving reasons for decisions) and also the notion of acting equitably, which in law is the jurisprudential basis for not applying the strict terms of a contract.

### **Customer Access to Information Entitlements and Contractual Rights**

It is common for complainants to the ABIO to not be aware of their contractual and legislative entitlements in relation to disclosure of information and other more substantive matters and to not be equipped to find out about those matters. In addition complainants sometimes have incorrect views about a bank's obligations which could be clarified easily by access to accurate and reasonably comprehensive information. If this type of descriptive information were included in the Code or as an appendix to the Code customers would be able to refer to one document to become better informed.

### **Timing differences affecting notification of changes**

The inclusion of information as to UCCC and FSR timing requirements in the descriptive information discussed above would also assist in reducing confusion and uncertainty as to a customer's entitlement to notice of changes.

### **Code Clauses 9.3 – Notification of changes to interest rates for money market products**

The amendment of Code Clause 9.3 to ensure that it reflects current accepted market practices is supported to the extent that it embraces new methods of notifying affected customers of other variations to Terms and Conditions, for example, via a bank's website or via email. However, there is a risk that the current accepted market practice may not represent a genuine attempt to notify as many affected customers as is reasonably possible in the circumstances.

### **Copies of Documents**

The requirement for banks to provide to customers, guarantors and persons acting for them, copies of contracts, account statements, notices and other relevant documents within time limits modelled on UCCC section 163(2) would, if submitted, assist in the prevention of disputes arising between customers and their banks. Disputes often arise based on misinformation and misunderstanding of the entitlements and obligations of a customer and its bank or of the status of an account.

### **Customers In Financial Difficulties**

It is the experience of this office that borrowers or guarantors of regulated credit, who are experiencing financial difficulty, are not always made aware of their right under the UCCC to apply to the bank for a variation of their repayment obligations. A provision in the Code referring to this right would assist borrowers and guarantors to be aware of their entitlements.

### **Privacy and Confidentiality**

The recommendation that banks comply with the National Privacy Principles would have the effect of ensuring that the Code is consistent with the content of the new legislation. It is, however, understood that there is no suggestion that the National Privacy Principles replace or override the duty as expressed in section 12.1 of the Code - currently the obligation of a bank under section 12 of the Code is expressly stated to be "*in addition to a Bank's duties under legislation*".

It appears, therefore, that it is intended that the common law and Code duty will co-exist with the new regime. This would be consistent with the long recognised understanding that the relationship of banker and customer is of more substance than that between, for example, a retail corporation and its customers.

### **Dispute Resolution**

#### *Information on a bank's website*

It may be appropriate to include in the Recommendation reference to making information readily accessible through clearly signposted pages on the website (ie either clearly visible or readily accessible through the search facility on the site) and links from the website to the website of the external dispute resolution service. The practice in this context appears to be inconsistent at present.

### **Miscellaneous Issues - compliance with other relevant codes**

It is noted that the ABIO's Terms of Reference are currently being redrafted and it is proposed that the decision making criteria to be applied by the Ombudsman of the law, good banking practice and fairness be expanded to include "*applicable industry codes or guidelines*".