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**Gerard Brown**  
General Manager

Mr Dick Viney  
Review of Code of Banking Practice  
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Dear Mr Viney

### **Future Role of CBP**

There is an ongoing discussion among financial services sector stakeholders about the future role of the Code of Banking Practice and, in particular, monitoring of performance against the Code.

ANZ believes that the redrafted Code, or Code Mk II, should be a comparatively concise document of principles and benchmarks, which includes internal and external dispute resolution.

The objective should be to set aspirational benchmarks for good banking practice. Deposit Taking Institutions may then compete within that broad framework to provide outstanding products and services to their customers.

Through an appropriate 'sunlight' mechanism, Deposit Taking Institutions' performance against these standards would be monitored and publicly reported annually.

Possible models for the Review and stakeholders to examine include:

- The Canadian financial services Privacy Code ([http://www.cba.ca/eng/Publications/pubs\\_privacy.htm](http://www.cba.ca/eng/Publications/pubs_privacy.htm)) and Model Code of Conduct for Bank Relations with Small and Medium-Sized Businesses (<http://www.cba.ca/eng/Publications/ModelCode/modelcode.htm>);
- The 'key commitments' section of the UK Banking Code [www.bba.org.uk](http://www.bba.org.uk); and
- The 'fundamentals' section of the South African Code of Banking Practice ([http://www.banking.org.za/consumer\\_affairs/CodeOfConduct/English/index.html](http://www.banking.org.za/consumer_affairs/CodeOfConduct/English/index.html)).

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## **Monitoring and Administration**

Transparency in schemes such as the Code is an important mechanism to ensure credibility and accountability. ANZ believes that compliance with the Code should be clearly demonstrable to all stakeholders. Various models are possible. ANZ believes there is merit in considering a two-part process which would involve self-assessment as well as a form of external audit and reporting.

The UK Banking Code Standards Board oversees a process that includes a self-assessment certification questionnaire signed off by the CEO and compliance visits by independent experts such as PriceWaterhouseCoopers who review high level compliance controls as well as sales documentation.

A similar two-part compliance process which includes self-assessment and an external audit of Code compliance may meet the significant need for accountability and transparency in compliance monitoring.

## **Gaps**

It has been mooted that the Code should also cover existing "gaps", that is, gaps between existing or pending legislation (eg. the Financial Services Reform Bill) and areas of community concern. This is an appropriate way forward for this Review, however, our concern is that if the Code is to function as a concise document of principles and benchmarks, then the Code may not be the most appropriate vehicle to address problematic issues which arise from time to time in the banking industry.

Additionally, the Code does not appear to be the most appropriate vehicle to "flesh out" detailed compliance proposed by the FSR Bill for the same reasons as outlined above.

In order to avoid regulatory overlap, we agree that where other legislation and Codes exist, the Code should "signpost" such matters.

## **Principle of Fairness**

The Australian Banking Industry Ombudsman scheme operates within the guidelines of the National Benchmarks for Industry Based Complaints Schemes. A fundamental principle of the Benchmarks is the need for fairness defined as follows:

*the scheme produces decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.*

It seems appropriate, in terms of consistency between the Code and the Terms of Reference for the ABIO, for the Code to promise that Banks will act fairly.

Additionally, the UK and South African Banking Codes both undertake that member Banks will "act fairly and reasonably" in all dealings.

## **Guarantees**

The suggestion that the Code should contain a promise that adequate information including the risk of giving the guarantee generally and pertaining to the particular case should be given to the prospective guarantor requires further examination.

Bank staff will have a conflict of interest in advising on and reaping the benefit of the guarantee.

An appropriate way forward at this stage would seem to be an industry discussion paper that both identifies current bank practice and canvasses what future bank practice could be on this issue. In addition, the law societies in each state have somewhat different procedures in dealing with advice to guarantors. This issue should also be covered in the discussion paper.

Please contact me on 03 9273 4991 if you wish to discuss these issues further.

Yours sincerely

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