

**ANZ SUBMISSION IN RESPONSE TO  
THE ISSUES PAPER OF THE  
REVIEW OF THE CODE OF  
BANKING PRACTICE**

July 2001



## Executive Summary

ANZ believes this Review provides an opportunity to do better for its customers. In particular, we believe the Revised Code must be more useful and relevant for consumers. We believe this can be achieved through ensuring the redrafted Code is a concise document in plain English of principles and benchmarks, which includes clear portals for internal and external dispute resolution.

The objective of the Code 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. The Code could then refer to regulations without duplicating standards.

ANZ makes the following recommendations in response to the Issues Paper:

- **Monitoring:** Deposit Taking Institutions' (DTI) performance against standards outlined in the Code should be monitored and publicly reported annually.
- The ABIO Council should undertake the role of overseeing the Code administration and monitoring. These functions could be taken up directly by the ABIO Council or a body appointed by the ABIO Council.
- Compliance with the Code should be clearly demonstrable to all stakeholders.
- A two-part process which involves self-assessment as well as external audit and reporting - such as the process overseen by UK Banking Code Standards Board - may well demonstrate compliance to all Code stakeholders.
- The issues of funding, governance, administration and reporting models of the monitoring body should be fully and publicly discussed prior to a final decision.
- **Principle of Fairness:** The Code should promise that DTIs will act fairly, particularly to ensure consistency between the Code and the Terms of Reference for the Australian Banking Industry Ombudsman scheme (ABIO).
- **Small Business:** The Code should be extended to cover small business.
- **Guarantees:** It is central to certainty in bank-customer-guarantor relationships that the Bank shares required information about a debtor with guarantor/s so that the guarantor can make a decision about their willingness to support the provision of financial services, just as the bank has done.
- **Code Review:** The Australian Banking Code of Practice should be reviewed biennially.

- **Direct Debits:** A Direct Debit Guarantee aligned with changes in the Bulk Electronic Clearing System (BECS) should be provided for customers using the Direct Debit system.
- **Subsidiary Cards:** The ability to cancel subsidiary cards when the primary accountholder makes that request, at no cost to the primary accountholder, should be available.
- **Customers in Financial Difficulties:** It will be helpful for consumers to include a clause in the Code on customers experiencing financial difficulties.
- **Information about fees and charges on statements:** ANZ supports more effective disclosure and participated in the Australian Securities and Investment Commission's (ASIC) Transaction Fee Disclosure Working Group.

This ANZ submission is made in light of domestic and international experience of self-regulatory Codes of Practice, consultation with customers and other stakeholders and in the context of competitive pressures within the financial services environment.

ANZ believes the process of reviewing the Bank's activity in relation to the Code and committing itself to the future amended Code of Banking Practice, has been valuable in raising customer focus within the Bank.

We look forward to participating in the ongoing review of the Banking Code, as well as applying the amended Code to our business. We trust our submission to the Code of Banking Practice Issues Paper will demonstrate our commitment to improving the delivery of financial services for our customers.

## Introduction

The Review of the Code of Banking Practice is an opportunity to enhance the relevance and utility of the Code for ANZ customers. In particular, to incorporate changes that have occurred in the banking industry and in the legal and regulatory environment since the Code was first written in 1993.

The 2000 Federal Treasury Taskforce on Industry Regulation proposed key criteria for successful Codes<sup>1</sup>. Some of these are:

- Coverage and publicity: a code should be in plain language and have consumer and industry awareness
- Consultation: industry, consumers and government should consult to ensure specific problems are addressed
- Dispute resolution and sanctions: complaint and dispute handling mechanisms should provide appropriate redress; adherence to a Code is essential to ensure the benefits of the standards of practise are passed on to the consumer; sanctions should ensure compliance; and
- Monitoring and reviewing: assists transparency and accountability and ensures a code is still relevant to address specific problems.

A recent paper by the Review Group on Banking Service Consumer Codes in the United Kingdom (UK) examined the consumer benefits that flowed from voluntary codes in banking and mortgages markets. The Review assessed codes as one part of the legal and market environments that influence the service standards provided by banks. The Review found that voluntary codes generally have been effective in raising standards and spreading best practice. The UK Review made 12 key recommendations. ANZ believes many of these recommendations bear further consideration in the context of the Australian market.

Similarly a recent paper from the Office of Fair Trading (OFT) in the UK proposes that self-regulation can enable consumers and business to adapt to the growth of e-commerce and international trade by providing flexible and speedy means to address changes in the market place. The OFT has set out clear criteria for a code of practice, including compliance and dispute resolution procedures. The OFT key criteria for consumer codes include:

- Content: a code should offer specific benefits beyond the law and include measures directed at easing consumer concerns
- Consultation: consumers, regulators and advisory bodies must be consulted
- Complaints handling: speedy and accessible procedures for dealing with complaints and specific time limits for responding to complaints; and
- Monitoring:

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<sup>1</sup> ["Industry Self Regulation in Consumer Markets Report prepared by the Industry Taskforce on Self Regulation August 2000"](#)

- Regularly reviewed and updated
- Performance indicators to be developed to measure effectiveness
- Published annual report on operation

It is ANZ's aim to ensure the Banking Code of Practice is as concise and relevant for customers as possible. It is only by making the Code simple and useful that customers will be able to rely on the information provided by, and protections within, the Code.

The ANZ submission in response to the Issues Paper of the Review of the Code of Banking Practice is made in light of the above principles, as well as competitive and legal pressures in the financial services marketplace.

## **Interim recommendations – ANZ Response**

### **Changes to Objectives and Principles**

ANZ agrees with the recommendation for the Code to commit to continuously improving the standards of practise and service in the banking industry and to promote better informed decision making by customers by providing effective disclosure and helping customers choose appropriate products. We believe the Code should commit banks to ensuring staff provide customers with the appropriate service, information and advice, as well as using new technologies to ensure relevant information is available to customers. ANZ aims to ensure relevant product and financial information is available to customers via sources such as anz.com, phone enquiry lines and at branches.

### **Fairness**

ANZ previously submitted to the Review of the Code of Banking Practise that banks should promise to act fairly and reasonably in all dealings. We remain committed to this principle.

ANZ recently announced the introduction of a Customer Charter. The ANZ Customer Charter will make promises encompassing the bank's commitment to customer service standards for our individual and small business customers, reflecting the Code's coverage. As part of our promise, ANZ will publicly report its compliance with the Charter every year. The report will be independently audited and the Charter will be annually reviewed and updated. We plan to introduce the Charter from 1 October 2001.

The proposed preamble to the Charter demonstrates how committed we are to treating our customers in a fair, reasonable and equitable manner:

*“At ANZ, we are committed to providing fair and equitable banking and financial services to our personal and small business customers. This Customer Charter is a formal recognition of our commitment to act fairly and reasonably in all of our dealings with you.”*

Additionally, as part of our commitment to the Charter and to demonstrate our commitment to acting fairly and reasonably, ANZ recently announced the appointment of a senior Customer Advocate. This newly created role will ensure fair, impartial and prompt resolution of issues and complaints for individual and small business customers. The Advocate will act on behalf of customers when the ANZ's existing customer complaint and dispute resolutions process have been exhausted. The Advocate will complement, not substitute, the Australian Banking Industry Ombudsman to whom customers will

continue to have access. The ANZ Customer Advocate will begin from 1 October 2001.

A key promise in the Charter will also be the payment of a financial donation by ANZ to the registered charity of the customer's choice should ANZ not meet the complaint resolution standard set out in the Charter. We believe that the public reporting and annual audit of the ANZ Customer Charter will ensure a transparent and accountable process.

We note that the UK, South African and New Zealand Banking Codes all undertake that member Banks will "act fairly and reasonably".

### **Prudential Principle**

ANZ does not believe the Prudential Principle needs to be retained in the Code. The Prudential Principle deals with capital adequacy requirements and does not address the character of acting as a prudent banker. As such retaining the Prudential Principle in the code is not necessary for protection of individual or small business customers.

### **Definition of "Banking Service"**

ANZ submits that the definition of "banking service" as proposed in the issues paper is too broad and has the potential to capture products and services which are beyond the full control of the bank which sells the service or product to the customer.

While a bank may be dealing with a customer in relation to the sale of a particular product, the product may not actually be issued by that bank, but rather by a third party. Further, some adjunct products/services provided by a third party may be provided without any additional charge to a customer, as is the case with some insurance and services associated with credit cards. For example, one credit card currently provides roadside assistance cover and overseas travel and medical insurance to cardholders. While the credit card is issued by ANZ, the adjunct service and insurance are provided by third parties.

ANZ believes a bank should be liable for its actions in selling the product or service, including any representations made to the customer during the selling process. However, any issues the customer may have in relation to the terms and conditions of such a product or the delivery of the service should be taken up with the third party.

As a result, we recommend that the definition of 'banking service' contained in the issues paper be amended to exclude all services like roadside assistance and exclude insurances which are issued by third parties, except to the extent that the bank is involved in the selling process.

We recommend the following wording replace the wording contained on page 18 of the issues paper (and the definition in the present Code):

“Banking Service” means any deposit, loan, insurance (but not insurance issued by a third party except with regard to the selling process) or other banking facility provided by a bank to a customer.

### **Definition of “Customer”**

ANZ continues to support the widening of the definition of “customer” to include small business.

### **Small Business**

ANZ agrees that the scope of the Code should be extended to include transactions and products offered by banks to small business. In practical terms, the scope of the Code already encompasses small business as a result of the introduction of the Small Business Principles by the ABA in July 1998. Such an extension is also consistent with other government policies to extend consumer protection policies to small business, for example as reflected in s 51AC of the Trade Practices Act.

However, the issues paper recommends that ‘small business’ as incorporated in the Code should have the same definition as ‘retail client’ under the Financial Services Reform Bill (“FSRB”). ANZ has reservations that such a definition may be too wide for the purposes of the Code of Banking Practice, as it would include organisations that logically do not require ‘consumer protection’ standards. Further, adopting this definition may cause some confusion as the current Code applies to all individuals, whereas the definition of ‘retail client’ in the FSRB excludes high net worth individuals and in some cases will depend on what product is sold.

If a link with the FSRB is desired, ANZ recommends that ‘small business’ have the same definition as ‘small business’ in the ‘retail client’ definition of the Financial Services Reform Bill, namely, a manufacturing business employing less than 100 people or any other business employing less than 20 people.

ANZ, by recommending this definition, aims to ensure certainty by providing coverage on products and services for all individual consumers and all small businesses as defined.

ANZ further recommends that it should be noted that the definition of “small business” within the Terms of Reference of the ABIO should also be amended to reflect the FSRB definition of small business within “retail client”.

## **Monitoring Compliance**

ANZ previously submitted that the Code should be monitored. We believe that the current recommendation will enhance transparency in the operation of the Code, which is an important mechanism to ensure Code credibility and accountability.

We believe that the ABIO Council should undertake the role of overseeing the Code administration and monitoring.

The functions of monitoring authority under the Code, whether it be the ABIO Council or a body appointed by the ABIO Council, must be clearly distinguishable from the functions of the ABIO as the dispute resolution body under the Code.

It is important that customers are given the opportunity to lodge complaints directly with the Code monitoring body. The body should also be required to investigate compliance issues referred to it by the ABIO (which may identify systemic problems from hearing a large number of similar complaints), and regulatory authorities.

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 who review high level compliance controls as well as sales documentation. Transparency in schemes such as the Code is a vital mechanism to ensure credibility and accountability.

The recent UK Review Group on Banking Service Consumer Codes recommends that aggregate data on compliance with key code provisions should be published early by the monitoring bodies. This information should then be followed by a published rate of code compliance for individual institutions. The Review Group proposes that compliance ratings for individual institutions enables customers to make better informed choices amongst product providers and provides an incentive for firms to improve their compliance procedures. ANZ believes this model for code compliance monitoring should be considered.

If the monitoring body is to hear compliance complaints, it should have sufficient resources to ensure the function of hearing individual complaints about a Bank's compliance with the Code does not detract from the function of identifying systemic compliance breaches and monitoring their rectification.

Additionally, ANZ submits that the redrafted Code must be clear on the reporting requirements of the Code monitoring body, including the information required from banks and the frequency of reporting. Whilst structuring the Code monitoring and administration body within the ABIO scheme may not be the most ideal or suitable long term arrangement, ANZ submits it is an achievable short term measure.

ANZ believes that whatever monitoring and compliance model emerges, the issue of funding of the monitoring body, its governance,

administration and reporting models should be fully and publicly discussed prior to a final decision.

### **Sanctions**

We agree with the recommendations of the Reviewer ensuring consumers and other organisations have the ability to make complaints about non-compliance with the Code, as well as ensuring processes are impartial, fair, efficient and accountable. In accordance with best practice models proposed by the Federal Treasury Taskforce on Industry Self Regulation and the UK Office of Fair Trading, the Code should detail complaint handling procedures. Additionally, sanctions should punish non-adherence to the Code. Sanctions could include public reporting, naming and where financial loss has been experienced, financial sanctions.

ANZ believes that financial sanctions should primarily only be imposed where the complainant has suffered a financial loss. We do understand that in some cases compensation for non-financial loss may be a fair way to resolve a complaint. Our expanded internal complaint and dispute resolution process should address these types of complaints. Where this is not possible, customers will continue to have access to the ABIO scheme. It is notable that the ABIO scheme has in the past suggested in some cases that a bank should compensate for non-financial loss. ANZ supports the continuation of this practice as a possible sanction.

### **Educating Code members (and their staff and agents) about the Code**

We agree with this recommendation. It is current ANZ practice to require staff to undertake Code of Banking Practise training every three years in line with the expected Code Review. We will be exploring possibilities of pursuing additional training for all relevant staff and agents.

### **Promoting the Code to Consumers, Consumer Advisers and the Public generally**

We agree with the recommendation requiring the Code administration body to promote the Code among bank customers, consumer advisers and the public generally. We also believe the Australian Bankers Association has a role to play in promoting the Code, particularly amongst the public generally.

We also agree with the second part of the recommendation, which requires us to have copies of the Code available on request by any person at all branches. Given that some banks are purely ebanks, and

many consumers increasingly access financial services on line, the Code should be able to be accessed via bank Internet sites.

### **Monitoring External Developments including Legislative Changes**

This recommendation may be most effectively achieved if the Code administration body were to issue Bulletins aimed at keeping Code subscribers informed of legislative and other developments. ANZ will also continue to separately monitor legislation and regulatory change which may impact the Code.

### **Arranging for Regular Reviews of the Code and Ensuring Ongoing External Representation and Consultation in Critical Areas**

ANZ supports this recommendation. As mentioned previously, a key criterion for successful consumer codes is consultation: consumers, regulators and advisory bodies must be consulted. The establishment of a forum for regular exchange of views in relation to the Code should ensure that specific problems are addressed in a speedy timeframe. We further believe that regular consultation will ensure that unanticipated consumer concerns or impacts of the Code will be able to be addressed promptly.

A recent report by the UK Review Group on Banking Service Consumer Codes recommends that code review processes should be biennial, formalised, transparent and led by an independent "Reviewer". ANZ believes this recommendation would be usefully adopted for the Australian Code of Banking Practice. Experience with the current review demonstrates there can be significant time lags between when a review commences and when tangible benefits are delivered for customers. A review conducted every two years would also be more reflective of the rapidly changing world of financial services, particularly electronic commerce.

We further believe that by reducing the time between reviews, Code subscribers will be able to ensure support of the Code is more closely aligned to business decisions.

### **Implementing Change**

ANZ supports this recommendation. A transparent review process should enhance the credibility, accountability and usefulness of the Code for consumers.

### **Access to Banking Services**

The Hawker Report "Regional Banking Services: Money too far away" recommended a protocol for closing regional and remote branches that includes the following:

- *20.1 Banks will give three months notice to customers and relevant community organisations such as Local Councils of their intention to close a branch*
- *20.2 Banks will consult with local communities about trends in the delivery of banking services and, in particular, about developments that have the potential to affect the delivery of services in that region. Included in this will be a genuine desire to use community goodwill to improve the viability of the branch. In the event of a decision to close a branch, banks will consult with the community about preferred options for alternative services and on the training to be provided in using alternative channels*
- *20.3 Banks will provide written notice of at least two months before changing the branch that manages an account*
- *20.4 In the event of closing or downgrading a branch below agency status, banks will waive any fees or penalties incurred in relation to early repayment of loans or closing accounts*

ANZ agrees with the recommendation of the Reviewer for the Code to incorporate the above proposals as an appropriate protocol when closing a regional or remote branch. We recommend, however, that recommendation 20.4 should be redrafted in two ways. Firstly, we suggest the recommendation should be technology neutral. We propose that “downgrading a branch below agency status” should be replaced with “downgrading a branch below offering **face-to-face transaction services**”. Secondly, the recommendations should be explicit that fee or penalty waivers only apply to customers of the closed or downgraded branch.

The Reviewer also raised the issue of certain records retained at branches such as the account holder’s signature. Whilst we agree with the Reviewer’s recommendation, advances in technology, such as imaging technology, will eventually mean that all records will be able to be held centrally. For example in the future branches will image a customer’s signature when they open an account and that signature will be stored centrally. When these procedures are in place, the branch will no longer hold the account holder’s signature. ANZ submits that issues surrounding the application of new technologies to back office banking systems should be further examined as part of future Code reviews.

### **Access to Banking Services for People unable or reluctant to use ATMs, telephone banking or Internet banking.**

ANZ is committed to ensuring that all our customers have access to our services. ANZ is an active participant in the industry’s efforts to identify and implement solutions to ensure access to financial services for people with a disability. Specifically, ANZ is participating in the Australian Banker’s Association (ABA) working group established to address the recommendations in the Human Rights and Equal Opportunities Commission (HREOC) 2000 report *Accessibility of Electronic*

*Commerce and New Service and Information Technologies for Older Australians and People with a Disability.*

The outcome of the working group is an E-Commerce Industry Action Plan lodged with HREOC. The Industry Action Plan includes reviewing, writing and adopting EFTPOS, ATM, and phone-based service standards that are consistent with the Australian Disability Discrimination Act and world best practise. These standards should be completed by December 2001.

ANZ has a concession for customers unable to use ANZ ATMs due to a disability. The concession, known as the “electronic concession”, allows customers to use their entire monthly quota of free withdrawals as branch assisted withdrawals. These customers will be charged excess branch withdrawals at a concession rate of 65¢ (50¢ for ANZ Cash Management Account) after the monthly quota of free branch withdrawals is exceeded. This concession applies to ANZ Access Simplicity Account, ANZ Access Deeming Account and ANZ Cash Management Account.

ANZ also recently announced fee-free transaction banking for customer’s aged 60 or over. The fee-free transactions include over the counter transactions.

ANZ believes the initiatives outlined above are constructive steps towards ensuring people who are unable or reluctant to use new technology still have access to financial services.

**Low Cost Accounts for Banking Services**

ANZ recently announced a basic bank account for Centrelink payment recipients and health care card holders that includes: 15 fee-free transactions per month, including over the counter transactions, no minimum account balance, no monthly account keeping fee and no charge for balance inquiries.

The account is available to existing customers from 1 October 2001 and new customers from 1 October 2002.

For about 75% of ANZ’s eligible customers (approx. 750,000 individuals), this account should, in effect, provide fee-free banking.

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

ANZ supports the removal of overlapping provisions and suggests that where overlapping exists, the Code could reference the appropriate legislation or Code via an appendix which includes the name of the legislation or Code only. Additionally, ANZ promotes compliance with all relevant laws and regulations, through staff education and disclosure to customers.

The recommendation to incorporate a summary into the Code of the principal features of rights and obligations arising out of Financial Services Reform Bill (FSRB), Uniform Consumer Credit Code (UCCC) and other relevant laws could be a useful reference point for both consumers and bank staff. However we note that this will in practice be a very difficult summary to complete given the volume and complexity of all the relevant laws. ANZ believes that any summary would be quite extensive and may overwhelm the Code, thereby making it a less accessible document for consumers. We would like to participate jointly with the industry, regulators and consumer groups to identify what sort of information would be feasible and useful to summarise for consumers.

ANZ supports the recommendation whereby we meet our disclosure obligations under FSRB, UCCC and other relevant laws. We note that as we are legally obliged to meet these disclosure obligations, contractually binding us to these same obligations may add little value for consumers. We further note that we will provide our customers with all relevant information as part of our commitment to act fairly and reasonably.

#### **“Fleshing out” necessary detail for Product Disclosure Statement (PDS)**

We agree the Code is not the appropriate medium for fleshing out PDS. We suggest that ASIC policy will be the method through which obligations under the PDS sections of the FSRB will be clarified.

#### **Which disclosure requirements should remain in the Code if all overlapping provisions are removed**

We agree with this recommendation and note that it reflects our current standard practise.

#### **Other gaps**

The major disclosure requirements which will be held exclusive to the Code once other regulatory requirements are taken into account, are those relating to small business loan products. In order to cover the field of regulation, the Code will have to make provision for this form of disclosure.

ANZ notes that disclosure standards for transaction products will be extended to Small Business through FSR.

We believe further analysis of gaps in the Code, FSR and UCCC should be undertaken by the industry and regulators.

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

ANZ supports this recommendation as it will minimise duplication of regulation and reduce the length and complexity of the new Code.

While the FSRB is less precise than the present Code in respect of notification requirements for product changes other than changes to fees and charges, this situation may change after the issue of ASIC policy and/or the regulations. Therefore, it is difficult to comment on this aspect of a new Code until the details of the policies and the regulations are released. However ANZ, sees no problem in complying with the notification requirements contained in the current Code, both in relation to individual and small business customers.

### **Statements of Account**

ANZ agrees to the extension of the Code to apply UCCC section 31 to 34 to Small Business statements of account. We also note that these reporting standards have already been adopted in practise for the majority of our small business customers.

We note some services, which are classed as small businesses credit products, do not receive statements. Products such as Indemnity Guarantees, Commercial Bills, Documentary Credit facilities, should not be required to comply with UCCC sections 31 to 34.

### **Statements of Account for Non-Credit Products**

ANZ supports the proposed changes to Code clause 14.1(ii). We do however, raise the following issue in the context of changing statement frequency from 6 to 3 monthly and abolishing Code clause 14.1 (iii) as requiring further consideration. The revised EFT Code Clause 4.2 requires statements to be provided every 6 months, with customers offered the option of receiving their statements more frequently. We believe that Code clause 14.1 (iii) should be retained and redrafted to harmonise with this provision.

We note that ANZ currently advises customers that they can elect to receive statements as regularly as they need.

Additionally, we submit that where mail has been returned, the customer has not advised of a new address and we have made reasonable attempts to locate the customer, we should not be required to keep forwarding statements to a known wrong address.

### **Shadow Ledgers**

ANZ provides statements to its customers. It is also ANZ practice to provide statements to customers who are in default on their loans. Such statements include the amount that the Bank believes the customer owes under the

terms and conditions of the loan and do not reflect any write downs made by the Bank for accounting or taxation purposes. Without a major systems upgrade, however, it is not possible to automatically issue statements to customers in all circumstances, for example, when an account has been partially or wholly written off. In those circumstances, statements need to be manually issued to reflect the total amount the Bank believes the customer owes.

The ACCC submission to the Parliamentary Joint Statutory Committee on Corporations and Securities inquiry into 'Shadow Ledgers' recommended that statements are either provided automatically or upon request (ensuring customers are fully informed about the availability of statements and the method of requesting them). As it is not currently possible to automatically issue statements in all circumstances, this recommendation is considered to be a practical way forward.

### **Code Clauses 9.1 and 9.3**

ANZ agrees in principle to the clarification of Code clause 9.1 but notes that initiatives that benefit customers in the payment of interest and changing of interest tiers will also be captured by this amended provision. Our current experience indicates that where we are making a change to interest rate tiers or account minimums in response to competitive pressures we generally do so with short notice. In contrast, we provide customers with time to make informed decisions about their accounts where we are making a change that requires a higher standard.

Our commitment to acting fairly and reasonably towards customers also ensures that adequate notice is provided to customers when we are changing minimum balance conditions.

### **Notification of changes to the fees for stand alone transactions or services**

ANZ supports this recommendation.

### **Notification of changes to interest rates for money market products**

ANZ agrees that market practice is such that money market products pay interest in line with the money market rate nominated in their terms and conditions. Notification of a change of rate in this case is not practicable as the rate changes with the market. ANZ recommends that rates applicable to money market products and products which use a reference rate, should be notified through advertisements in national or local media on a regular basis. Current practice for ANZ is to advertise our rates weekly in the national media.

## **Staff Training**

We agree with this recommendation. ANZ will continue to explore ways to improve delivery of training and education to our staff with the aim of ensuring staff are competent to discharge their functions efficiently.

## **Copies of Documents**

ANZ supports this recommendation. We consider that subject to any legislative requirement, records and documents referred to in the Review recommendation should not be required to be held for more than 6 years, to meet statute of limitations requirements.

## **Customers in Financial Difficulties**

ANZ agrees with the Reviewer that it will be helpful for consumers to include a clause on financial difficulties in the Code of Banking Practice. It is our view that customers experiencing financial difficulties should be encouraged by the Code, UCCC and our own policy to contact us as soon as possible for assistance with an instalment plan or other payment arrangement.

We also believe it will be useful to include details about debt counselling organisations where customers can get financial advice.

However, we are concerned that the way the recommendation is currently worded suggests the bank should be recommending financial arrangements for a customer's aggregate financial position. This places the bank in a conflict interest with other creditors of the customer, as the bank must try to ensure the customer's financial obligations to the bank are given preference to other obligations. As such, we suggest the clause be amended to read as follows;

“We will try to help you meet your obligations in times of financial difficulties, for example, with your co-operation, developing a plan with you for dealing with us and telling you in writing what we have agreed.”

The UCCC provides customers with the right to apply for a change to the contract terms on account of hardship. We believe it would be helpful for us to disclose the right to make an application to the Bank to vary the terms of the contract in communications with the customer once financial difficulties arise.

For guarantees this will also be supported by the requirement contained in the UCCC to recommend a guarantor seek financial advice.

ANZ believes the usefulness of the application of the recommendation for customers experiencing financial hardship would be helpfully tracked by banks and consumer groups through regular consultation. It is through ongoing consultation that the needs of customers will be

identified, so that any changes to the way Banks' do business will accurately address the needs of customers experiencing financial difficulty. We believe further discussion between the industry and consumer groups would best identify how this recommendation will meet consumer needs.

### **Debt Recovery**

We agree with the Reviewer's recommendation. The current ANZ policy on debt recovery already complies with the ACCC guide on debt recovery. Consumers will benefit from industry wide adoption of the ACCC guide.

### **Privacy and Confidentiality**

We currently have a project underway that will ensure we will comply with the Privacy Amendment (Private Sector) Act by December 2001.

Additionally, we are specifically including undertakings regarding customer privacy in our Charter, which will be in force from 1 October 2001. Our Charter will confirm our commitment to the Privacy Principles and the Act.

### **Credit Assessment**

ANZ agrees with the Reviewer's recommendation to include a clause in the Code that explains that a bank will exercise the care and skill of a diligent and prudential banker in assessing the level of credit or loan funds it will lend to a customer. We believe our role should be to determine if the loan funds are within the customer's capacity to repay.

For new customers, capacity to repay is established on a full financial position and application scoring. Behaviour scoring based on past account practices is used for existing customers. We note that our experience with behaviour scoring shows that it is a reliable indicator of an existing customer's capacity and willingness to repay. We also note that the NSW Minister for Fair Trading is currently investigating consumer over commitment on credit cards with the view to highlighting potential amendments to the UCCC. We believe that the UCCC, and not the Code, is the appropriate place to regulate credit assessment with regards to consumer lending.

ANZ understand that there is rising consumer and government concern over increasing consumer reliance on credit cards and the marketing of "pre-approved" credit cards or credit limit increases. ANZ believes that the use of behaviour and application scoring is a more reliable way of providing credit to consumers as it enables consistent decisions, free of any human bias. We do understand, however, the nature of consumer and government concern and have welcomed the opportunity to

contribute to the NSW Credit Overcommitment research. We would further welcome the opportunity to discuss and identify any reforms to address the needs of consumers who are experiencing, or likely to experience, difficulty as the result of consumer credit. We do not believe the effect of the clause "...are suited to the customer's stated financial needs and within the customer's capacity to repay" should be interpreted to mean that behaviour scoring is prevented from being used in offering to extend a customer's existing credit facilities.

It should be noted that Banks, through conducting their ordinary businesses, have access to a wide range of account usage data. ANZ have found that analysis of our customer data, particularly when seeking to identify leading events prior to a customer defaulting, can provide a highly predictive set of criteria which are embodied into a reliable Behaviour Score. The Behaviour Score has proven to be a robust indicator of a customer's capacity and willingness to repay. The predictive reliability of these types of scores provide us with an ability to detect anomalies in an account well in advance of other traditional techniques. Modelling of our existing customer account behaviour allows us to exclude people from offers to extend credit limits where the customer is at risk of default. We would like to work constructively with consumer groups and government to ensure our data collection and management capabilities can be used positively to assist people before they experience financial difficulty.

### **Implementing Family Court Decisions and Family Law Settlements**

ANZ supports this recommendation and has commenced investigating the guidelines addressing these matters. Additionally, ANZ will be contributing to industry discussion on these matters through the ABA.

### **Direct Debits**

We acknowledge the Reviewer's criticism of cancellation procedures for Direct Debits. We support the right of a customer to request the cancellation of a Direct Debit through the Bank as an additional option to cancelling through the Debit User. As such, we support the establishment of industry standards for the cancellation of Direct Debits. We will work together with the Australian Payments Clearing Association Ltd ("APCA") to establish these standards and to respond to the concerns raised by the Reviewer. We will also work with APCA to review and improve the claims and disputes processes for customers.

We believe that the recommendation to adopt a UK style Direct Debit Guarantee has great merit as consumers will have clear and transparent information about the protection they have for unauthorised Direct Debits. This procedure must be clear for every participant, including for paying banks who may often need to recover amounts that have been automatically reinstated to the customer because the Debit User denies

the customer's claim. We suggest that the introduction of a direct debit guarantee should not proceed unless there is agreement from APCA to change the BECS rules in order to accommodate the effect of the guarantee. The rules should be clear on the circumstances in which a paying bank may enforce indemnities against Debit Users in cases where the customer and the Debit User disagree on the validity of a direct debit. We believe that any Australian Direct Debit Guarantee should be fully supported and governed by the Bulk Electronic Clearing System ("BECS") rules.

Regarding the recommendation to automatically reinstate losses incurred as a result of an incorrect Direct Debit, if ANZ has made a mistake in processing a direct debit, it is existing procedure to automatically reinstate losses incurred in the nature of lost interest, additional fees and charges, and the incorrect amount processed. The ABIO guidelines described in ABIO Bulletin No. 24 include losses that are not readily ascertainable nor identifiable, such as opportunity costs. The losses described in the ABIO guideline could only be determined by an organisation such as the ABIO, not the bank. As such, we believe it is appropriate for the bank to limit automatic reinstatement of losses to those that are readily identifiable and ascertainable.

ANZ also understands the concerns many consumer groups have about how well the direct debit process and rules covering disputes or cancellation are understood by consumers. While we believe supporting industry wide review and change of the rules governing cancellation will assist consumers, we also believe there is an issue concerning financial literacy within the community. As such, ANZ has announced and is commissioning, research into adult financial literacy. As part of this, ANZ has committed to researching how consumers assess product utility when selecting a product. In undertaking this initiative ANZ hopes to understand ways we can assist consumers to understand their financial needs better and help them to make more informed decisions about choosing products and services that suit them.

### **Chargebacks**

ANZ agrees it will be helpful for banks to provide consumers with better information about chargebacks. We have already commenced a project to make the chargeback process simpler, faster and more transparent for our customers. The current ANZ terms and conditions of use already include the recommended information about chargebacks. Additionally, we currently process disputed transactions as chargebacks where a chargeback right exists, using the most appropriate reason code for the chargeback. We always aim to ensure that we only accept a rejection where we are satisfied that the rejection is reasonable.

In keeping with our aim to make the chargeback process simpler, faster and more transparent for customers, we agree that inclusion of general information about chargebacks at least every 12 months would be of

benefit to customers. We have drafted some general information on chargebacks and would most likely include it on statements annually:

#### *Disputed Transactions "Chargebacks"*

*A chargeback occurs when a cardholder disputes a transaction for reasons such as - transaction processed without the cardholder's permission, or failure by the merchant to provide goods or services.*

*It is important that the cardholder notify the bank within 14 days from the date of the statement on which the disputed transaction appears.*

*Upon receiving notification, the bank will seek further details from the cardholder and merchant, and will process the disputed transaction where chargeback rights exist.*

*Failure to report a disputed transaction or to provide necessary written information as required, may result in the cardholder being liable for the transaction. The bank will abide by the time limits as set by the credit card schemes.*

*If the disputed transaction occurs outside the set time limits, the bank will use its best endeavours to recover the funds on your behalf but cannot guarantee that it will be successful.*

*For further information, refer to the ANZ Credit Card Conditions of Use.*

We also note this clause will harmonise to the Revised EFT Code.

We support all the Reviewer's recommendations regarding chargebacks.

#### ***Guarantees and Indemnities***

##### **Application of Code to guarantors**

ANZ supports the recommendation for all provisions relating to guarantees apply across individual and small business customers. For the reasons stated earlier in this submission, "small business" for these purposes should have the same meaning as "small business" in the FSRB, not "retail client".

##### **Provision of information to guarantors**

ANZ supports all recommendations dealing with providing information to guarantors.

ANZ believes that providing information to a guarantor without the consent of the principal debtor may contravene privacy regulations. ANZ proposes to require the principal debtor to agree to the provision of all documentation and information as described in this Code as one of the conditions for the provision of the loan or security. We consider this is beneficial for both the guarantor and the Bank.

ANZ would likely provide the required information to the guarantor in the form of a sheet which:

- summarises the rights and obligations of the guarantor,
- includes the substance of the warning required in any UCCC regulated guarantee and
- incorporates a further warning that the prospective guarantor obtain independent legal advice.

ANZ practice would require the written warning to be reinforced by a further verbal warning from the relevant staff member that the guarantor should seek legal advice before signing the guarantee.

ANZ experience already indicates that in the majority of cases guarantees are signed in the absence of the principal debtor, and at least one day before the loan is advanced.

ANZ supports the above recommendations because they provide additional transparency for both the bank and the guarantor. We also believe that providing relevant information to the guarantor is fair and reasonable as it provides the guarantor with the opportunity to make the same decisions as the Bank.

#### **Form of guarantee (limitations)**

ANZ already does not accept all accounts or all moneys guarantee mortgages. We support the recommendation to prevent banks from accepting all accounts or all moneys guarantee mortgages without provisions or a signed extension of the mortgage.

#### **Right to cap liability**

ANZ notes that the ability to vary the guarantee by reducing the cap on liability or limiting the amount of liabilities guaranteed already exists for guarantors. ANZ currently takes guarantees for specified obligations only. We require a separate guarantee or agreement to extend a guarantee where amounts or liabilities are changing. Additionally, ANZ allows guarantors to reduce the cap on liability under the guarantee where the outstanding amount and accrued interest and fees have reduced on the guaranteed loan.

ANZ currently allows guarantors to withdraw from a guarantee by written notice to ANZ in the following circumstances;

- before the debtor receives any money under the loan; or
- if the loan contract changes materially from the contract given to the guarantor before signing the guarantee.

Generally past practise has been not to allow guarantors to withdraw completely from the guarantee once it has been signed and the debtor has received the money.

ANZ supports the recommendation dealing with the right to cap liability under a guarantee.

### **Enforcement**

ANZ supports this recommendation. We note however, that non-bank credit providers will be outside these provisions. We also note as clarification that the provisions of the UCCC apply to individual guarantors of lending to business, even if the lending itself is not covered by the UCCC.

### ***Joint borrowers***

#### **Signing up guarantors as co-borrowers**

Current ANZ credit policy should prevent the practise of signing guarantors as co-borrowers from occurring. We support this recommendation. Additionally, ANZ will review training and reconfirm credit policies to ensure the problem, as reflected in the recommendation, does not occur in practise.

#### **Extent of a co-borrowers liability**

Current ANZ policy recommends co-borrowers seek independent legal advice, with the aim of ensuring each borrower understands the full extent of his or her liability. Additionally, credit policy requires that all borrowers' ability to service commitments is assessed prior to approving lending facilities.

#### **Termination of liability for future advances**

ANZ supports this recommendation. We note that our current credit policy prevents additional liabilities being advanced where agreement is not obtained from all parties or where the Bank is aware of a dispute between the parties. The Bank acts immediately upon notification from a co-borrower that there is a dispute between borrowers that will affect financial liabilities.

#### **Subsidiary cards**

ANZ agrees with the Reviewer that primary cardholders need to be able to cancel a subsidiary card, for various reasons including if their relationship with the subsidiary cardholder has broken down. Under current ANZ systems, primary and secondary cards have the same account and card number. As a result when a subsidiary or other

secondary card needs to be stopped, the entire account must be closed and a new account opened. The new account can then be held in the primary cardholder's name and new subsidiary cardholders nominated if desired. ANZ acknowledges this system is inflexible and has consequential impacts on cardholders. Whilst there are no explicit dollar costs for the primary cardholder there are other impacts as access to ATMs, Internet banking, phone banking and credit card transactions will be restricted for the time it takes ANZ to replace all the cards.

In 2002 ANZ will be introducing a new credit card platform which will enable separate account numbers to be issued to main and subsidiary account holders. As card accounts are re-issued after the implementation of the new system, the subsidiary cardholder(s) would be allocated different card numbers, making it straight forward to cancel a subsidiary card without otherwise impacting the operation of the primary cardholder's account.

We support the Reviewer's recommendation and until all our customers are holding accounts on the new card platform, we propose to meet the reviewer's recommendation through the cancellation and reissue of accounts. Whilst we understand this is not ideal, we will make every effort to act fairly and reasonably in the interests of our customers.

### **Mutuality and set off**

We agree with the Reviewer's recommendation. Our current terms and conditions state that.

*"ANZ can combine the balances of two or more of your accounts, even if the accounts are at different branches. It can also do this if both accounts are in the same joint names. This may happen when one of your accounts is overdrawn or is in debit and another is in credit.*

*This means that the credit balance in one account can be used to repay to ANZ the debit balance in another account. ANZ will promptly inform you if it has combined any of your accounts. ANZ need not notify you in advance.*

*You should not treat your accounts as combined unless ANZ has agreed to such an arrangement."*

### **Dispute Resolution**

We agree with the Reviewer's recommendations on complaint handling.

Our experience demonstrates that a complaint is often best resolved with a telephone call that enables the manager of the complaint to be more flexible than if they were purely dealing with the complaint in writing. As such, we would prefer the Code reflect a technology neutral perspective that allows for complaints to be resolved via any medium. We believe the clause

“require banks to provide written reasons for its decisions” should be amended to reflect the reality that many complaints are resolved to the customer’s satisfaction over the telephone. The clause could be amended to “require banks to provide written reasons for its decision **upon request**”.

Additionally, we are able to advise customers of the name and contact number of the person who is managing their complaint, but the person who investigates the complaint may well be someone else. Our dispute resolution unit handles complaints and disputes centrally. In order to resolve complaints and disputes, our staff generally need to refer the matter to a specialist area for investigation, such as mortgage operations, card collections etc. As such, ANZ suggests the recommendation “ensure that customers are notified of the name and contact number of a person who is investigating their complaint” could replace the word “investigating” with “managing”.

It would also be useful to include a clause in the Code that encourages customers to approach the bank’s internal dispute resolution process before approaching the external dispute resolution process at the ABIO. We believe this will reduce the number of complaints that are received by the Banking Ombudsman scheme without the bank that is the subject of the complaint ever knowing of the matter. These complaints are required to be referred back to the bank for internal resolution before the Ombudsman is able to address them.

Additionally, as mentioned previously, ANZ recently announced the introduction of a Customer Charter and an internal Customer Advocate. The ANZ Customer Charter will make promises encompassing the banks commitment to customer service standards and will focus particularly on an improved complaint resolution process. The role of the ANZ Customer Advocate is to ensure the satisfactory and impartial resolution of customer issues and disputes.

Briefly the proposed four-step dispute resolution process to be followed upon the introduction of the ANZ Customer Charter is as follows:

**Step 1:** Customers will be asked to contact the ANZ area or branch with which they have been dealing.

**Step 2:** If the complaint is not resolved to the customer’s satisfaction, the customer can contact our complaints unit to escalate the complaint. Customers will be able to contact the complaints unit via a freecall number, email, fax or by mail. Contact details will be clearly publicised in the Charter.

**Step 3:** If the customer disagrees with the decision of our complaints unit, the customer may appeal to our Customer Advocate, who will seek to resolve the dispute fairly and impartially. The Customer Advocate’s Office will also be able to be contacted via phone, email, fax or by mail. The customer can elect to take their complaint from our complaints unit straight to the ABIO if they prefer. It is not intended that appeal to the Customer Advocate is a compulsory step within our internal complaint

process if the customer is dissatisfied with the response from our complaints unit. However, we are aiming to make the Customer Advocate a fair, impartial and credible role to resolve complaints for customers.

**Step 4:** If our Customer Advocate or complaints unit is unable to resolve the customer's complaint, the complaint can be referred to the Australian Banking Industry Ombudsman, Financial Industries Complaints Service, Superannuation Complaints Tribunal or Insurance Enquiries and Complaints Ltd depending on the product or service which is the subject of the complaint.

This process will commit ANZ to responding quickly to complaints we receive. There will be no charge attached to our complaint resolution process for our customers. The complaint unit will aim to resolve complaints within 10 days, or where the matter is complex, the customer will be updated about progress within 10 days and then regularly until the complaint is resolved.

ANZ is currently reviewing the Internal Dispute Resolution Process outlined above, as well as the roles of the Customer Advocate and other support staff in the Customer Advocate's Office, to ensure that we fully comply with ASIC guidelines addressed in ASIC FSRB Policy Proposal Paper No. 7, June 2001, "Licensing: External and Internal Dispute Resolution Procedures".

### **Electronic Communication**

We agree with the Reviewer's recommendation as to the extent that this will harmonise the Code of Banking Practise with the Revised EFT Code, which comes into effect on 1 April 2002.

Under the Electronic Transactions Act 2000, a person can satisfy a legal requirement to provide information in writing (or in paper form) with an electronic communication provided, amongst other things, the recipient has consented to the communication. Consent in these circumstances can be inferred by the conduct of the recipient, for example, where the recipient provides an e-mail address or applies for a product online. Where the communication is essential we will obtain explicit consent from the customer to supply the communication electronically. However, ANZ believes the Act permits flexibility appropriate to the circumstances. Therefore, where the communication is less important, we believe there should be flexibility to allow consent to be inferred by past conduct and past agreement to receive communications by electronic means.

The clause contained in the interim recommendations provides that a customer's agreement to receive electronic information must be by specific election. Although similar consent requirements are contained in the Revised EFT Code for individuals, the Code of Banking Practise

has a wider scope of operation as it will also cover small business. The consent provision proposed in the recommendation could restrict a Bank's ability to deliver products and services online across a wider range of customers.

An equivalent to the Commonwealth Electronic Transactions Act has now been passed by the legislatures of all States and Territories except West Australia. None of these has legislated for any exception for financial services from the ability to infer consent to electronic communication.

We note FSRB allows for initial and continuous disclosure to be performed electronically. ASIC has previously expressed its commitment to facilitating the electronic delivery of financial products and services. We recommend that ASIC's suggestion that a Best Practice Model for Electronic Commerce be debated by the industry, consumer groups and regulators should be adopted so that appropriate standards are incorporated into the Code with the aim of providing transparent and adequate levels of consumer protection. We further note that electronic communication is a growing and rapidly changing field. Therefore the model of consumer protection will need to be assessed and amended in line with consumer behaviour and the available technology. We believe this is best achieved by any provision in the Code being consistent with the Commonwealth and States' Electronic Transactions Acts.

## **Issues on which further views sought**

### **Any technical barriers or limitations to implementing the recommendation that the Code apply the substance of UCCC requirements (sections 31-34) to small business statements of account and related information**

ANZ does not see any technical barriers or limitations to implementing the recommendations that the Code apply the substance of UCCC requirements (sections 31 to 34) to small business statements of account and related information. We only note that it is not current standard practice to include small business in these provisions and therefore we will require time to comply.

Under the ANZ Customer Charter, ANZ is committing to treating all individual and small business customers fairly and equitably. We see this commitment as supporting the notification requirements within sections 31 to 34 of the UCCC.

As noted earlier, some services classified as small business credit products, such as Indemnity Guarantees and Documentary Credit facilities, should not be required to comply with UCCC sections 31 to 34.

### **How the needs of consumers with low literacy levels might be met through improved disclosure and other documents.**

ANZ is currently funding research into adult financial literacy. We expect this research will identify the issues involved in adult financial literacy, one of which is likely to be literacy levels.

As noted earlier, ANZ has developed a Customer Charter. One of the key commitments within the Charter will be a commitment to providing all material in plain language. This will assist customers to understand and interpret bank information.

### **The suggestion that the payments systems code require advertising and point of sale promotion of certain types of accounts to include specific reference to the institution's contractual right to unilaterally change terms and conditions**

Requiring additional information in advertisements can be quite complex and have the unintended consequence of making advertising less palatable for the financial institution. Issues that need to be addressed when prescribing specific information in an advertisement include matters such as; defining "advertising", how different forms of advertising will comply (print, TV, radio, Internet) and what satisfy's the information standard. A useful reference point for the types of matters that need to be addressed can be found in the NSW draft bill on mandatory comparison rate disclosure in advertising.

ANZ believes an easier way forward may be to require banks to ensure that disclosure of the institution's contractual right to unilaterally change terms and conditions be made prominent in the Terms and Conditions brochure provided to customers at the time of opening an account or when changed. Prominent could then be defined, for example, as notification being made on the front cover of the brochure, in bold and/or as an initial point in the Terms and Conditions.

**The efficacy or otherwise of the suggestion that customers be offered the option of being able to place a stop on credit card accounts in certain circumstances**

As discussed above under "subsidiary" cards, ANZ agrees with the Reviewer that primary cardholders need to be able to cancel a subsidiary card, for various reasons including if their relationship with the subsidiary cardholder has broken down. The Reviewer has also sought views as to whether a bank should offer the customer the option to place a stop on a credit card account when:

- A customer has disputed the transactions debited by the merchant;
- The credit limit of the card may have been exceeded; and
- That merchant is continuing to debit the account periodically

ANZ does not see any problems offering the customer this option. We note that the customer will also need to be fully informed of the effect of placing a stop on their account. The customer must be aware that this will prevent them, or any subsidiary cardholders, from using their credit card account, including for direct debits and Bpay. This may not be suitable for all customers.