



COMMONWEALTH BANK OF AUSTRALIA

**SUBMISSION TO THE REVIEW OF
THE CODE OF BANKING PRACTICE**

1 AUGUST 2000

INTRODUCTION

The Commonwealth Bank of Australia (the Bank) is pleased to make a submission to the review of the Code of Banking Practice (the Code) being undertaken by Mr Richard Viney (the Review).

The Bank believes that the Code has worked well as a statement explaining the relationship between banks and their customers and embodying good banking practice. Given this, the Objectives and Principles set out in the Code's Preamble which guide its implementation remain relevant and should continue to be the basis of the Code's operation.

The effects of deregulation and emerging technologies continue to revolutionise banking services in Australia. In 1994, over 50% of all Commonwealth Bank transactions were conducted over the branch counter; currently the figure is less than 20%. This means that four out of every five banking transactions are conducted electronically: e.g. through Automatic Teller Machines; Electronic Funds Transfer Point Of Sale (EFTPOS); telephone banking or the Internet. Alongside the developments in banking practice, the regulatory regime governing banking services has also developed and expanded.

It is against this background that the ongoing relevance and effectiveness of the obligations in Parts A, B and C of the Code must be reviewed.

NEED FOR REFORM OF THE CODE

The Bank suggests that due to regulatory developments that are now in progress, and in order to avoid a duplication of regulation once these developments are finalised, the Code would be most valuable as a concise statement of principles supported by a dispute resolution scheme.

Since the Code was published in 1993, there have been several regulatory developments, such as the Uniform Consumer Credit Code and the Electronic Funds Transfer (EFT Code), which have impacted on the scope and operation of the Code. The Code's role in prescribing the conduct of banks is perhaps less significant as a result of these developments. However, it remains a relevant and effective means of communicating the relationship between banks and their customers including standards of good banking practice and service, disclosure of information and dispute resolution procedures.

The Code will only be effective to the extent that it is consistent with the legislative regime and other relevant codes of conduct. As a result of two major legislative developments, namely the Financial Services Reform Bill and the Privacy (Private Sector) Amendment Bill, the Code will, in the very near future, need significant amendment to bring its terms in line with statutory regulation. There are also impending changes in self-regulation, notably the expanded

provisions of the EFT Code. Any suggestions for amendments to the Code of Banking Practice arising from the present Review will need to be considered in light of these major reforms. While it would be beneficial to await the finalisation of these regulatory reforms, the Bank recognises the importance of a timely review of the Code and the need to avoid any unnecessary delay.

We suggest when considering the future role of the Code these significant regulatory reforms be taken into account in assessing whether the Code would be more relevant and useful to customers as a concise statement of principles and obligations. These issues are discussed in further depth below.

Impact of Legislative and Other Regulatory Developments

Financial Services Reform Bill

The Financial Services Reform (FSR) Bill, once passed, will provide a single licensing regime and uniform disclosure requirements for all financial services products, including banking services.

The Commentary accompanying the Bill states that its disclosure requirements are intended to replace the disclosure requirements contained in the Code of Banking Practice and the EFT Code of Conduct. However, the Commentary also notes that the Bill may need clarification in relation to specific products and providers and notes that this may be achieved through the use of voluntary codes of conduct. The Bill sets out disclosure requirements for general terms and conditions, fees and charges (or the total 'cost' of the product), taxation implications, changes to fees, charges or other material changes, confirmation of transactions, statements of account and dispute resolution procedures.

If the FSR Bill is passed in its present (or similar) form, the disclosure sections of the Code may require amendment to be consistent with its requirements. While the Code must be consistent with the FSR Bill there would be little value in amending the Code to mirror its provisions. This would result in the type of duplication of regulation the industry and government is seeking to avoid. Such amendment would also see the Code become unnecessarily prescriptive.

There would however be value in the Code as a concise statement of the principles and obligations for banking products and services under the FSR legislation.

Privacy (Private Sector) Amendment Bill

Section 12 of the Code will need to be reconsidered in light of the Privacy (Private Sector) Amendment Bill. Should the Bill be passed in its present or similar form, section 12 of the Code will have no effect to the extent that it is inconsistent with the new statutory requirements.

The Bill gives organisations the option of either working under the National Privacy Principles in conjunction with the terms of the Bill, or adopting a privately drafted approved privacy code. If the Code were to continue to contain provisions relating to privacy, any such provisions would need to comply with the standards set by the legislation and be endorsed as an approved code. The

Bank is at present considering the best approach to take in relation to the protection of privacy under the new regime.

Electronic Funds Transfer (EFT) Code

The Bank strongly supports the initiative of the Australian Securities and Investments Commission (ASIC) to extend the EFT Code to take account of new and emerging electronic funds transfer technologies. It is in the general interest that the EFT Code provides users of payment services with clear protections, ensures confidence in payment systems, and does not entail unnecessary cost burdens or impede future developments.

Finalisation of the EFT Code has been postponed until the FSR Bill has been settled. The Bank endorses this decision in order to avoid multiple and/or conflicting compliance arrangements. In turn, any rewrite of the Code of Banking Practice must take into account proposed changes to the EFT Code in areas such as provision of terms and conditions and disclosure, privacy and confidentiality and dispute resolution and ensure that the terminology used between the two codes is consistent.

The Future of the Code of Banking Practice

Although the various regulatory developments outlined above will assume some of the ground previously covered by the Code, the Bank still sees the Code as playing a valuable role in the relationship between the Bank and the Customer.

The Code's value lies in it being a relatively straightforward and easy to understand account of the relationship between banks and customers. Caution must be exercised to ensure that these benefits are not sacrificed by making the Code overly detailed and prescriptive.

We suggest that the Code would best fit into the new regulatory regime as a brief and concise statement of principles of bank conduct, supported by the existing dispute resolution mechanism (and perhaps incorporating an industry privacy code). The statement could signpost other forms of industry and statutory regulation where appropriate. Such a statement would:

- provide customers with a concise and easily understood statement of the duties owed by banks to their customers, including those under the FSR Bill; and
- represent a well publicised commitment on behalf of banks to treat customers according to a set of broad principles.

Retaining the present ABIO administered dispute resolution scheme would also satisfy the requirement contained in the FSR Bill that issuers of financial products establish external dispute resolution procedures to resolve complaints raised by retail clients (the present dispute resolution procedure would need approval from ASIC).

The Bank regards the change in regulatory environment as an opportunity to make the Code of Banking Practice more relevant for customers. A concise and readable Code, capable of wide distribution and exposure, would benefit customers by providing an easy to understand reference point to the rights and obligations of both parties of a banking relationship.

In line with the stance recently adopted by financial services regulators, a revised Code should reflect the various ways in which banking can now be conducted and be technology neutral.

IMPROVEMENTS TO THE CODE IN ITS PRESENT FORM

Given the situation discussed above, there is limited scope at the moment for proposing specific improvements to the Code. However, the Code's Preamble requires amendment to reflect the actual process used in monitoring compliance with the Code.

Monitoring

ASIC now reports on compliance with the Code in place of the Australian Payments System Council. Code subscribers provide ASIC with an annual industry wide report on the operation of the Code and details of the number and type of disputes which have arisen. ASIC uses this information to compile an annual industry wide report on compliance with the Code and its general operation.

The Monitoring section of the Code's Preamble should be amended to reflect this new process.

CONCLUSION

While the Bank acknowledges the need to review the Code's operation in line with the time limits set out in the Code, it is the Bank's view that current regulatory developments make it difficult for the Review to reach comprehensive findings on the Code's continuing relevance and effectiveness. Accordingly, the Bank would welcome the opportunity to participate in a wide ranging discussion of the Code's future once the regulatory environment is more settled.

The Code serves a worthwhile purpose in communicating the relationship between banks and their customers. The Bank therefore supports continuation of the Code and the retention of its objectives and principles, while urging consideration of the benefits of rewriting it as a concise statement of the principles and obligations of the banking industry to its customers, supported by the existing dispute resolution mechanism.