



TAILORED FINANCIAL SOLUTIONS

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Review of the Code of Banking Practice
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NATIONAL AUSTRALIA BANK SUBMISSION ON THE REVIEW OF THE CODE OF BANKING PRACTICE

Dear Dick

I welcomed the opportunity to talk with you prior to putting an initial submission on the role the National believes the Code of Banking Practice (the "Code") should play in the future.

The National, as a member of the Australian Bankers' Association is pleased that the Code is being independently reviewed.

I would ask that you treat this submission as an initial one only. We would like the opportunity to comment on any submissions that have the potential to impact on the National, as well as on any recommendations that you may make as a result of the review.

Attached are some specific comments on the operation of the Code as it currently exists. These comments are made in the context that there is legislation currently before Parliament and amendments to various codes of practice that significantly overlap with the Code. In particular amendments to the Privacy Act, the draft Financial Services Reform Bill (FSR Bill), and the proposed changes to the Electronic Funds Transfer (EFT) Code of Conduct make it difficult to envisage the Code continuing in its present form.

Since the Code's initial development, the structure and competitiveness of the industry has changed significantly. The advent of new technologies and the extension of existing ones have altered the relationship between banks and their customers. Customers have been provided with greater choice of product and access, while the banks have sought to ensure that efficiencies inherent in new delivery and access mechanisms are captured by the banks, their customers and shareholders.

The National is concerned to ensure that the regulation of the financial sector, whether that be through legislation or self-regulation is simple, efficient and avoids overlaps and inconsistencies. If regulation meets these criteria, then it is likely that both the needs of customers and the needs of the financial institution can be met.

However, it is our contention that this is not currently the case. Any attempt to broaden the scope of the Code can only increase the complexity and cost of regulatory compliance as well as the potential for misunderstanding by customers and staff.

Inconsistent Codes and Legislation

In part, the Uniform Consumer Credit Code (UCCC) has produced overlaps with some elements of the Code. Examples include the UCCC disclosure requirements and the provisions relating to guarantees, advertising and notice of changes. All these areas are currently covered by the Code as well and in a number of cases do so in a way that is inconsistent with the FSR Bill.

Additionally, the FSR Bill currently before Parliament will have a fundamental impact on the relationship between the National and its customers, and hence on the relevance of the Code. In particular, the FSR Bill will proscribe duties of disclosure for all retail and investment financial services products as well as standards of training. The Bill also covers dispute resolution. All these areas are currently covered by the Code in a way that is inconsistent with the FSR Bill.

In addition, the NSW Government has introduced legislation in relation to "comparison rates" which is also covered by the Code.

The amendments to the Privacy Act dealing with the private sector will largely make Section 12 (Privacy and Confidentiality) redundant. Extensive new privacy obligations will be imposed on banks as well as on other organisations. These will be in addition to the privacy obligations that already apply to banks, both at common law and under equitable principles, and other codes (for example, the Australian Direct marketing Association code). Further regulation in this area is not needed.

It should also be noted in this context that the Australian Banking Ombudsman's Scheme (ABIO) is being amended to cover privacy disputes. Accordingly, there should be no concern about customers with privacy concerns having access to a dispute resolution scheme. The amendments to the ABIO are designed to give customers access to an alternative dispute resolution scheme in a manner consistent with the proposed amendments to the Privacy Act. The new privacy legislation, together with the amendments to the ABIO will essentially make the privacy and confidentiality provisions of the Code redundant.

Further overlaps exist between the Code and the provisions of the EFT Code of Conduct (in both its current and proposed forms). In particular, the provisions concerning disclosure of terms and conditions and privacy are not consistent.

It is arguable therefore that the existing Code has become all but irrelevant, given the wide range of legislation and other codes that already exist or are proposed. At a minimum, given the uncertainties arising from the raft of draft or proposed legislation in Parliaments that affect customer relations, the National considers that any final decisions on the Code or its content should be made in the full knowledge of new legislation on the industry.

Community Service Obligations

The National is aware that some organisations have called for the Code to incorporate contractual obligations in relation to minimum levels of customer service and access, particularly in relation to traditional branch access. The view has also been put that

banks should be regulated in terms of fees and charges, whether this is through legislation or self-regulation.

The National strongly opposes any of these suggestions. Inter alia, the market is highly contestible and any effort to proscribe service and access issues will not only increase costs to customers but will put banks at a significant competitive disadvantage to non-bank competitors and to new entrants which are not constrained by traditional service delivery mechanisms.

It should also be noted that this prescriptive approach was rejected when the Consumer Credit Code was passed.

Small Business

The view has also been put that the Code should be extended to small business. The Australian Bankers' Association "Small Business Principles", which the National has adopted, were developed in response to these views. It is not considered that there is any need for further regulation in this regard.

Further the ABIO Board has agreed that the definition of "small business" included in the ABIO Terms of Reference should be extended to allow a greater number of small businesses to have access to the ABIO. It is anticipated that the definition of "small business" used for this purpose will be consistent with the final form of the FSR Bill.

In particular, the National is concerned that support from the ABIO Board for the inclusion of small business may be used as an argument for extending the Code to small business. This was not the intent and is inconsistent with the existence of the Small Business Principles.

Please do not hesitate to contact me if you require further information.

Yours sincerely

Ian McLean
Head of Group Government, Regulatory and Industry Affairs

ATTACHMENT

CBP Objectives

- The objectives should be reviewed in light of changes to the Corporations Law, the Privacy Act and other applicable legislation and Codes that now, or will in the future, cover the current objectives.
- If privacy and confidentiality provisions are to remain in the Code the objectives should recognise the need for a reference to the effective management of customer information between group entities, between the bank and external suppliers and between the bank and those with which it has external alliances.

Monitoring

- We suggest that there be a discussion on this with ASIC and APRA as to whether the ASIC might be a more appropriate monitoring body.
- It is not clear why the RBA should receive reports in the first instance.
- ABA and individual banks should be consulted on the appropriate information to be provided.

Staff Training

This section overlaps with the draft Financial Services Reform Bill

Definitions

Clause 1.1

1. Account

This definition should be expanded so that it is clear that it includes all "accounts" that may be accessed by any form of electronic commerce.

2. Banking Service

Convergence and competition in the financial services industry means that this definition should be reviewed. The starting point here is that customers should be entitled to similar protections in relation to "banking products" regardless of where these are sourced. At the same time, in the interests of competitive neutrality, consideration needs to be given as to whether non-bank providers of prudentially supervised deposits and other providers of credit should be subject to similar provisions as those covered in the Code.

The definition should also expressly include those products and services delivered by way of electronic means.

3. Standard Fees and Charges

This definition should be amended to specifically exclude Government charges and taxes.

Clause 1.4

This definition should be amended so as to be consistent with the new form of the EFT Code of Conduct (when that form is settled).

Disclosure: Terms and Conditions

Clauses 2.1 and 2.2 should be amended to either delete the reference to disclosure in writing or recognise that disclosure can be by electronic means.

Disclosure: Cost of Credit

This section is likely to be redundant if the comparison rate legislation that is proposed in the New South Wales Parliament becomes law throughout Australia.

Variation to Terms and Conditions

9.1. Notification should include notification by electronic means.

9.2. Ideally this provision should be deleted. The UCCC does not require the Bank to give notice of a change to a government fee or charge and it is not clear why the Code should. If the section is to stay, there is a need to clarify that the Bank will provide notification of a government charge or tax only where that charge or tax is related to the operation of an account covered by the Code. The means of notification should include electronic means.

9.3. The following amendments are recommended:

- Communications to include electronic means.
- The clause should be revised to ensure consistency with the UCCC provisions dealing with the notice of variations. This would be helpful in allowing consistency in a Bank's procedures and for contract documents relating to both debit and credit products.
- Twenty-four hours notice of variations to terms and Conditions has proved administratively cumbersome. We suggest that banks be required to provide notice within 3 working days.
- The clause should specifically exclude Foreign Currency Accounts where it is not possible to advise changes of the frequency of other retail products.

Account Combination

10.2. Update reference to "Social Security".

Foreign Exchange Services

11.2. Notification to include electronic means.

Privacy and Confidentiality

For the reasons given in our covering letter, this section should be deleted.

Payments Instruments

This section should be reviewed to ensure consistency with the EFT Code of Conduct once the current review is finalised.

Guarantees

- 17.5. At its discretion, the Bank should be able to require a prospective guarantor to seek independent legal advice and to provide evidence that that advice has been obtained.

Dispute Resolution

- 20.2. Change "branches" to "outlets". Websites should include general information about the internal dispute resolution mechanism.
- 20.3. Communications should be able to be made through electronic means.