

BANKING CODE OF PRACTICE

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BACKGROUND/INTRODUCTION

The Tasmanian Government has a keen interest in banking issues, in part because of recent local experience relating to the recent Trust/Colonial and Commonwealth mergers but also because Tasmania is the most decentralised state in Australia.

In the last 12 months in particular, national controversy continued regarding bank closures and an ongoing focus on fees and charges have left the public with a cynical view of the banking industry's regard for consumers. Therefore, this review of the Code of Banking Practice should be seen as an opportunity for the banking sector to review its performance and to lift its game in the public arena.

While technology provides opportunities both for new ways of doing business and for reducing costs, we should be mindful that behind each account is a person with human needs. From this perspective, the focus of a Code of Banking Practice should be towards issues such as customer service, rather than the technical detail of banking — people rather than accounts.

It is my pleasure to respond briefly to this review of the Code of Banking Practice and I have detailed below specific recommendations for improvement.

MONITORING OF THE CODE

The Australian Securities and Investments Commission (ASIC) assumed the role of monitoring industry codes in July 1998.¹ However, the Banking Code still states that it is monitored by the Australian Payments System Council. This raises an important issue of currency and begs the question as to what provisions might be made for amendment of the Code for future changes. While the substantial content of a Code might be changed only through formal review, there should be some means for making technical changes in the intervening period.

Recommendation 1	That a mechanism be established to make ongoing minor and technical changes to the substance of the Code.
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Significantly, it should be noted that three Australian Banks have not adopted the Code and are not therefore subject to its provisions. These banks include the AMP bank. The ASIC report dated January 2000, which covered the period April 1998 to March 1999, stated that AMP would be fully compliant by early 2000. It is not clear if this is yet the case. Again, there should be some facility to update the currency of information about membership more frequently than once each year.

¹ ASIC has reporting responsibility for the Code of Banking Practice, the Building Society Code of Practice, the Credit Union Code of Practice and the EFT Code of Practice.

Recommendation 2 That provision is made either within the Code or on the ASIC web site to ensure that information, such as details of the participating banks are updated more frequently than once a year.

The ASIC report noted bank compliance with the Code and details minor transgressions. However, it should be noted that these reports are reliant totally on self reporting of internal compliance programs and does not rely on any external monitoring. While some banks have internal structures reporting on Code compliance matters directly to the chief executive, no banks have implemented any form of external monitoring.

Recommendation 3 That systems be established for external monitoring of compliance with the Code of Banking Practice.

SCOPE OF THE CODE

There are two significant limitations to the scope of the existing Code. Firstly, the definition of 'Banking Service' contained in the Code's 'Definitions and Application', excludes from the application of the Code, '...a variation of a term or condition of a facility or a debt to a bank that arises as a result of a withdrawal of more than the amount by which an account is in credit without the approval of the Bank.' It is unclear as to why a variation of a term or condition of a facility should be excluded from the Code, particularly when such variations can be made unilaterally by the bank. It is proposed that this exclusion be removed. Further, the exclusion of a debt to the bank arising from an unauthorised withdrawal appears not to take account of the possibility that such a withdrawal might arise from an error by the bank and not the customer. This occurred to a number of former Trust Bank customers during the transfer to the Colonial Bank. In this case a number of regular deposits were not correctly made because of systems difficulties. However, automatic deductions for payments meant that accounts were overdrawn and fees applied. As most of the people effected were pensioners, the scope of the Code should be expanded to capture errors of this type.

Recommendation 4 That variations of terms or conditions of facilities and unauthorised withdrawals be covered by the Code.

Secondly and of greater concern is the exclusion from the Code of a considerable amount of banking activity by the definition of 'Customer'. This definition limits the application of the Code to 'Banking Services' which are wholly and exclusively for private or domestic use. While, it might be appropriate to exclude medium and large business, the distinction between small business and consumers is not always clear. For this reason, the Uniform Consumer Credit Code applies to credit provided wholly or predominantly for personal, household or domestic purposes². However, the

² Section 6(1)(b) Uniform Consumer Credit Code

Code of Banking Practise should not be restricted by the limited application of the Consumer Credit Code. Instead it should apply to all consumer and small business Banking Services.

Recommendation 5 That the scope of the application of the Code be extended to include small business.

DISCLOSURE

INFORMATION CONTAINED IN STATEMENTS OF ACCOUNTS

Existing information in the Code relating to operations of accounts is reasonably comprehensive. However, one common complaint is that account statements are either difficult to obtain and when they are obtained do not contain adequate information. With respect to ease of access, many banks do not seem to be able to provide copies of statements outside of the usual cycles. Such out of cycle requests are often required by community organisations prior to general meetings. For personal usage, the Internet provides ready access to accounts on-line at no additional cost. However, where cheque accounts are operated without electronic access, this appears to be a problem. One of the solutions might be to provide on-line access from terminals contained within bank branches for people without Internet access. Such facilities could accommodate requests for account statements which could be satisfied immediately and at minimal cost. Alternately, it might be possible to provide a general on-line facility for people who do not wish to use Internet banking but which enables them to download and print account statements simply by using a card number and pin.

Recommendation 6 That Banks investigate means of providing easier on demand access to account statements other than through Internet Banking.

A more serious concern is the lack of adequate information on account statements as to the purpose of a fee or charge. It is not uncommon for account statements to contain a line simply stating that a fee has been imposed and for the reference to be 'account fee' or 'fee'. It is often not possible to identify what service has been provided for the relevant fee. This is unreasonable from the perspective that when a fee appears on a statement, it has already been debited and therefore paid by the consumer. No other business could reasonably expect to invoice a consumer requesting payment of an amount and expect payment with such a paucity of detail.

While the Code currently requires³ that a bank make available on request a schedule containing the 'Standard Fees and Charges which currently apply to the Banking Service', there appears to be widespread misunderstanding about the origin of many fees. Therefore, it would seem that many consumers would

³ Part/Section 4.1

have difficulty matching the fees and charges information with that contained on various account statements.

It is also noted that the Code contains provisions to notify customers of changes to fees. From this perspective, there seems to be a significant amount of information provided and it may be that the problem is not the volume of information as much as access at specific points in time. It is also appreciated that if all demands for more information on account statements were met, that these documents would be many pages longer than at present. Therefore, one solution might be to provide an Internet address for each banking facility and for this Internet address to be printed on the statement. The Internet address could provide detailed information about the nature and method of calculating fees for that particular banking service.

Recommendation 7 That Banks investigate means of providing better and more detailed information about fees and charges and better access to that information.

DISCLOSURE GENERALLY

Despite the argument that some aspects of disclosure should be strengthened, there is a view that disclosure is adequately dealt with by other laws and that the inclusion of disclosure generally in the Code duplicates those laws. For example, the Uniform Consumer Credit Code contains detailed disclosure provisions. Also, the Commonwealth's 'Clerp 6' reforms will add new disclosure regimes for deposit taking institutions including those relating to non-consumer transactions. The Code should be revised with a view to making references to this other regulation and should avoid duplicating their provisions. A better approach would be to signpost other provisions within the Code of Banking Practice. This signposting might include information about the general rights or obligation conferred and where details of that information might be obtained.

Recommendation 8 That the Code of Practice signpost information in existing legislation, such as disclosure information rather than duplicate these provisions.

DISPUTE RESOLUTION

Dispute resolution appears to be problematic for banks and it is reported that many banks do not make available information on dispute resolution as required by the Code.⁴ To the extent that this problem arises, it underscores the problems already referred to above, which arises from a lack of any external monitoring of the Code. Further, I am advised that a large proportion

⁴ 20.2 of the Code of Banking Practice states that 'A Bank shall have available in branches general descriptive information on: (1) the procedures for handling such a dispute; (ii) the time within which the dispute will normally be dealt with by the Bank; and (iii) the fact that the dispute will be dealt with by an officer of the bank with appropriate powers to resolve the dispute.'

of complaints to the Banking Industry Ombudsman Scheme have not been first considered by Internal Dispute Resolution Schemes. To this extent there appears to be an urgent need for a review of both process and commitment on behalf of banks. Finally, the time taken for the resolution of disputes lodged with the Banking Ombudsman appears to be lengthy and there would be benefit in streamlining of this process.

Recommendation 9 That a separate review be conducted on the effectiveness of both existing internal dispute resolution processes and the Banking Ombudsman. That benchmarks be established for turnaround times for dispute resolution and that monitoring be conducted by an external party.

CUSTOMER SERVICE STANDARDS

As mentioned in the introductory paragraphs, the focus of a Code of Practice should be about people, not accounts. From this perspective, the Code provides an opportunity to establish a set of standards or benchmarks which define what good customer service means. Customer service standards can relate to varied issues but might include standards for waiting time in queues, safety for automatic teller machines, the level of knowledge and training of counter staff, waiting time in phone queues and many other issues. Generally, customer service standards would establish basic principles of service delivery and establish standards and benchmarks which indicated compliance with these principles.

The development of appropriate customer service standards would provide an opportunity to shift the focus of the Code of Banking Practice and of the delivery of Banking Services from a legalistic to a people focus. This approach would not only improve customer services but would greatly enhance the image of banks in the community.

Recommendation 10 That banks develop customer service standards which define good customer service and develop benchmarks for their achievement.

GUARANTEES

Guarantees have long been the focus of consumer concerns, not only to the activities of banks, but to all lenders. The Code of Banking Practice makes provision for guarantees but again questions arise about the restrictions placed on their application. Indeed, if we apply both the general limitation on the scope of the Code and the additional limitations applied to guarantees, it would appear that the Code applies to few of these arrangements.

The restrictions on guarantees appear to be based on a notion that only consumers require the protection which is afforded by the provision of adequate information and there are a number of concerns which arise from this approach. Firstly, there is good argument that a person who is a director, secretary or member of a company (and the other groups and persons

excluded from the Code) also needs information about the risk of providing guarantees. The need for caution and the need to seek further legal advice is not automatically removed simply by virtue of membership of that class of persons which is excluded from the Code.

Nevertheless, to return to an earlier point it is probably not necessary to duplicate provisions which exist in legislation and the extensive provisions of the Consumer Credit Code dealing with guarantees. However, if we accept the view that the Code of Banking Practice should extend beyond its current scope, then there may be a need to expand and strengthen the current provisions.

Recommendation 11 That the Code's current exclusions for certain classes of guarantors be removed.

Also of significance to consumers, is the problem referred to generally as 'Relationship Debt'. This issue certainly arises with guarantees but more frequently to joint accounts. The Code currently makes some reference in the provisions relating to joint accounts and subsidiary cards to the liability of those shared accounts. However, these references are generally inadequate and could be improved through greater focus and emphasis. For example, it would be useful to provide cautionary information to people taking out joint loans and establishing joint accounts including advice as to action which might be taken to limit liability in the event of relationship breakdown. A number of consumer organisations have developed pamphlets, and similar information could be provided to support appropriate protocols in the Code.⁵

Recommendation 12 That specific information be provided to consumers when entering into joint accounts or joint arrangements which warn them of the risks of relationship debt and measures which might be taken to minimise this risk.

⁵ See 'Relationship Debt' a brochure produced by the Department of Fair Trading NSW (available from the Department's web site at: www.fairtrading.nsw.gov.au/)

CONCLUSION

The issues raised in this brief submission highlight the need for substantial revision of the Code of Banking Practice. Most significantly, this review serves as a reminder that it is the actions behind the Code and not just the words contained within it which require attention. Collectively, banks comprise one of the most significant and influential institutions in the economic world. However, the success and value of this institution ultimately depends upon how they treat people.

This review represents an opportunity for the banking industry and the content of this submission simply surveys the landscape of possible improvements. I hope sincerely, that the banking industry will grasp this opportunity with enthusiasm.