
CODE OF BANKING PRACTICE (3 November 1993)

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AUSTRALIAN BANKERS' ASSOCIATION**

PREAMBLE

The Code of Banking Practice (the Code) seeks to foster good relations between Banks and their Customers (as defined below) and to promote good banking practice by formalising standards of disclosure and conduct which Banks that adopt the Code agree to observe when dealing with their Customers.

Objectives

The Code is intended to —

- (i) describe standards of good practice and service;
- (ii) promote disclosure of information relevant and useful to Customers;
- (iii) promote informed and effective relationships between Banks and Customers; and
- (iv) require Banks to have procedures for resolution of disputes between Banks and Customers.

Principles

These objectives are to be achieved —

- (i) having regard to the paramount requirement of Banks to act in accordance with prudential standards necessary to preserve the stability and integrity of the Australian banking system;
- (ii) consistently with the current law and so as to preserve certainty of contract between a Bank and its Customer; and
- (iii) so as to allow for flexibility in products and services and in competitive pricing.

Monitoring

The Australian Payments System Council may obtain from the Reserve Bank of Australia consolidated information based on reports and information provided by the Banks so that the

Australian Payments System Council may provide reports to the Treasurer of the Commonwealth on compliance with the Code and its general operation.

The Reserve Bank of Australia will receive each year from each of the Banks —

- (i) a report on the operation of the Code; and
- (ii) information concerning the number of disputes referred to in sections 20.3 and 20.4 of the Code, according to their categories and how each of these categories of disputes has been handled.

The information to be provided by the Banks to the Reserve Bank of Australia will be determined by the Reserve Bank of Australia with the Banks. Before such determination, the Reserve Bank of Australia will consult with the Australian Payments System Council.

Review

The Code shall be reviewed at least every three years in accordance with the Objectives and the Principles set out in this Preamble and having regard to the views of interested parties.

Staff Training

A Bank shall endeavour to ensure that its staff are aware of the provisions of this Code relevant to their duties and of the procedures for handling disputes with Customers of the Bank.

THE CODE

This Code (published on 3 November 1993) is in three parts:

- (i) Part A — Disclosures. This part describes the information which a Bank will provide to a Customer in respect of the Banking Services which the Bank offers to the Customer.
- (ii) Part B — Principles of Conduct. This part describes certain principles of conduct which a Bank will follow in dealing with its Customers.
- (iii) Part C — Resolution of Disputes. This part requires Banks to have dispute-handling procedures.

1.0 DEFINITIONS AND APPLICATION

1.1 In this Code and the Preamble:

“Account” includes, amongst others, a cheque account or an account that can be accessed by a cheque.

“Bank” means a corporation authorised by law to carry on the general business of banking in Australia that has adopted this Code.

“Banking Service” means a deposit, loan or other banking facility provided by a Bank to a Customer, but does not include a service in relation to a bill of exchange, 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.

“Customer” means an individual, when that individual, whether alone or jointly with another individual, acquires a Banking Service which is wholly and exclusively for his or her private or domestic use, but in any event does not include an individual who makes a written statement to the Bank, in relation to a Banking Service, that the Banking Service will not be acquired wholly and exclusively for that use.

“Related Entity” has the meaning set out in Section 9 of the Corporations Law.

“Standard Fees and Charges” means fees and charges normally charged by a Bank to its Customers in respect of a Banking Service at a particular time.

“Terms and Conditions” means those terms and conditions specifically applied by a Bank to a Banking Service but does not include any other terms and conditions that may apply by operation of law.

- 1.2** This Code is to be read subject to any Commonwealth, State or Territory legislation.
- 1.3** From the date on which a bank publicly announces that it adopts this Code:
- (a) that Bank will be bound by this Code in respect of any Banking Service that Bank commences to provide to a Customer; and
 - (b) that Bank will be bound by this Code other than sections 2.1, 2.2, 2.3, 7.1, 11.2 and 17.1 to 17.7 inclusive in respect of any Banking Service it is then providing to any individual who would have been a Customer if this Code had applied at the time that individual first acquired that service.
- 1.4** To the extent of any inconsistency, this Code is to be read subject to the Electronic Funds Transfer Code of Conduct, which governs transactions on an account initiated through an electronic terminal by the combined use of a card and a personal identification number.

PART A: DISCLOSURES

2.0 DISCLOSURE: TERMS AND CONDITIONS

- 2.1** A Bank shall provide to a Customer in writing any Terms and Conditions applying to an ongoing Banking Service provided by the Bank to the Customer. Those Terms and Conditions shall:
- (i) be distinguishable from marketing or promotional material;
 - (ii) be in English and any other language the Bank considers appropriate;
 - (iii) be consistent with this Code;
 - (iv) be clearly expressed;
 - (v) be provided at the time of or before the contract for the Banking Service is made except where it is impracticable to do so, in which case the Terms and Conditions shall be provided as soon as practicable after the provision of the Banking Service; and

- (vi) draw attention to the availability of the general descriptive information referred to in sections 6.1 and 6.2.

2.2 Any written Terms and Conditions referred to in section 2.1 shall include a statement to the effect that the relevant provisions of this Code apply to the Banking Service but need not set out those provisions.

2.3 A Bank shall include (where relevant) the following in its Terms and Conditions applying to a Banking Service:

- (i) the nature of all Standard Fees and Charges that then apply;
- (ii) the method by which interest, if any, is calculated and the frequency with which it will be credited or debited;
- (iii) the manner in which the Customer will be notified of changes to the Terms and Conditions and changes to interest rates, fees and charges;
- (iv) if appropriate, the fact that more than one interest rate may apply;
- (v) any minimum balance requirement or restriction on depositing money in, or withdrawing money from, an Account;
- (vi) in respect of term deposits:
 - the manner in which payment of interest and principal will be made;
 - the manner in which funds may be dealt with at maturity; and
 - the nature of any charge or variation to an interest rate resulting from a withdrawal in advance of maturity;
- (vii) in respect of a loan to the Customer, the repayment details;
- (viii) the frequency with which statements of Account will be provided;
- (ix) a statement that information on current interest rates and fees and charges is available on request; and
- (x) how a Customer or a Bank may alter or stop a payment service.

3.0 DISCLOSURE: COST OF CREDIT

3.1 A Bank shall make available to a Customer, a prospective Customer or an appropriate external agency the interest rates and Standard Fees and Charges applicable to a Banking Service offered by the Bank, for use in the preparation of a comparison rate.

4.0 DISCLOSURE: FEES AND CHARGES

4.1 A Bank shall, before or at the time of providing a particular Banking Service to a Customer for the first time or otherwise on request by a Customer, make available to the Customer a schedule containing the Standard Fees and Charges which currently apply to the Banking Service.

5.0 DISCLOSURE: PAYMENT SERVICES

- 5.1** Where a Bank provides a Customer with a direct debit or credit payment service, an automatic payment service or access to an account by means of instruction via telephone or personal computer, the Bank shall make available to the Customer details of any bank fees or charges applying to the service.

6.0 DISCLOSURE: OPERATION OF ACCOUNTS

- 6.1** A Bank shall provide to a Customer or prospective Customer for a Banking Service upon request general descriptive information concerning Banking Services, including where appropriate:

- (i) Account opening procedures;
- (ii) the Bank's obligations regarding confidentiality of information relating to the Customer and the Customer's right to instruct a Bank in accordance with section 12.2(b) not to disclose information to a Related Entity of the Bank and the means by which that instruction can be given, such as by marking a box in an application form;
- (iii) complaint handling procedures;
- (iv) the Bank's right to combine Accounts;
- (v) bank cheques;
- (vi) the advisability of a Customer informing the Bank promptly when the Customer is in financial difficulty; and
- (vii) the advisability of a Customer reading the Terms and Conditions applying to the Banking Service.

- 6.2** A Bank shall provide to a Customer who opens a cheque account, and to other Customers on request, general descriptive information on:

- (i) the time generally taken for clearing a cheque and how a cheque may be specially cleared;
- (ii) the effect of crossing a cheque, the meaning of "not negotiable" and "account payee only" and the significance of deleting "or bearer" when any of these expressions appear on a cheque;
- (iii) how and when a cheque may be stopped;
- (iv) how a cheque may be made out so as to reduce the risk of unauthorised alteration; and
- (v) the dishonour of cheques, including post-dated and stale cheques.

PART B: PRINCIPLES OF CONDUCT

7.0 PRE-CONTRACTUAL CONDUCT

- 7.1** A Bank shall have readily available any Terms and Conditions of each Banking Service it currently offers to Customers or prospective Customers.
- 7.2** A Bank shall disclose the existence of any application fee or charge and whether the fee or charge is refundable if the application is rejected or not pursued.
- 7.3** Where a fee or charge is levied by a Bank for the provision of a bank cheque, a travellers cheque, an inter-bank transfer or the like service the Bank shall disclose the fee or charge to a Customer upon request when the service is provided or at any other time.

8.0 OPENING OF ACCOUNTS

- 8.1** A Bank shall provide to a Customer or prospective Customer upon request general descriptive information (which may consist of or include material made available by a government) about the identification requirements of the Financial Transaction Reports Act 1988 (Cth) and the options available to the Customer or prospective Customer under tax file number legislation.

9.0 VARIATION TO TERMS AND CONDITIONS

- 9.1** When, in relation to a Banking Service, a Bank intends to introduce a fee or charge (other than a government charge referred to in section 9.2), or to vary the method by which interest is calculated or the frequency with which it is debited or credited, the Bank shall provide written notice of the change to each affected Customer at least 30 days before it takes effect.
- 9.2** A Bank shall notify affected Customers of the introduction or variation of a government charge payable directly or indirectly by its Customers by advertisement in the national media or local media or in writing to affected Customers, unless the introduction or variation is publicised by a government, government agency or representative body.
- 9.3** A Bank shall notify affected Customers of other variations to the Terms and Conditions (including a variation of Standard Fees and Charges or of an interest rate) in relation to a Banking Service by advertisement in the national media or local media or in writing to affected Customers, no later than the day on which the variation takes effect.
- 9.4** Unless otherwise agreed, a Bank may give any written notice to a Customer at his or her mailing address that was last recorded with the Bank. A Bank may require a Customer to notify the Bank promptly of a change to his or her name or address.
- 9.5** If a Bank considers there are sufficient changes to warrant doing so, the Bank will make available a consolidation of the Terms and Conditions applying to a Banking Service.

10.0 ACCOUNT COMBINATION

- 10.1** A Bank shall inform a Customer promptly after exercising the Bank's right to combine Accounts affecting the Customer.

- 10.2** In exercising a right to combine Accounts, a Bank shall comply with any applicable requirements of the Code of Operation for Social Security Direct Credit Payments.

11.0 FOREIGN EXCHANGE SERVICES

- 11.1** In providing a foreign exchange service, other than by credit or debit card or travellers cheque, a Bank shall provide to a Customer:

- (i) details of the exchange rate and commission charges that will apply or, if these are not known at the time, details of the basis on which the transaction will be completed; and
- (ii) an indication of when money sent overseas on the Customer's instructions would normally arrive at the overseas destination.

- 11.2** Prior to granting a foreign currency loan in Australia, a Bank shall provide to the Customer a general warning in writing of the risks arising from exchange rate movements and shall inform the Customer of the availability of mechanisms, if they exist, for limiting such risks.

12.0 PRIVACY AND CONFIDENTIALITY

- 12.1** A Bank acknowledges that, in addition to a Bank's duties under legislation, it has a general duty of confidentiality towards a Customer except in the following circumstances:

- (i) where disclosure is compelled by law;
- (ii) where there is a duty to the public to disclose;
- (iii) where the interests of the Bank require disclosure; or
- (iv) where disclosure is made with the express or implied consent of the Customer.

- 12.2** Subject to section 12.1, a Bank may not, without the consent of the Customer, disclose information concerning the Customer to another person but the Bank may disclose

- (a) to a Related Entity, information necessary to enable an assessment to be made of the total liabilities (present and prospective) of the Customer to the Bank and the Related Entity, and
- (b) to a Related Entity of the Bank which provides financial services which are related or ancillary to those provided by the Bank, information concerning the Customer unless the Customer instructs the Bank not to do so. A Bank shall advise those who become Customers after it adopts the Code that they have the right to give this instruction by the means referred to in section 6.1(ii).

- 12.3** A Bank shall not collect information relating to Customers by unlawful means.

- 12.4** A Bank shall on request provide a Customer with information about that Customer which is readily accessible to the Bank and which may lawfully be provided. The information required to be provided is limited to the Bank's record of the Customer's address, occupation, marital status, age, sex, Accounts with the Bank and balances and statements relating to those Accounts (in this section 12 called "Customer information").

- 12.5** A Bank need not comply with a request under section 12.4 unless the Customer has, as clearly as possible, identified the Customer information requested and its likely location (if known to the Customer).
- 12.6** A Bank may recover its reasonable costs of supplying Customer information to a Customer.
- 12.7** A Customer of a Bank may request the correction of Customer information about the Customer held by the Bank.
- 12.8** A request for access to Customer information, or a request for the correction of Customer information, shall be dealt with in a reasonable time.
- 12.9** A Bank may not collect, use or disseminate information about a Customer's:
- (i) political, social or religious beliefs or affiliations;
 - (ii) race, ethnic origins or national origins; or
 - (iii) sexual preferences or practices;
- except that it may collect or use such information in accordance with this Code for a proper commercial purpose.
- 12.10** A Bank shall take reasonable steps to protect personal information held by it relating to a Customer against loss and against access, use, modification or disclosure that is unauthorised. A Bank shall require all staff with access to personal information concerning Customers to maintain confidentiality concerning that information.
- 12.11** In relation to a "banker's opinion" a Bank shall comply with any applicable requirements of any Credit Reporting Code of Conduct issued by the Privacy Commissioner under section 18A(1) of the Privacy Act 1988 (Cth).
- 12.12** In this section 12 "Customer" includes an individual who would have been a Customer if this Code had applied at the time that individual acquired a financial service.

13.0 PAYMENT INSTRUMENTS

- 13.1** A Bank may inform a Customer of the advisability of safeguarding payment instruments such as credit and debit cards, cheques and pass books.
- 13.2** A Bank may require a Customer to notify the Bank as soon as possible of the loss, theft or misuse of his or her payment instruments.
- 13.3** A Bank shall inform a Customer of:
- (i) the consequences arising from a failure by the Customer to comply with any requirement referred to in section 13.2 that is imposed on the Customer by the Bank; and
 - (ii) the means by which the Customer can notify the loss, theft or misuse of his or her payment instruments.

14.0 STATEMENTS OF ACCOUNT

14.1 At least every six months, a Bank shall provide a Customer with a record of all transactions relating to a deposit account of the Customer since the previous statement unless:

- (i) a passbook is provided or it is agreed that other documentation will be the record of transactions on the deposit account;
- (ii) there has been no transaction effected by the Customer on the deposit account during the past six months; or
- (iii) the deposit account can be accessed by the combined use of a PIN and an EFT card (in which case the requirements of the Electronic Funds Transfer Code of Conduct apply).

15.0 PROVISION OF CREDIT

15.1 In considering whether to provide a Banking Service involving the provision of credit to a Customer, a Bank shall take into account the range of factors it considers are relevant to the Customer and the Banking Service to establish whether, in the Bank's view, the Customer has or may have in the future the capacity to repay.

These factors may include:

- (i) the Customer's income and expenditure;
- (ii) the purpose of the Banking Service;
- (iii) credit scoring (being a scoring method used by Banks to assess whether a credit applicant is an acceptable risk); and
- (iv) the Customer's assets and liabilities.

16.0 JOINT ACCOUNTS AND SUBSIDIARY CARDS

16.1 A Bank shall provide to Customers opening a joint Account general descriptive information on:

- (i) how funds may be withdrawn from the joint Account having regard to the instructions given by the Customers;
- (ii) the manner in which such instructions can be varied; and
- (iii) the nature of liability for indebtedness on joint account.

16.2 When accepting a Customer's instructions to issue a subsidiary credit or debit card, a Bank shall:

- (i) provide general descriptive information to the primary cardholder on his or her liability for debts incurred by the subsidiary card holder by use of the card; and
- (ii) inform the primary card holder of the means by which a subsidiary card may be cancelled or stopped and the fact that this may not be effective until the subsidiary card is surrendered.

17.0 GUARANTEES

17.1 This section shall apply to each guarantee and each indemnity (whether or not contained in a security) (called "guarantee" in this section 17) obtained from a third party who is an individual (called "the guarantor" in this section 17) for the purpose of securing any financial accommodation or facility provided by a Bank to any person (called "the borrower" in this section 17) other than —

- (i) a public corporation or any of its Related Entities;
- (ii) a corporation of which the guarantor is a director, secretary or member or any of its Related Entities;
- (iii) a trustee of a trust (including a discretionary trust) of which the guarantor or a corporation or a Related Entity that is referred to in paragraph (ii) is a beneficiary or one of a class of beneficiaries under the trust; and
- (iv) a partner, co-owner, agent, consultant or associate of any of the guarantor, a corporation or Related Entity referred to in paragraph (ii) or a trustee referred to in paragraph (iii);

at the time the guarantee is obtained. The term "public corporation" has the meaning set out in section 9 of the Corporations Law.

17.2 A Bank may only accept a guarantee if the amount of the guarantor's liability is limited to, or is in respect of, a specific amount plus other liabilities (such as interest and recovery costs) that are described in the guarantee.

17.3 Before accepting a guarantee a Bank shall inform a prospective guarantor that the documents specified in section 17.4(ii) and 17.6 will be provided to the prospective guarantor if the borrower consents. If the borrower does not consent, the Bank shall so inform the prospective guarantor and shall not accept the guarantee without the agreement of the prospective guarantor to proceed with the guarantee in the absence of such consent.

17.4 A Bank shall provide to a prospective guarantor —

- (i) a written warning about the possibility of the prospective guarantor becoming liable instead of, or as well as, the borrower; and
- (ii) subject to obtaining the consent of the affected borrower, a copy or summary of the contract evidencing the obligations to be guaranteed.

17.5 A Bank shall recommend that a prospective guarantor obtain independent legal advice.

17.6 Subject to obtaining the consent of the affected borrower, a Bank shall send to a guarantor:

- (i) a copy of any formal demand that is sent to the borrower; and
- (ii) on request by the guarantor, a copy of the latest relevant statements of account provided to the borrower, if any.

17.7 A guarantor may at any time extinguish the guarantor's liability to a Bank under a guarantee by paying to the Bank the then outstanding liability of the borrower to the Bank (including any future or contingent liability) or any lesser amount to which the liability of the guarantor is limited by the terms of the guarantee or by making other arrangements satisfactory to the Bank for the release of the guarantee.

18.0 ADVERTISING

- 18.1** A Bank shall ensure that its advertising and promotional literature drawing attention to a Banking Service is not deceptive or misleading.
- 18.2** In any advertising in the print-media and any promotional literature that draws attention to a Banking Service and includes a reference to an interest rate, the Bank shall also indicate whether other fees and charges will apply and that full details of the relevant Terms and Conditions are available on application.

19.0 CLOSURE OF ACCOUNTS

- 19.1** Subject to the terms and conditions of any relevant financial service, a Bank:
- (i) will upon request by the Customer close an Account of the Customer that is in credit;
 - (ii) may close an Account of the Customer that is in credit by giving the Customer notice that is reasonable in all the relevant circumstances and repaying the Customer the amount of the credit balance; and
 - (iii) may charge the Customer an amount that is a reasonable estimate by the Bank of the costs of closure.

PART C: RESOLUTION OF DISPUTES

20.0 DISPUTE RESOLUTION

- 20.1** A Bank shall have an internal process for handling a dispute between the Bank and a Customer and this process will be readily accessible by Customers without charge upon them by the Bank. A dispute arises where a Bank's response to a complaint by a Customer about a Banking Service provided to that Customer is not accepted by that Customer.
- 20.2** A Bank shall have available in branches general descriptive information on:
- (i) 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.
- 20.3** Where a request for resolution of the dispute is made in writing or the Customer requests a response from the Bank in writing, the Bank shall promptly inform the Customer in writing of the outcome and, if the dispute is not resolved in a manner acceptable to the Customer, of:
- (i) the reasons for the outcome; and
 - (ii) further action the Customer can take, such as the process for resolution of disputes referred to in section 20.4.

- 20.4** A Bank shall have available for its Customers free of charge an external and impartial process (not being an arbitration), having jurisdiction similar to that which applies to the existing Australian Banking Industry Ombudsman Scheme, for resolution of a dispute that comes within that jurisdiction and is not resolved in a manner acceptable to the Customer by the internal process referred to in section 20.1.
- 20.5** The external and impartial process shall apply the law and this Code and also may take into account what is fair to both the Customer and the Bank.