

Executive Summary

Independent Review

Code of Banking Practice

(The Executive Summary reproduced here appears as Chapter 2 of the full report of the Independent Review. The full report can be found at the review website: [http://cobpreview.crkhoury.com.au/.](http://cobpreview.crkhoury.com.au/))

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EXECUTIVE SUMMARY

I have been asked by the banking industry to provide an independent review of the Code of Banking Practice at a time when community pressure on the banking industry is high. The industry has acknowledged this pressure and has made a significant commitment to win back a greater level of trust. This environment has added complexity to my task, however in many ways it is perhaps the best of times to be a reviewer. The essential elements of this Report are very briefly summarised below.

1. Value of a Code

I have listened to a range of views, both positive and sceptical, about the value that the Code currently provides, and aspirations that industry and stakeholders have for improving trust and confidence in signatory banks. I think that a new Code (along with other Better Banking initiatives) will provide the industry with an opportunity to signal a new way of working and will be a worthwhile endeavour.

2. Building trust

I have focused my review as much on the challenge of rebuilding trust between banks and their customers as I have on the many technical and specific fairness issues raised with me. Taking into account views put to me by small business and consumer representatives, bank customers, politicians, regulators and others, I have made recommendations aimed at meeting community expectations of banking practices that are seen as fair, predictable and trustworthy. Some of the proposed changes will mean some cost and effort for signatory banks to implement, however I see significant benefits in the long term for the community and for banks.

3. A broader scope

The current Code is only a part of a complex tapestry of obligations that also come from other codes and the law. My recommendations envisage a new Code that reaches further within that tapestry – in the breadth of issues that it covers, in the depth of some of its provisions and the customers that it provides protection to.

4. Code language, structure and authority

My view is that the Code could be much more effective if redrafted in a modern structure, based on key principles, in a plain-speaking style with fewer carve-outs and exceptions, and with supporting detail in linked Industry Guidelines.

This is not to imply that the new Code should be any less enforceable. I have recommended that the new Code be approved by ASIC and a substantially strengthened role for Code monitoring – in particular, in providing assurance to the community that the Code is being complied with.



5. Small business issues, including impaired loans

A primary issue for the review, my recommendations address some of the issues raised at government inquiries – in particular, better information for businesses applying for credit, more time to respond to changes imposed by banks, extending protections to small businesses in financial difficulty or whose loans are in default, access to valuers and accountants reports and improvements in access to dispute resolution.

I am conscious that there are others looking at small business and banking - notably the Australian Small Business and Family Enterprise Ombudsman and Financial Ombudsman Service and they will report after my report is due. Their recommendations will of course, have to be taken into account where they impact on the Code.

6. Responsible lending and credit cards

Responsible lending and credit cards have been subject to previous government reviews and were a focus of submissions to the Review. I have had the benefit of considering analysis from Treasury and the Australian Securities and Investments Commission.

I have recommended improved information and transparency for customers in a few places in the credit process. I recommend some restriction on the way credit card credit is marketed and provided, including a more responsible approach to credit limit increases and making it easier for customers to reduce or cancel their credit card accounts. I have also recommended some changes to interest charging and payment application practices that I think would be simpler for customers to understand and perceived as fairer.

I did not go as far here as some asked me to, as I think that some customer behavioural issues are not as clear cut as they might first appear. I look forward to the results of Treasury's testing of some possible further reforms and would expect the industry to engage with those on release.

7. Borrower default

My focus in this area has been on recommendations that will help borrowers who are in trouble with their credit to be given a fair chance to put things right, that they have fair access to information that would assist them and information about adverse credit reporting made about them.

8. Joint account holders and guarantors

There has been increasing concern in the community about financial exploitation and although guarantors already derive substantial protections under the Code, I have recommended some further enhancements to the Code for their benefit. I have also recommended better protections for joint account holders (recognising issues that can arise particularly after a relationship breakdown).



9. Financial difficulty

Submissions to my Review recognise that the banks' financial hardship processes provide very significant assistance to large numbers of consumers and went on to make requests for further enhancements to the Code provisions. This is an area where similar language has made the interplay between the Code and the law quite confusing and improving clarity and understanding about this would be a step forward in itself.

I have recommended more clarity about any assistance that is being provided by the bank and the potential consequences for the customer. While recognising that there are limits to what banks can do, I have also recommended more effort in the area of prevention - to proactively identify customers at risk of financial difficulty and to offer them assistance to avoid their circumstances deteriorating.

10. Banking terms and conditions, fees, cancellations

This is an area where I think a good deal of the community's mistrust arises from. Excessively legalistic terms and conditions, provisions that give the bank what seems to be unfair power, fees that are seen to be 'hidden' or out of proportion and so on, all contribute to a sense that a customer cannot 'just trust' their bank.

While I am not able to make recommendations about the level of specific fees, I have made a couple of recommendations for the Code that address the overall approach by banks to setting fees and informing customers.

Stakeholders also reported niggling and continuing problems experienced by a comparatively few customers with day-to-day issues such as direct debits and recurring credit card payments. These issues simply must be fixed, otherwise they will continue to undermine goodwill towards the banks. Some of these are technically complex issues that are enmeshed with the operation and rules of the quite separate credit card schemes, which I understand will take some time for banks to resolve. Other issues seem to be a problem with staff understanding of customer rights. I have recommended that signatory banks' new Customer Advocates take on the challenge of these latter issues.

11. Marketing and sales practices

A big part of this issue is being reviewed separately by Stephen Sedgwick AO – and I have left the issues of incentives and remuneration to that eminently qualified reviewer. I have made recommendations about customer practices in cross-selling (in particular, consumer credit insurance) and in lenders mortgage insurance – two areas of concern amongst regulators and consumer advocates.

12. Consumers with special needs

The Code and industry have already done much to recognise customers with special needs, however the community's understanding of these needs continues to evolve. I received a number of submissions suggesting improvements to recognise additional groups of customers and additional specific needs, including access to basic bank accounts.



I have recommended a principles-based approach to this aspect of the Code, with Industry Guidelines to pick up the specific requirements of different groups – much as the Industry Guideline on Financial abuse and family and domestic violence policies.

13. Code Monitoring

The current code-monitoring mechanism for the Code, the Code Compliance Monitoring Committee, came in for some criticism from stakeholders – its role, positioning and mandate were widely seen as inadequate. I have included a lengthy discussion of the issues and recommended a different and strengthened role focused on ‘monitoring’ – both for compliance and good practice and for much improved assurance to the public that industry is complying with the Code.

14. Conclusion

A full summary of the Recommendations I have made is in Attachment 6 of the main Report.

Finally, having completed the easy part, I am conscious that the hard work now falls to signatory banks. I have made a few observations reflecting stakeholder concerns about the implementation process, the redrafting of the Code, drafting of new supporting guidelines, transition to new requirements and so on – and offered any assistance I am able to give to get the implementation process off on the right foot.

