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**Banks and Community
Obligations**

by

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EXECUTIVE SUMMARY

Banks and community obligations: What are the obligations of Australian banks? In addition to the duties they have to their shareholders, do they also have a separate responsibility to the community? Should they consider the needs of the poor, the elderly and those in rural and regional areas who, for one reason or another, may have difficulty accessing banking services? Is a balance to be struck between commercial and community objectives? (page 1)

Banking as an essential service: Many argue that banking should be viewed as an essential service, akin to clean water, electricity and telecommunications. For example, the Local Government and Shires Association has maintained that the banks should be treated as public utilities, stating: 'It is not sufficient to argue that banks are now like any other competitive business whose primary objective is to maximise the return to the shareholder. The major banks, because of their key role in the financial system have a utility function that confers responsibilities beyond that of ordinary businesses'. The Australian Bankers' Association disagreed, arguing 'If it is considered appropriate for rural customers to be provided with transaction services that are not otherwise commercially viable, the cost of this should be met by the Government from the general budget'. (pages 3-5)

Background facts and figures: In Australia, as elsewhere, these arguments are posed against a background of rapid change in the banking industry, at a time of bank branch closures in rural, regional and metropolitan areas. For NSW, the statistics show that 331 metropolitan bank branches were closed between 1993 and 1999; and 258 were closed in regional and rural NSW in the same period. The breakdown for NSW for the four major banks over the same period is as follows

ANZ Bank	132 (from 352 to 220) - 34 per cent closure rate
Commonwealth Bank	123 (from 518 to 395) - 23.7 per cent closure rate
National Australia Bank	44 (from 390 to 346) - 11 per cent closure rate
Westpac	122 (from 465 to 343) - 26 per cent closure rate

Research conducted by the NSW Department of Fair Trading suggests that, between 1994 and 1997, 124 branches outside Sydney had closed, affecting 106 communities and leaving 36 without a bank branch. The National Farmers' Federation has estimated that there are around 600 communities in rural and regional Australia without access to a financial institution. It seems that, Australia-wide, towns with populations of less than 1000 account for over 50 per cent of towns where banks have closed their only branch in town. Towns with populations of less than 600 account for nearly 44 per cent. (pages 5-8)

Three questions: Statistics of this kind must be interpreted in a wider context which, of necessity, gives rise to at least three key questions. First, what are the forces driving these changes? Secondly, what impact does bank closure have on individuals, businesses and communities? Thirdly, are other services/institutions filling the gaps left by the banks in some or all of the communities which have been left without traditional banking services? (page 9)

Alternative means of providing banking services: It is generally recognised that, in many

cases, alternative means of providing banking services - agencies, ATMs, the Internet etc - can alleviate some of the problems where traditional banking services have been cut. It is also recognised that changes to face-to-face banking are inevitable in the current climate and that innovative approaches must be embraced. However, it is also argued that, in all probability, electronic banking cannot meet 'all the banking needs of most people', with the Australian Consumers' Association noting that 'Even enthusiastic users of electronic banking generally will want to visit branches for particular banking needs.' It also recognised that the elderly and disabled, along with disadvantaged groups generally, can face special difficulties in adapting to the revolution in banking services. (pages 13-15)

Regional transaction centres: At the federal level, one governmental response has been the plan to open regional transaction centres in up to 500 small rural towns. The program was launched on 11 March 1999, with the first centre opening in the NSW town of Eugowra in October 1999. (pages 15-16)

Governmental inquiries: The provision of banking services has been the subject of several governmental inquiries over the past few years, including a March 1999 report from the House of Representatives Standing Committee on Economics, Finance and Public Administration, *Regional Banking Services: Money Too Far Away*. In June 1999, the NSW Department of Fair Trading recommended the adoption of a system of community banking ratings similar to that operating in the USA. (pages 17-22)

The US Community Reinvestment Act: In Australia and elsewhere, a focus of the debate has been on this 1997 US Act which is intended to encourage banks to help meet the credit needs of the entire community, including low and moderate-income households. Ratings are given to the banks for compliance or non-compliance with the following performance tests: the lending test; the investment test; and the service test. The Act's 'bite' is found in the fact that a proposed bank merger or acquisition can be challenged if the bank in question has a low community rating. Evaluating the operation of the Act is difficult. Some are sceptical, seeing it as a burden on the banking industry. For many, however, it is an innovative law which may be an important model for other jurisdictions, including the UK and Canada. (pages 22-35) Some US States also require banks to offer a no-frills account, thereby making services affordable for low and fixed-income earners. (page 35)

Banks and community obligations in Canada: Various governmental inquiries have reported on the question of banking services in recent years, culminating in the release of a Department of Finance White Paper, *Reforming Canada's Financial Services Sector*, in June 1999. This would require low-cost accounts, branch closure consultation and the publication of Public Accountability Statements. However, the White Paper did not recommend the introduction of a US community reinvestment model. (pages 38-44)

Issues: Some of the main issues arising from the current debate are: should legislation be introduced to establish mandatory minimum service standards? should such legislation require banks to reinvest in the community, especially in support of the most disadvantaged? should banks be made to offer low-cost bank accounts as a way of making essential banking services available to all? (page 45)

1. INTRODUCTION

What are the obligations of Australian banks? In addition to the duties they have to their shareholders, do they also have a separate responsibility to the community? Should they consider the needs of the poor, the elderly and those in rural and regional areas who, for one reason or another, may have difficulty accessing banking services? Is a balance to be struck between commercial and community objectives?

These and other related questions and issues have been the subject of considerable public debate over the past few years. It needs to be remembered that this debate has occurred at a time of unprecedented change in the banking industry, with deregulation, a raft of technological advances, plus the forces of globalisation all contributing to the complexity and fluidity of the financial marketplace. Significant, too, especially for their critics, is the fact that Australian banks have experienced an era of high profits over the past decade or so, at a time, it is said, when they are charging more, as well as cutting back on the services they offer particularly to the least advantaged in the community. Over the last few years the public debate has focused on the 'rationalisation' of financial services and branch structures, with particular emphasis on the actual, proposed or rumoured closures of branches in rural and regional areas.¹ More recently, closures in metropolitan suburban areas have also become a major focus of debate.² Responding to concerns of this kind, as well as to comments made by some leading bankers who suggest that the banks only have a duty to look after the interests of shareholders, the Prime Minister stated:

There is more to banking than the bottom line...Banks have got to understand that there are social obligations. They have privileges. Australian banks are very profitable by world standards and they have obligations.³

The issue of banking services, particularly the closure of branches in regional and rural NSW, as well as in suburban metropolitan areas, has also been the subject of detailed debate in the Upper and Lower Houses of the NSW Parliament in recent months.⁴ In the course of the debate on banking services in the Legislative Assembly, the Minister For Fair Trading, Hon J Watkins MP, commented that the banks 'fail to see, as we do, that they have obligations' and that they were therefore unlikely to meet the special needs of the disadvantaged 'by themselves'. He went on to report that, at the recent meeting of the

¹ A Mitchell, 'Westpac plans to shut 80 branches', *The Sun-Herald*, 17 October 1999.

² NSW Local Government Banking and Financial Services Taskforce, *Interim Report - The Roles and Responsibilities of Local Government in Providing Banking and Other Financial Services to the Community*, April 1999, p 6; 'Locals deposit flowers as bank withdraws', *The Sydney Morning Herald*, 20 November 1999. (the '**NSW Local Government Taskforce Report**')

³ S Aylmer and G Lekakis, 'Banks may play role as pillars of the community', *The Australian Financial Review*, 27 October 1999.

⁴ NSWPD (Legislative Council) 13 and 27 May 1999; NSWPD (Legislative Assembly) 19 and 20 October 1999.

Ministerial Council on Consumer Affairs, he had put forward a ‘comprehensive plan which would see minimum community standards for banks enshrined in law’.⁵ According to the Minister, that plan was based on an existing US model, presumably the Community Reinvestment Act of 1977.⁶

Another aspect to the debate, arising from bank branch closures as well as the dearth of ATMs in lower socio-economic urban areas, is the question of the need for low-fee bank accounts for the disadvantaged. In June 1999 the Federal Treasurer, Peter Costello, summoned the major banks to a meeting to find cheaper ways of delivering payments to Australia’s seven million welfare recipients.⁷

This paper outlines the issues and developments relevant to this debate in Australia, including the release in March 1999 of the Report from the House of Representatives Standing Committee on Economics, Finance and Public Administration, *Regional Banking Services: Money Too Far Away* (the **Standing Committee Report**). It also looks at the US model of banking regulation, summarising the key provisions of the Community Reinvestment Act and analysing its effectiveness in ensuring that banks meet their community obligations. Proposals to introduce similar legislation into the UK and Canada are also discussed.

2. BANKS AND COMMUNITY OBLIGATIONS IN AUSTRALIA - BACKGROUND AND ISSUES

Banks and community obligations: As with all the issues raised in this paper, the question whether banks have obligations or responsibilities to the community at large is a complex matter which invites debate of a practical, theoretical and ethical nature. According to Dr Ian Manning of the National Institute of Economic and Industry Research, ‘It is often claimed that businesses in general, and banks as businesses, have no social responsibilities beyond an obligation to maximise profits subject to the constraints of the criminal and commercial law’.⁸ However, that claim, based as it is on a particular theory (General Equilibrium theory) in which emphasis is placed on competition as a moral force does not

⁵ NSWPD (Legislative Assembly), 19 October 1999, p 541. Note that, further to sections 51 (xiii) and (xx) of the Australian Constitution, the regulation of banking is primarily the responsibility of the Federal Government. The division of constitutional powers is outlined in - D Everett and S McCracken, *Banking and Financial Institutions Law*, 4th edition, LBC Information Services 1997, pp 2-5.

⁶ The NSW Department of Fair Trading’s June 1999 paper, *Australian Banks and Minimum Service Standards: USA Precedents for Regulation*, is discussed in a later section of this paper.

⁷ T Boreham, ‘Banks called to welfare account’, *The Australian*, 24 June 1999.

⁸ Prices Surveillance Authority, *Inquiry into fees and charges imposed on retail accounts by banks and other financial institutions and by retailers of EFTPOS transactions, Appendices*, 30 June 1995, p L-23. The discussion paper, which dealt specifically with the issue of the obligation of banks to provide basic services at little or no cost, was commissioned by the PSA.

command universal agreement and, as Dr Manning explained, ‘It remains an open question as to whether the forces of competition in Australian banking are sufficient to ensure fair pricing for services’.⁹

There is also the add-on question of whether banks are in a different position in this respect to businesses generally: do banks have a responsibility to take a long view and to operate within broader social horizons than businesses seeking to maximise short-term profits and fighting for survival against immediate competition? A further question of scale must also be posed. Even if banks are in this deregulated era broadly comparable to other profit-making businesses, it could still be said that the scale of their assets and the influence they have on the economy are so vast as to place them in a unique position, one which may carry with it special duties as well as rewards. Deregulation notwithstanding, for the Australian government not to step in and assist a major bank in danger of collapse would be more or less unthinkable, for the simple reason that such a collapse would have catastrophic implications for the whole economy. So large are the major banks and so pervasive is their influence that their collapse would in fact amount to nothing short of a systemic breakdown. The suggestion, therefore, is that while the banking sector is comparable in some ways to other sectors, it is also special in point of scale, as well as in terms of its influence on the every day and long-term working of the economy.

One implication that is drawn from observations of this kind is that banking should be viewed as an essential service, akin to clean water, electricity and telecommunications. The NSW Department of Fair Trading has said in this regard that consumers and small businesses alike need the following banking services: access to savings and directly deposited income (salaries, pensions, benefits, superannuation etc); a place to deposit and withdraw cash securely; a source of loans for consumer purchases, homes and businesses; and assistance with financial planning and investment advice and services.¹⁰ Another aspect to this ‘essential service’ argument is that many people have no choice but to deal with banks, into which their pay, pensions or welfare payments are deposited as a matter of course. As the House of Representatives Standing Committee Report observed, ‘The view of a service as an essential service inevitably raises the issue of community service obligations’.¹¹ The report said that many submissions had argued that these obligations flow from the privileged position banks have enjoyed traditionally. In its submission, the Local Government and Shires Association maintained that the banks should be treated as something akin to public utilities, stating:

It is not sufficient to argue that banks are now like any other competitive business whose primary objective is to maximise the return to the shareholder. The major banks, because of their key role in the financial system have a utility function that confers responsibilities beyond that of

⁹ Ibid.

¹⁰ NSW Department of Fair Trading, *Australian Banks and Minimum Service Standards: USA Precedents for Regulation*, June 1999, p 3.

¹¹ Standing Committee Report, p 30.

ordinary businesses'.¹²

The Australian Bankers' Association disagreed, in particular with the notion that 'banks should maintain rural branches under a community service obligation as a condition of their banking licence'. It argued this would involve 'a cross-subsidy' which would have to be paid for by bank customers and shareholders and would run contrary to the policies enunciated in both the Wallis and Hilmer reports. According to the Association, the scope for cross-subsidisation has, in any event, been eroded by competition. As well, it noted the practical problem of deciding which communities were entitled to a branch, presumably on the basis of some commercial viability test. Shifting the burden of responsibility, the Association concluded, 'If it is considered appropriate for rural customers to be provided with transaction services that are not otherwise commercially viable, the cost of this should be met by the Government from the general budget'.¹³ In fact, the 1995 Prices and Surveillance Authority's Inquiry Into Fees and Charges arrived at the same conclusion, noting that 'In general, it is more efficient and equitable to fund a CSO [Community Service Obligation] through the Budget'.¹⁴ The comment was also made that 'Equity issues cannot be resolved by applying economic principles; they are ultimately matters for the community to decide through the political process'.¹⁵ Such observations serve to remind us that a critical question in the debate relates to the role that is to be played, for practical, theoretical and ethical reasons, by governmental and non-governmental bodies in this field.

For its part, the House of Representatives Standing Committee decided that 'governments have a responsibility to ensure that all communities have access to essential services including financial services', but that 'they do not have this responsibility alone'. It is a shared responsibility, in the Committee's view, extending beyond governments to banks and other financial institutions, as well as to communities themselves.¹⁶

As noted, the Prime Minister has sided with the view that banks have social obligations to their customers. The major banks have themselves responded to such comments by seemingly accepting some part of the community obligations argument. The House of Representatives Standing Committee commented on a change of attitude in this regard and said that the banking industry had during the course of the inquiry announced a package of measures, including 'a commitment to leave reasonable access to banking services when closing a branch in rural areas', with six week prior notice of closure.¹⁷ At least a 'marked change in rhetoric' has been reported in this respect, with the National Australia Bank's

¹² Ibid, p 30.

¹³ Australian Bankers' Association, *Submissions, Volume 3*, p 612.

¹⁴ Prices Surveillance Authority, *Inquiry into fees and charges imposed on retail accounts by banks and other financial institutions and by retailers of EFTPOS transactions*, 30 June 1995, p 174.

¹⁵ Ibid, p 171.

¹⁶ Standing Committee Report, p 32.

¹⁷ Ibid, p 3.

chief executive, Frank Cicutto, and the head of the Commonwealth Bank, David Murray, distancing ‘themselves from earlier comments that banks had to look after shareholders only, and that involved staff and customers rather than communities’.¹⁸ The question, then, is whether these obligations extend to the provision of face-to-face services of some kind, as Mr Cicutto seemed to imply? Alternatively, as Mr Murray seemed more inclined to say, is the obligation to press on with the agenda of modernisation and to harvest the costs and efficiency benefits associated with it?

Background facts and figures: According to the 1999 Australian Year Book there were 55 banks operating in the country as at the end of June 1998, a figure which includes both locally incorporated banks as well as branches of foreign banks. Banks are authorised to operate by the Commonwealth *Banking Act 1959*, which underlines the point that banking is for all practical purposes a responsibility of the Federal Government. The four major local banks, the Australia and New Zealand Banking Group (ANZ), National Australia Bank, Westpac Banking Corporation and the Commonwealth Bank of Australia, account for over half the total assets of all banks. The 1999 Year Book continued:

As at 30 June 1998, banks operated 5,615 branches and 6,367 agencies. Of the total branches, 3,190 were located in metropolitan areas. Banking facilities were also available at 3,232 metropolitan agencies throughout Australia. Banking services were also provided at 2,720 *giroPost* locations and 8,814 Automatic Teller Machines (ATMs).¹⁹

Statistics concerning the number of bank branches and agencies are found in the Reserve Bank of Australia Bulletin each September.²⁰ The 1999 Report from the House of Representatives Standing Committee on Economics, Finance and Public Administration, *Regional Banking Services: Money Too Far Away* (the **Standing Committee Report**) commented that the data reveals a steady decrease in bank branch numbers since 1993 in both metropolitan and other areas. On the other hand, figures for agencies do not show a consistent trend; while figures for *giroPost* show a steady increase since its inception in 1995. These observations are confirmed by Table 1 showing the rate of change in metropolitan and other bank branches and agencies between 1990 and 1999:

Table 1

¹⁸ S Aylmer and G Lekakis, ‘Banks may play role as pillars of the community’, *The Australian Financial Review*, 27 October 1999.

¹⁹ W McLennan, *1999 Year Book Australia*, Australian Bureau of Statistics 1999, p 621.

²⁰ These figures are updated and corrected in the December Bulletin. However, these Tables are to be discontinued as of January 2000 and will be available, instead, on the APRA web site.

Bank Branches and Agencies 1990 to 1999					
	Branches		Agencies		
As at 30 June	Metropolitan	Elsewhere	Metropolitan	Elsewhere	giroPOST
1990	4028	2893	3506	4206	
1991	4049	2868	3126	4174	
1992	4032	2888	2736	3846	
1993	4118	2946	2563	3725	
1994	4075	2672	3136	2590	
1995	3990	2665	3302	2595	
1996	3879	2629	3599	3351	2557
1997	3499	2622	3625	3367	2627
1998	3190	2425	3232	3135	2720
1999	3047	2311	2852	3676	2724

Source: Bulletin. Reserve Bank of Australia, Tables B.22 and B.23, Various Issues

Table 2 shows the change in branches for the four major banks between 1993 and 1999.

The Standing Committee Report observed that the above statistics are ‘distorted’ by a number of ‘processes acting on the financial system’. In particular, bank mergers are said to ‘distort the statistics for the four largest banks’. This is because mergers mean that these ‘banks acquire networks of branches, increasing their branch numbers to give a false impression that only a small number of branches are closed’. In fact, the report commented that ‘many more branches have actually closed’ than the statistics suggest. The second process discussed in the Standing Committee Report was the number of new entrants into the banking industry, thereby distorting the figures in Table 1 for the overall number of bank branches and agencies. According to the report:

Many of the new banks formed since 1990 were initially building societies with extensive branch networks. these new banks add significant numbers to the branch statistics, but the impression on the statistics is misleading and masks the extent of the process of bank closures.²¹

Bearing these observations in mind, Table 2 can be said to show a State-by State breakdown in metropolitan and non-metropolitan bank branch numbers between 30 June 1993 and 30 June 1999.

²¹ Standing Committee Report, p 8. The report added: ‘Probably the biggest example of this process was the creation of Saint George Bank in 1993 which “increased the official bank branch statistics by 280 but did not alter the total number of financial service provider branches”’.

TABLE 2
LOCATION OF BRANCHES IN AUSTRALIA, 1993-1999, METROPOLITAN

YEAR	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	TOTAL
30-Jun-93	1397	1294	542	338	402	60	19	106	4158
30-Jun-94	1374	1248	539	344	428	53	17	102	4105
30-Jun-95	1364	1123	541	355	426	58	57	96	3990
30-Jun-96	1290	1116	532	347	412	58	25	98	3878
30-Jun-97	1168	996	534	296	348	48	23	86	3499
30-Jun-98	1049	892	487	274	342	46	22	78	3190
30-Jun-99	1066	791	461	271	315	38	24	81	3047

Source: RBA Bulletin (1993-1999)

LOCATION OF BRANCHES IN AUSTRALIA, 1993-1999, ELSEWHERE

YEAR	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	TOTAL
30-Jun-93	1042	689	576	239	242	102	15	1	2906
30-Jun-94	992	575	575	220	201	103	18	1	2685
30-Jun-95	980	556	588	206	206	94	34	1	2665
30-Jun-96	955	563	605	192	194	92	28	0	2629
30-Jun-97	921	550	679	188	183	84	17	0	2622
30-Jun-98	850	496	640	173	178	73	15	0	2425
30-Jun-99	784	483	600	176	171	80	17	-	2311

Source: RBA Bulletin (1993-1999)

Whatever interpretation is put on these figures, they undoubtedly show a marked decrease in bank branches in the 1990s, both in metropolitan and rural and regional Australia. For NSW, the statistics show that 331 metropolitan bank branches were closed between 1993 and 1999; and 258 were closed in regional and rural NSW in the same period. The State-by-State figures in detail for the four major banks are set out at Appendix B. Covering the period 1993 to 1999, they show the following rates of bank branch closures in NSW:

ANZ Bank	132 (from 352 to 220) - 34 per cent closure rate
Commonwealth Bank	123 (from 518 to 395) - 23.7 per cent closure rate
National Australia Bank	44 (from 390 to 346) - 11 per cent closure rate
Westpac	122 (from 465 to 343) - 26 per cent closure rate

The Standing Committee Report commented that such figures do not show how many

closures across rural and regional Australia have left communities without a bank branch altogether. The report does, however, cite research conducted by the NSW Department of Fair Trading suggesting that, between 1994 and 1997, 124 branches outside Sydney had closed, affecting 106 communities and leaving 36 without a bank branch.²² The National Farmers' Federation submitted to the Federal Standing Committee that there are around 600 communities in rural and regional Australia without access to a financial institution.²³ It seems that, Australia-wide, towns with populations of less than 1000 account for over 50 per cent of towns where banks have closed their only branch in town. Towns with populations of less than 600 account for nearly 44 per cent.²⁴

Slowdown of rural bank closures: Reacting to the bad publicity surrounding bank closures, ANZ and Westpac announced in July 1998 a slow-down in its closure of branches in the bush. ANZ's general manager, David Ward, reportedly stated: 'We're not going to pull out of any towns that we are currently in, to give some assurance to those towns'. Likewise, in Westpac's 1998 annual report the then managing director, Bob Joss, promised shareholders and customers that face-to-face banking would be maintained in country towns through in-store branches operated by agents.

However, it is claimed that the most recent Reserve Bank statistics show that these and other commitments have been breached by the major banks, with *The Australian Financial Review* reporting that the 'new trend contradicts promises by senior bank executives in 1998 to preserve "face-to-face" banking services in rural and metropolitan communities affected by bank branch closures'. The report continued:

Australia's big banks have breached undertakings to widen banking services through agency outlets, such as pharmacies and milk bars, to cover gaps in their networks caused by branch closures...Reserve Bank of Australia statistics show three of the majors - Westpac, ANZ and Commonwealth Bank - have been cutting back agency networks at the same time as they were slashing branch numbers.²⁵

Some of the major banks have contested these findings, with Westpac's head of media relations, David Lording, stating that Westpac had in fact increased the number of agencies to 55 in the last few months. The Reserve Bank, on the other hand, recorded a figure of 34 Westpac agencies operating as at 30 June 1999. An ANZ spokeswoman is also reported to have 'rejected' the Reserve Bank statistics, although it is reported that she also conceded

²² NSW Department of Fair Trading, *Banks: Are You Being Served - Report of the NSW Regional Banking Forums*, 1997, pp 28 - 32; Standing Committee Report, p 10. These figures were supplied by the banks, although there were none available for the Colonial State Bank at the time of the Departmental report.

²³ Standing Committee Report, p 10.

²⁴ *Ibid*, p 12.

²⁵ G Lekakis, 'Banks renege on service promise', *The Australian Financial Review*, 4 January 2000.

that her own figure of 115 agencies (as against the 85 reported by the Reserve Bank) 'included basic banking outlets owned and operated by the bank'.²⁶

Reporting on the same statistics, *The Australian* commented, 'Banks have closed almost 1300 branches, or 20 per cent of their network, since 1995, but the rate slowed last year'. However, the same article warned that in 2000 'Expected takeover activity in the banking sector is likely to bring further branch closures'. Noted were the ANZ's wish to buy State George Bank and the Commonwealth Bank's alliance with Woolworths which, although the Bank has not flagged its intentions, was said to have 'the potential to eliminate more than 500 branches'.²⁷ The reference is to the in-store banking service, known as Woolworths Ezy Banking, launched in July 1999 which, according to comments reportedly made by the Commonwealth Bank's managing director, David Murray, 'could replace branches in regional areas where customers showed a preference for it'.²⁸

Three questions: Statistics of this kind must be interpreted in a wider context which, of necessity, gives rise to at least three key questions. First, what are the forces driving these changes? Secondly, what impact does bank closure have on individuals, businesses and communities? Thirdly, are other services/institutions filling the gaps left by the banks in some or all of the communities which have been left without traditional banking services?

The forces driving changes in Australian banking: Various reports suggest that there are at least six major inter-related forces driving change in the financial services sector. These are as follows:

- *changes in the regulatory environment.* Deregulation, it is said, has resulted in the erosion of many barriers of entry into the banking industry, resulting in greater competition between banks and non-banking institutions, as for example in the home loans market where the number of mortgage providers has increased dramatically;
- *intensifying competition.* As the 1997 Wallis report stated, 'Competition is emerging from new providers of financial services and through the increasing globalisation of financial markets. This generates increasing pressure for improved efficiency and performance'.²⁹ It is also the case that branches are costly channels for servicing the needs of customers, added to which is the fact that this high cost is increasingly a disadvantage for the established banks compared with new competitors that offer banking services through less costly methods.
- *technology.* Technology has allowed banks to develop new products based on more

²⁶ Ibid.

²⁷ T Boreham, 'Bank closures slow to torrent', *The Australian*, 4 January 2000.

²⁸ J Scott, 'The supermarket you can bank on', *The Australian*, 13 July 1999.

²⁹ *Financial System Inquiry Final Report Overview*, March 1997, p 3.

efficient and cost effective methods of financial service delivery, thereby contributing to the process of 'rationalisation' under which branches are closed, functions centralised and overheads reduced. Moreover, with the decline in local banking services, there is greater reliance on electronic banking, which is seen to be one way of providing communities left without branches with necessary financial services. Increasing number of ATMs and EFTPOS facilities are an important feature of this trend towards electronic banking. Whereas in 1991, 93 percent of bank products were sold through bank branches, in 1999 no fewer than 82 percent of customer transactions are conducted through non-branch channels.³⁰ These developments, as the NSW Local Government Taskforce noted, have increased the convenience of banking for some customers. 'However', the Taskforce added, 'many people have been severely disadvantaged, for example, the elderly, disabled, people in rural and remote locations, those with limited mobility or limited access to technology'.³¹

- *changing customer needs.* Of this factor, the Wallis report commented that such changes are 'gradual but powerful influences on financial sector developments'. Among other things, the report went on to note that 'Greater familiarity with the use of alternative technologies means that more households are pursuing lower cost and more convenient means of accessing financial services'.³²
- *changes in banking corporate culture.* The NSW Local Government Taskforce commented that, before deregulation, provision of services to unprofitable or less profitable locations, such as small suburban centres and rural and remote locations, were cross-subsidised by more profitable activities in the metropolitan areas. The report added: 'Prior to deregulation, this also suited the banks' corporate culture in which banks accepted a higher degree of social responsibility and appreciation of their role within communities. Deregulation-induced competition and a changing corporate culture among banks, whereby this community responsibility culture has all but disappeared, has brought this era of cross-subsidisation to an end'.³³ This argument is supported by Argent and Rolley of the Department of Geography and Planning, University of New England, who argue that 'there is a wealth of evidence, some admittedly uncorroborated by the banks, to support the notion that corporate-level decision-making is the primary force driving the present reconfiguration of the branch network...'.³⁴ The banks would not agree.
- *changing demographics.* For some commentators, as well as for the banks

³⁰ D Morgan, 'Dimensioning Westpac's future growth', *Paper delivered to the Securities Institute*, Sydney, 16 November 1999, p 4.

³¹ *NSW Local Government Taskforce Report*, p 9.

³² *Financial System Inquiry Final Report Overview*, March 1997, p 4.

³³ *NSW Local Government Taskforce Report*, p 12.

³⁴ Submission 120 to the House of Representatives Standing Committee, Vol 5, p 988.

themselves, this is a particularly important agent of change as far as rural banking services are concerned. The issue was considered in a 1998 research report commissioned by the Australian Bankers' Association titled, *Demographic Trends and Services Provision in Rural Australia*. The research documents the spatially-uneven process of population growth and loss in Australia between 1976 and 1996, on the one side, and declining levels of rural service provision, on the other. It noted that there are 700 Local Government Areas or municipalities in Australia.³⁵ In 1996, 244 of these were located in urban centres of more than 17,500 people: 'Of the remaining 456 rural municipalities, 215 recorded a reduction in population between 1976 and 1996. These 215 LGAs contained 883, 747 people in 1976; by 1996 this number had fallen 12% to 778, 452'. The report went on to say that it is this collection of municipalities 'that is most at risk from the reduction in commercial and community services because of the long-term process of population loss'.³⁶ There was no single geographic or economic denominator linking these 215 municipalities, but the report observed that most were located in the wheat-sheep belt where global pressures for economies of scale are leading to farm amalgamations. However, it should be noted the 'population decline' argument is a contested one. For its part, the House of Representatives Standing Committee said it was 'not persuaded that the findings in themselves lend strong support to the argument that bank branch closures are a consequence of demographic change'.³⁷ It only accepted the proposition that 'demographic changes may be one of the factors contributing to changes in the delivery of services including financial services'.³⁸

The above account of the forces driving change in the Australian banking sector suggests that dynamic and complex forces are at work; these, in turn, can be seen to form the backdrop against which to pose the question of the community obligations of banks.

The impact of bank branch closure on individuals, businesses and communities: The

³⁵ The report noted that, in interpreting the data, there is some inconsistency in the 'geographic base of the LSA populations in that the scale of municipalities varies from communities of less than 200 to more than 200,000 people' (Australian Bankers' Association, *Demographic Trends and Services Provision in Rural Australia*, 8 February 1998, p 17).

³⁶ Australian Bankers' Association, *Demographic Trends and Services Provision in Rural Australia*, 8 February 1998, p 23. The research was conducted by the management consultants, KPMG. The findings of this research have been contested by Argent and Rolley who say that, while the ABA analysis may seem plausible at a 'superficial level', in fact the links between the 'independent variables' of demographic change and the provision of banking services 'is merely assumed rather than proven' (Submission 120 to the House of Representatives Standing Committee, Vol 5, page 988).

³⁷ Standing Committee Report, p 24. The report supported the argument presented in the Rolley and Argent submission, noting that 44 of the 72 NSW towns in localities outside Sydney classified as Other Rural Areas or Other Remote Areas which had become branchless between 1981 and 1998 had experienced population growth.

³⁸ Ibid.

impact of the trends discussed in the previous section will vary in significance for individuals and communities across NSW. In terms of access to retail services, the NSW Local Government Taskforce stated that these trends have ‘the greatest implications for those who are less mobile, such as the elderly or disabled, those who require access to cashing facilities such as welfare recipients and those who do not have means of transport’. Although the question of distance is obviously important in this regard, it can also be said that problems can be encountered in both metropolitan and non-metropolitan areas. In terms of access to business banking or lending facilities, the Taskforce went on to say that:

the impacts can be quite significant for local businesses as they lose that local contact with the bank manager and his decision autonomy. In the rural sector, this has had major impacts on rural producers as local knowledge, an understanding of the agricultural sector, the cyclical nature of rural business cash flows can potentially be lost as banks withdraw lending facilities from rural communities.³⁹

Most often cited on the question of the impact of bank closure on rural communities is the 1997 Centre for Australian Financial Institutions (CAFI) report by Beal and Ralston of the Faculty of Commerce, the University of Southern Queensland.⁴⁰ Their analysis was based on a survey of towns that have experienced the closure of their only bank branch.

For *individuals*, Beal and Ralston found the major impact of bank branch closure included:

- reduced savings;
- increased size of cash withdrawals;
- reduced investment income;
- reduced access to and increased cost of finance; and
- reduced access to financial planning advice.

For *business*, Beal and Ralston found the impact of the bank branch closure included:

- increase in cheque cashing;
- loss of cash sales;
- accumulation of excess cash;
- delay in deposit of cheques; and
- increase in bad debts.

³⁹ NSW Local Government Taskforce report, p 13. The report added that such problems have been addressed by various means which are discussed in the next section of this paper.

⁴⁰ D Beal and D Ralston, *Economic and Social Impacts of the Closure of the Only Bank Branch in Rural Communities*, Centre for Australian Financial Institutions 1997. Data for the report was gathered by a mail survey delivered to householders in each of the sample towns. Responses varied from 16% to 26%, with an average response rate of 21%. Towns included in the survey sample were: Ashford, Bundarra, Mungindi, Urana and Oaklands in NSW; and Jandowae and Wandoan in Queensland. All towns had lost their last bank branch with the exception of Jandowae which still had one bank branch.

For the *community*, Beal and Ralston found that the bank branch closure had three main impacts:

- financial drain from the community, as people travelled to larger centres to do their banking and shopping, with 88% of respondents reporting that their expenditure locally had decreased;
- loss of financial investment, with 30% of respondents indicating that the new financial environment had persuaded them not to proceed with undertaking a loan; and
- loss of confidence in the community, with 90% of respondents indicating they were now more pessimistic about the future of their community and 39% reporting that they would leave if they could..

Commenting on these findings, the NSW Local Government Taskforce stated: ‘While these survey results relate to rural and remote communities, similar impacts would apply to metropolitan areas that experience loss of financial services, particularly suburban strip shopping areas and those on the outer of the larger retail hubs. Similarly, the impacts associated with electronic banking would also be felt in both metropolitan and non-metropolitan areas’. The report then noted various concerns which have been raised in regard to electronic methods of financial service delivery, which included the difficulties experienced by the elderly and others with such services and the fact that, while electronic banking has expanded, ‘rural communities rarely have access to ATMs’.⁴¹ The House of Representatives Standing Committee Report tended to agree, citing Beal and Ralston with approval and noting that such specific groups as the elderly and disabled may suffer particular difficulties with ATMs or EFTPOS facilities.⁴²

Alternative means of providing banking services: However, that is not to say that alternative approaches to the traditional bank branch cannot alleviate some of the problems encountered by individuals and communities where branches have been lost. The many reports in this field all cover this ground which, again, is complex and many-faceted. There is evidence to suggest that, after a period of adjustment, many individuals and communities can and do overcome, in part at least, the problems associated with branch bank closure. For example, in 1999 a follow-up survey to that conducted in 1996 by Beal and Ralston, revisiting six of the towns surveyed in the original report. The 1999 report found that ‘Two years later these communities have an expanded range of self-service banking facilities, with more EFTPOS outlets, and wider availability of telephone and Internet banking. In addition, three towns have been successful in attracting a credit union agency’.⁴³ It concluded that, while ‘the initial impact of branch closure was significant to the economy

⁴¹ NSW Local Government Taskforce report, p 14.

⁴² Standing Committee Report, p 27.

⁴³ Centre for Australian Financial Institutions, *Banking in the Bush: the Transition in Financial Services*, 1999, p 8. Note, however, that this report was commissioned by the Australian Banker’s Association.

of the towns examined, changes over the intervening period appear to have been for the better as communities make the transition to living without a local bank branch'.⁴⁴ On the basis of this research, the Standing Committee Report concluded:

The studies clearly suggest that communities can adjust to the closure of bank branches where this is accompanied by the establishment of alternatives such as credit unions or other over-the-counter services and the increased availability of self-service methods of banking such as EFTPOS, telephone and Internet banking. They confirm the view taken by the Committee that what is important is providing communities with the means to adjust to changes in the delivery of services.⁴⁵

On the other hand, it has been noted that the Standing Committee was also aware of the potential problems and limitations of alternative sources of methods of obtaining financial services, particularly those associated with electronic forms of banking. The Committee found that institutional alternatives providing face-to-face service to customers were the better alternatives for remote and rural communities, whereas the Committee doubted whether technological alternatives - ATMs, telephone banking, Internet banking and smart cards - would ever be an 'adequate substitute for face to face banking'. It is enough in this context to list the main institutional alternatives:

- credit unions;
- building societies;
- community banks;
- giroPost;
- franchise arrangements;
- third party agencies; and
- electronic agencies.

The potential of these alternative means of providing banking services was the subject of many of the submissions received by the House of Representatives Standing Committee. For example, the NSW Government pointed out that in some instances credit unions had stepped in to 'fill the gap created by bank branch closures'. However, it added the warning that 'The pressure on credit unions is similar to the pressures on banks in terms of competition and costs. Therefore it is unreasonable to expect one small sector of the financial services industry can carry the cost of meeting social needs in low profit regional areas'.⁴⁶ Most accepted that innovative approaches had to be embraced, together with appropriate customer education campaigns; but it was argued too that, in all probability, electronic banking cannot meet 'all the banking needs of most people', with the Australian Consumers' Association noting that 'Even enthusiastic users of electronic banking

⁴⁴ Ibid, p 28.

⁴⁵ Standing Committee Report, p 15.

⁴⁶ NSW Government, *Submissions, Volume 4*, p 774.

generally will want to visit branches for particular banking needs'.⁴⁷

Recent NSW initiatives: The initiatives undertaken in this area by the NSW Government over the past few years were outlined in its submission of February 1998 to the House of Representatives Standing Committee. These included:

- *Meetings with bank managers* - in April 1997 the Minister for Fair Trading met with senior bank executives to raise broad community concerns and discuss bank plans on such issues as fees and branch closures. However, no bank committed itself to maintaining its branch network or giving more than four weeks notice of a branch closure.
- *Regional banking forums* - in June and July 1997 the Minister for Fair Trading convened a series of such forums, which included consumers, small businesses and representatives of various banks. A report titled, *Banking: Are You Being Served?*, was produced canvassing the many problems associated with bank branch closures.
- *Banking hotline* - on 10 June 1997 the Department of Fair Trade sponsored a Banking Hotline, run by the NSW Council of Social Services.
- *CreditCare funding* - this is a joint project between the Commonwealth Government and Credit Union Services, which assists communities to open credit union branches where other financial outlets are closing or inadequate. The NSW Government provides additional funding for CreditCare's NSW operations. In October 1997 annual funding was increased to \$345,000. This money funded field workers in NSW as well as a new project to assist credit unions serve small business needs in rural communities.⁴⁸

Regional Transaction Centres: During the 1998 Federal election, the Coalition Government committed \$70 million to restore basic transaction services to up to 500 small rural towns of no larger than 3000 people. The idea behind these transaction centres is that they house a range of transaction services - banking, post, phone and fax facilities and Medicare Easyclaim - under one roof. Individual communities will be able to bid for the mix of services they require and priority will be given to towns that have already lost the last of their transaction services and have no reasonable likelihood of services being restored without government assistance. Potential applicants for running the centres include local government, community groups and Chambers of Commerce. The program is to be funded from the partial sale of Telstra.

The first round of the program was launched on 11 March 1999, with the first centre opening in the central western NSW town of Eugowra in October 1999. That centre will

⁴⁷ Australian Consumers' Association, *Submissions, Volume 4*, p 725.

⁴⁸ The NSW Government does not appear to have provided any further funding to this program which is due to terminate in June 2000.

provide retail banking through Reliance Credit Union, Centrelink services, Medicare Easyclaim, community Internet access and business support groups.⁴⁹

Pharmacy banks: One suggestion put to the Federal Standing Committee was that the Pharmacy Guild could use the Pharmacy Intranet to provide a range of financial services to smaller communities.⁵⁰ In the Standing Committee Report it was said that, in February 1999, the Guild advised the Committee that ‘considerable progress had been made towards realising its vision to expand its involvement in banking services including the preparation of a feasibility study for a Guild Bank’. This was to be a joint venture between the Guild and BankWest.⁵¹ In support of this initiative, the Standing Committee recommended: ‘...that the Minister for Financial Services and Regulation monitors the Guild Bank development with a view to facilitating such initiatives’.⁵²

In the event, the planned partnership of the Guild with BankWest was abandoned in September 1999, thus clearing the way for negotiations between the Guild and other prospective banking partners.⁵³ Following on from this, in November 1999 the president of the NSW Local Government Association, Peter Woods, announced that an alliance is to be formed between pharmacies and councils to fill some of the gaps left by major banks in rural and suburban areas. The proposed bank is to be known as either the Community Bank or Guild Bank, with further details to be announced after the completion of negotiations with the Pharmacy Guild of Australia.⁵⁴

An anti-banks political party proposed: In August 1999 a Bulletin Morgan Poll found that banks remain Australia’s least popular industry. Asked to nominate industries ‘doing a poor job for Australia’, 44 per cent of those surveyed nominated banks, compared with only 6 per cent in 1983.⁵⁵ Perhaps, then, it was only a matter of time before someone proposed establishing a political party dedicated specifically to making the banks more accountable to the community. In fact a group called, Stop Banks Exploiting Australians,

⁴⁹ M Madigan, ‘PM’s plan to revive the bush’, *The Daily Telegraph*, 30 October 1999.

⁵⁰ House of Representatives Standing Committee on Economics, Financial Institutions and Public Administration, ‘Alternative means of providing banking and like services in regional Australia’, *Media Release*, 25 March 1998.

⁵¹ BankWest is a subsidiary of the Bank of Scotland which, it is reported, has been a leader in a similar joint venture with the UK store chain, J Sainsbury - K Towers, ‘Prescription for country banking’, *The Australian*, 22 March 1999.

⁵² Standing Committee Report, pp 63-64.

⁵³ Pharmacy Guild of Australia, ‘Pharmacists to maintain impetus for local banking services’, *Media Release*, 27 September 1999.

⁵⁴ M Skelsey, ‘Banks inside pharmacies to fill void’, *The Daily Telegraph*, 11 November 1999.

⁵⁵ ‘Banks hold lead in unpopularity stakes’, *The Bulletin*, 3 August 1999. The survey was conducted in May and June 1999, prior to revelations of the deal between the Australian Bankers’ Association and John Laws.

was on the Legislative Council ticket in the last NSW election.⁵⁶ On 4 January 2000 a Tasmanian, Rowan Payne, duly announced the birth of Bank Reform Australia-wide, a party he hopes to register in time for the next federal election.⁵⁷

3. BANKS AND COMMUNITY OBLIGATIONS IN AUSTRALIA - FINDINGS AND RECOMMENDATIONS

Focus on regional and rural Services: The reduction in the provision of services, through branch closures, and the increase in transaction costs has received significant political attention in recent years. This has been the platform for several inquiries into the provision of banking services, with a particular focus on regional and rural services. This section summarises the key findings and recommendations of these governmental inquiries.

Wallis Report:⁵⁸ This inquiry was asked to analyse the forces driving change in the financial system and recommend ways to improve current regulatory arrangements. Recommendation 96 is the most relevant for present purposes: *Governments should expedite the examination of alternative means of providing low cost transaction services for remote areas and for recipients of social security and other transfer payments.*

Regional Banking Service Report:⁵⁹ An inquiry into ‘...alternative means of providing banking and like services in regional and remote Australia to those currently delivered through the traditional bank branch network’ was referred to the Federal House of Representatives Standing Committee on Economics, Finance and Public Administration on 28 October 1997 by the Treasurer. This inquiry was one part of the Government’s response to Recommendation 96 of the *Wallis Report*, the other part of that response being a review undertaken by the Department of Social Security and others on alternative mechanisms for payment of public benefits.⁶⁰ During the course of the inquiry the Standing Committee received 157 submissions from various groups during the course of its inquiry, including: individual banks; the Australian Bankers Association; trade unions; rural groups; local and state governments; and charitable organisations.⁶¹ The Committee reported in March 1999.

The wide-ranging report looked at the changes in the delivery of financial services and the impact of those changes on the community. It then examined the institutional alternatives

⁵⁶ The party won 5 931 votes, 0.17 per cent of the total.

⁵⁷ G Warner, ‘Banking on political power’, *The Mercury*, 5 January 1999.

⁵⁸ *Financial System Inquiry*, Final Report, March 1997

⁵⁹ Report from the House of Representatives Standing Committee on Economics, Finance and Public Administration *Regional Banking Services Money too far away*, March 1999 (Standing Committee Report).

⁶⁰ *Ibid*, p 5.

⁶¹ *Ibid*, p 2

to traditional banking, such as community banks, and the technological alternatives available such as ATMs and EFTPOS.

As has been said, the Committee agreed that banking is an essential service to which all communities should have access. At least in the first instance, the Committee believed this should be achieved by voluntary action from banks rather than by regulation: *'The Committee favours, at least in the first instance, an approach which encourages all players - governments, financial service providers and communities - to accept their shared responsibilities for ensuring communities maintain access to banking and like services'*.⁶²

The NSW Department of Fair Trading has observed that the report 'did not recommend any enforceable minimum service standards for banks'. For example, it recommended that the relevant Federal Minister monitor bank closures and related issues for another two years, but the only recommendation for an enforceable standard of relevance to this paper was that banks give a specified period of notice before closing a branch. All the Standing Committee's recommendations are set out at Appendix A. The following are those recommendations of immediate relevance:

- **Recommendation (2):** That the Minister for Regional Services, Territories and Local Government and the Minister for Financial Services and Regulation in consultation with State colleagues, undertake a collection of comprehensive data on the access communities have to financial services. (paragraph 2.30)
- **Recommendation (7):** The Committee recommends that the Minister for Regional Services, Territories and Local Government ensures that the Rural Transaction Centres Program builds on State Government initiatives setting up government service centres to deliver financial services to regional areas. (paragraph 3.56)
- **Recommendation (11):** The Committee recommends that the Minister for Regional Services, Territories and Local Government gives a high priority to determining the scope of the Regional Transaction Centres program and the announcement of a timetable for implementation. (paragraph 3.183)
- **Recommendation (13):** The Committee recommends that the Minister for Communications in consultation with the Minister for Regional Services, Territories and Local Government undertakes to assist communities to utilise the Regional Telecommunications Infrastructure Fund to expand the number of Internet Service Providers in regional and remote Australia. (paragraph 4.59)
- **Recommendation (19):** The Committee recommends that the Australian Bankers' Association develops a minimum standard of service delivery as a guideline for banks in the event of closing regional and remote branches. (paragraph 5.48)
- **Recommendation (20):** The Committee recommends that the industry adopts a

⁶² Ibid, p 32.

branch closure protocol which incorporates the following: (1) Banks will give three months notice to customers and relevant community organisations such as Local Councils of their intention to close a branch; (2) Banks will consult with local communities about trends in the delivery of banking services and, in particular, about developments that have the potential to affect the delivery of services in that region. Included in this will be a genuine desire to use community goodwill to improve the viability of the branch. In the event of a decision to close a branch, banks will consult with the community about preferred options for alternative services and on the training to be provided in using alternative channels; (3) Banks will provide written notice of at least two months before changing the branch that manages an account; (4) In the event of closing or downgrading a branch below agency status, banks will waive any fees or penalties incurred relating to early repayment of loans or closing of accounts; (5) In the event of closing a branch, banks will be expected to leave behind some form of over-the-counter service that allows access to cash deposit and withdrawal facilities for personal and small business customers; (6) In the event of closing a branch, banks will provide face to face education and training for customers and the community in alternative forms of banking.

The first four items should be made mandatory and incorporated into the Code of Banking Practice. (paragraph 5.51)

- **Recommendation (21):** The Committee recommends that the Minister for Financial Services and Regulation monitors the practices of banks in the event of closing branches and reports back to the Committee within two years with respect to the: alternative services left in place; period of notice given and method of giving notice; degree of community consultation involved; level of education and training provided for customers; and the imposition of any fees on customers who repay loans early or close accounts as a result of the closure of that branch. (paragraph 5.52)

NSW Local Government Banking and Financial Services Taskforce Interim Report: This April 1999 interim report was issued on the heels of the Standing Committee report and is, in many ways, a commentary on that report's recommendations. Its focus, as one would expect, is on the role and responsibilities of local government in providing banking services to the community, although it is fair to say that its recommendations also extend beyond this perspective. For example, with respect to Recommendation 20 of the Standing Committee report, the Taskforce further recommended that all six protocols (and not just the first four) be made mandatory. The Taskforce also thought that the banking industry should *fund a customer/community education program in the use of alternative forms of banking*. Individual councils, it added, should *work with banks in their area in developing and implementing community education programs*.

Other recommendations of the Taskforce were as follows:

- *Enforceable community service obligations* - that Local Government continue to

make representations to the Federal Government urging it to use its regulatory powers to enforce community service obligations on the banking industry. The consumer service obligations should be determined through consultation with Local Government, the banking industry, consumer and community groups;

- *Funding for RTC program* - that Local Government make representations to the Federal Government advocating that full funding be allocated to the Rural Transaction Centre Program independently of the sale of Telstra;
- *Need for remedial action* - that Local Government impress on the Federal and State Governments that branch closures and other banking trends are creating difficulties for both rural and metropolitan communities and that remedial action must be implemented to redress the needs of both; and
- *Establishing strategic alliances* - that the Taskforce enter into detailed negotiations with potential partners with a view to establishing a strategic alliance to deliver banking and financial services to the community. The alliance must ensure the establishment of a network of retail banking service outlets that provide face to face banking, cash withdrawal and deposit facilities, business banking services and access to a range of other banking and financial services. The latter must include personal, housing, small business and agricultural loans, investment services, insurance and superannuation services. The potential outlets could include council offices.

As noted, in November 1999 the president of the NSW Local Government Association, Peter Woods, announced that an alliance is to be formed between pharmacies and councils to fill some of the gaps left by major banks in rural and suburban areas. The mooted bank is to be known as either the Community Bank or Guild Bank, with further details to be announced after the completion of negotiations with the Pharmacy Guild of Australia.⁶³

NSW Department of Fair Trading Paper:⁶⁴ The NSW Department of Fair Trading produced a paper in June 1999 for consideration by the Ministerial Council on Consumer Affairs.⁶⁵ The paper, entitled *Australian Banks and Minimum Service Standards: USA Precedents for Regulation*, looked at the social impact of changes in the delivery of banking services to certain sections of the community. A particular focus was on the provision of minimum service standards for the banks and, for this purpose, it considered the US experience of banking regulation, including the Community Reinvestment Act 1977 and the requirement in some US States for the provision of minimum banking services for all members of the community.

⁶³ M Skelsey, 'Banks inside pharmacies to fill void', *The Daily Telegraph*, 11 November 1999.

⁶⁴ NSW Department of Fair Trading *Australian Banks and Minimum Service Standards: USA Precedents for Regulation*, June 1999

⁶⁵ It seems another version of the paper was also directed to the Federal Minister for Financial Services and Regulation, Joe Hockey.

In the event, the paper recommended the adoption of a system of community banking ratings similar to that which operates in the United States:

- *Minimum service standards* - That the Federal Government enact legislation to impose minimum standards on bank licences (authority to carry on banking business) requiring them to supply at least a minimum level of banking services to the community.
- *Essential services* - That these basic banking services include: a certain number of fee free transactions for those in receipt of government pensions and benefits; a certain level of banking services in rural and regional areas; and safe, accessible and easy use of ATMs/EFTPOS for aged and disabled consumers.
- *Community banking rating* - That an existing regulator be appointed to compile a report for each retail bank on the extent to which the bank provides lending, deposit and transaction services across the range of socio-economic groups and geographic areas, leading to an overall 'community banking' rating.

The Department noted that, further to Part 7 of the federal *Telecommunications Act 1997*, Telstra is subject to Universal Service Obligations, which may serve as a model for a similar regime for the banking industry. To ease the cost of compliance for the banks, the Department also mentioned the issue of 'tradeable rights', under which banks could co-operate to fill gaps in their geographic coverage or product range. The Department proposed in this regard: 'Using the tradeable rights model, banks would have the option of negotiating with each other to make sure that each locality retained at least one branch to fulfill their obligations'.⁶⁶

In conclusion, the Department of Fair Trading emphasised that 'Access to financial services is a basic need of communities and individuals'. The problem it identified is that 'most banks are focusing their business on high net worth clients, reducing their numbers of branches and staffing and steadily raising the levels of their fees and charges'. For the Department, a suitably adapted form of the US regulatory model should be part of the response to the fact that some segments of the community are now left without access to essential banking services:

The USA provides several examples of how a commercial banking market can be regulated with the aim of ensuring the access of disadvantaged communities to essential banking services. It is significant that the USA has been prepared to legislate to improve the community benefits from the banking system. While the exact problems in the USA may differ from

⁶⁶ The paper noted: 'NSW has legislated to allow companies to trade in rights to allow emissions (Protection of Environment Operations Act NSW 1997, Part 93) and to allow irrigators to trade allocations of water (Water Act NSW 1912, Regulation Part 2)'.

Australia, some of the regulatory principles could be adapted to Australia.⁶⁷

Comments: This is clearly a time of great change, agitation and development in the banking industry in Australia. In many circles there is disquiet about the course that the banking industry is taking, especially as this affects the least disadvantaged in our community. For government, notably the Federal Government, the issue is whether there is a need take a more interventionist role to ensure that certain essential services are available to all Australians. The NSW Department of Fair Trading is one voice in the chorus calling for more stringent regulation. As the next section of this paper shows, this debate is by no means unique to Australia.

4. BANKS AND COMMUNITY OBLIGATIONS IN THE US - THE COMMUNITY REINVESTMENT ACT (CRA)

Australian connections: The NSW Department of Fair Trading has held out the example of the US Community Reinvestment Act as a precedent for ensuring that banks adhere to minimum service standards. One suggestion made by the Department is that ‘If a similar model was applied in Australia, banks which receive an inadequate “community rating” could be required to contribute a certain percentage of their pre-tax profits to a Community Banking Fund. This could be used to subsidise the provision of essential banking services to disadvantaged communities’.⁶⁸ Mention was in fact made of the US legislation in the NSW Government’s submission to the House of Representatives Standing Committee.⁶⁹ The Finance Sector Union (FSU) also suggested to the Committee that a similar mechanism might be used in Australia through which banks would be encouraged to take responsibility for ‘providing services to the whole community, not just the profitable parts of it’.⁷⁰ The FSU continued:

It is submitted that the value of such an approach would be in the provision of a formal mechanism by which all stakeholders in the system may potentially influence the business strategy of financial services providers and thereby temper a solely profit oriented approach.⁷¹

Comparative note: Any comparative account of the Australian and US banking systems must begin with a cautionary note. On one side, it can be acknowledged that, to a large extent, the issues and forces which drive the debate about banks and their community obligations in this country are also found in the US. Take, for example, this statement from

⁶⁷ NSW Department of fair Trading, *Australian Banks and Minimum Service Standards: USA Precedents for Regulation*, June 1999, p 8.

⁶⁸ *Ibid*, p 6.

⁶⁹ NSW Government, *Submissions, Volume 4*, p 777; these are discussed in the Standing Committee Report at page 31.

⁷⁰ FSU, *Submissions, Volume 2*, p 338.

⁷¹ *Ibid*.

one US commentator: 'Both rural and urban groups want to maintain access to banking services by halting wholesale branch closures in lower-income areas - such as the 140 mostly rural branches that KeyCorp announced it will close or the hundreds of branches that Wells Fargo abandoned after its 1996 merger with First Interstate'.⁷² The similarity with the Australian debate is obvious.

On the other side, significant point of dissimilarity must also be noted. For example, a century and a half of US policy on the geography of banking has resulted in the growth of a local and State-based banking system. This tradition of local banking and local bank regulation has given banks a greater stake in their local communities than is the case in Australia; as well, it has offered a geographically-focused lever to bank regulators. It has also meant that literally thousands of banks operate in the US. Only with the passing in 1994 of the *Riegle-Neal Interstate Banking and Branching Act* have banks been allowed to grow larger by merging anywhere in the country. In subsequent years many mergers have flowed from this development, as well from the global market forces which are driving towards the concentration of financial services, thereby driving down the overall number of banks to around 10,500 in 1998.⁷³ Broadly speaking, the point to make is that any comparative analysis must proceed cautiously, as must any proposal to transplant a regulatory regime from one country to another.

Background: Since 1977 US banks and what are called 'thrift institutions' (savings and loan associations) have been subject to a federal regulatory regime aimed at encouraging them to meet the credit and services needs of their entire communities, including low and moderate income neighbourhoods. The relevant Act is the Community Reinvestment Act (the 'CRA'), passed by the Carter Administration, largely as a result of the work of community based groups concerned about the 'redlining' of neighbourhoods by banks and other lenders. The term 'redlining' refers to the practice of some banks of drawing red lines on maps to indicate areas off-limits to lending. The movement's focus was pre-dominantly urban in nature, concerned to halt the trend of urban decay in the inner cities. It argued that banks were using deposits made in poorer neighbourhoods to fund loans in the suburbs and said that this disinvestment should be replaced by reinvestment of the community's own money back into the community.

An economist at the University of Massachusetts-Boston, Jim Campen, explains that the CRA is the centrepiece of several laws that have worked together to increase flows of credit to low and medium-income borrowers and poorer neighbourhoods generally.⁷⁴ In 1975 the *Home Mortgage Disclosure Act* was passed, which requires each bank to report annually on the number and dollar amount of mortgage loans made in every neighbourhood in every

⁷² J Campen, 'A law that works', *Dollars and Sense*, Nov/Dec 1997.

⁷³ JT Campen, 'Neighbourhoods, banks, and capital flows: the transformation of the US financial system and the community reinvestment movement' (1998) 30 *Review of radical Political Economics* 29 at 33. As noted, at the end of June 1998 there were 55 banks operating in Australia.

⁷⁴ J Campen, 'A law that works' - <http://www.igc.apc.org/dollars/issues/nov97/Comm.htm>

metropolitan area. Before then, the *Fair Housing Act* had been passed in 1968, which prohibits discrimination in the home purchase and home rental process (including lending), and the *Equal Credit Opportunity Act* had been passed in 1974, which outlaws discrimination in all types of lending.

The CRA might seem a paradox: the centrepiece of a financial regulatory regime in a country where regulation is supposedly looked upon as an anathema. During the 1980s, at least, this apparent paradox was resolved by the fact that the CRA was largely ignored by the banks and federal regulators alike. Campen comments in this regard that the:

in the deregulatory fervour of the 1980s, the federal agencies charged with enforcing the CRA acted essentially as if it did not exist. Regulators testified [during the 1988 Senate Banking Committee hearings] that only about 3 percent of all banks received unsatisfactory CRA ratings. They testified further that only 9 of over 50,000 bank applications requiring regulatory approval during the decade since passage of the CRA had been denied on the grounds of inadequate CRA performance.⁷⁵

Interest in the CRA and related legislation was rekindled following revelations of discrimination in bank lending in 1988.⁷⁶ Around the same time massive financial losses were revealed in the deregulated ‘thrifts’ sector of the finance industry and, seizing the opportunity to demand a quid pro quo for the taxpayer-funded rescue package, the community reinvestment movement was able to win adoption of important amendments to both the Home Mortgage Disclosure Act and the CRA. Thus, since 1989 federal regulators are required to disclose publicly the CRA performance ratings given to individual banks, as well as the written report explaining the basis for that rating. Revised regulations were also introduced by the federal agencies in May 1995, thereby further strengthening the scheme. These regulatory amendments were phased in up to July 1997. While these amendments did not introduce stronger sanctions, thereby reflecting the fact that the Clinton Administration’s original plans were watered-down by a hostile Republican Congress, they did establish a process more focused on the: evaluation of results; increased use of regulatory agencies’ discretionary powers; and obtaining performance evaluations based on better data, particularly data better adjusted to the size of the lending institution.⁷⁷

⁷⁵ JT Campen, ‘Neighbourhoods, banks, and capital flows: the transformation of the US financial system and the community reinvestment movement’ (1998) 30 *Review of radical Political Economics* 29 at 48.

⁷⁶ B Dedman, ‘The color of money’, *Atlanta Journal and Atlanta Constitution*, 1-4 May 1988. This prize-winning series of articles argued that white neighbourhoods receive up to five times as many mortgages per 1,000 mortgageable housing units as do black neighbourhoods with similar income levels. For an analysis of the findings of such empirical research see - RF Nesiba, ‘Racial discrimination in residential lending markets: why empirical researchers always see it and economic theorists never do’ (1996) 30 *Journal of Economic Issues* 51.

⁷⁷ N Pothier, *The Community Reinvestment Act (CRA): United States Credit Legislation*, Canadian Parliamentary Research Branch, October 1998, p 4. For a detailed commentary see KH Thomas, *The CRA Handbook*, McGraw-Hill 1998, pp 36-37.

Moreover, around the same time additional programs were created to provide financial support to and reward financial institutions that achieved the CRA objectives. In 1994 Congress created a fund under the Community Development Financial Institutions Program (CDFI) aimed at broadening access to credit and financial services, particularly in disadvantaged neighbourhoods. The fund had two parts: the CDFI fund provides a range of financial institutions with technical and financial assistance for community development; the second, the Bank Enterprise Award, rewards banks that enter into partnerships to assist community development financial institutions.⁷⁸ The National Community Capital Association has estimated that there are around 350 community development finance initiatives across the US, with \$2-3 billion available for lending.⁷⁹

As in Australia, the 1990s have been years of transition and rapid change in banking in the US. For this reason, the 106th Congress has looked closely at the whole issue of the modernisation of the financial services industry and, with it, its effects on the application of those community obligations established under the CRA. Several proposed pieces of legislation designed to permit affiliations of banking, securities and insurance firms have been introduced, including the *Gramm-Leach-Bliley Act 1999*. It is said that the proposed amendments to the CRA were the most difficult to negotiate and that the Clinton Administration would not countenance any watering-down of the CRA.⁸⁰ Thus, community reinvestment remains a hot issue in the US.

Overview of the objects of the CRA: The CRA is intended to encourage banks to help to meet the credit needs of the entire community, including low and moderate-income households. It is in fact a very brief piece of legislation, little more than a basic statement of purpose and intent, leaving it to the regulations passed by the appropriate federal agency to 'carry out' the Act's objects. In the definition of its 'purposes', the CRA states that, in enacting the legislation,

The Congress finds that -

(1) regulated financial institutions are required by law to demonstrate that their deposit facilities serve the

⁷⁸ N Pothier, *The Community Reinvestment Act (CRA): United States Credit Legislation*, Canadian Parliamentary Research Branch, October 1998, p 4.

⁷⁹ HM Treasury, *Enterprise and Social Exclusion*, November 1999, p 69.

⁸⁰ FJ Wells, *Financial Services Modernization Legislation in the 106th Congress*, Congressional Research Service Paper IB 10035, 16 November 1999, p 12. The proposed legislation would involve the following changes to the CRA: (a) that at the time an organisation applies to establish a financial services holding company, its banks must have a favourable CRA rating, and a bank or financial holding company could not start new activities authorised under the proposed legislation unless the bank or bank affiliate had a favourable CRA rating; (b) that small banks and thrifts with under \$250 million in assets would have the time between routine CRA examinations extended to four or five years depending on the rating on their most recent CRA exam; and (c) that CRA agreements made between banking organisations and non-bank parties in connection with CRA would have to be made public, and annual reports on uses of the money and other resources involved in the agreement would be required.

convenience and needs of the communities in which they are chartered to do business;

(2) the convenience and needs of communities include the need for credit services as well as deposit services; and

(3) regulated financial institutions have continuing and affirmative obligation to help to meet the credit needs of the local communities in which they are chartered.

Importantly, the Act adds that, in meeting the objects of the CRA, banks are to operate in a way that is ‘consistent with the safe and sound operation of such institutions’. The Act goes on to say that ‘Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations’.

The CRA’s regulatory mechanisms: The CRA requires that the record of each bank in helping to meet the credit and banking needs of its entire community be evaluated periodically by the relevant federal agencies. These are the Federal Reserve Board (FRB), the Office of Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) for banks and the Office of Thrift Supervision (OTS) for savings and loan associations. These agencies must:

- evaluate performance of banks in extending credit to the entire local community, including low and moderate-income neighbourhoods;
- take the CRA performance of banks into account before approving their applications to expand or change their activities;
- in their respective annual reports, report on measures taken under their CRA responsibilities;
- publish the regulations used to implement the CRA; and
- prepare written (and partially confidential) performance evaluations of CRA-regulated banks, taking into account the fact that the activities of some institutions are carried out in metropolitan areas or in more than one State.

A rating is given to the bank (or other relevant financial institutions) for CRA purposes. These ratings range from ‘outstanding’, ‘satisfactory’, ‘needs to improve’, or ‘substantial noncompliance’. As Governor Edward Gramlich of the Federal Reserve Board said in 1998, ‘All ratings are made public and the ratings are an important component of regulatory assessments of proposed mergers and acquisitions. It is this possibility that forms the real teeth of the CRA law’. The point is that the CRA allows community groups and other organisations to challenge a proposed merger or acquisition because of a bank’s inadequate service to minorities or low-income households.

The following table provides greater detail about activities requiring regulatory agency approval under the CRA.

ACTIVITIES REQUIRING REGULATORY AGENCY APPROVAL UNDER THE CRA APPLICATIONS THAT MAY BE REFUSED UNDER THE CRA	
<i>Subject of Application</i>	<i>Description</i>
Charter	Charter application by national banks or federal savings and loan associations
Deposit insurance	Deposit insurance application by recently chartered financial institutions such as state banks, savings banks, or savings and loan associations
Branches and deposit-taking facilities	Application by a deposit-taking institution to open a branch or additional facility in the United States
Move	Application by a financial institution to change the location of its headquarters or a branch
Merger, acquisition	Application by a financial institution to merge, consolidate activities with another institution, or acquire assets (or liabilities) of a financial institution under the CRA or Part IV of the <i>National Housing Act</i> (NHA)
Share acquisition	Application to acquire shares or assets of a financial institution requiring approval under section 1842 of the chapter on banks or section 498(e) of the NHA
Source: <i>Banks & Banking</i> , Chapter 30, "Community Reinvestment", 12 USC.	

An agency's evaluation of the bank's CRA performance must be placed on the bank's public file⁸¹ which, in addition, must include: a list of the bank's branches; a list of branches opened or closed in the last three years; a list of services generally offered at the bank's branches and descriptions 'of material differences in the availability or cost of services at particular branches, if any';⁸² plus any written comments from the public received by the bank concerning its CRA performance over the past three years. Banks which are required to report under the Home Mortgage Disclosure Act must, in addition, keep a copy of its HMDA Disclosure Statement in its public file.

Public disclosure of performance ratings, together with a written report by its regulator, dates back to amendments made to the CRA in 1989.

The CRA's performance tests: As noted, the regulatory agencies provide banks with a CRA rating, which can range from 'outstanding' to 'substantial non-compliance'. Generally, in arriving at this rating three tests are applied by the agencies in their evaluation

⁸¹ Note that the CRA includes a provision for a confidential section to the FDIC's report on the bank's performance. This is designed to protect the privacy of named individuals, as well as information deemed by the agency to be too sensitive or speculative to disclose to the bank or the public. Disclosure to a bank of the confidential section of an agency's report, in whole or part, will only occur if the agency decides that disclosure will promote the objectives of the Act.

⁸² A bank has the option to include information about the availability of alternative services for delivering retail banking services.

of the extent to which banks are achieving the objectives of the CRA. These are the lending, investment and service tests:

- The *lending test* evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community development lending. Among other things, the FDIC will assess lending activity in terms of the number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank's assessment area(s). Such things as borrower characteristics and the number and amount of community development loans (including their complexity and innovativeness) are also considered.
- The *investment test* 'evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s)'. A qualified investment is said to include 'Donating, selling on favourable terms, or making available on a rent-free basis a branch of the bank that is located in a predominantly minority neighbourhood to a minority depository institution or women's depository institution...'. The performance criteria include: the amount of qualified investments; the innovativeness or complexity of qualified investments; and the responsiveness of qualified investments to credit and community development needs.
- The *service test* evaluates a bank's record of helping to meet 'the credit needs of its assessment area(s) by analysing both the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services'. The relevant performance criteria for retail banking services are as follows: (a) the current distribution of the bank's branches among low-, moderate, middle-, and upper-income geographies; (b) in the context of that current distribution, the bank's record of opening and closing branches, particularly branches in low or moderate income areas or primarily serving low or moderate income individuals; (c) the availability and effectiveness of alternative systems for delivering retail banking services in low or moderate income areas; and (d) the range of services provided in the different areas and the degree to which services are tailored to meet the needs of particular geographies.

Alternatively, a bank's performance can be evaluated under an approved '*strategic plan*'. Public participation in the development of the plan is required under the CRA, including a period of formal public comment. The plan must include 'measurable goals' for helping to meet the credit needs of each assessment area covered in the plan, particularly the needs of low and moderate income individuals. The CRA also spells out the criteria to be used in evaluating the plan, including the availability and effectiveness of the bank's system for delivering retail banking services and the extent and innovativeness of the bank's community development services.

Note that a special test can also be applied to smaller banks, those independent banks

which have total assets of less than US\$250 million,⁸³ which aims to lighten their paper work load. Further, there is a ‘*community development test*’ which is applied to wholesale⁸⁴ or limited-purpose banks.⁸⁵ This test which is based on credit extended, investment made and community development services provided inside and outside given geographical areas.

Assessment under the CRA is tied to specific geographical areas in which banks operate. In urban regions, the median income of an area is calculated in relation to a Metropolitan Statistical Area (MSA); in rural regions the medium income is calculated in terms of the ‘statewide non-metropolitan median family income’.

Evaluating the CRA: This is difficult, in part because the CRA and related initiatives allow for a range of community finance activities on the part of banks. These include the Small Business Administration loan guarantee scheme, the Bank Enterprise Award scheme and public funding of community organisations under the Community Development Finance Institution Fund.⁸⁶ Banks can also make specific community development loans by agreement with community groups under the CRA. A US academic, Alex Schwartz, found that banks have signed more than 300 such agreement valued at \$350 billion between 1977 and 1997. His work, which focused on the operation of four such agreements in Chicago, Cleveland, Pittsburgh and New Jersey, found that agreements were more consistently successful in some areas than others, including investments in low-income housing tax credits, grant giving to community based organisations and in opening (and keeping open) inner-city bank branches.⁸⁷ However, it is also the case that banks with and without CRA agreements often develop lending, investment and service programs and strategies for low and moderate-income households and communities that are not specified in any CRA agreement.

As one would expect there are also different perspectives on the pros and cons of the

⁸³ Alternatively, a small bank can be an affiliate of a holding company that, in either of the past two years, had total banking and thrift assets of less than \$1 billion.

⁸⁴ This is a bank that is not in the business of extending home mortgage, small business, farm or consumer loans to retail customers and has received designation as a wholesale bank from its supervisory agency.

⁸⁵ A bank that offers only a narrow product line, such as credit card or motor vehicle loans, to a regional or broader market and has received designation as a limited purpose bank from its supervisory agency.

⁸⁶ In 1996, under the Bank Enterprise Award, 38 of 50 applicant banks received rewards totalling US\$13.1 million for increased projected investments in community development institutions and disadvantaged areas; the CDIF Fund obtained assistance totalling US\$35 million for 31 of 268 applicant financial institutions - N Pothier, *The Community Reinvestment Act (CRA): United States Credit Legislation*, Canadian Parliamentary Research Branch, October 1998, p 5.

⁸⁷ A Schwartz, ‘From confrontations to collaborations? bank, community groups, and the implementation of community reinvestment agreements’ (1998) 9 *Housing Policy Debate* 631.

CRA.⁸⁸ Opponents have raised the possibility that banking institutions have sought to avoid confrontation with community groups at the time of acquisitions and mergers by acceding to excessive demands.⁸⁹ Some bankers complain, in this regard, that they are ‘held up’ by community groups when they try to merge or acquire other banks and say that the CRA is one of the most burdensome regulations, arguing that ‘the program consists of a costly set of regulatory procedures that seem unwarranted in terms of basic lending discriminations, and that impose big reporting and other costs on financial institutions, whether they discriminate or not’.⁹⁰ Viewed from this perspective, CRA is a ‘regulatory tax on banking activity’, with some bankers arguing that, while deplorable, the decay of low-income neighbourhoods ‘is beyond the capacity of the banking industry alone to repair’.⁹¹ One commentator, Jeffrey Lacker, concluded in 1995 that ‘the CRA is not an efficient vehicle for revitalising decayed neighbourhoods, despite its laudable goals’. Lacker argued he would prefer to see community development being subsidised directly from general tax revenues and advocated use of the 1994 Community Development Banking Act as an alternative to CRA. According to Lacker, the 1994 Act ‘creates a new government corporation, called the Community Development Financial Institutions Fund, charged with providing financial and technical assistance to specialized, limited-purpose community development financial institutions (CDFIs), and authorizes expenditure of \$382 million over four years’.⁹²

Others say that objective, systematic empirical evidence on CRA is very thin. The evidence that the CRA has helped to turn around the process of urban decay and degeneration in some cities is said to be largely anecdotal, with very little rigorous evidence to support the claim. There is also the concern that the CRA’s future is clouded by the restructuring and consolidation of the financial service sector. The picture is further complicated by technological advances. Schwartz elaborated:

New modes of delivering bank services present yet another challenge to the implementation of CRA agreements...banks with agreements have not replaced inner-city branches with ATMs; to the contrary, several banks have

⁸⁸ For a detailed account of the ‘politics’ behind the CRA see - KH Thomas, *The CRA Handbook*, McGraw-Hill 1998, Ch 2.

⁸⁹ FJ Wells, *Financial Services Modernization Legislation in the 106th Congress*, Congressional Research Service Paper IB 10035, 16 November 1999, p 12. The paper comments that, with the mega-bank mergers of 1998, including that of Citicorp and Travelers Group into Citigroup Inc, ‘the trend to significant CRA commitments at the time of mergers received increased visibility...The substantial increase in mergers and concomitant increase in CRA commitments has focused renewed attention on the Act and whether it should be curtailed or expanded’.

⁹⁰ EM Gramlich, ‘Examining community reinvestment’ - <http://www.bog.frb.us/boarddocs/speeches/1998/19981106.htm>

⁹¹ These criticisms are reviewed in JM Lacker, ‘Neighbourhoods and banking’ (1995) 81 *Federal Reserve Bank of Richmond Economic Quarterly* 13 at 14.

⁹² *Ibid* at 32.

opened new branches. Nevertheless, banks increasingly use on-line computer systems and telephone services to take and process loan applications...Moreover, automation probably makes it more difficult for community advisory committees to monitor bank lending decisions....⁹³

On the positive side, many claim that a raft of CRA related activities have proved successful, particularly in urban areas. Such organisations as the Enterprise Foundation and the National Community Reinvestment Coalition campaign against any attempt to water-down its regulatory requirements. The Coalition noted that Federal Reserve Board Chairman, Edward Gramlich, estimated that \$117 billion in CRA-related home, small business, and community development loans were made on an annual basis. It is argued, too, that the CRA has shown banks good business opportunities that they otherwise would have missed.⁹⁴ The Enterprise Foundation argued: 'CRA has been successful in maintaining growth in banking while increasing investment in low- and moderate-income neighbourhoods. The law has spurred tangible revitalization in poor communities, giving flexible small business and commercial development loans to communities that have gone without them for years'.⁹⁵ Mayo and Guene in their book, *Banking and Social Cohesion*, offer the following analysis:

Since the inception of CRA in 1977, banks and thrifts have made \$1,051 trillion in loan pledges to low income areas, with 99 per cent of the total pledged in the past seven years, as structural changes in the banking industry led to rapid consolidation and a heightened focus on the CRA. In the small business market, banks and thrifts subject to CRA made two-thirds of all small business loans in 1997, equal to 2.6 million small business loans for a total of \$159 billion. About one-fifth went to low and moderate income areas, with loans totalling \$34 billion. In addition to small business loans, commercial banks made large investments in community economic development projects - \$17.7 billion in 1996 and \$18.6 billion in 1997.⁹⁶

This assessment would appear to be backed up by the comments of Governor Laurence Meyer of the Federal Reserve Board in 1998 to the effect that the CRA 'has contributed to [the] increase in the availability and affordability of credit. At a minimum, CRA has helped spur the development of new tools and techniques to help serve credit needs that, in the past, banks were either unable or unwilling to serve. At its best, CRA also has stimulated

⁹³ A Schwartz, 'From confrontations to collaborations? bank, community groups, and the implementation of community reinvestment agreements' (1998) 9 *Housing Policy Debate* 631 at 654.

⁹⁴ *NCRC Alert* - http://www.ncrc.org/policy/legislation_current.htm

⁹⁵ The Enterprise Foundation, 'Community Reinvestment Act' - <http://www.enterprisefoundation.org/policy/crasummary.asp>

⁹⁶ From E Mayo and A Mullineux, *A Community Reinvestment Act for the UK*, New Economic Foundation, 1999, p 5.

competition for loans and banking services in low-and moderate-income communities, leading many institutions on a continuing search for techniques to help better understand and mitigate consumer lending risks'.⁹⁷

Further, it is argued that the benefits of CRA need not be restricted to urban areas. As Lawrence Lindsey, a member of the Board of Governors of the Federal Reserve System, said in 1995: 'Overcoming rural financing challenges requires the same type of entrepreneurial skill that is needed in depressed centres of America's urban areas and that the CRA is intended to help.'⁹⁸ Lindsey points to some rural success stories in this regard, including the Arkansas-based Southern Development Bancorporation which invests in a 32-county region and uses both for-profit and non-profit approaches to projects

Summing up this positive appraisal of CRA, one US commentator, Robert Kuttner, has argued that several lessons emerge from the CRA experience. One is that the CRA regulatory scheme has only succeeded with grass roots support and that 'regulation without grass roots activism is hollow'. A second lesson is that norms can be changed, with the CRA changing the way bankers view their proper role in cities. A third is that, despite current fashions, 'regulation can be salutary for the economy'.⁹⁹

Hard questions and cautionary notes about CRA: In amongst these more positive appraisals of CRA, various commentators also pose some hard questions and post cautionary notes. For example, in 1998 Governor Edward Gramlich of the Federal Reserve Board raised a number of important evaluative questions, including:¹⁰⁰

- if there is lending discrimination, would it not make more sense to find and prosecute this discrimination directly, rather than to impose CRA requirements on a great many financial institutions?
- does it make sense to impose CRA requirements only on those financial institutions contemplating mergers, as the CRA effectively does at present, as opposed to all institutions, or noncompliant institutions?
- are the loans in question caused by the CRA or not? Are the loans repaid at normal rates? Are the interest rates on CRA loans subsidised, and to what degree? Exactly who gains and loses how much from these loans? Responding to these questions,

⁹⁷ LH Meyer, 'Community reinvestment in an era of bank consolidation and deregulation', *Before the 1998 CRA Conference of the Consumer Bankers Association, Arlington, Virginia, 12 May 1998* - <http://www.bog.frb.fed.us/boarddocs/speeches/19980512.htm>

⁹⁸ LB Lindsey, 'The future of rural America' - <http://woodrow.mpls.frb.fed.us/pubs/region/reg956b.htm>

⁹⁹ R Kuttner, 'Lessons of the Community Reinvestment Act' - <http://epn.org/kuttner/bk971111.htm>. Kuttner is the co-editor of *The American Prospect*.

¹⁰⁰ EM Gramlich, 'Examining community reinvestment' - <http://www.bog.frb.us/boarddocs/speeches/1998/19981106.htm>

Gramlich stated that the gross loan figures attributed to CRA may be overestimates, 'but that the law may still be important in breaking down discriminatory distortions'. Gramlich noted, too, that 'Lenders report that there does seem to be some subsidy on some CRA loans, partly because of the slightly worse repayment rate, partly through explicit subsidy terms such as lower down payments but they all say that these loans are profitable in an absolute sense'.

- did the small business lending and the community development lending stimulate neighbourhood economic development in low income areas? Did mortgage loans improve neighbourhood housing integration?
- how much leverage do the ratings provisions of CRA give the regulatory agencies when analysing a merger request? Gramlich notes that between 1993-97 the Federal Reserve Board considered an average of 1,100 merger cases a year where a merging institution was subject to CRA. In around 70 cases a year, potential CRA problems were raised but in the period an average of only one merger denial per year was recorded primarily as a result of the bank's CRA assessment. In another seven cases per year, the merger application was withdrawn, sometimes for CRA related reasons. On the other side, Gramlich notes that, while the CRA test does not seem to be very strict, many banks with low CRA ratings may not have applied for a merger.

In terms of the long-term impact of CRA, Gramlich is one of those observers who call for more rigorous research. This view was re-affirmed by Alan Greenspan, Chairman of the Federal Reserve Board, in January 1998 who called for 'More research and information...' on the performance of community development loans. Responding to an issue raised by Gramlich, Greenspan also said that the banking 'industry must continue to seek out new methods of underwriting deals without excessive use of unreliable subsidies'. Indeed, a theme of Greenspan's address was that 'community development lending has relied heavily on public subsidies'. Another was that the Federal Reserve would continue to stress the 'market' aspect of CRA, adding:

This is crucial. If CRA is perceived by banks as a tax or credit allocation, it will fail in the long run. Activities developed by banks to meet credit needs in low- and moderate-income neighbourhoods should be well planned and thoughtfully implemented within their overall business plans. Banks should not try to throw money at a problem or 'just write the check' - that's not to anyone's advantage. That type of activity will not be sustainable over the long haul.¹⁰¹

One further point to make is that, while the figures for the amount of community finance available in the US may seem impressive at face value, they still must be interpreted in relation to the general levels of finance available in the US as a whole. On this issue, a UK

¹⁰¹ A Greenspan, *Remarks at a community forum on reinvestment and access to credit*, 12 January 1998 - <http://www.frb.fed.us/boardsofspeeches/19980112.htm>

Treasury report has commented that, 'Compared to the £34 trillion assets of the mainstream financial services industry in the US, the activities of community finance initiatives are however still marginal'.¹⁰²

Comments: The CRA would appear to be a highly innovative law which appears to have had some success (though how much may be difficult to assess precisely) in an area of public policy which has often proved intractable, namely, the relationships between the banks and the less advantaged geographical areas. In the US the focus of the CRA has been very much on urban regeneration and there appears to be little if any rigorous analysis of its effects on rural communities.

On a comparative note, the apparent differences between the banking systems in the US and Australia needs to be taken into account. The CRA works largely through the process of applications for mergers, which suggests a banking system where there are still a relatively large number of banks. This is changing, but if a comparable situation arose to that in Australia where the entire system was dominated by five or six major corporations it is hard to see how the regulatory 'bite' of the CRA could be made to work. It may be more relevant to ask, 'does it make sense to impose CRA requirements only on those financial institutions contemplating mergers, as the CRA effectively does at present, as opposed to on all institutions, or on noncompliant institutions'? Another issue, which has been raised in the UK context but may also be relevant to Australia, is that the approach taken in the US of defining communities against which the bank is going to report may be problematic, in part because banks in both Australia and the UK tend to be national rather than local. One UK suggestion is that disclosure by banks should be limited to financial services data aggregated on the basis of the post code for low- to moderate income neighbourhoods.

Another key issue is the underlying approach taken by the regulatory authority itself, either 'market' driven as Greenspan says the US Federal Reserve must be, or more 'social' or community-based in orientation. Writing in 1992, Bradford and Cincotta highlighted several instances where the Federal agencies had failed to act against banks which had apparently failed the CRA tests, by closing offices in minority communities or failing to meet the mortgage needs of lower income borrowers.¹⁰³ Kenneth Thomas has gone a step further to argue that conflict exists between the four US federal agencies that are required to regulate the CRA, with the Federal Reserve having the least commitment to the CRA, acting in effect as the part of the banking industry lobby, and with the Office of the Comptroller of Currency siding more with consumer interests.¹⁰⁴ From a different perspective, some commentators would prefer to see community development being subsidised directly from general tax revenues, with JM Lacker advocating use of the 1994 Community Development Banking Act as an alternative to CRA.

¹⁰² HM Treasury, *Enterprise and Social Exclusion*, November 1999, p 70.

¹⁰³ C Bradford and G Cincotta, 'The legacy, the promise, and the unfinished agenda of the CRA' in *From Redlining to Reinvestment: Community Responses to Urban Disinvestment* edited by GD Squires, Temple University Press 1992.

¹⁰⁴ KH Thomas, *The CRA Handbook*, McGraw-Hill 1998, p 47.

None of these comments are intended to suggest that the US community reinvestment model could not be applied in some form in Australia. The intention, rather, is to suggest that any application of the model should be based on a thorough understanding of how that model works and how it would need to be adapted to meet local conditions.

5. ACCESS TO BANKING SERVICES IN THE US

Another issue which has been addressed in the US is the question of access to basic banking services. In a number of States, including Illinois, Massachusetts, Minnesota, New Jersey and New York, banks are required to offer minimum services to the population at large. In New York, for example, a maximum monthly fee of \$3.00 (US) for a no-frills account allowing eight withdrawals per month ensures that opening an account is affordable to those on lower incomes or benefits.¹⁰⁵

In its June 1999 paper the NSW Fair Trading Department commented on this approach to ensuring basic banking services. Notice has also been taken of it in Canada where, as it is shown in a later section of this paper, it forms one part of a package of reforms introduced by the Canadian Government in June 1999. It can be noted, too, that the issue has been raised federally in the US, in the context of the so-called Financial Modernisation legislation. In particular, consumer and public advocacy groups have argued that the legislation should include a requirement that banks offer low-cost lifeline accounts to offset rising bank fees.¹⁰⁶

¹⁰⁵ Canadian Community Reinvestment Coalition, *Access Denied: The Failure of Voluntary Measures to Improve Banking Services*, June 1999 - <http://www.cancrc.org/english/accesssurvey.html>

¹⁰⁶ Public Interest Research Group, *Big Banks Bigger Fees: A National Survey of Bank Fees* - <http://www.pirg.org/reports/consumer/bankfees/index.html>

6. BANKS AND COMMUNITY OBLIGATIONS IN THE UK

Other connections: Interest in the US community reinvestment legislation has not been restricted to Australia. Both in the UK and Canada the proposal to introduce comparable legislation has been canvassed and, again, much of the general debate about banking and community obligations in these countries traverses similar ground to the Australian discussion. This is especially true of Canada where comparable demographic and geographical forces are at work. Also, the Canadian banking system, which is national in scope and dominated by six major banks, seems to be closer to the Australian model than does its US counterpart. This is certainly true of the UK where, as in Australia, the banking sector is dominated by a small number of banks.

Community reinvestment in the UK: Recent interest in community reinvestment in the UK has focused on the regeneration of disadvantaged urban neighbourhoods. Bank branch closures are one aspect of this debate,¹⁰⁷ but it has been carried out within a broader discussion about what is called 'social exclusion' from finance. The failure rate of small business enterprises in low-income neighbourhoods, often as a consequence of failing to gain access to credit, has been of particular concern at governmental and other levels.

As a means of combatting these problems, reformist economic groups in the UK, notably UK Social Investment Forum and New Economics Foundation, have shown an interest in the CRA and have advocated the introduction of similar legislation. These proposals and the state of the UK debate generally on this matter are set out in a paper by Ed Mayo (Executive Director, New Economics Foundation) and Andy Mullineux (Professor of Money and Banking, University of Birmingham). Drawing on the US model, the paper proposed a three-stage application of community reinvestment principles:¹⁰⁸

- **Stage 1 - disclosure:** it seems that the Minister for Trade and Industry, Patricia Hewitt, has called recently for disclosure by banks of their lending record,¹⁰⁹ with this disclosure being designed to assist banks in identifying market gaps and policy makers in assessing the social performance of banks. According to Mayo and Mullineux, 'Disclosure could be implemented on a voluntary basis or, if necessary, through legislation'. In fact, on 15 July 1998 the Member of Parliament for Putney, Tony Colman, introduced a Ten-minute Rule Bill, titled Community Reinvestment Disclosure, '*to require financial institutions to maintain and to publish details of*

¹⁰⁷ A recent study, conducted by Richard Willis of the Centre for Urban and Regional Studies at the University of Newcastle (UK), has found that building societies that become banks have tended to shut branches, particularly in poorer neighbourhoods. The study stated that, since 1990, around 10,000 branches of banks and building societies had shut in the UK - P Brown, 'Banks make lepers of the poor, says study', *The Guardian*, 6 January 2000.

¹⁰⁸ E Mayo and A Mullineux, *Show and tell: A Community Reinvestment Act for the UK?*, 1999.

¹⁰⁹ The Minister said, 'We need banks to disclose what they are doing. We need transparency to reward best practice and to shame those banks which are not doing much in this area to catch up and lay the scourge of financial exclusion to rest' - reported in the *Financial Times*, 21 October 1999.

their lending and financial services to individuals, businesses and organisations by postcode; to ensure that redlining of neighbourhoods does not take place; and to ensure that regeneration objectives are met through a public-private partnership of the financial institutions together with central and local government'. The proposal of Mayo and Mullineux was along similar lines. Disclosure would: extend beyond banks to cover all financial institutions; be limited to financial services data aggregated on the basis of the post-code for low-to moderate-income neighbourhoods; and cover all the key financial services, including totals and rejection rates for loans, mortgages, overdrafts, credit cards, leasing and factoring, bill payment credits and invoice discounting. The authors note that, by using post-codes as the basis for disclosure, this *'would allow reinvestment patterns to be understood and compared to socio-economic indicators of deprivation. It would allow communities to engage in informed discussion with banks about how to reinvest in their area. It would allow public sector organisations such as Regional Development Agencies and local authorities to understand reinvestment flows and where to channel efforts, technical assistance or funds to improve the environment for private investment*'.

- **Stage 2 - rating:** a community reinvestment rating of banks would be established, published by the Treasury (or listed in the Bank of England Quarterly Bulletin) and drawing on public or private data made available by banks on a voluntary basis through industry bodies. *'This', it is argued, 'would reward best practice and enable policy makers and bank customers to differentiate between retail banks'*. It is envisaged that the proposed rating would assess performance on such criteria as: finance for small business; finance for social housing; service for non-profit, social enterprise initiatives; and service for disadvantaged areas. Perhaps a bank could be rated against a select number of these criteria, thereby introducing 'a welcome degree of flexibility and allow banks to specialise in activities that best fit their core business'.
- **Stage 3 - sanctions and targets for voluntary action:** regulatory sanctions are proposed as a third step, to be pursued only if 'a voluntary approach makes no progress'. These sanctions would include fines and, in the final analysis, threats to withdraw banking licences. However, the Mayo and Mullineux paper makes it clear that, at present, 'there exists a creditable degree of commitment by banks to voluntary action and it could be argued that a period of experimentation and testing is required'. Further to this, governments should set targets to assess the success of the voluntary approach, so that by December 2000: (a) all retail banks offer basic bank accounts to any customer, subject to minimum legal requirements (as in Scotland); (b) the capital directed towards social inclusion by community finance initiatives rises to £192 million; and (c) *the closure of the last branch in a neighbourhood should be subject to minimum community consultation requirements and a detailed consideration of alternatives, beyond ATMs.*

Enterprise and social exclusion: In November 1999 the Treasury published a report of the National Strategy for Neighbourhood Renewal, Policy Action Team 3, titled *Enterprise and Social Exclusion*. This wide-ranging report, the focus of which was on securing finance for small business in deprived neighbourhoods, included the following recommendations:¹¹⁰

- the Government monitor the character and volume of bank and CFI [Community Finance Initiates] activity in deprived areas, to maintain pressure for change;
- the Government should invite the Bank of England to report regularly on finance for business in deprived areas (and for groups within deprived communities)...;
- Government should run an award scheme for innovation and excellence in the banking sector in serving deprived communities, with the first awards to be made in 2001; and
- Banks should be encouraged to work with interested parties on voluntary disclosure of activity in this area.

The general point to make is that, while branch closure in rural and other areas is certainly an issue in the UK, for obvious geographical reasons it has not gained the prominence it has here in Australia. As in the USA in the 1970s and beyond, the main target of interest in the UK is on urban renewal.

7. BANKS AND COMMUNITY OBLIGATIONS IN CANADA

Overview of the Canadian banking system:¹¹¹ It has been said that the banking system in Canada is broadly comparable to that in Australia. As in Australia, the regulation of banks is the responsibility of the federal government (although some subsidiary activities are regulated by the Provinces). Of a total of 11 domestic banks, there are six major Canadian banks which account for about 90 per cent of the assets of the Canadian banking industry and about half of the financial sector's total assets.¹¹² The six major banks play a major role in several key markets, accounting for about 79 per cent of business loans, some 60 per cent of residential mortgage loans and about 62 per cent of consumer credit. They also account for about 13 per cent of Canada's equity market capitalisation. Between them, the big six banks have over 8,000 branches and more than 14, 000 ATMs. In 1998, Canadians conducted over 1 billion ATM transactions and almost 1.5 billion debit card transactions. In response to intensified competition from new players in the financial sector,

¹¹⁰ National Strategy for Neighbourhood Renewal, Policy Action Team 3, *Enterprise and Social Exclusion*, HM Treasury, 1999, p 82. Ed Mayo was part of the team.

¹¹¹ This overview is based on: Canadian Department of Finance, *Canada's Banks*, 1999 - <http://www.fin.gc.ca/toce/1999/banke.html>

¹¹² These are, in descending order of asset holdings - Canadian Imperial Bank of Commerce; Royal Bank of Canada; the Bank of Nova Scotia; Bank of Montreal; the Toronto-Dominion Bank; and the National Bank of Canada.

banks are delivering services through the Internet and the telephone and, according to a Department of Finance paper, 'are beginning to experiment with new ways of delivering retail banking services by locating branches in retail stores or forming alliances with retail chains'.¹¹³ Note that these major banks must be 'widely held', which means that no more than 10 per cent of any class of shares of a bank may be owned by a single shareholder, or by shareholders acting in concert.¹¹⁴

In addition to the big six banks, the five smaller domestic banks account for about 2 per cent of banking industry assets. Among these is the Citizens Bank of Canada which opened in 1997 and is known as a 'virtual' bank because it transacts business with its customers by means of telecommunications technology, rather than a 'bricks and mortar' branch structure. Another smaller bank is the First Nations Bank of Canada, a joint venture of The Toronto-Dominion Bank and the Saskatchewan Indian Equity Foundation, which is scheduled to be wholly owned by the Aboriginal community by 2006.

In recent years most of the regulatory barriers to entry for foreign financial institutions have been lifted. Of the 42 foreign banks operating in Canada, most are involved in wholesale banking or niche financing; their physical presence often consists of a head office and one branch. In 1999, foreign banks accounted for almost 10 per cent of banking industry assets in Canada.

Developments and issues: As in Australia, the question of the financial system and its reform has been high on the agenda in Canada in recent years. In the Northern Summer of 1998 the National Council of Welfare released a report on *Banking and Poor People*, which covered the familiar themes of bank branch closures in poorer neighbourhoods, as well as in rural and remote areas of Canada, a process which it discussed in the context of the push for bank mergers in Canada.¹¹⁵ In the same year major bank merger proposals were rejected after considerable debate.¹¹⁶ As well, a private member's bill was introduced by Mr Real Menard along the lines of the US community reinvestment legislation.¹¹⁷ This is in addition to the work undertaken by the Canadian Community Reinvestment Coalition which has argued over many years that US-style regulations be introduced to establish an accountable and responsible banking sector, in relation to which the community is fully informed about

¹¹³ Canadian Department of Finance, *Canada's Banks*, 1999, p 11.

¹¹⁴ The government has proposed an amendment to this rule to allow an investor to hold up to 20 per cent of any class of voting shares, and up to 30 per cent of any class of non-voting shares of a 'widely held bank'.

¹¹⁵ Canadian National Council of Welfare, *Banking and Poor People: Talk is Cheap*, Summer 1998 - <http://www.ncwcnbes.net/htmldocument/reportbanking/REPORTBANKING.htm>

¹¹⁶ Canadian Community Reinvestment Coalition, *Ending Power Without Accountability: Making Banks in Canada Better Before They Get Bigger*, May 1998 - <http://www.cancrc.org/english/Sumpp6.html>

¹¹⁷ Bill C-428, Introduced on 18 September 1998.

bank lending practices.¹¹⁸

Most substantial, in terms of its general review of the whole banking industry, has been the work of the Task Force on the Canadian Financial Services Sector. This was established in 1996 and it reported to the federal Government in September 1998. The report was the subject of intensive public consultations, with two parliamentary committees subsequently conducting nationwide public hearings on the Task Force's work. This was followed in June 1999 by the release of a Department of Finance White Paper, *Reforming Canada's Financial Services Sector*.

Again, as in Australia, these various reports and papers agree on the fact that banking is in a state of transition at present, driven largely by technological advances, which offers opportunities to many and problems and concerns to others, notably the least advantaged in society. Demographic factors are also part of the Canadian debate, with the recent White Paper commenting:

A particular challenge for Canada is the shrinking population in small communities. This has implications for how financial institutions maintain national policies while ensuring adequate access to financial services in smaller remote and rural communities.¹¹⁹

Availability of branch services was also a key concern of the Task Force report, a concern which, it said, raises different issues from those of access for low-income groups. This is because customers in the communities where a bank branch closes 'have already established relationships with financial institutions. The withdrawal of branches forces them to change the way in which they transact their financial business, or the institution with which they deal'. 'In some communities', the report added, 'the loss of a branch may be traumatic for reasons beyond the economic costs. It may be seen as just a further sign of the continuing erosion of the infrastructure that supports the community as a community'. The report pointed to research which showed that 'Only 31 per cent of Canadians agreed, and fully 56 per cent disagreed, that banks should be able to close branches as long as customers can still get access to services through new technologies'. It also noted that, as population has shifted from rural areas and with advances in technology, 122 communities lost their only bank branches over the period from 1991 to 1996. For the Task Force, the policy issues raised by this issue were twofold: (a) should government intervene in business decisions to open or close service locations?; and (b) do financial institutions closing branch facilities and/or governments have a responsibility to

¹¹⁸ Canadian Community Reinvestment Coalition, *Disclosure by Banks of Business Lending Statistics: How to Correct the Flaws in the Current System*, November 1997 - <http://www.cancrc.org/english/pp3sum.html>

¹¹⁹ Canadian Department of Finance, *Reforming Canada's Financial Services Sector; A Framework for the Future*, 25 June 1999, p 3 - http://www.fin.gc.ca/tocec/1999/finserv_e.html

ease the transition difficulties for the affected community?¹²⁰ Basically, the Task Force concluded that government should not strip banks of the ability to close their branches or to subject such closures to regulatory approval, but that banks should be obliged to give ‘reasonable notice to relevant stakeholders’.¹²¹ The June 1999 White Paper followed a similar course.

It is in the light of such concerns that the major recommendations of both the 1998 Task Force report and the 1999 White Paper can be noted.¹²²

Recommendations of the 1998 Task Force: In total the Task Force report, which was supported by five background papers and 18 research studies, forwarded 124 recommendations to the Minister of Finance. They were said to address four main themes: (a) enhancing competition; (b) empowering consumers; (c) Canadians’ expectations and corporate conduct; and (d) improving the regulatory framework. As part of this integrated scheme, the Task Force said that its recommendations would make Canada’s ‘financial services sector healthier by strengthening the relationship between our financial institutions and the communities they serve’. Its key recommendations in this regard included:

- *Recommendations 88 to 92 - with regard to access to banking services*, that banks and other financial institutions be required to provide fairly-priced services to any person who can prove residency in Canada, and to clear cheques and deposits within a specific time period, as well as to establish an independent and effective monitoring system to ensure compliance.
- *Recommendation 93 - with regard to access to branches*, that federally regulated banks and other deposit-taking institutions be required to give at least four months notice to close a branch. During the notice period they should work pro-actively with the community to explore alternatives to ease the transition;
- *Recommendation 87, 101, 105 and 106 - with regard to disclosure of small business financing information*, that all financial institutions that contribute data to the comprehensive survey on small business finance should be required to make that data public so that institutional performance can be identified; and
- *Recommendations 99 and 100 - with regard to improving accountability and providing a framework for continuing dialogue with the community*, that each federally regulated financial institution and life insurance company should be required to provide one or more annual Community Accountability Statements to

¹²⁰ Task Force on the Future of the Canadian Financial Services Sector, *Change, Challenge, Opportunity: Canadians’ Expectations and Corporate Conduct*, Background Paper #4, September 1998, pp 32-3.

¹²¹ *Ibid*, p 37.

¹²² Canadian Department of Finance, *Reforming Canada’s Financial Services Sector; A Framework for the Future*, Ch 4.

describe its contribution to the community and to identify emerging community needs to which it intends to respond. Such statements should be filed with the Minister of Finance who should table them with the Standing Committee of the House of Commons on Finance.

The Task Force did not recommend the introduction of US-style legislated community reinvestment requirements, believing that other mechanisms could be used to promote accountability in Canada.¹²³ Comparing the Canadian and US situations, it concluded: 'It has not been established, and it does not appear, that similar conditions warranting such a mandatory approach exist in Canada at this time. Such an approach would entail an onerous review process that would require the definition of relevant communities, the development of appropriate standards of behaviour, and regular, intensive monitoring. It would add substantial regulatory burdens and costs. For these reasons the Task Force does not believe that a full-blown CRA approach should be introduced in Canada'.¹²⁴ The subsequent parliamentary committees agreed with this approach.¹²⁵

Overall, the Canadian Community Reinvestment Coalition supported the vision and framework set out in the Task Force's report. However, in certain areas it would have gone further. Predictably, it would have adopted more of the US model's requirements for disclosure. For example, the Coalition argued that, among other things, the Community Accountability Statements should also include information about the number of complaints received by the institution's branches and the pattern of opening and closing branches. It was also of the view that a financial institution should be required to disclose the branch's profit/loss and net income record for a few years before the proposed closing date, to ensure that the community has full information relating to reasons for a branch closure.¹²⁶

Recommendations of the 1999 White Paper: This is on a similar scale and covers comparable issues to those dealt with in the Task Force report. Again, a major concern is the empowerment and protection of consumers of financial services, to which end the following key recommendations were made:

- *Ensuring access:* Banks will be required by law to open accounts and cash federal government cheques for any individual who meets certain basic identification requirements, provided there is no reason to suspect fraudulent activity. Neither employment nor a minimum deposit will be required to open an account.

¹²³ Task Force on the Future of the Canadian Financial Services Sector, *Change, Challenge, Opportunity: Canadians' Expectations and Corporate Conduct*, Background Paper #4, September 1998, p 47.

¹²⁴ Ibid, p 46.

¹²⁵ Canadian Department of Finance, *Reforming Canada's Financial Services Sector; A Framework for the Future*, Ch 4.

¹²⁶ Canadian Community Reinvestment Coalition, *CCRC Recommendations and Corresponding Task Force Recommendations*, September 1998 - <http://www.cancrc.org/english/recomm.html>

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- *Low-cost accounts:* The government will introduce regulations requiring banks to offer a standard low-cost account that includes a certain number of non-electronic transactions, and prominently post information on their availability in branches.
 - *Branch closure rules:* The government will require federal deposit-taking institutions to provide four months' notice of branch closures and post notice of the closing date in the affected branch. In rural areas without another financial institution within a 10-kilometre radius of the closing branch, six months' notice will be required.
 - *Branch closure and consultation:* For branch closures in rural or low-income inner-city areas with only one branch of a deposit-taking institution, the new Financial Consumer Agency will be able to convene a consultation of stakeholders if there are concerns that insufficient consultation is taking place.
 - *Elderly and disabled access:* The government will monitor federal deposit-taking institutions' progress toward full wheelchair accessibility.
 - *Enforcement by Financial Consumer Agency:* The government will establish a new Financial Consumer Agency (FCA) to enforce the consumer-oriented provisions of the federal financial institution statutes, monitor the industry's self-regulatory initiatives, promote consumer awareness, respond to consumer enquiries, and direct the calls of consumers with complaints to the appropriate body. The FCA will consolidate and strengthen existing oversight activities currently dispersed among various federal entities.
 - *Dispute resolution by Canadian Financial Services Ombudsman:* The government will work with the industry to establish the Canadian Financial Services Ombudsman (CFSO), a not-for-profit corporation that can accept any financial institution as a member, to provide impartial, non-legalistic dispute resolution services. The CFSO will operate independently of government and financial institutions.
 - *Transparency and disclosure:* The federal government will hold discussions with the provinces and the industry to work towards enhancing transparency and disclosure of financial service sales documents and contracts.
 - *Enforcing disclosure:* In order that the government be able to respond to disclosure problems as new products and services emerge, it will amend the financial institution statutes to provide for regulation-making authority governing disclosure.
 - *Accountability statements:* Federal financial institutions with equity in excess of \$1 billion will be required to publish annual Public Accountability Statements that describe an institution's contributions to the Canadian economy and society.
 - *Data on small and medium business loans:* The government will undertake a

comprehensive program of data collection and analysis to ensure that there is adequate information on the financing needs of small and medium-sized enterprises (SMEs) for effective public policy development.

Again, the Canadian Community Reinvestment Coalition was broadly supportive of the White Paper's proposals, although it would have gone further in ensuring the public accountability of financial institutions. For example, the Coalition would require financial institutions to: (a) provide details on all loans, investments and services to individuals and businesses community by community across the country and, as in the US, require corrective action and penalise institutions that are not meeting customer needs; and (b) undertake a detailed, mandatory review of any proposed branch closure.¹²⁷

For its part, the White Paper rejected the US community reinvestment model for the reasons set out in the Task Force report.

Implementation: It seems that the idea of incorporating these and other proposals in a legislative package which would overhaul the regulation of the financial sector in Canada and introducing that package into Parliament before the end of 1999 has been put on hold.¹²⁸ Key issues remain to be resolved amongst the main stakeholders, including the proposal that banks offer basic bank accounts to people with low-incomes. According to one report:

The proposal of no-frills accounts is too open-ended and could be a money-loser for the industry, bankers have told the federal government. The banks want some limitation on who can access such accounts. They have proposed a means test. But the government has not budged from its stance that the accounts be widely available...¹²⁹

It is also reported that Duff Conacher, Canadian Community Reinvestment Coalition co-ordinator, has said that the government told social groups they will not abandon the basic bank account proposal. According to Conacher: 'We're finally going to get some rights for financial consumers and some responsibilities for financial institutions'.¹³⁰

8. CONCLUSIONS

¹²⁷ Canadian Community Reinvestment Coalition, *Coalition Calls on Paul Martin to Close Remaining Gaps in Bank Accountability*, 25 June 1999 - <http://www.cancrc.org/english/re1Jun25en.html>

¹²⁸ The package is likely to be introduced in February 2000.

¹²⁹ A Toulin, 'Disagreements delay revamp of financial system', *National Post*, 18 November 1999.

¹³⁰ Ibid.

Clearly, in Australia as elsewhere, this is a time of transition for the banking and financial sector generally. More than anything, innovations in technology are making it possible for banks to offer many new services to customers, sometimes at reduced costs, and many of these advances have opened new horizons and opportunities. What is also clear is that rural and regional Australia can only participate in this electronic banking revolution if the appropriate telecommunications technology is in place. At the recent Regional Summit held in Canberra this was said to be a first order priority for country Australia. Obvious, too, is the fact that the changes that have occurred have been difficult for many people and, as the Westpac's Managing Director, Dr David Morgan, said recently 'it's no good pretending rural Australia can fully retain or go back to the way they were'.¹³¹ He spoke of the greater complexity in the new banking environment and commented that 'The old bank model of vertically integrated manufacturers/distributors focused around products and geographies, driven by command and control cultures and characterised by high fixed cost and high cost legacy infrastructures is poorly suited to this environment'.¹³²

It is to this increasingly complex world that the question of the community obligations of banks belongs and, with it, the critical question of the balance and relationship between governmental and non-governmental obligations in this field. The banking industry has already made a commitment to leave reasonable access to banking services when closing a rural branch, as well as to give six weeks prior notice of closures. The question is whether such commitments are likely to be upheld under a voluntary code of banking practice, or are they more likely to be honoured in the breach as some commentators have suggested recently? A further question, then, is whether further regulatory action is needed in this area? Should legislation be introduced to establish mandatory minimum service standards? Should such legislation require banks to reinvest in the community, especially in support of the most disadvantaged? Should banks be made to offer low-cost bank accounts as a way of making essential banking services available to all?

¹³¹ D Morgan, 'Dimensioning Westpac's future growth', *Paper delivered to the Securities Institute*, Sydney, 16 November 1999, p 12. Dr Morgan said that, by the end of 2000, 'a sizeable number of [Westpac's] traditional branches will be converted to in-store operations, which, with the benefit of these enabling technologies [EFTPOS etc], these operations can be operated at a much more affordable cost than a stand-alone branch'. He stressed the need for rural Australia to be fully equipped to 'fully join the eCommerce world through the rollout of high bandwidth communications'.

¹³² *Ibid*, p 2.

APPENDIX A

*Recommendations from the House of Representatives
Standing Committee on Economics, Finance
and Public Administration
- Report on Regional Banking Services Money too far
away*

March 1999

Chapter 1

Recommendation (1)

The Committee recommends that the Treasurer and the Minister for Financial Services and Regulation ensure that the Department of Social Security, in conjunction with the Commonwealth Services Delivery Agency, the Treasury and the finance sector, investigate and report on possible options for alternative payment instruments for government transfer payments as noted in the Government's response to the Recommendation 96 in the Wallis Report. (paragraph 1.26)

Chapter 2

Recommendation (2)

That the Minister for Regional Services, Territories and Local Government and the Minister for Financial Services and Regulation in consultation with State colleagues, undertake a collection of comprehensive data on the access communities have to financial services. (paragraph 2.30)

Recommendation (3)

The Committee recommends that the Code of Banking Practice be amended to require banks to give customers two months written notice before transferring accounts between branches without permission of that customer. (paragraph 2.52)

Chapter 3

Recommendation (4)

The Committee recommends that Federal, State and Territory governments give high priority to concluding a Heads of Agreement covering transfer issues and to enacting the legislation necessary for the transfer of credit unions and other Financial Institutions Scheme bodies to the Commonwealth. (paragraph 3.24)

Recommendation (5)

The Committee recommends that the Australian Payments Clearing Association ensures that commercial practices governing property settlements do not continue favouring or mandating bank cheques. (paragraph 3.34)

Recommendation (6)

The Committee recommends that the Victorian Government amend its legislation relating to the use of credit unions by local governments to bring it in line with the other States and Territories. (paragraph 3.42)

Recommendation (7)

The Committee recommends that the Minister for Regional Services, Territories and Local Government ensures that the Rural Transaction Centres Program builds on State Government initiatives setting up government service centres to deliver financial services to regional areas. (paragraph 3.56)

Recommendation (8)

The Committee recommends that the Treasurer negotiates with the Minister for Communications to ensure Australia Post's giroPost services are extended to include business banking services. (paragraph 3.108)

Recommendation (9)

The Committee recommends that the Minister for Regional Services, Territories and Local Government and the Minister for Communications negotiate an agreement whereby funding from the Rural Transaction Centres Program be used to install giroPost or an EFTPOS style mechanism where communities are able to demonstrate that there is a need and demand for the services. (3.126)

Recommendation (10)

The Committee recommends that the Minister for Financial Services and Regulation monitors the Guild Bank development with a view to facilitating such initiatives. (paragraph 3.165)

Recommendation (11)

The Committee recommends that the Minister for Regional Services, Territories and Local Government gives a high priority to determining the scope of the RTC program and the announcement of a timetable for implementation. (paragraph 3.183)

Chapter 4

Recommendation (12)

The Committee recommends that the Australian Bankers' Association open discussions with the Australian Local Government Association and other interested organisations about the feasibility and value to communities of placing ATMs in council offices and other such locations. (paragraph 4.11)

Recommendation (13)

The Committee recommends that the Minister for Communications in consultation with the Minister for Regional Services, Territories and Local Government undertakes to assist communities to utilise the Regional Telecommunications Infrastructure Fund to expand the number of Internet Service Providers in regional and remote Australia. (paragraph 4.59)

Recommendation (14)

The Committee recommends that the Regional Telecommunications Infrastructure Fund Board be urged to consider Internet banking prospects when assessing funding for projects. (paragraph 4.79)

Recommendation (15)

The Committee recommends that the Minister for Community Services directs Centrelink to give priority to developing and implementing a trial in a small rural community of a smart card product which could be:

- reloaded over the telephone
- directly credited with government pensions
- used to purchase goods and /or services. (paragraph 4.100)

Chapter 5

Recommendation (16)

The Committee recommends that the Commonwealth government undertakes, as part of the Rural Transaction Centres Program, to develop a method to contract Australia Post to deliver cash to areas in which Australia Post has a presence but in which there is no other financial institution. (paragraph 5.14)

Recommendation (17)

The Committee recommends that in the event of closing a branch, the bank concerned waives any fees or penalties incurred relating to the early repayment of loans or closing of accounts. (paragraph 5.39)

Recommendation (18)

The Committee recommends that state governments provide exemptions for stamp duties on any mortgages in instances where customers are transferring loans to another bank as a direct result of a bank closing the branch at which the loan was made. (paragraph 5.40)

Recommendation (19)

The Committee recommends that the Australian Bankers' Association develops a minimum standard of service delivery as a guideline for banks in the event of closing regional and remote branches. (paragraph 5.48)

Recommendation (20)

The Committee recommends that the industry adopts a branch closure protocol which incorporates the following:

- 1 Banks will give three months notice to customers and relevant community organisations such as Local Councils of their intention to close a branch.

- 2 Banks will consult with local communities about trends in the delivery of banking services and, in particular, about developments that have the potential to affect the delivery of services in that region. Included in this will be a genuine desire to use community goodwill to improve the viability of the branch. In the event of a decision to close a branch, banks will consult with the community about preferred options for alternative services and on the training to be provided in using alternative channels.
- 3 Banks will provide written notice of at least two months before changing the branch that manages an account.
- 4 In the event of closing or downgrading a branch below agency status, banks will waive any fees or penalties incurred relating to early repayment of loans or closing of accounts.
- 5 In the event of closing a branch, banks will be expected to leave behind some form of over-the-counter service that allows access to cash deposit and withdrawal facilities for personal and small business customers.
- 6 In the event of closing a branch, banks will provide face to face education and training for customers and the community in alternative forms of banking.

The first four items should be made mandatory and incorporated into the Code of Banking Practice. (paragraph 5.51)

Recommendation (21)

The Committee recommends that the Minister for Financial Services and Regulation monitors the practices of banks in the event of closing branches and reports back to the Committee within two years with respect to the:

- alternative services left in place
- period of notice given and method of giving notice
- degree of community consultation involved
- level of education and training provided for customers, and the
- imposition of any fees on customers who repay loans early or close accounts as a result of the closure of that branch.(paragraph 5.52)

APPENDIX B

***NUMBER OF MAJOR BANK BRANCHES IN
AUSTRALIA, 1993-1999***

**SOURCE: RESERVE BANK OF AUSTRALIA
BULLETIN, TABLES B.22 AND B.23, VARIOUS
ISSUES**

NUMBER OF MAJOR BANK BRANCHES IN AUSTRALIA 1993-1999

ANZ BANK

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	TOTAL
30-Jun-93	352	365	208	132	95	38	8	11	1209
30-Jun-94	331	356	207	121	96	39	9	11	1170
30-Jun-95	331	336	217	121	98	38	35	10	1186
30-Jun-96	315	325	210	119	128	36	27	10	1170
30-Jun-97	262	277	188	105	113	29	12	9	995
30-Jun-98	228	204	163	80	105	24	8	8	820
30-Jun-99	220	219	162	84	78	26	10	8	807

COMMONWEALTH BANK OF AUSTRALIA

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	TOTAL
30-Jun-93	518	751	226	92	118	25	5	21	1756
30-Jun-94	504	639	226	90	113	25	5	20	1622
30-Jun-95	489	513	223	90	111	24	5	19	1474
30-Jun-96	462	485	215	86	104	23	6	19	1400
30-Jun-97	440	450	212	84	101	22	6	19	1334
30-Jun-98	416	385	195	79	99	19	6	19	1218
30-Jun-99	395	362	183	75	91	19	6	20	1151

NATIONAL AUSTRALIA BANK

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	TOTAL
30-Jun-93	390	369	264	84	105	10	7	19	1248
30-Jun-94	383	364	265	79	105	11	7	19	1233
30-Jun-95	379	355	262	76	105	11	7	19	1214
30-Jun-96	369	342	255	76	104	12	7	17	1182
30-Jun-97	359	317	242	70	95	12	7	17	1119
30-Jun-98	337	293	226	61	93	13	7	16	1046
30-Jun-99	346	299	232	64	100	12	7	18	1078

WESTPAC

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	TOTAL
30-Jun-93	465	297	215	85	133	29	11	20	1255
30-Jun-94	407	257	189	70	122	26	11	18	1100
30-Jun-95	406	255	189	67	121	25	11	18	1092
30-Jun-96	388	232	186	64	109	25	10	17	1031
30-Jun-97	356	212	170	53	110	22	10	17	950
30-Jun-98	354	325	175	54	109	19	10	15	1061
30-Jun-99	343	218	162	53	105	19	11	13	924