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By email



17 July 2009

Dear Professor Riley

This submission is made on behalf of the Commonwealth Bank of Australia Group (CBA).

1. Introduction

CBA does not intend to make submissions on all of the questions for review raised in the Discussion Paper of June 2009 (the **Discussion Paper**). Rather it will address the following questions:

- Should the August Bank Holiday be retained as a 'close holiday' for banks in New South Wales?
- Should the provisions making every Saturday and Sunday 'close holidays' be repealed?

Our submissions on these questions are set out below. However, in summary we submit that:

- There is no compelling reason for the continuation of the August Bank Holiday.
- There should be no restrictions on the hours during which banks can choose to trade. However, where businesses are generally closed on significant national public holidays, then banks should be treated in the same manner with other businesses.

CBA also generally supports the submissions put forward by the Australian Bankers' Association Inc.

2. August Bank Holiday

We do not see that there is a compelling reason to maintain the August Bank Holiday as a close holiday or otherwise as a public holiday which applies only to banks. In fact, CBA submits that there are compelling reasons for the August Bank Holiday to be abolished. In particular, we submit that the real issue is whether there is an ongoing rationale for having a 'public' holiday which applies to only one part of one industry and is recognised only in one State (and where there is no particular connection between the holiday and that State: contrast Melbourne Cup Holiday in Victoria).

The continuation of a 'bank-only' public holiday is also inconsistent with the NSW Government's stated aim of "enhancing Sydney's position as a financial services centre"¹.

a. Original rationale no longer necessary

The Bank Holidays Act was passed in England in 1871². A 'bank holiday' was identified as being necessary because, without a legislative requirement for banks to close on what would otherwise be a work-day, there were real issues about whether they could do so. That is, other employers could, for example, close their business on a Monday and give their employees a day off. However, a Bank could not do this as holders of bills of exchange and promissory notes could demand payment on that day and failure to meet such payment could expose the Bank to an application for bankruptcy³.

This is no longer a compelling reason to maintain, a bank-only holiday. This is demonstrated by the fact that other States do not have a bank-only holiday. In this context, Easter Tuesday was a holiday which applied in Victoria to the finance industry and public sector and was removed by the *Public Holidays Act 1993 (Vic)*. Issues regarding bills of exchange, promissory notes and similar (to the extent that Commonwealth legislation does not deal with the issue) can be dealt with by other means, see for example section 9 of the *Public Holidays Act 1993 (Vic)*.

b. Disadvantage to customers

The disadvantage to customers is self-evident. On what is otherwise a normal business day in NSW, CBA customers cannot go to a branch to attend to their banking needs. There are a number of alternative channels which our customers can utilise to do their banking. However, there are still a significant number of customers who use our branch network, either by preference or by necessity. In this respect, there are in the order of 145,000 transactions conducted in branches daily from Monday to Friday in NSW and the ACT.

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http://www.business.nsw.gov.au/newsroom/news_finance_institute_for_Sydney_20081219.htm

² The first NSW statute dealing with the issue appears to have been the *Bank Holidays Act 1875 (NSW)*

³ Hansard *HL Deb 04 May 1871 vol 206 cc128-9*

c. Unequal operation of August Bank Holiday

Further, the holiday does not apply across the whole of the finance industry. As noted in the Discussion Paper,

“Not all financial institutions are required to observe this day, so those banks that are required to close have argued that they face unfair competition from those institutions that have engaged in comparative advertising campaigns, claiming to provide better service to customers than the banks”⁴.

This leads to a situation where customers of some financial institutions are disadvantaged in when they can access that institution, not by reason of the service offering made by the financial institution, but because of the operation of law. The ability of a bank to compete on the basis of customer service should not be hampered by legislation that does not operate uniformly.

d. Desirability of national uniform approach to public holidays

The abolition of the ABH (as a NSW-specific close holiday applicable only to banks) would be consistent with the recommendation of the Council of Australian Governments (COAG) in its communiqué of 8-9 June 1993, where COAG states:

“Heads of Government have acted to overcome the wasteful situation where parts of Australia are closed down while other parts remain open because of the lack of uniformity in the observance of public holidays.

It has been agreed that there should be uniform Australian Public Holidays and the dates on which Public Holidays are observed should be certain.

The Council has no intention of reducing the number of public holidays. Rather, the objective is to achieve uniformity in the observance of public holidays. This is an important micro-economic reform with the potential to avoid the costs and disruption for business that occurs under the present arrangements.”

We submit that the wastefulness arising from the lack of uniformity is amplified where part of an industry in one State is required to shut down.

We recognise that this does not mean that all public holidays will operate uniformly. For example, there may still be a place for local show days and State-specific public holidays (e.g. Melbourne Cup day in Victoria). However, we submit that such holidays will usually only be appropriate where there is a compelling community-based reason to justify them. As we have set out, there is no such justification for the August Bank Holiday.

e. Existing employees

If the August Bank Holiday is abolished, CBA recognises that it is appropriate that current employees are not disadvantaged through a reduction in the number of public holidays to which they are entitled. This can be done by ensuring that these employees are given another day-off in place of the August Bank Holiday. This is an

⁴ Page 19

issue that can be considered more fully in light of the options paper to be produced by the Review.

3. Weekend trading

As stated in the Discussion Paper, section 15A of the BBH Act requires banks to be closed on Saturdays and Sundays unless they have obtained approval from the Director General of the Department of Commerce. CBA has utilised this process to obtain approvals for its Commonwealth Bank of Australia branches in NSW to trade on Saturdays and Sundays. While CBA has achieved outcomes which are broadly acceptable to it, there does not appear to be a compelling reason for the existence of such restrictions.

Further, the process can be time consuming and cumbersome. By way of example, the CBA's application to trade on Sundays was made on 12 September 2007 and the approval was granted on 31 October 2007 (this approval also varied the terms of a previous approval to trade on Saturdays). This is a relatively short time-frame. However, the decision was then challenged by the Finance Sector Union, firstly through an application for internal review and then by an application to the Administrative Decisions Tribunal of NSW (the **ADT**). The ADT did not hand down its decision until 18 November 2008⁵. This meant that for some 12 months CBA did not have any certainty as to whether it would be permitted to continue to operate its branches on weekends.

The situation can be contrasted with that in Victoria, where CBA is free to open its branches on weekends, subject only to relevant local council regulations. We are not aware of any Victorian customers or employees who have been put at any disadvantage due to the lack of an approval system.

a. Benefits to customers

Our customers are increasingly seeking flexibility in the way that they conduct their banking, both the means and the time.

CBA made its original application to trade on Saturdays in May 2006. As stated in that application, our customer research had shown that the issue of extending branch hours on Thursday mornings and Saturdays was ranked the second highest service concept by participants in our Customer Commitment Charter Research conducted at that time.

Further, as noted in our application to trade on Sundays, a December 2006 survey of weekend trading showed that on a scale of '1' to '10', (where '1' is not important and '10' is extremely important to customers):

- 51% of customers responding rated weekend trading '8' or higher.
- 29% rated weekend trading as '10' (extremely important to them).
- Only 18% of respondents indicated that they would never visit a branch on a weekend.

⁵ *Finance Sector Union of Australia (NSW) v Director General, Department of Commerce (NSW) & Anor* [2008] NSWADT 338 (the **CBA weekend trading decision**).

- 41% would visit either “quite often” (31%) or “weekly” (10%).

The benefits to customers were also recognised in the CBA weekend trading decision. The ADT stated that “there is no dispute as to the benefits of weekend trading for customers [and] traders”⁶.

b. Benefits to employees

The ADT also recognised that there were benefits to:

“some employees, as Mr Derrick⁷ acknowledged in his evidence. In the case of employees, there may be a variety of benefits, including flexibility of working hours, childcare arrangements and financial benefits”.⁸

The ADT did not find any evidence of employees being disadvantaged by Sunday trading, either in NSW or elsewhere.

Having the ability to open our branches on weekends does provide more working options to our employees. For example, in families where two parents work, having one parent working on weekends will often allow them to bring in additional income without incurring child-care costs. Working weekends can also be attractive to people such as students who may have other commitments between Monday and Friday.

The Discussion Paper raises the issue that:

“bank trading hours remain an important factor in preserving the entitlement to a weekend break from work for many bank employees. The present arrangements under which banks are required to obtain exemptions to open on weekends ensure that only willing employees can be rostered to work on weekends.”⁹

Similarly, in the CBA weekend trading decision, the ADT stated that there is:

“a broad public interest in weekend work being voluntary so that individuals can choose to pursue their non-work interests...”¹⁰

In this respect, the ADT recognised that this consideration could be met by staff freely entering into “an agreement specifically providing for work at weekends”¹¹ and also recognised that more specific conditions are more appropriately “included in an industrial agreement addressing the terms and conditions of employment of those engaged to perform weekend work”¹².

It is CBA’s submission that a trading hours approval process is not the appropriate mechanism to deal with the terms and conditions of employment of employees

⁶ CBA weekend trading decision at ¶71.

⁷ NSW/ACT Branch Secretary, Finance Sector Union

⁸ CBA weekend trading decision at ¶71.

⁹ At page 20.

¹⁰ CBA weekend trading decision at ¶95.

¹¹ See orders made at ¶97.

¹² At ¶96

engaged to work on weekends. Australia has a strongly regulated employee relations system which already provides for minimum standards for employees, for example, the minimum standards provided for shift-workers, hours of work and overtime in the National Employment Standards contained in the Fair Work Act 2009¹³. Further, most, if not all, banks and other financial institutions will be covered by awards, collective agreements and other industrial instruments¹⁴.

In this respect, as noted in the Discussion Paper, businesses that are not engaged in retail trade or are not banks are "free to trade as they wish throughout the year"¹⁵. Similarly, and again as noted in the Discussion Paper, the restrictions on business in the retail trade are less extensive than those on banks¹⁶. There does not appear to be a compelling reason why the terms and conditions of employees working on weekends in banks need to have additional regulation through an exemption approval process.

4. Other issues

As we stated in the introduction to these submissions, we do not seek to comment on all of the issues raised in the discussions paper. However, we do make the following brief comments.

a. Bills of exchange

If the BBH Act is amended, it may be necessary to consider what provisions should be made regarding bills of exchange. Section 98 of the *Bills of Exchange Act 1909* (Cth) has the effect that Bank Holidays under State laws are non-business days for the purpose of presenting bills of exchange and promissory notes. There may be a need to continue to recognise bank holidays for this purpose only. This nature of any such provision is an issue which can be considered in more detail in light of proposed options from the Review. However, as mentioned above, one model to be considered is section 9 of the *Public Holidays Act 1993* (Vic).

b. Public holidays and trading hours

We submit that public holidays should be dealt with in a Public Holidays Act. There does not appear to be any reason why generally recognised public holidays should be described by way of reference to banks. We suggest that the use of such terminology can lead to confusion. If there is a need to regulate trading hours of businesses (whether they be banks or otherwise) then this can be dealt with through separate legislation. In this respect, while CBA submits that there should be no restrictions on the hours which banks can choose to trade, where business are generally closed on significant public holidays, then banks should be treated equally with other businesses.

¹³ See also the Fair Pay and Conditions contained in the Workplace Relations Act 1997.

¹⁴ From 1 January 2010, this will include the Banking, Finance and Insurance Award which will be the 'modern award' for this industry and which deals with weekend work.

¹⁵ At page 15

¹⁶ Ibid

5. Union Picnic Days

The Discussion Paper also discusses the issue of union picnic days, but does not raise any Questions for Review with respect to such days. It is CBA's submission that such days are a matter to be dealt with through negotiation between employers and employees or through the Fair Work Act.

We question whether there is a compelling community basis for the NSW Government to consider granting a union picnic day as an additional public holiday given that trade union membership in the Australian workforce is 19% and is only 14% in the private sector¹⁷.

Yours sincerely



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¹⁷ Australian Bureau of Statistics, *6310.0 Employee Earnings, benefits and Trade Union Membership, Australia, Aug 2008*.