



Code Compliance Monitoring Committee

Submission to the review of the Code of Banking Practice

Specific Recommendations regarding Bank's obligations under the Code

The Code Compliance Monitoring Committee's Overview to its submission (Annexure A) outlined that in the Committee's view:

- the Code has been working well in practice since its introduction in 2004; subscribing banks have generally demonstrated their commitment to meeting their obligations under the Code;
- the Code is not severable and banks cannot choose which parts of the Code to comply with;
- the Committee's role in relation to the Key Commitments of the Code should be confirmed, and
- the review should consider the absence of any reference in the Code to a bank breaching its terms and conditions.

Specific recommendations regarding improving banks' obligations under the Code are outlined below.

A. ISSUES FOR INCLUSION IN THE CODE

Communications between bank and customer

In recent years, cases before the Committee have evidenced instances of poor communication between banks, their customers and their customer's representatives. Examples include:

- Failure to respond to customer correspondence at all or in a timely or effective manner,
- Difficulties faced by customers of different cultural backgrounds, and
- Disclosure of relevant banking information in a way that is difficult to understand or to find.

- Failure to recognise a customer's representative;

The Committee suggests the inclusion of a new clause which deals with communication between banks, customers and their representatives. In the Committee's view communication should be timely and effective.

Electronic Banking

The Code is largely silent about electronic banking matters. The Committee understands that these matters are dealt with under the EFT Code, which is also currently under review. However the Code of Banking Practice is intended to be a primary reference for customers in regard to retail banking conduct. Given the increased use of electronic and on-line banking, the Committee thinks it appropriate that sufficient reference is made to these issues in the Code. In the Committee's view that should include:

- a summary of the areas covered by the EFT Code;
- a statement that all provisions of the EFT Code apply, and
- details of where a customer might find the EFT Code.

Remote Banking Customers

The Committee has received general feedback from consumer advocates based in the Northern Territory and far North Queensland which indicate the difficulties that remote banking customers, and particularly indigenous customers face, because of their remoteness. The Committee considers that Clause 6 of the current Code could be amended to better serve remote banking customers.

For example, Clause 6 could be redrafted to read: *We recognise the needs of elderly customers, remote customers and customer with a disability to have fair access to banking services, and will take reasonable measures to enhance their access to those services.*

Agency relationships

Many banks provide deposit and credit facilities through intermediaries. These include bank subsidiaries and others with whom the bank has an agency relationship.

The Committee has dealt with cases and had informal feedback in regards to other cases where the customer either has been unsure who to contact when things went wrong and there was confusion by both parties as to who was responsible.

The Committee suggests the inclusion of a clause which requires banks to clearly set out to customers the relationship between banks and their agents/service providers. Banks should be required to make customers aware of whom their contract is with and to whom they can make a complaint.

B: AREAS FOR AMENDMENT TO THE CURRENT CODE

External codes and guidelines

The Code incorporates the Code of Operation for Centrelink Direct Credit Payments and ACCC guideline "*Debt Collection and the Trade Practices Act*" dated June 1999. The latter was updated in 2005 and all subscribing Banks have adopted the 2005 Guidelines. However the Committee has been limited to monitoring compliance with the 1999 Guideline because the Code incorporates the 1999 guideline specifically.

The Committee sees great value in the Code incorporating external legislation, guidance and best practice standards. However, in the Committee's view, it must remain up to date. The Committee suggests the Code be amended to enable references to legislation, external codes and guidance to be updated automatically, when the primary document is amended or superseded.

The Committee notes that it has been recommended by the House of Representatives Standing Committee on Economics Finance and Public Administration¹ that the regulation of credit be moved to the Commonwealth from the States. If that was to occur, the Uniform Consumer Credit Code will likely to be superseded by Commonwealth legislation. Changes to the Code to incorporate updated external guidance should enable any legislation which might replace the UCCC to also be included.

Account combination

Although the Committee has only dealt with one case involving Clause 17, the Committee questions the usefulness of informing a customer that the bank has exercised its right to combine accounts, after that right has been exercised. The provision would be of more benefit to the customer if it required banks to inform the customer of this before it takes place. Informal feedback from consumer advocates is that the right to combine accounts can be used punitively against low income customers.

Cost and Provision of Credit

Clause 12 deals with the cost of credit and Clause 25 deals with the provision of credit. Subclause 25.1 which requires the banks to exercise the care and skill of a diligent banker when offering a credit facility seems more appropriately linked to Clause 12 than to Subclause 25.2, which deals with banks obligations to deal with customers in financial difficulty. The Committee suggests that Subclauses 25.1 and

¹ House Standing Committee on Economics Finance and Public Administration Inquiry into home loan lending practices and the processes used to deal with people in financial difficulty report.
<http://www.aph.gov.au/house/committee/efpa/banklending/report.htm>

25.2 should be included as separate sections of the Code, and notes that Clause 12 and Subclause 25.1 could be usefully combined.

The Committee notes that a similar provision (Clause 5) in the draft ABACUS Code of Practice (for credit unions and building societies) uses plain, commonly understood language about the provision of credit. It refers to “*responsible lending*” and states “*we will only lend amounts to you that we believe, on the information available to us, you can reasonably afford to repay*”. This provision also deals with credit increases which could be helpfully included in the Code of Banking Practice.

The Committee understands that the Australian Bankers Association has requested that Clause 25.2 be specifically considered in this review of the Code. Significant interpretational guidance regarding Clause 25.2 has been provided through both the Banking and Financial Services Ombudsman and Committee bulletins. Further, because of the complaints received, Clause 25.2 has been a main focus of the Committee’s work since it commenced in April 2004.

Of the 55 breaches (as at 28 February 2008) determined by the Committee since the commencement of its operation in 2004, 16 (29%) have related to Subclause 25.2. In the Committee’s view, Clause 25.2 has encouraged banks to significantly improve their practices in regard to customers in difficulty. Given current economic conditions including the increase in interest rates and high consumer credit levels, the Committee thinks it likely² that there will be an increase in the number of consumers facing financial difficulty. In such conditions the Committee considers it important that banks continue to assist customers in financial difficulty. In the view of the Committee banks have made considerable progress in understanding and giving effect to the provision of Clause 25.2.

Copies of Cheques

Clause 11 requires banks to provide certain documents to customers but does not require banks to keep or provide copies of cheques. We suggest that the reviewer consider including a reference to cheques in Clause 11. The Committee notes that the UK Code states: “*Cheques 9.7 We will keep original cheques paid from your account, or copies, for at least six years unless we have already returned these to you.*”

The Committee suggests that cheques (paid into and out of a customers account) could be conveniently added as subsection ‘e’ to Clause 11.2.

² Reference material includes. “[They still want to take our house - A further investigation into house repossessions in the ACT Supreme Court](http://www.carefcs.org/srcfiles/TheyStillWantToTakeOurHome07.pdf)”. The Consumer Law Centre of the ACT and the Centre for Commercial Law, ANU, December 2007, <http://www.carefcs.org/srcfiles/TheyStillWantToTakeOurHome07.pdf>

C: MONITORING ISSUES

Compliance with laws

Clause 3 of the Code obliges banks to comply with all relevant laws relating to banking services. Whilst the Committee appreciates the spirit in which this Clause was intended, it has had difficulties monitoring bank compliance with this Clause of the Code. To effectively monitor compliance with Clause 3, the Committee would need to identify all *relevant laws relating to banking services* and determine whether a Bank was complying with those laws. The Committee does not feel it is competent to make findings in relation to whether a bank is or is not compliant with general law.

The Committee requests that this issue is considered in the review of the Code. The Committee notes that one possible option for resolving this issue would be to make reference to banks' obligations to comply with banking laws in the introduction to the Code.

Bringing a complaint under the Code

The Code refers to the Committee's role in Clause 34 in the context of the establishment of the Committee. Now that the Committee has been established for some years, its role should be expressed in a way that is helpful to consumers. Customers should be aware of their right to bring a complaint to the Committee and the Committee's contact details should be included in the Code. In the Committee's view, Customers should also be given a reference, such as the Committee's or the ABA's website, where they can find out information about the Code and a list of who subscribes to it.