

Abacus Australian Mutuals – Draft Code of Practice

About this submission

This submission is a response by consumer representatives (Tony Devlin and Jenny Lovric) on the Board of the Credit Union Dispute Resolution Centre (CUDRC) to the consultation on the draft Abacus Australian Mutuals Code of Practice (the draft Code).

Endorsed by AFFCRA and Care (Inc) Financial Counselling Services

In preparing this submission, we have consulted consumer advocates and their views are incorporated into this submission. In particular, we have consulted closely with the Australian Financial Counselling and Credit Reform Association (AFFCRA) and Care (Inc) Financial Counselling Services (ACT). These organisations formally endorse this submission.

Contractual obligations - a threshold issue

We welcome the decision to draft a new Code, and applaud many of its provisions which go some way to address matters that impact on vulnerable and disadvantaged consumers. However, of primary concern to us is the threshold issue of the draft Code's status and compliance requirements.

We feel that Abacus could have taken the opportunity afforded to it by developing a new code to distinguish this sector from other industry codes and in the process raising the bar on expectations of best practice. We had also hoped that Abacus might seek to have the draft Code approved by ASIC. Regrettably, however, Abacus instead has, we feel, taken the retrograde step of not making Code commitments contractual obligations on credit unions, incorporated into the terms and conditions of relevant products and services. This diminishes the rights the draft Code offers in comparison to those that other lenders' customers now have under other Codes.

In this light, we suggest the statement that “the Code goes beyond our legal obligations, offering our members and customers additional protections and benefits” is misleading, or at best confusing for consumers.

The statement that making commitment to Code terms contract terms would be “at odds with the non-technical and aspirational style of drafting” (in the public consultation document at p 3) is a triumph of form over function, and a significant loss to consumers. Similarly, placing reliance on misleading and deceptive conduct as a remedy for Code breaches represents a poor outcome for consumers who should, at this point in time, have ready recourse to far better protections.

We strongly urge Abacus to require subscribing institutions to give their members and customers contractual rights in respect of Code commitments. Without this core

commitment, the draft Code represents a statement of lame aspirations and its credibility is compromised.

We would urge the inclusion of a clear commitment at the start of the Code, perhaps preceding the 10 Key Promises, to the effect:

The promises made in this Code are intended to be met and to benefit all of our members and prospective customers in relation to our dealings with them and the provision of relevant products and services.

Form of the draft Code

“10 key promises”

We are unclear of the function of these promises. Do these statements stand alone or are the following parts of the draft Code what actually should happen in practice? If these are not the actual standard they may be confusing to consumers who may primarily refer to them. If the “promises” are promoted or advertised separately to the Code, which conceivably could happen, it could give a different perception as to what the code is specifically about. It may be better to delete the “promises” and just set out clearly what the actual standard is.

Many of the “promises” are in fact restatements of the existing legal obligations of financial service providers (in particular, 2, 3, 4, 6 and 8). Others are clearly aspirational standards (in particular 1, 5, 9 and 10). Putting these together is confusing. We query the utility of calling them promises. Regrettably, this sounds like “spin”.

At promise 9, contributing to community activities and projects is referred to - but how will this happen? If this is a promise, then it needs a framework - otherwise it will sound like an empty promise. For example, should a community forum be established? Should this be made explicit in the Code?

Disadvantaged groups

No particular provisions have been made in regard to groups who may be marginalised or disadvantaged, for example, people from a culturally and linguistically diverse background, Aboriginal and Torres Strait Islanders, the elderly, disabled, people with low financial literacy skills and low income people.

Could some provision(s) be developed to ensure that these people can be appropriately included in all aspects of a Mutual’s operations? For example, a statement that Credit Unions/mutuals aim to be inclusive of all, that the specific needs of these people will be taken into account, key documents available in community languages, staff trained in cultural awareness, appropriate accounts and facilities and disability access (physical and electronic). Photos shown in the draft Code could also be from a broader demographic base to denote social inclusion.

We understand that there may be an issue of capacity related to the relative size of a mutuals. For smaller mutuals we suggest adding something to the effect of:

If for some reason you feel you are excluded from accessing our services we will listen to your explanation of that exclusion and, as our resources allow, try to find ways to accommodate you, or to suggest alternatives if we are aware of them.

The use of footnotes

Footnotes should be incorporated into the body of the document wherever possible. Given the content of them – they are reading like exclusion clauses or “small print”.

Transitional arrangements

Given many of the obligations are already legal obligations in any case, or at least form part of current and known best practice in financial services, we question whether the requirement for a 12-month transitional period is necessary.

Provisions of the draft Code

The following part of the submission provides comments on specific provisions of the draft Code.

CI 2 Information about our products

2.1 Why state that information will be consistent with any applicable legal requirements if the Code does not form part of the customer’s contractual Terms?

Arguably, to a consumer “clear, concise” is the same as “plain language”?

2.2 and 2.3 why only make information/explanations available “if you ask us”?

CI 3 Information in interest rates, fees and charges

We note there is no reference or commitment to low fee transactions accounts. This is disappointing in light of developments in this space in the banking industry.

CI 4 Standard terms

Some of these provisions read like “spin” and may be otiose? The footnote exclusions (footnote 10) potentially remove any value that the Clause might seek to deliver in any event.

4.2 – how will you know which terms a customer is “unlikely to be able to comply with”?

4.4 – how will you review “the effectiveness of our disclosure to members”? without explanation, this appears to be “spin” .

CI 5 Responsible lending practices

We welcome the willingness to tackle such an important issue. Perhaps the commitments could be clarified and extended, as follows:

- These provisions do not apply to bridging finance, reverse mortgages or redraw facilities and reliance is on another industry body (SEQUAL, section 12) in regard to “equity release” products. It is appreciated that these are different products and it is not simple to include them in the section however all these products have a harmful side. Perhaps a useful provision in section 5 might be, something to the effect of;

We will always act responsibly in the provision of reverse mortgages, bridging finance and redraw facilities and will base our decisions on a careful and prudent assessment of your financial position.

- The rider at the end of this clause has the potential to undermine the intent of the section. We would suggest rewording, by removing the brackets and substituting the current wording with:

To supplement our independent checks.

- Re. 5.4. It would be very helpful to consumers to not only get information on the new minimum payment required but also the length of time it would take to repay the facility at its limit at the minimum repayment rate.
- Re. 5.5. Promoting the responsible use of credit is a good initiative. What methods and strategies are planned?

CI 7 Subsidiary cards

7.2, what do you mean by “Reasonable steps”? It would be helpful to advise consumers what is reasonable. In particular regard should be had to the circumstances which might give rise to the need to cancel a subsidiary card (for example separation), so that consumers are not required to take steps that might be inappropriate, even potentially dangerous.

CI 8 Safeguards for co-borrowers

The overall intent of the clause is welcome, however 8.3 is written in a manner that might unnecessarily limit the practical effect. The circumstances in which it will not be possible to limit future advances for co-borrowers are likely to be very narrow. It should be possible therefore to articulate what those might be.

CI 9 Safeguards for loan guarantors

Re. 9.9, 24 hours seems a very short time period to obtain the advice referred to, it would seem a better safeguard if the minimum was extended to 72 hours.

CI 10 Use of finance brokers

We understand the practical reality in relying on reference to the “Mortgage and Finance Association”. We would suggest however that there may be benefit in articulating some

basic principles for engaging brokers - for example, requirements they will adopt and observe the responsible lending principles, properly and diligently assess potential borrowers, accurately record and communicate information etc.

CI 11 Equity Release products

See comments above re CI 5.

CI 12 Communication

This should also refer to members *or their representatives*. It is not only when people are in financial hardship that their representatives may be acting for them, perhaps add:

- at the end of the first sentence, *or their representatives*. Section 24 of the draft code talks generally about working with representatives but this helps clarify the role of the representative on a key issue.
- at the end of the third sentence, *in writing or by fax, however the initial communication was received*. On many occasions consumers and representatives only receive a telephone call response to a letter or fax.

CI 13 Account statements

13.2, sending statements to members every six months makes it difficult for some consumers to properly manage their finances, particularly those who do not have ready access to the internet. If statements can be provided more frequently on request - it should be made explicit that they will be so provided “*at no additional cost*”.

CI 16 Additional copies

16.1, could *Application form* be added to the documents that could be provided, this type of document could reasonably be of assistance to consumers in considering their position.

16.3, fees for providing documents to low income people can be onerous and cause or exacerbate hardship. We suggest consideration be given to adding:

Unless the application of such a fee would cause you undue hardship.

CI 22 Financial difficulties

22.1. Many people in financial difficulties work with a financial counsellor, community lawyer or other representative, and this occurs not just when debt collection or legal action has happened (CI 23). After “We will work with you” could *or your representative* be added. In this regard, perhaps CI 24 – “Working with your representative” should be moved forward in the Code?

Sometimes a debt to a credit union may be in order – eg, where there is a direct debit payment to a loan account but the member still is in financial difficulties due to debt arrears to other organisations, could “to us” be deleted at the end of the first sentence, so that that the whole of a members financial situation is considered, which is critical to proper assessment.

22.2. The list is useful but in our view should not be presented as exhaustive. The clause might usefully begin:

We will have procedures in place that include:

We would suggest that the second last dot point, in relation to alerting consumers to their UCCC rights should not be an afterthought but be provided as and when it is relevant.

We would also suggest the last dot point be a separate item 2.3 to note its significance. It is in any event a legal requirement for UCCC regulated lending.

Additional suggestion:

Some people in financial difficulties are unable to make any payments for periods, due to unexpected life events e.g. illness, unemployment, relationship breakdowns and addictions. In such circumstances unless repayment plans are appropriate to actual capacity to repay, bankruptcy may be the only realistic option. Choosing that course does not help either party. Could this be acknowledged in some way? Our suggestion is the addition of a further section:

In circumstances where rejection of a request for assistance is likely to lead to bankruptcy, we will ensure our response is thoughtful and sensitive and does not produce a punitive outcome.

CI 23 Debt collection and legal action.

23.1 This clause should anticipate and accommodate any updating of the debt collection guidelines without amendment to the Code.

23.2 - Cross over with clause 22 is acknowledged. Would it be clearer for consumers to just include this provision under 22? A person can be in financial difficulties without debt collection or legal action having commenced.

23.4 – We suggest informing customers of an intention to exercise the right to combine accounts *before*, rather than “promptly after” doing so.

23.5 This is a welcome addition.

CI 25 Prompt, fair resolution of complaints

25.3 – We would suggest removal. The reference sounds unduly paternalistic and IDR processes can adequately express the need for consumers to engage when requested.

Why not state explicitly what the EDR schemes are (ie CUDRC, FCDRS, BFSO etc): this will help raise the profile of EDR schemes - all reviews of EDR schemes point to low consumer awareness.

CI 26 Complaints handling process

Many of the points here sound like “spin”.

- States at dot-point 3 that the process is free “and accessible” How is it accessible? - from a consumer perspective – simply being able to not require an initial complaint in writing does not mean the process is accessible. Similarly, dot point 6 states “we will have a straightforward process for determining your complaint”. Should also be in present tense.
- Why not state explicitly what the EDR schemes are (ie CUDRC, FCDRS, BFSO etc): this will help raise the profile of EDR schemes - all reviews of EDR schemes point to low consumer awareness.
- Consider removing text in brackets.

CI 27 EDR schemes

For clarity and information to consumers list the names of the EDR schemes and contact and web site details and also refer consumers to the terms of reference of the schemes.

CI 28 Code breaches

Again, refer explicitly to EDR schemes’ names.

The exclusion of Code breach reports where financial loss might be claimed is unnecessarily limiting. Where such matters are resolved without dealing with a Code issue a complaint should not be prevented.

It is not clear from the draft where the Code compliance and complaint process will sit. It is our understanding from discussions with the reviewer that this will be an arrangement managed by the EDR process. In our view that is a less than ideal outcome with dispute resolution and compliance monitoring and Code breach determination having clear structural differences. We note our comments below.

Appendix 1

Publicising the Code.

Awareness and accessibility to the Code are critical to the proper functioning of the Code. Could a stronger commitment by Credit Unions and Abacus to publicise the Code be made, perhaps something to the effect of;

Abacus will create and continue to maintain an awareness of the Code with, financial services industry bodies, main referral sources to external dispute resolution schemes and organisations who assist people in financial difficulties. Credit Unions will actively promote the Code to members and will provide copies on request and provide a copy with each annual report, free of charge. The Code will also be prominently and clearly displayed at branches and on Credit Union websites.

Code compliance monitoring

Without further details of how Code Compliance will be managed, it is difficult for us to comment. We expect that we will be given an opportunity to comment on the structure of any Code monitoring infrastructure before it is implemented.

We would have concerns about any structure that conflates Code compliance with EDR. EDR schemes are about finding mutually beneficial outcomes to consumer complaints. While both Code compliance and EDR implicitly enhance good practice, Code compliance and monitoring is distinctly different regime to EDR. It is not appropriate that these dispute resolution and compliance & monitoring are merged.

We note in passing that the Banking Code Compliance Monitoring Committee (CCMC) for the Banking Code has recently published a Bulletin (Bulletin #9, November 2007) which draws attention to the need for banks to provide accurate and appropriate information to the CCMC so that effective monitoring can occur. The same bulletin also outlines “key expectations” it has of banks when responding to an allegation of breach – possibly implying that some banks may not necessarily be performing at optimum levels in relation to information and reporting. We would hope that the development of any Code Monitoring infrastructure refer to matters that have arisen under the CCMC in order to take the opportunity to learn and build on best practice in Code compliance.

Sanctions for breach of the Code

This paragraph is not about sanctions – it merely points to process & procedure in relation to determinations and imposition of sanctions. We suggest you consider re-naming the paragraph and/or state explicitly what are the available sanctions.

Tony Devlin tel: 9266 9587 tony.devlin@ae.salvationarmy.org
Jenny Lovric tel: 0410 348311 jenny.lovric@legalaid.nsw.gov.au

Care (Inc) Financial Counselling Services (David Tennant) david.tennant@carefcs.org
AFFCRA (Jan Pentland) janpentland@hotmail.com

14 December 2007