

Mutuals Code of Practice

Final Draft

Commentary Paper

20 June 2008



Abacus
Australian Mutuals

Introduction

This Paper sets out the changes Abacus has made to the Mutuals Code of Practice in light of the submissions and other feedback we have received from both industry and external stakeholders since publishing the Public Consultation Draft on 1 November 2007.

The Paper provides an overview of the main changes, section-by-section comments have been set out in the *Summary of Changes* paper¹. Both should be read in conjunction with the Final Draft text. You may also wish to compare the Final Draft with the Public Consultation Draft and/or the public submissions we received from external stakeholders in response.²

Changes to organisation and presentation of the Code

We have identified each part of the Code by a letter (Parts A – E) to make it easier to reference the Code. Importantly, the section on Code administration is no longer presented as an Appendix, but is now *Part E: How the Code is administered*. This change is intended to address stakeholder concerns that Code administration commitments had been given a reduced status by being relegated to an Appendix in the previous Draft. While that was not our intention, we have sought to put the issue beyond doubt through the revised structure.

Another presentational change is to incorporate most of the substantive footnotes of the Public Consultation Draft into the text, and to significantly reduce our use of footnotes.

Both external stakeholders and industry members had expressed concern that several important exclusions, definitions etc had been relegated to footnotes in the Public Consultation Draft. Stakeholders also considered that extensive use of footnotes was not consistent with plain English drafting. As well as reducing use of footnotes, a short *Appendix: Definitions* has also been added, and definitions that were previously set out in footnotes have been located in the Appendix.

Extensions to scope or coverage of the Code (Part B)

We have extended the coverage of the Code (already broad) in three specific respects, in response to suggestions of external stakeholders and Abacus members.

First, the application of the Code to guarantors has been broadened to include guarantees given to *any* member/customer of the subscribing institution (not just to an individual or

¹ Available to view at www.abacus.org.au/codeofpractice.html

² Available to view at www.abacus.org.au/codeofpractice.html

Small Business). In other words, we have accepted the view put by consumer representatives and others that the determining factor as regards coverage of guarantors should be the identity of the guarantor rather than the identity of the borrower: see under Part B of the final draft code.

Secondly, we have given Code subscribers the ability to apply the Code to any of their members/ customers that it does not already apply to, should the subscribing institution wish to do so: see under Part B of the final draft code.

Thirdly, the coverage of products and facilities issued by third party organisations has been extended to include the “selection” (as well as the “distribution”) of the product or facility: see under Part B of the final draft code.

Incorporating the Code contractually (Part B)

The Final Draft now includes an additional commitment under *Part B, Commitment to comply with Code* – “*We will incorporate this Code in our written Terms and Conditions for products and facilities to which this Code applies*”. This represents a significant departure from the approach taken in the Public Consultation Draft (which did not require Code subscribers to contractually incorporate the Code).

While external stakeholder responses were generally positive about the Draft Code, there was a strongly negative reaction to the lack of contractual incorporation on the part of several stakeholders.

Comments made by these stakeholders included: that lack of contractual liability compromised the Code’s credibility; that it was inconsistent with other comparable codes and best practice in self-regulation; that it was inconsistent with the use of contract-like language in the Consultation Draft (“promises” etc) and made this language potentially misleading; and that it sent an ambiguous message to staff of our member institutions about how seriously they should take the Code. In addition, the Credit Union Dispute Resolution Centre indicated in its submission that contractual enforceability would be of “considerable benefit” to the CUDRC as a decision maker, in terms of determining the status of the Code’s commitments and on what basis CUDRC could award compensation for breaches.

After further consultation with our member organisations, we have responded to these views and concerns and revised our approach to contractual incorporation accordingly.

Our 10 Key Promises to you (Part C)

The main change to this Part is the revised preamble, which makes it explicit that, where there is overlap, the Key Promises set out in Part C “... *should be interpreted by reference to the more specific and detailed commitments of Part D – Delivering on our Promises*”. In addition, some minor modifications have been made to the wording and order of some of the Key Promises: see *Summary of Changes Paper*.

These changes respond to industry concerns about the broad-textured language of the Key Promises, especially in the context of the new commitment to contractual incorporation of the Code (see section above). Some of our member organisations were concerned that tendentious interpretations of some of the language of this Part might be used to support unreasonable demands on their businesses.

However, changes to Part C respond to external stakeholder criticisms as well. In particular, some of the amended phrasing was seen as having an inappropriately promotional aspect (“spin” was a term used in one submission). External stakeholders also wanted the relation between the Key Promises of Part C and the detailed commitments set out in Part D to be clarified.

Delivering on our promises (Part D)

Our response to stakeholder submissions

We have adopted, in part or whole, a majority of the substantive proposals made by consumer organisations, government, EDR scheme and third party service providers in their submissions in response to the *Delivering on our promises* Part of the Public Consultation Draft.

The changes made in response to stakeholder proposals are set out in detail in the Appendix below. They include:

- Revisions to make it clear that the Code’s commitment to “responsible lending” applies to *all* loan products and facilities regulated under the Code (Part D, sections 6, 7, 8)
- Additional consumer information to be provided when credit limit increase offers are made (Part D, section 7.2)
- A new commitment to training of staff involved in the introduction distribution etc of reverse mortgage products (Part D, section 8.4)
- A number of new commitments intended to protect loan guarantors (Part D, section 12)
- A new commitment in relation to third party products—subscribers will commit to distributing products that are “useful, reliable and of value” and to only distribute products of issuers that belong to an ASIC-approved EDR scheme (Part D, section 13)
- The commitment to provide clear, timely, effective communications has been extended to the member/customer’s authorised representative (Part D, section 15)
- A new commitment, in the context of electronic communications, to only make statements, notices etc available at a secure electronic site requiring a pre-arranged and secure access method (Part D, section 18)
- A new commitment not to reduce chargeback rights in subscribing institutions’ Terms & Conditions (Part D, section 21)
- A new commitment not to use electronic communication practices associated with internet fraud—unsolicited emails and phone calls seeking personal banking information, use of emails with attachments, use of emails with hyperlinks (Part D, section 23.9)

- A new commitment not to sell debts of distressed debtors while the institution is still considering an application for hardship relief (Part D, section 24.2, 7th dot point)
- A new commitment, in the context of debt recovery, only to sell debts to a debt buy-out business that subscribes to an ASIC-approved EDR scheme (Part D, section 26.5)
- A new commitment, in the context of complaint handling, to adopt the Guiding Principles of the Australian Standard, *Customer satisfaction—guidelines for complaint handling in organisations (AS ISO 10 002:2004, MOD)*

External stakeholders also sought a number of other changes to the Code, which we have not adopted. A number of these are referred to in the *Summary of Changes* paper.

Our response to concerns expressed by Abacus member organisations

We have also made limited modifications to aspects of the Code in response to our members' concerns about the practicality and/or cost of implementing certain commitments proposed in the Public Consultation Draft. The changes in question include:

- *Credit limit increase offers (Part D, section 7.1)*: The previous commitment not to send the customer a credit card limit increase offer *if the customer regularly makes only minimum monthly repayments* has been removed. Virtually all our affiliated institutions indicated that they would not be in a position to implement this commitment without making costly systems changes. In addition, many CU/BS took the view that a blanket prohibition was inappropriate and that some members/customers may choose to make only minimum repayments on one facility because they had chosen to focus on paying off another loan – such customers may not be in a situation of financial distress.
- *Reverse mortgage loans (Part D, section 8)*: We have modified this provision to give subscribers flexibility to issue and/or distribute reverse mortgage products without belonging to SEQUAL. A key issue here is the cost of SEQUAL membership, especially for smaller entities. The SEQUAL Code still provides a benchmark, however, and comparable standards are required of subscribers.
- *Joint accounts (Part D, section 9)*: The Public Consultation Draft had included a provision to *"require you to positively choose whether a single account holder can access funds in the account, or whether the authorisation of both account holders is required"*. This provision has been removed in response to CU/BS concerns that it is generally not practical to offer a both-to-authorise option in the context of products with card or internet access.
- *Safeguards for co-borrowers (Part D, section 11)*: Some additional flexibility has been given to subscribing institutions under (11.2). As now worded, the institution must not accept the loan if it is aware, or ought to be aware, that the co-borrower will not receive a *"benefit"* from the loan. The Public Consultation Draft had imposed a notionally higher *"direct benefit"* standard. This change was made to accommodate situations where, for instance, a CU/BS agrees to a parent acting as a co-borrower for a loan to finance the purchase of a motor vehicle by their young adult son or daughter.

How the Code is administered (Part E)

The Final Draft includes a number of enhancements to this Part of the Code, introduced in response to comments of ASIC and other external stakeholders. These include: more specific commitments in relation to publicising the Code; an explicit commitment that the proposed Code Compliance Committee will publish an annual report; and clarification of the relation between the CCC and the Compliance Manager. Complaints referral and information sharing issues between EDR schemes and Code Compliance have also been addressed more specifically. See Appendix below for further details.