

Mutuals Code of Practice

Final Draft

Summary of Changes

20 June 2008



Abacus
Australian Mutuals

Details of changes to Mutuals Code of Practice

CU/BS = credit union and building society members of Abacus

Organisation, style and presentation of Code

Aspect	Comments on proposed changes
Numbered as Parts A – E, including Part E (<i>How Code is administered</i>)	The Parts of the Code have been called Parts A – E to assist easy identification. <i>How the Code is administered</i> is now identified as Part E rather than being set out in an Appendix as in Public Consultation Draft. This is intended to remove any doubt that statements about Code administration are integral to Code.
Appendix: Definitions	An Appendix defining some key terms and phrases has been added and definitions have been removed from footnotes. This assists the reader and is consistent with the approach of other Codes.
Use of footnotes	Use of footnotes has been significantly reduced. Stakeholders and some CU/BS had expressed concern that several important exclusions, definitions etc had been relegated to footnotes in preceding draft. Stakeholders also considered that extensive use of footnotes was not consistent with plain language drafting/ consumer-friendly presentation.
Sections of Part D reorganised	There has been some repositioning, dividing up and reorganisation of sections of Part D, including one new section 13 (<i>Third party products</i>). Changes are intended to enhance the clarity and accessibility of the Code. See Part D comments below.

Part A - Introduction

Aspect	Comments on proposed changes
Text general	Footnote (no. 2) has been added to address the situation of one current Abacus member, and possibly others in the future. Slightly fuller descriptions of key consumer protection laws covering CU/BS have been included. Other minor changes.

Part B - Coverage, Commitment to comply, Relation to other laws and regulation

Aspect	Comments on proposed changes
Coverage of Code	Reference to " <i>retail</i> " members or customers has been removed as it is not used elsewhere. Coverage of guarantors has been broadened to include all guarantors guaranteeing

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	<p>loans of subscribers' members/ customers (whether or not the borrower is an individual or Small Business).</p> <p>Coverage of third party products has been extended to include "<i>selection</i>" as well as "<i>distribution</i>" of these products. See also new <i>Part D, section 13 (Third party products)</i> below.</p>
Commitment to comply	<p>"<i>We will incorporate this Code by reference in our written Terms & Conditions for products and facilities to which the Code applies</i>" has been added. See discussion of this key change under <i>Incorporating the Code contractually</i> (p.2 above).</p> <p>Reference to "<i>financial loss</i>" in the Public Consultation Draft has been removed. Consistently with the FCDRS and CUDRC Terms of Reference, the Final Draft broadens this formulation to complaints involving <i>a claim that you have suffered loss or detriment</i>. This change responds to stakeholder recommendations. See also <i>Part D, section 30 (Complaints about breaches of this Code)</i> below.</p>

Part C – Our 10 Key Promises to you

Aspect/Section	Comments on proposed changes
Preamble	Preamble has been revised to limit interpretation of the <i>10 Key Promises</i> by reference to the more specific commitments of Part D where there is an overlap. See commentary above under <i>Our 10 Key Promises to you (Part C)</i> .
1	Moved from 2 nd to 1 st position to reflect centrality of the commitment.
2	Public Consultation Draft version had been KP 1 in Public Consultation Draft. Final Draft removes Consultation Draft statement: " <i>Because we are mutual organisations, our members come first</i> ". Responds to ASIC criticism that statement was inconsistent with language of balancing interests used in (4.2), Part D; and also to more general stakeholder criticism that the statement was too 'promotional' in character for a regulatory document. Also responds to industry concerns about open-ended commitments.
3	Again, somewhat less expansive wording. Responds to criticism that previous wording (especially " <i>the right product for you</i> ") was too promotional in character, and that it was inconsistent with (2.1), Part D, which refers only to information that is " <i>sufficient</i> " to allow the customer to make an " <i>informed decision</i> ".
4	The phrase " <i>not promoting over-commitment</i> " used in the Public Consultation Draft has been removed on the basis that is an odd formulation and did not add anything. The theme of responsible lending is developed in section 6, Part D.
5	The phrase " <i>useful, high quality</i> " has been replaced by the more specific and limited " <i>useful, reliable and of value to our members and customers</i> " in response to CU/BS submissions. This phrase is also used in Section 13 (<i>Third party products</i>), Part D.
9	We have not adopted stakeholder suggestions that the Code should spell-out this commitment to the wider community in greater detail, or that it should include other service commitments (to the environment etc). While many of the 140 plus CU/BS make significant community commitments and/or support various Corporate Social Responsibility obligations, we do not believe it is possible to

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	"capture" these very diverse commitments in the Code except in the very general statement set out.
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Part D – Delivering on our promises

*There has been some reorganisation of the sections of this Part. (The numbers in brackets below the section number refer to the section numbers of the preceding Public Consultation Draft.)**

Section Number	Comments on proposed changes
1 (1)*	<p>Advertising <i>"or deceive"</i> has been added, at the suggestion of stakeholders, to reflect the statutory standard.</p> <p>We have not adopted suggestions of some stakeholders that the obligations in relation to advertising go further. CU/BS noted that an expansive jurisprudence in relation to the statutory prohibition of misleading and deceptive conduct already exists. Proposed extensions (for instance, that advertising will be consistent with responsible lending messages) were seen as far too nebulous and likely to create opportunities for tendentious interpretation.</p>
2 (2)	<p>Info on our products (2.2): Minor wording change to remove stakeholder concern about perceived implication that information would only be provided on request.</p> <p>(2.3) Last sentence: This qualification/rider has been incorporated into main text and reworded to clarify intent. Responds to stakeholders' concern that the Public Consultation Draft wording was too broad.</p>
3 (3)	<p>Info on interest rates, fees Minor changes only. See previous section.</p> <p>We have not adopted the suggestion that the Code include a commitment that all subscribing institutions provide a low fee transaction account. CU/BS noted that their transaction fees were generally lower than those of other sectors.</p>
4 (4)	<p>Fair terms and conditions Material on <i>standard terms</i> and <i>fees and charges</i> has been broken into two sections (see also 5 below). Order of paragraphs has also been changed. Footnote qualifications have been incorporated into main text.</p> <p>(4.3): Removed <i>"are not reasonably necessary to protect our legitimate interests"</i> - repetitious given (4.2).</p> <p>(4.4): <i>"This section is not intended to limit our right to determine the pricing of our products and facilities on a commercial basis"</i> – this new wording is intended to be simpler and clearer than the phrasing it replaces.</p> <p>We have not adopted the suggestion that this commitment be aligned with legislative provisions relating to unfair contract terms.</p>
5 (4)	<p>Fees and charges (5.2): <i>"Clearly disclosed"</i> removed – Covered in section 3, Part D</p>

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	<p>(5.2): "<i>Fairly applied</i>" removed – Both CU/BS and external stakeholders queried what the phrase meant; some external stakeholders implied the phrase was 'spin'.</p> <p>Abacus considers that mutual banking sector has made a substantial commitment on exception fees by mandating that such fees will be "<i>reasonable having regard to our costs</i>" (5.2). We have not adopted the suggestion of some stakeholders that this commitment should, or must, be limited to a "genuine pre-estimate" of the subscribing institution's costs. In our view, the argument that such fees constitute unenforceable penalties at law has been substantially undermined by the recent decision of the UK High Court in the <i>OFT v Abbey National & 7 Ors</i> case.</p>
6 (5)	<p>Responsible lending</p> <p>The exclusion of bridging finance, equity release and use of redraw facilities from the "responsible lending" commitment in previous Draft was heavily criticised by external stakeholders. These exclusions have been removed. At the same time, the link between <i>responsible lending</i> and <i>assessment of capacity to repay</i> has been modified appropriately.</p> <p>The section has been refocussed around the concept of the <i>prudent</i> lender to a greater extent, in response to stakeholder recommendations. Other minor wording changes.</p>
7 (5)	<p>Credit limit increase offers</p> <p>Material on credit limit increase offers has been separated from more general material on "responsible lending" (where placed in Public Consultation Draft).</p> <p>(7.1): Section has been broadened somewhat by addition of promise not to make unsolicited increase offers "<i>if we are aware of other circumstances that make it imprudent for us to extend further credit to you</i>".</p> <p><i>On the other hand, the specific provision of the Public Consultation Draft not to make credit increase offers "if you ... regularly make only minimum monthly repayments on the facility" has been removed. This change is discussed under Our response to concerns expressed by Abacus member organisations at p. 4 above.</i></p> <p>(7.2): Extent of consumer information to be provided has been broadened in response to stakeholders' suggestions (3rd dot). A possible implication of previous draft that borrower must positively <i>reject</i> increase offer has been removed. Other minor wording changes.</p>
8 (11)	<p>Reverse mortgage loans</p> <p>Paragraph (8.1) reinforces the applicability of Code's general commitments on responsible lending to reverse mortgages (see also section 6 above).</p> <p>The section has been limited to reverse mortgage loans (rather than <i>equity release products</i> generally as in previous Draft). We believe this is appropriate given that other equity release products are at an early stage of evolution, are difficult to identify/limit as a category, and are not currently distributed by CU/BS to any extent. Also, the SEQUAL Code currently only applies to reverse mortgages.</p> <p>We have also modified the 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</p>

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	<p>SEQUAL Code still provides a benchmark, however, and comparable standards are required of subscribers.</p> <p>(8.4) The section has been extended to encompass training of subscribers' staff arranging etc these loans. This follows representations from consumer and government agencies. While the Code does not commit subscribers to any particular training programme, consistency with "generally accepted industry standards" is required.</p>
9 (6)	<p>Joint accounts</p> <p>A specific commit to include information on how to cancel a joint account in product information has been added.</p> <p>The Public Consultation Draft had included a provision to "<i>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</i>". 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.</p>
10 (7)	<p>Subsidiary cards</p> <p>The wording of (10.2) has been amended, at stakeholders' request, to remove a possible (unintended) implication of the Public Consultation Draft that the cardholder must destroy or return the subsidiary card in order to avoid liability following cancellation.</p>
11 (8)	<p>Safeguards for co-borrowers</p> <p>The wording of (11.2) has been amended to remove a possible implication of the Public Consultation Draft that the subscriber can avoid liability by turning a blind eye to whether the co-borrower is receiving a benefit under the facility.</p> <p>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 child.</p>
12 (9)	<p>Safeguards for loan guarantors</p> <p>The Final Draft contains a number of revised and/or additional commitments to loan guarantors:</p> <p>Subscribers are now obliged to give the guarantor a copy of the borrower's final letter of offer, and any current credit-related insurance contract (12.6), in addition to the other information and documents referred to.</p> <p>The wording of (12.9) has been modified, following criticism by external stakeholders that the Public Consultation Draft provision allowing the guarantor to request that the cooling-off period be reduced could be abused.</p> <p>The commitments contained in (12.10) and (12.11) are new.</p> <p>There is a significant new commitment in (12.12) for the institution to provide the guarantor "<i>with any updated information available to us on the financial position of the borrower, being information that a careful and prudent guarantor may wish to consider</i>" before allowing a guarantee to be extended.</p> <p>Other changes to this section include:</p> <p>The promise in the Public Consultation Draft to provide information about "<i>any</i></p>

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	<p><i>other matter relevant to the borrower or loan facility to be secured</i>" has been removed from (12.6). This was criticised as too broad/ vague by both Abacus members and, from a privacy law perspective, the Office of the Privacy Commissioner (OPC). Inter alia, the OPC considered the deleted provision as potentially in breach of s.18N, <i>Privacy Act 1988</i> (notwithstanding the s. 18(N)(1)(bh) exception relating to provision of information to guarantors). The commitment to provide a 2-year borrower credit history has been reduced to a 12-month timeframe. This change was made in response to CU/BS concerns about the 2-year obligation being excessively onerousness. An additional qualification has been added to the commitment on enforcement of judgment against the guarantor that the obligation does not apply if "<i>any delay in enforcement is likely to prejudice [the subscriber's] interests</i>".</p>
13 (None)	<p>Third party products This new provision has been introduced into the Code in response to suggestions of both CU/BS and consumer groups. It recognises the extensive use of third party products by the mutual banking sector. Subscribers commit to distributing products that are useful, reliable and of value; and where the issuer belongs to an ASIC-approved EDR scheme.</p>
14 (10)	<p>Use of finance brokers Use of "<i>engage</i>" has been replaced by phrasing that avoids issues about whether broker is an agent of the customer or the CU/BS.</p> <p>On advice, we have extended the requirement that brokers used by subscribing institutions must belong to the Mortgage and Finance Association to include "<i>other recognised industry association</i>".</p>
15 (12)	<p>Clear, timely, effective communication This provision has been extended to cover the member or customer's duly authorised representatives (requested by Financial Counsellor representatives).</p>
16 (13)	<p>Account statements and balances No substantive changes.</p> <p>We have not adopted the suggestion that a/c statements should be provided every 3, not every 6, months as the Draft Code specifies. While many CU/BS do provide statements on many/all their accounts more frequently than 6 months, there was no consensus that this should be adopted as a standard for all institutions across the board.</p> <p>A number of CU/BS noted that to provide statements more frequently would add significantly to their costs (which would be passed on to the subscriber's members/customers). It was also noted that up-to-date a/c information was increasingly available to most – though not all - customers via institutions' internet banking site. A number of CU/BS indicated that, in their experience, members/customers were not asking for more frequent statements.</p>
17 (14)	<p>Notifying changes to your account (17.1 Subscribers will also need to give 30-days advance notice before reducing the number of fee-free transactions on an account. Responds to stakeholder suggestion.</p> <p>We have not adopted suggestions that the Code should be more prescriptive about the method of notification of change to the account. The provision is subject to existing legal requirements, and there is an obligation to balance a number of considerations (the effectiveness of the notification as well as the nature and extent of the change, and the cost of the notification).</p>

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18 (15)	<p>Provision of statements and notices electronically</p> <p>We have incorporated a new commitment in relation to information security in this section – “<i>We will only make your account statements, notices and other prescribed information available at a secure electronic site requiring pre-arranged and secure access method.</i>” Information security issues are also addressed in section 23 (see below). Responds to stakeholder, including Office of the Privacy Commissioner, submissions</p>
19 (16)	<p>Copies of documents, statement and other information</p> <p>(19.1) <i>Loan application</i> has been added to list of documents to be provided on request, at the suggestion of consumer groups. We have also inserted (19.4) to draw attention to the broader obligations of subscribers under the privacy laws.</p>
20 (18 & 19)	<p>Stopping direct debit and recurring payment arrangements</p> <p>We have undertaken some restructuring of previous sections to bring out more clearly the different approaches taken with transaction/ EFTPOS accounts, on the one hand, and scheme cards on the other.</p>
21 (18)	<p>Seeking a chargeback on your behalf</p> <p>This is a new obligation that commits subscribers not to reduce chargeback rights in Terms and Conditions etc. Proposed by consumer group.</p>
22 (20)	<p>Closing your account</p> <p>(22.2) Final draft includes a 7-day timeframe for providing a pay-out figure consistent with s. 76, Consumer Credit Code, requirement. This replaces Public Consultation Draft, which made a more general commitment to respond “<i>promptly</i>”.</p>
23 (17 & 21)	<p>Information privacy and security</p> <p>Combines two sections of preceding Draft, reflecting awareness of privacy and security issues in a more integrated way. Also reflects Office of Privacy Commissioner submission requesting additional language drawn from National Privacy Principles, to which CU/BS are subject in any case.</p> <p>We have discarded paragraphs (20.4) and (20.5) of Public Consultation Draft, which deal with liability allocation issues. These issues are addressed in other instruments (EFT Code, card scheme rules etc). On reflection, and following submissions from Abacus members, we see little value in duplicating these commitments in Mutual Code. NB: Mutual Code includes specific commitment to comply with EFT Code: see Part B under <i>Relationship to EFT Code of Conduct</i>.</p> <p>(23.9) Commits subscribers to not using communications’ practices associated with fraud – unsolicited emails and phone calls seeking personal banking information, emails with attachments, and emails containing hyperlinks. This is a new commitment, responding to increasing industry and community concern about internet fraud.</p>
24 (22)	<p>If you are in financial difficulties</p> <p>(24.2) Preamble <i>Without limiting (24.1)</i>: This phrase has been included to clarify that the general commitment to work with member/ customer in a constructive way etc is not exhausted by the institution adhering to the specific procedures set out in (24.2).</p> <p>(24.2), (1st dot) – telling members about UCCC right to make hardship variation or change application: Change reflects consumer groups’ and ASIC’ concern that Public Consultation Draft did not give adequate prominence to telling struggling debtor about rights under Consumer Credit Code at an early stage of interaction.</p>

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	<p>(24.2) (7th dot point) – not selling debt while still considering application for relief: This additional commitment has been added at request of consumer groups.</p> <p>Other minor wording changes to reflect intent of Public Consultation Draft wording.</p> <p>We have not adopted the suggestion of one consumer group that there be an additional requirement not to commence legal proceedings until the subscribing institution has formally advised the customer of its decision not to grant a variation of repayment arrangements, and given the customer an opportunity to respond. Nor have we adopted the suggestion that the institution should always provide written reasons for its decision not to grant a variation. Generally, CU/BS were resistant to any further across-the-board procedural constraints being imposed on their actions, apart from those they have already committed under this section.</p>
25 (24)	<p>Working with your representative</p> <p>No change to content. Section has been re-positioned to remove possible implication of Public Consultation Draft that financial counsellors and others only assist persons facing recovery action. See also section 15 above.</p>
26 (23)	<p>Debt collection and legal action</p> <p>(26.1) Phrase in brackets has been added to save need to update Code if the <i>ASIC & ACCC Debt collection guideline</i> is revised.</p> <p>(26.3) Some additional detail on what information default notices will contain has been added to this paragraph.</p> <p>(26.5): Obligation to only sell debts to a debt buy-out business that belongs to an ASIC-approved EDR scheme has been added. This is a new commitment. Responds to stakeholder suggestion.</p>
27 (25)	<p>Prompt, fair resolution of complaints</p> <p>(27.1) As proposed in submissions, we have included definitions of “complaint” and “dispute”. These definitions are based on <i>Australian Standard, Customer satisfaction—guidelines for complaints handling in organisations (AS ISO 10 002:2004, MOD)</i>. (Also see section 28 below.)</p> <p>(27.4): We have replaced the phrase “<i>continue to cooperate</i>” used in the Public Consultation Draft with the more specific requirement that members/customers “<i>continue to communicate with us, and respond to our reasonable requests</i>”. This responds to a stakeholder concern that the earlier formulation was too broad, and could be interpreted tendentiously by subscribing institutions.</p>
28 (26)	<p>Our complaints handling process</p> <p>(28.1) This commitment to adopt the <i>Guiding Principles of the Australian Standard, Customer satisfaction—guidelines for complaints handling in organisations (AS ISO 10 002:2004, MOD)</i> is new. It responds to a submission from ASIC recommending that the Code adopt the Standard.</p> <p>We have not adopted suggestions that the complaint-handling timeframes should be reduced. In our view, the 21/ 45 day timeframe is consistent with legislative requirements and the EFT Code, and takes account of the fact that, while some complaints can be resolved quite quickly, others take considerably longer (particularly in the frequent situations where information has to be obtained from 3rd parties). This latter point was emphasised in CU/BS comments to us.</p>

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29 (27)	<p>External dispute resolution (EDR) schemes</p> <p>No substantive changes.</p> <p>We have not adopted the suggestion that the specific details of the two industry dispute schemes to which CU/BS belong should be included in the Code itself. In our view putting details of the two schemes in the Code itself is likely to cause confusion (given that each CU/BS only belongs to one of these schemes). In addition, sector EDR scheme arrangements may change during the period the Code is in operation. Subscribing institutions are already obliged to make this information available to their members/customers under the financial services laws.</p>
30 (28)	<p>Complaints about breaches of this Code</p> <p>(30.1) Public Consultation Draft had stated that complaints involving <i>financial loss</i> should be referred to the subscriber's EDR scheme. Consistently with the FCDRS and CUDRC Terms of Reference, the Final Draft broadens this formulation to complaints involving <i>a claim that you have suffered loss or detriment</i>. This change responds to stakeholder recommendations.</p>

Part E – How the Code is administered

Section	Comments on proposed changes
1	The commitments to publicise Code have been made more specific in response to stakeholder comments and suggestions—there is an additional reference to publicising the code “in our branches” and an obligation to “ <i>give or post you a copy on request</i> ”.
3	Role of Abacus and other organisations in determining composition of the Code Compliance Committee has been clarified.
4	An explicit commitment that the Compliance Committee will publish an annual compliance report has been included, at the request of stakeholders.
5	ASIC specifically sought clarification of the proposed relation between the Compliance Committee and the Compliance Manager, which we have provided with the statement: “ <i>The Compliance Manager will report to and be directed by the Committee.</i> ”
6	Additional words have been added to further underline the broad standing of any interested person to make a complaint to the Compliance Committee.
7	ASIC specifically sought clarification that Code complaints handling process could relate to broader systemic issues, not just single incident, practice or customer. Paragraph 7 provides this.
8 & 9	These paragraphs respond to CU/BS and external stakeholder submissions that the Code should provide more detail on the proposed relationship between the Compliance Manager role and the role of industry EDR schemes.
10 - 18	No substantive changes.