

Mutual Banking Code of Practice Compliance Manual

December 2008 – First version



Abacus
Australian Mutuals

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ABOUT THIS MANUAL

Objective of this Manual

This Manual is designed to assist staff of Financial Institutions that subscribe to the Mutual Banking Code of Practice (MBCOP) to understand and implement its requirements. The Manual also explains how the MBCOP relates to other legislation, regulatory guides and other industry codes. Our aim is to provide practical compliance guidance on all aspects of the MBCOP in a manual of manageable length.

How this Manual is organised

The organisation of the Manual will be apparent from its Contents pages. Following the current chapter (which introduces the Manual), a list of definitions and the chapter entitled ABOUT THE MUTUAL BANKING CODE OF PRACTICE there are five chapters that follow the five Part structure of the MBCOP itself. In turn, each of these chapters reflects the organisation of the Part of the MBCOP to which it relates. The text of the MBCOP is reproduced as Appendix 4: Mutual Banking Code of Practice

Read Manual in conjunction with the MBCOP

The text of the MBCOP should be referred to whenever you are reading the five chapters making up the core of this Manual. We have not replicated the text of the MBCOP in these chapters.

Cross-references to other material not in the Manual

Because the MBCOP touches on many areas of regulation affecting consumers of financial products and facilities, our general approach has been to summarise the key information necessary to comply with it in the Manual. We also refer the reader to additional resources—including other Abacus compliance manuals and guides—for further or more detailed information if this is required.

Cross-references within the Manual

Specific topics are dealt with only once. Where another topic is relevant to a particular topic, the Manual will cross reference the other topic (or topics). *In order for you to completely understand the implications of any topic, you must read all internal cross-referenced material in conjunction with the topic material.*

Make sure you are using the current version of the Manual

The current version of the Manual (the 1st) is referred to by date on the front page and in the footer of each page. The Manual will be revised from time to time to reflect changes to the regulatory environment or to the MBCOP itself.

You should always make sure you are using the most up-to-date version of this Manual. Check by visiting the Abacus Interact Website.

Other resources to assist institutions to achieve compliance

Apart from developing this Manual, Abacus is currently producing a range of other resources to assist subscribing institutions to implement and publicise the MBCOP. These will include: an implementation guide; a computer based training module; revised *Standard Documents* suite incorporating the MBCOP by reference; and content and art work that subscribing institutions

can use to promote the MBCOP to their Customers and staff. For further information MBCOP subscribers should refer to forthcoming Abacus Bulletins and Compliance Notes.

Implementing a compliance program

An institution will achieve compliance with the MBCOP by:

- Auditing its current policies, procedures and documentation in all areas affected by the MBCOP—the Manual can assist with this process
- Where necessary, revising policies, procedures and documentation to ensure the requirements of the MBCOP are applied to the institution's specific environment
- NB: This Manual is not a substitute for an institution's own internal policies and procedures as they relate to the requirements of the MBCOP
- Training all Customer-facing and other relevant staff on the requirements of the MBCOP
- Obtaining legal advice on whether particular policies, procedures and/or documentation are consistent with MBCOP obligations, if this is in doubt.

Manual is not a substitute for legal advice

This Manual is **not** a substitute for legal advice. You should seek advice from your own legal advisers or Abacus Legal if you are uncertain about your organisation's compliance with any aspect of the MBCOP. Initial requests for advice may be sent to legalinfo@abacus.org.au, or telephone Abacus Legal staff.

IN THIS MANUAL

“ACCC” means Australian Competition and Consumer Commission

“ACRCM” means Abacus Credit Reporting Compliance Manual

“ACCCCM” means Abacus Consumer Credit Code Compliance Manual

“AFSL” means Australian Financial Services Licence

“AML/CTF legislation” means the Anti Money Laundering and Counter Terrorism Financing Act 2006

“AML/CTF Rules” means the rules prescribing matters required by the AML/CTF legislation

“ASIC” means the Australian Securities and Investments Commission

“ASIC RG” means ASIC Regulatory Guide

“BDP” means a Basic Deposit Product as defined in Chapter 7 of the Corporations Act 2001

“CCC” means Uniform Consumer Credit Code

“Customer” is used throughout for convenience to refer to members and non-members of Financial Institutions that subscribe to the MBCOP.

“EFT Code” means the Electronic Funds Transfer Code of Conduct administered by ASIC

“Financial Institution” means a credit union or mutual building society subscribing to MBCOP

“CUCOP” means Credit Union Code of Practice

“MBCOP” or ‘the Code’ means the Mutual Banking Code of Practice

“PDS” means a Product Disclosure Statement required under the Corporations Act (Cth) 2001

“RMLs” means Reverse Mortgage Loans

“Small Business” means a business having fewer than a) 100 full-time (or equivalent) people if it involves the manufacture of goods; or b) in any other case 20 full-time (or equivalent) people.

“TPA” means Trade Practices Act (Cth) 1974

ABOUT THE MUTUAL BANKING CODE OF PRACTICE

Introduction

The MBCOP is the industry code of practice of *Abacus – Australian Mutuals*. It is a voluntary industry code covering general banking and lending practices and products. The MBCOP was developed following an extensive consultation process with industry and external stakeholders during 2007 and 2008. The MBCOP comes into operation from 1 July 2009.

From 1 July 2009, the MBCOP will replace the Credit Union Code of Practice to which all member credit unions currently subscribe. Building society subscribers to the Building Society Code of Practice abandoned a formal Code of Practice in 2004, though they generally continued to comply with procedures previously mandated by that Code.

All building societies and credit unions that belong to Abacus may subscribe, or belong to, the MBCOP. It is expected that all, or nearly all, Abacus member organisations will elect to become MBCOP subscribers.

The MBCOP sets out Key Promises (see PART C: OUR 10 KEY PROMISES TO YOU), as well as detailed commitments to their Customers (see PART D: DELIVERING ON OUR PROMISES), and administrative and compliance requirements (see PART E: HOW THE MBCOP IS ADMINISTERED), that subscribing institutions agree to abide.

The MBCOP is administered by the Mutual Banking Code Compliance Committee << *Details to be inserted once finalised* >>

How to obtain a copy of the MBCOP

<< *Details to be inserted once finalised* >>

How to subscribe to the MBCOP

<< *Details to be inserted once finalised* >>

How to check if your institution subscribes to the MBCOP

<< *Details to be inserted once finalised* >>

PART A: INTRODUCTION

Overview

Part A, MBCOP:

- Briefly introduces the reader (Customer or other interested person) to mutual building societies and credit unions and the role of the MBCOP
- Sets out key legislation regulating the sector and states that the MBCOP “establishes higher standards than the law requires in a range of areas” and “addresses issues not addressed by the law”
- Tells the reader how they can find out if their credit union or building society subscribes to the MBCOP
- Lists the Parts (A- E) of the MBCOP, and
- Notes the MBCOP Commencement Date.

Commencement Date

The Commencement Date for the MBCOP is **1 July 2009**.

This is the date after which all institutions that have subscribed to the MBCOP prior to 1 July 2009 must ensure they have policies and procedures in place that are compliant with the MBCOP. Institutions that subscribe to the MBCOP after 1 July 2009 are generally required to comply with the requirements of the MBCOP from the date the institution subscribes.

Note, however, that subscribing institutions may take up to 6-months from the date of subscribing to implement the mandatory requirement to incorporate the MBCOP by reference in the Terms and Conditions of all their products and facilities to which the MBCOP applies—see further under *Commitment to comply with the Code* (Part B).

PART B: COVERAGE, COMMITMENT TO COMPLY, RELATION TO OTHER LAWS AND REGULATIONS

Overview

Part B, MBCOP, deals with the following topics:

- Coverage of the Code
- Commitment to comply with the Code—including the requirement to incorporate the Code in the subscribing institution's Terms & Conditions
- Relationship to law
- Relationship to EFT Code of Conduct
- Credit Union Code of Practice replaced

Coverage general

The MBCOP has broad coverage or application. A subscribing institution must determine:

- a) Whether the person it is dealing with is entitled to the protections of the MBCOP (they generally will be)
- b) Whether the MBCOP applies to the product or facility under consideration (it generally will apply), and
- c) In the case of actions of agents or representatives, whether the agent or representative is acting on the institution's behalf. If so, their actions will be covered by the MBCOP.

Who is entitled to the protection of the MBCOP?

Customers

- The MBCOP covers all the subscribing institution's individual and Small Business Customers.
- "Small Business" is defined, consistently with the financial services laws, as "a business having fewer than: a) 100 full-time (or equivalent) people if it involves the manufacture of goods; or, b) in any other case, 20 full-time (or equivalent) people" (see *Appendix: Definitions MBCOP*). Note that "people" could include contractors as well as employees.
- For most Abacus member organisations, the MBCOP's "Small Business" definition will effectively mean that all, or nearly all, the institution's Customers will be covered by the MBCOP. This represents a significant extension of the coverage of the Credit Union Code of Practice and (former) Building Society Code of Practice.

Loan guarantors

- The MBCOP covers individuals and Small Businesses (as defined) that give guarantees or indemnities securing loans to the institution's Customers.
- This coverage applies irrespective of whether the loan guarantor is him or herself also a Customer of the institution
- Also, this coverage applies in respect of *any* loan to a Customer as long as the guarantor is either an individual or Small Business—so the question is who is the guarantor, not who is the borrower
- Any aspect of the MBCOP can apply to a guarantor to the extent applicable. This is in addition to Part D, section 12, which is specifically addressed to loan guarantors. (See Footnote 5 of the MBCOP.)

Prospective Customers

- Individuals or Small Businesses that are not either Customers or guarantors under the MBCOP are entitled to rely on commitments in the MBCOP that relate to the provision of information about the institution's products and facilities.
- This aspect of the MBCOP's application particularly relates to: Part D, section 1 (*Advertising*); Part D, section 2 (*Information about our products and facilities*); and, Part D, section 3 (*Information on interest rates, fees and charges*).

Applying the MCCOP to all the institution's Customers

Given the broad application of the MBCOP, institutions may decide to apply it to all their Customers. This is permitted under the MBCOP: see *Coverage of Code* (4th dot point)

Products and services to which the MBCOP applies

Products issued by the institution

The MBCOP does not impose any limitations on the products or facilities of the institution to which the Code applies. It states that it covers "deposit accounts, personal loans, home loans, credit and debit cards, cheques and other financial products and facilities that we issue". While this list draws attention to savings and loans products typically offered by Abacus member organisations, the list is not exhaustive and the MBCOP will also apply to (any) other financial products or facilities the institution issues.

Products introduced, arranged or distributed by the institution

The MBCOP has only limited application to third party products and facilities (i.e., those that the subscribing institution does not issue itself but only introduces, arranges or distributes). In relation to these products, obligations under the MBCOP are limited to choice of products by the institution and the conduct of the institution in distributing the product. This generally reflects the extent of the subscribing institution's control over these products or facilities.

Products that are not financial products

The MBCOP is stated as applying "to financial products and facilities" (see above). In Abacus view, this means, for instance, that the jurisdiction of the MBCOP extends to any insurance product (e.g., health, life, income protection, travel, consumer credit insurance etc) that the subscribing institution distributes or issues. On the other hand, a travel service would not be covered as it is clearly not a financial product or facility.

Coverage – Agents or representatives

The MBCOP also applies to the actions of the subscribing institution's agents or representatives (e.g., a collections agent used by the institution) when the agent or representative is acting on behalf of the institution. This is no more than a restatement of the legal position.

Commitment to comply with the Code – subscribers must incorporate the MBCOP

The MBCOP states that subscribing institutions must "incorporate the Code by reference in the written Terms and Conditions for products and facilities to which the Code applies". This must be done within 6 months of the date on which the institution first subscribes to the MBCOP. Thus, if the institution subscribes to the MBCOP on or before the Commencement Date (1 July 2009), standard Terms and Conditions for all MBCOP-regulated products and facilities issued by the institution must be amended to incorporate the MBCOP by, at the latest, 31 December 2009.

The purpose of the 6-month transition period is to give subscribing institutions ample opportunity to adjust their standard document formats and systems and to run down existing stocks of printed documents. However, Abacus encourages institutions to commence using

new standard Terms and Conditions incorporating the MBCOP by reference as soon as possible after they subscribe to the MBCOP.

Incorporation in Abacus Standard Documents

To assist compliance with the incorporation requirement, the *Abacus Standard Documents* suite has been reissued (December 2008) with the MBCOP incorporated by reference in standard Terms & Conditions. The incorporation clause states:

APPLICATION OF INDUSTRY CODES OF PRACTICE

If our Financial Institution subscribes to the Credit Union Code of Practice, the relevant provisions of the Credit Union Code of Practice apply to [insert name of document].

If our Financial Institution subscribes to the Mutual Banking Code of Practice, the relevant provisions of the Mutual Banking Code of Practice as amended from time to time apply to this [insert name of document].

Note that this incorporation clause will only apply to the MBCOP from the Commencement Date.

Abacus will also separately publish a recommended form of words for the MBCOP incorporation clause for use by member organisations that do not use our *Standard Documents* product.

Relationship to the law

This 'safeguard' provision of the MBCOP states that subscribers are only bound by the MBCOP to the extent that compliance with it would not require them to breach a legal obligation, either under statute or the general law. However, where consistent, both the MBCOP and a legal obligation can apply and the more stringent provision must be complied with. Abacus is not aware of any provision of the MBCOP compliance with which is in any way likely to involve a breach of a legal obligation.

The MBCOP also notes that it cannot, and does not purport to, limit any legal obligation the subscribing institution may have.

Relationship to EFT Code of Conduct

This provision of the MBCOP states that, to the extent of any inconsistency, the MBCOP should be read "subject to" the EFT Code. This means that, if the subscribing institution has to choose between acting contrary to the EFT Code and acting contrary to the MBCOP, *under the MBCOP* the institution should give preference to complying with the EFT Code. By necessary implication, the institution will not be in breach of the MBCOP if it does this.

Abacus is not aware of any provision of the MBCOP compliance with which would involve a breach of the EFT Code.

Credit Union Code of Practice replaced

This provision of the MBCOP states that from the Commencement Date (1 July 2009), the MBCOP replaces the Credit Union Code of Practice [CUCOP].

This means that, when a credit union subscribes to the MBCOP, the MBCOP and not the CUCOP will govern its ongoing relationship with its existing Customers in all cases where that relationship is currently subject to the CUCOP (i.e., wherever the current applicable Terms and Conditions incorporate the CUCOP by reference). So, to take one example, if in respect of an existing pre-MBCOP loan, a Customer gets into financial difficulties, the Financial Institution should apply the procedures set out in Part D.24 of the MBCOP in its dealings with the Customer.

While no similar provision applies to building society subscribers, Abacus would encourage building society subscribers to apply beneficial provisions of the MBCOP to all its Customers, from the date the institution subscribes.

PART C: OUR 10 KEY PROMISES TO YOU

Introduction

Part C of the MBCOP consists of “general principles or values applying to our Customers, as well as the broader community”. Subscribing institutions are advised to interpret the Key Promises [KP] of Part C “by reference to the more specific and detailed commitments of *Part D – Delivering on our promises*” where the former overlap with the latter.

This means that, in the case of those KPs that address issues or topics also addressed in Part D, the subscribing institution will meet its Part C obligations by implementing the corresponding Part D requirements. See, in particular, KP3, KP4, KP5 (in part), and KP6. Note, however, that Part C does not systematically or comprehensively cover all the topic areas or themes of these other Parts, focusing rather on more central and less technical aspects.

As well as constituting part of the MBCOP, the text of Part C also forms the basis of a separate stand-alone document to be produced by Abacus that subscribing institutions will be able to use to promote the MBCOP (and their institution).

Analysis of the 10 Key Promises

1. We will be fair and ethical in our dealings with you

Always act honestly and with integrity (KP1)

These words should be given their ordinary meanings, having regard to general community standards. They require the subscribing institution, and its individual staff, to act in an ethically sound way, and to avoid conduct that is morally wrong or otherwise problematic. The requirement sets minimum standards in relation to conduct. It is a general standard applying to all aspects of the relationship between the institution and its Customers (and others such as loan guarantors and prospective Customers).

Always treat Customers fairly and reasonably (KP1)

Again, these words should be given their ordinary meanings, having regard to general community standards. This second aspect of KP1 goes somewhat further than merely acting honestly requires. Dealing with a Customer in a high-handed or inflexible way (for example, by refusing to listen to or negotiate with them), even if not dishonest, would be inconsistent with treating them fairly and reasonably.

In Abacus’ view, this aspect of KP1 requires the subscribing institution to pay due regard to the legitimate needs and interests of the Customer, balancing these against the interests of the institution, including its commercial objectives and prudential obligations. In important areas—such as the provision of product information, the handling of complaints, and dealing with Customers in financial difficulties—the specific commitments of Part D of the MBCOP provide a good guide to how this aspect of KP1 should be interpreted and implemented.

2. We will focus on our Customers

Place a high priority on service, competitiveness and Customer focus (KP2)

This is a general commitment designed to draw attention to the strength of mutual Financial Institutions in the area of Customer service. It reflects the fact that a Customer of a mutual is also the shareholder, unlike non-mutuals where the interests of Customers can often compete with those of shareholders. How institutions apply this commitment will depend very much on the particular institution. Fully implementing the specific requirements of Part D of the MBCOP is one way of reflecting the priority your institution gives to service and Customer focus.

Provide friendly and reliable service to our Customers (KP2)

This phrase also draws attention to the Customer service ethos of our sector, and is largely promotional in character.

3. We will give you clear information about our products and services

Provide clear and accessible information about products and services (KP3)

Many sections of Part D of the MBCOP deal with the provision of product information to Customers. The most general commitment is Part D.2 (Information about our products) under which the subscribing institution promises to make general information about products and facilities readily available to anyone who wants it. Other relevant sections include: Part D.3 Information on interest rates, fees and charges; Part D.7 Credit limit increase offers; Part D.8 Reverse mortgage loans; Part D.9 Joint accounts; Part D.10 Subsidiary cards; Part D.11 Safeguards for co-borrowers; and Part D.12 Safeguards for loan guarantors. By implementing these specific obligations under Part D, the institution will also substantially satisfy KP3.

Disclose interest rates, fees and charges in an accessible and clear format (KP3)

This aspect is reflected in greater detail in Part D.3 (Information on interest rates, fees and charges).

Provide you with regular account statements (KP3)

This aspect is reflected in greater detail in Part D.16 (Account statements and balances).

Provide information on how to minimise fees and charges (KP3)

Part D.3, section (3.3), reflects this aspect of KP3.

Advertising and promotional material will not be misleading (KP3)

This requirement is restated in Part D.1 (Advertising).

4. We will be responsible lenders

Lend responsibly (KP4)

The obligation to lend responsibly is specifically spelled-out in Part D.6 (Responsible lending practices), Part D.7 (Credit limit increase offers) and Part D.8 (Reverse mortgage loans), which refer specifically to responsible lending. Other relevant sections include Part D.10 (Subsidiary cards), Part D.11 (Safeguards for co-borrowers), and Part D.12 (Safeguards for loan guarantors). By implementing these specific obligations under Part D, the institution will also substantially satisfy this aspect of KP4.

Assist people in financial difficulties (KP4)

Part D.24 (If you are in financial difficulties) deals specifically with institutions' obligations when Customers are in financial difficulties. Part D.25 (Working with your representative) and Part D.26 (Debt collection and legal action) are also relevant. Again, by implementing these specific obligations under Part D, the institution will also substantially satisfy this aspect of KP4.

5. We will deliver high Customer service and standards

Issue & distribute products that are useful, reliable and of value (KP5)

This commitment reflects current practice and commercial imperatives, and is arguably minimal in character. Part D.13 (Third party products) restates the commitment in relation to products *distributed* by the subscribing institution. There is no specific equivalent provision in Part D in relation to products and services *issued* by the institution; however, Part D.4 (Fair Terms and Conditions) is relevant in this context.

Make sure staff, agents and representatives are well trained (KP5)

The issue of training generally is not elsewhere addressed in the MBCOP (although Part E.2 deals specifically with training on the MBCOP). By law, staff involved in distribution of financial products, as defined in the Corporations Act, must receive training consistent with the requirements set out in ASIC Regulatory Guide 146. In Abacus' view, KP5 will be satisfied as far as regulated financial products are concerned if RG 146 is adhered to. In addition, subscribing institutions must ensure their loans personnel are properly trained in the credit area (which is not regulated under the Corporations Act), including credit-related aspects of the MBCOP.

Promote secure and reliable banking and financial services (KP5)

This aspect of KP5 is reflected in greater detail in Part D.23 (Information privacy and security) of the MBCOP.

Keep Customers up to date on changes to the products and services (KP5)

Part D.17 (Notifying changes to your account) spells out (and defines the scope of) the general promise of KP5 to keep the Customer up to date about changes to products and services.

Treat personal information as private and confidential (KP5)

Part D.23, Section (23.2), reflects the specific wording of KP5. Note that section (23.2) lists a number of qualifications applicable to the general commitment to treat personal information as private and confidential. Part D.23 (Information privacy and security) as a whole is relevant to interpreting and implementing this aspect.

6. We will deal fairly with any complaints

Handle complaints promptly and fairly (KP6)

Institutions will satisfactorily implement this aspect of KP6 by delivering on the obligations set out in Part D.27 and D.28, including the specific requirements for a complaint handling process in D.28, section (28.2).

Provide information on avenues for resolving disputes not able to reach agreement (KP6)

This refers primarily to informing Customers about the availability of the Institution's EDR scheme where a complaint has not been resolved. Part D.28.4, Part D.29 and Part D.30 of the MBCOP address this aspect of KP6

7. We will recognise member rights as owners

Ensure members receive information on the benefits, costs and impacts of any proposal to change the organisation's mutual structure; and as far as possible ensure any information provided by third parties is fair and not misleading (KP7)

The subject of KP7 is not otherwise dealt with under the MBCOP. KP7 reflects general law and *Corporations Act* obligations of the directors of a subscribing institution to its member shareholders in the context of a demutualisation proposal. See Abacus' *Takeover Response Manual* for further information on the obligations of directors in this context.

8. We will comply with our legal and industry obligations

Be responsible and prudent managers of our institution (KP8)

In Abacus' view, this aspect of KP8 is likely to be satisfied by meeting all APRA requirements to which the institution is subject.

Comply with obligations under law and relevant codes of practice (KP8)

This aspect is self-explanatory. It covers laws related to subject areas covered by the MBCOP, but is not limited to these. *Relevant* codes of practice would include all industry codes

(including the EFT Code, the MBCOP, and the SEQUAL Code if relevant under D.18) to which the institution subscribes.

Act fairly and consistently with good banking and financial services practice (KP 8)

In Abacus view, compliance with the specific requirements of Part D of the MBCOP should ensure that the subscribing institution acts both fairly and consistently with good banking practice in areas the MBCOP addresses. The commitment to acting fairly is discussed above in relation to KP1. The phrase “good banking and financial services practice” imports a notion of comparison with other businesses operating in the general banking area. Industry EDR schemes (including FOS, and FCDRS) are required to have regard to both fairness and good practice in resolving complaints. The bulletins and other publications of these schemes are a source of guidance on these broad requirements as they apply to specific contexts and issues.

9. We will recognise our impact on the wider community

Take account of impact on staff, communities we serve, and members (KP9)

This is a very generally worded promise to be a good employer and corporate citizen, as well as provider of services to members/Customers. As with some other broadly stated commitments of Part C, the language of this aspect of KP9 is somewhat promotional in character and is probably not sufficiently precise to impose contractually binding obligations on institutions. Institutions will interpret and apply this commitment having regard to their own particular circumstances. One way an institution can show it “takes account” its members is by fully implementing the MBCOP.

Promote community engagement and contribute to community activities and projects (KP9)

This commitment is also very general and somewhat promotional in character. It seeks to highlight the fact that Abacus member organisations contribute to their communities in a diverse range of ways. Again, institutions will interpret this aspect having regard to their own particular circumstances. We would apply the notion of *contributing to community activities* broadly to include, apart from activities in geographically based communities, other activities that have a social, developmental or environmental focus.

10. We will support and promote the Mutual Banking Code of Practice

Promote MBCOP and ensure staff are trained to put MBCOP into practice (KP10)

Part E.1 (*Publicising the Code*) and Part E.2 (*Training our staff*) of the MBCOP elaborate on this aspect of KP10.

Support monitoring and effectiveness of MBCOP (KP10)

Part E.10-14 (*Our compliance responsibilities as Code subscribers*) of the MBCOP elaborates on this aspect of KP10. Also see Part E generally.

PART D: DELIVERING ON OUR PROMISES

Part D 1. Advertising

Key Requirements & Application

Ensure that your Financial Institution:

- Does not release advertising or promotional material that is misleading or deceptive either by way of representation or by omission.
- Does not allow staff who market products and services to mislead or deceive as they discuss the product.

This section applies to your Financial Institution whenever it advertises or promotes its products and services.

This section merely restates legal obligations prohibiting misleading and deceptive conduct. The following commentary provides information on how those obligations have been interpreted by the Courts.

Interpretation

What is advertising and promotional material?

An advertisement or promotion includes any material that is designed to draw the attention of the public or individual Customers to your Institution's products and services, or which is intended to induce Customers to acquire your Institution's products and services.

An advertisement or promotion may be made by, or in, any media or channel, including:

- newspapers and magazines;
- brochures, signs and flyers
- radio broadcasts;
- television broadcasts;
- websites and emails;
- sms;
- material included on/with account statements;
- loan calculators; and
- call centres.

The requirements not to mislead or deceive also apply to more informal discussions intended to promote products. For example:

- A Customer service officer explaining the benefits of a product to a Customer at the counter, or in an interview.
- The Financial Institution's CEO speaking in a radio interview about a new product.

What constitutes misleading or deceptive advertising?

A misleading or deceptive advertisement is one that is capable of inducing error on the part of the audience. The most obvious example of a misleading advertisement is one that contains information that is untrue or contrary to the facts.

FOR EXAMPLE	<i>An advertisement in a local newspaper, which implies that a credit union offers a fixed loan product at 8.5% with no establishment fees, would be misleading if charges in the nature of an establishment fee were in fact payable by Customers on the opening of new account.</i>
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It is possible for an advertisement to mislead by omission. Leaving out a vital piece of information has the potential to distort the overall message conveyed by the advertisement. Disclosing full information in Terms and Conditions will not “cure” an advertisement or other representation that is misleading.

FOR EXAMPLE	<i>An advertisement in a local newspaper which states that a building society offers a fixed loan product with a rate of 7.5%, would be misleading if the advertisement also failed to disclose that the rate of 7.5% was a honeymoon rate that after 12 months would increase to an ongoing rate of 12%.</i>
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Disclaimers and/or qualifications may sometimes be effective in limiting the message conveyed to Customers by an advertisement. However these measures will only be effective if they are sufficiently prominent and easy to read.

FOR EXAMPLE	<i>A television advertisement for home loans in which it is claimed that no establishment fees are payable would probably be misleading if establishment fees are only waived for Customers that meet certain criteria and this condition is not displayed prominently or given sufficient exposure time on screen.</i>
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Adequate prominence can be a particular issue in the context of Internet advertising. An inaccurate representation in an Internet ad will generally not be undone by corrective or qualifying statements that can only be found by clicking a link to a further page – your Institution should ensure that the ad does not mislead as a stand-alone representation or series of representations.

A limited degree of ‘puffery’ or exaggeration in advertising or promotional material is permitted for the purpose of attracting potential Customers. However, there is a fine line between acceptable exaggeration and statements that are considered to be misleading representations. In general, to be acceptable puffery the statement must be too imprecise to suggest a measurable attribute i.e., one that could be shown to be false or inaccurate.

FOR EXAMPLE	<i>A credit union which promoted itself as being the “cheapest” Financial Institution in town may be engaging in misleading or deceptive conduct if it is shown that another local Financial Institution is comparatively cheaper in the products it offers. On the other hand a credit union which promoted itself as being the “friendliest” Financial Institution in town would be engaging in acceptable puffery, as the exaggeration employed is too open-ended to be proved incorrect.</i>
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An advertisement may be misleading if it makes claims or predictions in respect of any future matters for which there is no reasonable basis. Particular care is required when seeking to make claims about future performance on the basis of past performance, as the conditions that gave rise to the past performance may no longer be applicable in the future.

**FOR
EXAMPLE**

A promotional brochure for an investment product which states that the return on the investment can be expected to be within a particular range on the basis that the product has delivered returns within this range over the past 3 years.

Unless you clearly disclose the time at which the offer will end an advertisement will be misleading if it advertises a product or service at a specific price, or on specified terms, and you do not offer the product or service as advertised for a reasonable period of time.

**FOR
EXAMPLE**

A television advertisement that offers a credit card with an interest rate of 9.99% is likely to be misleading if you raise the interest rate applying to this product immediately after the promotion ends.

Who is likely to be misled or deceived?

Whether an advertisement is misleading will be determined by the impression it would create in the minds of the average member of the likely audience. In most cases your Financial Institution's advertisements will be directed to the general public. So, before releasing an advertisement you must consider the impression likely be created in the mind of the ordinary member of public.

As the focus is on the ordinary member of the general public, the advertisement should be pitched at the level of someone who has only a limited understanding of financial matters, and is not particularly astute in general. You also need to take into account that people do not attend carefully to advertising, but generally just pick up a general impression.

It does not matter whether or not any members of the target audience have actually been misled by the advertisement. An advertisement will be unlawful and in breach of the MBCOP if there is a real possibility—as distinct from just a remote, or merely theoretical possibility—of members of the target audience being misled.

'Misleading' is a broad category of conduct that includes:

- making a false or inaccurate claim;
- leading a Customer to a wrong conclusion;
- creating a false impression;
- leaving out (or concealing) important information; or
- exclusions in Terms and Conditions that are written in fine print.

Does there need to be an intention to mislead on the part of the Financial Institution?

No intention to mislead is required, either at law or under the MBCOP. In assessing whether an advertisement is misleading, your intention or your staff's intention will **not** be a determining factor. Unlawful advertisements often occur as a result of mismanagement or inadvertence on the part of the advertiser.

Related laws and Codes

There are a number of statutes which prohibit Financial Institutions from engaging in misleading and deceptive conduct including:

- ASIC Act 2000 (Cth)
- Corporations Act 2001 (Cth) (CA)
- Trade Practices Act 1974 (Cth) (TPA)
- Consumer Credit Code (CCC)
- State and Territory Fair Trading laws.

There are related prohibitions against "unconscionable conduct" in the promotion of financial products. There are also prohibitions against harassing a person into acquiring a financial product.

Benefits of compliance

This section of the MBCOP supports sound and ethical business practices but also minimises the potential for your organisation to breach one of the many relevant consumer protection laws.

Business Implications

This section of the MBCOP restates legal obligations prohibiting misleading and deceptive conduct. It does not impose any additional obligations on subscribing Financial Institutions beyond what the law already requires.

➔ IMPLEMENTATION CHECKLIST

Action	Area/Responsibility
1. Review each advertisement to check that it: <ul style="list-style-type: none"> • does not contain any inaccurate material; and • discloses all relevant information. 	Compliance Officer/ Marketing Staff
2. Ensure any disclaimer or qualification used in the advertisement is clearly displayed and clearly directed to relevant content.	
3. If an offer is for a limited time ensure that the advertisement clearly states that the offer is for a limited time only and states what the limits are.	
4. If the advertisement makes claims or predictions in respect of future matters, ensure you have established reasonable grounds for making those claims.	
5. If the content of any advertisement has been provided by a third party and has not been verified by you, ensure the advertisement contains a clear statement to this effect.	
6. Remove all advertisements (and any associated marketing material) from all media, including websites as soon as any offer has ended.	
7. Keep a register of your advertisements and associated marketing material which records: <ul style="list-style-type: none"> • what the offer was; • how the offer was advertised • when the advertisement was placed; and • how long was the offer/advertisement ran. 	

Further Resources

[ACCC Advertising and Selling \(January 2007\)](#)

[ASIC Regulatory Guide 170: Prospective Financial Information](#)

Key Tip for Compliance and Audit Staff

Ensure you have appropriate controls and procedures in place to:

- (i) prevent the release of non-complying advertising and promotional material;
- (ii) track current advertising and promotional material for currency; and
- (iii) retain records of all advertising and promotional campaigns.

Part D 2. Information about our products

Key Requirements & Application

Ensure that your Financial Institution:

- Makes well-presented general information about its products and facilities available to anyone who wants it.
- Makes copies of Terms and Conditions available to anyone who wants them.
- Answers Customers' and prospective Customers' questions about the features of products and facilities, and how they work.

This section applies to all your Financial Institution's products and facilities.

Interpretation

Prepare general information about products and facilities

General information must be prepared about products and facilities. That general information must be distinguishable from Terms and Conditions. Use the following checklist when preparing general information:

- Clear
- Concise
- Accurate
- Written in plain language
- Generally sufficient to allow the Customer to make an informed decision about the product or facility
- Consistent with any legal requirements.

The general information could be collated into one document, or spread over a series of documents. In Abacus' view, as long as the above requirements are met, a Financial Institution could provide general information in a document that also had a promotional or marketing aspect.

Make the general information readily available

The general information should be *readily available to anyone who wants it*. This means that such information should be available (at least) at your Financial Institution's branches and on its web site (if it has one). It also means that the general information should be available to non-Customers, as well as existing Customers, if they ask for it.

Terms and Conditions to be readily available

Terms and Conditions must be available to anyone who requests them. This means that they must be made available to both existing Customers and non-Customers, if requested. Where Terms and Conditions are "tailored" and then printed from your institution's system, the person requesting them may need to specify product characteristics and other information that will determine which Terms and Conditions they are to be given.

The criteria for developing Terms and Conditions are set out in Part D 4. Fair Terms and Conditions.

Staff to answer questions about products and facilities

Staff must answer questions from Customers and prospective Customers about the features and workings of products and facilities.

Related laws and Codes

Consumer Credit Code

The CCC does not impose obligations on credit providers to make product information generally available. However, the CCC does impose mandatory pre-contractual disclosure requirements for credit products relating to fees and charges, interest rates, details of any security etc. See under D3 below. Also, see Abacus Consumer Credit Code Manual for further information.

EFT Code

There is no requirement to make information about products and services generally available under the EFT Code. Under the EFT Code, an Account Institution must provide a copy of Terms and Conditions to an account holder prior to or at the time of the initial use of an access method. A copy of must also be provided to an account user at any other time, on request. The Terms and Conditions must be clear and unambiguous (cl 2.1). The Account Institution must publicise the availability of its Terms and Conditions (cl 2.2).

Corporations Act

The Act only requires a Financial Institution to provide information about regulated products and services if they will be or are likely to be provided to a retail client. The requirements for giving disclosure documents (Financial Services Guide, PDS, Statement of Advice) are set out in Pts 7.7 and 7.9 of the Act. The Terms and Conditions of financial products are set out in these documents. Information must be worded in a clear, concise and effective manner (ss 942B (6A), 942C (6A), 947C(6), 1013C (3)).

BUSINESS IMPLICATIONS GENERAL

This commitment goes further than the law in requiring your Financial Institution to provide product information and copies of Terms and Conditions to anyone on request. However, your institution will generally have a commercial incentive to provide such information in any case. It is unlikely that many product "shoppers" will want to obtain copies of Terms and Conditions, as distinct from general product information, before making a decision on a product. However, you will need to have the capacity to provide these if they are requested.

➔ IMPLEMENTATION CHECKLIST

Action
1. Prepare general information for each product and facility.
2. Make general information available to anyone. For example, print brochures that are available in branches, and post them on your website.
3. Prepare Terms and Conditions documents for each product and facility (refer to Part D 4. Fair Terms and Conditions).
4. Makes Terms and Conditions for a product available to anyone who requests it.
5. Ensure staff are trained about each product and service sufficiently to be able to answer questions from Customers and members of the public.

Part D 3. Information on interest rates, fees and charges

Key Requirements & Application

Ensure that your Financial Institution:

- makes information about interest rates and fees and charges readily available to anyone who wants it
- provides that information in a clear, concise and up to date form
- publicises its interest rates by a variety of methods
- tells Customers how its interest rates are calculated and applied
- assists Customers to minimise or avoid fees and charges

This section applies to all your Financial Institution's regulated products and facilities.

Interpretation

Information on Interest Rates

There are three requirements in relation to interest rates.

a. Prepare a schedule providing information about interest rates.

This schedule should be clear and concise. It should contain details about interest rates for all retail savings products and loan products your Financial Institution offers. Two or more separate schedules could be produced for this purpose. Where interest rates are variable, include the current rate in the schedule, and update the document when the rate changes.

The CCC says that, in the case of credit products, comparison rate schedules must be readily available to the public at the credit provider's premises (section 146K). In complying with this obligation, the comparison schedule could be combined with the general interest rates schedule.

Keep the information in the document up to date.

b. Prepare material to answer questions about interest rates.

Under MBCOP, Financial Institution staff members are required to answer questions about interest rates, and how they are calculated and applied. While many of these questions can be answered by reference to Terms and Conditions of the product or the interest rate schedule itself, a simple question and answer document might also be prepared to help staff answer questions consistently.

c. Make information about interest rates available.

Information about interest rates must be made available to anyone who asks for it, whether or not the person is a Customer. Make the information available as follows:

- As a document available at a branch.
- As a document that can be posted to a person, if requested.
- As a document that is available on your Financial Institution's website, and able to be downloaded.

The Financial Institution will use a range of methods to publicise interest rates. Some examples include:

- Advertisements in newspapers, magazines, etc.
- Advertisements on Internet sites.
- Using posters or notices in branches.
- Newsletters published by the Financial Institution.

For variable interest rates, the individual should be given the current rate at the time they apply for the product.

The CCC requires certain disclosures about interest rates in pre-contractual material, as well as the credit contract itself: ss 14, 15C, 15D and 15E. Section 32(E) requires disclosure of certain information about interest rates in the statement of account. The CCC specifies that where the cost of credit is referred to in an advertisement the interest rate must be disclosed (section 140) and also the comparison rate (section 146E). For more details refer to [Abacus' Consumer Credit Code Compliance Manual](#).

Information on Fees and Charges

There are three requirements in relation to fees and charges.

a. Prepare a brochure or schedule providing information about fees and charges.

This document should be clear and concise. The document should contain details about all fees and charges applying to products and facilities regulated by the MBCOP. Two or more separate documents could be produced for this purpose.

The document about fees and charges must include all applicable fees and charges, including non-standard fees that only apply in particular situations (for example, fees if a Customer overdraws their account or is late in their payments).

The Financial Institution is also required to provide general information to Customers on how to avoid or minimise fees and charges. This information could be provided as part of the fees and charges brochure or schedule, or it could be provided in a separate document.

Keep the information in the fees and charges document up-to-date.

b. Prepare material to answer questions about fees and charges

Financial Institution staff members are required to answer questions about fees applying to a product or facility. While many of these questions can be answered by reference to Terms and Conditions of the product and the fees and charges schedule, a simple question and answer document could also be prepared for staff to help them answer Customers' questions consistently.

c. Make information about fees and charges available.

Information about interest rates must be made available to anyone who asks for it, whether or not the person is a Customer. This could be achieved by having the fees and charges brochure or schedule available as follows:

- As a document available at a branch.
- As a document that can be posted to a person.
- As a document that is available on a website, including a document that is available for downloading.

The Financial Institution must inform the Customer about any fee for a one-off service (eg, issue of a bank cheque), before the Customer becomes liable to pay this. Procedures should be in place to ensure this notification is made. For example:

- Staff in a telephone call centre should tell the caller about the fee when they request the one-off service.
- Member service staff should be trained to inform Customers about such a fee before they use the service.
- If such services are available through the institution's internet site, the site should be designed so that notification of the fee is made before the Customer can access the service.

See also MBCOP section D5, which covers the requirement to regularly review fees and charges and their disclosure. Section D17 covers advance notice required in order to change interest rates and fees and charges.

Related laws and Codes

Related laws also govern the requirement to make information about fees and charges available:

Consumer Credit Code

The CCC has a number of provisions requiring disclosure of credit fees and charges. Sections 15(G) and 15(H) provide for their disclosure in the credit contract. Section 32(F) requires disclosure of certain fees and charges in the statement of account. See Abacus Consumer Credit Code Manual for further details.

EFT Code

The EFT Code contains requirements for disclosure of fees and charges. Clause 2.3(a) requires separate disclosure of charges for an access method. Clause 3 provides details about changing charges. Clause 4.1 restricts imposing certain charges. Clause 4.3 requires separate disclosure of certain charges on a statement of account.

Corporations Act

Chapter 7 of the Corporations Act requires pre-contractual disclosure in a Product Disclosure Statement (PDS) to include information about the cost of the product and any amounts payable by a holder of a product after its acquisition and the times at which those amounts will become payable (section 1013D (1) (d) (i) and (ii)). "Additional information" must be provided on request as soon as practicable before the Customer acquires a financial product and in any event within one month (section 1017A). For basic deposit products (including a facility for making non-cash payments related to a basic deposit product), where no PDS is required, information about the cost of the product must still be provided to the Customer (reg 7.9.07FA).

More Information: Preparing the Fees and Charges Brochure

When designing the fees and charges brochure, consider the mandatory requirements, and also consider the best practice model developed by ASIC in ASIC RG 40 "ASIC Guidelines on Good Transaction Fee Disclosure for Bank, Building Society and Credit Union Deposit Payments Products (Transaction Accounts)". Compliance with the requirements in the ASIC Guidelines is not mandatory, but Financial Institutions should consider working towards the standards set out by ASIC in this guidance.

BUSINESS IMPLICATIONS GENERAL

This section expands little beyond legal requirements relating to disclosure. The material in this section largely also mirrors requirements of the superseded Credit Union Code of Practice, s3.1.

➔ IMPLEMENTATION CHECKLIST

Action
1. Prepare relevant documents, including an interest rate brochure or schedule and a fees and charges brochure or schedule.
2. Prepare material for staff to answer common questions and answers about interest rates and fees and charges.
3. Make the information available as appropriate.
4. Keep the information up to date.

Part D 4. Fair Terms and Conditions

Key Requirements & Application

Your Financial Institution must ensure that its standard Terms and Conditions for its products and facilities:

- Are clear, unambiguous and not misleading
- Are easily distinguishable from any advertising or promotional material you publish
- Are written in a plain style and are legibly presented
- Are consistent with the MBCOP
- Strike a fair balance between the needs and interests of the Customer and the interests and obligations of the Institution
- Are able to be complied with by the Customer.

This section applies to your Financial Institution's products and facilities that are regulated by MBCOP, but:

- Only to *standard* Terms and Conditions (so, not matters set out in the schedule of individually negotiated terms relating to price, amount security etc), and
- Only in respect of contracts entered into after the commencement of the MBCOP.

Interpretation

Clear, unambiguous and not misleading (D 4.1)

Your intended audience will usually be the general public, so your Terms and Conditions should be comprehensible, as far as possible, to average members of the community.

'Misleading' is a broad category of conduct that includes

- making a false or inaccurate claim
- leading a Customer to a wrong conclusion
- creating a false impression;
- leaving out (or concealing) important information; or
- exclusions in Terms and Conditions that are written in fine print.

In terms of print size, a good guideline to follow would be to ensure all Terms and Conditions brochures are printed in a minimum 10-point font. This is a requirement in the case of contracts regulated under the Consumer Credit Code: Regulation 39 of the CCC Regulations.

Distinguishable from advertising and promotional material (D 4.1)

Terms and Conditions must also be distinguishable from advertising and promotional material. Options for complying with this requirement include:

- Provide two brochures or other documents for the product. The first might be a general information brochure summarising and promoting the product's features. The second document would be the Terms and Conditions.
- Provide a single document for the product made up of two distinct parts or section. The first part would contain general information and would summarise and promote the features of the product. The Terms and Conditions would then be set out at the back of the document, in a clearly distinguishable part or section.

Consistent with this Code (D 4.2)

Not only must Terms and Conditions be consistent with the MBCOP, subscribers must also incorporate the MBCOP by reference in Terms and Conditions. (See also PART B: COVERAGE, COMMITMENT TO COMPLY, RELATION TO OTHER LAWS AND REGULATIONS)

Striking a reasonable balance (D 4.2)

Financial Institutions should review their standard documentation to ensure that standard terms in contracts, while protecting the Institution's legitimate commercial interests, are not unreasonably one-sided. We consider that Abacus *Standard Documents* do not contain such terms. Further guidance on this requirement will be provided in later versions of this Manual.

Able to be complied with (D 4.3)

In Abacus view, the requirement not adopt Terms and Conditions that Customers are unlikely to be able to comply with is a minimal one that your Financial Institution will satisfy in satisfying the D4.2 requirement to strike a reasonable balance in its Terms and Conditions between the interests of the Financial Institution and those of the Customer.

Related laws and Codes

Laws relating to clear, unambiguous, legible etc terms

The obligation in D4.1 to ensure Terms and Conditions are clear, unambiguous, and not misleading follows similar obligations in a range of consumer protection laws including the CCC, the ASIC Act, Corporations Act, and Fair Trading legislation. A number of consumer protection laws also include provisions relating to plain language style and legibility in D4.1. For instance, under the CCC contracts must be easily legible and clearly expressed (s 162). Similarly, "clear, concise and effective" disclosure is required under the Corporations Act regulation of financial services.

Laws relating to fair terms

Part 2B of the Victorian Fair Trading Act prohibits unfair terms in consumer contracts. The Part contains a list of types of terms that may be challenged under the legislation (section 32X). Currently, this regime does not apply to consumer credit. At the time of writing, however, the Victorian Parliament was considering a Bill to extend the operation of Part 2B to consumer credit. The Australian Government has also given in principle support to the introduction of unfair contracts regulation in proposed new national consumer protection legislation.

BUSINESS IMPLICATIONS

The MBCOP goes beyond the specific requirements of current law in obliging your Financial Institution to strike a fair balance in its standard terms between the needs of the Customer and the needs of the Financial Institution. The requirement not to adopt Terms and Conditions that the Customer is unlikely to be able to comply with also reinforces the requirement for your Financial Institution to explicitly consider the Customer's viewpoint.

Financial Institutions should undertake a review of all their standard contractual documentation to ensure these additional obligations are adequately reflected in product terms, and that unreasonably one-sided "boilerplate" terms are revised or removed from standard documents.

➤ IMPLEMENTATION CHECKLIST

In the lead-up to commencement of the MBCOP, review Terms and Conditions applying to each product and service you offer. When Terms and Conditions are under review, likewise ensure they meet these minimum standards.

Use the following checklist for Terms and Conditions:

- Clear
- Unambiguous
- Not misleading
- Distinguishable from advertising and promotional material
- Written in a plain language style.
- Legibly presented.
- Strike a fair balance between the legitimate needs of Customers, and the interests of the Financial Institution, including prudential obligations.
- Make sure there are no provisions in the Terms and Conditions that the Customer is unlikely to be able to comply with.
- The Financial Institution is free to determine pricing of its products and facilities on a commercial basis.

Our Terms & Conditions:	Check Box
Are clear	<input checked="" type="checkbox"/>
Unambiguous	<input checked="" type="checkbox"/>
Not Misleading	<input checked="" type="checkbox"/>
Distinguishable from advertising and promotional material	<input checked="" type="checkbox"/>
Written in a plain language style	<input checked="" type="checkbox"/>
Legibly presented	<input checked="" type="checkbox"/>
Strike a fair balance between the legitimate needs of Customers, and the interests of the Financial Institution, including prudential obligations	<input checked="" type="checkbox"/>
Do not contain provisions that our Customers are unlikely to be able to comply with	<input checked="" type="checkbox"/>
Enable the Financial Institution the freedom to determine pricing of our products and facilities on a commercial basis	<input checked="" type="checkbox"/>

Key Tip for Compliance and Audit Staff

Regularly review current Terms and Conditions for your financial products and services to ensure their compliance with the MBCOP, any applicable laws and industry standards.

Part D 5. Fees and charges

Key Requirements & Application

Ensure your Financial Institution:

- Regularly reviews its fees and charges, including the level of fees and charges.
- Has exception fees that are reasonable.

This section applies to all your Financial Institution's fees and charges for products and facilities regulated by the MBCOP.

Interpretation

Review fees and charges regularly

As a matter of good practice, review fees and charges at least annually. In addition, review fees and charges when there are other triggers, such as a fee increase from an external supplier, or new legislation. Areas to consider during a review of fees and charges include the following:

- The level of fees and charges
- Whether a particular fee or charge should be imposed. Have regard in this context to the effect the may have on the behaviour of Customers. For example, imposing a higher fee on ATM usage and a lower fee on EFTPOS usage may cause more Customers to use "cash out" on EFTPOS instead of ATMs.

Exception fees must be reasonable

Exception fees (sometimes called "default fees") are imposed on Customers in particular non-standard or exceptional situations. Some examples of exception fees include: credit card late payment fees, account overdrawn or dishonour fees, direct debit dishonour fees, cheque dishonour fees, and ATM failed transaction fees.

Some criteria indicating that exception fees are reasonable may include:

- The fee is not substantially out of line with industry averages.
- The fee is not disproportionate to the costs of administration services incurred in processing a default.

In Abacus' view, the D5.2 formulation does **not** exclude a profit margin in respect of exception fees – but it does require that this margin be proportionate having regard to your Institution's associated costs.

Further Details

Part D 3. Information on interest rates, fees and charges provides more details about disclosing fees and charges.

Part D 16. Account statements and balances requires disclosure of fees and charges on statements.

Part D 17. Notifying changes to your account outlines notice periods for new and varied fees and charges.

BUSINESS IMPLICATIONS

Subscribing Financial Institutions should review the exception fees they charge, and consider reducing fees that are out of line with industry averages.

Part D 6. Responsible lending practices

Key Requirements & Application

The general principle in this section is that the Financial Institution will act as a responsible lender. This principle is spelled out in a number of practical steps that should be taken by the Financial Institution:

- base lending decisions on a careful and prudent assessment of the Customer's financial position
- periodically review credit assessment procedures and criteria
- generally only lend amounts the Customer can reasonably afford to repay. Exceptions apply for bridging finance and reverse mortgage products
- undertake additional independent checks if required to confirm information provided by a Customer applying for a loan or extension of a credit facility
- promote the responsible use of credit using a range of approaches

This section applies to the subscribing Financial Institution's:

- home loans
- personal loans
- small business loans
- credit cards
- overdraft facilities
- loan extensions and
- whenever a Customer applies for credit or extension of existing credit facility

Interpretation

1. The general principle is that the Financial Institution will always act as a responsible lender. (MBCOP D6.1)

2. The Financial Institution must always base its lending decisions, including the decision to extend credit facilities, on a careful and prudent assessment of the Customer's financial position. Responsible lending takes into account a Customer's capacity to repay a particular loan while continuing to meet other commitments (such as repaying other loans), and covering ordinary household expenses. Experienced and suitably trained staff should make lending decisions using a careful and prudent assessment process. (MBCOP D6.2)

3. The Financial Institution should periodically review its credit assessment procedures and criteria. These reviews should reflect environmental changes (eg changes in the cost of living) and regulatory change (eg changes to legislation that impact on credit assessment). (MBCOP D6.3)

4. The Financial Institution should generally only lend amounts the Customer can reasonably afford to repay from their income, and without undue hardship. This assessment should be based on the information available to the Financial Institution. Exceptions apply for bridging finance and reverse mortgage products. Bridging finance is an exception because as a form of short-term financial accommodation a full credit assessment will generally not be necessary or commercially practical. Reverse mortgages are an exception because typically no principal or interest is paid until after the death of the Customer, and the loan is made explicitly on the basis that it will not be repaid from income (see further Part D 8. Reverse mortgage loans (RMLs)). (MBCOP D6.3)

5. It may be appropriate for the Financial Institution to undertake additional independent checks of information provided by a Customer applying for a loan or extension of a credit facility. If information provided by the Customer is clearly inaccurate, nonsensical or inconsistent with other information in your possession, further investigation must be undertaken. In other cases, Financial Institutions should determine which further checks are required, and when. A key factor to consider will be the amount being borrowed – a prudent lender will always do checks for a home loan, say, but might reasonably rely on information provided by Customer in case of \$5,000 credit card. Generally, it will be appropriate to check VEDA or other credit reference file. Some independent checks include accessing the Customer's credit file at a credit reference agency, confirming employment details with the Customer's employer, and checking with state Registers of Encumbered Vehicles to ensure no previous mortgage exists over a motor vehicle. (MBCOP D6.4)

6. The Financial Institution should promote the responsible use of credit using a range of approaches. Some positive steps include providing information in a range of media, including paper, Internet, recorded information, newsletters, etc. (MBCOP D6.5)

The MBCOP is not prescriptive about what "approaches" are used, but some approaches to consider include:

- Minimally, have a brochure or similar material available to give or send to Customers on request and/or if staff members consider the information would assist the Customer. Most Institutions will also want to have appropriate content on the Institution's web site and/or a link to a site providing relevant information.
- Posters or other information displayed in branches.
- Investment in or sponsorship of community education programs promoting financial literacy.
- Customer-facing staff should receive training on where/how Customers can obtain information on responsible use of credit.

Good sources of content on the responsible use of credit include: [Abacus \(Take Control Booklet Series\)](#), [ASIC](#), the [BFSO](#) and the [Federal Government's Financial Literacy site](#).

The theme of responsible lending is also addressed in section D.7 (credit limit increase offers) and D.8 (Reverse mortgage loans). Other relevant sections include: D.10, D.11, D.12.

Related Laws and regulation

Under Section 70, CCC, a Court may reopen a regulated contract, mortgage or guarantee if it is found to be unjust. One of the factors the Court may have regard to is whether, at the time of entry into the transaction, the credit provider knew, or could have ascertained by reasonable enquiry of the debtor, that the borrower could not repay the loan without substantial hardship.

Prohibitions on unconscionable conduct under the ASIC Act and State and Territory Fair Trading laws are also potentially applicable to situations where inappropriate lending has occurred.

The ACT Fair Trading Act 1992 has specific credit assessment requirements if the Customer is an ACT resident (s 28A) (see Implementation Checklist below).

The Financial Ombudsman Services applies a concept of maladministration in lending when considering complaints about inappropriate lending decisions: See Banking and Finance Bulletins (especially Bulletins 45 & 50) at www.fos.org.au

Benefits of Compliance

The MBCOP requirements reflect prudent lending practices designed to minimise credit risk and limit potential for breach of relevant consumer protection laws by subscribing institutions.

BUSINESS IMPLICATIONS GENERAL

The MBCOP requirements are likely to be consistent with your Financial Institution's current practices (for credit unions the MBCOP largely reflects the provision of credit obligations in the previous CUCOP section 15). However the following Implementation Checklist may assist in updating your existing policies and procedures and can also be used by your Internal Audit, Risk or Compliance staff for control testing.

➔ IMPLEMENTATION CHECKLIST

Priority	Action	Area/Responsibility
1.	Review lending policies (including for small business lending) to ensure consistency with "responsible lending" requirements. ACT Financial Institutions only: ensure systems and procedures are in place to satisfy credit assessment procedure under Fair Trading Act 1992 (ACT) (section 28A)	Credit Manager/ Compliance Officer
2.	Review application forms to ensure they allow sufficient space for inclusion of information on applicant's income and financial commitments.	Credit Manager/ Compliance Officer
3.	Review application assessment procedures to ensure they require lending staff to: <ul style="list-style-type: none"> Assess applications for completeness, internal consistency, and consistency with other information in the possession of the institution Undertake credit checks with a credit reporting agency Be able to identify a repayment source/ capacity sufficient to cover at least minimum periodic payments over term of loan. 	Compliance Officer/ Internal Auditor/ Training Manager
4.	Review staff training to include where they can direct applicants/Customers to information on the responsible use of credit	Training Manager
5.	Review and update financial literacy and responsible use of credit materials provided to Customers to ensure currency	Compliance Officer/ Marketing Officer

Key Tip for Compliance and Audit Staff

Review credit assessment procedures and criteria annually

As a minimum, the assessment policy, process & lending criteria should be subject to annual review and be a key component of your Loans function audit. The control test here would be to ensure consistency with the obligation to lend responsibly.

Part D 7. Credit limit increase offers

Key Requirements & Application

Ensure that your Financial Institution:

- acts responsibly in setting or increasing credit limits on credit cards and other revolving credit facilities
- does not send unsolicited credit limit increase offers to Customers with a poor repayment history or who would not be able to repay
- includes particular information in any unsolicited letter offering an increase in a credit limit.

This section applies to your Financial Institution if it:

- issues credit cards and/or other revolving credit facilities; and
- makes direct unsolicited increase offers to individual Customers.

This section does not regulate general offers made in advertising, newsletters to Customers, on web sites, etc

This section **does not** apply to:

- Financial Institutions that merely arrange or distribute third party products eg Citibank Mastercard
- Unauthorised overdrafts.

Interpretation

What should a Financial Institution do when setting or increasing a credit limit? (D 7.1)

The Financial Institution should assess the Customer's financial position. It should be reasonably satisfied that the Customer will be able to make minimum periodic repayments from income without undue hardship while continuing to meet their other financial commitments and pay for ordinary household expenses for themselves and dependents.

A realistic assessment should be made of what ordinary household expenses are likely to be given the composition of the Customer's household, including number and age of dependents. It is not generally appropriate to use a very low benchmark (such as the Henderson poverty line) in making this assessment.

What does a recent poor repayment history mean? (D7.1.)

This includes Customers who:

- fail to make regular minimum payments,
- have a pattern of making late payments,
- have made special repayment arrangements under financial hardship provisions with your institution, or another credit provider (and your institution is on notice of these).

What other circumstances could make the extension of further credit imprudent? (D 7.1)

This requirement is limited to situations where the Financial Institution is *on notice* of circumstances that make extension of further credit imprudent. Some examples might include where:

- The Customer's credit reference file indicates they have defaulted on a loan they currently have with another lender.
- The Customer has recently informed your institution that they have lost their job.

What Customer information should the Financial Institution provide to the Customer when an unsolicited credit increase offer is made? (D 7.2)

An unsolicited offer made by the Financial Institution to increase the Customer's credit limit on a credit card or other revolving credit facility should include the following information:

- the new minimum payment requirement;
- options for lowering existing or new credit limits;
- not to accept the offer if the Customer cannot afford further credit, the Customer is currently having difficulties meeting their repayments, or the Customer's financial circumstances are likely to deteriorate in the near future; and
- how the Customer can advise the Financial Institution if they do not want to receive credit increase offers in the future.

Related laws and Codes

See also MBCOP D6: Responsible lending

The ACT Fair Trading Act 1992 has specific credit assessment requirements for credit limit increases if the contract is regulated by the Consumer Credit (ACT) Code. (section 28A) (see Implementation Checklist below)

Section 62 of the CCC sets out procedures to follow when increasing the credit limit for credit contracts regulated under the CCC. Refer to Abacus Consumer Credit Compliance Manual for more information.

Benefits of compliance

The MBCOP requirements reflect prudent lending practices designed to minimise credit risk to your Financial Institution and limit the potential for a breach of relevant consumer protection laws.

BUSINESS IMPLICATIONS GENERAL

These requirements are likely to be consistent with the current practices of most Financial Institutions subscribing to the MBCOP. For credit unions the MBCOP is consistent with the *Provision of credit* obligations in the previous CUCOP (section 15). There are some additional information requirements that must be met in the context of unsolicited credit increase offers.

➤ IMPLEMENTATION CHECKLIST

Priority	Action	Area/Responsibility
1.	Review lending policies (including for small business lending) to ensure consistency with “responsible lending” requirements.	Compliance Officer/ Loans Officer
2.	<p>Review procedures for sending offers to increase credit limits. Some areas that might be included in the procedures for increasing credit limits are:</p> <ul style="list-style-type: none"> • Staff should review the original credit application lodged by the Customer. Things to note: <ul style="list-style-type: none"> • is Customer on a fixed income eg Centrelink or Veterans Affairs entitlements? • is Customer currently in a special repayment arrangement with your Financial Institution or another credit provider? <p>Staff should undertake credit checks with the credit reporting agency.</p> <p>Staff should review file notes about conversations with the Customer to see whether there are areas that may cause concern. Things to note:</p> <ul style="list-style-type: none"> • have the Customer’s personal financial circumstances recently changed? <p>Staff should review the account to see previous patterns of usage of the account thus far, including promptness of repayments. Things to note:</p> <ul style="list-style-type: none"> • has Customer’s credit behaviour been unreliable during the preceding 12 months? 	Loans staff
3.	<p>For contracts regulated by the Consumer Credit (ACT) Code only:</p> <ul style="list-style-type: none"> • All credit limit increases must be requested by the Customer, or offered by you and accepted by the Customer in writing; • You must ask Customer for a statement of financial position including income, existing credit accounts and repayment commitments; • You must be satisfied that the Customer has a reasonable ability to repay the amount of credit you will be providing. 	Loans staff
4.	Ensure systems generating general mail-out increase offers exclude members/Customers with a recent poor payment history, and those where an increase is imprudent.	Loans staff
5.	Ensure increase offer forms include required consumer information	Compliance Officer/ Loans Officer

Further details

While MBCOP D7 provides particular procedures to follow when making an unsolicited offers to increase a credit limit, there are a range of options available for increases in a credit limit.

Procedures should be in place for each of the following situations:

- **Option 1.** The existing Customer unilaterally initiates a process to increase their credit limit.
- **Option 2.** The Financial Institution sends out unsolicited general information to Customers about how to increase their credit limit and then the individual Customer makes a specific application if they wish to increase their credit limit.
- **Option 3.** The Financial Institution sends out unsolicited information to particular Customers who would be eligible for an increase in their credit limit. This information requires the Customer to make an application and be approved by the Financial Institution.
- **Option 4.** The Financial Institution sends out unsolicited information to particular Customers indicating that the Customer can be approved immediately for an increase if they complete the response form in the letter.
- **Option 5.** The Financial Institution sends out unsolicited information to a particular Customer indicating that the Customer has already been pre-approved for an increase in their credit limit and they can activate this by simply drawing down the extra funds.

It would be hard to show that Option 5 complied with MBCOP D7, though the other options would all comply with MBCOP D7 if proper procedures were in place. Option 4, would be difficult for Financial Institutions with contracts regulated under the Consumer Credit (ACT) Code to comply with, though Options 1-3 should not present problems for them if careful procedures were followed.

Further resources

[Congratulations you're pre-approved!](#) An analysis of credit limit up-selling letters (Consumer Law Action Centre August 2008)

Key Tip for Compliance and Audit Staff

The same procedures and criteria should be applied to assessing a credit limit increase as to an initial grant of credit. This approach does not rely wholly on credit scoring techniques or credit reporting checks but requires some consideration of a Customer's individual circumstances.

Part D 8. Reverse mortgage loans (RMLs)

Key Requirements & Application

If a Financial Institution issues, or distributes RMLs, then the following needs to happen:

- The Financial Institution must be committed to responsible lending in relation to RMLs.
- If the Financial Institution issues an RML, it must either belong to SEQUAL and adhere to the SEQUAL Code of Conduct on RMLs, or have policies and practices that are consistent with the SEQUAL Code of Conduct.
- If the Financial Institution introduces or arranges RMLs of other product issuers, it must ensure those product issuers either belong to SEQUAL and adhere to the SEQUAL Code of Conduct, or have policies and practices equivalent to the SEQUAL Code of Conduct.
- Relevant staff and agents must be properly trained to deal with RML products.

This section applies to staff and agents of the Financial Institutions involved in issuing, arranging or distributing RMLs.

Interpretation

What are RMLs? (D 8.1 – 8.4)

RMLs are a relatively recent product development. They are often used to assist older people to fund their retirement by drawing on equity held in their homes. A definition of an RML is provided in the Appendix to the MBCOP:

A loan secured over a home that does not require borrowers to make repayments while they remain living in the home. The debt is repaid when they vacate the property. This may occur for instance when they move into care, sell the home or die.

What is SEQUAL? (D 8.2)

SEQUAL is the voluntary industry body representing 90% of the reverse mortgage industry in Australia. To determine whether an RML product is issued by a member of SEQUAL, go to the website <http://www.sequal.com.au/>

Under the MBCOP, an RML product issuer does not need to be a member of SEQUAL, but if they are not, the subscribing Financial Institution must confirm that the product issuer whose products it uses has adopted policies and practices consistent with the [SEQUAL Code of Conduct](#).

What is the SEQUAL Code of Conduct? (D 8.2, 8.3)

The SEQUAL Code of Conduct is an industry code that sets out the RML issuer's obligations to ensure:

- clear disclosure of reverse mortgage product features, Terms and Conditions
- minimum procedural requirements on default,
- that borrowers receive appropriate legal advice and
- that the product offers a no-negative equity guarantee

A copy of the SEQUAL Code of Conduct is reproduced in the APPENDIX to this section.

Training (D 8.4)

Training is required for staff and agents that introduce, explain, arrange, finalise or otherwise deal with RMLs. They should be properly trained to undertake the functions or role they perform in relation to RML products.

Training should be consistent with generally accepted industry standards. In particular, training should comprehensively address the steps prospective borrowers should take to ensure they make a fully informed decision about a reverse mortgage loan.

Related laws and Codes

Currently, consumer protection laws do not specifically regulate RMLs and related advice or dealing activities (although this is likely to change). The CCC applies generally to RMLs, including s70, which gives a court the power to reopen credit contracts or variations of credit contracts that are unjust.

There are prohibitions on unconscionable or misleading conduct under the TPA, ASIC Act and State and Territory fair trading laws

Benefits of compliance

The MBCOP requirements in relation to RMLs reflect prudent lending practices designed to minimise credit and reputational risk to your Financial Institution, and to limit the potential for a breach of consumer protection laws.

BUSINESS IMPLICATIONS GENERAL

The MBCOP standards will help the Financial Institution to ensure good practice standards for this emerging area of products.

➔ IMPLEMENTATION CHECKLIST

Priority	Action
1.	Prepare and implement policies and procedures to ensure responsible lending with respect to RMLs.
2.	If the Financial Institution issues RML products, ensure membership of SEQUAL and adherence to the SEQUAL Code of Conduct. Alternatively, ensure policies and practices are at least consistent with the SEQUAL Code.
3.	If the Financial Institution introduces or arranges RML products, ensure that organisation has membership of SEQUAL and adheres to the SEQUAL Code of Conduct. Alternatively, ensure its policies and practices are at least consistent with the SEQUAL Code
4.	Train relevant staff.

FURTHER RESOURCES

The following are some helpful resources for Financial Institutions in relation to RMLs:

- A useful reverse mortgage calculator can be found at:
- [http://www.fido.gov.au/asic/pdflib.nsf/LookupByFileName/reverse_mortgage_calculator_guide-v1.pdf/\\$file/reverse_mortgage_calculator_guide-v1.pdf](http://www.fido.gov.au/asic/pdflib.nsf/LookupByFileName/reverse_mortgage_calculator_guide-v1.pdf/$file/reverse_mortgage_calculator_guide-v1.pdf)
- ASIC REP 109 "All We Have Is this House" (see "Structure and Operation of Products") on ASIC website <http://www.asic.gov.au/asic/asic.nsf>
- Mortgage and Finance Association "Reverse Mortgages Code of Proper Process" at <http://www.mfaa.com.au/default.asp?artID=1998>

Key Tip for Compliance and Audit Staff

Be sure to provide the Customer with easy access to information about the potential costs and risks of a reverse mortgage loan. Control test is implementation of steps 2-5 in Implementation Checklist above.

Appendix: SEQUAL CODE OF CONDUCT

Each Member of SEQUAL agrees its equity release product(s) will adhere to, and be measured against the following Code of Conduct in dealing with Senior Australians their families and advisers. As a minimum, Members of SEQUAL shall:

1. Treat all Borrowers with respect and dignity
2. Participate in an ASIC approved External Dispute Resolution Scheme
3. Ensure that all products carry a clear and transparent 'no negative equity' or 'non-recourse' guarantee.
That is, the Borrower(s) will never owe more than the net realisable value of their property, provided the Terms and Conditions of the loan have been met
4. Strongly encourage Borrower(s) to discuss the transaction with family members and to seek independent financial advice from a qualified financial adviser
5. Strongly encourage Borrower(s) to discuss the transaction with Centrelink to ensure they fully understand the impact, if any, on their Centrelink entitlements
6. Ensure that the Borrower(s) obtains independent legal advice performed by the solicitor of their choice.
Prior to the completion of the transaction, the Borrower(s) or their solicitor will be provided with full details of the benefits the Borrower(s) will receive, and the obligations they are entering into
7. Clearly and accurately identify all costs to the Borrower(s) that are associated with the transaction
8. Not assert or imply to a Borrower(s) that the Borrower(s) is obligated to purchase any other product or service offered by the Member or any other company in order to enter into an equity release product
9. Provide in writing, a fair and complete package of equity release documents, covering the benefits and obligations of the product.
This will include making available to the Borrower(s) and their advisers a tool illustrating the potential effect of future house values, interest rates and the capitalisation of interest on the loan
10. Ensure that all loans are written under the Uniform Consumer Credit Code (UCCC), irrespective of the use of proceeds from the loan

All Members will comply with the Privacy Act, Trade Practices Act any other relevant Code or Regulation at law.

Part D 9. Joint accounts

Key Requirements & Application

Ensure that your Financial Institution:

- makes general information available to Customers about their rights and responsibilities in opening a joint account
- makes general information available to Customers about how to change the authorisations to operate a joint account.
- explains the information if the Customers request this

This section applies to your Financial Institution's dealings with all its individual and small business Customers/members

Interpretation

Opening a joint account

Where two or more individuals jointly open an account, the starting point is that each account holder is required to sign in relation to a transaction. However, this position can be modified if all the joint account holders sign an authority allowing fewer than all account holders to sign.

For example, an account that has three account holders could be changed by the account holders to:

- Any one account holder to sign.
- Any two account holders to sign.
- One particular account holder plus either of the two other account holders to sign.

If there is no explicit consent by the account holders, the Financial Institution must require all to sign on the account each time a transaction is carried out.

In practical terms, Financial Institutions should think carefully how this will link to the requirements for providing joint account holders with ATM cards, telephone banking and internet banking. Terms and Conditions for these facilities may stipulate that the account automatically becomes "any one account holder to sign" in order for these facility to become available. Alternatively, more limited facilities could be made available. For example, Internet banking may allow joint account holders with "all to sign" to view transactions, but not conduct transactions.

Changing authorisations on a joint account

If fewer than all the account holders can sign on the account, any one of the account holders can notify the Financial Institution that the account must be reverted to "all to sign".

For example, in a marital breakdown context, one party may notify the Financial Institution that the account must immediately be changed to "all to sign" in order to prevent the other party removing all the funds from the account. If the Financial Institution does not comply with the first party's request immediately, this may create a liability for the Financial Institution.

There can be practical problems for joint account holders in relation to ATM cards, telephone banking and Internet banking. Terms and Conditions for these facilities may stipulate that a request for reversion to "all to sign" will be dependent upon surrendering of these facilities. Alternatively, Terms and Conditions could notify Customers that a request by one Customer to revert to "all to sign" will lead to automatic cancellation of these facilities.

Other changes to joint account authorisations

All the joint account holders should make other changes to authorisations. For example, consider a joint account with three account holders that currently requires "two to sign". In order to change the account to "one to sign", all three account holders should consent to this change.

Related laws and Codes**Consumer Credit Code**

Where there is a loan account regulated by the CCC, Form 2 Information Statement must be given to each the co-borrower on the joint account (section 14). The CCC also contains provisions relating to service nominations and consents that you can utilise for the sending to joint account holders of notices, statements etc (section 171).

AML Act

Identification verification procedures in Part B and Chapter 4 of the AML/CTF Rules should be undertaken on each joint account holder.

Benefits of compliance

Adherence to procedures for opening of joint accounts will ensure the Customer understands the nature of the liability they assume as a joint account holder. The MBCOP approach minimises the risk that if one of the account holders is wronged by the other in the operation of the account, the Financial Institution may be called upon to account for the loss suffered.

BUSINESS IMPLICATIONS GENERAL

The MBCOP commitments in Part D 9 to joint account holders are consistent with applicable legal requirements, the previous CUCOP section 16 and MBCOP Part D 2.

➔ IMPLEMENTATION CHECKLIST

Priority	Action
1.	Develop joint account opening and operating procedures (incorporate applicable Customer identification procedures in Part B AML/CTF program and Ch 4 AML/CTF Rules)
2.	Prepare general descriptive information on joint accounts
3.	Review Terms and Conditions to ensure they adequately deal with joint accounts.

Key Tip for Compliance and Audit Staff

Ensure your general descriptive information about joint accounts accurately reflects your Financial Institution's Terms and Conditions for operating a joint account

Part D 10. Subsidiary cards

Key Requirements & Application

Ensure that Customers to whom subsidiary cards are issued are given general information about:

- The primary cardholder's liability for debts incurred by the subsidiary cardholder when using their card.
- Procedures for stopping or cancelling a subsidiary card.

This section applies to Financial Institutions' dealings with their individual and small business Customers where the Customer has authorised the institution to issue a subsidiary credit or debit card.

Interpretation

What is a subsidiary card? (D 10.1)

Subsidiary cardholders are sometimes called third party cardholders. This is in contrast to a joint membership or joint cardholder where the second account holder also signs formal contracts. The subsidiary cardholder is merely able to access funds held by the Customer(s) of the Financial Institution using the debit or credit card that has been issued to the subsidiary cardholder for this purpose.

What should be included in general information? (D10.1)

General information on subsidiary cards should be provided to the primary cardholder before or at the same time as the primary cardholder instructs the Financial Institution to issue a subsidiary card.

General information should cover the liability of the primary cardholder for debts incurred by the subsidiary cardholder when using their card. It should also set out the Financial Institution's procedures for stopping or cancelling a subsidiary card.

Who is liable when a subsidiary card is used after it has been cancelled by the primary card holder? (D 10.2)

Clause D10.2 deals with the primary cardholder's liability for losses after cancellation of the subsidiary card.

The question of liability can sometimes be the cause of dispute between a Financial Institution and a Customer. For example, where a relationship between a primary and subsidiary cardholder breaks down the primary cardholder will usually seek to cancel or stop a subsidiary card. However, cancellation does not always prevent continuing unauthorised spending or use of the card by the subsidiary cardholder (for example, sub-floor transactions that are not immediately verified electronically at point of sale).

In some cases, the Financial Institution may wish to hold the primary cardholder liable for the unauthorised transactions of the subsidiary cardholder even after the subsidiary card has been cancelled. Under the MBCOP, however, if the primary cardholder has instructed the Financial Institution to cancel the subsidiary card and taken "all reasonable steps" to ensure the card is destroyed or returned to the Financial Institution, the primary cardholder may not be made liable for any losses resulting from continuing unauthorised use of the subsidiary card.

What reasonable steps must the primary cardholder take to satisfy D 10.2?

The MBCOP does not provide examples of "reasonable steps" that a primary cardholder could be required to take. Some examples could include:

- Contacting the subsidiary cardholder and seeking the return of the card;

- Making a formal request in writing to the subsidiary cardholder; and
- Making a request through the subsidiary cardholder’s solicitor where there are family law proceedings underway.

It is appropriate to require the primary cardholder to provide a statutory declaration setting out what actions they have taken to have the subsidiary card returned.

Note that there may be cases where no reasonable steps can be taken because the primary cardholder has no way of contacting the subsidiary cardholder. In some cases, too, the threat of domestic violence (or similar circumstances) may make the taking of steps to retrieve a card unreasonable.

Note on subsidiary cardholders under 18

Subsidiary cards are sometimes used by adults to provide their children with a means to access funds for living expenses. Standard Conditions of Use may state that the subsidiary account holder must be over the age of 18, unless the Financial Institution agrees to a younger age. Financial Institutions that wish to provide a subsidiary card to a person who has not yet reached age 18 should seek legal advice before they do so. This is because each State and Territory has a different law that applies where a contract involves a minor. In some cases, the Financial Institutions may not be able to claim an amount where a minor uses a subsidiary card.

Benefits of compliance

By providing Customers with clear, unambiguous Terms and Conditions for use of subsidiary credit or debit cards you reduce opportunities for Customers to complain about misunderstanding the nature of their liability.

➔ IMPLEMENTATION CHECKLIST

Action
1. Write general descriptive information on opening and operation of subsidiary cards in Terms and Conditions. Terms and Conditions should include information about cancellation of subsidiary card and liabilities until card is cancelled
2. Check general descriptive information on subsidiary cards against Model Information Statement
3. Give general descriptive information to Customer before or at the same time as Customer instructs you to issue subsidiary card

Key Tip for Compliance and Audit Staff

Use only standard form general descriptive information in relation to a Visa or Redicard product that uses CUSCAL Standard Terms and Conditions. Ensure that any information about the operation, liabilities and cancellation of the subsidiary card is included in your standard Terms and Conditions.

Part D 11. Safeguards for co-borrowers

Key Requirements & Application

Ensure your Financial Institution provides certain safeguards for Customers who are co-borrowers, including:

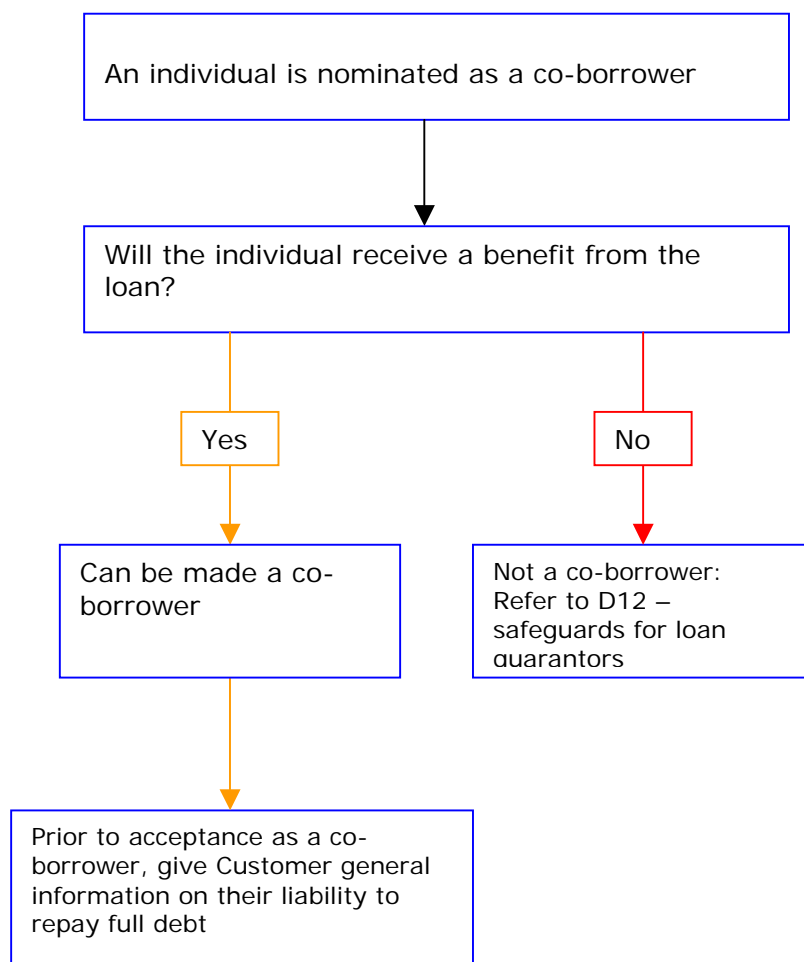
- Refuse to accept someone as a co-borrower if they will not receive a benefit from the loan contract or other credit facility.
- Provide general information to an intending co-borrower about their liability to repay the full amount of the debt.
- Allow a co-borrower to terminate their joint and several liabilities for future financial accommodation in certain circumstances.

This section applies to all the Financial Institution's loan and credit facilities regulated by the MBCOP where there are co-borrowers. It applies to both individual and small business Customers.

Interpretation

Establishing loan with a co-borrower

Summary: Flow chart



What is a “benefit”?

In practical terms, the test of “benefit” can sometimes be easier or harder to determine. For example, it is clear that an elderly parent of someone seeking a business loan will generally not receive any benefit themselves, and should be dealt with as a guarantor only (assuming, after the required disclosures, the person is willing to provide a guarantee). On the other hand, where a parent wishes to help a young adult child to buy a car, the fact that, for instance, the child will no longer seek to borrow the parent’s vehicle *may* constitute a sufficient “benefit”.

Note, however, that under the general law, the test of “benefit” looks at the **substance** rather than the form of the arrangement. Further, it is possible that a Court would require that a tangible financial benefit be demonstrated. While it may be easier and quicker to document a loan with co-borrowers, if the court determines there was no benefit to one of the parties, it will treat that party as a guarantor—and the guarantee, so defined, will then generally not be enforceable because the formal requirements for a guarantee (under the CCC and the general law) will not have been satisfied.

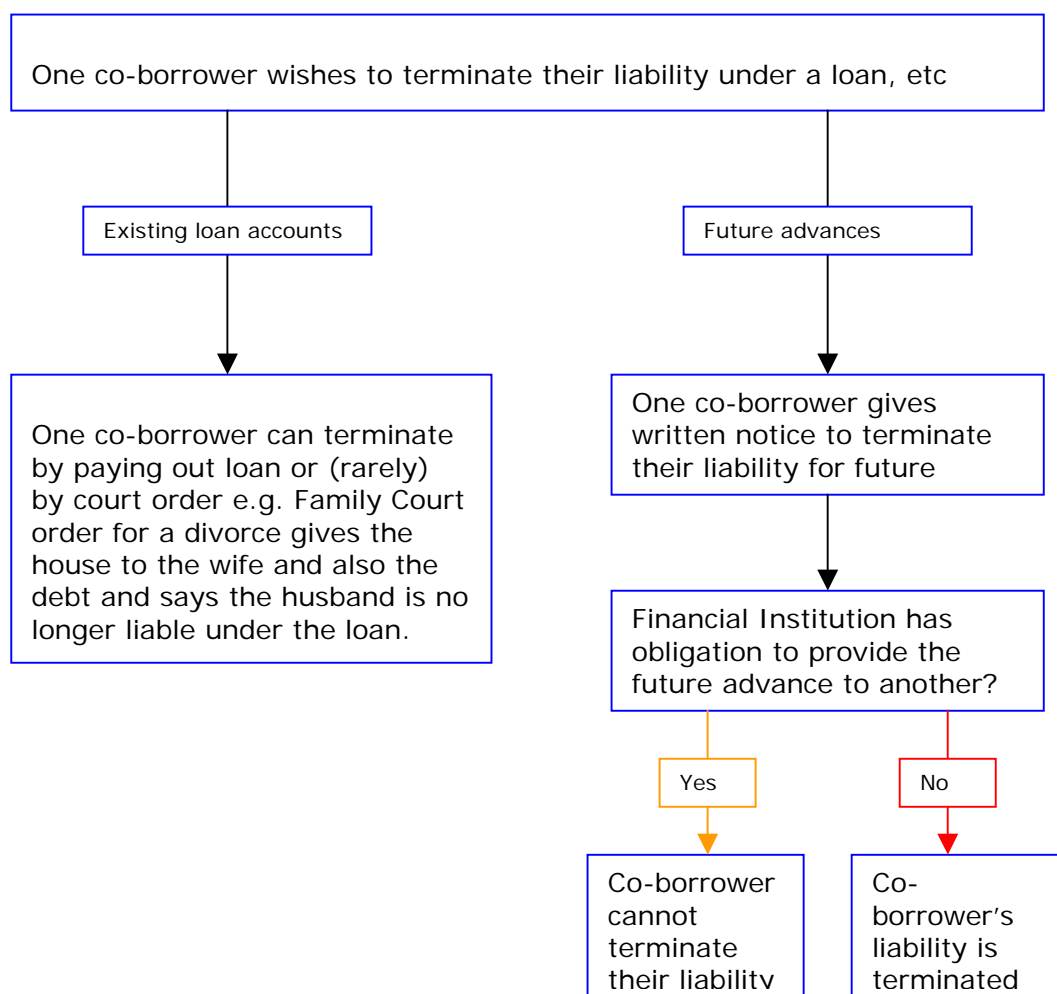
Where you are unsure about the application of the “benefit” test, you should seek legal advice. Alternatively, adopt a conservative approach and do not allow someone to be a co-borrower unless it is clear they will themselves receive a clear financial benefit from the loan.

Give information to co-borrower about liability

The minimum requirement is to provide general descriptive information to the proposed co-borrower before the Customer instructs your Financial Institution to arrange a co-borrowing facility. This should be in writing and should set out that the co-borrower is liable to repay the full amount of the debt.

Flow chart of steps for terminating liability of co-borrower

There are circumstances in which a co-borrower can terminate their liability in relation to future advances and future financial accommodation.



Related laws and Codes

Consumer Credit Code

The CCC has requirements for the form and content of credit contracts (sections 12, 15), pre-contract disclosure (s 14), mortgages and guarantees (sections 38 – 57). These are given to all the co-borrowers. Under the CCC, courts can also reopen “unjust” contracts (section 70).

The CCC requires separate notices and documents relating to a credit facility to be sent to each co-borrower unless a co-borrower nominates another debtor to receive notices etc on their behalf; or consents to documents or notices being jointly addressed to themselves and the other debtor (section 171).

Other consumer protection statutes

The ASIC Act, State Fair Trading Acts, the NSW Contracts Review Act and other consumer protection laws prohibit unconscionable and/or unjust conducts. These provisions may be used to reopen co-borrowing agreements in certain circumstances.

General law

The law will treat co-borrowers’ legal obligations under the law of guarantee if the Financial Institution knows that a person being joined as co-borrower is not receiving a benefit from the credit facility.

Benefits of compliance

The MBCOP requirements reflect prudent practices and procedures to minimise the risk that your loan or other credit facility extended to co-borrowers will be set aside either in whole or in part by a court or that it will be found to be unjust or unconscionable.

BUSINESS IMPLICATIONS GENERAL

The MBCOP is consistent with applicable law and industry practice for credit arrangements involving co-borrowers.

➔ IMPLEMENTATION CHECKLIST

Action
Prior to accepting an individual as a co-borrower, ensure they receive a benefit under the loan. If not, treat them as a guarantor.
Prior to accepting an individual as a co-borrower, provide them with general information about their liability to repay the full amount of the debt.
If a co-borrower wishes to terminate their liability for future amounts, ask them to put the request in writing. The request can only be accepted if the Financial Institution is under no obligation to provide further credit.

Key Tip for Compliance and Audit Staff

Always document a credit transaction according to what is actually happening. Who is receiving the benefit of the loan or credit facility? What is the relationship between all parties? Is a co-borrower arrangement the most appropriate in the circumstances?

Part D 12. Safeguards for loan guarantors

Key Requirements & Application

The key requirements of this section are to ensure that your Financial Institution has a series of safeguards for loan guarantors. These include:

- A prohibition on guarantees with unlimited liability.
- Procedures to follow before obtaining a guarantee.
- Safeguards relating to taking extensions of guarantees and new guarantees.
- Requirements to provide certain information to the guarantor.
- Procedures to follow when enforcing judgment against the guarantor.

This section applies to all guarantees taken by the Financial Institution to which MBCOP applies.

Interpretation

Definitions

For the purposes of the MBCOP, a "Guarantee" is defined as generally including an indemnity: see *Appendix: Definitions of the MBCOP*. (An exception applies in relation to enforcing a guarantee under section D12.16. This sub-section is discussed below.)

A guarantee is a contract under which the guarantor agrees to assume the obligations of the borrower to repay the loan if the borrower defaults under the loan contract. The guarantor's liability only arises when the primary obligations of the borrower to repay the debt remain unpaid.

An indemnity is an agreement from the indemnifier to pay for any loss your Financial Institution suffers arising from a default by the borrower under the loan contract. Unlike a guarantee, where the guarantor's liability is secondary in nature, the indemnifier assumes primary liability.

In simple terms, a guarantee is a document that requires the Financial Institution to first demand payment from the debtor before calling up the guarantee. An indemnity is where the indemnifier indemnifies the debt and the Financial Institution can demand payment from the indemnifier before or at the same time as it claims on the debtor.

Simplified procedure for certain guarantees from a small business director (D12.2)

Where the Financial Institution requires a director of a Small Business (as defined in the MBCOP: see *Appendix: Definitions*) to give a personal guarantee for a proposed or existing loan facility, only certain requirements of MBCOP D12 must be met. The other requirements need not be met. The requirements that must be met are:

- Guarantee must not have unlimited liability (D12.3)
- A prominent notice must be given to the proposed guarantor setting out particular information (D12.4)
- Particular procedures must be followed when the guarantee is extended to cover another loan in the future (D12.12)
- Procedures to allow extinguishment of the guarantor's liability under the guarantee (D12.15)
- Where the Financial Institution seeks to obtain a new guarantee from such a director, it must send the prominent notice required in D12.4.

Principle of No Unlimited Liability for a Guarantee (D12.3)

The Financial Institution must only accept a guarantee if the liability is limited to:

- A specific amount, plus interest and enforcement costs, and/or

- The value of a specified security at the time of recovery.

This requirement is subject to D12.12, which allows the Financial Institution to extend the guarantee to cover another loan.

This requirement is also subject to section 56 of the CCC, which provides an option for extending liability.

Independent Legal and Financial Advice (D12.4)

The Financial Institution may require that the proposed guarantor obtain independent legal and/or financial advice before entering into the guarantee. Each Financial Institution should consider in which circumstances they will apply this requirement.

Abacus strongly recommends that Financial Institutions should require guarantors to receive independent legal advice prior to entering the guarantee. This will help to avoid courts reopening guarantees. At very least, legal advice should be mandatory where Financial Institution staff suspect that the prospective guarantor may not fully understand their obligations under the guarantee. Some guarantors such as wives and parents may be particularly vulnerable because of undue influence or pressure from family members who are seeking credit.

Minimally, the MBCOP requires Financial Institutions to advise a prospective guarantor to consider obtaining independent legal and financial advice: see next paragraph.

Prominent Notice (D12.4)

A prominent notice must be given before the Financial Institution obtains the guarantee that sets out the following:

- The proposed guarantor can refuse to enter into the guarantee.
- The proposed guarantor has a right to limit their liability in accordance with the MBCOP, and as allowed by law.
- There are financial risks involved in becoming a guarantor.
- That the proposed guarantor should consider the information and documents the Financial Institution provides to them, and should seek further information or clarification if required.
- The proposed guarantor should seek independent legal and financial advice before entering into the guarantee.

The purpose of the prominent notice is to ensure the guarantor understands the nature and implications of the guarantee.

A form of words for the prominent notice appears in Appendix: Form of Prominent Notice to Guarantor in this section of the Manual. This will generally be a stand-alone document, and must not be included in the Form 4 or Form 5A that is required to be given under the CCC, as the format for those documents is strictly regulated.

Copies of Documents (D12.5)

The Financial Institution must also give a copy of certain documents to the proposed guarantor. These documents are:

- The final letter of offer and credit contract to which the proposed guarantee relates.
- Details of any security to be provided by the borrower in support of the loan.

The requirement to give the final credit contract goes further than section 51(a) of the CCC which requires the Financial Institution to give the guarantor a copy of the loan contract or proposed credit contract within 14 days of the date of signing the guarantee. Under the MBCOP, the contract must be given to the guarantor before they sign the guarantee.

The requirement to disclose any borrower's security should be met by the disclosure of such information in the credit contract. It is not necessary to give the guarantor a copy of the mortgage given by the borrower.

Information about the borrower (D12.6)

As well as the information and documents referred to immediately above, the Financial Institution must provide any additional information to the prospective guarantor that a careful and prudent prospective guarantor may wish to consider regarding the financial position of the borrower and the borrower's credit history for the previous twelve months. Some examples include details about notices of demand, defaults, overdrawn accounts or other evidence of borrower distress known to the Financial Institution.

The Financial Institution should also provide the guarantor with copies of relevant account statements and other documents on request.

As a guide, the Financial Institution should follow the time frames in MBCOP D19 in providing the above information and documents. In any case, the information must be provided before the guarantor signs the guarantee. Note that the Financial Institution is not required to provide opinions to the prospective guarantor about the borrower, the proposed loan, or related matters.

Contingency information (D12.7)

The Financial Institution must tell the guarantor if the following will occur if the guarantee is not provided:

- An existing facility given to the borrower will be cancelled; or
- A facility will not be provided.

A facility may include a fixed sum loan or a continuing credit contract.

Privacy consent by borrower (D12.8)

The borrower must sign a privacy consent to allow release of the information in MBCOP D12 to the prospective guarantor. If not, the Financial Institution must not accept the guarantee from the prospective guarantor.

Abacus' standard privacy consent will satisfy this requirement.

In the event that security is provided by a third party that is not a borrower, the Financial Institution will give the prospective guarantor details about the security if the third party agrees that the Financial Institution can do this. This situation will only arise in two extremely limited circumstances:

- First, where the MBCOP applies to the loan, but not to the related guarantee. This could occur for example, where the borrower is a natural person or a strata corporation but the guarantor is not a natural person or a strata corporation: see sections 6 and 9 of the CCC.
- Secondly, where there is a second guarantor on the loan that provides a mortgage in relation to their guarantee. The Financial Institution must obtain the consent of the second guarantor before providing the first guarantor with details about security on that guarantee, and vice versa.

Execution or acceptance of a guarantee (D12.9)

Once the steps above have been completed, including giving the relevant information to the prospective guarantor, the following time frames apply for signature or acceptance of the guarantee:

- Where the prospective guarantor has previously obtained independent legal advice about the guarantee, the Financial Institution can ask the prospective guarantor to sign or accept immediately.

- Where the prospective guarantor has not previously obtained independent legal advice about the proposed guarantee, the Financial Institution must give the prospective guarantor until at least the next business day to consider the information.

Arranging signing (D12.10, D12.11)

These provisions seek to guard against the possibility that the guarantor may be signing under duress from the borrower:

- Where the Financial Institution attends the signing of the guarantee, it must ensure that the debtor is not present when the guarantor signs the guarantee.
- Where the Financial Institution gives the guarantee to another person to arrange the signing, it must not give the guarantee to debtor or a person acting on the debtor's behalf to arrange the signing. The only stated exception is where the guarantor's solicitor is also acting on behalf of the debtor; however, this situation is likely to be extremely rare because it will create a conflict of interest for the solicitor.

Extensions of guarantees and new guarantees (D12.12, D12.13)

There are three situations to consider.

SITUATION 1: Where it is sought to extend the guarantee to cover a new loan (in addition to the loan already covered by the guarantee):

Guarantee A from X, linked to Loan B

To:

Guarantee A from X, linked to Loan B and Loan C

Where Guarantee A is to be extended to also cover new Loan C, the following steps must be followed before the guarantor becomes liable for an amount under Loan C:

- The guarantee must contain a provision allowing the guarantee to be extended to cover another loan in the future.
- The borrower under the new loan contract must consent to the release of relevant information to the guarantor; otherwise the Financial Institution should not accept any extension of the guarantee.
- The Financial Institution must give the guarantor a copy of the final credit contract pertaining to new Loan C. This requirement modifies the position in section 52 of the CCC which requires the Financial Institution give to the guarantor a copy of the final letter of offer and loan contract within 14 days of the date of signing. The MBCOP now requires that the document must be given to the guarantor before they can be liable for any amount under the future loan contract.
- The Financial Institution must provide the guarantor with any updated information about the financial position of the borrower. The information required is any information that a prudent and careful guarantor may wish to consider in deciding if they should accept the extension of the guarantee to liabilities under the new loan contract.

SITUATION 2: Where it is sought to obtain a new guarantee from the guarantor in respect of an existing loan:

Guarantee D from Customer X linked to Loan F

To:

Guarantee D from Guarantor X + Guarantee E from Guarantor X, both Guarantees linked to Loan F

In this case, the Financial Institution must follow the procedures set out in MBCOP D12.4 to D12.11, effectively meaning that the new guarantee must have the same procedures as the first guarantee.

SITUATION 3: Where the borrower uses Regulation 22 of the CCC to receive a further advance on the loan, the guarantor's liability can be increased to cover the amount of the further advance if this is done in accordance with section 56 of the CCC.

Ongoing Information (D12.14)

After entering into the guarantee agreement with the guarantor, the Financial Institution must send the guarantor a copy of any formal demand or default notice sent to the borrower. This mirrors the provisions of sections 80 and 85 of the CCC; however the CCC requires a separate notice to be sent to the guarantor.

Upon request, the Financial Institution must also send the guarantor a copy of the latest account statement (if any) provided to the borrower. This mirrors the requirements in section 34 1 (a) of the CCC, and the time frames therein should be observed. MBCOP D16 provides more details about account statements and MBCOP D19 provides details about giving copies of existing statements to the borrower.

Extinguishing Liability under a Guarantee (D12.15)

The guarantor can extinguish their liability under a guarantee at any time by:

- Paying the outstanding liability of the borrower (including any future or contingent liability);
- Paying any lesser amount to which the liability of the guarantor is limited by the terms of the guarantee; or
- Making other arrangements satisfactory to the Financial Institution for the release of the guarantee.

This mirrors the requirements of section 75 of the CCC. In addition, the guarantor's liability may be discharged under section 53 of the CCC if they withdraw from the guarantee prior to the time credit is first provided under the credit contract, or there is a material difference in the proposed loan contract given to the guarantor prior to signing.

Enforcement of Judgment against Guarantor (D12.16)

This clause does not apply in relation to obtaining judgment against an indemnifier. The definition of a Guarantee" in *Definitions: Appendix* of the MBCOP states that: "For the purposes of this Code, a guarantee includes an indemnity, except in relation to D12.16".

The basic procedure to enforce judgment against a guarantor is as follows:

- Obtain judgment against the borrower.
- Send a letter demanding payment to the borrower.
- The judgment debt remains unpaid for thirty days.
- Begin the process to enforce judgment against the debtor.

However, this procedure does not apply if:

- Any delay in enforcement against the guarantor is likely to prejudice the interests of the Financial Institution;
- The Financial Institution has made reasonable attempts to locate the debtor, but without success;
- The borrower is insolvent; or
- Recovery of the debt from the borrower is otherwise untenable.

Refer to MBCOP D26 for more information about enforcement of judgment against a debtor.

Related laws and Codes

Consumer Credit Code and Regulations

The MBCOP goes further than the CCC by extending its protections to small business. A guarantee for a Small Business Customer is not CCC-regulated however the MBCOP imports some similar protections from the CCC, mainly in sections D12.4 and D12.13. The commentary above compares aspects of the MBCOP and requirements of the CCC in detail.

Privacy Act 1988

The Privacy Act limits disclosure by credit providers of personal information contained in reports relating to credit worthiness.

Australian Securities and Investments Commission Act 2001

Prohibits unconscionable conduct misleading and deceptive conduct, false and misleading representations in connection with the supply or possible supply of financial services

General law of guarantee

Numerous court cases have shaped the both the general law of guarantee and consumer protection over time. In general, courts are more willing to overturn guarantees where the guarantor is perceived to be vulnerable to influence from the debtor.

Benefits of compliance

The MBCOP requirements reflect prudent practices and procedures that will minimise the risk that a guarantee supporting a loan or other credit facility will be set aside either in whole or part by a court on the basis that a contractual defence applies or consumer protection statutory it is unjust or unconscionable.

BUSINESS IMPLICATIONS GENERAL

The MBCOP protections for guarantors are consistent with the CCC but unlike the CCC some key protections extend to Small Business Customers. Overall the section reflects the applicable law and best industry practice for credit arrangements involving guarantors.

➤ IMPLEMENTATION CHECKLIST

Action	Area/Responsibility
<p>➤ Before obtaining a guarantee you must:</p> <ul style="list-style-type: none"> • Give a prominent notice to the guarantor of the matters contained in D 12.4 (D 12.4) (see form of notice below) • Provide to the guarantor the documents and information listed in D12.5 • Provide to the guarantor any information available to you relating to the financial position and previous twelve months credit history of the borrower (D 12.6) • Tell the guarantor if any facility you have given the borrower will be cancelled if the guarantee is not provided (D 12.7) • Ensure the guarantor has sought independent legal and financial advice [optional] (D 12.4) • Ensure the guarantee is signed in the absence of the borrower (D 12.11) 	<p>Loan Staff</p>
<p>➤ Before providing a guarantee the guarantor must:</p> <ul style="list-style-type: none"> • Consider the documents and information you give them under 12.5 (D 12.4, 12.5) • Seek independent legal and financial advice about their obligations [optional] (12.4) 	<p>Loan Staff & Proposed Guarantor</p>
<p>➤ After obtaining a guarantee you must:</p> <ul style="list-style-type: none"> • Send to the guarantor any formal demand or default notice you send to the borrower (D 12.14) • At the guarantor's request, give a copy of the borrower's latest statement of account, if any (D 12.14) 	<p>Loan Staff & Guarantor</p>
<p>➤ Extending the guarantee:</p> <ul style="list-style-type: none"> • You must not extend the guarantee to cover another loan unless you have followed the procedure in D 12.12 (D12.14) 	<p>Loan Staff</p>

Key Tip for Compliance and Audit Staff

Always document a credit transaction according to what is actually happening. Who is receiving the benefit of the loan or credit facility? What is the relationship between all parties? Is a guarantee the most appropriate in the circumstances?

Appendix: Form of Prominent Notice to Guarantor

Warning

You should seek independent legal and financial advice on the effect of this Guarantee before you agree to sign it.

You can refuse to sign this Guarantee.

There are financial risks involved in signing this Guarantee (for example it may become necessary for you to sell your assets so that you can pay us).

You have the right to limit your liability under this guarantee and indemnity in accordance with the Consumer Credit Code, the Mutual Banking Code of Practice and as allowed by law.

You should consider all the information and documents we have provided to you in connection with this Guarantee and, if you require, you should seek further information or request clarification.

Part D 13. Third party products

Key Requirements & Application

Ensure that your Financial Institution:

- Only distributes third party products and facilities that are useful, reliable and of value to your Customers
- Regularly reviews the third party products it distributes, and
- Only distributes financial products (including credit products) of issuers that belong to an External Dispute Resolution scheme, approved by ASIC

This section applies to any third party financial products and facilities your Financial Institution provides to an individual or Small Business.

Interpretation

Third party products or facilities (D 13.1-13.2)

These might include:

- Insurance products. For example, motor vehicle and caravan insurance, personal insurance, travel insurance, health insurance and life insurance. Providers include organisations such as Suresave, Allianz and QBE.
- Bank-issued credit and/or debit Visa card or Mastercard
- A distribution alliance with an external provider in connection with a rewards program eg Triangle Rewards Points
- Travellers cheques

Verify usefulness, reliability and product value (D13.1)

These are broad terms and there are many criteria against which to assess usefulness, variety and product value. You should consider your Customer-base and try to measure these factors in objective ways. In Abacus' view, most mainstream financial products distributed by the sector are likely to meet the required standard.

Ensure issuer belongs to an External Dispute Resolution scheme (D13.2)

Virtually all third party financial products distributed by subscribing Financial Institutions will already be covered by an ASIC-approved EDR scheme. This is because issuers of these products are required, as a condition of their Australian Financial Services Licence, to belong to one or more ASIC-approved EDR schemes covering the financial products they issue to retail customers. See also Part D 29. External dispute resolution (EDR) schemes

Regularly review suite of third party products (D13.1)

A review of your suite of these products should be conducted at least annually.

Australian Standards may apply to the third party products and services a Financial Institution introduces, arranges or otherwise distributes: see www.standards.com.au

Related laws and Codes

Common law prohibitions on misleading conduct and harassment under TPA, ASIC Act or State and Territory fair trading laws extend to any representations a Financial Institution makes in relation to products and facilities issued by another organisation. See also D1 Advertising

The Corporations Act requires Financial Institutions holding an Australian Financial Services Licence to belong to an EDR Scheme (section 912A)

Benefits of compliance

A high standard of conduct in relation to third party products is a good advertisement for your Financial Institution's own products and services. It carries reputational benefits by meeting Customers' expectations of honesty and integrity, without extending your Financial Institution's obligations beyond applicable laws.

BUSINESS IMPLICATIONS GENERAL

The MBCOP generally does not go beyond current legal obligations in relation to the distribution of third party financial products. The MBCOP does not prevent Financial Institutions from limiting their liability for warranties or representations made by external product and service providers, to the extent permitted by law.

Part D 14. Use of finance brokers

Key Requirements & Application

Ensure that if your Financial Institution uses finance brokers to distribute its products, the brokers belong to:

- the Mortgage and Finance Association of Australia or other recognised industry association and
- an External Dispute Resolution Scheme approved by ASIC

This section applies to Financial Institutions that offer any of its products through a finance broker

Interpretation

Recognised industry association

The main industry associations for finance brokers are:

- The Mortgage and Finance Association of Australia (MFAA) (www.mfaa.com.au); and
- The Finance Brokers Association of Australia (FBAA) (www.financebrokers.com.au).

EDR scheme approved by ASIC

ASIC has approved a number of external dispute resolution schemes for the financial services sector. Finance brokers generally belong to either the Credit Ombudsman Service Limited (www.creditombudsman.com.au), or the Financial Ombudsman Service (www.fos.org.au).

The MFAA and FBAA both have industry codes applying to their members. These specify minimum education requirements and offer professional development programs. The MFAA has developed advertising guidelines and both have internal dispute resolution processes that their members are required to follow. The MFAA and FBAA also have disciplinary rules and procedures. Both associations require their members to belong to an ASIC-approved EDR scheme.

Related laws and Codes

There is currently no law or code that requires finance brokers to be members of an industry association, or to be a member of an EDR scheme (although in practice both are the norm for mainstream brokers).

In WA the activities of finance brokers are licensed and regulated under the Finance Brokers Act 1975 (WA) and an associated Code of Conduct. There is also minimal (and inconsistent) regulation of finance brokers in other State and Territory jurisdictions. The regulation of finance brokers is currently under review and will form a key aspect of new Commonwealth credit legislation, currently under development.

BUSINESS IMPLICATIONS GENERAL

There is currently no legal obligation for finance brokers to belong to an industry association or an ASIC-approved EDR scheme. The MBCOP commits your Financial Institution to doing business only with brokers who do.

Procedures

1. Ensure your broker is a member of MFAA: see www.mfaa.com.au

or other recognised industry association, such as FBAA: see www.financebrokers.com.au

2. Ensure your broker belongs to an ASIC-approved EDR scheme. For details see D 28.

Appendix: Things to consider in your relationship with your finance broker.

1. Review broker's professional training

The MFAA and FBAA specify minimum education requirements, offer professional development programs and dispute resolution. The MFAA publishes advertising guidelines for its members. These associations also impose disciplinary rules on their members.

2. Note special requirements for WA Financial Institutions

Confirm that your broker is complying with:

- any conditions of their licence
- the provisions of the Finance Brokers Control Act 1995 (WA) and regulations
- Maximum Remuneration Schedule
- Code of Conduct applying to WA finance brokers

3. Some conditions to consider in the contract of engagement with a broker

Consider the inclusion of the following minimum standard terms in your finance broker's contract of engagement:

- MBCOP provisions in D 14.1
- mandatory skills and ongoing professional development;
- a condition that the broker:
 - provides specified disclosures about costs and services before negotiating a broking agreement with a Customer; makes sufficient enquiries about the consumer's financial status to ensure they can afford the product recommended; and
 - compensates the Customer for losses when they enter into an inappropriate credit product on the broker's recommendation.

Part D 15. Timely, clear and effective communication

Key Requirements & Application

Ensure that your Financial Institution's communications with its Customers is timely, clear and effective.

Timeliness in communication is achieved by setting out response times to Customers and their duly authorised representatives that the Financial Institution will aim for.

Clarity and effectiveness is achieved by using plain language as the target for all communications with Customers.

This section applies to your Financial Institution in all its communications with Customers and their duly authorised representatives.

Interpretation

Timely Communication (D15.1)

The general commitment to timely communication with Customers is made clearer with the following time frames for response times:

- Where a Customer initiates a particular communication with the Financial Institution by means of telephone and electronic messages (eg internet), the general response time is within 3 working days.
- Where a Customer initiates a particular communication with the Financial Institution by means of writing (eg a letter) or by facsimile, the general response time is within 7 days of the receipt of the Customer's communication by the Financial Institution. (For example, this means that the 7-day time for response begins to run from when the Financial Institution receives a letter from the Customer, rather than when the Customer posts the letter).
- Where a Customer is lodging a complaint, D27 has a commitment to respond to complaints and disputes promptly, and the general response times are set out in D28.
- If a Customer requests a payout figure on their loan or credit facility, this must be provided within seven days to be consistent with section 76(3) of the CCC. See Part D 22. Closing your account
- If a Customer requests a copy of a particular document, this must be generally be provided to the Customer within 14 days or 30 days (depending on when the document came into existence). See Part D 19. Copies of documents, statements and other information

The same time frames apply when the Financial Institution communicates with a person who is a duly authorised representative of a Customer. A duly authorised representative is someone chosen by the Customer to act on their behalf in negotiations with the Financial Institution. D25 provides some examples of duly authorised representatives, including a Financial Counsellor, community worker, solicitor, family member or carer.

Clear and effective communication (D15.2)

Clear and effective communication is achieved by using plain language that avoids legal and technical jargon as far as possible. The intended audience should be able to readily understand the material the Financial Institution provides.

The requirement for clear and effective communication applies to all written communications by the Financial Institution, including:

- letters
- notices
- brochures
- telephone scripts

- website messages
- other communications
- general information about products (see D2)
- information about interest rates and fees and charges (see D3)
- Terms and Conditions (see D4)

Benefits of compliance

This commitment sets a minimum standard in relation to customer service. Most institutions would aim to achieve shorter initial response times in most situations.

BUSINESS IMPLICATIONS GENERAL

This section goes further than other codes by requiring a positive commitment to delivering a high standard of Customer service in communications with Customers and more generally. It goes further than the Corporations Act by extending to all communications with Customers and not merely disclosure documents.

➔ IMPLEMENTATION CHECKLIST

Action	Area/Responsibility
1. Timely Communication: Prepare, implement and monitor procedures that set out required time frames for communication. This may require appropriate staff training.	Compliance Staff
2. Clear and Effective Communication: Review standard letters, documents and telephone scripts to ensure they meet plain language requirements. Train staff as appropriate in plain language drafting.	Operations Staff

Key Tip for Compliance and Audit Staff

There should be appropriate reporting on the operation of the response-time compliance program against documented and published performance standards.

Part D 16. Account statements and balances

Key Requirements & Application

Ensure that your Financial Institution provides Customers with:

- regular, clear account statements containing prescribed information about transactions and fees and charges; and
- a simple, fee-free method of access for the Customer to find out the balance on their account

Your Financial Institution is also committed to not bundling fee amounts but breaking fees down by transaction type and channel.

This section applies in relation to all deposit and loan accounts, but it does not apply to dormant accounts and passbook accounts.

Interpretation

Content of Account Statements (D16.3)

For all savings and deposit accounts, except dormant accounts and passbook accounts, the following requirements must be met:

- Account statements must clearly set out all transactions on the account during the period.
- Account statements must include clear information about the Financial Institution's fees and charges incurred on the account during the statement period. Fee amounts must not be bundled, but should be broken down by transaction type and channel. The impact of any applicable fee-free limit or rebate scheme must also be indicated. ASIC Regulatory Guide 40 "Good transaction fee disclosure for bank, building society and credit union deposit and payment products (transaction accounts)" provides a best practice model to assist Financial Institutions with fee disclosure on statements.
- Use the material in the Appendix to this chapter to confirm that the content of your institution's account statement complies with other laws.

Frequency of Account Statements (D16.2)

Account statements must be sent at least every six months. However, this is subject to other laws. For example:

- *Consumer Credit Code*: Statements must be issued every 40 days for accounts that are continuing credit contracts ordinarily accessed only by a credit card. Other continuing credit contracts can be sent every 3 months if the Customer and the Financial Institution agree, or otherwise every 40 days. Account statements on other loans must be provided at least every 6 months.
- *EFT Code*, clause 4.2, requires statements every 6 months for accounts where the EFT Code applies. Financial Institutions must also offer the Customer the option of receiving more frequent account statements, and provide statements on request.
- *Corporations Act*. Section 1017D requires the statements to be issued annually and they must also contain certain information. Terms and Conditions may also specify that account statements must be sent more frequently. As well as being required under the MBCOP, sending a statement at least every six months will qualify a Financial Institution for exemption from the requirement of the *Act* to confirm a transaction for basic deposit products.

Tip: When determining the frequency of account statements, you must comply with all relevant laws. Where there is some flexibility about how often to send the statements, balance the following competing priorities:

- Fraud: By sending account statements less often, there is a higher risk of liability for fraud.
- Cost: More frequent account statement mail outs are more costly for the Financial Institution.

Account statements should be provided more frequently than six monthly upon the Customer's request. This requirement mirrors clause 4.2(a) of the EFT Code. The Financial Institution should consider carefully how it would respond to requests for account statements to be provided more frequently than is required by legislation. There is nothing to prevent the Financial Institution charging a fee for more frequent provision of account statements, provided the fee is properly notified to the Customer, and the Terms and Conditions for the account allow charging of the fee.

Where the Customer requests a copy of an existing statement that has already been sent to them, refer to MBCOP D19 for details about procedures to follow.

Destination of Account Statements (D16.1)

Account statements must be sent to the last address the Customer has given to the Financial Institution. However, account statements can be delivered electronically if the Customer agrees – see Part D 18. Provision of statements and notices electronically

Tip: Customers should be frequently reminded to notify the Financial Institution of a change of address, and the procedure they must follow to do so. This will also help to minimise the risk of fraud from statements that are sent to old addresses and improperly accessed by other people.

Exception for passbook accounts and dormant accounts (D16.5)

The requirement to provide regular account statements does not apply to passbook accounts and dormant accounts.

The holder of a passbook account for a basic deposit product issued after 11 March 2002 must have access to all information that would normally be included in a periodic statement by presenting the passbook to the issuer to be updated free of charge. (See Corporations Act reg 7.9.71A, which provides an exemption from the periodic statement requirement of s.1017D for passbook accounts).

Account Balance upon Request (D16.4)

The Financial Institution must provide one or more simple method of access for the Customer to find out the balance on their account. Some methods of access include the following:

- Over the counter inquiry.
- Telephone banking.
- Internet banking.
- ATM.

However, the Financial Institution must not impose any fees for using an access method. This means that the Financial Institution should review whether fees will impact the access method. For example:

- If a fee is incurred for the Customer to use the Institution's telephone banking system to ascertain their account balance, telephone banking should not be advertised as an access method that complies with D16.4. However, it could still be advertised as a means by which an account balance can be accessed subject to a possible fee.
- During 2009, it is expected that direct charging of ATMs will be introduced. This will require a fee to be paid by the Customer at the time they use the ATM. If this means that the Customer is charged a fee to check their balance via the ATM, the access method complying with D16.4 might better be described as the institution's own ATMs, rather than any ATM.

If there are problems with one access method, the Financial Institution must make sure that at least one other access method is available for the Customer to find out the balance of their account.

Tip: The account balance for a loan account or credit facility might be different from the payout figure that the Financial Institution is required to give the Customer under D22.2.

Related laws and Codes

Consumer Credit Code

For credit products the CCC requires Financial Institutions to state the frequency with which they will issue statements (section 15(1)). Sections 31 and 32 require periodic statements of account for certain credit contracts to be issued with the prescribed frequency and they must contain certain information (see Implementation Checklist below).

Corporations Act

The Corporations Act requires Financial Institutions to give periodic statements for deposit accounts and other types of accounts that have an investment component. Section 1017D requires the statements to be issued with the prescribed frequency and they must also contain certain information (see *Implementation Checklist* below).

Retail clients can be provided with electronic confirmation of their transactions (section 1017F, regs 7.9.75A and 7.9.75B). This must 'give the holder the information that the responsible person believes the holder needs (having regard to the information the holder has received before the transaction) to understand the nature of the transaction'.

EFT Code

Statements of account for EFT transactions must comply with the EFT Code. They can be sent more frequently than prescribed if the Customer requests, however there is no restriction on a Financial Institution setting a fee in relation to such requests. There are content requirements under the EFT Code for statements of account that are additional to the CCC.

Clause 22 of the EFT Code governs electronic account information and notification requirements. Under the EFT Code:

- receipts must be given for all regulated EFT transactions; and
- in the case of periodic statements (except for passport accounts), a record of account activity must be given at least every 6 months

Benefits of compliance

This section delivers on Key Promise 3 to give Customers clear information about your products and services. It will assist your institution to meet or exceed the expectations of Customers and enhance high standards of practice, conduct and service within the institution.

BUSINESS IMPLICATIONS GENERAL

This commitment is consistent with but goes no further than statutory, CCC and EFT Code obligations regarding the frequency of account statements. However, the requirement to provide fee information that is not bundled does go further than law (except the EFT Code), and may require computer system changes.

➤ IMPLEMENTATION CHECKLIST

Action
1. Review the content of account statements to ensure they comply with MBCOP and other laws.
2. Ensure account statements are sent at least six monthly, unless they relate to a dormant account or passbook account. Comply with other laws that require account statements to be sent at more frequent intervals.
3. Alert Customers to the need to promptly inform the Financial Institution if they change address. Ensure there is an easy process to do this.
4. Send account statements to the last address nominated by the Customer (unless statements are delivered electronically).
5. Provide at least one fee-free simple method of access for a Customer to find out the balance of their account.

Appendix: Content of Account Statements

Use the following checklist to ensure account statements relating to basic savings and deposit products issued by Authorised Deposit-Taking Institutions (ADIs) contain all the information required by law. The FSR legislation also contains a general statement that the periodic statement must give a Customer the information that the issuer reasonably believes the Customer needs to understand their investment in the product: Corporations Act s.1017D(4)

For all account statements:

- Name and ABN of the Financial Institution that is the product issuer: Corporations Act s.153.
- Set out all transactions relating to a Customer's deposit and loan accounts with the Financial Institution. MBCOP, clause 16.1
- Include clear information about fees and charges incurred on a Customer's account during the statement period. Fees amount will not be bundled but will be broken down by transaction type and channel. Information should also be included about the impact of any applicable fee-free limit or rebate scheme: MBCOP, clause 16.3

For products regulated under FSR: (this covers both Basic Deposit Products (BDPs) and Deposit Products that are not BDPs)

- AFS licence number: regulation 7.6.01C(2)
- Opening & closing balances for the reporting period: s 1017D(5)(a)
- The termination value of the investment at the end of the reporting period: s. 1017D(5)(b)
- Details of transactions in relation to the product during the reporting period: s. 1017D(5)(c)
- Any increases in contributions in relation to the financial product by the Customer or another person during the reporting period: s. 1017D(5)(d)
- Return on investment during the reporting period: s. 1017D(5)(e)
- Details of any change in circumstances affecting the investment that has not been verified since the previous periodic statement: s. 1017D(5)(f)
- Amount paid by the Customer in respect of the financial product during the reporting period: regulation 7.9.75(1)(a) which also includes a fee, expense or charge in relation to the financial product: regulation 7.9.75(2).
- Fees, expenses or charges deducted from a common fund, where amounts are paid into a common fund: regulation 7.9.75(1)(b).
- A statement informing the client that there is a dispute resolution mechanism that covers complaints by the client; and of the means by which the client is able to gain access to that information: regulation 7.9.75(1)(c).

- A statement that further information in relation to the financial product is available on request and the means by which the client is able to gain access to the mechanism: regulation 7.9.75(1)(d).

Additional content requirements for First Home Saver Accounts:

In addition to the general content requirements mentioned above, a periodic statement for an FHSA product must also:

- include the following words: ' The First Home Saver Account is an Australian Government initiative to help Australians save for their first home".
- state the number of years, after the end of the reporting period for the statement, during which the Customer must make personal FHSA contributions as required by the FHSA Act for a payment to be made out of the product. If the number of years is 0, the periodic statement must state that the Customer may, subject to the FHSA Act apply for payment from the product to acquire a qualifying interest in a dwelling.

Credit Union member shares

A credit union that makes use of ASIC Class Order 02/1176 relief from the requirement to confirm transactions for the redemption of member shares not exceeding \$50 in value must include in each periodic statement of account sent to a holder of member shares, a statement of the number of shares held by that member or the amount subscribed by that member for the member shares.

For loans regulated by the Consumer Credit Code:

A statement of loan account must contain the following information:

- the statement period: s. 32(A)
- the opening and closing balances for the statement period: s. 32(B)
- particulars of each amount of credit provided during the statement period: s. 32(C)
- the amount of interest charged to the debtor's account during the statement period and when the interest was debited: s. 32(E)(a)
- the annual percentage rate: s. 32(E)(b)
- details of any change to the annual percentage rate since the last statement period, where required: s. 32(E)(b)
- fees or charges debited to the debtor's account during the statement period: s. 32(F)
- particulars of each payment or transfer to or from the debtor during the statement period: s. 32(G)
- if applicable, the amount of any payment in relation to credit related insurance, the name of the insurer, the kind of insurance and any commission paid by the insurer in relation to the insurance policy (but only if not previously disclosed): s. 32(I)
- any correction of information in a previous statement of account: s 32(J) and
- any other information required by the regulations: s 32(K)

In addition to the above, a statement of account in relation to a continuing credit contract must contain the following information:

- where credit is ordinarily obtained only by use of a card - the identity of the supplier if the credit was provided for any cash, goods or services supplied by another person: s 32(D); and
- if applicable, the minimum amount payable by the debtor and the due date for payment under a continuing credit contract: s 32(H).

EFT Code

The statement must provide a record of account activity for an account to or from which EFT transactions can be made. The statement must:

- include, in respect of each EFT transaction occurring since the previous statement:
 - the amount of the transaction
 - the date the transaction was debited or credited to the account
 - the type of transaction

- the receipt number, or other means, which will enable the account entry to be reconciled with a transaction receipt
- show any charges relating solely to the use of an access method (identified as a separate item); and
- contain the address, telephone number or other contact details to be used for inquiries concerning the account or to report any errors in the statement: clause 4.3. (However, any statement issued outside the usual statement cycle must show as much of the above information as possible).
- provide a notice to check entries.
- include (on or with account statements) at least annually a clear and prominent statement summarising access method security guidelines: clause 4.5.

Additional Requirements

Additional requirements about statements apply for other less common products. Seek further information. For example:

- First Home Saver Accounts.
- RSA Accounts.

For further details refer to various Abacus Compliance Manuals:

- FSR Compliance Manual, chapter 35.
- Consumer Credit Code Compliance Manual.
- EFT Compliance Manual, chapter 13

FURTHER RESOURCES

Part D 18. Provision of statements and notices electronically

Key Tip for Compliance and Audit Staff

Your software for statement production should meet the requirements of the MBCOP, CCC, EFT Code and Corporations Act, where applicable.

Part D 17. Notifying changes to your account

Key Requirements & Application

Ensure that your Financial Institution provides Customers with at least 20 days notice before you make certain changes to their account. Time frames for other changes are also specified.

The section permits you to use various methods to notify your Customer of those changes. The methods used will depend on the significance of the change and a cost-benefit assessment of using a method.

Interpretation

What are the time frames to notify changes? (D 17.1 – D 17.3)

At least 20 days advance notice is required to:

- Introduce a new fee or charge
- Increase to a fee or charge
- Reduce the number of fee-free transactions permitted on the account
- Vary the minimum balance to which an account-keeping fee applies
- Vary the method by which interest on the account is calculated, or
- Vary the circumstances when interest is credited or debited to the account

Notice is required no later than the day of change for any increase in the interest charges on the Customer's loan or credit facility (this does not apply to a reduction in interest charges). At the same time, notice must be given of the new repayment amount.

Section 59(1) of the CCC requires notice to each debtor no later than the change takes effect of the new annual percentage rate. A change to the annual percentage rate does not necessitate a change to the repayment amount. However, if there is an increase in the repayment amount, this requires 20 days advance notice to each debtor under section 60(1) of the CCC. Each debtor should be informed of a decrease in the repayment amount at least when the next statement of account is sent to the debtor after the change takes effect (section 60(2) of the CCC).

Notice is required of other changes to the Customer's account at the time the Financial Institution next communicates with the Customer. This is subject to any applicable laws. Some examples of these types of changes include the following:

- Changes to interest rates on savings accounts.
- Variations to the frequency with which statements are sent (but see also MBCOP D16).

Notifying Changes (D 17.4)

When notifying changes, any applicable laws must be followed, including the requirements set out in the Terms and Conditions of the account.

There is a range of options available to notify changes:

- Notification on or with the Customer's account statement.
- Notification by letter or other direct communication.
- Announcement via the Financial Institution's newsletter or website.
- Advertisement in the local or national media.
- Notification by electronic means (refer to MBCOP D18).

When assessing which of these options to use, the Financial Institution should weigh the following factors:

- The nature and extent of the account change,
- The cost and effectiveness of different methods of notification.
- The requirements in the Terms and Conditions of the account.
- Legal requirements relating to notification of changes.

Customer's Responsibility to Notify Change of Address (D 17.5)

If the Customer has failed to notify the Financial Institution of their change of address, the Customer cannot complain that the Financial Institution has failed to fulfil relevant obligations under MBCOP D17 to send notices directly to them.

Related laws and Codes

Consumer Credit Code

The CCC has rules on notification. Notification of the amount, frequency or time for payment of a credit fee or charge (including a new credit fee or charge) must be given no later than 20 days before the change takes effect (sections 59, 61(1), 61(2))

This notification can be given by publishing a notice in a newspaper circulating throughout the jurisdiction. However, if this is done, the borrower must be given particulars of the change before or when their next account statement is sent.

The CCC requires all credit contracts to contain a statement that:

- changes in interest rates or
- changes in amount or frequency of payment of a credit fee or charge or instalment or
- a new credit fee or charge

may only be made if the contract permits it. The statement must also state the means by which the debtor will be informed of the change (ie by personal service or newspaper advertisement) (section 15(H))

The CCC permits increases in interest rates to be notified as late as the day the change takes effect by personal service or by newspaper advertisement (section 59(1)). Decreases in interest rates do not have to be notified (section 59(5)). When the notice is published in the newspaper, particulars of the advertised change to interest rates must be sent to the debtor before or when the next statement of account is issued after the change (section 59 (2)).

Corporations Act

Issuers must notify retail clients of "material changes" to regulated products, in writing, electronically or by other means specified in the regulations. Material changes according to the CA include a significant event that affects a matter that would usually have to be specified in a PDS for the financial product or any other change, event or other matter of a kind specified in the CA Regulations (section 1017B(1A)). Thirty days advance notice is required for a change that is an increase in a fee or charge. If the change is not an increase in fees or charges the notice may be given sooner than 30 days (s 1017B).

EFT Code

The EFT Code requires any changes imposing or increasing charges relating solely to the use of an access method (or issuing an additional or replacement access method) to be notified by written notice 20 days before the change takes effect (section 3.1(a)).

If a Financial Institution increases an account holder's liability for losses relating to an EFT transaction or adjusts transaction limits applying to EFT transactions it must give written notice to the account holder 20 days before the change takes effect (section 3.1 (b) and (c)).

Benefits of compliance

This section delivers on Key Promise 3 to give Customers clear information about your products and services. It will assist you to meet or exceed the expectations of Customers and enhance the high standards of practice, conduct and service within your Financial Institution.

BUSINESS IMPLICATIONS

This commitment is consistent with and generally does not go further than existing statutory CCC and EFT Code obligations relating to account statements.

➔ IMPLEMENTATION CHECKLIST

There are three areas to consider when implementing D17 of the MBCOP.

1. Prepare Terms and Conditions

When preparing Terms and Conditions, ensure the following requirements are met to comply with D17:

- There must be provisions in the Terms and Conditions that allow for changes to be made to various items, otherwise the Financial Institution will have no power to make these changes in the absence of a statute that overrides the Terms and Conditions.
- Provisions in the Terms and Conditions must be consistent with the requirements about notifying changes to the account in D17 of MBCOP. Terms and Conditions must not be written with the intent of overriding these requirements of the MBCOP.

2. Procedures for making a change to an account

When making a change to an account use the following steps:

Step One: Ensure you have the power to make the change. This will either come from the Terms and Conditions, or from legislation that explicitly allows the change.

Step Two: Ascertain the required notice period. The Financial Institution must comply with the most stringent requirements of the Terms and Conditions, Codes (including the EFT Code and the MBCOP), together with other laws (including the Consumer Credit Code, Chapter 7 of the Corporations Act, etc)

Step Three: Notify the Customer using the means required by Terms and Conditions, Codes and legislation.

3. Change of Address by Customer

Alert Customers to the need to promptly inform the Financial Institution if they change address. Ensure there is an easy process to do this.

Part D 18. Provision of statements and notices electronically

Key Requirements & Application

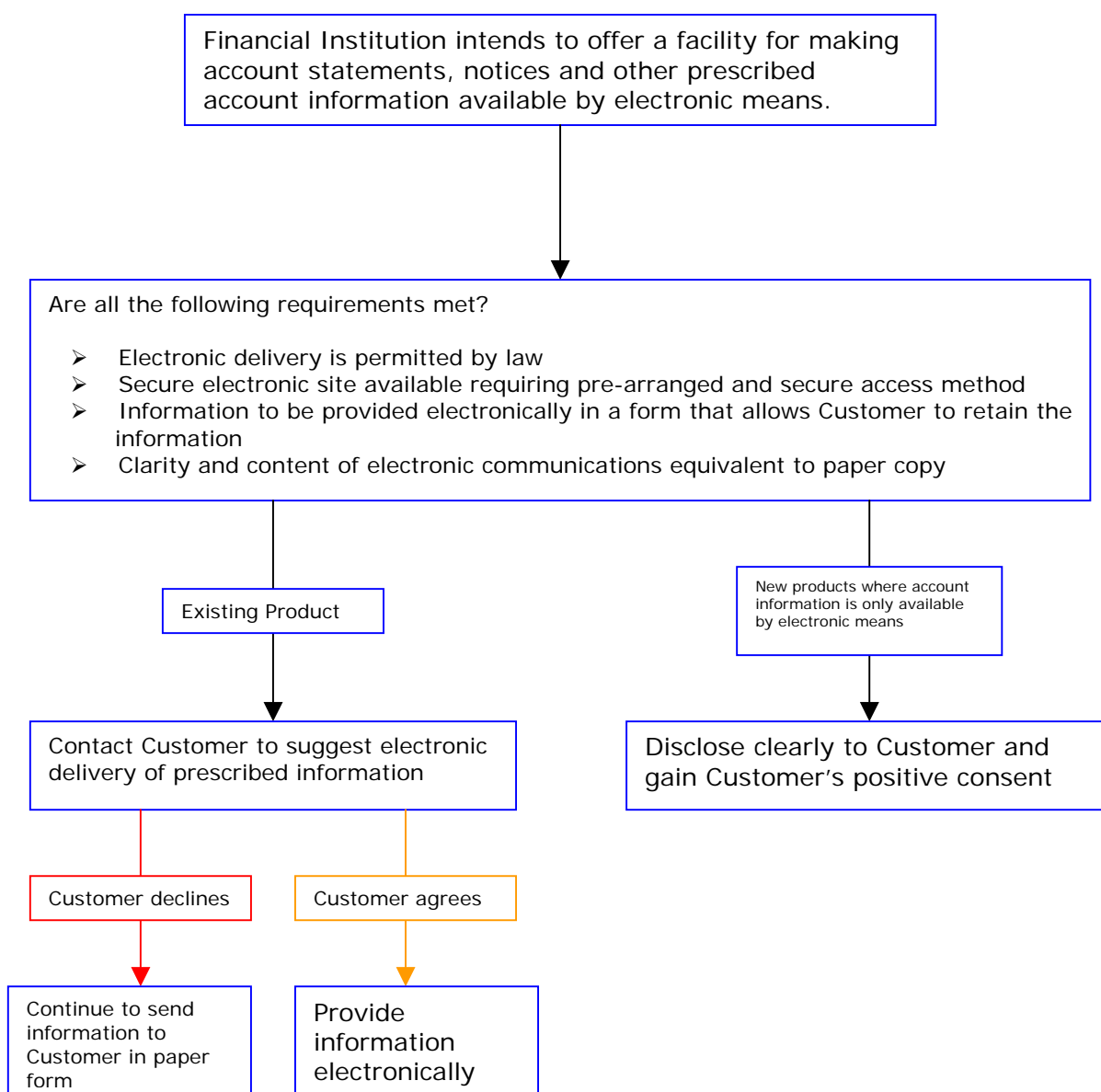
This section applies if your Financial Institution has a facility for making account statements, notices and/or other prescribed account information available to your Customers electronically.

Generally, when inviting your Customer to access information electronically rather than receiving paper copies, you must give the Customer the option of continuing to receive the information in paper form.

If the Financial Institution offers a product on the basis that account statements and other account information will only be available electronically, this must be clearly disclosed to the prospective Customer, who must give positive consent to this before the product is issued to them.

Where you deliver information in electronic form ensure the following apply:

- Electronic delivery of the information is permitted by law
- The statements or other information is made available at a secure electronic site. This requires a pre-arranged and secure access method for users of the site.
- Information provided electronically is in a form that allows the Customer to retain the information.
- Clarity and content is equivalent to paper copies.



Information available at a secure electronic site (D18.3)

Where information is to be provided electronically, it must only be made available at a secure electronic site requiring a pre-arranged and secure access method. This approach helps to deal with fraud problems associated with electronic delivery of information. For example, if information is sent to a Customer electronically (eg via email attachment of hyperlink) the risk of identity fraud if the email is intercepted is increased.

A Customer can be notified electronically (eg via email) that the information is now available at the secure electronic site. However, section D23.10 indicates that the email should not include a hyperlink or an attachment, as this is a technique used by fraudsters. Since the Customer will already know the website, the required approach is to direct the Customer to access your Institution's secure site as previously arranged.

Related laws and Codes

Consumer Credit Code

Most information and notices may be provided electronically unless excluded by reg 39A (section 164A). Documents that must not be provided electronically include a guarantee, credit contract and certain notices to which the CCC applies. For further details see D 12, D 16 and D 19.

Corporations Act 2001

Retail clients can be provided with electronic confirmation of their transactions (section 1017F(6), regulation 7.9.63(1)). Notifications of material changes to accounts can be electronic (section 1017B(3) and regulation 7.9.75B). A periodic statement may be given electronically (section 1017D(6), regulation 7.9.75B). For further details see D 16, D 17

EFT Code

Banks, building societies and credit unions offering electronic facilities to retail Customers subscribe to the EFT Code. Clause 22 of the EFT Code provides details about how to provide information electronically. A user can agree to accept information by electronic communication (eg via email or SMS) or by receiving notification to retrieve information at the Financial Institution's electronic address (eg website). The Financial Institution is required to provide the same material in paper copy if the user requests this within six months.

As noted above, however, emailing a statement to a member creates a greater risk of identity fraud if the email is intercepted. Similarly, sending an unsolicited email or hyperlink to a website in an email creates a fraud risk because it encourages behaviours that fraudsters exploit. For this reason, D18.3 of the MBCOP prohibits electronic delivery (eg email) of information, and instead directs Customers to access the information at a secure electronic site. D23.10 prevents a Financial Institution from providing an email with a hyperlink. See further D 16, D 17

Electronic Transactions Act

The Act permits a Financial Institution to use electronic communications to satisfy their usual legal obligations including to:

- give information in writing
- provide a signature
- produce a document
- record information; and
- retain a document.

Electronic communications must satisfy specified criteria so that they are accessible for future reference, reliable and maintain the integrity of the information communicated: see section 11(3),12). Financial Institutions that intend to take advantage of electronic communications must ensure they have systems in place to maintain the integrity of information.

There are default rules under the Act regulating what is deemed to be the time and place of dispatch and receipt of electronic communications.

Benefits of compliance

This section maintains the high standards of practice, conduct and service within your Financial Institution and complements existing legislative and industry code requirements.

BUSINESS IMPLICATIONS GENERAL

This commitment works with existing approaches to electronic delivery of statements and notices, but refines them to take account of developments in fraud and technology. Other

sections dealing with the provision of statements and notices provide more detailed obligations (see Further Resources below). As with other sections, D 18 incorporates the CCC and EFT Code. However there is a small extension to those codes as this section applies to information that is only available electronically and to small business.

FURTHER RESOURCES

Part D 16. Account statements and balances

Part D 17. Notifying changes to your account

Key Tip for Compliance and Audit Staff

Ensure your Financial Institution has processes and systems in place to maintain the integrity of information stored and transmitted electronically.

Part D 19. Copies of documents, statements and other information

Key Requirements & Application

There is a general requirement that the Customer can access personal information held by the Financial Institution: Part D23

However, Part D19 goes further to say that specific documents must be given to the Customer, on request:

- a loan application
- a contract (including Terms and Conditions, details of interest rates, fees and charges)
- a mortgage or other security document
- a statement of account
- a notice previously given by the Financial Institution to the Customer about the Financial Institution exercising its rights, eg a default notice. An exception applies where the request is for a notice issued more than two years before the discharge or termination of the contract to which the notice is related.

Time frames for giving such documents after the request depend on when the original came into existence:

- Within 14 days if the original came into existence 1 year or less before the Customer makes the request.
- Within 30 days if the original came into existence 1 year but less than 7 years before the Customer makes the request.

Reasonable fees can be charged by the Financial Institution to recover the costs of providing the document.

Documents can be provided in the form of a computer generated record, rather than a copy from an original document. For example, a printout of an original document that was scanned may be provided.

Interpretation

This section covers certain documents relating to a product or facility that the Customer has, or has had, with the Financial Institution. On request, the Financial Institution must send a copy of these documents to the Customer.

The Financial Institution is not required to give the original of the document to the Customer.

The time frames for responding to the request are 14 days (if the original came into existence one year or less before the Customer made the request), or 30 days (if the original came into existence more than one year but less than seven years before the Customer made the request). If the Financial Institution is unable to comply with these time frames, the Financial Institution must advise the Customer in writing, and must notify the expected time frame for providing the document.

What if the document came into existence more than seven years before the Customer requested the document?

This is possible because AML/CTF Act requires certain documents (such as the loan application form) to be kept for seven years after the account is closed. In this case the Financial

Institution should attempt to comply with the 30-day time period, but advise the Customer in writing of the expected time frame if this will not be met.

What if a mortgage document is attached to another contract?

For example, a mortgage was created eight years ago, but two months ago it was linked to a new loan contract. In this case, a request by a Customer has different time frames for the loan contract (14 days) and mortgage (28 days).

Related laws and Codes

Consumer Credit Code

The CCC requires a Financial Institution to provide copies of credit related documents including contracts, mortgages, guarantees and related notices to the debtor at their written request, in certain circumstances (sections 34 and 163). If there are several debtors, copies must be given to each of them unless they have nominated one to receive (section 171 (4)).

Under the CCC, most copy documents may be given electronically unless excluded by reg 39A (section 164A). **Note that copies of credit contracts and guarantees cannot be given electronically** (reg 39A).

Privacy Act

The National Privacy Principles require access to personal information held by the Financial Institution.

AML Act

The Act requires certain documents to be kept by the Financial Institution. For more details refer to Abacus' AML/CTF Compliance Manual.

Benefits of compliance

Compliance with this section will help the Financial Institution to comply with document retention requirements and privacy requirements, and to hold the two in correct tension.

Compliance with this section will also help the Financial Institution to maintain good relations with its Customers as it can comply with requests for certain specific documents within a reasonable time frame.

BUSINESS IMPLICATIONS GENERAL

This section is consistent with existing CCC obligations relating to credit contracts; however it goes further by extending to a variety of financial products and services.

For credit unions, this is a new section that was not present in the previous CUCOP.

➔ IMPLEMENTATION CHECKLIST

In order to implement the requirements of section D19, the Financial Institution must take certain steps:

Step One: Implement a plan for document retention.

The Financial Institution must implement a comprehensive plan to ensure it complies with all of the requirements of all laws and Codes that relate to document retention.

However, the Financial Institution must specifically ensure that its system will comply with the requirements of D19. For example:

- A Customer file could be created that maintains all information relevant to the particular Customer. This could be held in paper copy, or in electronic copy (such as a scanned document). Access to this file would comply with the requirements in section

D19 to provide access to a loan application, a mortgage/security document, and a notice given to the Customer.

- A facility on the computer could allow printing of old copies of statements for a Customer – this would allow easier storage.
- A master record of brochures, and the dates during which these were given to Customers could be used to comply with requests for contracts by Customers.

Step Two: Implement a plan for privacy law compliance.

For more details about implementing such a plan, refer to chapter D23, together with Abacus' NPP Compliance Manual, and Abacus' Credit Reporting Compliance Manual. This plan would also take into account requirements of the AML/CTF Act that restrict giving of documents.

Step Three: Design a procedure to follow when a Customer requests a document.

Elements in this procedure could include:

- Modifying the Terms and Conditions document, together with the fees and charges brochure (see D3) to allow a fee to be charged for request of a document, and specifying the fee.
- Developing a form for a Customer to complete when they wish to request one of the documents listed in D19. Staff should also notify the Customer as they lodge the request that a one-off fee will apply (see D3).
- Allocating responsibilities and time frames for responding to the Customer's request. This includes the requirement to write a letter to the Customer in the event that a time frame will not be met. A sample letter notifying extra time required for production of document appears below:

Sample letter

Dear *Customer*

We apologise for the delay in responding to your request for [documents] on [indicate date]. We expect to be able to locate and provide the documents to you within [] from the date of this letter. If this causes any difficulties, please do not hesitate to contact me on my direct line below.

Yours sincerely
[Name of Officer]

FURTHER RESOURCES

- D 15 Clear, timely and effective communication
- D 16 Account statements and balances
- D 17 Notifying changes to your account

Part D 20. Stopping direct debit and recurring payment arrangements

Key Requirements & Application

Upon request from a Customer, the Financial Institution must promptly stop a direct debit facility linked to their transaction account.

The Financial Institution must have a procedure to accept and process a complaint by a Customer that a direct debit facility was not authorised or is otherwise irregular.

The Financial Institution must assist the Customer, where possible, to seek a chargeback of any unauthorised payments debited to the Customer's scheme credit or debit card pursuant to a recurring payment arrangement.

Interpretation

What is the difference between a direct debit and recurring payment arrangement? (D 20)

There are two different schemes in Australia for a Customer to make electronic payments: a direct debit facility and a recurring payment arrangement. Section D20 requires a Financial Institution to stop these where possible if the Customer requests, and to assist the Customer to deal with irregularities relating to the accounts.

Direct Debit Facility Introduction

A direct debit facility is linked to the Customer's transaction account at the Financial Institution. The Customer signs a Direct Debit Request (DDR) form addressed to the merchant (called the "debit user") authorising the debiting of the Customer's transaction account at the Financial Institution. This arrangement is governed by Direct Entry procedures developed by the Australian Payments Clearing Association (APCA).

Stopping a direct debit facility

The Financial Institution has the responsibility to promptly stop a direct debit facility linked to the Customer's transaction account whenever the Customer asks the Financial Institution to do so.

Under the Direct Entry procedures, the Ledger Financial Institution (for example, a credit union, a building society, or a bank), the Sponsor (including organisations such as CUSCAL and Indue, and ASL) and the Debit User (entity initiating direct debits to Customers' account) are each obliged to act on any notice of cancellation received.

Financial Institutions should work with their Sponsor organisation to develop and implement procedures to follow when a Customer requests the Financial Institution to stop a direct debit facility.

Complaints processing relating to a direct debit facility

The Financial Institution is required to accept and process a Customer's complaint that a direct debit facility was not authorised, or is otherwise irregular. The Financial Institution may request that the Customer try to resolve the complaint with the merchant or supplier first.

Recurring Payment Arrangement

Introduction

The Visa, AMEX, and Mastercard debit or credit card operating rules govern recurring payment arrangements. Direct debits from credit and debit card accounts under these schemes are by written agreement between the cardholder and merchant. Accordingly, the Financial Institution will not have been a party to the establishment of the recurring payment arrangement between the cardholder and the merchant.

Customer seeking chargeback under recurring payment arrangement

When a Customer has set up a recurring payment from a credit or debit card (eg. MasterCard, AMEX or VISA card), the cardholder can terminate the agreement directly with the merchant but the cardholder cannot seek a chargeback unless they have written proof the agreement was terminated.

However, the Financial Institution that issued the credit or debit card must assist the Customer to seek a chargeback of any payments that the Customer claims were unauthorised debits to their account pursuant to a recurring payment arrangement. For example, this situation may occur where the Customer claims to have cancelled the recurring payment arrangement but the payments continue to be debited to their account. MBCOP D21 also refers to requirements in relation to chargebacks.

Related laws and Codes

APCA BECS procedures

Visa, AMEX, Mastercard scheme operating rules

Benefits of compliance

The commitment to help Customers experiencing problems with cancellation of direct debit arrangements or unauthorised or irregular debit payments is consistent with Key Promise 5 to deliver high Customer service and standards. Compliance with these requirements will help to maintain good Customer relationships, and to minimise the liability of the Financial Institution in the case of a dispute.

BUSINESS IMPLICATIONS GENERAL

The MBCOP does not require you to go further than current industry practice in relation to assisting Customers to cancel direct debit arrangements or seeking chargebacks.

➤ IMPLEMENTATION CHECKLIST

Direct Debit Request

Action
1. Ensure you have procedures for a Customer to stop a Direct Debit Request. These procedures should be developed in conjunction with your Sponsor organisation (such as CUSCAL, Indue or ASL). They may include a standard form for a Customer to complete when they wish to stop a Direct Debit Request.
2. Ensure that dispute resolution procedures require the Financial Institution to accept and process complaints about direct debit facilities.
3. Prepare general descriptive information on direct debits and recurring payment (see Appendix: Model Information Statement (Direct Debits and Recurring Payments)).

Recurring Payment Arrangement

Action
Develop procedures to accept complaints from Customers about unauthorised payments.
Process the complaints by contacting other relevant scheme organisations as appropriate.

Appendix: Model Information Statement (Direct Debits and Recurring Payments)

A direct debit is a convenient and efficient method for making a variety of payments but is usually best suited to small to medium recurring payments of a fixed amount such as insurance premiums. It can also be a convenient way to make payments of variable amounts such as telephone or electricity charges. Care should be taken before giving a direct debit authority for unpredictable expenses or for amounts that can vary significantly.

You will usually give a direct debit authority to a merchant, which permits them to directly debit your nominated account with us in payment for goods and services. The direct debit can also be linked to a credit card. You should always review your bank or credit card statements to ensure that the merchant is debiting your account in accordance with your authority.

You can cancel a direct debit authority that is linked to an account with us and we will promptly forward your cancellation instruction to the merchant's sponsor Financial Institution, which must then arrange for your merchant to cancel the direct debit.

We will assist you to resolve complaints about unauthorised payments debited to a scheme credit or debit card account including where possible, assisting you to seek a chargeback.

Part D 21. Seeking a chargeback on your behalf

Key Requirements & Application

The Financial Institution must:

- Make general information about chargebacks available to Customers
- Ensure that its procedures set out how a Customer can lodge a claim for a chargeback and how this will be processed
- Ensure that its Terms and Conditions and/or procedures do not reduce the period or circumstances in which the Financial Institution can seek a chargeback at the request of a Customer.

This section applies to all debit and credit card products issued by the Financial Institution.

Interpretation

Introduction

A chargeback is a right your institution has under the rules of a card operating scheme (VISA, Mastercard, AMEX) to charge back responsibility for certain card transactions to a merchant's bank. Problems that may prompt the use of the chargeback mechanism include unauthorised use of the card, and non-delivery of goods.

The card scheme rules set out more details, including time frames within which chargebacks must be reported, and procedures to follow when dealing with other organizations on behalf of a Customer.

Scope of Operation

The requirements in D21 only apply to chargebacks in relation to scheme credit and debit cards issued by the Financial Institution.

Procedures for chargebacks

The Financial Institution's procedures for dealing with chargebacks must not seek to reduce the period or circumstances in which the Financial Institution can seek a chargeback on the Customer's behalf under the rules of the relevant card scheme.

General Information about chargebacks

The Financial Institution must make general information about the chargeback mechanism readily available to Customers. This general information must emphasise the need to promptly report problems to ensure a claim can be made within relevant chargeback periods. See

Appendix: Model Information Statement for sample wording

This general information should also be made available as follows:

- In product information published by the Financial Institution.
- On the website of the Financial Institution (if the Financial Institution has a website).

Customer claims for chargebacks

If the Customer disputes a transaction with the Financial Institution within the required time frame, the Financial Institution must seek a chargeback on behalf of the Customer if it can do so. The Financial Institution must do the following:

- Process the claim without delay.
- Ensure the claim for the chargeback is processed with the most appropriate reason cited. Each card scheme will have a number of codes for different chargeback claims,

and these should be considered carefully. Care should be taken to ensure that Customer's reasons for the chargeback are properly represented and relevant chargeback documentation under the card scheme is completed.

- Not accept a refusal to chargeback by the merchant's Financial Institution unless it is consistent with the relevant card scheme rules. This means that the Financial Institution must consider carefully any refusal to chargeback and consider whether it must dispute the decision.

If a Customer does not tell the Financial Institution about a disputed transaction with the required time frame, the Financial Institution should advise the Customer that they must bear any loss as against the Financial Institution, but that the Customer may be able to resolve the issue with the merchant directly. In cases where the transaction is PIN-authorized, the EFT Code may also regulate how the disputed transaction is to be resolved (see below).

Related laws and Codes

The conditions of use for credit and debit card accounts

Any terms implied by law into the contract between a Financial Institution and its Customer.

Visa, AMEX, Mastercard credit and debit card operating schemes

Benefits of compliance

A prompt response to Customers' complaints of unauthorised card transactions enhances consumer confidence in your credit or debit products and in your Customer service.

Compliance will result in good Customer relationships and will minimise the Financial Institution's liability for unauthorised transactions

BUSINESS IMPLICATIONS GENERAL

MBCOP does not require you to go further than applicable laws and industry codes in relation to chargebacks.

➤ IMPLEMENTATION CHECKLIST

Action
1. Check Terms and Conditions to ensure they do not seek to reduce periods or circumstances for chargebacks.
2. Check procedures to ensure they do not seek to reduce periods or circumstances for chargebacks.
Prepare general information about chargebacks and make this available as appropriate, including in product information and on the website of the Financial Institution.
4. Review your procedures for how to process a chargeback to ensure they are consistent with scheme card procedures.

Appendix: Model Information Statement (Chargebacks)

Sample wording

A chargeback is a right that we exercise on behalf of a Customer holding a debit or credit card (the cardholder). It is a right to charge back responsibility for a credit (or debit) card transaction from the cardholder's Financial Institution to the merchant's Financial Institution.

If you dispute a credit or debit card transaction we will promptly claim a chargeback right on your behalf where one exists. However to enable us to do this you must dispute the transaction to us within the required time frame. You should notify us *immediately* you become aware of an unauthorised transaction on your credit or debit card."

Part D 22. Closing your account

Key Requirements & Application

This section requires the Financial Institution to have procedures in place to close accounts. In practical terms these requirements will play out at three levels:

- Closure of the Customer's relationship with the Financial Institution, such as a termination of membership with a credit union or mutual building society.
- Closure of one of several particular accounts held by the Customer. For example, closure of a term deposit, closure of loan account, or closure of a savings account.
- Closure of a payment facility attached to a particular account. For example, the Customer may indicate that they no longer wish to have a cheque-book, debit card or Visa card attached to their savings account.

The Financial Institution must close a Customer's account, upon request, as long as the Customer has discharged all their obligations in relation to the account. The Financial Institution can require a request by the Customer to close the account to be put in writing.

The Financial Institution must provide a payout figure for a loan account or credit facility within seven business days after a request for this by the Customer.

The Financial Institution must give the Customer at least 14 days advance notice before unilaterally closing their account.

Interpretation

Customer initiated closures (D22.1)

Where a Customer requests an account to be closed, the Financial Institution must do so as long as the Customer has discharged all their obligations in relation to the account. This includes:

- Requirements under the Terms and Conditions relating to the account. For example, if the Terms and Conditions of a transaction account require return of an EFT card before the closure of an account, the account need not be closed until the EFT card is returned (however, see Part D10 in relation to subsidiary cards).
- Requirements in relation to mortgages and personal property securities that are linked to the account. For example, if discharge of a mortgage is required before closure of the loan account, the account should not be closed until discharge of the mortgage is confirmed. Equally, procedures should take account of the role of guarantors, including guarantors that have given a mortgage in relation to the guarantee.

The procedures of the Financial Institution can require that the Customer lodge a request to close the account in writing. If this is the case, the Financial Institution should develop a standard form for a Customer to complete to request closure of an account. A record in writing from the Customer may help to prevent fraud, and will provide consistent records.

Payout Figure (D22.2)

A payout figure is the sum that a Customer needs to pay in order to pay out a loan or credit contract. This figure will take into account interest charges, rebate of premiums, together with various fees and charges. Relevant fees and charges may include early termination charges and enforcement expenses, where these are provided for under the contract.

If the Customer requests a payout figure in relation to their loan or credit facility, this must be provided to the Customer within seven business days. The CCC already contains this requirement in relation to continuing credit contracts and the MBCOP extends this requirement

to fixed sum contracts also. Refer to Abacus' Consumer Credit Code Compliance Manual for more details about calculating a payout figure.

Financial Institution Initiated Closures (D22.3)

The general rule is that the Financial Institution must give the Customer at least 14 days notice before closing their account. However, exceptional circumstances can see this time frame reduced. Exceptional circumstances might include fraud, and orders (such as a court order) that require the account to be closed in a shorter time period.

The notice must be given to the Customer at their last address they have given to the Financial Institution, or by other legally permissible means.

It is likely that the Financial Institution would initiate closure of an account in the following situations:

- ***Security Breach.*** If the Financial Institution becomes aware that security has been compromised, it may immediately act to close the account, and then notify the Customer. For example, if the Financial Institution is informed that particular card numbers have been stolen for a Visa card, AMEX or MasterCard, the Financial Institution may close the Customer's access to these cards before informing the Customer. The Terms and Conditions relating to the cards need to allow the Financial Institution to do this.
- ***Fraud.*** If the Financial Institution becomes aware that fraud is being perpetrated, it may act to close the account, particularly if freezing the account would not be an adequate solution. This would depend on the Terms and Conditions relating to the account.
- ***Rollover of Term Deposit.*** When a term deposit finishes, the Financial Institution will need to determine what will happen with the funds. In most cases the Terms and Conditions specify what will happen to the term deposit at the end of the term. If not, the Financial Institution may need to determine what will happen to the funds at the end of the term.
- ***Court Order, etc.*** A Financial Institution may receive notice requiring closure of the account. This may include a court order, a forfeiture order made under the Proceeds of Crime Act requiring the money in the account to be forfeited to the Crown. In this case the Financial Institution may be required to act without the Customer's consent and within less than 14 days. More detail about orders made under the Proceeds of Crime Act is found in Abacus' AML/CTF Compliance Manual.
- ***Insolvency or Deregistration of Company.*** The Constitution of the Financial Institution may require removal of a body corporate from the list of members when it is deregistered or dissolved.
- ***Unilateral Closure due to individual's misbehaviour.*** The Constitution of the Financial Institution may provide for a procedure to terminate a membership by board resolution as follows: the member fails to discharge their obligations to the Financial Institution, the member is guilty of conduct detrimental to the Financial Institution, and the member has obtained the membership by misrepresentation or mistake.

Note the following two situations:

- ***Deceased Account.*** The Financial Institution will not initiate closure of a Customer's account on the death of the Customer. The closure of the account in this case should be initiated by an executor of the deceased, or by court order.
- ***Dormant Account and Unclaimed Money.*** A Customer that cannot be found will have money in their account dealt with in accordance with dormancy rules in the Financial Institution's Constitution. Dormant accounts may later be subject to unclaimed money laws. Financial Institutions should review their Terms and Conditions, including eligibility to charge fees in relation to a dormancy and unclaimed money situation.

Related laws and Codes

Closure of an account is always subject to a Financial Institution's Terms and Conditions. See also D 9 Joint accounts. D20 provides details about stopping direct debit and recurring payment arrangements.

Consumer Credit Code

The CCC requires provision of a payout figure for fixed sum loan contracts within seven business days after a Customer's request.

AML Act

The Act contains provisions relating to closing accounts. For example, a Financial Institution unilaterally closing an account for which a suspicion has been formed may trigger the tipping-off provisions in section 123 of the AML/CTF Act and cause the Financial Institution to commit an offence.

Corporations Act

Under section 1017F(3)(b) there is an obligation to confirm the transaction upon "the redemption or surrender of the financial product from or by the holder".

Benefits of compliance

The obligations in this section are consistent with Key Promise 3 to provide clear and accessible information about your products and services. Clear procedures regarding closure of accounts will improve Customer satisfaction and help to prevent fraud.

BUSINESS IMPLICATIONS GENERAL

MBCOP does not require a Financial Institution to go further than applicable laws and other industry codes in relation to closure of accounts. Its requirements are likely to be consistent with the constitution of the Financial Institution. However, MBCOP now sets a time frame for provision of payout figures for a continuing credit facility as well as a loan contract.

➔ IMPLEMENTATION CHECKLIST

Action
1. Develop and implement a procedure to receive a Customer initiated closure of each of the following: <ul style="list-style-type: none"> • A particular payment instrument attached to an account. This would include a debit card, a Visa card, and a cheque-book. • A particular account. This would include a loan account, a term deposit and a savings account. • A membership. This would include procedures to terminate the membership and return the member's shares (if any).
2. Review computer systems to ensure they can provide a payout figure in relation to a loan account. Procedures must be in place to provide the payout figure to the Customer making the enquiry within seven business days.
3. Develop and implement a procedure to follow when the Financial Institution initiates closure of an individual's account.

FURTHER RESOURCES - Procedures for Closing Accounts

The Financial Institution should have well-developed procedures for closing accounts. Here is a stepped process that could be useful:

Step One: Review Terms and Conditions.

Ensure Terms and Conditions accurately spell out the Customer's responsibilities for each type of closure. Terms and Conditions should give rights to the Financial Institution to take appropriate steps. Terms and Conditions should permit the charging of any fees.

Step Two: Review fees and charges.

Fees can be charged in relation to closures of certain account. For example, a fee may be charged for an early termination of a loan contract. Fees should be reasonable. Terms and Conditions must provide for the fee and the fee must be disclosed at the time the Customer opens the account, such as through the fees and charges brochure (see D3). New fees must be notified to Customers in accordance with D17.

Step Three: Review procedures.

Procedures followed by staff should clearly show steps for them to follow in each type of closure. This will ensure consistency when closing.

The following is a useful sample table to prepare for each type of closure:

		Review Terms and Conditions	Review Fees and Charges Brochure	Review procedures
Closing Membership or Relationship with the Financial Institution				
Closing Accounts	Closing loan account			
	Closing line of credit			
	Closing savings account			
	Closing term deposit			
Closing Facilities	Closing a cheque book facility			
	Closing a debit card			
	Closing a Visa card			
	Closing a direct debit facility			

Step Four: Review closing in unusual situations

Different procedures may apply in a number of situations. When developing procedures for closing accounts, consider the following situations:

- Joint Accounts. Consider whether one of the joint account holders can unilaterally close the account without the consent of the other joint account holder. MBCOP D9 provides more details about this.
- Accounts operated by a third party. In some cases, an account may be operated by a person apart from the person who owns the account. For example, an account operated by an adult on behalf of a child, an account operated under a power of attorney, an account administered by the trustee in bankruptcy, or an account administered on behalf of a person of unsound mind. Procedures should specify whether and how the account can be closed by the person owning the account and the person operating the account.
- Subsidiary cardholder. For example, a parent may give their child a subsidiary Visa card to access funds in the parent's account. Ensure your procedures take account of whether the primary account holder or the subsidiary account holder is able to cancel the subsidiary card.
- Accounts where a suspicion has been formed and a Suspicious Matter Report sent to AUSTRAC. The "tipping off" offence under section 123 of the AML/CTF Act may prevent the Financial Institution from unilaterally closing an account where a Suspect Matter Report has been sent to AUSTRAC. Refer to Abacus' AML/CTF Manual for more details when developing procedures.

Step Five: Look for systemic problems.

The procedures for a Customer terminating their entire relationship with the Financial Institution could include staff asking the Customer the reason they are terminating the relationship with the Financial Institution. Staff would record the reasons. When these were collated, it may show a systemic problem that needs to be addressed to prevent further Customers leaving.

Part D 23. Information privacy and security

Key Requirements & Application

The Financial Institution must comply with privacy law, including the Privacy Act generally, the National Privacy Principles, and the credit reporting provisions of the Privacy Act.

The Financial Institution must comply with laws relating to retention of personal information about a Customer.

The Financial Institution must actively promote awareness of security issues, and must act consistently with such methods. Customers must have an opportunity to report security breaches.

Interpretation

Compliance with NPPs (D23.1 – 23.6)

Having specified that Financial Institutions must comply with the NPPs, the MBCOP provides a simple summary of some of the NPPs:

- D23.2 – NPP2 [Disclosure]
- D23.3 – NPP4 [Data Security]
- D23.5 – NPP6 [Access and Correction]
- D23.7 – This corresponds to the exemption for related bodies corporate in section 13B(1) that allows disclosure to related bodies corporate for information apart from sensitive information.

Related bodies corporate are defined in section 50 of the Corporations Act to include a holding company and a subsidiary, and two subsidiaries of the same holding company. Sensitive information is defined in the Privacy Act to include health information and information about an individual's race, ethnicity, politics, religion, philosophies, criminal records and membership of a trade association, professional association, and trade union.

Full details about compliance with the NPPs can be found in [Abacus' NPP Compliance Manual](#).

Retention of private information (D23.7)

Various laws require retention of particular information about a Customer, including their personal information and their financial information. For example, the AML/CTF Act requires information to be held about a Customer and their accounts. The legislation specifies the length of time for which the information must be held. Financial Institutions must comply with relevant laws.

Security Issues (D23.8-D23.12)

The Financial Institution must actively promote awareness of security issues, including internet security, to its Customers. The aim is to reduce the opportunity for fraud. This can be done using a range of approaches.

Specifically, the Financial Institution should provide information to Customers about the following:

- Protecting payment methods. This includes payment cards and cheques.
- Protecting equipment. This includes protecting computers where online banking is offered.
- What the Customer should do if they believe a breach of security on their account has occurred.
- What the Customer should do if they believe an unauthorized transaction has occurred.
- The possible consequences of not reporting breaches on their account promptly.

The Financial Institution should review its own communication procedures to ensure communication processes are consistent with an approach that avoids fraud. For example, the Financial Institution should **not** do the following:

- Use unsolicited email or telephone contact to ask the Customer to disclose their personal banking information or secure code or password.
- Send unsolicited emails to Customers that include attachments.
- Send emails to Customers that include hyperlinks in the message.

Customers should be educated about what to do if they receive these types of emails or telephone calls, including:

- The need for the Customer to report the possible scam to the Financial Institution, particularly if the message includes the brand or name of the Financial Institution or makes reference to their banking details.
- The need to promptly delete unsolicited and suspicious emails.
- The need for a Customer to hang up on an unsolicited caller.

The Financial Institution must provide the Customer with means to report security breaches at any time. This should be clearly advertised to the Customer. In general, the Customer will not be liable for breaches that take place after they have reported them to the Financial Institution. Accordingly, the Financial Institution should weigh up the cost of employing a person to receive these security breach reports 24 hours a day, seven days a week, as against using a telephone answering machine at night and on weekends.

Benefits of compliance

This section is designed to minimise the risk of your Financial Institution breaching privacy laws and document retention laws, and to assist you to identify the issues you need to consider when complying with those laws. It will also help to minimise opportunities for fraud and to minimise the Financial Institution's liability for unauthorised transactions. It reinforces Key Promise 3 to promote secure and reliable banking and financial services.

BUSINESS IMPLICATIONS GENERAL

MBCOP generally imposes no more than the minimum statutory requirements under the Privacy Act and National Privacy Principles. This section should be read subject to the privacy legislation.

However, a number of very small Financial Institutions may fall within the exemption that allows small business not to comply with the NPPs. This is specifically overridden by the MBCOP, and small Financial Institutions need to comply with the NPPs. For more detail refer to Abacus' NPP Compliance Manual.

In addition, the commitment in section D23.10 to avoid certain communication practices also used by perpetrators of fraud (in particular, not to send Customers unsolicited emails with attachments or hyperlinks) goes somewhat further than current legal and regulatory obligations.

➤ IMPLEMENTATION CHECKLIST

- | |
|---|
| 1. Ensure that the Financial Institution has a comprehensive program in place to comply with privacy laws, including the NPPs and the Credit Reporting provisions of the Privacy Act. |
| 2. Review document retention procedures to ensure compliance. |
| 3. Review procedures to deal with security breaches. Ensure that Customers are regularly educated about this, and that there is a method for them to report security breaches to the Financial Institution. |

FURTHER RESOURCES

[Abacus' National Privacy Principles Compliance Manual](#)

Key Tip for Compliance and Audit Staff

Your Financial Institution should ensure it has a privacy and security policy. This policy should cover all organisational systems used for processing, storing or transmitting personal information. To be effective a security policy needs to be monitored and periodically reviewed. Staff and management must be made aware of the security policy and how to implement it.

Part D 24. If you are in financial difficulties

Key Requirements & Application

This section requires the Financial Institution to work co-operatively with its Customers to try to resolve any problems they have in meeting their financial commitments to the Financial Institution. The section commits the Financial Institution to a series of procedures it must follow when a Customer is experiencing financial difficulty.

Interpretation

While many of the procedures in D24.2 are self-evident, there are some points that require further explanation:

Consumer Credit Code Hardship Variations

Section 66 of the CCC contains provisions that allow a debtor to apply for certain changes in relation to the loan if they are suffering hardship and they can show these changes will allow them to discharge their obligations.

Listing on Credit Report Files

Where a debtor has defaulted on their loan, they can be listed at a Credit Reporting Agency (such as VEDA) once certain requirements are met. These requirements are outlined in detail in Abacus Credit Reporting Compliance Manual.

➔ IMPLEMENTATION CHECKLIST

1. Establish panel of senior staff to assess financial difficulty requests on case-by-case basis

In the most common situations a Customer will be unable to meet their obligations under a credit facility because of illness, unemployment or other reasonable cause. In some cases, there may be an unmanageable increase in overall liabilities or the Customer may have been offered a credit product that they could not reasonably repay from the outset. In other cases the Customer will be in financial difficulty simply because of poor financial management or a lack of any genuine commitment to repay debts.

The panel should compose suitably qualified senior staff to develop the following (if these are not already in place):

- minimum eligibility criteria for applications for variations of credit facilities compliant with the MBCOP. These must also satisfy the minimum requirements for a hardship application under the CCC
- guidelines and process flow charts for assessment, implementation and monitoring of applications

2. Interview with Customer

You should interview your Customer to discuss their financial circumstances. You should give genuine consideration to any reasonable repayment proposal, or suggest other alternatives that will assist the Customer to resolve their financial difficulties.

Some areas you may cover during the interview include:

- providing information about CCC hardship variation applications
- receiving a current signed statement of Customer's financial position
- identifying longer-term and shorter-term financial issues
- considering referral to financial counsellor
- agreeing immediate and reasonable payment variation arrangements

3. Determine application and repayment options

Repayment arrangements should be realistic even if this involves a long-term solution rather than a short-term fix. Options that should be considered include:

- exploring ability of the Customer to reduce their living expenses or increase their income (for example, by taking on additional employment)
- extension of period of loan to allow a reduction in the amount of regular repayments
- if Customer has a number of loans and credit facilities, a consolidation of these into a single loan (as long as their overall commitments are thereby reduced)
- a moratorium on payments, in a case where there is some prospect the Customer's financial circumstances will improve within a defined period (however, this may be of little benefit to the Customer, and even detrimental, if compounding interest continues to accrue on the debt during the moratorium period)
- voluntary sale of security property or other property
- waiver of interest or write-off of some or whole of debt
- permanent or temporary reduction in repayments

4. Advise Customer of determination

If there is a decision to reject a proposal this should be given to the Customer in writing.

5. Enforcement action

Enforcement action should not be commenced as a matter of course unless there are strong reasons why a Financial Institution should not delay doing so. In some cases commercial imperatives will require a Financial Institution to move quickly to enforcement action but in most cases a more constructive outcome can be reached by working with the Customer. For further details on enforcement and debt recovery actions see MBCOP D26.

Related laws and Codes

The CCC allows a debtor suffering hardship to apply to the credit provider for certain changes to the credit contract (section 66). Under section 66 a borrower may apply to the credit provider for a variation of their payments on the grounds of illness, unemployment or other reasonable cause. The credit provider is only required to consider the application if the maximum amount of credit provided is below a certain threshold. The threshold is a floating amount, which is linked to an Australian Bureau of Statistics index of mortgage levels. It is an amount equal to 110% of the amount of the average loan size for the purchase of new dwellings in NSW (floating threshold is current to October 2008 see www.creditcode.gov.au)

Agreed changes must be documented (section 67). If the credit provider and debtor cannot agree on a variation the debtor can apply to a court for a variation of the contract (section 82).

Benefits of compliance

The approach of MBCOP is aimed at:

- Maximising the eventual repayment of debts owed to Financial Institutions
- Protecting the industry's reputation for Customer care and personal service
- Limiting the need for, and occurrence of, formal hardship variation applications by debtors, and
- Limiting the need for debt recovery action by Financial Institutions.

BUSINESS IMPLICATIONS GENERAL

The processes outlined in MBCOP will generally be consistent with existing practices of subscribing Financial Institutions and good industry practice generally. In the case of regulated credit contracts, they are also largely required if Financial Institutions are to genuinely comply with the hardship requirements of the CCCC. Failure of subscribing institutions to deal fairly and sympathetically with cases of genuine financial stress may have negative implications for the reputation of the particular institution and has potential to damage the mutuals sector "brand" generally.

FURTHER RESOURCES

D26 Debt collection and legal action

Key Tip for Compliance and Audit Staff

Ensure that key Customer-facing staff are alert to options and obligations when a Customer first raises or indicates financial difficulty. Customers should be offered an opportunity to constructively resolve issues with staff.

Part D 25. Working with your representative

Key Requirements & Application

This section obliges your Financial Institution to work with any duly authorised representative of a Customer, such as a financial counsellor, community worker, solicitor, family member or carer.

This section should be read primarily in the context of your commitments concerning Customers who are in financial difficulties (D 24) and your debt recovery procedures (D 26). However it also sets out general principles to apply to your dealings with Customers' representatives.

Interpretation

From time to time Customers may require the assistance of someone to act on their behalf in their dealings with your Financial Institution.

Often this will be at an informal level:

- where a family member or friend assists a Customer in financial stress in negotiations with you, or
- simply acts as an interpreter for a Customer with language or comprehension difficulties.

Sometimes the Customer will have formally appointed another person to act as their agent or attorney to deal with you, for example as a:

- tax agent,
- solicitor
- representative such as a financial counsellor, or
- under a power of attorney

In each case you may be asked to provide access to a Customer's account and other banking details. This will require you to consider what you are permitted to disclose about your Customer under the Privacy Act, anti-money laundering legislation (AML) and general law.

Related laws and Codes

Privacy Act

The Financial Institution must comply with privacy laws, including the Privacy Act generally, the National Privacy Principles, and the credit reporting provisions of the Privacy Act. See D 23 for a summary and full details in Abacus' NPP Compliance Manual.

Under section 18H – 18N of the Act, an authorised agent of the Customer may be granted access to the Customer's 'credit information' and more basic information upon receipt of a written authorisation from the Customer. A Financial Institution may only provide information within the scope of the information specifically authorised by the Customer

See Appendix: Sample authorisations for sample authorisations for access to credit information.

AML Act

Part 4.11 of the AML/CTF Rules applies where an agent of a Customer is authorised to act for or on behalf of the Customer in relation to a designated service. The Financial Institution's AML/CTF program in Part B (Customer identification) must have a procedure to collect

information and documents on the identity of the agent and to verify the identity. There must also be evidence of the Customer's authorisation (Pt 4.11.2).

Power of Attorney

A power of attorney is a legal document that enables a person to make decisions on behalf of another. **The general law** provides for two main types of power of attorney: general and enduring.

A general power of attorney enables an attorney to make financial decisions on behalf of another person. It can limit the decisions that can be made. For example, permitting the attorney only to pay bills or access a particular account.

Depending on the State and Territory an enduring power of attorney enables an attorney to also make health and lifestyle decisions. For further information about powers of attorney see [Powers of Attorney: Making Your Own Decisions](http://www.abacus.org.au/credit_unions/consumeradvice.htm) (Abacus Take Control series available at http://www.abacus.org.au/credit_unions/consumeradvice.htm)

Benefits of compliance

Effective, professional dealings with your Customer's representative will help you in reaching mutually acceptable outcomes from negotiations with clients, particularly those in financial stress. In many cases it may lead to the earlier resolution of disputes than may be able to be achieved by dealing with the unassisted Customer.

BUSINESS IMPLICATIONS GENERAL

The MBCOP encourages good relations with, among others, community sector representatives assisting consumers in difficulties. Where good working relations exist, these representatives can indirectly assist your business to effectively manage its relations with Customers in difficulties or requiring assistance with budgeting etc. Maintaining good relations with the community and NGO sector (which has considerable access to government) is important for the reputation of our industry.

MBCOP imposes no more than the minimum statutory requirements under the Privacy Act and National Privacy Principles. This section should be read subject to the privacy legislation.

➔ IMPLEMENTATION CHECKLIST

- | |
|---|
| <ul style="list-style-type: none">• Develop a procedure to follow if the Customer wants another person to assist• Provide staff training and education |
|---|

Appendix: Sample authorisations

1. Financial counsellor

I/We authorise [financial counsellor] or other persons providing financial counselling employed by [counselling agency's name] to:

- act as my/our agent in seeking access to my/our consumer credit information held by [name of credit reporting agency]

This authority only applies to enquiries made by [counsellor's name] or persons employed by [counselling agency's name] in connection with:

- an application or proposed application by me/us for credit
- my/our having sought advice in relation to existing credit

(signed and dated by the parties)

2. Accountants, solicitors or financial advisers

I/we [names/s] authorize [name of agent] to act for me concernig:

- an application or proposed application by me/us for credit; and
- advice in relation to existing credit

Signed and dated by the parties

Part D 26. Debt collection and legal action

Key Requirements & Application

This section applies when a Customer's financial difficulty has deteriorated to the point where a Financial Institution needs to consider recovery action.

The Financial Institution and its agents must observe the following key requirements:

- Comply with [ASIC RG 96 Debt collection guideline: for collectors and creditors \(October 2005\)](#).
- Seek active co-operation with Customers who have fallen behind with their payments.
- Prior to commencing any legal action, send a default notice giving the Customer the opportunity to pay.
- When combining accounts, notify the Customer after this happens, and comply with the *Code of Operation for Centrelink Direct Credit Payments*
- Do not seek recovery of statute-barred debts.
- Do not sell debts to a debt buyout business unless that business belongs to an ASIC-approved external dispute resolution scheme. (This does not apply to securitisation schemes, etc).

This section applies to you, your staff and any collection agent whenever a Customer has fallen behind with repayments.

Interpretation

Implement ASIC Debt collection guideline (D 26.1)

The ASIC guideline comprehensively addresses debt recovery practices outside the court system and sets robust good practice standards. It provides practical guidance to:

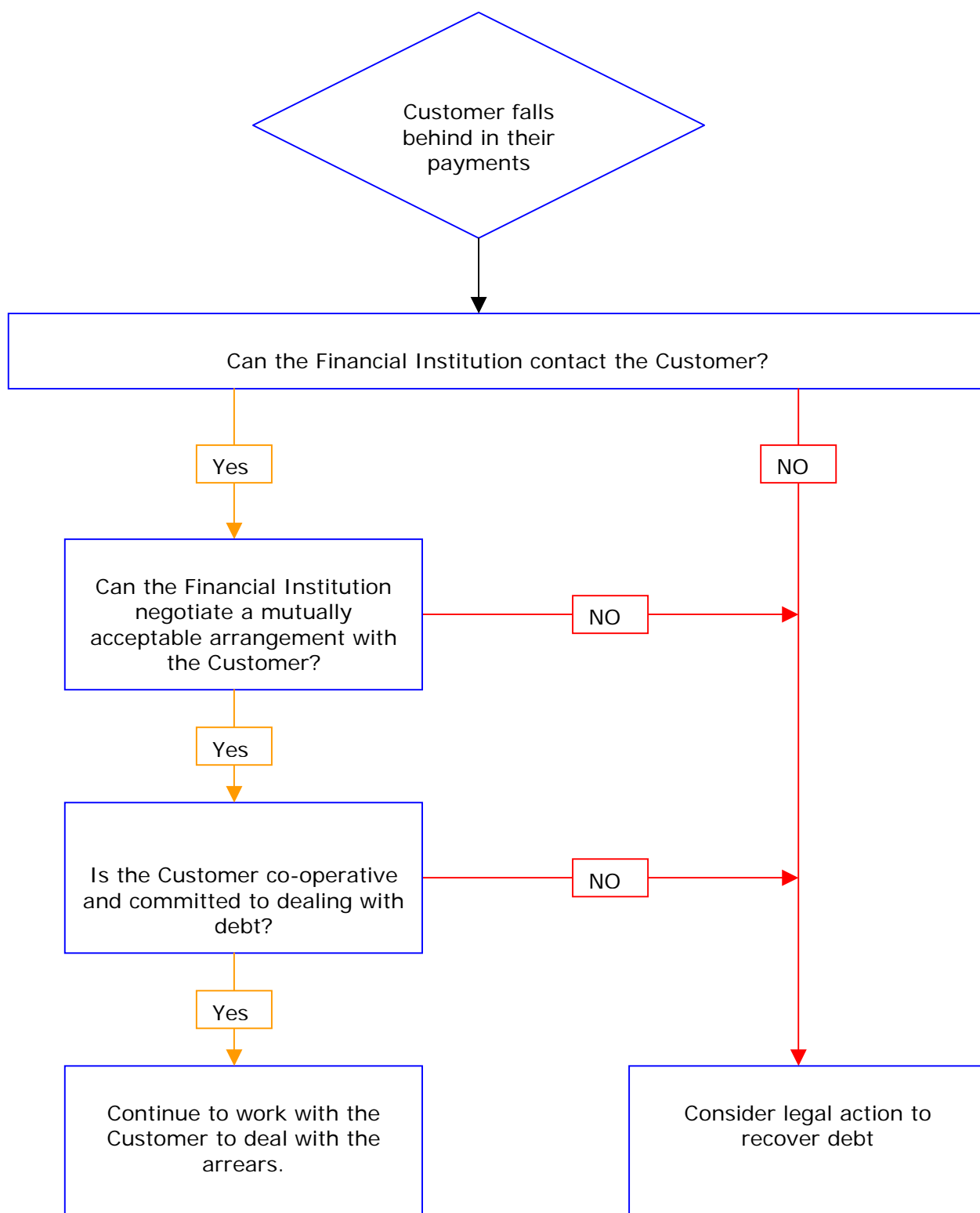
- **creditors** who use external collection agencies to collect debts or sell or assign debts to third parties; and
- **financial counsellors** or other debtors' advisers.

Key topics covered in the ASIC guideline are:

- the do's and don'ts of contact with debtor
- collecting, using and disclosing debtors' personal information
- conduct towards debtors and their family members
- correspondence and record keeping
- independent external dispute resolution schemes

MBCOP adopts the philosophy of the ASIC guideline by encouraging a flexible and realistic approach to debt recovery

For further details see [ASIC RG 96 Debt collection guideline: for collectors and creditors](#)



A Customer that has fallen behind in repayments (D 26.2)

Where a Customer has fallen behind in repayments, the Financial Institution must contact the Customer and seek to negotiate a repayment arrangement. This arrangement should, where possible, be mutually acceptable to the Financial Institution and the Customer, and should take account of the Customer’s financial circumstances as a whole, as well as the Customer’s particular obligations to the Financial Institution.

If the Customer co-operates and commits to dealing with the debt, the Financial Institution should also remain committed to working with the Customer or their representative. Where relevant, the Financial Institution should draw the Customer's attention to procedures that cover Customers in financial difficulties (MBCOP D24 requires the Financial Institution to adopt such procedures).

Prior to commencing legal action (D26.3)

Prior to commencing legal action, the Financial Institution must send out a written default notice to the Customer. This should be sent to the Customer's last notified address. The default notice:

- should give the Customer the opportunity to pay any amount outstanding on the account with the Financial Institution. Explain to the Customer that the "amount outstanding" is the loan arrears and must not be confused with the "balance outstanding".
- must specify the date after which the Financial Institution is lawfully entitled to commence legal proceedings to recover the debt.
- should invite the Customer to contact the Financial Institution to discuss their options.

The CCC and other laws also govern the content of default notices and associated procedures.

Exercising rights to combine accounts.

In certain circumstances the Financial Institution may be able to apply the credit balance in any of a Customer's deposit accounts towards repayment of a debt that the Customer owes to the Financial Institution. This right is often referred to as the right of set off or the right of combination. If the Financial Institution exercises its right to combine accounts, the Financial Institution must promptly inform the Customer after doing so.

Code of Operation for Centrelink Direct Credit Payments

In exercising any right to combine the accounts of a Customer, you must comply with the *Code of Operation for Centrelink Direct Credit Payments*. The Code is an agreement between Centrelink and financial service providers, which operates to ensure that consumers receiving income support payments have access to a reasonable amount of money to live on, even when they owe a debt to their financial service provider.

The Code of Operation for Centrelink Direct Credit Payments states that:

- if a Customer owes an unauthorised debt to your Financial Institution (for example an overdrawn account without an agreed overdraft); and
- the Customer receives a social security direct credit payment under the Social Security Act 1991 (Cth) into an account of the Customer,

you must allow the Customer to withdraw at least 90% of the social security payment, whether or not you are otherwise legally entitled to appropriate the payment to satisfy the debt that the Customer owes (see section 9, Centrelink Code).

This means that a Financial Institution can only take 10% of any social security direct credit payment in exercising any right to combine the accounts of a Customer. However, an institution may take more than 10% of any social security direct credit payment if the Customer agrees in writing. In agreeing with a Customer to appropriate more than 10%, the Financial Institution must take into account the following considerations:

- the Customer's needs, given the subsistence nature of any social security payment;
- any action by your Financial Institution that may have contributed to the fact that the Customer is not legally entitled to the full amount of the social security payment;
- where the unauthorised debt exceeds the amount of the Customer's usual social security payment, future Centrelink payments; and
- any other special circumstances (see section 9, Centrelink Code).

The *Code of Operation for Centrelink Direct Credit Payments* is reproduced in Appendix 2 at end of this manual.

Do not seek to recover statute-barred debts (D 26.5)

The Financial Institution must not seek recovery of statute-barred debts.

Statute-barred debts are debts on which the legal limitation period has expired. The limitation period is set under state law and there is some variation across states. The period is usually six years after the debtor defaults on regular payment obligations under the contract, but it can be revived by subsequent payment or acknowledgement of the debt.

Where a debt is statute-barred, the debtor can raise that fact as a complete defence in any legal proceedings for recovery. However, recovery of statute-barred debts is not itself prohibited by law. Notwithstanding this, MBCOP subscribers commit to not seeking to recover such debts.

Selling debts (D26.5)

A Financial Institution may seek to sell or assign debts to a debt buy-out business. This is done when a debt is in arrears (often for more than 6-months).

Under the MBCOP the Financial Institution must not sell debts that are statute-barred. In addition, the Financial Institution must not sell the debts unless the business buying the debt (the assignee) belongs to an external dispute resolution scheme that has been approved by ASIC. These restrictions on selling debts are not intended to apply to securitisation, and similar programs.

Related laws and Codes

ASIC Act and Fair Trading laws

The ASIC Act (section 12DJ) prohibit *undue harassment and coercion* in connection with for payment for financial services by a consumer. There a similar general provisions in the Trade Practices Act and State Fair Trading laws. These laws also prohibit misleading and deceptive conduct and unconscionable conduct in trade and commerce generally—this includes in the debt recovery context.

ASIC RG 96 *Debt collection guideline: for collectors and creditors*. ASIC and ACCC encourage creditors and collection agencies to incorporate this guideline into their staff training and contractual arrangements with their agents.

Consumer Credit Code

The CCC contains provisions that impact on debt recovery procedures including: obtaining account information and documents (sections 34 and 163); varying repayments on hardship grounds (section 66), and enforcement of credit contracts, mortgages and guarantees (Part 5). Under section 66 a borrower may apply to the credit provider for a variation of their payments on the grounds of illness, unemployment or other reasonable cause. For further details see D24.

The CCC restricts the ways in which a credit provider may exercise its enforcement rights and remedies under a credit contract, guarantee and mortgage. Section 80 prohibits the credit provider from commencing enforcement proceedings against a debtor or a mortgagor unless the debtor or mortgagor is in default, a default notice has been served and the debtor/mortgagor has not remedied the default within 30 days from the date of the notice. Sections 82 and 83 contain similar provisions in relation to guarantees and chattel mortgages respectively.

Commercial agencies

Commercial collection agents are governed by occupational licensing requirements in most states and territories. In Queensland licensed commercial agents are subject to a mandatory code of conduct, the Commercial Agency Practice Code of Conduct.

Statute of limitations

Each state and territory sets limitation periods on debt recovery actions. The limitation period for most simple contracts is usually six years (three years in the Northern Territory). In some states a payment or acknowledgment of a debt will start the limitation period running again even after its original expiration.

Bankruptcy law

The Bankruptcy Act 1966 allows for debt and personal insolvency agreements under Parts IX and X. Debtors can be released from their financial obligations for provable debts and further recovery action (other than through a scheme of administration) is not permitted.

Privacy laws

The Privacy Act and National Privacy Principles govern credit reporting, the collection, use and disclosure of personal information.

State mortgage assistance schemes

These schemes provide short-term assistance to people experiencing mortgage repayment difficulties because of an unavoidable change in their circumstances: see, for example, www.housing.nsw.gov.au

Benefits of compliance

The MBCOP commitment to working co-operatively with a borrowers experiencing repayment difficulties will minimise the risk of breaching applicable consumer protection laws and regulatory guidelines. In many cases, a cooperative approach is also the best way of ensuring the distressed borrower ultimately repays their loan.

BUSINESS IMPLICATIONS GENERAL

The MBCOP seeks to consolidate current high industry standards in this area. MBCOP requirements largely replicate the law and regulator guidance, and will generally be consistent with your current practices. However, you should review the Implementation Checklist following.

➔ IMPLEMENTATION CHECKLIST

Priority	Action	Area/Responsibility
1.	Develop a procedure to follow for debt collection that is based on the principle of working co-operatively with the Customer where possible. Minimum requirements are: <ul style="list-style-type: none"> • comply with ASIC RG 96 • do not seek to recover or sell statute-barred debts 	Financial services staff
2.	Develop a procedure to follow for writing/sending default notices prior to commencing legal action. Minimum requirements are: <ul style="list-style-type: none"> • specify date from which you may commence legal action • default notice, or accompanying letter, must invite Customer to discuss options • send notice to last notified address of Customer 	
3.	Develop a procedure for combining accounts. Before exercising any right to combine the accounts of a Customer, you must:	

	<ul style="list-style-type: none"> • ensure that any debt the Customer owes your Financial Institution is due and payable; • ensure that the Customer has defaulted in the repayment of the debt; • comply with the Code of Operation for Centrelink Direct Credit Payments; see below; and • comply with any other applicable law in relation to the acceleration and enforcement of the debt (for example the Consumer Credit Code) in exercising your right to combine the accounts of the Customer. <p>Inform the Customer promptly after combining accounts.</p>	
4.	<p>Develop procedure for selling debts. Minimum requirements are:</p> <ul style="list-style-type: none"> • purchaser must belong to ASIC-approved EDR scheme • do not sell statute barred debts 	Financial services staff

FURTHER RESOURCES

[ACCC Guide to unconscionable conduct](#)

Consumer Affairs Victoria [Guidelines for debt collection](#)

[Abacus CCC Compliance Manual](#)

Key Tip for Compliance and Audit Staff

Be sure to record and keep any agreements made with the Customer (eg to suspend enforcement action). All collection-related correspondence must be consistent with what has been agreed. Ensure that collection agents (and any assignees such as debt buy-out businesses) have a copy of any agreement.

Part D 27. Prompt, fair resolution of complaints

Key Requirements & Application

This part introduces, and should be read in conjunction with, parts D28- D30.

Ensure your Financial Institution has an internal complaint handling process and belongs to an ASIC-approved External Dispute Resolution scheme.

Ensure your Financial Institution's complaint handling process is:

- Prompt and efficient
- Consistent with law, industry codes and good practice
- Fair to everyone involved

Interpretation

What is a "complaint" in the MBCOP? (D27.1)

A "complaint" is defined as any expression of dissatisfaction made to the Financial Institution related to its products or services, or to its complaints handling process, where a response or resolution is implicitly or explicitly expected (See *Appendix: Definitions*).

Note:

- This is the definition adopted in Australian Standard, Customer satisfaction—guidelines for complaints handling in organisations (AS ISO 10 002:2004, MOD)
- This is a very broad definition (any expression of dissatisfaction)—for instance, there is no need for the Customer to identify their dissatisfaction as a "complaint"
- The definition has two elements: expression of dissatisfaction + expectation of response
- An expression of dissatisfaction may be polite, reasonable, unemotional etc—there is no need for it to include any accusation, anger etc (although it may, of course)

What is a "dispute" in the MBCOP? (D27.1)

A "dispute" is defined as a complaint that the Financial Institution has not been able to resolve to you're the Customer's satisfaction (See *Appendix: Definitions*).

Note:

- The term "dispute" is generally used in the MBCOP to describe the situation where the Financial Institution is unable to resolve the complaint to the satisfaction of the Customer and the matter needs to be referred to the Financial Institution's External Dispute Resolution scheme.

Prompt, efficient, compliant and fair response (D27.3)

In Abacus view, Financial Institutions will generally comply with these obligations by implementing part D28 (see next section).

Related laws and codes

Under section 912A, Corporations Act, all Australian Financial Services Licence holders, including all credit unions and building societies, must have a dispute resolution system consisting of:

- an internal dispute resolution procedure that complies with standards and requirements made or approved by ASIC, and
- membership of one or more external dispute resolution schemes approved by ASIC

ASIC Policy RG 165 sets out ASIC internal dispute resolution standards the Licensee must comply with.

Benefits of compliance

Effective complaint handling procedures improve levels of Customer confidence and satisfaction. Early resolution of disputes prevents complaints from becoming entrenched and preserves Customer relationships.

BUSINESS IMPLICATIONS GENERAL

Part D27 merely summarises obligations that all Abacus member organisations have as Australian Financial Services Licence holders.

FURTHER RESOURCES

[ASIC RG 165 Licensing: Internal and external dispute resolution](#)

[AS ISO 10002:2004 MOD Customer satisfaction – Guidelines for complaints handling in organisations](#)

Key Tip for Compliance and Audit Staff

Your complaints handling process must include a system for keeping records about complaints received. This is a useful means of tracking compliance issues or risks.

Part D 28. Our complaints handling process

Key Requirements & Application

Ensure your Financial Institution adopts an internal complaints handling process with the features and timeframes set out in section D28.2.

Interpretation

Complaint handling process must be consistent with Australian Standard (28.1)

Financial Institutions must have a complaint handling process consistent with both the *Guiding Principles* and certain specified sections of the Australian Standard applying to complaint handling (AS ISO 10 002:2004, MOD). These parts of the Standard are reproduced in Appendix 3 of this Manual. You can obtain a copy of the full Standard from Australian Standards (see Further Resources). The section D28.1 requirement follows ASIC regulatory guidance RG 165 (see Further Resources).

The requirements set out in D28.2, MBCOP, discussed below, draw attention to—but generally do not go beyond—the obligation of AFS Licensees to implement an internal complaints handling process consistent with ASIC requirements.

Provide information about complaints handling process (D28.2, 1st dot)

A Financial Institution should have an information brochure and online content dealing with its complaints handling process. The material should set out clearly how a Customer may make a complaint to the Institution, and must include contact details of the Institution's EDR scheme. (These are legal as well as MBCOP obligations.)

This information should be able to be provided to Customers on request. So:

- Ensure stocks of your Institution's brochure are available at branches and for distribution through the post
- Ensure your web site includes content on complaints handling, and that there is a prominent link to the material on your Institution's home page.

TIP – It is not acceptable, either under the law or the MBCOP, to only tell your Customers of your Financial Institution's EDR Scheme in circumstances where there is an unresolved dispute between the Institution and a Customer. The information must be generally available and should clearly explain when a matter may be referred to the EDR Scheme.

All complaints must be covered (D28.2, 2nd dot)

Note:

- The broad definition of "complaints" under the Code and ASIC guidance
- The MBCOP obligation to deal with complaints applies to all complaints (as defined) received by your Financial Institution, whether or not the subject matter of the complaint falls within the scope of the Code.

Complaints process must be adequately resourced (D28.2, 2nd dot)

This includes selection, support and training of complaints-handling personnel and other resources such as procedures, documentation, specialist support, materials and equipment, computer hardware and software, and finances: see 6.4 *Resources*, Australian Standard (extracted in Appendix 3 of this Manual).

Complaints process must be free and accessible (D28.3, 3rd dot)

Note:

- Your Financial Institution should not require the Customer to initially make all complaints in writing—this acts as a block for many people on making complaints, and inevitably slows the resolution process. Rather, the Customer should generally first be able to raise an issue or make a complaint verbally (for instance, by speaking to a Customer service staff member by phone or in person at a branch). The Financial Institution can require ongoing complaints (particularly if they are complex) to be put into a written form in order to be progressed.
- The MBCOP does not specifically address ensuring that your Financial Institution has accessible complaint processes for people who do not speak English, people with intellectual and/or physical disabilities, people with low levels of literacy and other vulnerable Customers. In Abacus' view, the MBCOP nonetheless clearly applies to these groups (as, of course, do anti-discrimination laws).
- Your Financial Institution should have a policy of doing everything it practically can, having regard to its resources and capacities, to ensure that all your Customers are able to make effective use of your complaint handling process.
- Where required, your Financial Institution should make use of the Telephone Interpreter Service or other interpreter service to assist non-English speakers to make a complaint.

Time frames for resolving complaint (D28.2, 4th dot; D28.3, D28.4)

Ensure your Financial Institution tries to resolve the complaint as soon as possible, and generally that complaints are resolved within 21 days of being received.

If a complaint has not been resolved with 45 days of being received, you should *write* to the Customer:

- Explaining why
- Estimating how long it is likely to be before your Financial Institution will be able to resolve the complaint, and
- Advising the Customer of their right to take the complaint to your EDR scheme immediately if they choose. (Provide contact details for the EDR scheme in the letter.)

This letter should be written immediately as D28.4 says the Customer must be *informed* within 5 days of the end of the 45-day period (and you will need to allow 1-2 days for postal delivery).

Note:

- The Customer has a right to take their complaint to the EDR scheme after 45 days irrespective of whether your Financial Institution is responsible for the delay in resolving the complaint (for instance, if another financial institution has failed to respond to your request for information about the complaint)
- If you clearly explain why the complaint is taking time to resolve and when resolution can be expected, the Customer is more likely continue to seek resolution through your Financial Institution's internal process rather than refer the complaint to the EDR scheme.

Nominate person responsible for dealing with the complaint (D28.2, 5th dot)

This provision is designed to address the situation where a Customer is required to explain their concern to multiple staff members on different occasions. Either the nominated person's individual contact details should be provided, or the person should be readily accessible through your reception—it must not be difficult for a Customer to contact someone who can update them on the progress of their matter.

Only the nominated person's first name needs to be provided, if this approach is preferred for staff security reasons.

Straightforward process (D28.2, 6th)

There has been a lot of criticism of the internal complaints handling processes of some large financial institutions on the basis that Customers with a complaint that is not resolved initially are sometimes then required to take the complaint to a higher internal authority (eg an internal Ombudsman) before they are permitted to take the complaint to the Financial Institution's EDR scheme.

MBCOP subscribers undertake to avoid such two- or even three-step processes. Under the MBCOP, the person to whom the complaint is referred (see previous point) must either have the capacity to resolve the complaint themselves or must be able to liaise internally with a person or persons with that authority.

Finding against the Customer (D28.2, final paragraph)

Where the complaint cannot be resolved to the Customer's satisfaction, this should be advised to the Customer in writing, giving reasons. The letter should provide contact details of the Financial Institution's EDR scheme.

➔ IMPLEMENTATION CHECKLIST**1. Method of collecting complaints**

Your process for receiving complaints should be flexible and include provision for oral complaints or complaints in other formats (e.g., email), toll-free or local call fee facilities. Special arrangements should be made for Customers with specific needs including availability of interpreters.

2. Establish procedure for recording complaints

A procedure for recording a complaint and responses should be established and implemented. These records should be monitored, subject to your obligations under privacy laws.

3. Appoint complaints officer or employee

Where practical, your Financial Institution should nominate a staff member or members to investigate all complaints including complaints about breaches of the Code. The employee(s) should be given appropriate powers or authority from your Financial Institution.

4. Receive and acknowledge complaint

If the initial complaint does not provide sufficient information to enable the investigation to commence you should ask for more details from the Customer.

You should send your Customer a written request for details of the complaint asking for:

- a description of the complaint;
- the product, services or organisation practices complained about; and
- the remedy sought by the Customer.

Receipt of each complaint should be acknowledged to the Customer via post, telephone or email. Give Customer name and contact details of investigating officer. Track complaint from initial receipt to final determination.

Sample letter**Letter to account holder on receipt of enquiry/complaint**

Dear [*Customer*],

We acknowledge receipt of your enquiry/complaint regarding [].

The [Financial Institution] will undertake a full investigation of the information provided by you on the [Complaint form].

We will seek to advise you of our findings within 21 days of you lodging the Enquiry/Complaint form. If we are unable to complete our investigation within the 21 days we will advise you in writing, to extend the investigation period by up to a further 24 days.

Please do not hesitate to contact me should you have any questions during this process. My contact details are set out below:

[Name of Investigating Officer]

[Position]

Address/Telephone/Email

Yours sincerely

5. Investigation

The investigation procedure will include:

- initial assessment according to criteria (eg severity, complexity, reputational risk, etc)
- taking into account any applicable law, the MBCOP, other relevant considerations

6. Your written response

The investigating officer must give the Customer a written response setting out:

- the decision
- the reasons for the decision
- a statement that copies of any evidence relied upon by investigation officer are
- available on request by Customer

the consequences of the decision

Sample letter

Dear [*Member/Customer*]

The [Financial Institution] has investigated your claim concerning [] for [amount] on [date].

Our investigation has concluded that [refuse claim, accept claim without admission of liability, find wholly or partly against member].

Should you decide that you wish to pursue this matter further, you are entitled to refer your claims to this [Financial Institution's] external dispute resolution scheme. Brochures explaining the procedure and the terms of reference are enclosed for your information

7. Resolution of complaint within 21 days

The overriding requirement is to try to resolve the Customer's complaint as soon as possible.

If an immediate resolution is not possible, follow procedures in steps 8 to 10 below.

8. Where the dispute is unresolved after 21 days

If the decision is not resolved to the Customer's satisfaction within 21 days from receipt of the complaint provide written information to your Customer about:

- any internal review process you offer before referral to your external dispute resolution scheme
- your external dispute resolution scheme

their right to take the complaint to your external dispute resolution scheme when 45 days have elapsed since the complaint was made

Sample letter**Letter advising of 24 day extension to complete investigation**

Dear *Customer*

I apologise for the delay in responding to your enquiry/complaint concerning your [] for [amount] on [indicate date]

The matter is still being investigated and we wish to advise you that further time (not exceeding 24 days) is required to complete the investigation. If this causes any difficulties, please do not hesitate to contact me.

Yours sincerely

9. Internal review of investigating officer's decision

During this period you may wish to offer additional internal dispute resolution procedures such as:

- a review of the investigating officer's decision by senior management
- consultation between the Customer and senior management; or
- a mediation procedure

10. Where the dispute is unresolved after 45 days

When 45 days have elapsed since the complaint was made, a letter should be sent to the Customer advising them of their right to use your Financial Institution's EDR Scheme. This letter should reach the Customer within 5 business days after the end of the 45 day period.

Related laws

Pursuant to Corporations Act requirements, ASIC RG 165 sets out ASIC requirements for AFS Licensees' internal dispute resolution processes. It states that Licensees must have internal dispute resolution procedures that satisfy the Guiding Principles in Section 4 of AS ISO 100002 4269-1995, and the following sections in that Standard:

- 5.1 Commitment
- 6.4 Resources
- 8.1 Collection of information
- 8.2 Analysis and evaluation of complaints

The Guiding Principles and these sections of the Australian Standard can be found in Appendix 3 of this Manual.

Benefits of compliance

Effective complaint handling procedures will improve levels of Customer confidence and satisfaction. Early resolution of disputes prevents complaints from becoming entrenched and preserves Customer relationships.

BUSINESS IMPLICATIONS GENERAL

In Abacus view, D28 of the MBCOP goes no further than the law applying to holders of an AFS Licence in relation to internal complaint handling. The main function of D28 is to draw your Customers' attention to the way your Financial Institution deals with complaints. Review your current procedures to ensure they are robust and credible, and consistent with the MBCOP and legal requirements.

FURTHER RESOURCES

[ASIC RG 165 Licensing: Internal and external dispute resolution](#)

[AS ISO \[10002-2004; MOD\] Customer satisfaction – Guidelines for complaints handling in organisations](#)

Key Tip for Compliance and Audit Staff

Your complaints handling process must include a system for keeping records about complaints received. This is a useful means of tracking compliance issues or risks

Part D 29. External dispute resolution (EDR) schemes

Key Requirements

This part requires your Financial Institution to:

- Belong to one or more ASIC-approved external dispute resolution (EDR) schemes covering the products and facilities it offers
- Provide information about its EDR scheme(s) to its Customers
- Refer a Customer who has made a complaint to its EDR scheme if the complaint has not been able to be resolved to the Customer's satisfaction within 45 days.

Interpretation

Applicable EDR schemes (D29.1, D29.2)

All Abacus member organisations subscribe to either:

- The Mutuals Division of the Financial Ombudsman Service [FOS] (which came into operation from 1 January 2009, replacing CUDRC) or
- The Financial Co-operative Dispute Resolution Scheme [FCDRS]

Both schemes are ASIC-approved.

Disclosing information about your Institution's EDR scheme (D29.2)

Your Financial Institution must tell Customers which EDR scheme it belongs to if the Customer asks. In addition, your Institution must prominently disclose the name of the EDR scheme:

- In printed information on how your Financial Institution deals with complaints and disputes (this information must be provided on request)
- On your website (if you have one)

Capacity to hear disputes (D29.3)

An EDR scheme cannot deal with a Customer's dispute unless the Customer has first attempted to resolve their complaint with your Financial Institution and, *either*

- The Customer has not accepted your Institution's formal proposal to resolve the complaint. In most cases, this will arise because your Institution does not agree that the Customer has a valid complaint; *or*
- At least 45 days has elapsed, and the complaint has not been resolved to the Customer's satisfaction.

Other EDR scheme jurisdiction matters (D29.3)

Both the Mutuals Division of FOS and FCDRS have monetary limits on claims of \$280,000.

There are some other restrictions on what complaints these EDR schemes can seek to resolve. We suggest that you refer Customers with questions about an EDR scheme's jurisdiction to the Scheme (especially if your organisation is in dispute with the Customer).

Relation to the law

Section 912A(2)(b) set outs obligations for providers of financial services to be a member of an ASIC-approved EDR scheme available to retail clients, as a condition of their AFS licence. ASIC RG 165 provides guidance on this obligation.

BUSINESS IMPLICATIONS GENERAL

The requirements of this Part do not go beyond your Financial Institution's legal obligations, and existing arrangements, under the financial services law.

FURTHER RESOURCES

[ASIC RG 139 Approval of external dispute resolution schemes](#)

[ASIC RG 165 Licensing: Internal and external dispute resolution](#)

➔ IMPLEMENTATION CHECKLIST

- | |
|--|
| 1. Disclose details about the EDR scheme upon request, on your website, and in your information about complaints and disputes. |
| 2. Ensure that you notify Customers of their right to take their unresolved complaint to your EDR scheme within 5 business days of the end of a 45-day period from the date the complaint is first received. |

Part D 30. Complaints about breaches of this Code

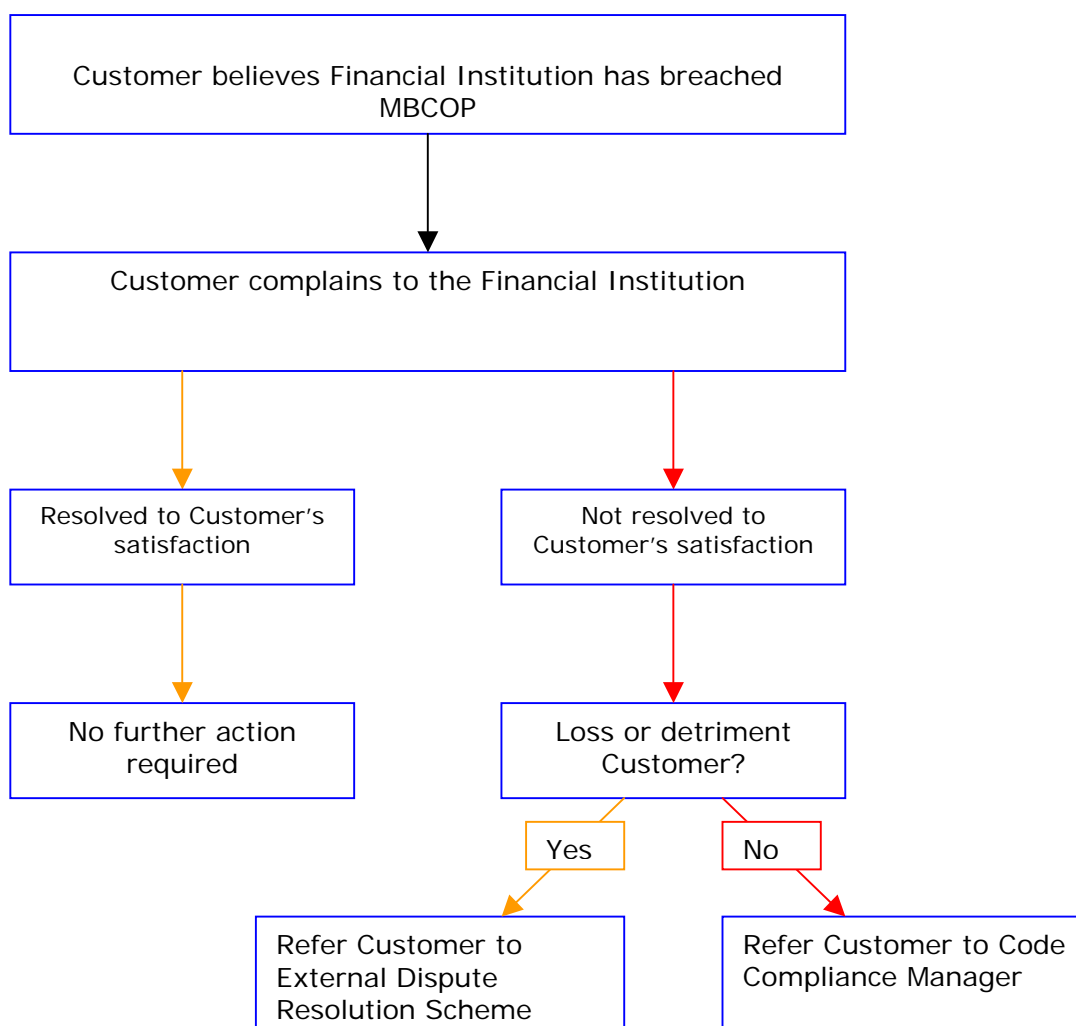
Key Requirements

Your Financial Institution must have a procedure for handling complaints where the Customer believes your Institution has breached the MBCOP.

Your Institution:

- Must seek to resolve the complaint to the Customer's satisfaction (see D28)
- If the complaint remains unresolved, and the complainant is seeking compensation or other redress, refer the Customer to your Financial Institution's EDR scheme (see D28 – D29)
- If the complaint remains unresolved, and the Customer is NOT seeking compensation or other redress, refer the Customer to the Code Compliance Manager (D30).

Overview: Flow chart



Code Compliance Manager [CCM]

Abacus expects that the Financial Ombudsman Service will undertake the role and functions of the CCM. << FURTHER DETAILS TO BE PROVIDED ONCE ARRANGEMENT IS FINALISED >>

The role and functions of the CCM, and the relation of the CCM to the Code Compliance Committee, are summarised in Part E, MBCOP: see E5-6. The CCM will be the main point of contact between Financial Institutions' staff and the administration of the Code.

➤ IMPLEMENTATION CHECKLIST

1. Review your Financial Institution's complaint handling process to ensure it adequately covers complaints in relation to breaches of the MBCOP by your Financial Institution.

2. Train staff to deal with complaints that your Financial Institution has breached MBCOP.
--

PART E: HOW THE MBCOP IS ADMINISTERED

Introduction

Part E, MBCOP, sets out the administrative arrangements relating to the Code. The Part consists of the following topics:

- Publicising the MBCOP (paragraph 1)
- Training our staff (paragraph 2)
- Code compliance monitoring (paragraphs 3 – 7)
- Code administration and external dispute resolution (paragraphs 8 – 9)
- Our compliance responsibilities as Code subscribers (paragraphs 10 – 14)
- Sanctions for breach of the MBCOP (paragraphs 15 – 16)
- Amending the MBCOP (paragraph 17)
- Reviewing the MBCOP (paragraph 18)

These sections are considered below:

Publicising the MBCOP

Part E.1, MBCOP, imposes an obligation on subscribing institutions to “publicise this Code and promote our adoption of it”. This obligation is stated as including:

- *Publicising and promoting the MBCOP in the institution’s branches:* This might be achieved by the use of a poster, flyer or other display material. It does not necessarily require that the MBCOP itself be on display.
- *Making copies available in branches:* Subscribing institutions should have a stock of printed copies (or capacity to print off a copy) sufficient to meet requests for paper copies of the MBCOP. While it is acceptable to draw Customers’ attention to the availability of the MBCOP on the institution’s web site (where this is the case), it should not be assumed that all members or Customers have electronic access and/or the ability to download and print a copy.
- *Giving or sending members and Customers a copy of the MBCOP on request:* See previous dot point. Subscribers must be willing to post a copy of the MBCOP to a Customer who requests this.
- *Publishing the MBCOP (or a link to it) on the institution’s web site:* All MBCOP subscribers who have a website should provide electronic access to the MBCOP via their site. A link to the MBCOP should be provided on the institution’s home page.

Abacus is currently developing brochure, online content and other material that subscribing institutions will be able to use to meet these obligations. This material is expected to be available during the first six months of 2009.

Training staff

Part E.2 requires that employees, agents and representative receive training on the MBCOP.

Abacus is developing an MBCOP electronic training module, expected to be available by April 2009 (ahead of the 1 July 2009 implementation date). Subscribing institutions will be able to satisfy the Part E.2 requirement by ensuring all their staff members with Customer facing roles, and the managers/ supervisors of these staff, undertake this (or equivalent) training on the MBCOP. In addition, Abacus is producing brochure, online content and other material that subscribing institutions can use to promote the MBCOP to their staff as well as their members and Customers (see previous paragraph).

Part E.2 also requires subscribing institutions to ensure their staff members “apply” the MBCOP in their dealings with their Customers. Apart from training, subscribing institutions will need to implement an MBCOP compliance program to achieve this outcome. See further information under Implementing a compliance program, in this Manual.

Commentary on other aspects of Part E will be included in this Manual as the administrative arrangements for the MBCOP are finalised.

Appendix 1: Terms & conditions checklist

This is a checklist of matters that the MBCOP requires a Financial Institution to include in its Terms and Conditions for each financial product or service (excluding products or services involving the provision of credit). They are in addition to the usual contractual Terms and Conditions which a properly designed financial product or service should have.

Note 1

This checklist should not be used for any Financial Institution's financial product or service that involves the provision of credit to the Customer to which the Consumer Credit Code applies.

Note 2

Financial Institutions must use Abacus standard consumer credit contracts, or other forms of contracts that complying with the Consumer Credit Code: see Abacus Consumer Credit Code Compliance Manual.

Note 3

Use this checklist as an indicative list only. It is intended as a guide to matters to consider when you are drafting your Terms and Conditions. It does not purport to be exhaustive.

Ω State that the Mutual Banking Code of Practice applies to the product or service:

Part B

Ω State that general descriptive information about the operation of the account is available: **D2**

Ω State the nature of any standard fee or charge: **D 3**;

Ω State any fees and charges that apply to the Financial Institution product or service: **D 3.1**;

Ω State the manner in which you will give notice to a Customer of any variation to:

- the interest rate that applies to the product or service: **D3.1, 3.2**;
- the Terms and Conditions: **D 4**

Ω **For a savings account, term deposit or loan contract**

- state the method by which interest, if any, is calculated and the frequency with which it is credited or debited in relation to the Financial Institution product or service. If relevant, state that more than one interest rate may apply.

- state that the Financial Institution may unilaterally vary:

- the interest rate;
- the method of calculating the interest rate; and
- the frequency with which interest may be debited or credited

- state the frequency with which the Financial Institution will provide statements of account

- state that the Financial Institution will give to the Customer, upon request, information on the current interest rate and current fees and charges

For a deposit account

- state any minimum balance requirements; and

- state any restriction on depositing money in or withdrawing money from the account

For payment services – state how a Customer or the Financial Institution may alter or stop the payment service

For term deposits – state:

- the manner in which the Financial Institution will pay interest and repay the principal;
- the manner in which the Customer may deal with the term deposit at

maturity; and

- the nature of any charge or variation to any interest rate resulting from the Customer withdrawing the term deposit before maturity ¶127.2

For loan contracts – state repayment details

[This is optional]

For direct entry operating on an account – state the Financial Institution may reverse a direct credit that the Financial Institution has received on behalf of the Customer's account if the Financial Institution for any reason whatsoever, does not receive value for the direct credit

[This is optional]

For a deposit account – include:

- a contractual set off clause permitting the Financial Institution to apply the balance of the Customer's savings account or term deposit towards the repayment of any debt, other than a debt regulated by the Consumer Credit Code, that the Customer owes to the Financial Institution.

[This is optional]

For a payment instrument – include terms stating:

- that the Customer must notify the Financial Institution as soon as possible after the loss, theft or misuse of any of the Customer's payment instruments;
- the method by which a Customer can notify the Financial Institution of the loss, theft or misuse of any of the Customer's payment instruments; and
- the Customer's liability in relation to the loss arising from the loss, theft or misuse of any of the Customer's payment instruments.

[This is optional]

For a subsidiary card – include terms that:

- set out the primary cardholder's liability for any debt incurred by the subsidiary cardholder using the card;
- inform the primary cardholder how to cancel the subsidiary card;

[This is optional]

For a deposit account – include terms that:

- allow the Financial Institution to close the account although in credit;
- specify how a Customer may close a term deposit account before maturity, setting out any penalty for doing so;
- specify any fees and charges for closing an account
- set out the fees and charges or other penalty that may apply for putting the account into debit

[This is optional]

For a deposit account – include a term setting out the fees and charges or other penalty that may apply if the Customer puts the account into debit.

Appendix 2: Code of Operation for Centrelink Direct Credit Payments

This Code, which was first developed as the Department of Social Security Code of Operation, supersedes all previous versions of the Code.

The *Commonwealth Services Delivery Agency Act 1997* came into effect on 1 July 1997.

It established 'Centrelink' as the operating name of the Commonwealth Services Delivery Agency. Centrelink's primary role is to deliver services and programs for policy departments, such as the former Department of Social Security (now known as the Department of Family and Community Services), under contractual arrangements.

The Code is an agreement between Centrelink and representative bodies of financial institutions on recovery procedures and arrangements to apply when Centrelink Customers' accounts are overdrawn.

In accordance with the *Social Security (Administration) Act 1999* Centrelink payments are to be paid to the credit of an account maintained by the Centrelink Customer with a Financial Institution.

Should a Customer discover that their account has been overdrawn they should immediately contact their Financial Institution. These overdrawn amounts may be caused by miscalculation or by not allowing for the Financial Institution fees and charges, which may apply to some accounts from time to time. However, this Code does not extend to cover any unauthorised debt.

Financial Institutions occasionally make mistakes and if this has caused a Customer's account to be overdrawn then the Customer should refer the matter to the financial institution for correction. All costs and charges associated with such mistakes will be refunded by the Financial Institution.

Provided there is no unauthorised debt of a Customer, the following procedures will apply:

(a) consultation with the Customer on the debt and, where necessary, the level of repayments over a period. Customers can be assured that they will at least be able to retain 90% of their Centrelink payments in any fortnightly period.

The procedure is outlined in more detail in the principal document under the heading of *Scope*;

(b) a Customer will be able to request their Financial Institution to review the debt should the Customer's circumstances change; and

(c) the appointment of a liaison officer within Centrelink to deal with any Customer or Financial Institution difficulties.

All parties to the Code recognise the subsistence nature of Centrelink payments and the need for recipients of income support payments to have access to a reasonable amount of money to live on. Participating Financial Institutions have agreed that they will take this into account when considering the actual amount they should recover each fortnight (the Code only specifies a minimum amount Customers can retain, not a standard amount).

All parties to the Code recognise that this Code does not endorse unauthorised debt to be incurred with a Financial Institution, nor will the Code limit the action a financial institution may take to recover such debt.

The Code does not override the EFT (electronic funds transfer) code of conduct. The Code is to be reviewed from time to time. All Parties to the Code will be consulted during the course of any review.

The arrangements which have been agreed will be publicised by Centrelink. Financial institutions will ensure that their Customers also are given information on the Code.

March 2002

CODE OF OPERATION FOR CENTRELINK DIRECT CREDIT PAYMENTS

1. Introduction

This Code has been developed by the:

- Australian Bankers' Association (ABA) for member banks;
- Credit Union Services Corporation (Australia) Limited (CUSCAL) for member credit unions; { Creditlink Services Limited (Creditlink); { Australian Association of Permanent Building Societies (AAPBS) for member institutions; { Members Equity; and { Centrelink.

2. Definitions

Customer - means a person receiving a social security pension, benefit or allowance.

Financial Institution - means any Financial Institution which is a member of the ABA or CUSCAL or the AAPBS or Creditlink.

Unauthorised debt - means a debt that is incurred when a Customer knowingly transacts on their account in order to gain funds from a Financial Institution that they are otherwise not entitled to and have no other sources of funds to cover the overdraw.

3. Scope

The Code identifies the principles and procedural arrangements for the administration of the direct crediting of income support payments identified in the accompanying Payment Schedule into accounts held with Financial Institutions by Customers.

The aim of the Code is to ensure that recipients of income support payments have sufficient income to maintain adequate living standards.

This Code does not override or replace procedures established in legislation (such as bankruptcy legislation) or the Electronic Funds Transfer (EFT) Code of Conduct.

The Code does not extend to cover unauthorised debt. Nor does the Code extend to cover the situation where a Financial Institution makes a payment in advance at the request of a Customer.

The Financial Institution may report an overdrawn amount to a credit reporting agency where this is allowed under the credit reporting provisions of the *Privacy Act 1988*. If this action is taken it may affect the credit rating of the Customer.

The Financial Institution may also take legal action against the Customer to recover the outstanding amount. In the case of fraud, the Financial Institution may also refer the matter to a law enforcement agency for criminal charges to be laid.

4. Payment Types

The payment types to which this Code applies are listed in the Payment Schedule that accompanies this Code.

5. Points of Contact

Where a Customer has been receiving regular payments into their account for some time and a due payment is not received and they know of no dealings with Centrelink which might have delayed it, they should first contact their Financial Institution to ensure that there has not been any processing problems. Once it is established that the Financial Institution has not received the payment the Customer should contact Centrelink to resolve the matter.

Where there has been a change of any kind or it is the first payment and it has not been received, the Customer should first contact Centrelink to determine that the payment has actually been sent.

Should a Customer feel that their Financial Institution is not fully complying with the Code they should first contact the Financial Institution and try to resolve the matter. Where they are not satisfied, they should raise their concerns with Centrelink.

6. Crediting an Account

In accordance with the *Social Security (Administration) Act 1999* income security payments made by Centrelink are to be paid to the credit of an account maintained by the Centrelink Customer with a Financial Institution. Accordingly, to enable Centrelink to process the payment, the Customer must provide to Centrelink the name of the Financial Institution, the type of account (cheque/savings), the Branch where the account is held, the Branch (BSB) number, the account number and the name(s) in which the account is held.

A Customer who is already receiving a payment in one account can request Centrelink to arrange for it to be transferred to another specified account with the same Financial Institution or another Financial Institution. However, a Customer should not request Centrelink to transfer payments to any other specified account in order to avoid repayment of a debt.

7. Delay in Availability of Funds

If a Financial Institution is contacted by a Customer about a payment not being available because the institution has made a processing error, it should advise the Customer accordingly and resolve the problem immediately.

If a Financial Institution is contacted by a Customer about a payment not being available and no processing error has occurred it should advise the Customer to contact Centrelink.

If Customers' payments generally are likely to be affected as a result of processing problems or other circumstances within the Financial Institution that will result in a delay of Customers' payments, the Financial Institution should immediately advise Centrelink's user Financial Institution. Centrelink's user Financial Institution will immediately liaise with Centrelink regarding the situation.

A Financial Institution is not responsible for the effects of late delivery of data by Centrelink or its agents to the institution.

8. Charges on Customers' Accounts

Financial Institutions may impose charges against a Customer's account only if they are consistent with normal Financial Institution practices, ie.

- government charges and taxes where applicable;
- charges and fees applicable to the type of account operated by the Customer; and
- penalty and/or interest charges for debts accepted by the Customer for which the Customer is legally responsible.

No penalty, interest or other charges will be imposed on a Customer's account(s) if discrepancies occur as a result of an error by an institution.

Charges imposed on a Customer's account(s) will not exceed the normal rates of the institution concerned at the time the charges are imposed.

9. Debit Accounts

A major aim of the legislation providing for income support payments as identified in the Payment Schedule (namely, the *Social Security Act 1991*, the *Student Assistance Act 1973*, the *Farm Household Support Act 1992* and the *Family Assistance Act 1999*) is to ensure that all payments made under the legislation are available for the recipient's use before other claims on the payment are considered.

Subject to the exception specified in this document under the heading '*Item 3 - Scope*', where an account of a recipient is credited with an income support payment and that recipient has a debt to the Financial Institution for which he or she is legally responsible, the Financial Institution will allow income support recipients to withdraw an amount equivalent to a minimum of 90 per cent of that payment irrespective of the balance of the account at the time of withdrawal or of any other rights the Financial Institution may have in relation to that payment, unless the recipient agrees in writing to a lesser percentage. This will apply in respect of each income support

payment until the debt is repaid in full.

In all debt recovery situations, the percentage of income support payment that can be withdrawn will have regard to a case by case assessment of such factors as:

- the Customer's needs, taking into account the subsistence nature of income support payments;
- any actions by the Financial Institution which may have contributed to the fact that the Customer is not legally entitled to the full amount of the payment;
- where the unauthorised debt exceeds the usual Centrelink payment being credited to the Customer's account, should this be the case, the Financial Institution will consider, in accordance with this Code, future Centrelink payments as recovery of the debt; and
- any other special circumstances.

An account may only be 'frozen' if reasonable efforts have been taken to contact the Customer and the Customer has not contacted the Financial Institution. A 'frozen' account must be reinstated as soon as the Customer makes contact. Any supposed debt must be discussed according to the procedures set out in this Code.

Arrangements between Financial Institutions and recipients of income support payments will be recorded in a written form held by the Financial Institutions. The written record will also include details of any disagreement between the Customer and the financial institution and the advice given to the Customer on his or her rights and further avenues for resolution of the disagreement.

10. Enquiries and Disputes

In the event of uncertainty or a dispute arising about the handling of social security payments by Centrelink or a Financial Institution, a Customer should raise the matter directly with the Centrelink liaison officer and/or with the Financial Institution.

Centrelink's liaison officer and the institution will co-operate in investigating these issues. Each Financial Institution will have its own dispute resolution process. Customers will be notified of these rights.

The institution's decision in relation to a dispute is to be made on the basis of all established relevant facts and not on the basis of inferences unsupported by evidence.

11. Overdrawn Accounts

A Customer can limit the possibility of unintentionally overdrawing their account by keeping their account transaction receipts/records and checking the available balance to ensure that the transaction amount has been deducted from their account balance.

12. Dissemination and Publicity

All Centrelink offices and branches and offices of all Financial Institutions that are member organisations and that have dealings with Centrelink Customers are to be made aware of this Code and its provisions.

The nature and existence of the Code should be publicised to Customers. Centrelink will make available a suitable pamphlet for distribution. The pamphlet may summarise the Code but will mirror its content.

Copies of the Code will be available to Customers on request through Centrelink offices.

13. Review of the Code

This Code and the attached Schedule will be reviewed when changes are required but must be reviewed every two years.

The Code remains in force until changes are ratified by all parties concerned (ie those listed at Item 1 of this Code).

Payment Schedule

The payment types listed hereunder are covered by the 'Code of Operation for Centrelink Direct Credit Payments':

- Age Pension
- Disability Support Pension
- Wife Pension
- Carer Payment
- Widow B Pension
- Parenting Payment
- Youth Allowance
- Austudy Payment
- Newstart Allowance
- Mature Age Allowance
- Sickness Allowance
- Special Benefit
- Partner Allowance
- Carer Allowance
- Crisis Payment
- Disaster Relief Payment
- Dairy Exit Program
- Sugar Industry Assistance
- Abstudy
- Farm Help
- Farm Household Support
- Exceptional Circumstances Relief Payment
- Drought Relief

The following payments are also covered by the Code where the Customer is also in receipt of one of the above payments types:

- Family Tax Benefit - Part A
- Family Tax Benefit - Part B
- Double Orphan Pension

Appendix 3: Australian Standard TM Customer Satisfaction – Guidelines for complaints handling in organizations (ISO 10002:2004, MOD) [EXTRACTS]

4 Guiding Principles

4.1 General

Adherence to the guiding principles set out in 4.2 to 4.10 is recommended for effective handling of complaints.

4.2 Visibility

Information about how and where to complain should be well publicised to customers, personnel and other interested parties.

4.3 Accessibility

A complaints-handling process should be easily accessible to all complainants. The characteristics of an accessible complaints-handling process include the provision of readily accessible information about the process, flexibility in the methods of making complaints (including that the process for submitting complaints should be flexible and include provision for oral complaints or complaints in other formats), toll-free or local call fee facilities for making complaints and special arrangements and/or support should be made available for complainants with specific needs (including availability of interpreters and cross-culturally trained staff).

Information should be made available on the details of making and resolving complaints. The complaints-handling process and supporting information should be easy to understand and use. The information should be in clear language. Information and assistance in making a complaint should be made available (see Annex B), in whatever languages or formats that the products were offered or provided in, including alternative formats, such as large print, Braille or audiotape, so that no complainants are disadvantaged.

4.4 Responsiveness

Receipt of each complaint should be acknowledged to the complainant immediately. Complaints should be addressed promptly in accordance with their urgency. For example, significant health and safety issues should be processed immediately. The complainants should be treated courteously and be kept informed of the progress of their complaint through the complaints-handling process.

4.5 Objectivity

Each complaint should be addressed in an equitable, objective and unbiased manner through the complaints-handling process (see Annex C).

4.6 Charges

Access to the complaints-handling process should be free of charge to the complainant.

4.7 Confidentiality

Personally identifiable information concerning the complainant should be available where needed, but only for the purposes of addressing the complaint within the organization and should be actively protected from disclosure, unless the customer or complainant expressly consents to its disclosure.

4.8 Customer-focused approach

The organization should adopt a customer-focused approach, should be open to feedback including complaints, and should show commitment to resolving complaints by its actions.

4.9 Accountability

The organization should ensure that accountability for and reporting on the actions and decisions of the organization with respect to complaints handling is clearly established.

4.10 Continual improvement

The continual improvement of the complaints-handling process and the quality of products should be a permanent objective of the organization.

5. Complaints-handling framework

5.1 Commitment

The organization should be actively committed to effective and efficient complaints handling. It is particularly important that this is shown by, and promoted by, the organisation's top management.

A strong commitment to responding to complaints should allow both personnel and customers to contribute to the improvement of the organization's products and processes.

The commitment should be reflected in the definition, adoption and dissemination of policy and procedures for the resolution of complaints. Management commitment should be shown by the provision of adequate resources, including training.

....

6.4 Resources

In order to ensure that the complaints-handling process operates effectively and efficiently, top management should assess the needs for resources and provide them. These include resources such as personnel, training, procedures, documentation, specialist support, materials and equipment, computer hardware and software, and finances.

The selection, support and training of personnel involved in the complaints-handling process are particularly important factors.

....

8.1 Collection of information

The organization should record the performance of its complaints-handling process. The organization should establish and implement procedures for recording complaints and responses and for using these records and managing them, while protecting any personal information and ensuring the confidentiality of complainants. This should include the following:

- a) specifying steps for identifying, gathering, classifying, maintaining, storing and disposing of records.
- b) recording its handling of a complaint and maintaining these records, taking utmost care to preserve such items as electronic files and magnetic recording media, since records in these media can be lost as a result of mishandling or obsolescence;
- c) keeping records of the type of training and instruction that individuals involved in the complaints-handling process have received;
- d) specifying the organization's criteria for responding to requests for record presentation and record submissions made by a complainant or his or her agent; this may include time limits, what kind of information will be provided, to whom, or in what format;
- e) specifying how and when statistical non-personally identifiable complaints data are disclosed to the public.

8.2 Analysis and evaluation of complaints

All complaints should be classified and then analysed to identify systematic, recurring and single incident problems and trends, and to help eliminate the underlying causes of complaints.

....

Appendix 4: Mutual Banking Code of Practice



Final Text

Credit Union & Building Society
Mutual Banking
Code of Practice



Draft Mutual Banking Code of Practice

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Preface

Abacus will insert a suitable preface (third-party endorsement) once the Code is finalised

Part A – Introduction

This Mutual Banking Code of Practice is the industry code of *Abacus Australian Mutuals*, the association of mutual building societies and credit unions.¹ Credit unions and mutual building societies are owned by our members — this is what being a mutual means². As such, we are focused on member-benefit, community involvement, fairer fees and customer service.

Credit unions and building societies already comply with a range of regulatory requirements including:

- Responsible financial management requirements (under the *Banking Act 1959* and our regulation by the Australian Prudential Regulation Authority)
- Corporate and financial services' licensing, advice and training, and disclosure regulation (under the *Corporations Act 2001* and our regulation by the Australian Securities and Investments Commission)
- Consumer credit laws
- Privacy, fair trading and other Commonwealth, State and Territory legislation.

This Code establishes higher standards than the law requires in a range of areas, and addresses issues not addressed by the law. In adopting this Code, mutual building societies and credit unions agree to abide by the higher standards and additional requirements set out in the Code.

Who subscribes to the Code?

Most credit unions and mutual building societies subscribe to the Code—that is, they formally agree to be bound by the Code in their dealings with their members and customers. To find out if your credit union or building society is a Code subscriber, refer to the Abacus website or visit www.mutualbankingcode.org.au.

<< Website updating process to be completed prior to Code implementation >>

Structure of the Code

- Part A – Introduction
- Part B – Coverage, Commitment to comply, Relation to other laws and regulation
- Part C – Our 10 Key Promises to you
- Part D – Delivering on our Promises
- Part E – How the Code is administered
- Appendix: Definition of terms used

We can also provide you with a booklet that summarises our key promises to you.

Commencement Date

This Mutual Banking Code of Practice commences on 1 July 2009. The commitments under the Code apply to credit unions and building societies that subscribe to the Code, either from this commencement date or, if the entity subscribes to the Code at a latter date, from that latter date.

¹ More information about Abacus, and a list of Abacus affiliated financial institutions, is available at: www.abacus.org.au

² In some cases an Abacus member may be a wholly owned subsidiary of a mutual financial institution. In such cases, this Code applies to the Abacus member, if it subscribes to the Code, with necessary variations to reflect its status.

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

In this Code, “we”, “us” and “our” refers to your building society or credit union if it subscribes to the Mutual Banking Code of Practice. “You” and “your” refers to you, the reader, if you are our individual or Small Business member or customer. See *Appendix: Definitions* for other terms used in this Code.

Coverage of Code

This Code applies to our dealings with:

- Our individual and Small Business³ members or customers
- Individuals and Small Businesses who give guarantees or indemnities securing loan facilities that we provide to our members or customers
- In the case of commitments about the provision of information, prospective members or customers, and
- Any other of our members or customers to whom we may voluntarily apply the Code.

For the purposes of this Code, an entity is a “Small Business” if the entity comes within the definition of a Small Business set out in *Appendix: Definitions* when it applies for, or guarantees, a product or facility with us.

The Code covers:

- Deposit accounts, personal loans, home loans, credit and debit cards, cheques and other financial products and facilities that we issue
- Products and facilities issued by another organisation and introduced, arranged or otherwise distributed by us, but only in relation to our selection and distribution of the product or facility⁴
- Our employees, and our agents and representatives when they are acting on our behalf.

Commitment to comply with Code

We undertake to comply with this Code in our dealings with you. We will incorporate this Code by reference in our written Terms and Conditions for products and facilities to which the Code applies. We will ensure we do this within six months of the commencement date of this Code; or, if we subscribe to this Code after its commencement, within six months of the date on which we first subscribe.

Relationship to law

We will comply with this Code to the extent that applicable Commonwealth and State and Territory laws permit. If we would have to breach our statutory or common law obligations to comply with an aspect of the Code, we will not be able to comply with it. This Code cannot, and does not purport to, limit any statutory or common law obligation we may have.

Relationship to EFT Code of Conduct

We subscribe to the *Electronic Funds Transfer (EFT) Code of Conduct*, administered by the Australian Securities and Investments Commission, which also deals with banking and payment issues. To the extent of any inconsistency, this Code should be read subject to the *EFT Code of Conduct*.

Credit Union Code of Practice replaced

From the date this Code commences it replaces the *Credit Union Code of Practice*.

³ See Appendix: Definitions for a definition of Small Business for the purposes of this Code

⁴ For example, we may distribute insurance products on behalf of another organisation; in which case, this Code does not apply to the terms of policies, product documentation, claims handling etc. Part D, section 13 (*Third party products*) sets out our positive commitments in relation to these products.

Part C – Our 10 Key Promises to you

This Part of the Code contains general principles or values applying to our members and customers, as well as the broader community. Where they overlap, these principles should be interpreted by reference to the more specific and detailed commitments of *Part D – Delivering on our promises*.

1. We will be fair and ethical in our dealings with you

We will always act honestly and with integrity, and will treat you fairly and reasonably in all our dealings with you.

2. We will focus on our members

We will place a high priority on service, competitiveness and member focus. We will provide friendly and reliable service to our members and customers.

3. We will give you clear information about our products and services

We will provide clear and accessible information about our products and services, so you can make an informed decision about the product you want. We will disclose interest rates, fees and charges in an accessible and clear format and provide you with regular account statements. We will give you information on how to minimise fees and charges. Our advertising and promotional material will not be misleading.

4. We will be responsible lenders

We will lend responsibly, and will try to assist you if you find yourself in financial difficulties.

5. We will deliver high customer service and standards

We will issue and distribute products and provide services that are useful, reliable and of value to our members and customers. We will make sure our staff and agents or representatives are well trained. We will promote secure and reliable banking and financial services, and keep you up to date on any changes to the products and services we provide to you. We will treat your personal information as private and confidential.

6. We will deal fairly with any complaints

We will handle complaints promptly and fairly and provide you with information on avenues for resolving disputes if we are not able to reach agreement with you.

7. We will recognise member rights as owners

As mutual institutions our members are our owners. We will ensure that you receive information on the benefits, costs and impacts of any proposal to change our mutual structure. As far as possible, we will ensure that any information on proposals to change our mutual structure provided to you by other parties is fair and not misleading.

8. We will comply with our legal and industry obligations

We will be responsible, prudent managers of our institution, and will comply with all our obligations under the law and relevant codes of practice. We will act fairly and consistently with good banking and financial service industry practice.

9. We will recognise our impact on the wider community

Credit unions and mutual building societies have a strong community focus. We will take account of the impact of our operations on staff, the communities we serve and our members. We will promote community engagement and will contribute to community activities and projects.

10. We will support and promote the Mutual Banking Code of Practice

We will promote the Mutual Banking Code of Practice, ensure that our staff are trained to put it into practice, and support its monitoring and effectiveness.

Part D – Delivering on our Promises

1. Advertising

(1.1) We will ensure our advertising and promotional material is not misleading or deceptive. We will not mislead or deceive you either by what we say or represent, or by omission (what we fail to say or represent).

2. Information about our products

(2.1) We will make general information about our products and facilities readily available to anyone who wants it. This information will be:

- Clear, concise and accurate
- Written in plain language
- Generally sufficient to allow you to make an informed decision about the product or facility, and
- Consistent with any applicable legal requirements.

(2.2) We will make a copy of the standard Terms and Conditions applying to a product or facility available to you, if you ask us. We will not require you to apply for the product or facility first. However, depending on our product range and systems, we may need to ascertain the features or characteristics of the product you are considering before we are able to generate a copy of standard Terms and Conditions for that product.

(2.3) We will answer any questions you have about the features of our products and facilities and how they work.

3. Information on interest rates, fees and charges

(3.1) Interest rates and fees and charges applying to our products and facilities will be readily available to anyone who wants this information. The information will be clear, concise and up to date.

(3.2) In the case of products with variable interest rates, we will tell you what the current rate is when you apply for the product. We will also use a range of methods to publicise our rates. We will answer any questions you have about our interest rates and how they are calculated and applied.

(3.3) Our information about fees and charges will cover all applicable fees and charges, including non-standard fees that only apply in particular situations (for example, fees if you overdraw your account or are late in making your payments). We will also provide general information to our members and customers on how to avoid or minimise fees and charges. We will answer any questions you have about the fees applying to a product or facility. We will regularly review the effectiveness of our disclosure of fees and charges to members and customers.

(3.4) We will inform you of any fee for a one-off service (e.g., issue of a bank cheque), before you become liable to pay it.

4. Fair terms and conditions

(4.1) The standard Terms and Conditions applying to our products and facilities will be:

- Clear, unambiguous, and not misleading
- Distinct from our advertising and promotional material
- Written in a plain language style, and legibly presented.

(4.2) Our standard Terms and Conditions will be consistent with this Code and will strike a fair balance between:

- Your legitimate needs and interests as our member or customer, and
- Our interests and obligations, including our prudential obligations.

(4.3) We will not adopt standard Terms and Conditions that you are unlikely to be able to comply with.

(4.4) This section:

- Is not intended to limit our right to determine the pricing of our products and facilities on a commercial basis
- Only applies to standard Terms and Conditions entered into after the Commencement Date of this Code (see *Part A - Introduction*).

5. Reviewing fees and charges

(5.1) We will regularly review any fees and charges on our products and services, including their level.

(5.2) We will make sure any exception fees we charge (including credit card late payment fees, account overdrawn or dishonour fees, direct debit dishonour fees, cheque dishonour fees, and ATM failed transaction fees) are reasonable having regard to our costs. Our costs include charges imposed by our service providers, where applicable.

6. Responsible lending practices

(6.1) We will always act as a responsible lender.

(6.2) We will base our lending decisions, including decisions to extend existing credit facilities, on a careful and prudent assessment of your financial position. We will periodically review our credit assessment procedures and criteria for the products we issue.

(6.3) We will generally only lend amounts to you that we believe, on the information available to us, you can reasonably afford to repay. However, different criteria will apply in the case of some products, such as bridging finance arrangements and reverse mortgage loans (if we offer these).

(6.4) We expect you to provide honest and accurate information to us when applying for a loan or the extension of a credit facility. However, where it is prudent to do so, we will also undertake our own independent checks.

(6.5) We will promote the responsible use of credit to our members and customers using a range of approaches.

7. Credit limit increase offers

(7.1) If we issue a credit card or other revolving credit facility, we will act responsibly in setting and increasing the amount of credit we make available to you. We will not send you an unsolicited offer to increase your credit limit if you have a recent poor repayment history, or we are aware of other circumstances that make it imprudent for us to extend further credit to you.

(7.2) We will ensure any unsolicited offer we make to you to increase your credit limit on a credit card or other revolving credit facility that we issue includes information on:

- The new minimum payment required
- Options for lowering existing or new credit limits
- Not accepting the offer if you cannot afford further credit, you are currently having difficulties meeting your repayments, or your financial circumstances are likely to deteriorate in the near future, and
- How to tell us if you do not wish to receive offers to increase your credit limit in the future.

8. Reverse mortgage loans⁵

(8.1) We are committed to responsible lending practices in relation to reverse mortgage loans (if we issue or distribute these products).

(8.2) We will only introduce or arrange the reverse mortgage loans of product issuers that:

- Belong to SEQUAL and adhere to its Code of Conduct (as amended from time to time),⁶ or
- Adopt policies and practices that are consistent with the SEQUAL Code.

(8.3) If we issue a reverse mortgage loan ourselves, we will:

- Belong to SEQUAL and adhere to its Code of Conduct (as amended from time to time), or
- Adopt policies and practices that are consistent with the SEQUAL Code.

(8.4) We will ensure that our staff and agents who introduce, explain, arrange, finalise or otherwise deal with reverse mortgage loans are properly trained to undertake the functions or role they perform in relation to these products. Our training will be consistent with generally accepted industry standards. Our training will comprehensively address the steps prospective borrowers should take to ensure they make a fully informed decision about a reverse mortgage loan.

9. Joint accounts

(9.1) If you are opening a joint account, we will make general information about your rights and responsibilities as a joint account holder available to you. This will include information on how to change the authorisations to operate a joint account. We will explain this information if you ask us.

10. Subsidiary cards

(10.1) When issuing a subsidiary credit or debit card at your (the primary cardholder's) request, we will provide you with general information on your liability for debts incurred by the subsidiary cardholder when using their card. This information will also set out our procedures for stopping or cancelling a subsidiary card.

(10.2) If you instruct us to cancel a subsidiary card, you will not be liable for any losses resulting from continuing (unauthorised) use of the subsidiary card following cancellation, provided you:

- Take all reasonable steps to ensure the card is destroyed or returned to us; and
- Do not act fraudulently or otherwise cause the loss.

11. Safeguards for co-borrowers

(11.1) We will not accept you as a co-borrower if we are aware, or ought to be aware, that you will not receive a benefit from the loan or other credit facility.

(11.2) Before we accept you as a co-borrower under a loan or other credit facility, we will provide you with general information on your liability to repay the full amount of the debt.

(11.3) If you are jointly and severally liable for a loan or other credit facility, we will allow you to terminate your liability for future financial accommodation if you give us written notice. However, this right only applies when we can terminate any obligation we have to provide further credit to another borrower under the same credit facility.

12. Safeguards for loan guarantors

Application of this section

⁵ See *Appendix: Definitions* for a definition of reverse mortgage loan

⁶ For more information about SEQUAL go to www.sequal.com.au

(12.1) In this section only, “you” refers to an individual or Small Business⁷ that gives a guarantee that secures a loan or other credit facility that we provide to our member or customer. So, in this section, “you” may not be our member or customer.

(12.2) We may require a director of a Small Business to provide a personal guarantee for a proposed or existing loan facility. Only paragraphs (12.3), (12.4), (12.12), and (12.15) of this section apply in this situation. Where we obtain a new guarantee from such a director we will follow the procedures in (12.3), (12.4), (12.12) and (12.15).

No unlimited liability

(12.3) Subject to (12.12), we will only accept a guarantee from you if your liability under the guarantee is limited to:

- A specific amount, plus interest and enforcement costs, and/ or
- The value of a specified security at the time of recovery.

The specific amount of your liability under the guarantee may be increased with your written consent, subject to law.

Before we obtain a guarantee from you

(12.4) Before we obtain a guarantee from you, we will give you a prominent notice that:

- You can refuse to enter into the guarantee
- You have a right to limit your liability in accordance with this Code and as allowed by law
- There are financial risks involved
- You should consider the information and documents we provide to you, and seek further information or clarification if required
- You should seek independent legal and financial advice before entering into the guarantee. (In some circumstances, we may require that you obtain such advice as a condition of accepting your guarantee.)

(12.5) We will give you a copy of:

- The credit contract or proposed credit contract to which the proposed guarantee relates, and
- Details of any security to be provided by the borrower in support of the loan.

(12.6) In addition, we will provide you with all the information available to us that, in our reasonable view, a careful and prudent prospective guarantor might wish to consider regarding:

- The financial position of the borrower, and
- The borrower’s credit history for the previous twelve months (including details of any notices of demand, defaults, overdrawn accounts or other evidence of borrower distress known to us).

This commitment does not include providing records of our *opinions* regarding the borrower, the proposed loan or related matters. We will also provide you with copies of relevant account statements and other documents on request.

(12.7) We will tell you if any existing loan or other facility we have given the borrower will be cancelled, or if the loan or other facility will not be provided, if the guarantee is not provided.

(12.8) We will not accept a guarantee from you unless the borrower agrees to the release of the information and documents referred to in this section to you.⁸

(12.9) We will not ask you to sign a guarantee, or accept it, unless we have:

- Provided you with the information referred to in paragraphs (12.4) to (12.7), and

⁷ See *Appendix: Definitions* for a definition of Small Business for the purposes of this Code.

⁸ Where security is provided by a third party who is not the borrower, we will give you full details of any security if the third party agrees to our doing so.

- Given you until at least the next business day to consider that information. However, we are not obliged to do this if you have previously obtained independent legal advice about the guarantee, having received the information referred to in paragraphs (12.4) to (12.7).

Execution of guarantee

(12.10) We will not give the guarantee to the borrower, or someone acting on behalf of the borrower, to arrange the signing, unless the person acting on behalf of the borrower is also your solicitor. In this case, we may give the guarantee to that person to arrange the signing.

(12.11) Where we attend the signing of the guarantee, we will ensure that you sign the guarantee in the absence of the borrower.

Extensions of guarantees and new guarantees

(12.12) A guarantee may contain a provision allowing the guarantee to be extended to cover another loan in the future. However, we will not make you liable for any amount under a future loan unless we have:

- Given you a copy of the credit contract or proposed credit contract
- Provided you 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 before allowing a guarantee to be extended, and
- Obtained your written acceptance of the extension of the guarantee.

We will not accept an extension of a guarantee from you unless the borrower agrees to the release of information and documents referred to in this paragraph to you.

(12.13) We will follow the procedures set out in paragraphs (12.4) to (12.11) above before we obtain new guarantees from you.

Ongoing information

(12.14) After entering into a guarantee agreement with you, we will send you a copy of:

- Any formal demand or default notice we send to the borrower, and
- If you ask us, a copy of the latest account statement (if any) provided to the borrower.

Extinguishing liability under a guarantee

(12.15) You may at any time extinguish your liability to us under a guarantee by:

- Paying the outstanding liability of the borrower (including any future or contingent liability)
- Paying any lesser amount to which the liability of the guarantor is limited by the terms of the guarantee, or
- Making other arrangements satisfactory to us for the release of the guarantee.

Enforcement of judgment

(12.16) We will not enforce a judgment against you under a guarantee unless we have obtained judgment against the borrower, and the judgment debt remains unpaid 30 days after we demand payment from the borrower in writing. However, this commitment does not apply if:

- Any delay in enforcement against you is likely to prejudice our interests
- We have made reasonable attempts to locate the borrower without success
- The borrower is insolvent, or
- Recovery of the debt from the borrower is otherwise untenable.

13. Third party products⁹

(13.1) We may introduce, arrange or otherwise distribute products and facilities issued by other organisations. We will take steps to ensure that the third party products and facilities we

⁹ See Coverage of Code, Part B, on this Code's coverage of products and facilities issued by another organisation and introduced, arranged or otherwise distributed by us.

distribute are useful, reliable and of value to our members and customers. We will regularly review the third party products and facilities we distribute.

(13.2) We will only distribute financial products and facilities (including credit products) of issuers that belong to an External Dispute Resolution scheme, approved by the Australian Securities and Investments Commission, that covers the product in question.

14. Use of finance brokers

(14.1) If we engage with mortgage or finance brokers to distribute our products, we will require that these brokers:

- belong to the Mortgage and Finance Association of Australia or other recognised industry association, and
- are members of an ASIC-approved external dispute resolution scheme.

15. Timely, clear and effective communication

(15.1) We are committed to timely communication with our members and customers. We will generally respond to telephone and electronic messages within 3 business days. If you write to or fax us, we will generally respond within 7 days of receipt of your communication. (Timeframes for responding to complaints are set out in section 28 below¹⁰).

(15.2) We will adopt the same timeframes when communicating with a person who is acting as your duly authorised representative.

(15.3) We are committed to clear and effective communication with our members and customers. We will write our letters, notices, brochures, telephone scripts, website messages and other communications in plain language, avoiding legal and technical jargon as far as possible.

16. Account statements and balances

(16.1) We will provide you with regular account statements clearly setting out all transactions relating to your deposit and loan accounts with us. We will send these account statements to the last address you have given us. (The provision of account statements electronically is considered in section 18).

(16.2) Account statements will be sent or made available at least every 6 months. We will provide you with more frequent periodic account statements if you request these. We will also comply with our obligations in relation to account statements under consumer credit and other applicable laws.

(16.3) Account statements will include clear information about our fees and charges incurred on your account during the statement period. Fee amounts will not be bundled, but will be broken down by transaction type and channel. The impact of any applicable fee-free limit or rebate scheme will also be indicated.

(16.4) We will provide a simple method(s) of access for you to find out the balance on your account. We will not impose any fees for using this access method.

(16.5) This section does not apply to:

- Passbook accounts, and
- Accounts that are dormant.

¹⁰ Separate timeframes apply for our commitments under section 19 (in relation to provision of documents) and section 22 (in relation to provision of payout figures).

17. Notifying changes to your account

(17.1) We will give you at least 20-days advance notice before we do any of the following in relation to your account:

- Introduce a new fee or charge
- Increase a fee or charge
- Reduce the number of fee-free transactions permitted on the account
- Vary the minimum balance to which an account keeping fee applies
- Vary the method by which interest on your account is calculated, or
- Vary the circumstances when interest is credited or debited to your account.

(17.2) We will notify you of an increase in the interest we charge on your loan or credit facility no later than the day on which the change takes effect. We will also advise you of any new minimum repayment amount.

(17.3) We will notify you of other changes to your account when we next communicate with you (subject to any applicable laws).

(17.4) We may use various methods to notify you of changes to your account referred to in this section. Subject to applicable laws, these may include one or more of: notification on or with your account statement; notification by letter or other direct communication; announcement via our newsletter or website; or advertisement in the local media or national media. In deciding the method of notification, we will consider the nature and extent of the account change, as well as the cost and effectiveness of different methods of notification.

(17.5) Any commitment we may make to notify you at your address of changes to your account is subject to your keeping us informed of your current contact address.

18. Provision of statements and notices electronically

(18.1) We may have a facility for making account statements, notices or other prescribed account information available by electronic means. If so, and if the law permits us to do so, we may invite you to consider accessing this information electronically rather than receiving it in paper form. In the case of existing accounts, we will always give you the option of continuing to receive your account statements, notices and other account information in paper form.

(18.2) If we offer a product on the basis that statements and other account information will *only* be available electronically, we will:

- Clearly disclose this to you, and
- Obtain your specific positive acknowledgement of the arrangement

before we issue or distribute the product to you.

(18.3) We will only make your account statements, notices and other prescribed account information available at a secure electronic site requiring a pre-arranged and secure access method. (Also see section 23.)

(18.4) We will provide prescribed information to you electronically in a form that allows you to retain the information (for example by printing and saving it). Our electronic communications will be comparable with equivalent paper documents in terms of the clarity and content of the information provided.

19. Copies of documents, statements and other information

(19.1) At your request, we will send you a copy of any of the following documents relating to a product or facility you have, or have had, with us:

- A loan application
- A contract (including standard Terms and Conditions, and details of interest rates and fees and charges)
- A mortgage or other security document

- An account statement, and
- A notice we have previously given you about us exercising our rights (unless the request is for a notice issued more than two years before the discharge or termination of the contract to which the notice is related).

This section does not apply to documents we are no longer legally required to retain.

(19.2) If a copy of a document is requested, we will provide it to you:

- Within 14 days, if the original came into existence 1 year or less before you make the request, and
- Within 30 days, if the original came into existence more than 1 year but less than 7 years before you make the request.

If for some reason we are unable to provide a document within these timeframes, we will advise you in writing, together with the expected timeframe for providing the document.

(19.3) Documents may be provided in the form of a computer-generated record.

(19.4) We may charge a reasonable fee, reflecting our costs, for providing a document.

(19.5) Access to your personal information is considered more generally in section 23.

20. Stopping direct debit and recurring payment arrangements

(20.1) We will promptly stop a direct debit facility linked to your transaction account with us whenever you ask us to do so.

(20.2) We will accept and process your complaint that a direct debit facility was not authorised or is otherwise irregular. However, we may request that you endeavour to resolve the complaint with the merchant or supplier first.

(20.3) Where possible, we will assist you to seek a chargeback of any unauthorised payments debited to your scheme credit or debit card account (e.g. MasterCard, AMEX or VISA card) pursuant to a recurring payment arrangement. The situation may occur, for instance, where payments continue to be debited to your account even though you have cancelled the recurring payment arrangement. Also see section 21 (*Seeking a chargeback on your behalf*).

21. Seeking a chargeback on your behalf

(21.1) If you have a scheme credit or debit card (e.g., a MasterCard, AMEX or VISA card) issued by us, we may be able to claim a chargeback on your behalf if a problem (such as unauthorised use, or non-delivery of goods ordered) arises.

(21.2) If you dispute a transaction with us within the required timeframe and we can seek a chargeback on your behalf, we will do so without delay. We will also:

- Ensure we claim the chargeback for the most appropriate reason, and
- Not accept a refusal to chargeback by the merchant's financial institution unless it is consistent with the relevant card scheme rules.

(21.3) We will make general information about the chargeback mechanism readily available to our members or customers, emphasising the need to promptly report problems to ensure a claim can be made within relevant chargeback periods. We will make this general information on the chargeback mechanism available in our product information and on our web site (if we have one).

(21.4) Whether through our standard Terms and Conditions or otherwise, we will not seek to reduce the period or circumstances in which we can seek a chargeback on your behalf under the card scheme rules applying to your scheme credit or debit card.

22. Closing your account

(22.1) If you ask us to close your account, we will do so as long as you have discharged all of your obligations under the applicable Terms and Conditions and any mortgage or other similar arrangements relating to the account. We may require that you put your request in writing.

(22.2) We will provide you with a payout figure for your loan or credit facility within seven business days, if you request this.

(22.3) Unless there are exceptional circumstances, we will give you at least 14 days advance notice before closing your account when the standard Terms and Conditions of the account permit us to do so (i.e., in circumstances where you have not sought to close the account yourself).¹¹ We will notify you at the last address you have given us, or by other legally permissible means.

23. Information privacy and security

(23.1) We will comply with the Privacy Act 1988 and the *National Privacy Principles*, including with respect to credit reporting and the collection, storage, use and disclosure of your personal and financial information.

(23.2) We will treat your personal and financial information as private and confidential. We will not disclose that information to any other organisation unless:

- We are required to by law (for example, under anti-money laundering laws)
- There is a duty to the public to disclose the information
- Our interests require disclosure (for example, to prevent fraud)
- You ask us to disclose the information, or
- We have your permission to do so.

(23.3) We will take reasonable steps to protect your personal and financial information from misuse or loss, and from unauthorised access, modification or disclosure. We will regularly review the security and reliability of our banking and payment services.

(23.4) We will give you access to the information we hold on you if you ask us to, subject to certain exceptions. These are set out in our Privacy Policy and are consistent with the National Privacy Principles. We will correct any error that you bring to our attention. If your details change, tell us as soon as possible—we will update our records promptly.

(23.5) We will make a copy of our Privacy Policy available to you on request and will publish it on our web site, if we have one. We will tell you about the Policy if you ask us.

(23.6) Subject to applicable laws, the commitments made in this section do not prevent us from disclosing personal and financial information to other companies in a group of companies that we belong to (where applicable).

(23.7) We will comply with all applicable laws relating to the retention of your personal and financial information.

Raising awareness of security issues

(23.8) We will actively seek to promote awareness of security issues, including Internet security, to our members and customers, using a range of approaches.

(23.9) We will provide information on topics including:

- Protecting your payment methods (e.g., payment cards and cheque books) and equipment (e.g., your computer if you bank online) from unauthorised use

¹¹ "Exceptional circumstances" would include circumstances where we reasonably suspect fraud or criminal activity involving the account.

- What to do if you believe a security breach of your account or unauthorised transaction has occurred, and
- The possible consequences of not reporting security breaches on your account promptly.

(23.10) We will avoid communications practices that are inconsistent with our messages about avoiding fraud. For instance, we will not:

- Use unsolicited email or telephone contact to ask you to disclose your personal banking information or secure code or password to us
- Send you unsolicited emails that include attachments, or
- Send you emails that include hyperlinks in the message.

(23.11) If you receive such communications, delete them immediately or hang up on the caller. If a message includes our brand or name or makes reference to your banking details, contact us to report the incident.

(23.12) We will provide you with options to report security breaches at any time.

24. If you are in financial difficulties

(24.1) We will work with you in a constructive way if you experience genuine difficulties meeting your financial commitments. With your agreement and commitment, we will try to assist you to overcome those difficulties. We will do this whether or not you have a right to seek a hardship variation or change under the consumer credit laws.¹²

(24.2) Without limiting (24.1), we will have procedures in place to ensure we:

- Adhere to hardship variation or change provisions of the consumer credit laws
- Respond promptly to any request or application made to us. (We may also initiate contact to discuss your financial situation)
- Genuinely consider your application or request, taking account of your situation. However, we will only be able to do this if you provide us with the financial information and documents we may reasonably need to assess your situation for ourselves
- Encourage you to keep making whatever payments you can while we are considering your request
- Consider longer term as well as short-term financial issues when they are relevant. If you are experiencing longer term difficulties, we will try to develop an appropriate solution with you to allow you to meet your obligations
- Not list your default on your credit reference file while we are considering your application or request
- Where you have made an application or request in respect of a debt, not sell that debt to a debt buy-out business while we are still considering the application or request
- Suggest other options or avenues that may be available to you, if we are unable to agree to your application or request
- If we agree on a plan to assist you, summarise this in a letter to you
- If we are unable to assist you, advise you promptly in writing, and
- Refer you to a Financial Counselling or similar service in appropriate cases (subject to availability).

25. Working with your representative

(25.1) You may choose to be represented or assisted by another person whom you authorise to act on your behalf in negotiations with us. For instance, you may be represented by a Financial Counsellor, community worker, solicitor, family member or carer. We respect your right to be represented, and will work with your duly authorised representative if you have one.

¹² See s66 – s69, Uniform Consumer Credit Code.

26. Debt collection and legal action

(26.1) We and our agents will comply with *Debt collection guideline: for collectors and creditors* (October 2005) of the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission (as amended from time to time).¹³

(26.2) If you fall behind with your payments, we will contact you and seek to negotiate a mutually acceptable repayment arrangement with you, having regard to your financial circumstances as a whole as well as your obligations to us. If you cooperate with us and commit to dealing with the debt, we will work with you (or your representative if you have one). Where relevant, we will draw your attention to our procedures covering members or customers in financial difficulties (see section 24).

(26.3) We will send a written default notice to the last address you have given us, and will give you an opportunity to pay any amount outstanding on an account with us, before we commence legal action against you.¹⁴ The default notice will specify the date after which we are lawfully entitled to commence legal proceedings to recover the debt. The notice, or an accompanying letter, will invite you to contact us to discuss your options.

(26.4) Should we exercise our right to combine your accounts, we will inform you promptly after doing so.¹⁵ We will also comply with any applicable requirements of the *Code of Operation for Centrelink Direct Credit Payments*.

(26.5) We will not seek recovery of, nor will we sell, statute-barred debts. We will only sell debts to debt buy-out businesses that belong to an external dispute resolution scheme approved by the Australian Securities and Investments Commission.

27. Prompt, fair resolution of complaints

(27.1) The terms "complaint" and "dispute" as used in this Code are defined in *Appendix: Definitions*.

(27.2) We have an internal process for handling complaints of our members or customers in relation to the products and facilities we issue. We also belong to one or more external dispute resolution schemes, approved by the Australian Securities and Investments Commission, to which you can take any unresolved complaint against us (if the dispute is within the scheme's terms of reference). Complaints and disputes about products or facilities distributed by us that other financial institutions have issued should normally be referred to the complaints handling and/or External Dispute Resolution scheme of the issuing institution.

(27.3) We are committed to responding to complaints and disputes in a way that is:

- Prompt and efficient
- Consistent with the law, applicable industry codes (including this Code), and good industry practice, and
- Fair to everyone involved.

(27.4) We will only be able to deal effectively with your complaint if you continue to communicate with us, and respond to our reasonable requests for information, while we are considering the complaint.

¹³ Copies of the *Debt collection guideline* and related consumer publications can be obtained from either ASIC or the ACCC (available at [Hwww.asic.gov.au](http://www.asic.gov.au)H and [Hwww.accc.gov.au](http://www.accc.gov.au)H).

¹⁴ In some cases, we are required to provide such notice by law.

¹⁵ Under the law, a financial institution may have a right to combine two or more of its customer's accounts, or in effect to treat the accounts as a single sum. This right may exist when one of the accounts is in arrears.

28. Our complaints handling process

(28.1) Our complaints-handling process will be consistent with the *Guiding Principles* and sections 5.1, 6.4, 8.1 and 8.2 of the *Australian Standard, Customer satisfaction—Guidelines for complaints handling in organizations (AS ISO 10 002:2004, MOD)*.

(28.2) Features of our complaints-handling process include:

- We provide information on how we deal with complaints, including your right to take unresolved complaints to an External Dispute Resolution scheme, in our product information, through our branches and on our web site (if we have one). We will give or send you a copy of this information if you ask us, or if you raise a concern that we are not able to resolve immediately. We will also explain how the process works.
- Our internal process covers all customer complaints, including complaints about breaches of this Code. (On Complaints about breaches of this Code, see section 30.) We will ensure our complaints handling process is adequately resourced.
- The process is free to you and accessible. We will be flexible about how complaints are made and will not require that initial complaints be made in writing (however, some complaints may subsequently need to be put in written form to be progressed).
- We will try to resolve your complaint as soon as possible—"on the spot" if we can. If this is not possible, we will adhere to timeframes set out in clauses (28.3) and (28.4) in dealing with the complaint.
- If your complaint is not resolved immediately, we will give you the name and contact details of a person in our organisation nominated as responsible for dealing with your complaint. As far as possible, this person will not be someone to whom your complaint relates (however, if we are a small organisation, this may not be possible).
- We will have a straightforward process for determining your complaint. We will not make you go through multiple internal complaints-handling personnel or processes.

If we are not able to resolve your complaint to your satisfaction we will advise you of this in writing, giving our reasons.¹⁶ Our letter will also tell you how to contact our External Dispute Resolution scheme, should you wish to take the complaint further. We will take this action within the time frames set out below.

(28.3) We will do our best to ensure that our investigation is completed, and a decision on your complaint is communicated to you, within 21 days of our being advised of the complaint. We will inform you if we need more time.

(28.4) If we are not able to resolve your complaint to your satisfaction within 45 days you may take the complaint to our External Dispute Resolution scheme, even if we are still considering it (assuming the complaint is within the scheme's terms of reference). We will inform you that you have this right within 5 business days after the end of the 45-day period.

29. External dispute resolution (EDR) schemes

(29.1) Financial services EDR schemes are independent bodies with the power to investigate disputes against scheme members, and to make decisions that are binding on their members (including requiring us to make a monetary payment to the person bringing the dispute). They must act in a way that is fair to all the parties. The schemes are free to our members and customers.

¹⁶ The requirement to provide reasons does not apply in the case of immediately resolved complaints.

(29.2) We belong to one or more EDR schemes approved by the Australian Securities and Investments Commission. We will tell you which scheme(s) we belong to if you ask us, and we will prominently disclose this in our information about complaints and disputes, and on our website (if we have one).

(29.3) Our EDR scheme(s) cannot deal with your dispute unless you have attempted to resolve the problem with us first; and *either*:

- We have made a formal proposal to resolve the complaint, and you have told us that the proposal is not acceptable to you; *or*
- At least 45 days has elapsed since you made your complaint whichever occurs sooner.¹⁷

30. Complaints about breaches of this Code

(30.1) If you believe we have breached the Code, you can make a complaint to us. If we are not able to resolve the complaint to your satisfaction and the complaint involves a claim that you have suffered loss or detriment, you may then refer the matter to the External Dispute Resolution scheme to which we belong (see sections 27 - 29). If the complaint does not involve a claim that you have suffered loss or detriment, you can report it to the Code Compliance Manager (details below).¹⁸

Code Compliance Manager
Mutual Banking Code Compliance Committee
<<CONTACT DETAILS CURRENTLY BEING FINALISED FOR CCC >>

¹⁷ There are also various limits on EDR scheme jurisdictions (e.g., monetary and time limits on claims)—EDR scheme staff will be able to tell you about these.

¹⁸ Also see *Appendix – How the Code is Administered*

Part E – How the Code is administered

Publicising the Code

1. In conjunction with Abacus, we will publicise this Code and promote our adoption of it, including in our branches. We will make copies of the Code available in our branches and will give or post you a copy on request. We will publish the Code (or a link to it) on our website, if we have one.

Training our staff

2. We will ensure that our employees, agents and representatives receive training on the Code, and that they apply it in their dealings with you.

Code compliance monitoring

3. The Code Compliance Committee is an independent committee established by the Mutual Banking Code Compliance Committee Association. It consists of: an industry representative (appointed by the MBCCCA); a consumer representative (appointed by the MBCCCA on the nomination of the Consumers Federation of Australia); and an independent Chair (appointed by the MBCCCA in consultation with ASIC).

4. The responsibilities of the Code Compliance Committee are set out in the Constitution of the MBCCCA¹⁹. These responsibilities include monitoring and reporting on compliance with the Code, and determining Code breach issues that have been referred to it. The Committee may impose sanctions on subscribers if it determines that a breach of the Code has occurred (see *Sanctions for breach of the Code* below). The Committee will publish an Annual Report on Code subscribers' compliance with the Code and the Committee's compliance activities.

5. The Code Compliance Committee may appoint a Compliance Manager to undertake compliance functions on behalf of the Committee. The Compliance Manager will report to and be directed by the Committee. Functions of the Compliance Manager may include: receiving compliance reports from Code subscribers; receiving and investigating Code breach allegations; undertaking own motion compliance inquiries; preparing reports; and supporting the Committee.

6. Any person may make a complaint about an alleged breach of the Code to the Compliance Manager. This includes: representatives of government and consumer organisations; representatives of credit unions and mutual building societies; members and customers of credit unions and mutual building societies; and other interested organisations and individuals.

7. Complaints about alleged breaches of the Code may relate to an individual incident or practice and/or to an individual Code subscriber (subject to the limitation set out in Part D, section 30 of this Code). Complaints may also relate to wide-ranging or systemic issues and/or issues potentially involving several or many Code subscribers.

Code administration and external dispute resolution

8. The Code Compliance Committee will establish referral protocols with the External Dispute Resolution schemes to which Code subscribers belong. These protocols will ensure that complaints/ disputes about alleged breaches of the Code are directed to the appropriate body in an efficient and timely manner. Consistently with Part D, section 30 of this Code, complaints received by the Code Compliance Committee that relate to claims of loss or detriment will be forwarded to the applicable External Dispute Resolution scheme for resolution.

¹⁹ The Constitution of the MBCCCA is available at: [Hwww.mutualbankingcode.org.au](http://www.mutualbankingcode.org.au)H

9. The Code Compliance Committee will also establish reporting protocols with the External Dispute Resolution schemes to which Code subscribers belong. Through these protocols, the Committee will facilitate the regular provision to the Compliance Manager of aggregated and de-identified information about Code-related complaints/ disputes considered by the External Dispute Resolution schemes.

Our compliance responsibilities as Code subscribers

10. We will be in breach of this Code if our employees, agents, or representatives fail to comply with the Code when acting on our behalf.

11. We will cooperate fully with the Code Compliance Committee and the Compliance Manager in the discharge of their functions, including the undertaking of own motion compliance inquiries and the investigation of alleged breaches of the Code by us.

12. Without limiting clause 11, we will comply with any reasonable request to provide access to information, documents and systems, which the Code Compliance Committee considers necessary to discharge its functions. We will comply with any such reasonable request except if we certify that to comply with a request would constitute a breach of either the law or our duty of confidentiality to a third party, or if legal professional privilege attaches to the information requested by the Committee. Where the law or our duty of confidentiality prevents us from disclosing information without first obtaining the consent of a third party, we will take reasonable steps to obtain that consent.

13. We accept that Code breach determinations by the Code Compliance Committee made in accordance with this Code and the MBCCCA Constitution are binding on us, and will comply with those determinations.

14. We will complete an annual compliance report in the required form on our compliance with the Code. We will submit that report within 3 months of the end of the annual reporting period, or other period determined by the Code Compliance Committee.

Sanctions for breach of the Code

15. Before making a determination or imposing a sanction, the Code Compliance Committee will ensure the Code subscriber is accorded procedural fairness, including an adequate opportunity to respond to an initial finding that it has breached the Code. In conjunction with Abacus, the Committee will develop operating procedures for ensuring procedural fairness is accorded to Code subscribers.

16. Having made a determination in relation to a Code breach, the Code Compliance Committee may (but is not required to) impose one or more of the following sanctions:

- Formally warn the subscriber
- Require the subscriber to undertake a compliance review
- Require the subscriber to undertake a staff training program on the Code
- Require the subscriber to undertake corrective advertising
- Publicly name the subscriber as non-compliant with the Code
- Advise Abacus of the subscriber's non-compliant status and/or failure to undertake a required course of action.

Amending the Code

17. As Code owner, Abacus may amend the Code from time to time. Before doing so, Abacus will consult with Code subscribers, ASIC, the Chair of the MBCCCA, the Code Compliance Committee, and other industry and external stakeholders as Abacus determines.

Reviewing the Code

18. In consultation with the MBCCCA and the Code Compliance Committee, Abacus will arrange for an initial review of the Code, to be undertaken by an independent reviewer. This will begin within 3 years of the commencement of this Code. Subsequent reviews of the Code will be undertaken at least every 5 years.

Appendix: Definitions

For the purposes of this Code, the words and phrases set out in this Appendix are understood as follows.

"The Code", "This Code" etc – Refers to the Mutual Banking Code of Practice, unless otherwise qualified.

"Code Compliance Committee" – Refers to the Mutual Banking Code Compliance Committee established by the Mutual Banking Code Compliance Committee Association, pursuant to the Association's Constitution.

"Complaint" – Any expression of dissatisfaction made to us related to our products or services, or to our complaints handling process, where a response or resolution is explicitly or implicitly expected.

"Dispute" – A complaint that we have not been able to resolve to your satisfaction.

"Guarantee" – For the purposes of this Code, a guarantee includes an indemnity, except in relation to D12.16

"MBCCCA" – Refers to the Mutual Banking Code Compliance Committee Association (see below)

"Mutual Banking Code Compliance Committee Association" – An Incorporated Association, incorporated under the *Associations Incorporation Act 1984 (NSW)*

"Reverse mortgage loan" – A loan secured over your home that does not require that you make repayments while you remain living in the home. Your debt is repaid when you vacate the property. This may occur, for instance, when you move into care, sell your home, or die.

"Small Business" – A business having fewer than: a) 100 full-time (or equivalent) people if it involves the manufacture of goods; or, b) in any other case, 20 full time (or equivalent) people.

"Our" – Refers to your building society or credit union if it subscribes to the Mutual Banking Code of Practice

"Us" – Refers to your building society or credit union if it subscribes to the Mutual Banking Code of Practice

"We" – Refers to your building society or credit union if it subscribes to the Mutual Banking Code of Practice

"You", "Your" – Refers to you, the reader, if you are our individual or Small Business member or customer.