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Australian Consumers' Association

Review of the Code of Banking Practice

July 2000

57 Carrington Road Marrickville, NSW 2204 • Telephone (02) 9577 3333 •
Facsimile (02) 9577 3377
email ausconsumer@choice.com.au
www.choice.com.au

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Code of Banking Practice Review ACA Submission

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For comment on this submission please contact:
Louise Petschler
Senior Policy Officer, Financial Services
Australian Consumers' Association
(02) 9577-3349

Executive Summary

The Australian Consumers' Association (ACA) welcomes the opportunity to comment on the Code of Banking Practice ("the Code"). The review is an opportunity to account for the significant changes in the sector since the Code's drafting, and improve protections and outcomes for consumers in the banking industry.

Consumers are increasingly dissatisfied with the standards of service they receive from banks. For example, in October 1999 ACA conducted a banking survey of 15,000 CHOICE subscribers. The 5,670 respondents reported significant concerns: more than one third felt banks treated consumers less well than five years ago, and 71% of respondents felt that their bank was mostly concerned with increasing profits. The Code review offers the industry a chance to deal meaningfully with these and other concerns.

The Code is an important but inadequate piece of self-regulation. It covers a range of areas where other regulation does not apply and has the potential to set standards for industry practice in other areas. The inadequacies of the Code are reflected in its inability to adopt a consumer-friendly framework on areas of service, disclosure and privacy, or to address a full range of transaction and credit issues. Issues that the ACA wishes to highlight for the review include:

- **Inadequacy as an Industry Code Of Practice:** The Code fails to address key elements in administration and monitoring, sanctions, consultation, frameworks for complaints resolution, review and reporting. It also represents a missed opportunity to promote best practice and better standards in the banking sector.
- **Disclosure:** Extensive inadequacies exist in relation to disclosure undertakings in the Code and the sector generally. Concerns include fees and charges, risks and costs of credit and investment products, statements of account, terms and conditions and variance, pre-contractual information, comparison rates, default information.
- **Consistency With UCCC And Related Codes Of Practice:** The Code must seek consistency with UCCC, draft FSR Bill, EFT Code and relevant statutes.
- **Coverage and Application:** The coverage and application of the Code is inadequate. The Code applies to a narrow range of transactions (excluding bills of exchange and overdrafts for example) and customer base. ACA recommends coverage be reviewed and extended, to avoid arbitrary limitations on its scope and make it a more meaningful and effective Code for consumers.
- **Community Obligations:** The Code presents an opportunity for the sector to take up the challenge of community service obligations, through mandated or strongly encouraged access, affordability and community undertakings in key areas.
- **Specific Concerns with Current Code Provisions** The submission will outline areas of concern in existing Code provisions, such as disclosure, account combinations, guarantees, privacy, account handling, allocation of liability.
- **Consumer Representation:** ACA views with concern the failure to involve consumer representatives in drafting of the Code, and emphasises the need for the review (and ongoing monitoring) to engage with consumers and advocates.

Introduction

1.1 About the Australian Consumers' Association

The Australian Consumers' Association is a not for profit, non party political consumer organisation established in 1959 to provide consumers with information and advice on goods, services, health and personal finances, and to help maintain and enhance the quality of life for consumers. Independent from government and industry, it lobbies and campaigns on behalf of consumers to advance their interests.

ACA is funded primarily through subscriptions to its magazines, including CHOICE, fee-for-service testing and related expert services. There is no government funding for the normal running expenses of ACA, and no commercial sponsorship or advertising.

The ACA has had a long-standing interest in banking policy. Our positions on tenets of disclosure, consumer protections and redress and arguments for community obligations for the banking sector have been addressed in many forums and reviews.

1.2 Overview

The Banking Industry Code of Practice fails banking consumers. Its provisions are not well known, and provide limited coverage or guidelines for standard banking activities. Despite widespread consumer dissatisfaction with banks, the Code makes no attempt to promote consumer protection, service outcomes or industry best practice.

Key consumer concerns – such as allocation of liability in disputed transactions, disclosure, privacy, and fair and fast complaints hearings – are inadequately dealt with. Others are not canvassed at all – such as direct debit and cheque clearing, debt collection, and community undertakings in access and fairness. Provisions on privacy are manifestly inadequate. Requirements for complaints handling are limited and unsatisfactory. There is no administration body to monitor compliance or sanction members for breaches, nor Code review process to engage with consumer concerns.

In many respects the Code reflects a narrow and self-defensive stance that runs contrary to the industry's stated commitment to customer service. The weaknesses of the Code are evident when compared to other industry Codes of Practice as well as the more extensive requirements of legislation and the EFT Code (and draft Code revision). Banks themselves have moved beyond the Code's limited provisions in some in-house practices. Clearly, there is enormous scope for improvement in the Code.

This submission outlines “key issues” which ACA recommends be considered through the review. These issues reflect common concerns with the inadequacies and operation of the Code. In addition, the submission sets out comment on obvious revisions required to ensure a credible and sound Code of Practice for banking.

The ACA also argues that, given the significant consumer affairs issues involved, redrafting and revision of the Code should be undertaken in consultation with stakeholders. ACA encourages the industry to provide for meaningful and informed dialogue with consumers and consumer representatives in redrafting of the Code.

2. Inadequacy of the Code as Industry Self-Regulation

The Code represents a missed opportunity for promoting best practice in the banking sector. The review offers a chance for the Code to promote leadership and innovation, a responsive approach to consumer protection and concerns, and fairness for customers.

The ACA has reservations about the effectiveness of self-regulation in financial services. However, this paper will not debate the benefits of legislative/regulatory models of consumer protection over industry codes of practice, except to emphasise the need for co-regulation and strong support for minimum standards of consumer protection which should accompany and underpin any industry code – even more importantly in an area of essential service such as banking.

The inadequacy of the Code, fragmentation and gaps in financial services regulatory coverage and confusion in oversight and monitoring contribute to unsatisfactory protection for banking consumers. The increasing complexity of the financial services market – and the increased responsibility on consumers– highlights the importance of thorough and clear consumer protection measures in banking. Given these important issues, and the role that the Code has in areas where other regulation does not exist, it is essential that the Code be revised with a consumer-friendly and responsive focus.

In assessing the current Code, it is useful to examine the Ministerial Council on Consumer Affairs (MCCA) Guide: Fair Trading Codes of Conduct: *Why have them, how to prepare them?*¹. Similarly, the draft report of the Taskforce on Industry Self Regulation² has highlighted good practice elements for Industry Codes of Practice. There are a number of important elements that are lacking in the Banking Code.

- **Consultation** – the Code reflects the limited involvement of consumer representatives and public interest groups in drafting and ongoing monitoring. This review presents an opportunity for consultation with relevant organisations, including regulatory authorities, industry and banks, consumer groups and consumers, and the Australian Banking Industry Ombudsman, amongst others. While submissions on the Code provide a start, ACA recommends that redrafting of the Code be undertaken in partnership with consumers and consumer groups.
- **Core rules** – the MCCA guidelines promote benchmarks and technical standards to cover issues such as liability, advisory services for customers and disclosure. The Code does not provide standards in important areas. For example, there are no time limits imposed for dispute handling, limited requirements for pre-contractual disclosure; no limits set on variance of terms. The Code also suffers from a failure to include sanctions or incentives for compliance.
- **Complaints and dispute mechanisms** – this issue is dealt with separately below. The Code requires redrafting to provide effective, time-limited and well-publicised avenues for internal and external dispute handling. The Code should also provide a review mechanism to capture systemic issues emerging through complaints, and a process for industry or regulatory response.

¹ Ministerial Council on Consumer Affairs Fair Practice Guide October 1996

² Taskforce on Industry Self-Regulation Draft Report, Treasury, June 2000

- **Sanctions** – The MCAA guidelines note the importance of sanctions if industry codes are to retain credibility³. The Self-Regulation Taskforce Draft Report also highlights the importance of sanctions:

*The Taskforce considers that there should be a range of sanctions that can be used by industry in order to achieve compliance depending on the nature of the problem and the consequence of non-compliance.*⁴

The importance of sanctions in industry codes has also been emphasised in Taskforce submissions. ASIC's submission highlighted the serious consequences – both for consumers and systemic integrity – of inadequate enforcement of financial services industry self-regulation.

The lack of sanctions in the Banking Code present a fundamental weakness, and raise doubts about the credibility of the Code for both industry participants and consumers. For example, there are no sanctions for breaches such as refusing to tell a customer about dispute mechanisms, not providing information on request, or not following customers' instructions in relation to account cancellation. A range of sanctions, underpinned by regulatory mechanisms, are essential for Code credibility.

- **Administration of the code** – the failure of the industry to appoint and resource an administrative body for the Code suggests a lack of commitment to its (hardly onerous) principles of conduct and disclosure. The policy framework set out by MCCA identified three factors as illustrative of industry commitment to codes of conduct: financial commitment (eg in administration); consultation (in drafting and review); and monitoring and reviewing performance. The Banking Code has performed poorly in each of these respects. Codes of Practice in other sectors have administrative bodies, in collaboration with regulators and consumer advocates.

ASIC has been responsible for monitoring finance Codes of Practice since July 1998. Before that, the Australian Payments System Council monitored compliance with the Codes. ACA supports ASIC's involvement in the monitoring of the Banking Code, and recommends collaboration with ASIC in Code revision.

In determining a more effective administrative process for the Banking Code, the ACA recommends that the industry:

- Adopt a genuine commitment to consultation with consumers;
 - Establish an appropriately resourced administrative body to oversee compliance, publicity and review of the Code;
 - Ensure regular reporting and accountable performance indicators on compliance with the Code, developed in collaboration with ASIC;
 - Provide clear guidelines for further review and updating of the Code.
- **Consumer Awareness:** The lack of an administrative body and failure of the industry to publicise the Code has contributed to a lack of consumer awareness of its existence, provisions and protections. Access and awareness are critical issues for all industry codes, but in this instance even well informed consumers would find it difficult to know about the Code's provisions and coverage. Staff training on Code provisions (outlined in clause 2.7) also require updating and extension.
 - **Review mechanism:** the review provisions outlined in the Code require redrafting, to enshrine principles of independent review, adequate consumer participation,

³ Ministerial Council on Consumer Affairs Fair Practice Guide October 1996

⁴ Taskforce on Industry Self-Regulation Draft Report June 2000, p72

opportunities for consultation and comment, and input by relevant stakeholder organisations (such as ASIC, ABIO and consumer groups).

3. Disclosure

ACA has long argued for improved disclosure provisions in the regulation of the financial services industry. Consumers remain concerned at the lack of comparability and detailed information on the financial services products – including transaction accounts, credit and loans.⁵

For consumers to make informed decisions about banking services and products, disclosure – across a range of areas – is vital. These areas include disclosure of fees and charges, truth in lending, risks and legal obligations, dispute resolution and rights of redress, and privacy principles and protection.

The Code adopts a narrow view of disclosure, which requires updating not just to ensure consistency with regulatory requirements (such as the UCCC) but also to demonstrate the industry's commitment to its consumers.

The principle of open and fair disclosure is essential for consumers. The Code's provisions are inadequate, and summaries of some areas for improvement are noted below. Rather than focus on existing Code provisions, however, ACA recommends that the review adopt revised principles to improve the industry's approach to disclosure.

These should include:

- making summary and full information available to consumers when shopping around for banking products – including loans;
- full disclosure of all fees and charges on all product lines, including frequency of fees, methods of charging and regular statements of fees charged;
- in credit arrangements, compliance with UCCC guidelines and mandatory disclosure of full costs of credit, loan details, arrangements for default and debt collection, and undertakings to provide updates regularly and on request;
- undertakings to inform consumers of full terms and conditions (and cost implications of these conditions), including dishonour/overdraw charges, account combination practices, debt obligations, and collection;
- a commitment to provide information on request about consumer accounts and services, in a free or low-cost, accessible format.

As examples of current inadequacies ACA notes improvements required in the Code:

- clause 2.1/7.1: information on terms and conditions for consumers – not just customers - when comparing products. This information should include provision of contract documents, fees and charges, and detailed terms on request;
- clause 2.3: provide increased disclosure of all fees and charges (not “standard” fees), for example at point of transaction, in clear and concise forms;
- clause 2.3/3.1: ensure compliance with UCCC requirements regarding consumer credit, and extend these disclosure principles to all credit products;
- section 6 – operation of accounts: the current range of disclosure provisions are inadequate and fail to meet consumer expectations on the form and availability of information about their accounts. Obligations placed on consumers in the Code also appear out of context – the Code is about banks meeting standards of practice;

⁵ ACA's Bank Satisfaction Survey found that over half of our respondents did not agree that it was easy to find the best banking product for them.

- section 9: protect consumers from variations in terms and conditions by increasing notice periods and providing guidelines for changes to “fee free” floors and related (fee attracting) conditions;
- clause 14.1: improve guidelines for information included in and frequency of account statements, including an obligation on the bank to provide consumers with full details of account records and transactions upon request;
- establish requirements for disclosure of loan details, banning the use of “shadow ledger” practices to withhold up to date credit/default information from customers;
- promote adoption of a comparison rate in advertising credit products;
- seek consistency with the draft Financial Services Reform Bill and disclosure requirements for consumer credit under the UCCC;
- clause 18: improve provisions relating to advertising, to encourage adoption of truth in lending (via a comparison rate) and promote accuracy.

4. Coverage

The ACA recommends that the Code’s coverage be reviewed and extended. As currently drafted, the code applies only to a narrowly defined range of banking services to defined customers (ie an individual who acquires a banking service that is wholly or exclusively for his or her private or domestic use). The Code excludes from coverage service in relation to a bill of exchange; a variation of a term or condition of a facility; and unauthorised overdrafts.

By contrast, the Uniform Consumer Credit Code applies to natural persons and to strata corporations where the credit is wholly or predominantly for personal, domestic or household purposes. Recently, the terms of the Australian Banking Industry Ombudsman scheme were amended to include coverage of small business disputes (consistent with draft Financial Service Reform Bill) and customer complaints across any retail activity in a bank group (including finance companies). The Code should encompass the ordinary range of transactions that consumers undertake in banking.

A related issue is the approach taken by the Code in favouring a narrow and self-protective interpretation of industry practices and principles for action. For example, the Code does not incorporate reference to fairness (in all circumstances), best practice, or consumer rights and access within its overall framework for the sector.

The ACA argues that both consumers and participants would benefit from a Code which expressly encourages innovation, accessibility, fairness, and good practice, with an explicit recognition of consumer protection concerns. These principles should be adopted explicitly, in both the objectives and principles of the Code.

The Code also fails to adequately encompass the areas which consumers use in the ordinary course of banking. Coverage must be clarified in relation to:

- **electronic transactions**: overlap/consistency with the (draft) revised EFT Code should be clarified, and standards outlined for practices relating to services such as direct debits (including clear guidelines to banks and redress for consumers in the cancellation of facility and disputed transactions);
- **disputed liability**: this issue is canvassed below;
- **debt collection practices**: standards consistent with s60 of the Trade Practices Act should be adopted in the Code, including requirements on banks (or third parties contracted by banks) to ensure their debt collection practices comply with minimum standards on reasonable conduct, disclosure and recourse.

5. Dispute Resolution

While the Banking Code makes reference to internal and external dispute resolution, the ACA has serious reservations about the framework provided in the Code and the adequacy of its complaints resolution provisions.

Effective and accessible complaint resolution mechanisms promote consumer confidence in industry codes of practice, and provide industry with an avenue to address systemic weaknesses and consumer problems. The MCCA Guide emphasises the importance of complaints and dispute procedures within reasonable timeframes as a core element of industry codes.

Consumers need confidence that internal dispute mechanisms are accessible, fair, and provide appropriate and timely redress. The Code, however, fails to set out standards for internal dispute mechanisms, core rules for satisfactory hearing of complaints, time limits for the resolution or action on consumer complaints, or guidelines for members on how disputes should be managed. It provides no sanctions should member banks fail to advise customers on dispute resolution options, promote ADR redress or fall outside “reasonable” time limits for considering and responding to complaints.

Some key issues include:

- ***dispute versus complaint***: the Code does not adequately define the scope of issues which would be relevant to IDR/ADR procedures. Adopting a broader complaints based definition would enhance consumer protection and outcomes;
- ***meeting standards***: the Code requires updating to comply with relevant guides and regulation, including ASIC Policy Statement 139, Australian Standard on Complaints Handling. Current provisions are manifestly inadequate;
- ***timeframes***: the Code should establish minimum standards for complaints procedures and timeframes for disputes to be resolved or referred to ADR;
- ***publicity and information***: the Code must strengthen the obligations on members to promote and publicise dispute resolution and redress options;
- ***systemic issues***: complaints provide an opportunity for the industry to collate, investigate and respond to systemic issues emerging through consumer feedback. The Code must establish a viable process for reviewing complaints data, ensuring oversight and monitoring, and nominate an independent body to oversee responses to systemic consumer protection concerns.

Code revision should take account of the improvements required in these areas. A responsive, accessible and well regulated framework for complaints handling offers industry a chance to respond to consumer concerns regarding banking services, as well as the opportunity to identify systemic failures where remedial action is required at a regulatory or industry level.

6. Allocation of liability for disputed transactions

The Code contains inadequate provisions in relation to liability allocation for disputed transactions (refer Code section 13, for example). Liability allocation presents difficult issues for industry and consumers, particularly in instances where blame for the unauthorised transaction is not easily assigned. The Banking Code requires amendment to include concise, clear and fair provisions on liability that protect consumers.

Some guiding principles for allocation of unauthorised transactions were set out in the EFT Code Working Group's Discussion Paper (July 1999):

- liability should be allocated to the party or parties that can reduce the incidence of losses at the lowest cost;
- liability allocation rules should be simple, clear and decisive so as to minimise the costs of administering them. No-fault based allocation rules and precise standards are to be preferred over fault based allocation rules and broad standards such as "reasonable care".

The ACA recommends that the Code incorporate liability allocation for disputed transactions, lost accounts/cards and unauthorised use of banking products which:

- adopts a no-fault allocation system, with due account paid to the frequency of use of particular products in determining notification periods;
- outlines clear guidelines and redress for consumers in relation to disputed charges or unauthorised use, particularly where weaknesses in the access system or product design contribute to fraudulent or disputed charges;
- clearly assigns liability for institutional error to financial institutions (for example, in instances of cheque dishonouring post clearing times);
- places liability with institutions for products with a high fraud risk (placing incentives on member banks to develop and market products which do not place consumers at undue risk of fraudulent activity or theft);
- is developed with the input of consumer representatives and consistent with provisions of related regulatory structures (eg UCCC and EFT Code);
- contains a review process to allow amendment as required.

Consumers would benefit from a Code that outlined, clearly and consistently (across related Codes and regulation), the process and redress for disputed transactions, consumer liability limits, and investigation procedures in a fair manner.

7. Banking: An Essential Service

Consumer advocates have long argued for the recognition of banking as an essential service and the adoption of a regulatory framework that recognises this principle and enforces it through the management and oversight of financial services.

These arguments have been debated in various inquiries and public statements, notably comments by the Prime Minister in relation to banking services, for example:

There is more to banking than the bottom line...Banks have got to understand that there are social obligations...Australian Banks are very profitable by world standards and they have obligations.⁶

Recent reviews, such the House of Representatives Standing Committee on Economics, Finance and Public Administration *Regional Banking Services: Money too far away* (March 1999), as well as previous inquiries and research, have canvassed policy responses and positions on banking social obligations.⁷

⁶ "Banks may play role as pillars of the community" Australian Financial Review 27 October 1999

⁷ Refer outline in Griffith G, Banks and Community Obligations, NSW Parliamentary Library Research Service, Briefing paper No 1/2000 (January 2000) pp17-22

ACA has consistently argued for financial institutions to ensure that all consumers – regardless of their income, ability, or geographic location – have access to the level of banking services that best meets their needs. The Code offers the banking industry the opportunity to take up this challenge, through provisions encouraging community investment and access to low cost products for consumers.

There are already viable regulatory models operating overseas that explicitly recognise banking as an essential service. For example, the US has the *Community Reinvestment Act*, and several states have their own legislation regarding access to basic banking products. Such models are meant to safeguard an element of fairness in an industry that can be unkind on affordability and access for particular communities.

In Canada the issues were explored in a Department of Finance White Paper, *Reforming Canada's Financial Services Sector*, June 1999, and in the UK with a comprehensive paper that's located at www.bankreview.org.uk⁸.

Canada has introduced legislation⁹ to implement the framework recommended in *Reforming Canada's Financial Services Sector* with elements including:

- **Ensuring Access:** banks would be required to open accounts for any individual and cash government cheques for non-customers. There would be no minimum deposit required and employment would not be a condition of opening an account.
- **Low-Cost Account:** The Bill would provide the Government with the authority to make regulations for low-cost accounts. The banks have committed to working with the Government and will be given the chance to deliver via self-regulation.
- **Branch Closures:** The Bill would require banks to provide four months' notice of branch closures. In rural areas with no other institution within a 10-km radius, six months' notice would be required. Consultation would also be mandatory.

While access and affordability are subject to minimum standards in other countries, in Australia they are not. ACA recommends that the review of the Code incorporate consideration of community service obligations, and examine the scope for voluntary action by the industry to take up access, affordability and community investment issues.

⁸ Cruickshank, D. Competition in UK Banking, Report to the Chancellor of the Exchequer, March 2000 ('the Cruickshank Report')

⁹ Full text of the Canadian Bill (introduced 13 June) available at www.fin.gc.ca/newse00/00-047e.html

8. Specific Comment on Current Code Provisions

(note: issues with disclosure provisions outlined in section 3 above)

1: Terms and Conditions (section 2.0, section 9.0)

The Code's provisions relating to terms and conditions lag behind both good practice as well as requirements spelt out in related Codes and legislation. There are a number of improvements which should be made to strengthen obligations under the Code:

- **clause 2.1(i) Plain English:** terms and conditions: information should be provided in a form which is easily understood by consumers, and in a format which is easily comparable for consumers deciding between banking products. Advice should also be available for consumers with disabilities or language barriers.
- **clause 2.1 (v), 4.1 Pre-contract disclosure:** the Code presents an opportunity for the industry to extend its onus to provide consumers with information – including contracts, full details on fees, and terms and conditions – to all consumers, not just existing customers or potential customers about to enter agreements.
- **Fees and Charges:** the ACA advocates improved disclosure on fees and charges across all accounts. Of particular importance is disclosure of fee free transactions and “hidden” costs – for example, disclosure of fees incurred by use of non-bank ATMs. The ACA advocates a clear and comprehensive disclosure regime for banks to inform consumers of the status of fees incurred and amounts charged, as charges are accrued. This disclosure regime should be supported by “truth in lending” undertakings for credit services and products.
- **Variation to terms and conditions:** the current Code provisions are outdated. Customers should be informed in writing with adequate advance notice of changes to the terms and conditions of accounts and banking products. The ACA recommends that the Code make particular reference to changes to: fee free transactions, minimum balance requirements for fee exemptions, changes to fees and charges and interest rates in outlining notice requirements for institutions.

2. Cost of Credit: (section 3.0)

Code provisions relating to credit have largely been superceded by the UCCC, and the Code require revision to ensure both legislative compliance and consistency with the principles of “truth in lending” practices. The ACA supports the extension of truth in lending provisions (by way of comparison rates, for example) for credit purposes. It also encourages the industry to adopt consistent and consumer friendly responses to contentious issues of fraud, disputed charges and default. The principle of full cost of credit disclosure should be adopted in the Code for all credit products.

3. Account combination: (sections 6 and 10)

The practice of “combining” accounts to cover debts is of serious concern to consumer organisations, particularly where low-income customers are left without funds for day-to-day expenses. Banks’ authority to undertake such unilateral action is neither well known or publicised, and the Code requires no notice or efforts to discuss credit nor account positions prior to combinations. These provisions are inadequate and reflect poorly on the industry.

In view of these concerns, the ACA recommends cessation of account combination practices by financial institutions. In place should be concise requirements for banks

to contact customers in circumstances where combination might be pursued, where difficulties with a customers accounts or credit facilities are emerging, and to require advance notice and approval for any proposed combination of accounts.

4. Privacy (section 12)

Privacy provisions in the Code are outdated. The Code requires amendment to ensure compliance with National Privacy Principles. While the ACA has reservations about the “light touch” regulatory approach adopted in the draft *Privacy Amendment (Private Sector) Bill 2000*, it is clear that even the limited requirements of the draft legislation would not be met by the current Code.

The ACA argues that the Code should incorporate guidelines to improve privacy protection. The ACA recommends redrafting to address serious weaknesses:

- *Onus on consumer to object*: under clause 12.2 of the Code, the onus is placed on the customer to object to disclosure of information to related parties. This is illogical and unfair. Consumers should be provided with advice on the information held, as well as dissemination or information sharing between related entities. The onus should be placed on the bank to obtain consumer approval for exchange.
- *Customer access to information*: the Code does not provide for simple and timely disclosure of information to customers. For example, no time limits are set for the processing of requests for information, no caps are provided on charges to consumers seeking information, and clause 12.5 provides that information is only required to be provided if the customer can provide hints to the bank on where it might be found. These requirements are unacceptable and provide for poor privacy protection and disclosure.
- *Type of information held*: the ACA has serious concerns with clause 12.9, which in effect enables banks to hold information on customers’:
 - Political, social or religious beliefs or affiliations;
 - Race, ethnic origins or national origins; or
 - Sexual preferences or practiceswhere there is a “proper commercial purpose”. Interestingly, this data is not included in clause 12.4, which lists the type of customer information that consumers may request from banks. The ACA does not accept that these personal details would be required under normal practice, and recommends that the Code be redrafted to remove the authority to collect and disseminate such data. Use of such information would be subject to anti-discrimination statutes, and dissemination should only ever be undertaken with express consumer permission.
- *Hearing of privacy complaints*: proposed amendments to the ABIO scheme relating to the hearing of privacy disputes should be incorporated into the Code. The Code should require members to ensure consumers are informed of their rights in relation to privacy, and the opportunity for dispute resolution through the ABIO scheme and the Privacy Commissioner should be advertised to consumers.

5. Guarantees (section 17)

The issue of “relationship debt” is under review by the NSW Law Reform Commission¹⁰, and the ABA has signalled its intention to improve the current provisions relating to guarantees in the Code¹¹. The ACA welcomes these reviews,

¹⁰ NSW Law Reform Commission *Guaranteeing Someone Else’s Debt – Issues Paper 17*, April 2000

¹¹ ABA press release 21 June 2000: “Australian Bankers’ Association working with the community on relationship debt”

and encouraged the industry to consider methods of improving the operation of guarantees and impact of relationship debt for consumers.

However, such ongoing action does not preclude immediate improvements to the Code in relation to guarantees, providing a platform on which to adopt further improvements or incorporate legislative changes as they develop.

The Code should mandate:

- *Provision of all relevant information to guarantors* – including details of the borrower’s purpose and conditions of the loan, statements and letters of demand should the borrower fail to comply with the terms of the loan.
- *An onus on lending institutions* to ensure guarantors for personal/small business loans receive professional advice on the financial implications of guarantees.
- *Explicit prohibition of unlimited guarantees* to protect consumers.
- A requirement on lending institutions to *pursue the borrower* in all instances, prior to seeking to enforce a personal guarantee.
- Provision of information on *debtor harassment and ADR/IDR* mechanisms.
- *An onus on banks* to ensure the guarantor is informed of the consequences of entering into guarantees, through independent advice or full disclosure.

6. Advertising (section 18)

The Code should mandate accuracy as a requirement for banking product advertising. ACA would support disclosure of the fees and charges applying in summary form in advertising. Adoption of a mandatory comparison rate would provide the means for such costs to be displayed in an accountable and transparent manner.

7. Closure of Accounts – (section 19)

Bank practices in relation to closed accounts and overdraft charges would benefit from strong industry regulation. The Code should establish clear guidelines for account closure, including payment of existing credit, advice to consumers on issues such as cancelling direct debit payments and procedures for wages or income support, and restrictions on fees of dormant accounts (at a level to be determined with ASIC and consumer advocates).

Conclusion

The ACA has seen evidence of consumer dissatisfaction with the service and standards of the banking sector. For example, in October 1999 ACA conducted a banking survey of 15,000 CHOICE subscribers. The 5,670 respondents reported significant concerns with banks: more than one third felt banks treated consumers less well than five years ago, and 71% of respondents felt that their bank was mostly concerned with increasing profits.

Against this backdrop, consumers are facing increased fees and charges¹², mergers within the sector, branch closures and service shifts and increased responsibility for decisions relating to their financial futures. It is vital that the Codes inform and protect consumers in this complex market place.

In view of these concerns, the ACA believes that the Code of Banking Practice requires substantial review and revision, to encompass:

- Increased coverage, to encompass issues of concern to consumers;
- Explicit recognition of consumer protection issues, including revision of the objectives and principles to incorporate fairness and consumer protection as important industry considerations in the sector;
- Consistency with regulatory standards spelt out in the UCCC, the EFT Code of Practice, the draft FSR Bill, and the National Privacy Principles and draft legislation proposed in NSW on comparison rates;
- Increased disclosure requirements, including expanded obligations to disclose fees and charges and ensure consumers are informed of conditions attached to banking products and avenues for redress;
- Amendment to clarify allocation of liability in disputed transactions, with consumer protection and fairness underpinning industry;
- Revised guidelines for guarantees and the abolition of account combinations (as currently provided for within the Code);
- Improved privacy protections for consumers;
- Concise and accessible standards for internal dispute and complaint resolution.

The ACA also encourages the industry to extend the Code of Practice to incorporate principles of access and affordability for consumers, through the provision of a basic, low fee account and community investment and access schemes, consistent with community obligations models in overseas jurisdictions.

¹² See for example, CANNEX Fees and Foes Report: March 2000, Further Notes on Bank Fees - Reserve bank of Australia Paper submitted to House of Representatives Standing Committee on Economics, Finance and Public Administration, 22 May 2000