

Submission from Brisbane office of the Australian Competition and Consumer Commission to the Code of Banking Practice Review

The Brisbane office of the Australian Competition and Consumer Commission (ACCC) has received a number of complaints from consumers regarding the practices of banks in maintaining off system accounts described to this office as 'shadow ledgers'.

This office understands the issue arises from the above accounting practice of the major banks. This practice involves writing off on their mainframe accounting system customer debts which they believe to be irrecoverable so that they did not show interest continuing to accrue and therefore create a tax liability for the bank. The banks maintain separate manual ledgers (shadow ledgers) to show the actual amount that remains due. It is alleged that once the above accounting treatment has been effected the Bank will no longer provide the customer with a statement of account. It is also alleged that several customers have been inadvertently provided with an account balance from the mainframe showing the amount due to be less than is in fact the case.

The ACCC has communicated with a major Bank regarding the above allegations. The Bank informed the ACCC that it will write-off a debt, or part thereof, when an assessment is made that it is unlikely to recover the debt. The borrower's statement, which is kept on the Bank's mainframe system, is then reduced by the written off amount. The Bank does not send this statement to the borrower as it does not reflect their legal obligation to pay the full amount of the debt. It is further understood that the Bank will then keep an account of the debt as well as the interest accruing on it in a separate off-system account, in the so named 'shadow ledgers'.

The Bank informed the ACCC that in order to prevent the customer from receiving statements reflecting the write-off treatment, the address of the statement is changed as soon as the write off is effected. The borrower should never receive notification that their debt has been written off. The Bank advised that any such disclosure would only be the result of a system malfunction.

Further, when the Bank writes off a debt, it is usually the final step in a long process of negotiation with the defaulting borrower. The Bank advises that it has almost always commenced enforcement proceedings by the time a debt is written off. The Bank confirmed that it will suspend normal communications with the customer, which includes the issue of bank statements in circumstances where the banker/customer relationship has entered legal proceedings. Accordingly, the borrower will not receive statements of the debt as it is recorded in the 'shadow ledger'.

The Bank stated however, that it will, on request, always provide to a customer an account of his or her legal obligation under the debt.

The ACCC has received information that consumers are experiencing difficulty in obtaining statements from Banks. The ACCC is concerned that the non-issuance of statements may affect the borrower's ability to:

- calculate the level of their debt;
- complete tax returns,
- re-finance; and
- budget.

The ACCC is concerned that the above conduct may raise implications in terms of the misleading and deceptive conduct provisions of the *Trade Practices Act 1974* and in given circumstances may result in consumers suffering loss as a result of misinformation. Further, the ACCC is concerned about the reported difficulties, as listed above, that consumers may experience as a result of not being issued with statements of account.

The ACCC is seeking an industry wide solution to the above concerns and to this end has raised the issue with the Banking Industry Ombudsman. Further, the ACCC considers that concerns regarding the issuance of bank statements may be appropriately addressed by providing in the Code of Banking Practice that regardless of the status of a customer's loan Banks should:

1. automatically provide consumers with accurate and regular statements of account;
or
2. (a) ensure that accurate statements of account are provided in a timely manner to customers on request; and

(b) ensure customers are fully informed about the availability of statements and the method of requesting them.