

JOINT CONSUMER ORGANISATIONS

SUBMISSION ON CODE MONITORING IN RESPONSE TO THE REVIEW OF THE CODE OF BANKING PRACTICE ISSUES PAPER

Mr Dick Viney
Banking Code of Practice Review
P.O. Box 2045
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Consumer Organisation Views – Code Monitoring

Dear Mr Viney

This submission is an interim response to the Issues Paper, released by the Code of Banking Practice Review, on behalf of a range of consumer organisations.

We welcome the Issues Paper and believe that in general, the Interim Recommendations would provide some valuable suggestions for improving the Code.

As you are aware, consumer groups have provided significant input into the Code review to date. We intend to comment in more detail on a number of the recommendations once we have had the opportunity to consider and discuss the issues and industry response. Critical areas include disclosure, staff training, guarantor issues, privacy, account administration and direct debits. This letter is a brief initial response to a critical issue for the Code review – Code administration and monitoring.

The consumer movement has welcomed recent announcements by ANZ and the Australian Bankers' Association regarding key provisions of the Code. In particular, we support announcements that the ABA has endorsed:

- A principle of 'fairness' to be drafted into the Code;
- Monitoring of banks' compliance with the Code;
- Reflecting banks agreement to be prudent and diligent in assessing a customers capacity to re-pay a loan;
- Recognition that better information must be given to guarantor, so they understand the implications of what it means to guarantee someone else's debt.
- Inclusion in the Code of the safety net, basic bank account benchmarks, Disability Action Plan and the Transaction Services and Branch Closure Access Protocol for rural and remote areas.

However, while these commitments are welcome, the detail of the industry's proposal must be reviewed prior to any endorsement being provided. We look forward to the detail of the industry's undertakings in order to provide comments to the review.

In relation to the monitoring and administration of the Code, we have some initial comments in relation to the recommendations put forward in the Issues Paper to assist the ongoing review process.

Consumer groups are supportive of an effective, adequately resourced and independent body able to monitor and administer the Code. In submissions we have outlined the issues that Code administration and monitoring must cover, including:

- promotion of the Code within industry and to the wider community
- compliance monitoring, including shadow shopping and review of systemic breaches
- complaints mechanisms where consumers and advocates can take allegations of Code breaches
- enforcement, including sanctions against institutions which breach Code requirements
- public reporting of Code compliance
- overseeing reviews of the Code or relevant sections, as required.

Consumer groups support the broad principles outlined in the Issues Paper relating to options for a monitoring and administration body for the Code. However, rather than a body such as ASIC or the ABIO Council having responsibility for this task we support the establishment of a separate entity, with independent status and adequate powers. We note the comments in the Issues Paper relating to potential administration bodies, including ASIC and the ABIO Council. There are a number of problems with these proposals, outlined below.

ASIC as Code Monitoring Body:

The Code is a self-regulatory mechanism. While general oversight of the Code by ASIC in broad terms is consistent with its role, it is more appropriately undertaken by a separate independent body. At present ASIC's oversight of Code compliance takes the form of collation and analysis of self-assessment returns by banks. As the Issues Paper and ASIC itself has acknowledged, this is an inadequate form of monitoring for the Code. While it is likely that the analysis and form of ASIC oversight of industry codes in financial services will be improved, we believe that the detailed and investigative monitoring required to ensure compliance with the revised Code is beyond the scope of the regulator's role. If we propose government as the Code monitoring mechanism, then we could reasonably propose that the services and coverage of the Code be enforced in legislation.

Rather, it should be funded by the industry itself, which can demonstrate its commitment to improved standards and customer service by ensuring an independent and recognised administration and monitoring body. There are additional concerns given ASIC's broader responsibility for financial services.

ABIO Council as Code Monitoring body:

We also have concerns with proposals to vest monitoring in the ABIO Council. These relate to the potential for Code administration to impinge upon the important ombudsman function which the ABIO performs, and the value of separating the broader systemic compliance with the Code from individual consumer complaints

involving redress and unfair treatment dealt with under the ABIO scheme. Given the Code establishes the ground rules for internal and external ADR, having the oversight of its broader functions vested in the external ADR scheme may present conflicts.

An independent body would be able to accept referrals and recommendations from the ABIO scheme, as well as other bodies and consumers, and focus on compliance with the Code rather than attempting to also meet the dispute resolution function.

Alternate model for compliance and administration

The Code covers a range of activity relating to transactions and service standards in banking. Given its importance to the industry and the wide range of activities it encompasses, we consider it appropriate for a separate and adequately resourced body to be established to administer, monitor, enforce and publicise the Code.

Support for this form of administration can be found in the UK Banking Code Standards Board. Under this model, the Code is administered by a separate Board made up of a majority of independent directors and representatives from banks.

The Board, established as an independent organisation in 1999, monitors Code compliance by: self assessment by institutions, market research (including shadow shopping), media monitoring and “tip offs”, compliance checks from its own staff and by independent experts.

The Board initially refers allegations of breaches of the Code to the bank or building society concerned to take appropriate action. The Code requires subscribers to have their own procedures for handling complaints fairly and speedily. In the event of serious failings, the Board uses its disciplinary powers. These include directions about future action, recommendations on remedies for past conduct, and public censure (we recommend these and additional sanctions in an Australian context).

This model offers considerable advantages, particularly if the broader requirements recommended by consumer groups are incorporated into the Code:

- it gives an independent body power to monitor compliance with fee disclosure undertakings (through shadow shopping and surveys)
- it enables fast review of potential systemic failures within the banking sector which may be leading to poor consumer outcomes
- industry “buy in” through representation on the board, and consultation in setting compliance structures, could support broader adoption of the spirit of a revised Code throughout the banking sector
- it provides a body which can conduct supportive research and pilot programs to facilitate compliance with broader Code undertakings to support continuous service improvements
- it enables the industry to focus on the importance of the Code as a separate and important issue for the sector

As an example of the potential of a stand alone organisation’s capacity to oversee broader systemic issues relating to issues such as disclosure, we note the following excerpt from the UK Standard Board’s April 5th newsletter:

During February we carried out a small exercise to test the arrangements, which should have been operative from 1st January this year under sections 5.9 and 5.10 of the new Banking Code, for pre-transaction notification of charges at cash machines.

We are aware that this has involved significant systems development to a relatively short timescale and it was pleasing to find that generally the treatment of debit cards ('cash cards') was in line with the Code. However we found that a number of ATM owners were not displaying appropriate screen messages warning holders of other cards, such as credit cards, that they might be charged by their card issuer, and providing an opportunity to abort the transaction.

We have written to the subscribers whose ATM displays were found to have shortcomings in our sample, but we also ask compliance officers to carry out tests on their own processes in those institutions that operate cash machines, if they have not done so already, and arrange to remedy any weaknesses identified.

Under present arrangements it is difficult to imagine the Code in Australia producing such valuable monitoring on fee disclosure, or indeed any element of the Banking Code. This is to the detriment of consumers and ultimately industry itself.

The Code Administration body should have as a broad outline:

- an independent board comprised of industry nominees, consumer and community representatives, and an independent chair;
- its own website and annual public reporting process;
- a separate and adequate budget to oversee Code compliance and enforcement;
- a joint responsibility with the ABA to promote awareness of the Code;
- powers to monitor compliance with the Code, including access to banks' internal Code compliance auditing and step in audit powers for institution compliance, shadow shopping exercises, power to receive complaints from the ABIO, consumer advocates and the community, and media;
- sanctions, including public reporting of compliance, "naming" of institutions in breach of Code requirements on an annual basis (with outline of remedial action taken), power to enforce small payments to consumers where breaches of the Code occur, authority to direct and require reporting on relevant bank practices;
- powers to direct institutions to undertake specific remedial action, make remedies for past breaches or improve operations in relation to Code compliance;
- the power to suspend or (in severe cases) remove subscribers from the Code, with full public reporting of such actions.

Further matters

As noted, there are a range of other critical issues where consumer groups will provide additional feedback once industry views become clearer. These include areas such as fee disclosure (and links between existing ASIC work and FSRB developments), training, direct debits, guarantees, dispute resolution, subsidiary cards, privacy, credit and links with UCCC developments, review proposals and access and affordability and portability undertakings. We look forward to providing you with further detail on these matters in the near future.

We would welcome the opportunity to discuss Code monitoring and other matters as required. Please contact Louise Petschler, Australian Consumers' Association on (02) 9577-3349 or Carolyn Bond, Consumer Credit Legal Service Victoria, on (03) 9670 6625 if you require further clarification or information on the issues raised.

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