Review of the Code of Banking Practice

Response to Issues Paper

Australian Securities and Investments Commission

July 2001

1. Introduction

ASIC is pleased to provide a response to the Issues Paper on the Review of the Code of Banking Practice. We welcome the recommendations in the Issues Paper and believe that, if implemented, they will result in significant improvements to the Banking Code and considerable benefits for consumers.

Set out below are our comments on individual recommendations. As you will see, we support the majority of your recommendations and have also included a number of additional suggestions for amendments to the Banking Code ("the Code").

2. Disclosure requirements

2.1 Summary of our views

As already discussed with you, our views on disclosure requirements differ slightly from those expressed in the Issues Paper. In summary:

(i) We agree with the comment in the Issues Paper that significant overlap between the Code and legislation may be undesirable in some circumstances. In saying this, we interpret overlap to mean duplication.

(ii) Our understanding is that the Product Disclosure Statement (PDS) (required by the Financial Services Reform legislation) and the product terms and conditions (required by the Code) will serve slightly different purposes. Because of this, there may be information that needs to be contained in both the PDS and the terms and conditions where they are separate documents.

(iii) There are some disclosure requirements currently in the Code that are no longer necessary or appropriate.

(iv) We take the view that, in some cases, the Code may be the appropriate place to 'flesh out' the necessary detail of what should be in the PDS documents. This is particularly the case in terms of what should be disclosed in relation to the significant 'risks', 'benefits' and 'characteristics' of banking products. It is unlikely that ASIC Policy Statements will flesh out the requirements in exhaustive detail on an industry basis, and it is our understanding that it is unlikely that regulations will be introduced to provide any detail for the PDS requirements for standard banking products.

(v) We agree that it is important that banks continue to contractually bind themselves to meet their disclosure requirements in the Code. However, it is less important that banks contract to comply with the disclosure obligations imposed by the Financial Services Reform (FSR) legislation, because the FSR Bill currently provides consumer remedies (see s. 1022B(1) and (2)).

(vi) We do not think that there is a strong case for the inclusion of summary material in the Code that describes or signposts all of the disclosure rights and obligations contained in legislation. This would merely increase the length of the Code and add to consumer confusion and may result in inconsistency. However there may be some limited circumstances where it will be appropriate for the Code to require that rights provided in the FSR legislation are explained in the Terms and

Conditions (eg the obligations to provide notice of changes to the fees and/or terms and conditions).

A more detailed analysis of the pre-contractual requirements of the Banking Code, and their potential relationship with the proposed FSR Bill, is provided below. In preparing this section, we have also taken into account the ASIC Policy Proposal Paper (PPP) on Product Disclosure Statements, issued in April 2001. (It is however important to note that the FSR Bill may be amended during the Parliamentary process, and that the final ASIC PDS Policy Statement may differ from the PPP.)

We have also set out our views on the changes that should be made to the current Code requirements.

2.2 Current (and proposed) requirements for pre-contractual disclosure

2.2.1 Product Disclosure Statements

The FSR Bill introduces a requirement for issuers and advisers to provide retail clients with a Product Disclosure Statement (PDS) before a product is issued. The Bill sets out, in broad terms, the type of information that must be included in a PDS. It will be an offence to fail to provide a PDS when required, or to provide a defective PDS.

The broad objective of the PDS obligations is to "provide consumers with sufficient information to make informed decisions in relation to the acquisition of financial products, including the ability to compare a range of products".[1]

There are a number of remedies available if a PDS is defective or is not provided at the appropriate time. For example, ASIC can issue a stop order, or interim stop order, that specifies particular conduct not to be engaged whilst the order is in force. In addition, a consumer that has suffered loss or damage because of a defective PDS, or a failure to be given the PDS, can take civil action to recover that loss or damage. Failing to provide a PDS, or providing a defective PDS, may also amount to a criminal offence.

ASIC has proposed that it will issue a Policy Statement to give guidance (with the use of good disclosure outcomes and examples) on the content of a PDS. (A PPP was issued on 26 April.) However, as noted, the matters listed in the final Policy Statement will not necessarily be exhaustive.

It is proposed that the examples contained in the eventual Policy Statement will provide a guide to ASIC's current thinking on the issues, and to what ASIC will look for when assessing the adequacy of a PDS. However, a failure to follow the guidance or the examples included in the Policy Statement will not necessarily mean that a PDS is defective.

The period for public comment on the PPP closed on 7 June. ASIC will be taking into account the comments and submissions made before finalising its policy position, and the content of the eventual Policy Statement may therefore differ from the content of the PPP. We may also have regard to the final

[1] Explanatory memorandum to the Financial Services Reform Bill p. 137, para 14.28.

content of the Banking Code if it is known before the policy statement is finalised.

2.2.2 Terms and Conditions

The Code of Banking Practice currently requires banks to provide consumers with written Terms and Conditions for any ongoing banking service. The Terms and Conditions document must be provided before, or at the time, the contract for the banking service is made. The Terms and Conditions govern the relationship between the consumer and the bank for that product (ie they represent the contract between the parties).

The Code also spells out the information that must be included in the Terms and Conditions.

Failure to provide a copy of the Terms and Conditions, or providing Terms and Conditions that do not contain the information required by the Code, is currently a breach of the Code. If a consumer suffered financial loss due to the breach, and was not able to resolve the matter with the bank, he or she could take the matter to the Banking Ombudsman.

2.2.3 Schedule of fees and charges

Under the Banking Code, banks must provide customers with a schedule with the current fees and charges currently applicable to the banking service. The schedule must be provided before or at the time of providing the banking service for the first time. Banks must also provide the schedule on request.

Failure to provide a copy of the schedule is currently a breach of the Code. If a consumer suffered financial loss due to the breach, and was not able to resolve the matter with the bank, he or she could take the matter to the Banking Ombudsman.

2.3 Overlap between the requirements of the PDS and the Terms and Conditions

In some circumstances, the FSRB requirements on what must be contained in the PDS may be the same, or similar, to the Code requirements on what must be included in the Terms and Conditions.

This leads to a number of issues:

(i) Given the requirement for a PDS, will banks need to provide a Terms and Conditions document?
(ii) Should information that is required in the PDS be duplicated in the Terms and Conditions?
(iii) Should the Code play a role in fleshing out the FSRB requirements for the PDS?
(iv) Apart from the PDS and Terms and Conditions, is there any other pre-contractual disclosure needed?

2.3.1 Will Banks need to provide a Terms and Conditions document?

Discussions with institutions and our own thinking on the matter suggest that once the FSRB requirements about PDS documents come into effect, there will still be a need for banks to provide a Terms and Conditions document. It is important that consumers have a statement of the terms and conditions covering their use of the banking service that they can retain for future reference. While some institutions may choose to present the PDS and Terms and Conditions in a single document, it is unlikely that the PDS alone will replace the need for Terms and Conditions. There are a number of reasons for this view:

- First, it does not appear to be the intention of the Government that the PDS will also provide the complete terms and conditions governing a financial service. As shown above, the Explanatory Memorandum instead refers to a PDS as playing a role in purchasing decisions.

- Second, the value of a PDS, and its ability to be of use in purchasing decisions, will be compromised if the PDS is unnecessarily long and complex. This may happen if the PDS were to provide a complete statement of the contractual terms. A PDS is required to be clear concise and effective.

- Third, the tone of a PDS is likely to be different to that in the Terms and Conditions, given the different functions of the two documents. For example, in the case of the "significant risks" required to be disclosed in the PDS, we would envisage that the disclosure in the PDS could amount to some form of health warning (eg 'You may be liable for unauthorised transactions if you disclose your PIN or password to a third party'). In contrast, the Terms and Conditions will spell out the details of the rules governing liability in the relevant circumstances.

Our discussions with institutions to date suggest that close attention is being given to the question of whether the PDS and the Terms and Conditions documents should be merged into one document. It is possible that some institutions will decide to combine the documents, while others may continue to provide consumers with a PDS and a separate Terms and Conditions document.

The requirement to provide some form of key features document, as well as a complete statement of the terms and conditions, is not unusual in the financial services sector.

<u>2.3.2 Should the information that is required in the PDS be duplicated in the Terms and Conditions?</u>

If the Terms and Conditions are to be a complete statement of the contract between the consumer and their bank, then it is almost inevitable that there will be some duplication of information between the two documents.

However, the risk of inconsistency referred to in the Issues Paper can be minimised by appropriate compliance and review practices by Code members. In addition, the risk will be generally low because neither the Code nor the PDS is likely to spell out the exact wording that will be required in the disclosure documents.

For example, the Code could provide that:

- a copy of the Terms and Conditions must be provided to customers when they purchase a banking service;
- the terms and conditions must contain all of the terms of the contract; and
- the terms and conditions must include information on … {matters to be specified in the Code}.

In addition, the Code should place a positive obligation on Code members to take steps to ensure that there is no inconsistency between their PDS documents and their Terms and Conditions documents.

It is worth emphasising that the Terms and Conditions should be automatically provided to customers who purchase a banking product. If the Terms and Conditions are to be the primary document detailing the contractual relationship, it is essential that customers receive this document without having to make a specific request to the bank.

2.3.3 'Fleshing out' the FSRB requirements for the PDS

We also think that the Code can play an important role in 'fleshing out' the requirements of the PDS. The PDS requirements are necessarily general, and do not give specific guidance on, for example, what are the significant risks, benefits, and characteristics or features of banking products. The Code could flesh out these requirements by providing that Code members will treat specific types of information as, for example, a 'significant feature', thus requiring disclosure in the PDS.

There are two other possible options for fleshing out the FSRB requirements – through ASIC Policy Statements or through regulations.

However, the final ASIC Policy Statement is only likely to play this fleshing out role in a limited sense. It is likely to provide at most only examples and to suggest desirable outcomes (with some exceptions). It is less likely to contain detailed rules on the information that must be included in the PDS.

Further, our understanding is that it is unlikely that regulations will be introduced to provide any detail for the information that must be included in the PDS for standard banking products.

2.3.4 Need for additional disclosure requirements?

In Table 1 below, we have detailed, for each disclosure provision in the Code, our views on whether that provision should be kept, deleted, or altered. As noted above, we are of the view that there are some circumstances where the Code should provide that specific information should be included in the Terms and Conditions, even though information on the same issue may also be provided in the PDS.

In the current Code, there are a number of clauses that deal with the provision of specific information on request. In the analysis below, we have suggested

that some of this information be included in the PDS and/or Terms and Conditions.

There are also some circumstances where information needs to be provided on a one-off basis, but does not necessarily need to be included in the Terms and Conditions or PDS. We have suggested below that obligations to disclose this information should be included in the Code.

2.4 Analysis of current provisions in the Banking Code and recommendations for change

Table 1 provides our recommendations on the amendments needed to the Code to deal with the disclosure issues.

Table 1 – Analysis of current Code provisions

Code Provision	Recommendation	Reasons
2.1: Provide Terms and Conditions (T&C's) to customer	Alter	T&C's only need to be provided if they provide information that is additional to the information contained in the PDS. (This gives banks an option to provide only one document.)
2.1(v): Provide T&C's at the time of, or before, the contract is made, unless impracticable	Alter	Where T&C's contain additional info to that in the PDS then it must be provided at the time or before contract except where it is impractical and then it must be provided as soon as soon as practicable. T&C's must also be provided on request.
2.1(i) – (iv), (vi): content of T&C's	Keep (i)	It is important that T&C's are clearly distinguishable from marketing material.
	Drop (ii)	Does not add any real obligation.
	Drop (iii)	Covered by current clause 2.2.
	Keep (iv)	It is always useful to have a reminder of the need for clearly written documentation, particularly for legal documents such as T&C's.
	Drop (vi)	See below re: 6.1 and 6.2.
	Add new clause	Where the T&C's and PDS are separate documents, the T&C's and PDS should each explain why there are two documents, and what they are designed to be used for.
2.2: – T&C to make Code contractually enforceable	Alter	Keep the present intent but also make it clear that in the case of an inconsistency between the code and another provision of the T&C's, the code prevails.
2.3(i): Disclosure of the nature of fees	Drop	Covered by 1013D(1)(d) FSRB and Interim recommendation p. 48.
2.3(ii) & (iv) Calculation and payment of interest.	Keep and insert a signpost to FSRB	This information should be included in the T&C's. The Code should also signpost that the information needs to be in the PDS. The signpost might read: "Banks consider that a PDS should describe the method by which interest, if any, is calculated and the frequency with which it will be credited, as well as stipulate, where relevant, that more than one interest rate may apply."
2.3 (iii): How notification of changes will be made	Alter	Although the FSRB spells out how notification will occur, it is unreasonable to expect consumers to read the FSR legislation. The current Code provision may, however, need amendment to implement the Interim Recommendation on p. 50 of the Issues Paper.

2.3(v), (vi): notice of min balances etc, term deposit details	Keep and insert a signpost to FSRB	This information should be included in the T&C's. The Code should also signpost that the information needs to be in the PDS. The signpost might read "Banks consider that these items of information should be considered 'significant characteristics' for the purposes of the PDS."
2.3(vii): Loan repayment details	Drop for UCCC regulated loans, but keep for unregulated loans	This is probably adequately covered by the UCCC where it applies for consumer accounts, but such a requirement would need to be retained for unregulated loans to individuals (such as loans for investment purposes) or loans to small businesses.
2.3(viii): frequency of account statements	Alter	Arguably this is covered by 1013D(f), but the Code could usefully retain the requirement. In any event, it would be useful for the T&C's to also inform consumers that they can request more frequent statements.
2.3(ix): current interest and fees available on request	Keep	Covered by interim recommendation, p.48 of Issues Paper.
2.3(x): Stopping & altering payments service	Keep and signpost for FSRB.	This information is critically important, and should be provided in the T&C's. It may also be covered by ss. 1013D(1)(c) or (f) and included in the PDS. However, it will also be important for the PDS to refer to the existence of this information. A suitable signpost might read: "Banks consider that the PDS should contain a reference to the ability to stop and alter payments services, and should refer readers to the T&C's for the details on how to exercise these rights."
3.1: Cost of credit for comparison rate purposes	Drop	We assume this will be adequately covered if interim recommendation p. 48 is implemented, and it is clear that 'person' is not limited to potential customers, and can include at least 'appropriate external agencies'.
4.1: Schedule of fees and charges	Drop	Clearly covered by s.1013D(1)(d) when consumer opens account. They will also change over time, so that there is not much point including them in the T&C's. Will also be available on request if interim recommendation adopted.
5.1: More fee disclosure	Drop.	Covered by s. 1013D(1)(d) (for deposit products). For credit products, will be covered if interim recommendation p. 48 of Issues Paper is implemented.

6.1: Disclosure re: operation of account	Drop some and alter/signpost others	6.1 only deals with information on request. See below for proposed changes to clause 7 that will cover information available on request.
	Drop (i), (ii), (iv), (v), (vii)	(i) account opening – the bank will of necessity tell consumers. (ii) privacy – presumably will be covered by privacy legislation (although we haven't confirmed this). (iv) right to combine accounts – this will be addressed in a different way if interim recommendation on p99 of Issues Paper is implemented. (v) bank cheques – banks will of necessity advise consumers who want to buy a bank cheque. (vii) advisability of reading the T&C's – this clause is not particularly effective, and it would be better if the PDS referred to the importance of reading the T&C's.
	Alter (iii)	Information about complaints handling procedures will be included in the PDS under s.1013D(1)(g). However, it is also important that this information be included in the T&C's. The Code should require that basic information about the complaints handling procedures should be included in the T&C's. (More detailed information will also be available in branches, on websites etc under current clause 20.2 of the Code.)
	Query (vi)	(vi) customers in financial difficulty – whether this needs to be retained in Code (eg by making it an obligation to include this advice in the T&C's) will depend on how interim recommendation p. 63 of Issues Paper is implemented.
6.2: Cheque details	Alter and signpost to PDS	This information is important and should be included in the T&C's for products that have a cheque facility. This information should also be included in the PDS. A suitable signpost might read: "Banks consider that this information (ie existing cl 6.2), if relevant to the particular product, should be set out in the PDS."
7.1: Information to any person	Alter	Alter so that clause 7.1 implements interim recommendation p. 48 of Issues Paper (with the exception of the fourth dot point), including the requirement to have material readily available to meet requests expeditiously.

7.2: Disclosure of application fees and whether they are refundable	Alter	This information should be included in the PDS. A suitable signpost might read "Banks consider that information on whether an application fee applies, its amount and whether or not and in what circumstances it is refundable should be set out in the PDS".
7.3: Disclosure of fees for bank cheques, travellers' cheques and interbank transfers	Alter	This clause should be altered to make it clear that the information should be automatically given when the service is provided and on request.
11 Disclosure and foreign exchange products	Alter	We understand that it is not always practically possible to comply with existing clause 11. Assistance from the banks might be needed to make appropriate changes to the Code. Note that it is also possible that some foreign exchange contracts will be "financial products" under the FSRB, and a PDS will be required to be provided.
13.1: Advisability of safeguarding payment instruments	Drop	Current obligation not mandatory, therefore does not add anything. In practice, covered by 13.3. Also, we expect that institutions will voluntarily provide this information, as it is in their interests to do so.
13.2: Require notification of loss of payment instruments	Drop	Current obligation not mandatory, therefore does not add anything. Should be covered by 13.3. Also, we expect that institutions will voluntarily provide this information, as it is in their interests to do so.
13.3: Consequences of failing to safeguard payment instruments (and access codes) etc	Alter and signpost to PDS	The Code should provide that this information should be included in the T&C's. In addition, it should ideally be included in the PDS. Section 1013D(c) will be relevant, however, the Code should also include a signpost to this requirement, eg "Banks consider that information about the need to safeguard payments instruments – especially access codes -and the consequences of failing to do so should be provided in the PDS."
16.1 Joint accounts 16.2 Subsidiary cards	Alter	While this information should be covered by s. 1013D(b), (c) and/or (f), there are good practical reasons, especially in relation to subsidiary cards, for including this information in the T&C's, and for including an obligation to provide the information again if a subsidiary card is issued some time after the account was opened. Subsidiary cards are often issued

		some time after the principal card is issued, in which event the principal cardholder may not recall the terms of the original PDS. In addition, there is unlikely to be a different PDS when products are used as a joint account, or when a subsidiary card is issued, so it may be better (in terms of the length of the PDS) to have this information in the T&C's. However, it is also worth considering whether there should also be a note in the PDS that customers opening the product as a joint account, or with a subsidiary card, should refer to the T&C's specifically on this issue. Both of these provisions may need further amendment if the interim recommendations on pp. 95 and 97 of the Issues Paper are implemented.

3. Administration and monitoring issues

As we noted in our original submission, there is scope for significant improvement in the way that the administration and monitoring issues are dealt with in the Code. Improving the Code provisions in this area should generate increased consumer confidence in the legitimacy and relevance of the Code.

There are three main areas that should be covered by administration and monitoring provisions:

(i) general Code administration;
(ii) monitoring compliance with the Code; and
(iii) investigating and resolving complaints about non-compliance with the Code.

These issues are discussed more fully below. In summary, however, we would strongly support the interim recommendations in the Issues Paper on administration and monitoring.

3.1 General Administration

3.1.1 Administration issues

In our recent PPP on Codes approval, we explained that, when approving Codes, we would be looking at a number of matters in order to satisfy ourselves that a Code is effectively administered. We would generally expect to see that there is an independent organisation to administer the Code. This organisation should have responsibility for:

(i) obtaining adequate funding from Code subscribers to administer the code;
(ii) ensuring compliance with the Code is monitored annually and publicly reported upon;
(iii) in some instances, hearing complaints about breaches of the Code and imposing sanctions and/or remedial measures where appropriate;
(iv) reporting serious breaches and instances of serious misconduct to ASIC;
(v) arranging publicity for the Code;
(vi) making provision for employee training about the Code; and
(vii) ensuring that at least every 3 years, there is an independent review of the effectiveness of the Code and its procedures and recommending amendments if necessary.

We strongly recommend that each of these responsibilities be allocated in the Banking Code, or through the current review process. We also make the following additional comments on the interim recommendations included in the Issues Paper.

3.1.2 Promoting the Code

We generally support the intent of the interim recommendation regarding promotion of the Code to consumers, consumer advisors, and the public generally.

However, we are not convinced that it will always be necessary to display the Code in all bank branches. In addition, we note that many transactions are made outside of branches, and some banks have no branches, or only a very small number of branches.

It is, however, desirable that consumers are made aware of the existence of the Code and of its relevance. There are a number of ways this could be achieved, for example, displaying simple posters in branches that summarise the key points or commitments in the Code, and advising of the Code's existence and role via alerts on websites and simple information in recorded messages or hold music at banking call centres.

It is also important that consumers be able to easily access a copy of the Code. Copies should be available on websites, and consumers should be able to request a copy of the Code at branches or via email or telephone. An obligation to this effect should be contained in the Code.

3.1.3 Monitoring external developments, including legislative changes

The Issues Paper suggested that the monitoring body also have a role in monitoring external developments, including legislative changes, and keeping Code subscribers informed of these developments.

However, it seems to us that it is more appropriately the role of the Australian Bankers' Association (ABA) and individual Code members to keep up to date with legislative and other developments and how they will impact on their business. Instead, we suggest that the monitoring body be required to monitor legislative developments in order to ensure that the Code does not become inconsistent with legislation.

3.1.4 Arranging for regular reviews of the Code

We support the interim recommendation in relation to reviews of the Code. We also suggest that the Code also specify a maximum time period of 3 years between Code reviews.

We also support the interim recommendation for a forum for the exchange of views between banks and consumer advisers and would like to participate in this forum.

3.1.5 Implementing changes

As well as the interim recommendation suggested in the Issues Paper, it would be useful if the Code incorporated a requirement that the ABA publish a final response to the report and recommendations of Code reviews within a specific time frame (eg 3 months) following the release of a review report.

3.1.6 Educating code members and their staff and agents about the Code

We support the interim recommendation that the Code oblige banks to ensure all relevant staff and agents have adequate knowledge of its provisions.

3.2 Monitoring compliance with the Code

In addition to the current monitoring requirements involving self-assessment of compliance, we strongly support the interim recommendation that some independent compliance monitoring be used. Our PPP on codes approval also refers to the need for some form of external monitoring from time to time (see C10(c), p. 25). However, it is important that "phantom shopping" is not the only form of independent or external monitoring used.

Phantom shopping can be an effective way of monitoring compliance with some provisions of the Code – for example, provisions that require disclosure of certain information on request. However, a number of other provisions could only be tested by phantom shoppers actually opening and operating an account. This may impose unnecessary costs and administration work on Code members in circumstances where there is no real intention on the part of the phantom shoppers to create an ongoing relationship with the bank.

More importantly, there are a large number of provisions in the Code where compliance with those provisions could not be adequately tested using phantom shopping. For example, it would be difficult to test compliance with the complaints handling processes through a phantom shopping exercise.

In our view, external independent monitoring will be most effective if the organisation's files, documentation and procedures can also be reviewed. Such a process can be disruptive, so would need to be sensibly handled. As we noted in our original submission, the monitoring organisation would also have to have sufficient authority to require Code members to allow access to premises, staff, files, documentation, and other information. The Code should include a clause to this effect.

In our view, the monitoring organisation will need to use a range of techniques and approaches, including phantom shopping, in order to carry out the monitoring function effectively.

The UK Banking Code Standards Board (BCSB) is one example of a code monitoring organisation that uses a range of techniques. They include:

- a self-certification questionnaire, the Annual Statement of Compliance, signed by chief executives;
- market research activities, including 'spot checks' through mystery shopping;
- monitoring the media, tip offs from the public, etc; and
- compliance visits by its own officers and by independent experts, such as PricewaterhouseCoopers.

According to the BCSB, compliance visits will:

- initially be on a two year cycle for each organisation;
- be tailored according to organisation size and complexity;

- review high level compliance controls - involve a review of sales documentation; and
- include visits to a sample of sales outlets and administration departments.

More information about the Board and its monitoring techniques (including a summary of the compliance visits by PricewaterhouseCoopers to date) is available from the website of the BCSB (www.bankingcode.org.uk).

We reiterate the comments in our original submission that there would not generally be a need for an annual audit of every provision of the Code and every party to the Code. It will be more effective and appropriate for the external monitoring process to be a tightly targeted exercise that focuses on higher risk areas. In addition, the exercise would not necessarily need to be completed annually.

3.3 Enforcement - complaints handling, remedies and sanctions

In our view, an effective compliance regime for an industry code requires a complaint handling organisation that:

(i) can consider all complaints about breaches from affected consumers and other interested parties (eg regulators, consumer affairs agencies, consumer organisations, public interest groups, etc);
(ii) has appropriate authority to provide a suitable remedy in instances of non-compliance (including compensation for any financial loss);
(iii) particularly in cases of repeat or wilful non-compliance, has authority to impose appropriate sanctions; and
(iv) maintains appropriate records, so that systemic issues can be identified and addressed.

In the case of the Banking Code, we note that complaints about Code breaches where financial loss is involved can be referred to, and investigated by, the Banking Ombudsman scheme. However, there is currently no formal process for independent review and investigation of complaints about Code breaches that do not cause financial loss. It is important that, through this review process, this situation is remedied. We discuss later in this paper our views on which organisation should be responsible for dealing with complaints about breaches of the Code.

We support the interim recommendation on sanctions in the Issues Paper. As we noted in our original submission, it is important that the organisation responsible for handling complaints about the Code have an adequate range of both remedies and, in appropriate cases, sanctions in order to encourage compliance.

The Code should spell out the range of remedies and sanctions that can be ordered for contraventions of the Code. The complaints handling organisation should have sufficient flexibility to deal with the range of contraventions that may occur, for example, contraventions may range quite considerably in scope, severity, deliberateness and importance. Possible remedies and sanctions could include:

- financial compensation for loss suffered;
- formal apologies;
- directions for action to remedy past conduct;
- directions about future action to avoid further breaches;
- publishing the name of the non-complying organisation – eg in the annual report;
- corrective advertising;
- formal warnings;
- financial penalties;
- compliance audit;
- changes to practices and procedures; and
- suspension or expulsion from the Code in extreme cases.[2]

In addition, the Final Report on the review should make it clear that Code members will need to sign an agreement to comply with both the Code and any sanctions imposed by the complaints handling organisation.

It is essential that the complaints handling organisation has detailed complaint making, investigation, and decision-making processes. However, to ensure that the Code remains of a manageable length, it may be appropriate to spell out only the broad principles in the Code, and for the complaints handling organisation to develop detailed guidelines separately to the Code itself.

3.4 Who should be responsible for administration, monitoring and enforcement?

We believe that the Code Review process is the appropriate time to determine the organisation (or organisations) to be responsible for the monitoring, administration and enforcement functions discussed above. At the time of our original submission, we did not have a firm view as to which organisation(s) should have these roles. We have now given further consideration to this issue, and set out our views below.

The Issues Paper notes that the administration/monitoring organisation should:

- have experience in consumer banking issues; and
- have sufficient independence from banks.

We agree with these criteria. We also think that it preferable that the organisation responsible for monitoring compliance is also the organisation responsible for complaints handling and investigation.

The Issues Paper suggests two organisations that could possibly be given the administration/monitoring role – ASIC or the ABIO Council. We believe that there is also a third possibility – that an independent organisation could be established solely to administer and monitor the Code. We understand that this possibility has also been canvassed by consumer organisations.

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[2] Note that suspension or expulsion may raise competition issues, and may need to be authorised by the ACCC.

The merits of these different possibilities are described in Table 2 below.

Table 2: Possible Code monitoring organisations

Organisation	Advantages	Disadvantages	Example
Regulator – Australian Securities & Investments Commission	• Independent. • Code monitoring currently falls within its statutory role (s. 12A(3)(d)) ASIC Act). • Has experience in consumer banking issues. • Could also monitor codes from other DTIs (eg credit unions, building societies). This may also allow for better comparisons across the different industry groups. • Previous experience in monitoring Banking Code (and others). • Can quickly identify if Code breach is also breach of ASIC legislation, and if so, can refer to appropriate division within ASIC for investigation. • Has the confidence of consumers. • Funded by government, therefore no direct cost to industry or consumers for the monitoring/administration role.	• Monitoring exercise is resource intensive; resources may be better spent on investigation and enforcement activities. • Additional resources would be required if ASIC were to perform all monitoring and administration functions. • No consumer representatives involved in process. • Monitoring role may be compromised by ASIC's other roles – eg industry may not be willing to participate in an external monitoring exercise if it were conducted by ASIC; and ASIC could not give a guarantee that information obtained through monitoring exercise would not be used for other regulatory purposes. • ASIC would not have powers to impose sanctions without amendments to the ASIC Act or other relevant legislation. In any case, it would generally be inappropriate for a government agency such as ASIC to impose sanctions for non-compliance with a voluntary code. • It would not generally be appropriate for Code members to contract with ASIC to comply with the Code and any sanctions imposed by ASIC for contravention of the Code.	ASIC currently has monitoring role for Banking Code, Building Society Code, and Credit Union Code. However, it does not currently have any general administration or sanctions functions in relation to these codes. ASIC also monitors and assumes some general administration responsibility in relation to the EFT Code (a functional code).

Organisation	Advantages	Disadvantages	Example
The overseeing body for an industry dispute resolution scheme (eg the ABIO Council). The actual monitoring and compliance enforcement work could then be undertaken either within the office of the ABIO or monitoring could be contracted out and a special compliance committee could be established, reporting to the overseeing body for the ABIO.	• Existing infrastructure; no need to create a new organisation. • Already industry funded (although query whether additional funding would be required for the monitoring/administration role). • Has consumer confidence. • Experience in consumer issues, including issues relating to the Banking Code. • Logical first port of call for consumers with concerns or complaints about bank practices. • Existing consumer representation and involvement in administration of scheme. • May be able to identify non-monetary breaches at the incoming call stage and refer them directly to the compliance section. • Some complaints are likely to deal with both monetary loss plus breaches, which don't involve financial loss. Ideally they should be dealt with as a whole as it is artificial and unduly resource intensive to divide them up and have them dealt with by separate people. • Institutions already have a contractual relationship with the ABIO; and already contract to comply with the ABIO's determinations. • ABIO already has a requirement to identify systemic issues.	• Monitoring, administration and sanctions function requires a different set of skills than is required for complaints management and resolution. Of course, it would be possible for the ABIO to recruit new staff, train existing staff or contract an external organisation, to perform the main tasks of this new role. • Query whether the ABIO Council would also be able to monitor compliance with the Credit Union and Building Society Codes. • It is important that the monitoring and administration function have an ongoing presence; one danger of using existing ABIO staff is that resources might be diverted from overall code monitoring and administration to complaints handling. • Potential risk that banks might be less forthcoming in relation to individual complaints within the traditional ABIO jurisdiction (eg where there is financial loss suffered) because further information might lead to identification of other Code breaches involving non-financial loss.	Code Compliance Committee of the Insurance and Enquiries Complaints Ltd.

Organisation	Advantages	Disadvantages	Example
An independent body established for purpose of monitoring and administering the Code. Under this model complaints about breaches involving non-financial loss could either be dealt with by the independent body or the ABIO.	• Independence and consumer representation can be built into the organisation during its establishment. • Can be industry funded (eg via an industry levy). • Primary role would be monitoring and administration, therefore unlikely to be distracted by other responsibilities (although could also build in a complaints handling/sanctioning role). • May be able to provide monitoring, administration and sanctions role for other relevant codes (eg Building Society and Credit Union Codes). • Can establish new contractual arrangements with Code members that would allow for internal and external monitoring, access to information, imposition of sanctions, etc.	• May require significant additional costs for industry and therefore there may be a risk that it will not be properly funded. • Not linked directly with consumer complaints, and not necessarily an obvious point of contact for consumers. • May be difficulties for a new body in terms of creating an identity/brand name, and becoming known by consumers and consumer advocates.	In the UK, the Banking Code Standards Board is responsible for registering banks and building societies and monitoring their compliance with the Banking Code. The Board can also exercise its disciplinary functions in the event of a serious breach of the Code.

As indicated in Table 2, there are pros and cons to each of the models discussed above.

We believe that, with appropriate attention to necessary safeguards, either the industry dispute resolution scheme overseeing body model or the independent organisation model could effectively carry out the administration, monitoring and enforcement functions.

In favour of a new and independent body is the fact that administration and monitoring organisations will also be required for other industry codes in the deposit-taking sector. There would be advantages to having these functions for each of the deposit-taking codes carried out by the same organisation. This would ensure a consistent approach, as well as limit the extent to which resources are duplicated. An independent organisation with code monitoring and administration as its primary function would also be able to carry out these roles without a risk that other functions will be compromised.

In addition, we understand that the ABIO is currently considering a restructure its operations. This may make it an inopportune time to add new functions to the organisation's mandate.

That said, it would seem silly if a consumer with a complaint which involved both matters traditionally dealt with by the ABIO and Code breaches which presently fall outside the ABIO's jurisdiction had to make complaints to two separate bodies. If an independent organisation were to be established, it is clear that there would need to be appropriate referral arrangements to minimise this risk.

We also recognise that there are considerable obstacles to establishing a new organisation, not the least of which is the extra costs for Code members. In addition, there is a logic to expanding the current role of the ABIO Council and possibly of the office of the ABIO given the extensive industry knowledge and expertise they already possess as well as their developed links with industry, consumer organisations and regulators.

If the ABIO Council were to be given the administration, monitoring and enforcement functions, we would strongly recommend that:

- it be made clear that the ABIO has jurisdiction to deal with Code breaches which don't involve financial loss;
- that anyone has standing to raise complaints about Code breaches – although non-customers need not be entitled to financial compensation;
- the ABIO be provided with a specific allocation of funding quarantined for the new functions;
- the ABIO establish a discrete part within the Scheme responsible for the new functions or that the ABIO outsource some or all of these functions to a suitable organisation;
- those responsible for the administration/monitoring/enforcement functions report directly to the ABIO Council; and
- either the Code give the ABIO council sufficient authority to carry out these functions, or new contracts are negotiated with Code members to ensure this authority.

Finally, the ABIO Council should be given a brief to talk with the industry associations responsible for the other payments system codes with a view to developing consistent and possibly joint monitoring and reporting procedures.

These functions should also be reviewed at the time of the next review of the Code (ie within 3 years).

We do not believe that ASIC is the most suitable organisation for carrying out the administration, monitoring and sanctions functions of the Code. Although it has successfully performed the current limited self-reporting monitoring role in recent years, we believe that it would not be appropriate for ASIC to have a wider role in this area.

4. Direct debits

4.1 Cancelling direct debits

In recent months consumer groups and individuals have raised with ASIC a number of instances of consumers having trouble cancelling direct debit payments. Included amongst these examples are cases where the consumer has followed recommended procedures and written or contacted the 'debit user' cancelling their authority but the debit user has continued processing the direct debits. Even in these instances we understand that some consumers have had trouble getting the bank to cancel the order. (It is not, however, clear to us how frequently credit cards were involved with these examples).

ASIC supports the interim recommendation in the Issues Paper that the Code require all banks to take instructions from their customers to cancel direct debits and advise the debit user in writing that the authorisation has been cancelled where the customer so requests. It would probably be useful if the Code provision also included a timeframe in which the bank had to action the cancellation. Our initial view is that it would seem reasonable to action the cancellation immediately, however, we would be interested to know whether there are any technical or other reasons that would make such a requirement inappropriate.

We understand that there is a debate about whether this issue should be dealt with in the Code or the BECS rules and procedures. While we are sympathetic to the need to deal with the details of the direct debits system under BECS, and thus retain some flexibility, we would urge that the Code also reflect the obligation of banks to accept instructions to cancel a direct debit authority. One reason for this is that consumers are far more likely to turn to the Code to determine their rights than they are to find their way to the BECS procedures. Also, if bank staff are unclear about their responsibilities it will be easier to point them to the Code requirements.

4.2 Claims and disputes

We also tentatively support the adoption of the UK Direct Debit Guarantee within the Code. Factors influencing our view here include anecdotal evidence of the time it has taken some consumers to have incorrect debits re-credited and the fact that the present system has been designed with efficiency goals in mind so that banks are debiting accounts without needing to check on the authenticity of the authorisation.

We understand that a number of arguments have been raised against the Direct Debit Guarantee and that these have related to such things as large direct debits associated with petrol deliveries. Such direct debits would appear to be the exception rather than the norm. Rather than these cases being used to stop all reform in this area, one compromise, which may be worth examining, is a system of caps or exemptions on automatic refunding. As you know, ASIC is holding a roundtable meeting on direct debits on Thursday the 26th of July. We are hopeful that this will provide a useful forum for discussing and progressing the debate on the issue of the Direct Debit Guarantee.

We support the other two limbs of your interim recommendations dealing with reinstating losses arising from such things as lost interest and fees resulting from incorrect debits, as well as providing compensation for other losses as described in the ABIO guidelines.

4.3 Rejected debit fees and direct debits

Another direct debit related issue that has been raised with us recently is the problem of lenders (for example, pay day lenders) continuously processing direct debits when funds are not available. This has reportedly resulted in consumers becoming liable for large levels of rejected debit fees. We have been advised (but have not yet verified) that it is not uncommon for some lenders to reactivate the direct debit on a daily basis until funds become available.

Depending on the timing of the statement cycle, and the need for the consumer to withdraw money directly from their account, it may be some time before a consumer becomes aware of the original rejection of the direct debit. In these circumstances, the consumer can become liable for a large number of rejected debit fees.

We have not yet undertaken sufficient consultation on this issue to have firm views about how best to deal with this problem. We hope that the Direct Debits roundtable referred to above will provide a useful forum for discussing the issue.

Some initial thoughts are that the Code or BECS procedures could require sponsor financial institutions to make it a condition of sponsorship that where a debit has been rejected because of insufficient funds:

- the debit will not be reactivated until a specified period of time has expired, unless the consumer consents to an earlier re-presentation; or
- the debit will not be presented more than a specified number of times (eg twice) unless the debit user has contacted the consumer directly to advise of the lack of funds.

4.4 Debits from credit card accounts

As the Issues Paper notes, the situation with cancelling direct debits involving credit cards is somewhat more complicated and reforms are likely to involve changes to the Visa and Mastercard rules rather than the Banking Code of Practice.

That said, it is suspected that the differences in terms of cancellation rights between direct debits involving regular accounts and credit cards are poorly understood by consumers. While at least one institution makes an effort to inform their credit card consumers about the limitations on cancellation rights, it would appear that this is not the norm. Such a warning (along with more general education initiatives) seems desirable. We would see merit in the Code requiring banks offering credit cards to include warnings in their terms and conditions about procedures for cancelling periodic debits involving a credit card.

5. Response to other interim recommendations

5.1 Interim recommendations strongly supported

We particularly welcome the following interim recommendations suggested in the Issues Paper:

Fairness – Introducing a concept of fairness into the Code would reflect the changes and developments in contract law and associated principles (eg unconscionability) that have occurred in recent years. A commitment to fairness should also be instrumental in developing more positive and effective relationships between consumers and banks.

Extension of Code to small business – As we noted in our original submission, small businesses are often in a disadvantaged bargaining position when it comes to dealing with large financial organisations. Extending the Code as recommended in the Issues Paper will provide small businesses with some much needed additional protections, and will also be consistent with the recent changes to the jurisdiction of the ABIO scheme.

Shadow ledgers – The issue of shadow ledgers is one example of the particular difficulties that small businesses can face when dealing with financial institutions. We strongly support measures to address this issue.

Debt recovery – Undue harassment and coercion has been a concern raised by consumer advocates for many years, and it is timely to include an obligation in the Code that ensures that banks and their agents comply with the Guideline that has been developed by the ACCC. We also note that the ACCC document includes a compliance guide, and suggest that it might also be worthwhile to consider referring to this guide in the Code.

Chargebacks – Consumer rights under the chargeback system have not previously been understood by consumers or consumer advocates, and in large part, this has been due to the lack of transparency about these arrangements. In turn, this has had an impact on the extent that consumers have been able to utilise the arrangements. Making the chargeback system more transparent is a very important reform for consumers.

Subsidiary cards – The interim recommendation suggested in the Issues Paper will provide some important protection for consumers, and addresses the practical difficulties of cancelling a subsidiary card under the current arrangements. However, it would also be useful to include some clarification of what the term 'reasonable steps' might encompass.

5.2 Additional comments

There are also a number of areas covered by the Issues Paper where we would like to make additional comments.

5.2.1 Small Business Principles

As we noted in our original submission, we believe that small businesses should be protected under the Banking Code, and that the current Small Business

Principles alone are insufficient without the introduction of a monitoring and enforcement infrastructure.

We therefore support the interim recommendation for a review of the Small Business Principles, and codification of those principles into the Code following the review. However, we are concerned that there is no clear timeframe or process for this review suggested in the Issues Paper. Questions such as who will conduct the review, what consultation will be involved, and how the revised principles will be incorporated into the Code are still be addressed. We suggest that the final report of the review should spell out these details to the extent possible. Once included in the Code the Small Business Principles should form part of the regular reviews of the Code as a whole.

In addition, we note that the review of the Small Business Principles may take some time. In the meantime, we believe that it would be appropriate to consider whether some interim protections could be provided to small business in the Code. One possibility might be to incorporate the current small business principles into the Code in their current form.

We do not agree that the disclosure provisions of the Small Business Principles should be expressed to apply only to credit products. It is true that some disclosure for non-credit products will be covered by the FSRB requirement for a PDS. However, as our earlier comments show, there is still a role for disclosure obligations in the Code, for example, the obligation to provide terms and conditions documents.

5.2.2 Access to banking services

We support the interim recommendation in relation to access to banking services, and also suggest that recommendation 20.6 of the Hawker Report (obligation to provide education on alternative forms of banking where a branch is closed) be incorporated into the Code.

5.2.3 Access to banking services for people unable or reluctant to use electronic banking

We support the interim recommendation. In addition, given the lack of prescription in relation to this issue, we suggest that it would be useful if the Code specifically required that the monitoring organisation collect information and examples on the measures that have been taken. It might also be helpful if the Code were to provide some examples of the type of measures that could be implemented by banks.

5.2.4 Low cost accounts for banking services

Again, we support the interim recommendation. However, we also suggest that it might be appropriate to place an obligation on banks to directly advise customers of basic bank accounts if the bank is aware that the customer is in receipt of social security payments. This might be a way of ensuring that the recommendation has a practical effect for low-income consumers.

5.2.5 Statements of account for non-Credit products

We support the interim recommendation, but suggest the addition of the following requirements:

- Banks should advise consumers that they can request more frequent statements; and
- Banks not be permitted to impose a charge for more frequent statements, at least where the frequency is one month or more.

5.2.6 Customers in financial difficulties

We generally support the interim recommendation. However, to avoid confusion, it might be appropriate to clarify that the obligation to assist customers in financial difficulties is limited to consideration of the consumer's financial position with the bank concerned.

5.2.7 Implementing Family Court decisions and Family Law settlements

We strongly agree that guidelines on these issues need to be developed by banks. However, we suggest that the Code may not be the best place to impose the requirement to develop guidelines. It would be preferable to include in the Final Report a recommendation that banks develop these guidelines, rather than including the requirement in the Code itself.

5.2.8 Dispute resolution

We strongly support the interim recommendation and believe that implementation of the recommendation should bring about improvements in complaints handling by banks. We also suggest that the Code specify that internal processes be consistent with Australian Standard AS 4269-95 or any other industry dispute resolution standard or guideline which ASIC declares to apply to this clause (see clause 10.1 of the revised EFT Code). (Note that ASIC has released a Policy Proposal Paper on External and Internal Dispute Resolution Procedures, which provides further detail on how AS 4269-1995 might be applied to financial services businesses.)

We also suggest that the Code include provisions along the lines of clauses 10.5, 10.6 and 10.8 of the revised EFT Code. These clauses were developed in consultation with banking representatives, among others, and we believe they represent current best practice in internal complaints handling processes in this sector.

5.2.9 Electronic communication

We strongly support the intent behind the interim recommendation, but suggest that the Code instead adopt the wording used in the final version of the revised EFT Code (clauses 22.1, 22.2, and 22.3).

5.3 Credit issues

We generally support the intent of the interim recommendations that relate to credit issues including the recommendations covering: statements of account for credit products; credit assessment; guarantees and indemnities; and joint borrowers. However, as we do not currently have consumer protection

responsibilities for credit products and services, we have not examined the interim recommendations in detail.

5.4 Remaining interim recommendations

We also support the remaining interim recommendations in the Issues Paper, ie the recommendations covering:

- Changes to the Objectives and Principles;
- Prudential principle;
- Scope of the Code – Definition of Banking Service;
- Scope of the Code – Definition of Customer;
- Definition of small business;
- Definition of Banking service;
- Timing differences affecting notification of changes;
- Code clauses 9.1 and 9.3;
- Staff training;
- Copies of documents;
- Privacy and confidentiality; and
- Mutuality and set off.

6. Issues on which further views are sought

6.1 Compliance with other codes

We believe that there is value in the Code of Banking Practice also including an obligation to comply with other relevant industry codes, and we repeat the comments made in our original submission on this issue.

6.2 Options for fleshing out the detail of PDS documents

We refer to our comments on this issue in section 2 of this paper.

6.3 Effectiveness of notification of changes to terms and conditions through the media alone

We are of the view that the current practice of notifying changes to the terms and conditions through newspaper advertisements is ineffective.

As we mentioned in our original submission, last year we commissioned research into consumer understanding of transaction fees. Although the research was on a relatively small scale, one of the findings was that few consumers surveyed had noticed official notices in newspapers. In addition, those that had seen the notices regarded them as too formal and expressed in legal jargon, so that little attention was paid to this source.

Another factor contributing to the low effectiveness of this method of notification is that large numbers of consumers do not read newspapers on a daily, or even regular basis.

Our research suggested that personal communication – through notices on statements, and information on ATMs – would be the most effective ways to inform consumers about transaction fees. The research did not look at the ways in which consumers currently found out about changes to the terms and conditions. However, we have used the results to form a view that personal or direct notification might be also be most effective for notification of changes to terms and conditions documents. For example, methods such as:

- Notices in branches (eg at teller counters; around customer counter areas);
- Notices on ATM screens;
- Notices on websites – eg when a consumer logs into internet banking; and
- Information included in recorded messages on telephone banking services and customer enquiry numbers;

may be more likely to be effective in drawing the attention of consumers to the changes.

In addition, changes should also be notified via account statements, and the date of the last change to the Terms and Conditions document should be obvious. This is clearly much more easy to do electronically – for example, when terms and conditions are displayed on a website.

6.4 Technical barriers to applying the substance of the UCCC requirements to small business statements of accounts and related information

We have no specific comments on this issue.

6.5 Needs of consumers with low literacy levels

There is persuasive evidence that many consumers in Australia have low levels of literacy and numeracy. The 1996 Survey of Aspects of Literacy found that about one-fifth of Australians aged 16-74 had very poor literacy skills, such that they could be expected to experience considerable difficulties in using many of the texts and documents printed in English that they encounter in daily life. In addition, over one quarter had poor literacy skills, and could be expected to experience some difficulties.[3]

These results have implications across the board, and are not relevant only for the financial services sector. However, it is important to acknowledge the reliance placed on disclosure documents in banking and financial services regulation. In fact, a large component of the current Code deals with disclosure issues.

Improving the literacy of Australians is a long-term project, and one that is the responsibility of governments at all levels, as well as industry, community and consumer organisations. However, it is worthwhile considering whether this review could consider specific initiatives to assist consumers with low levels of literacy.

One possible option is for banks to consider providing disclosure and summary information in different formats, in addition to the traditional written format. For example, it might be appropriate for some disclosure information to be provided in community languages, in large print, and/or in video or audiotape format.[4] On this issue, we also support the submission on the Issues Paper from Consumer and Business Affairs Victoria that suggests that banks should ensure that code promotional activities are undertaken in a way that accommodates the needs of vulnerable consumers (p. 8).

It may be appropriate to include in the Code a provision that requires banks, when preparing documentation, to consider the needs of consumers that may have difficulty accessing or using traditional disclosure materials. Although such a clause has an aspirational or subjective element, its usefulness would be improved if banks were required to report to the code monitoring organisation on the steps they have taken.

Alternatively, addressing this issue could be a key topic for discussion in the proposed forum of consumer and bank representatives.

6.6 Advertising of ability to unilaterally change terms and conditions

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[3] ABS Catalogue No. 4228.0 *Aspects of literacy: Assessed literacy skills* 1996.

[4] A representative from Care Financial Counselling Service (ACT) has suggested that one advantage of providing information in video and/or audiotape format is that consumers would not have to identify themselves as having literacy difficulties.

We agree with the concerns expressed by consumer groups that institutions can promote a product as being 'fee free', but can then unilaterally introduce fees, providing the requisite notice period is met.

We would support this issue being addressed in the Code.

One solution might be that suggested by caseworkers – that advertising and point of sale promotion of fee free accounts should include specific reference, of equal prominence, to the institution's contractual right to introduce account keeping and administration fees in the future. However, such a requirement should only be imposed where a particular feature that can be unilaterally changed is a major selling point for the product.

Another solution might be to encourage banks to include, in their advertising of fee free products, a guarantee that the advertised feature will not be changed within a certain period of time. It would not be appropriate for the Code to specify what that minimum time period should be, and institutions would be free to guarantee the feature for as long or as short a time period as they feel appropriate. This guarantee would also have to be mirrored in the terms and conditions, and the monitoring organisation could monitor the extent to which such guarantees are offered.

If such a guarantee is provided, it could also be appropriate to remove the requirement for advertising the ability to unilaterally change the advertised feature.

Such an approach might create an incentive for institutions to offer the advertised feature for a reasonable period of time. It would give consumers a better idea of whether it is worthwhile changing accounts to take advantage of the advertised feature.

6.7 Incentives to rectify service problems

We would support institutions developing service charters that include financial or other incentives for meeting particular service standards. However, we do not necessarily see such charters as appropriate for inclusion in the Code itself. Instead, a charter might be an additional offering by individual companies to improve their standards to a level above that in the Code and to demonstrate their uniqueness compared to other Code members. We note, for example, that the ANZ Bank has announced that it is developing a Customer Charter, to be launched later this year.

We would hope that the revised monitoring procedures will increase the incentives to comply with the Code provisions themselves.

6.8 Option of being able to place a stop on credit card accounts

We would generally support the recommendation suggested by the ABIO.

6.9 Right to withdraw from a guarantee before credit is extended

We would support the Code giving a right to withdraw from a guarantee before credit is extended. However, there might need to be consideration given to

restricting the ability to exercise such a right so that the debtor is not prejudiced – for example, in situations where the debtor has legally committed the loan funds to a third party.

6.10 Wording of qualifications to protect the bank's interests in relation to further advances

We have no specific comments on this issue.

7. Suggestions for new clauses in the Code

7.1 Disclosure of views on account aggregation

In recent months, a number of account aggregation services have become available in Australia. These services allow consumers to check account balances and other account information for a number of accounts of different types, and with different providers, at the one website location, and using a single username and password.

There are a number of consumer issues associated with these services, and we are keen to facilitate debate and discussion on the best way to address the issues. In May 2001, we released an Issues Paper on Account Aggregation, and we are planning to hold a roundtable meeting on this topic later this year.

One of the major consumer issues with account aggregation services is that, to use most of the currently available services, the consumer must disclose their PIN or password to a third party – the account aggregator. However, such disclosure will often be a breach of the consumer's contract with their financial institution. In addition, it may create a risk that the consumer will be held liable for any unauthorised transaction that results from the disclosure.

The risks for consumers could be minimised in part if a financial institution clearly advised its customers whether disclosure to account aggregators is permitted or not. (The revised EFT Code provides that conduct that is expressly authorised by a financial institution will not be a contravention that leads to consumer liability for unauthorised transactions.)

We would therefore recommend that the Code include an obligation on banks to disclose to their customers the bank's views on customer use of aggregation services. This would send a clear message to consumers about the risks or otherwise in using these services.

7.2 Second PINs or passwords

Another issue that is worth considering in this Code review is that of the needs of some consumers to give a third party access to their card and PIN or password. This can happen where, for example, a consumer is housebound or is otherwise physically unable to attend a branch or ATM.

In these circumstances, banks should be able to issue a second PIN or password for use by a third party. In addition, the consumer concerned should be able to ask the bank to place restrictions on the use of the account (eg daily transaction limits), and should be able to cancel the second PIN or password at any time. A clause along these lines could be a useful addition to the Banking Code. Alternatively, if this suggestion comes too late in the review to allow for adequate consultation this too could be an issue for the proposed consultation to consider.

7.3 Disclosure of Account Keeping Fees and when they will be debited

While institutions are presently required to disclose account-keeping fees, there does not appear to be a requirement to disclose when they will be debited. For those accounts that can be overdrawn and to which overdraw fees apply this can result in accounts becoming overdrawn and additional fees imposed. It might be useful if the Code required that, at least annually, banks notified consumers of not just what their account keeping fees are but also when they will be debited. The provision could include a requirement that the disclosure include a warning to the consumer to ensure that they have sufficient funds in their account at the relevant time and about what the consequences, if any, are of their not being sufficient funds available.