



Code Compliance Monitoring Committee

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Clause 9 Inquiry

In June and July the Members and CEO conducted a limited survey to test bank compliance with clause 9 of the Code, which requires the Code to be:

1. On display in branches;
2. Available on request;
3. On display on the bank's website; and
4. Sent by electronic communication or mail on request.

A total of 103 bank branches were visited in Melbourne, Sydney, Canberra (and region) and Adelaide. While the sample sizes, particularly of the smaller regional banks were small, the exercise provides a snapshot of compliance with clause 9. It was disappointing to find that only slightly more than half the branches surveyed complied with the requirement to display the Code.

The mixed results indicate that this an area in which the Committee needs to undertake a more formal review.

Results were classified into three groups:

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| 1. Code on display | 61 branches |
| 2. Code not on display but available on request | 30 branches |
| 3. Code not available | 12 branches |

This last group largely consisted of branches where staff were simply unfamiliar with the Code. At these branches, the Committee Members were offered product disclosure statements, copies of internal bank documents and even a copy of the 1993 Code of Banking Practice. These branches were spread across six different banks.

All banks bar one have a copy of the Code available on their website.

If you are interested in obtaining the results for your bank, please contact the Barbara Schade on 03 9613 7353 or bschade@bankcodecompliance.org

Unilateral Variation Clauses:

There are a number of clauses in the Code of Banking Practice that may be relevant to the use of and reliance on Unilateral Variation Clauses in contracts for banking services and products. The Committee believes it may be of value to all stakeholders to provide some observations about:

- the issues that may arise under the Code and
- the manner in which the Committee will consider those issues in weighing complaints or in undertaking compliance monitoring activities where Unilateral Variation Clauses are involved.

These observations are not intended to be exhaustive, rather to provide guidance and to support the continuous development and evolution of good banking practice. It is the strong view of the Committee that the Code exists to support such a process of continuous improvement.

As the name suggests, Unilateral Variation Clauses seek to reserve rights for one party to make changes to the terms of a contract or agreement without reference

to the other party. When a Unilateral Variation Clause is used or relied upon, a number of clauses of the Code of Banking Practice may be relevant, including:

Clause 3: Which requires compliance with relevant laws;

Clause 10: Which imposes obligations in relation to terms and conditions applying to banking services; and

Clause 18: Which provides for changes to terms and conditions in relation to banking services.

Also potentially relevant to the use of Unilateral Variation Clauses are the key commitments and general obligations set out in clause 2 of the Code of Banking Practice, in particular requirements to:

Clause 2.1(a): Work continuously to improve the standards of practice and service delivery in the banking industry;

Clause 2.1(b): Promote better informed decisions about banking services by providing effective disclosure of information; and

Clause 2.2: Act fairly and reasonably in a consistent and ethical manner.

The Committee is of the view that the key commitments and general obligations create responsibilities that may, depending on the particular circumstances involved, require a standard of conduct that goes beyond simple adherence to the letter of the law.

For example, a Unilateral Variation Clause that is used to fundamentally alter the nature of the agreement that a bank has settled with a customer, without giving the customer any right to comment on or influence the outcome of that change, may satisfy the bank's legal obligation but fall short of the commitments outlined above in clause 2. Another example might be where a Unilateral Variation Clause is relied upon to alter a term that was prominent in the bank's marketing of the product or service and central to the customer's decision to take up that product or service, and where the right to vary that term was either not mentioned prior to contracting, or not given sufficient prominence.

In the Committee's view it is neither practical nor possible to describe every possible scenario in which the use of a Unilateral Variation Clause may be in conflict with the obligations set out in the Code of Banking Practice. Instead, the Committee invites all stakeholders to be mindful of the overarching intention of the Code to support good relationships between customers and banks, informed,

fair use and delivery of banking services and products, and continuous improvements in good banking practice.

Compliance Program

In response to suggestions raised at the Bank Forum in Sydney on 10 May 2006, the Committee has decided to publish its compliance program for the next six months. In the second half of 2006, the Committee intends to undertake compliance monitoring in respect of the following clauses of the Code:

Clause 14 - Account suitability

Clause 19 - Direct debits

Clause 25.2 - Customers in financial hardship

There may be some compliance exercises that are not publicised by the Committee, for example, where the compliance exercises involve a particular bank or banks, or where the Committee takes the view that a compliance exercise is best undertaken without notice.

Case Manager

After introducing our new case manager Catriona Lowe in the May bulletin, we are farewelling her this month. Catriona is leaving the CCMC to take up a position at the new Consumer Action Law Centre in Melbourne. We thank Catriona for her work for the CCMC and wish her well in her new position.

Next Bulletin

The next bulletin is due to be released in November 2006.

Enquiries

If you have any enquiries about this bulletin or the work of the Committee more generally, contact Barbara Schade on 03 9613 7353 or bschade@bankcodecompliance.org