NEW CONSUMER CREDIT CODE AND CODES OF PRACTICE

— How are the Lenders Adapting?

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CONSUMER CREDIT CODE : INTERACTION WITH CODE OF BANKING PRACTICE

In this paper I am looking at the two codes - *Consumer Credit Code* (CCC) and *Code of Banking Practice* (CBP) and how a bank with a significant retail banking portfolio needs to adapt its documentation, systems and procedures in order to comply with the regulations imposed by those two codes. "Imposed" is probably too harsh a word in the case of CBP since the CBP is a voluntary code adopted (or to be adopted) by banks. However, from the point of view of compliance officers and those charged with the responsibility of implementing documentation systems and procedures, nothing really turns on such fine technical distinctions. Both codes are sets of rules which need to be complied with from that point of view.

First of all, the bank needs to identify which of its portfolio or products are affected. So it is necessary to do an "overview". The most obvious point of difference between CCC and CBP is that CBP covers all "banking services" ie not only credit facilities. For example, accounts conducted in credit, payment services, investment advice are all topics which are governed to some degree by CBP. They are not governed by CCC. The primary focus of this paper however is on banks as lenders. Therefore I will assume that the bank is able to segregate its credit products from the others for the purpose of running its compliance programme and I will examine in this paper how the two codes will affect credit facilities.

Here we find that there are two primary determinants as to the types of lending covered. These are shown in the following table:

	Consumer Credit Code (CCC)	**Code of Banking Practice (CBP)**
1. Status of Borrower	Individual or strata corporation.	Individuals (not strata corporation).
2. Loan Purpose	Wholly *or* predominantly for personal, domestic or household (excluding investment section 6(4)).	Wholly *and* exclusively private or domestic (can include investment).

Status of the borrower is easy to identify. Nevertheless, as we will see later, it does present problems for a large scale lender which is trying to develop a uniform system.

Loan purpose throws up some difficult issues. You have one test which is determined by "wholly and exclusively"; the other is "wholly or predominantly" - ie a percentage test - and the percentage can be of the amount of use (if there was one drawdown) or of the volume of applied purposes (where there are multiple drawings, eg overdraft).

You have words which have largely similar meanings. Between the two codes there are five different terms used to describe the purpose of a facility. Of these, only one - "domestic" is common to both codes. There is obviously a degree of commonality between "private" (CBP) on the one hand and "personal"/"domestic" (CCC) on the other. But (leaving aside the exception of "investment") I would expect that "private" would cover all else which is encompassed by "personal and household" and possibly a bit more as well.

Investment is excluded from the CCC but may be included in the CBP if it can be categorised as "private".

The CCC provides some help for a lender by allowing for a purpose declaration (section 11(2)). Ironically, the lender puts that declaration in its non-regulated paper. So if you are the person in the bank who is in charge of the regulated products you have to rely on those who have responsibility for the non-regulated to make sure they have got it right. Also, just as many (if not more) borderline cases are going to occur where the bank will want to write the business on its regulated paper but the credit is in fact unregulated because it is not for a qualifying purpose. Here the "if in doubt, regulate" approach has been recommended, at least unofficially, by the Government's Drafting Committee. I look at the issues arising from this approach later in this paper.

The other "comfort" which a bank has in this regard is that the CBP is expressed to operate subject to any applicable law (eg the CCC) - clause 1.2. This works as regards direct conflicts, but what if the CBP imposes additional requirements to those of CCC. For example:

- Variations to credit fees and charges - CCC requires 30 days notice (which may be by newspaper); CBP requires same day notice (except if introducing a new fee) - but the notice must be individual - ie not by newspaper.

- When applying to guarantees, the CBP appears to have stricter requirements as regards the statement of liability covered by the guarantee than does the CCC.

Overlaps

Because there are differing requirements of the two codes, it is important for the bank to identify the areas of overlap - where one code applies and the other does not. There are three broad areas of overlap:

1. **Overlap between partly (predominantly) private and partly business**

   This is regulated by CCC: not regulated by CBP.

   For example, a mixed purpose home loan or overdraft.

2. **Loan for private investment purpose**

   Not regulated by CCC: regulated by CBP.

   Here there is obviously room for divergent views as to whether investment can be a private purpose. The classic case is a loan for the purpose of investment in a static asset eg real estate or unmanaged investment fund. The investor has minimal further activity to enjoy the profits of the investment. However, even investments requiring more investor effort might be considered "private" if they are essentially run by the one person.

3. Guarantees

(a) CCC covers only an individual's guarantee of an individual's borrowings. CBP extends further - covers guarantees by individuals of some business loans, eg loan to a proprietary company guaranteed by wife of director.

(b) Where both CCC and CBP apply to guarantees, CBP appears to have a stricter requirement as regards the statement of liability covered by the guarantee. It must be limited to a "specific amount" plus other liabilities that are described in the guarantee - CBP 17.2.

By the time you try to put all of this together it does not give a coherent picture. Banks are going to be very hard pressed to set simple guidelines for staff and customers.

All banks with any significant retail operation will have the same concerns in attempting to comply with regulation of this kind. The main concerns are:

- Simple facilities - easy to understand and to operate.
- Uniform facilities - across all States and Territories and for as many classes of customer as possible.
- Simple system.
- Simple documents - as few in number as possible and with the minimum of blanks to be completed.

The benefits from achieving this simplicity and uniformity are:

- Minimise mistakes - leads to less customer complaints and less likelihood of costly remedial procedures.
- Easier for staff to understand.
- Easier for customers to understand and follow.
- Less costly - derives from the above.

Most of this is self evident. Of course banks want to offer "tailored finance" which has a range of options which can be selected and mixed to meet individual customer needs. The challenge is to do this in a way which maintains simplicity and as much conformity with established procedures and documents as possible so as to reap the benefits which are referred to above. In the context of compliance with regulation by the two codes, the solution for banks as suggested by government authorities is "when in doubt, regulate". In other words, if you want to offer the same facility or mix of facilities to a range of customers who may use them for a variety of purposes (some of which will qualify for regulation) then you should treat the whole portfolio as if it were regulated.

One exception should be made and that is for corporate customers (except strata corporations) since facilities to these customers can never be regulated. So you should always write those facilities on non-regulated paper (ie without the statutory warning notices and information statements, etc). A bank might well want to write exactly the same facility in terms of its features as used by the customer so that the only difference between that offered to a company and that offered to an individual might be that the one lacks the pre-contractual notices which are contained in the documentation for the other. Even if it does this, as we have noted earlier it will be possible for guarantees given to support a loan made to a company to be covered by CBP. So it is not possible to make a completely clean break between facilities offered to companies and those offered to individuals. Nevertheless, that demarcation is probably as clear as any other that you are likely to get with these two codes.

Apart from companies, a bank might want to offer the same facility to individuals without distinguishing between regulated and unregulated. In other words, the documentation would look exactly the same but if the loan purpose meant that the loan was in fact unregulated, then some of the statements in the "warning notice" and "things you must know" documents would be inapplicable and thus could be said to be misleading to the customer. This problem has not escaped the attention of the finance industry. It has been one of the topics of discussion with those representing the government. I note that in the latest drafting instructions for the regulations, there has been some concession by government to the finance industry's concerns in that the words "the law says that your credit provider must give you this information about your proposed credit contract" (or similar wording) have been omitted from the prescribed pre-contractual forms and notices. Whether this omission will be sufficient to relieve lenders from liability for misleading conduct is a question which lenders will have to study very carefully.

CONSUMER CREDIT CODE

Definition of credit

As was stated at the outset, CCC has a lesser reach than the CBP, because CCC is exclusively concerned with credit. A lender needs to examine the definition of "credit" in CCC so that it can identify which of its facilities provide "credit" and which do not.

I propose to examine some of the exclusions which will be influential in the way in which a bank will approach the presentation and documentation of some of its products.

Exceptions from definition

- Debit cards - ie to the extent to which a customer may obtain access to credit funds via use of a card (for example an EFTPOS transaction).

- Charge cards - ie cards where there is only an annual fee and no interest charged and the annual fee does not exceed the prescribed amount.

- Credit without prior arrangement.

This exception is likely to give rise to a number of difficulties in practice. The exception in section 7(2) reads:

> "Credit without prior agreement. This Code does not apply to the provision of credit without prior agreement between the credit provider and the debtor. For example, where a cheque account becomes overdrawn but there no agreed overdraft facility or when a savings account falls into debit."

First I want to observe that on occasion an account might be overdrawn beyond the agreed limit. Nevertheless, I expect that the exception would be regarded as applicable in such a case - ie for the overdrawing past the agreed limit there would be held to be an overdrawing with no agreed overdraft facility.

Leaving that to one side, there are aspects of greater concern. There are two classic statements of principle applicable to bank accounts which come into consideration here. The first is that the drawing of a cheque which will overdraw an account constitutes a request by the customer for an advance. If the bank honours the cheque, by doing so it agrees to the customer's request.[1] On this basis, it becomes doubtful whether one can say that there was no agreed overdraft at the time when the credit was granted - the two were simultaneous. Nevertheless, I would draw comfort from the use of the words "overdraft facility" in the above quoted section. A "facility" connotes something available to be used by the customer at the customer's choice. Thus, the ad hoc agreement arising from the bank's honouring of a cheque, can, I think, be distinguished as not constituting an "overdraft facility".

The second classic principle is that a savings account falling into debit is a thing which is not recognised by the law. The law regards that circumstance as constituting a payment by the bank under mistake.[2] The real question which arises is - what arrangements are made for repayment of the debited amount? Although traditionally savings accounts were not permitted to go into debit, there are a number of modern examples where accounts classified as savings accounts have "fail safe" clauses stating that if, contrary to expectation, the account goes into debit then the debit balance is payable on demand and a rate of interest is imposed. Can such accounts still be classified as "savings account"? Are they examples of accounts where credit is provided without prior agreement?

Let us look at three typical examples of credit without prior agreement which can arise with the ordinary current account.

1. A customer contacts the bank after writing a cheque but before it is presented. The bank officer agrees to honour the cheque when presented.

   Here there is obviously prior agreement before the credit is provided - the credit is not provided until the cheque is paid. How can this be accommodated within the requirements of CCC? Obviously, the bank will not have time to make the necessary disclosures and obtain signed documents before it provides the credit. The only solution seems to me to lie in the exemption for short term credit. That is the bank officer will have to make his agreement to honour the cheque subject to the customer agreeing to repay the overdrawn amount within 62 days maximum.

2. There is no prior contact between customer and bank but the bank pays the cheque when it is presented and allows the account to overdraw.

   This is the exemption which section 7(2) is obviously aimed at. Arguably there is no "overdraft facility" constituted by the bank's action (see above). However it will be good banking practice for the account officer to follow up by contacting the customer and making some agreement to repay. Such agreement will probably constitute a regulated credit agreement unless it can be confined to the 62 day short term credit period.

3. What if there is some prior history of ad hoc overdrawings which are then repaid without formal recording of an agreement?

   If this procedure is repeated on a fairly regular basis you could easily reach the point where the customer feels he or she has an arrangement with the bank that it will honour his/her cheques. When does such an arrangement become a "prior agreement"? In this regard I note that contracts are defined in CCC as including "arrangements".

   In my view if the bank adopts the philosophy of "when in doubt regulate" it will need to formalise all of these informal arrangements by writing them as regulated loans or confining them to a 62 day short term credit exemption.

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1 *Cuthbert v Robarts, Lubbock & Co* [1909] 2 Ch 226 at 233. *Re Loteka Pty Limited (In Liquidation)* [1990] 1 Qd R 322 at 328-329.

2 *Barclays Bank v Okenarhe* [1966] 2 Lloyd's Rep 87.

DOCUMENTATION AND PRE-CONTRACTUAL PROCEDURES

First let us have a look at methods available for formation of the contract. There are four possible methods. Three are permitted by the CCC and one is not permitted. The following table illustrates the methods and lists the advantages/disadvantages.

Contract formation

	Lender Offer/Borrower Accept		**Borrower Offer/Lender Accept**	
Acceptance:	**In writing**	**By Conduct**	**In Writing**	**By Conduct**
Method	**1**	**2**	**3**	**4**
Advantages:	• Simple, borrower gets a "firm approval".	• Simple, borrower gets a "firm approval". • No extra copy of contract required to send to borrower after contract formed.	• Lender has more control. • Less conditions precedent required.	**Not permitted (s.12).**
Disadvantages:	• Need more conditions precedent than for method 3. • Extra copy of contract needed to send to borrower after contract formed.	• Conditions precedent required. • What type of conduct is to be specified by which borrower will accept offer?	• Extra copy of contract must be sent after acceptance. • Borrower does not get "firm approval", only "invitation to treat".	
Revision of offered terms prior to acceptance:	Revoke previous offer and start procedure again with new offer document.		Borrower can initial change before signing. Bank officer initials change when accepting offer.	

As regards the revision of offered terms, it might seem curious that the offer needs to be withdrawn when section 17 of CCC clearly contemplates alterations being made to the contract document. However, in practical terms sections 14(2) and (7) dictate that new documentation should be provided. Most lenders will be documenting their pre-contractual statement by taking advantage of section 14(5) which allows the pre-contractual statement to be the proposed contract. True, you can vary the pre-contractual statement by written notice - section 14(7) - and have the contract document amended in accordance with the terms of that notice and then initialled by the debtor, but by the time you have done that, it would be cleaner and probably quicker to reclaim all the original documents and issue fresh documents containing the amended text.

Obtaining Security

Guarantee

There are, of course, a number of pre-contractual disclosures and warning notices and information statement required for guarantors. These are listed below:

To be given to guarantor before signing:

- Copy of loan contract or offer for loan.
- Warning notice.
- "Things you must know" information statement.
- Copy of proposed guarantee (section 51(b)).

The last of these is not explicitly stated in the CCC but arises by implication from the information statement which exhorts the guarantor to obtain a copy of the proposed guarantee and read it and have it explained by a lawyer and consider getting financial advice about it. I do not see how a lender could resist a re-opening application if its procedures did not routinely provide for a copy of the proposed guarantee to be provided to the guarantor during the pre-contractual stage.

After signing

After the guarantor signs, a difficult interpretational issue arises. The lender must give a copy of the guarantee as executed, to the guarantor. Do you also need to give a copy of the concluded loan agreement if you have already given the guarantor a copy of the proposed loan contract at the pre-contractual stage? Or, is it enough to say to the proposed guarantor at the pre-contractual stage - "here is the proposed loan contract, we will give you a copy of the concluded one only if it has changed from this one". Section 52 of CCC attempts to cover the point but the language is puzzling. It says that within 14 days after sign-up you must give the guarantor a copy of the guarantee "and any related credit contract or proposed credit contract (if a copy of the related contract has not previously been given to the guarantor)". The exception within the brackets refers only to the related contract and not to the proposed related contract. It is not clear whether this was intentional or whether the proposed credit contract can be regarded as a "copy of the related contract". Given that the guarantor has the right to ask for a copy of the concluded credit contract at any time and that if at any time (not just prior to the funds being drawn) the concluded credit contract is produced and is different from the proposed one then the guarantor may disclaim all liability (refer section 53(b), I do not see any policy reason why another copy should routinely be given to the guarantor after sign-up.

Mortgages

There is no separate warning notice required and no information statement required to be given for mortgages. It seems that the regulators have decided that all of the warnings are adequately covered by the warnings in the guarantee or those in the loan agreement depending on whether the mortgage is a third party mortgage or a direct one.

As regards "third party mortgages" the effects of sections 44 and 50(2) seem to be rather curious. Section 50(2) allows a guarantee to be contained in a mortgage. That is exactly what many lenders regard as a third party mortgage. What seems to be prohibited is for that mortgage to also secure loans made by the lender to the mortgagor. Why that should be is not really clear to me.

Another curious factor relates to what are usually described as "limited recourse clauses". With these clauses a mortgagor limits his or her liability to the amount which the lender can obtain by realisation of the security. However section 44 appears to prevent the credit provider from agreeing to a mortgage of this kind since the mortgagor must also undertake personal liability - refer section 44(1).

TYPES OF FACILITIES

Points of distinction

When you come to consider how the codes will affect the facilities which a bank ordinarily offers to customers there are a number of basic characteristics by which the portfolio can be divided. These are:

- by interest rate - fixed or variable
- by drawing rights - continuing or once only drawing
- by loan term - on demand or fixed term
- by security - secured or unsecured

Of these, the latter two are not significant when considered from the point of view of setting up a system for compliance with the codes. Of course, important disclosures must be made to the customer about the bank's requirements for security and about the loan term, but these can be accommodated by the system perfectly adequately across the whole portfolio.

With loan term, this is disclosed under CCC by reference to repayments. Security required is also disclosed by inserting details in the pre-contractual disclosure statement which will "double up" under most systems as forming part of the terms of the contract. Thus, there is no need to devise a different form of loan contract or different documentation procedures to cope with these characteristics.

A further point needs to be made about security. A bank will need to make a strategic decision as to whether it wants to use a one contract/one security system or securities which can "tack on" to further facilities by means of acknowledgments. However, such a decision can be made independently of decisions about the form of loan contract. In fact, you could have basically the same loan contract available for use coupled with either a security referrable only to that loan contract or an "all accounts" security.

The other two characteristics are more significant when devising a loan portfolio.

Interest rate

Banks will wish to have documents flexible enough to offer a considerable range of different interest rate characteristics. Basically they come down to two types - fixed rate where the bank has no right to vary the rate during the fixed rate period and variable rate where the bank does have this right (although it might be circumscribed by a "cap" or other constraint).

Variable rate

Here the choice for the bank is between selecting a reference rate and providing for an ad hoc change. (CCC section 59(1), (2), (3)). If you chose a reference rate, you can use it either with or without a margin. The bank can also reserve the right to change the customer's margin. In the past, many home loans were written as a reference rate with no individual margin for particular customers. In more recent times there has been a marked move towards providing individual margins based on customer characteristics. For example special rates might be offered to members of professional associations which have an arrangement with the bank. There are *Trade Practices Act* (third line forcing) implications here which are not within the scope of this paper. However it is relevant to note that banks are likely to establish reference rates coupled with margins so as to respond to increasing competition in the retail sector.

If the facility works off a reference rate, it is possible to change the reference rate without prior notice to the customer so long as the change is advertised in a newspaper circulating in the state in which the customer resides. For banks with a national operation, this means a national advertising program. The change must be confirmed in the next account statement which goes to the customer. If there is to be an ad hoc change, (ie a change referrable to an individual customer) then this requires 30 days prior notice. An example would be change of a particular customer's margin. I expect that even for individually negotiated rates, a bank will wish to express them as a margin above or below a reference rate so as to retain the right to change the reference rate same day rather than having to give a 30 day notice. At least in theory the reference rate equates to the bank's cost of funds. The protection for the customer is that the individual margin which the customer has negotiated cannot be changed except by a 30 day notice.

This regime is less strict than that which used to apply under the *Credit Act* which required two billing cycles notice before changes could be made in rates referrable to continuing credit contracts - that requirement was relaxed in 1993 when the amendments allowing changes of annual fees were also introduced.

Other exotic conditions such as "caps" and "floors" can usually be accommodated fairly easily within the terms of the contract. Of course you need to be precise about the period during which the special condition lasts and what rate is to apply once it finishes.

You also need to bear in mind the provisions that should be inserted in the loan agreement giving the bank the right to change repayment arrangements consequent upon changes in interest rates. Any change in repayments requires a 30 day notice period.

With an "interest only" facility, there is an interpretation issue as to whether the borrower's payments of interest constitute "repayments". If they do, then this makes it very difficult to comply with the code as regards changing of interest rates for an interest only facility. With an amortised payment comprising part principal and part interest, the components of the regular repayment "self-adjust" upon any changing interest rate. Thus a bank can "live with" the requirement to give 30 days notice of a change in repayment amounts. The bank will know that any increase in interest rate will be "covered" because a larger slice of the regular repayment will go towards satisfying the interest debt. With an "interest only" loan, changes in interest rates are normally accommodated by the flexible deduction authorities which now apply across the industry. These allow for the amount which is required to satisfy the interest only payment to be automatically adjusted whenever the recipient bank requests it. The request, of course, comes via computer linkage. The customer also needs to be informed how much money he or she needs to have in the target account so that when the drawing is made there will be sufficient funds to meet it. However, under current procedures banks usually put this onus on the customer by telling the customer to keep an eye on interest rate changes. All of this may have to change if these interest only payments need to be notified 30 days in advance under section 60(1) CCC.

Fixed rate

Here the major issue is, how can the fixed rate be agreed between the bank and the customer? The fixed rate is obviously a vital term of the contract and it is difficult to envisage how a contract can be formed until the parties have agreed on the rate. It might be possible to have reference rates for fixed rate. However, there is often a gap between the date of contract and date of loan drawings. If the fixed rate is to apply for a fixed period from the date of loan agreement, this may not be attractive for a customer who is uncertain when a particular property purchase will settle and thus loses some of the benefit of the fixed rate term. On the other hand, banks would not want to hold fixed rates available for drawing at a future date. One solution would be for the bank to agree a fixed rate and hold it open for a limited period after which the loan would revert to variable rate if not already drawn. The customer could then re-negotiate another fixed rate or stay with the variable rate depending on which seemed more attractive at the time. If the parties do not want to do this, is it possible to deliver the pre-contractual documentation to the customer with the interest rate left blank on the basis that it will be agreed and inserted in the documents on the day of the drawing? I cannot see how this can be done except if the parties delay making their agreement until the date of drawing. The customer would not really know where he or she stood under such a situation and I think they would prefer the certainty of knowing they had funds available at some rate (even if that be a variable rate).

Loan term

There are various ways of looking at this issue. The CCC has perpetuated a distinction which was made in the *Credit Act*, although a different definition has been adopted. The distinction is between "continuing credit contracts" and "non-continuing credit contracts" which I shall call "closed-end contracts". The obvious examples of "continuing credit contracts" are credit card contracts and overdrafts. The typical closed-end contract is a term loan. Credit foncier loans such as the standard home loan do not really have a fixed term but they have an "assumed term" on which the repayments are calculated. So we will call them closed-end contracts. "Redraw facilities", where the customer starts with a term loan which is fully drawn and in reduction, and then has the right to re-borrow amounts repaid, are a kind of hybrid between continuing credit contracts and closed-end contracts. The decision on how to document them and where to locate them on the system will probably depend on whether they are to be amortised or made payable on demand. The former can probably be put with closed-end contracts, the latter with continuing credit contracts.

With credit cards, it would be possible for a bank to amalgamate this portfolio with its overdrafts and other continuing credit contracts. I doubt that this will happen since most banks have a separately operating cards division already well established and whose system complies with the *Credit Act* and this needs little change to accommodate the CCC. Cards are a recognised separate "product" which also encompass EFT facilities, so there is no compelling commercial reason readily apparent for such an amalgamation.

Mixtures of facilities

One of the criticisms of the *Credit Act* was that it was very restrictive in the types of facilities which lenders could provide. Those who have drafted the CCC (and the CBP) have been mindful of this and have attempted to provide maximum flexibility for offering differing facilities within the one contract. However there are a number of practical constraints which will arise for lenders:

- the requirement to disclose all fees will mean that a long and complex schedule of financial information will appear in the "Schumer Box". If you were to document with differing contracts, each would have a shorter schedule of fees in its Schumer Box.

- if you wish to have an overall credit limit applying to the whole facility and perhaps specific limits applying to particular parts of it, again this will make the document complex and difficult to understand when completing details in the Schumer Box. This perhaps highlights the policy question of whether these sorts of facilities are really suitable for consumer lending.

- if there are too many facilities offered within the one contract, the disclosure documents will become quite long given the number of key requirements that must be set out for the contract.

- the more "variables" you have in the one contract, the more likely it is that you will need to vary the contract. This might become too unwieldy.

Having said that, I think there is some scope for offering a "cocktail" of different facilities within the one contract set of documents. I have attached a number of models which illustrate the approaches which a lender might make towards the problem of documenting facilities. The challenge in every case is to try to get the right balance between standard terms and conditions which are to apply as far as possible across the board and particular variations which can be grafted onto those standard terms in order to satisfy particular customer needs. The models are not intended to be an exclusive range but just a series of examples which bear some consideration.

CONSUMER CREDIT CODE

CONTRACTUAL TERMS

MODEL A

A		Usual terms common to all contracts		
	1	2	3	
B	Usual terms for term loan	Usual terms for overdraft	Usual terms for credit cards	Etc
C		Particular terms of this facility		

Features:

- 3 documents for each facility - a lot of duplication
- Each facility is separately documented - but it might be possible to combine 2 or more facilities using C and a combination of the relevant documents from B plus one copy of A - only possible if the facilities operate under one limit
- "Usual terms and conditions" = A + (appropriate document from B).

Contract comprises:

A + (one out of B) + C

CONSUMER CREDIT CODE

CONTRACTUAL TERMS

MODEL B

(Documents from (A and B in Model A) are combined into A).

	1	2	3	
A	Usual terms for term loan	Usual terms for overdraft	Usual terms for credit cards	Etc
B		Particular terms of this facility		

Features:

- 2 documents for each facility - the A documents will contain a core of similar clauses.
- Each facility is separately documented - but it might be possible to combine 2 or more facilities using B plus a selection from A - only possible if the facilities are operated under one limit.
- "Usual terms and conditions" = appropriate document from A.

Contract comprises

(One out of A) + B

CONSUMER CREDIT CODE

CONTRACTUAL TERMS

MODEL B+

	1	2	3	
A	Usual terms for term loan and overdraft	Usual terms for credit cards	Usual terms for fully drawn on demand loan	Etc
B		Particular terms of this facility		

* This is like a combination of A plus B1 and B2 from Model A.

Features:

- 2 documents per contract
- Facilities are separately documented if they have their own limit.
- Combination of facilities under one contract is easier therefore less likelihood of multiple contracts.
- If want only one of the facilities described in a multi-facility document, document B covers this by specifying only the particulars relevant to that facility, eg it specifies only overdraft out of term loan and overdraft referred to in document A.
- Selection of the combination options to include in the standard A documents might tend to inhibit product mix.
- "Usual terms and conditions" for separate products, eg overdraft are not easily identifiable.

Contract comprises:

(One out of A) + B

CONSUMER CREDIT CODE

CONTRACTUAL TERMS

MODEL C

(Combination of A and most versions of B + C from Model A)

A Multi facility agreement

Appendices for

- Term Loan
- Overdraft
- Credit Card

Etc

Features:

- Contract is one document only.
- Contract will require more tailoring to individual need.
- Elaborate document if only single facility is required.
- "Usual terms and conditions" for particular facilities are hard to identify.
- Multi facilities under one limit are best suited.

PRE-CONTRACTUAL DOCUMENTS

Consider a hypothetical borrower who applies for a housing loan. The bank approves the housing loan, together with a small overdraft for the borrower. The bank requires the housing loan to be serviced by direct debit to a cheque account. The overdraft will be conducted on the cheque account.

What documents will the bank provide to the borrower before the contract is formed?

Document	Required By
Consent to disclosure	Privacy Act
Approval Letter	
Schedule (includes "Schumer Box" financial information)	CCC CBP
Usual Terms and Conditions	CCC CBP
Schedule (overdraft) (includes "Schumer Box" financial information)	CCC CBP
Usual Terms and Conditions (overdraft)	CCC CBP
Copies	CCC
Direct Debit Authority Form	
Booklet - Features of Banking	CBP
Cheque account conditions of use	CBP
Schedule of fees and charges	CBP
Insurance proposal and policy document	Insurance Contracts Act
Form 2 Information statement "Things You Must Know"	CCC
Form 3 Warning notice (include in schedule)	CCC

Notes

- The borrower will be required to sign other documents, for example, a declaration for financial transactions reporting and the bank's account authorities.
- If the insurance premium is being financed, disclosure might be required under CCC.

It can be seen that the documentation requirements are quite comprehensive and will require a good deal of staff training as well as system development in order to ensure compliance. Compliance in this area is vital to ensuring that the bank obtains a legally enforceable contract. Legally enforceable contracts are the cornerstone of the bank's balance sheet so these issues become of fundamental importance to the bank in a prudential sense as well as from a business perspective.

One can only hope that lenders will be able to develop a sufficiently automated system to cope with these requirements and provide the documentation to customers in a timely and cost efficient manner. The main problem will be in trying not to swamp the customer with too many bits of paper and too much information. Although some of the documents in the above list can be combined, it is still a daunting amount of information for a customer to come to grips with.

CONCLUSION

So far as I have observed, most lenders are taking the opportunity provided by these two codes of reviewing and revising their standard forms of loan and security documentation. I expect that there will be significant customer benefit from this in terms of having more readable documents and a more efficient product delivery system. The main concern is the amount of information required to be given to customers and the possibility that they will be deterred from reading any of it by the sheer volume.

Cost of compliance is likely to be significant. We will need to await the surveys which interested groups will no doubt conduct on cost benefit before we will have any empirical evidence on which to make a balanced assessment of the effect of these two codes.