

MIAA Code of Practice

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Introduction to the MIAA Code of Practice

What is the Mortgage Industry Association of Australia?

The Mortgage Industry Association of Australia (“the MIAA”) was incorporated as a company limited by guarantee in 1982. The MIAA comprises individuals and organizations Australia wide who are specialists in the finance sector, particularly housing finance.

Who are the Members of the Mortgage Industry Association of Australia?

Membership of the MIAA comprises the following classes of Member:

- Full Members
- Life Members
- Honorary Members
- Accredited Mortgage Consultants (“AMC”)
- Other classes of Member established by the Board from time to time.

Full Members and Life Members of the MIAA may be individuals, or small or large organisations. AMCs are individuals employed by or contracted to a Member other than an AMC.

The range of MIAA Membership is very broad and includes:-

- **“Mortgage Originators”**, ie Members who bring together potential borrowers and credit providers (sometimes also known as “Mortgage Finance Intermediaries” or “Mortgage Introducers”)
- **“Mortgage Managers”**, ie Members who manage mortgages on behalf of credit providers
- Members who are **“Lenders”** or **“Credit Providers”**, eg banks, credit unions, building societies, mortgage funders, superannuation funds and other providers of credit
- **“Finance Brokers”**, ie Members who bring together potential borrowers and credit providers in respect of lease, hire purchase and rental transactions
- Members who provide lenders' mortgage insurance
- Members who issue, purchase, market or invest in mortgage loans or mortgage related securities, such as professional market investors and mortgage securitizers.
- Members who enhance the credit quality of mortgage loans or mortgage related securities or who regularly assist the industry generally, such as lawyers and valuers

The relative sizes of MIAA Members and the roles they perform can vary quite considerably. But all Members have one thing in common – a commitment to ensuring good industry practice and fair dealing within the Mortgage Industry. This broad range of individuals and corporations and the functions that they perform make up the **“Mortgage Industry”**.

MIAA Members and the Finance Market Place

Housing and other finance is no longer obtained solely from the traditional sources of finance such as Banks, Building Societies and Credit Unions. There are now many other organizations providing finance.

Although many Lenders still provide their own “face to face” dealings with consumers, the Mortgage Industry has seen a rapid growth in the activities and status of mortgage intermediaries. These intermediaries bring together the consumer and the Lender. They play a key role in assisting a consumer to obtain the kind of finance that is best suited to their own particular circumstances, i.e. *appropriate* finance.

Once a mortgage loan has been made, a consumer will often deal with a Mortgage Manager who takes on the responsibility to manage the mortgage on behalf of the Lender. The Mortgage Manager may well have ongoing dealings with a consumer particularly if a consumer needs some assistance because of financial difficulties.

With so many different operators in the marketplace for finance and with so many different products available, a consumer can sometimes feel daunted by the prospect of raising finance. It is important that consumers are given access to a broad range of choices. Consumers looking for a loan need to feel confident in proceeding with what is usually the most significant financial transaction in their lives - confident also in the knowledge that the person with whom they are dealing has a commitment to good industry practice and fair dealing.

The MIAA believes that consumers benefit significantly from a healthy competitive spirit in the marketplace for finance. The active involvement of individuals and small corporations in competition with each other and with large corporations and Lenders means that consumers have a wider choice of financial products at a competitively set price.

Overview of the MIAA Code of Practice

What is a “Code of Practice”?

A “Code of Practice” is a developed statement of principles dealing with industry practices designed to set a standard of good industry practice and fair dealing between consumers and MIAA Members. The Code of Practice aims to instill public confidence in the operations of Members. Although the Code of Practice is not legislation like an Act of Parliament, it is binding on Members.

The MIAA Code of Practice is intended to complement the Corporations Act 2001, the Uniform Consumer Credit Code (“UCCC”), the Australian Securities and Investments Commission Act 2001, the Trade Practices Act 1974 and other Fair Trading legislation. The MIAA supports Government legislation and believes that by Members making a commitment to good industry practice and fair dealing in the finance marketplace, and putting that commitment into practice, the confidence of both consumers and the public generally, will be enhanced.

Finance plays a pivotal role in the Australian economy. It is imperative that consumers have confidence in their dealings with Mortgage Originators, Credit Providers, Mortgage Managers, Finance Brokers, AMCs and others in the Mortgage Industry.

Membership of the MIAA is “accreditation” that a person has met the MIAA’s standards to be admitted as a Member and so has the right to publicly proclaim membership of the MIAA. The MIAA believes that this is not simply an empty phrase. It is the outward sign of a Member’s commitment to good industry practice and fair dealing. The Accreditation “Member of the Mortgage Industry Association of Australia” or “Accredited Mortgage Consultant” stands as the sign of a skilled professional who not only has this commitment but who puts that commitment into practice. Accreditation must have value to both Consumers and to Members of the MIAA themselves.

The MIAA Code of Practice which follows specifies minimum standards of professional conduct and good industry practice to be adhered to by Members. It also specifies minimum requirements of professional qualifications and/or experience and Professional Indemnity Insurance that apply to Members.

Consumer Complaints Handling

Internal Disputes Resolution

Complaints against Members are dealt with under two separate procedures:

- Internal Disputes Resolution (“IDR”) Procedures covering complaints made directly to the Member concerned, and
- an independent External Disputes Resolution Service

The Board of the MIAA has promulgated IDR Procedures with which every Member must comply.

A copy of the MIAA IDR Procedures can be obtained from one of the contact points shown in Schedule 1 or by visiting the MIAA web site at www.miaa.com.au.

External Disputes Resolution - COS

Under powers contained in its Constitution, Credit Ombudsman Service Limited (“COS Limited”) has established the Credit Ombudsman Service (“COS”). The Credit Ombudsman Service Rules made by COS Limited (“COSL Rules”) spell out how COS will deal with complaints by consumers against Members (other than AMCs), and also how disputes will be resolved.

The COSL Rules do not apply to the acts or omissions of AMCs. The AMC’s employer or contracted Member remains fully responsible for the acts or omissions of

their AMCs. Therefore every reference in this Code of Practice or in the COSL Rules to a "Member to whom the COSL Rules apply" is a reference only to a Member other than an AMC. But even though an AMC cannot be the subject of a complaint under the COSL Rules, each and every AMC is bound by the MIAA Constitution to comply with the MIAA Code of Practice in all respects. An AMC who breaches the Code of Practice can be dealt with under the MIAA's own Disciplinary Rules.

The COSL Rules do not apply to a consumer who is a party to a transaction that involves or may involve the provision of credit secured by way of mortgage over property other than residential real estate, eg by way of mortgage over commercial real estate.

A copy of the COSL Rules can be obtained from one of the contact points shown in Schedule 1 or by visiting the COS Limited web site at www.creditombudsman.com.au or the MIAA web site at www.miaa.com.au.

MIAA Code of Practice

Part 1. Preliminary

Name of Code

1. This Code is the MIAA Code of Practice.

Objectives of the Code

2. The objectives of the Code are:
 - to establish professional standards of consumer/Member dealings in the Mortgage Industry
 - to promote commitment by MIAA Members to compliance with laws and regulations in the spirit of those laws and regulations
 - to promote the maintenance of the high public standing of MIAA Membership accreditation
 - to promote ethical and fair business practices to the benefit of consumers and the public and Members
 - to promote education and professional programs for Members

Ongoing relevance of the Code

3. The MIAA will actively review changes in the Mortgage Industry and mortgage practice with a view to ensuring the maintenance of good Mortgage Industry practice at all times and will amend this Code where there is a need or benefit to consumers in doing so.

Application of the Code

4. This Code of Practice applies to and is binding on every
 - Mortgage Originator
 - Mortgage Manager, and
 - Credit Providerwho is a Full Member or Life Member of the MIAA and who acts for a party to a transaction which involves or may involve the provision of credit secured by way of mortgage over real estate.

5. The Code also applies to and is binding on every
 - Finance Broker who is a Member of the MIAA; and
 - AMC.

7. Where this Code refers to a “Member” it means a Member of the MIAA to whom the Code applies and by which is bound. Sometimes the word “Member” has a slightly different meaning but in this case this will be indicated in the context in which the word appears. Where this Code imposes an obligation on a “Mortgage Originator”, “Credit Provider”, “Mortgage Manager”, or “Finance Broker”, that obligation applies only if the person referred to is a Member to whom the Code applies and by which is bound.

8. This Code applies to and binds and continues to apply to and to bind a Member to whom the Code applies notwithstanding that the Member has ceased for any reason to be a Member of the MIAA after the date (or when more than one on the last of such dates) upon which the facts giving rise to the complaint by the consumer occurred.

9. The Board may from time to time prescribe that this Code applies to a particular class of transaction not otherwise referred to in this Code. Any such prescription shall as between a Member and MIAA, or as between Members, be final and binding.

Part 2. Essential Requirements to become and remain a Member to whom the Code Applies

Qualifications and Experience of Mortgage Originators and Finance Brokers

10. A Mortgage Originator, Mortgage Manager, Finance Broker or AMC must have qualifications or experience relevant to the functions to be performed and to the satisfaction of the Board. An applicant for membership as a Mortgage Originator, Mortgage Manager, Finance Broker or AMC must be able to demonstrate either mortgage lending, finance broking or mortgage management experience satisfactory to the Board, or be the holder of educational qualifications recognised by the Board.
11. Mortgage Originators, Mortgage Managers, Finance Brokers and AMCs must also keep up to date with the laws and practices in the Mortgage Industry as they change and evolve. Mortgage Managers, Finance Brokers and AMCs must undertake continuing education programs recognised by the Board and earn sufficient "accreditation points" to maintain membership.
12. The categories of operations of Members are many and varied and can be quite specialised. Most Members, who are not Mortgage Originators, Mortgage Managers, Finance Brokers or AMCs, are already subject to, or have available to them, continuing education programs for their particular area of operations. Where appropriate, the MIAA may supplement such programs with the MIAA's own programs designed specifically for the Mortgage Industry.
13. Mortgage Originators, Mortgage Managers and Finance Brokers must ensure that at all times they employ operatives and engage agents who have the qualifications or experience necessary to deal competently and professionally with consumers.

Professional Indemnity Insurance

14. Members who are Mortgage Originators, Mortgage Managers or Finance Brokers, that are Members, must at all times maintain Professional Indemnity insurance:
 - of not less than \$1 million, and
 - endorsed to cover a Determination made by the Credit Ombudsman, and
 - unless the Board specifies otherwise, with an extension for Fidelity cover of not less than \$100,000.
15. The terms and conditions of that insurance must at all times meet other minimum standards as set by the Board from time to time.

16. An AMC must be employed by or contracted to only one Full Member of the MIAA whether on a full time, part time or casual basis. Each AMC must be personally covered by Professional Indemnity Insurance for not less than \$1 million for each and every transaction facilitated by that person.
17. The purpose of the requirement for Professional Indemnity Insurance is to ensure that any third party who has suffered a loss due to some act or default of a Member has recourse to the proceeds of the insurance policy irrespective of the Member's own financial capacity to meet a successful claim against that Member.

Part 3. Practice Standards for MIAA Members

18. The Practice Standards set out hereunder apply to and bind Members of the MIAA, subject to the provisions of this Code of Practice.
19. In these Standards, “Residential Loan Member” means a Member who acts for a party to a transaction which involves or may involve the provision of credit secured by way of mortgage over residential real estate; “Commercial Loan Member” means a Member who acts for a party to a transaction which involves or may involve the provision of credit secured over real estate other than residential real estate. Where the word “Member” is used, the Practice Standard applies to and binds all Members except in clauses []to [] where “Member” means Member to whom the COSL Rules apply, or as otherwise specified.

Compliance with Laws and the MIAA Code of Practice

20. A Member must always comply with this Code, the Corporations Act 2001, the Uniform Consumer Credit Code, the Trade Practices Act 1974 and other Fair Trading legislation, and other laws and regulations applying to a loan transaction from the time of loan enquiry until the loan is discharged.

Appropriate Finance

- 21A. A Residential Loan Member must suggest or recommend to an applicant only those arrangements for mortgage finance that the Member genuinely and reasonably believes are appropriate to the needs of that applicant.
- 21B. A Residential Loan Member must not engage in Churning by receiving a commission, payment or other incentive for negotiating a refinanced loan for a consumer, with a different lender from the lender which originally financed the loan for the same property, and the consumer is not better off as a result of the refinance.
22. A Residential Loan Member must, before a consumer signs a Letter of Engagement with the Member, provide to the consumer a recommendation that where the Member is acting as agent for a Credit Provider the applicant should seek and rely upon their own enquiries about the competitiveness and suitability of the Loan.

Loan Applications

23. A Member must always disclose to an applicant all relevant details known to the Member about a proposed loan at the time of application.
24. A Residential Loan Member must always make such enquiries as are necessary to determine an applicant’s capacity to repay the proposed loan.
25. A Residential Loan Member must submit a loan application to the Credit Provider, whenever possible, within five (5) business days (but in any case

promptly) after receipt of a duly completed application, supplying all information required by the Credit Provider to make the decision whether or not to grant the loan applied for.

26. A Commercial Loan Member must submit a loan application to the Credit Provider promptly after receipt of a duly completed application, supplying all information required by the Credit Provider to make the decision to make the loan applied for.
27. A Member must always keep an applicant informed of all relevant information known to the Member relating to a proposed loan to the extent that that information applies to that applicant.

Outcome of Loan Application

28. A Residential Loan Member must advise an applicant of the outcome of the loan application, whenever possible, within five (5) business days (but in any case promptly), of the loan decision being notified by the Credit Provider to the Member.
29. A Commercial Loan Member must advise an applicant of the outcome of the loan application promptly after the loan decision being provided by the Credit Provider to the Member.
30. A Residential Loan Member must refund amounts which may be due to the applicant, whenever possible, within two (2) business days (but in any case promptly) of the decision to decline the loan application being notified to the applicant.
31. A Commercial Loan Member must refund amounts which may be due to the applicant as provided for in any agreement between the applicant and the Commercial Loan Member or otherwise promptly after the decision to decline the loan application is notified to the applicant.

Confidentiality

32. A Member must at all times keep confidential information provided by an applicant and will only disclose information as may be required by law or as authorized by the applicant.

Fees and Commissions

33. If a fee or ongoing commission will or may be paid by or to the Member for or in connection with a loan or an application for a loan, the Member must always disclose to the applicant:
 - (a) that fact; and
 - (b) the person by whom the fee or commission is payable; and
 - (c) the person to whom the commission is payable; and

- (d) the amount of the fee or commission if ascertainable; and
- (e) if the fee or commission is un-ascertainable, the basis of or formula for such fee or commission;

but this paragraph does not apply to:

- (f) fees payable by a supplier under a merchant service agreement with a credit provider;
 - (g) the amount payable in connection with a credit related insurance contract; or
 - (h) commission paid to employees of the Member.
34. A Member must never charge an applicant a non-refundable application fee for a loan submission where the Member knows or suspects that there is little or no chance of the loan being approved.

Skill, Care and Diligence

35. A Member must act with all due skill, care and diligence in their Mortgage Industry dealings.
36. A Member must always ensure that they, their associates and staff are thoroughly knowledgeable in those areas and aspects of the Mortgage Industry in which they participate.
37. A Member must undertake all necessary education and other MIAA endorsed programs to maintain and further their and their staff's professionalism.
38. A Member must take all reasonable steps to ensure that the finance applied for is obtained and property settlement completed in a timely fashion.

Honest and Honourable Dealings

39. A Member must establish and maintain honest and honourable relationships with all persons with whom they may come into contact in the course of their professional and commercial activities.
40. A Member must express written terms and conditions of their services in plain language and provide a fair and balanced view of the relationship between the applicant or borrower and the Member.
41. A Member must tell an applicant or borrower how any variation of the terms and conditions of their services will be notified and will give the applicant or borrower reasonable notice before any variation takes effect.
42. A Member must not engage in any acts or omissions of a misleading, dishonest, deceptive or fraudulent nature.

43. A Member must ensure that a Member's advertising will not be misleading, dishonest or deceptive.

Complaints Handling

44. A Member must always tell a consumer who makes a complaint by telephone the name of the Member's "Complaints Contact Person".
45. A Member must always ensure that the Complaints Contact Person has the authority to determine and respond to any complaint made by a consumer.
46. A Member must always maintain a written policy on complaints handling which must be provided to the Complaints Contact Person.
47. A Member must ensure that a consumer is treated courteously when making a complaint to a Member.
48. A Member must not, subject to statutory requirements, impose any fee on a consumer who makes a complaint.
49. A Member must always tell a consumer about the COS and about how, and to whom, to make a complaint whenever a consumer informs the Member that the consumer believes that the complaint has not been dealt with satisfactorily by the Complaints Contact Person.
50. A Member must keep displayed in the Member's offices a leaflet publicising the COS.
51. A Member must always respond in writing to the Scheme Manager, whenever possible, within fifteen (15) business days (but in any case promptly) after receipt by a Member of a written complaint referred to that Member by the Scheme Manager for response.
52. A Member must always maintain a record of written complaints made against that Member in the form and manner stipulated by the Board from time to time.

Conflict of Interest

53. A Member must frankly and fully disclose any actual, apparent or potential conflict of interest of which a Member is or ought to be aware to the extent that such a conflict of interest may concern a consumer.

Member vicarious liability and Member Dealing with MIAA and Other Members

- 54A. A Member is vicariously liable for any acts or omissions of any employee or representative that embarrasses, impugns or discredits the MIAA or brings the MIAA or the mortgage industry into disrepute or may do any of those things. Any such acts or omissions are deemed to be a breach of this Code of Practice by the Member.

- 54B. A Member must always conduct that Member's business in accordance with the Memorandum and Articles of Association of the MIAA and this Code of Practice, act in a professional and courteous manner towards consumers and fellow Members, and refrain from any conduct which may embarrass, impugn or discredit the MIAA or bring the MIAA into disrepute.
55. A Member must immediately advise any other MIAA Member in a lending transaction of any financial interest, relationship or association whatsoever with an applicant or borrower or guarantor or any other party in relation to the loan.

Moneys Held on Trust

56. A Member who is a Mortgage Originator or Finance Broker must (unless in a particular case by law required otherwise), whenever possible, by the next business day (or in any case promptly) deposit any money received or held by the Member on trust for a consumer into a trust account maintained by that Member with an authorised deposit-taking institution which account must not contain any moneys other than moneys received or held on trust by the Member for consumers.
57. A Member who is a Mortgage Originator or Finance Broker must (unless in a particular case by law required otherwise), whenever possible, by the next business day (or in any case promptly) deliver money received or held by the Member on trust for any third party (other than a consumer) to that third party or, at the Member's election, deposit that money into an account maintained by an authorised deposit-taking institution nominated by the third party for the purpose.
58. A Member who is a Mortgage Originator or Finance Broker must (unless in a particular case by law required otherwise) at all times keep such books and records as correctly record and explain the transactions relating to money received or held by the Member on trust for a consumer or a third party (other than a consumer) from time to time.
59. A Member who is a Mortgage Originator, or Finance Broker must (unless in a particular case by law required otherwise) ensure that the Member's trust account is audited by a registered company auditor, and a written report thereon prepared by the auditor, within such period as the Board may from time to time prescribe.
60. A Member who is a Mortgage Originator or Finance Broker must (unless in a particular case by law required otherwise) within such period as the Board may from time to time prescribe lodge with the National Secretariat the written report by the auditor containing such matters as the Board may from time to time prescribe.
61. A Member who is an Accredited Mortgage Consultant ("AMC") must not request, require or induce a consumer to pay or deliver money to that

Accredited Mortgage Consultant in relation to a loan transaction except as may be authorised in writing by that AMC's employer or principal.

62. A Member who is an Accredited Mortgage Consultant ("AMC") must (unless in a particular case by law required otherwise), whenever possible, by the next business day (or in any case promptly) deposit any money received or held by that AMC on trust for a consumer into a trust account maintained by the Member by whom or to whom that AMC is employed or contracted (as the case may be) with an authorised deposit taking institution which account must not contain any moneys other than moneys received or held on trust by that Member for consumers.
63. A Member who is an Accredited Mortgage Consultant ("AMC") must (unless in a particular case by law required otherwise), whenever possible, by the next business day (or in any case promptly) deliver money received or held by that AMC on trust for any third party (other than a consumer) to that third party or, at the AMC's election, deposit that money into an account maintained by an authorised deposit taking institution nominated by the third party for the purpose.
64. A Member who is an Accredited Mortgage Consultant ("AMC") must (unless in a particular case by law required otherwise), whenever possible, at all times keep such books and records as correctly record and explain the receipt, depositing and delivery of money received or held by that AMC on trust for a consumer, or a third party (other than a consumer), from time to time.

Part 4 Dictionary

65. In this Code of Practice, the following words and phrases have the meanings and references set out below:

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| “AMC” | an Accredited Mortgage Consultant being an individual who is a Member employed by or contracted to another Member other than an AMC; |
| “Business” | every business, trade, profession or occupation continuously carried on and whether or not for profit; |
| “Board” | the board of directors of the Association from time to time; |
| “Churning” | exists when a loan writer receives a commission, payment or other incentive for negotiating a refinanced loan for a consumer, with a different lender from the lender which originally financed the loan for the same property, and the consumer is not better off as a result of the refinance; |
| “Code of Practice” or “Code” | this Code of Practice as promulgated by the MIAA and as revised and re-promulgated by the MIAA from time to time; |
| “Credit Provider” | an individual, corporation or other entity that lends or provides credit; |
| “consumer” | a member of the public who deals with a MIAA Member whether as a borrower, guarantor, prospective borrower, or prospective guarantor, or who in any other way seeks the services of a Member in the ordinary course of that Member’s business in the Mortgage Industry; |
| “COS Limited” | Credit Ombudsman Service Limited or its successor in title; |
| “COS” | the service for dispute and complaint handling established by COS Limited; |
| “COSL Board” | the board of directors of COS Limited established under its Constitution; |
| “COSL Rules” | the Credit Ombudsman Service Rules made by COS Limited; |
| “Determination” | an agreement, settlement or award made pursuant to the COSL Rules; |
| “Finance Broker” | a Member who brings together potential borrowers and Credit Providers in respect of lease, hire purchase and rental transactions; |

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|------------------------|---|
| “Individual” | a natural person, or a partnership or other incorporated body consisting only of natural persons; |
| “Member” | an individual corporation or other entity that is a member of the MIAA; |
| “MIAA” | the Mortgage Industry Association of Australia; |
| “Mortgage Industry” | the environment and operations of Mortgage Originators, Mortgage Managers, Lenders, Finance Brokers and others more particularly described in the Introduction; |
| “Mortgage Manager” | a Member who manages mortgages on behalf of a Credit Provider; |
| “Mortgage Originator” | a Member who brings together potential borrowers and Credit Providers; |
| “Mortgage Services” | any services provided to consumers by a Member in the ordinary course of its business in the Mortgage Industry; |
| “National Secretariat” | the National Secretariat of the MIAA; |
| “Practice Standards” | the standards of good industry practice specified in Part 3; |
| “Scheme Manager” | the Scheme Manager appointed by the COSL Board; |
| “State” | includes Territory of the Commonwealth of Australia. |

Part 5 Promulgation

66. This Code of Practice (Edition 2) is promulgated by resolution of the Board dated [].

Notes:

1. In this Code of Practice a reference to money received or held on trust is a reference to money received or held by a Member to which that Member is not wholly entitled both at law and in equity.

Edition 2 – Promulgated [].

Statement of Interpretation Adopted by MIAA Board 27 May 2003

(To be read in conjunction with MIAA Code adopted by the Board 27 May 2003)

“ A. Commission Disclosure

A member will have satisfied clause 33 of the Code of Practice and will not be guilty of Misconduct if:

- (a) *where the member is paid by or on behalf of the lender, the member discloses that:*
- (i) *a commission may be paid;*
 - (ii) *the commission will be paid by or on behalf of the lender (there is no need to identify the name of the lender);*
 - (iii) *that the commission is payable to the member;*
 - (iv) *the amount of the fee or commission if ascertainable;*
 - (v) *if the fee or commission is unascertainable, a statement that the commission comprises (as appropriate):*
 - *an upfront payment equal to a percentage of the principal sum;*
and
 - *an ongoing commission throughout the term of the loan based on a percentage of the amount owing from time to time.*

Where the member is a mortgage manager or aggregator who distributes loans through sub-originators, and the mortgage manager or aggregator does not deal directly with the relevant customer, that member will not need to make a disclosure under clause 33. In these circumstances the relevant disclosure will be made by the sub-originator who deals with the customer. In reaching this conclusion the Council notes that the Consumer Credit Code will require the lender to comply with s 15(M) of the Consumer Credit Code in relation total commissions paid by the lender.

- (b) *Where a member is being paid a commission by a manager or an aggregator the member must disclose the following:*
- a commission may be paid;*
- the commission will be paid by or on behalf of the lender, manager, or aggregator (there is no need to identify the name of the lender, manager, or aggregator);*
- that the commission is payable to the member;*
- the amount of the fee or commission if ascertainable;*

if the fee or commission is unascertainable, a statement that the commission comprises (as appropriate):

- *an upfront payment equal to a percentage of the principal sum; and*
- *an ongoing commission throughout the term of the loan based on a percentage of the amount owing from time to time.*

The Council approves the form of disclosure attached. Members can use any form of disclosure so long as it complies with the above interpretation of clause 33.

Sample form of disclosure

[BROKER NAME] arranges loans for borrowers.

In providing these services [BROKER NAME] is an independent contractor.

You acknowledge that we may be paid a commission by funders, managers, product suppliers or other people with whom we do business. We also may pay referral fees or commissions to people who referred you to us. No commission is payable by you.

In respect of most loans, we may be paid an upfront commission, which is a percentage of your loan amount, and a trail commission, which is a percentage of the ongoing loan balance. In respect of other products and services we may be paid a commission which may consist of an initial commission plus an ongoing commission calculated by reference to the loan or product amount. It is not practical at the date of this disclosure to specify the exact amount of commission payable.

[BROKER NAME] is a member of the Mortgage Industry Association of Australasia, the peak body for mortgage intermediaries. We and any of our representatives will comply with the Code of Practice binding on its members. We will use our experience to present to you products which we consider are suitable for your requirements, but the final choice to acquire any of those products is yours.

B. Fidelity insurance

Failure to obtain an extension for fidelity cover of not less than \$100,000 as prescribed by clause 14 of the Code of Practice will not be considered Misconduct where trust monies are not received.”

C. Member Keeping/Advising/Telling an Applicant/borrower/Customer

The responsibility for providing the advice under 27, 28, 29, 41, 44 and 49 of the Code of Practice shall be deemed to be limited to the person or organization directly dealing with the borrower/customer as per the disclosure of commission requirements.”

