

## Accountants spared from loan certifications by new ABA Code of Practice

**A change to the Australian Banking Association's Code of Practice will finally put an end to the practice of its members asking accountants to certify the capacity of a business to repay borrowings.**



This is welcome news for our profession, which has wrestled with these requests for a number of years now. In a nutshell, banks and other financial institutions have increasingly sought to mitigate their risk when assessing a business loan application by asking the client's accountant to sign statements certifying the future capacity of the business to repay. This effectively requires the accountant to take on responsibility for the loan, by transferring the risk of the bank's assessment process to someone else.

This is not mere speculation. While banks have tended to play it down at the time as being a mere formality, there have been cases where banks have in practice sought recovery from an accountant who certified a business in this way, effectively treating the assurance as a guarantee.

Imagine a business approaches a bank with a loan application to help with future cashflow. The process is laborious and the paperwork seemingly endless. Finally, the bank advises the client that the application is close to approval, subject to the very small matter of getting a signature on a letter. It's no big deal - just some confirmation that the business is likely to have the necessary capacity to service the loan. Surely this should be very simple for the person who prepares the financial statements for the business?

Putting aside the awkward possibility that the accountant may have genuine concerns that put them in a compromising position (what would refusing to certify on that basis alone do to the relationship?), providing an opinion about a client's ability to meet financial obligations would not be covered by the accountant's Professional Indemnity insurance, which potentially makes the accountant personally liable. It may also be considered a regulated activity under the National Credit Act, and as such be prohibited for all those other than licensed credit advisers. Furthermore, to do so under these circumstances would constitute a breach of professional standards, and for this reason the accounting professional bodies' (CAANZ, CPA Australia and the IPA) joint position is that they should not be signed by members.

None of this has stopped banks from undermining the client-accountant relationship by continuing to ask for them. Financial institutions have historically continued to pressure clients to seek them, even after receiving this advice, which inevitably then puts strain on the accountant's relationship with the client. "The bank says this is standard practice and won't approve finance without it, they're not sure why you're refusing to sign a simple declaration." In that all too common situation, the accountant ends up being the bad guy, while the bank dismisses the accountant's legal and ethical obligations as being overly cautious - even after being made explicitly aware of them. This approach seems intentional in order to undermine the relationship and compel the accountant to acquiesce out of fear of losing the client.

Thankfully, after much lobbying and negotiation by the accounting bodies, an update to clause 78 of the

Banking Code of Practice will state "We will not ask a third party (such as your accountant) to certify that you can repay the loan." This will hopefully put an end to this practice on the part of the banks.

It's worth noting however that the Code only applies to members of the Banking Association. We have received numerous similar requests from other institutions over the years, including Government bodies and non-bank lenders. It's therefore pertinent to note again that **we cannot provide information that we cannot factually verify. We also cannot provide a service that we are not insured for and that would be a breach of our own professional standards. As such, we regret that we are unable to sign letters, declarations and certifications seeking assurance about capacity to service or repay.**

We understand that other agencies may pressure borrowers to continue to seek these certifications, and we apologise for the inconvenience their practices may cause. However it is the sole responsibility of a lender or credit provider to determine a capacity to repay, and this cannot be outsourced to a third party.

We hope this amendment to the Banking Code of Conduct will go some way towards ending this practice.

**If you have any question or concerns about this please [contact us](#).**

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