

Banking Code Compliance Committee Operating Procedures

Background

1. The Banking Code Compliance Committee (BCCC) is an independent compliance monitoring body established under clause 207 of the 2019 Banking Code of Practice (Code).
2. The purpose of the BCCC is to monitor and drive best practice Code compliance. To do this the BCCC will:
 - a. examine banks' practices
 - b. identify current and emerging industry wide problems
 - c. recommend improvements to banks' practices
 - d. consult with and keep stakeholders and the public informed.

Compliance monitoring program

3. To fulfill its purpose, the BCCC has a comprehensive compliance program that actively monitors Code subscribing banks' (banks) compliance with the Code¹.
4. The BCCC's key monitoring activities are:
 - a. inquiries
 - b. investigations
 - c. data collection (the Banking Code Compliance Statement).

Code Monitoring Priority Framework

5. The BCCC conducts its compliance monitoring program with reference to its Code Monitoring Priority Framework.
6. The Code Monitoring Priority Framework:
 - a. ensures that the BCCC's monitoring work focuses on industry wide, serious and systemic issues and leads to improved banking practice
 - b. operates like a risk model to identify which areas of banks' compliance with the Code it should prioritise as part of its monitoring and investigation.

¹ Clause 2.1 of the BCCC Charter (Charter) also empowers the BCCC to monitor and investigate Code subscribing banks' compliance with the 2013 and 2004 Codes, as applicable, in accordance with the principles and powers set out in the Charter.

7. The BCCC uses data analytics and a subjective assessment of both quantitative and qualitative information to understand the significance of known issues or identify emerging problems.
8. The BCCC records, assesses and tracks information from a wide variety of sources including:
 - a. banks
 - b. consumer Code breach allegations
 - c. consumer advocacy organisations (for example, financial counselling organisations, community law centres and legal aid)
 - d. consumer focus groups
 - e. the small business sector
 - f. the Australian Financial Complaints Authority (AFCA)
 - g. regulators and other government bodies
 - h. the financial services Royal Commission and other major inquiries
 - i. other stakeholder engagement activities
 - j. general media coverage and publications.
9. The BCCC tracks breach remediation and banks' implementation of its recommendations to assess and report on banks' efforts to improve banking services for customers.
10. There are three stages to the operation of the framework. The BCCC:
 - a. collects data from banks² and other parties³
 - b. assesses this information to identify and prioritise issues which warrant further examination⁴
 - c. conducts a monitoring activity to address the issues identified.
11. The output of the priority assessment is both influenced by and influences the BCCC's compliance monitoring activities. For example, the BCCC may identify an issue from its Banking Code Compliance Statement that, when assessed within the context of the wider framework, requires the BCCC to conduct a targeted inquiry into a single bank's compliance with the Code.

Operating procedures

12. To support its compliance monitoring program and its key monitoring activities, the BCCC has developed four operating procedures:
 - a) Inquiries
 - b) Investigations
 - c) Making findings of non-compliance
 - d) Imposing sanctions.

² Clauses 4.1 a) and 4.2 of the Charter

³ Clauses 4.1 b) and 4.5 of the Charter

⁴ Clause 3.1 b) of the Charter

13. These operating procedures were developed pursuant to clause 13.1 of the Charter and are set out in Appendices 1 – 4 below.

Appendix 1 – BCCC Operating Procedure: Inquiries

Inquiries

1. The BCCC conducts two types of inquiry:
 - a) ‘Major inquiries’ typically monitor all banks’ compliance with a broad Code obligation. They can be exploratory in nature and seek to identify good practice.
 - b) ‘Targeted inquiries’ examine a narrow issue across the industry or a smaller subset of banks or a concern about a single bank’s compliance with the 2019 Code.

Monitoring methods

2. The BCCC may use one or more of the following monitoring methods in either type of inquiry, as set out in clauses 4.1 to 4.5 of the Charter.
 - a) Request a bank to provide, or provide access to, information, documents or systems.
 - b) Require a bank to provide an appropriate representative to attend an interview.
 - c) Visit a banks’ premises.
 - d) Require a bank to conduct an internal performance audit.
 - e) Request a bank to complete a questionnaire.
 - f) Conduct a desktop audit of material provided by a bank or its website.
 - g) Conduct or commission market research or mystery shopping activities.
 - h) Request a person who alleges a breach of the Code to provide information.
 - i) Engage with and/or seek information from third parties. Third parties may include:
 - i. AFCA
 - ii. the Australian Securities & Investment Commission (ASIC)
 - iii. the Australian Competition & Consumer Commission (ACCC)
 - iv. the Australian Prudential Regulation Authority (APRA)
 - v. the Office of the Australian Information Commissioner
 - vi. the Australian Small Business and Family Enterprise Ombudsman
 - vii. financial counsellors
 - viii. state based legal aid organisations
 - ix. community legal centres, and
 - x. any other relevant consumer, academic, government or private sector organisation or individual that the BCCC considers may assist it in its role to monitor compliance with the Code.

Inquiry schedule

3. Where possible, the BCCC will give banks advance notice of a major inquiry and publish a notice of its intention to conduct an inquiry in the BCCC’s annual business plan.

4. The BCCC will aim to address emerging priorities in a timely manner and may, as a result, provide limited notice before it undertakes some major inquiries and most targeted inquiries.
5. Where possible, the BCCC will provide notice of the full lifecycle of a major inquiry. This includes the time frame for scoping, data collection, engagement, reporting, and follow up.
6. Ordinarily the stages of a major inquiry will include:
 - a) research and scope (establishing purpose and methodology)
 - b) initial consultation
 - c) information gathering
 - d) assessment and analysis
 - e) individual feedback and engagement with banks
 - f) public reporting (including any recommendations)
 - g) requests for banks to inform the BCCC about how they will address the findings and recommendations
 - h) follow up with banks on the implementation of recommendations, and
 - i) ongoing compliance monitoring through data collection or other means as appropriate.
7. A targeted inquiry may follow the same stages of a major inquiry (above) or be undertaken in accordance with the procedure for a BCCC Investigation (See **Appendix 2**).

Banks' obligations

8. In response to reasonable requests from the BCCC, banks must cooperate, investigate and report back to the BCCC within 21 days unless otherwise agreed, as outlined in clause 4.3 of the Charter.
9. If any of the exceptions listed under clause 4.3 i) to iv) of the Charter apply to a request from the BCCC, a bank must inform the BCCC, preferably once the bank is aware that the exception applies and certainly within 21 days of the BCCC's request. The bank's response should be sufficiently detailed to satisfy the BCCC that the exception applies.

Reporting

10. The BCCC may issue one or more of the following types of report or publication to inform stakeholders of the outcomes of an inquiry:
 - a) Individual reports to each bank to highlight any specific issues the BCCC has identified.
 - b) A major report that sets out the findings and recommendations at an industry level.
 - c) Guidance notes developed or amended to reflect the BCCC's approach to compliance with a Code obligation.
 - d) Case studies that demonstrate how a Code obligation should apply in practice.
 - e) Smaller reports or news articles on the BCCC website that outline findings of smaller targeted inquiries.

Appendix 2 – BCCC Operating Procedure: Investigations

Investigations

14. The BCCC is empowered to investigate alleged breaches of the Code. The BCCC will give priority to matters it considers to be serious or systemic.
15. Clause 5.1 of the Charter allows the BCCC to commence a compliance investigation:
 - a. as an outcome of the BCCC's monitoring and information gathering activities.
 - b. in response to an allegation, by any person, that a bank has breached the 2019 Code, provided that the allegation is made within two years of the complainant becoming aware of the events that gave rise to that allegation.
16. This Investigations Procedure sets out how the BCCC will investigate Code breach allegations it receives from:
 - a. members of the public
 - b. referrals from financial counsellors, community legal centres, and legal aid
 - c. AFCA, ASIC and the Australian Banking Association (ABA)
 - d. any other individual or body.

Investigations procedure

Stage 1: Triage

17. Upon receipt of a Code breach allegation, the BCCC will conduct a preliminary assessment to determine whether it has the power to investigate. Under clause 5.3 of the Charter, the BCCC must not commence a compliance investigation where the allegation:
 - a. relates to a bank's commercial judgement in a decision about lending or security
 - b. has not been made within two years of the complainant becoming aware of events that give rise to the allegation, unless by mutual agreement between the BCCC and the bank
 - c. is based on the same events and facts as a previous allegation to the BCCC by the person making the new allegation
 - d. is, or will be, heard by another forum, noting that if the relevant forum has declined to determine whether a breach has occurred, the BCCC can consider the matter
 - e. matters that are not directly related to compliance with the Code.
18. The BCCC may gather additional information from the relevant parties about the allegation to inform its preliminary assessment.
19. Where the BCCC decides that an allegation is excluded from the scope of its investigative powers, it will close the matter and notify the person who made the

allegation. The BCCC will capture and retain any information relevant to its monitoring activities (pending or future).

Stage 2: Assessment

20. If an allegation of a Code breach falls within its jurisdiction, the BCCC will assess whether it is appropriate to investigate, taking into account the powers set out in clause 211 of the Code.
21. As part of its assessment, the BCCC may take into account anything it considers reasonable and appropriate, such as:
 - a. the nature of the allegations, including the significance of the alleged breach
 - b. the period of time since the alleged event occurred
 - c. whether another forum may be more appropriate
 - d. whether the matter is frivolous or vexatious
 - e. whether the BCCC has undertaken previous work to monitor or review practices and procedures of the bank.
22. Notwithstanding the above criteria, the BCCC retains the discretion to decide whether or not to commence a compliance investigation, as granted by clause 5.2 of the Charter, subject only to limitation by the Code and Charter.
23. Where the BCCC exercises its discretion and decides not to commence a compliance investigation, it will close the matter and notify the person who made the allegation. The BCCC will capture and retain any information relevant to its monitoring activities (pending or future).

Stage 3: Investigation

24. If the BCCC decides to commence a compliance investigation, it will investigate the allegation in accordance with clauses 5.4 to 5.6 of the Charter.
25. The BCCC will use one or more of the powers conferred to it through the Charter to investigate Code breach allegations.
26. Throughout the investigations process, the BCCC retains the discretion granted by clause 5.2 of the Charter to decide whether to continue or discontinue a compliance investigation, subject only to limitation by the Code and Charter.
27. Where the BCCC exercises its discretion and decides to conclude an investigation without making any findings, it will close the matter and notify both the bank and the person who made the allegation. The BCCC will capture and retain any information relevant to its monitoring activities (pending or future).

Stage 4: Concluding an Investigation

28. If the BCCC finds that the bank did not breach the Code, it will close the matter and notify the bank and, if applicable, the person who made the allegation. The BCCC will capture and retain any information relevant to its monitoring activities (pending or future).
29. If a finding of non-compliance is made, the BCCC will have regard to the process set out in its Operating Procedure (**Appendix 3**).
30. The BCCC will endeavour to work with the bank to develop recommendations, implement corrective actions, remediate the breach and improve existing practice.
31. Where appropriate, the BCCC may make additional inquiries and/or conduct additional monitoring activities to oversee the implementation and effectiveness of corrective actions.
32. The BCCC will notify the person who made the allegation of the relevant decision.
33. Consistent with the BCCC's purpose to drive best practice Code compliance, the BCCC may publish observations, recommendations, and/or guidance arising from any of its findings on a de-identified basis to encourage continuous improvement within the banking industry.

Stage 5: Sanctions

34. Where the BCCC identifies that a bank has breached the Code, the BCCC is authorised to impose sanctions in accordance with clause 214 of the 2019 Code and clause 7.1 of the Charter.
35. When applying a sanction, the BCCC will have regard to its relevant Operating Procedure (**Appendix 4**).

Appendix 3 – BCCC Operating Procedure: Making a finding of non-compliance

Making a finding of non-compliance

1. Where the BCCC identifies, either through monitoring or investigation, that a bank has failed to comply with the 2019 Code or, if applicable, the 2004 or 2013 Code of Banking Practice, it may, at its discretion and pursuant to this operating procedure, make a finding of non-compliance (finding).
2. The process by which the BCCC will make a finding is set out below.

Before the BCCC makes a finding on non-compliance

3. Before a finding is made, the BCCC will give the bank and, if applicable, the person who has made the allegation notice of the BCCC's intention to make a finding (notice).
4. The notice will include:
 - a. a brief description of the finding and the basis on which it was made
 - b. comments as to whether the breach identified is serious or systemic
 - c. seek final comments from the bank and, if applicable, the person who has made the relevant allegation
 - d. request that final comments are provided by the relevant parties within 21 days or as otherwise agreed.

Making a finding of non-compliance

5. After the BCCC has allowed a reasonable timeframe for the relevant parties to respond and provide final comments to its notice, the BCCC may proceed to make a finding.
6. Pursuant to clause 11.3 of the Charter, the BCCC will exercise the power to make a finding and cannot delegate that power.
7. Once a finding has been made, the BCCC will notify the bank and, if applicable, the person who made the allegation (notification of a finding).
8. The notification of a finding will include:
 - a. a brief description of the finding and the basis on which it was made
 - b. comments as to whether the breach identified is serious or systemic
 - c. notification of whether the BCCC intends to sanction the bank
 - d. an outline of any proposed sanctions.

Appendix 4 – BCCC Operating Procedure: Imposing sanctions

Imposing sanctions

1. The 2019 Code empowers the BCCC to impose sanctions.
2. Specifically, clause 214 of the 2019 Code states:

The BCCC has the power to apply sanctions to a Code subscriber for a breach of this Code where a finding has been made that:

- a. the breach is serious or systemic;*
 - b. the bank has failed to act on BCCC's request to remedy a breach, or failed to do so within a reasonable time;*
 - c. there has been a breach of an undertaking given to the BCCC; or*
 - d. the bank has not taken adequate steps to prevent a serious or systemic breach from reoccurring.*
3. With respect to the sanctions available to the BCCC, clause 215 states:

The BCCC may impose one or more sanctions after considering the seriousness of the breach. Sanctions available to the BCCC are:

- a. requiring the bank to rectify or take corrective action on the breach identified;*
 - b. requiring a bank to undertake a compliance review of our remediation actions;*
 - c. formally warning a bank;*
 - d. requiring a bank to undertake a staff training program on the Code;*
 - e. naming a bank in the BCCC annual report or website; and*
 - f. reporting serious or systemic ongoing instances where a bank has been non-compliant to ASIC.*
4. In addition, clause 2.1(b) of the Charter empowers the BCCC to:

monitor and investigate Code-subscribing banks' compliance with the 2013 and 2004 Codes, as applicable, in accordance with the principles and powers set out in this Charter.

5. For the avoidance of doubt, and to ensure that banks are held accountable for their conduct, the BCCC will read these powers together. That is, where a bank subscribed to the 2004 and/or 2013 Code of Banking Practice, the BCCC may, as it considers appropriate, monitor and investigate that bank's compliance with those Codes.
6. Where the BCCC identifies that the bank has breached one, both or all of the Codes, the BCCC may apply one or more of the sanctions from clause 215 of the 2019 Code, pursuant to clause 214 of the 2019 Code and the relevant operating procedures.

Before the BCCC imposes a sanction

7. The BCCC will advise a bank of its intention to impose a sanction in the notification of a finding (see **Appendix 3**).
8. The notice of finding will provide the bank with a further 21 days, or as otherwise agreed, to provide final comments regarding the BCCC's intention to sanction the Bank.
9. The BCCC will take the bank's comments into consideration before making its decision to impose a sanction(s).
10. The BCCC will provide the bank with at least 24 hours' notice before imposing the sanction(s).