

# improving standards in banking



## what we do

The Committee's role is to:

- » Monitor subscribing banks' compliance with the Code of Banking Practice, (the Code), and
- » Investigate complaints that the Code has been breached.

## how we do it

The Committee fulfils its role by:

- » Accepting, investigating and making determinations on any allegation by any person that the Code has been breached;
- » Requiring banks to complete, on an annual basis, a comprehensive statement addressing all aspects of Code compliance;
- » Undertaking compliance monitoring exercises such as shadow shopping and compliance visits;
- » Engaging in dialogue with subscribing banks on their obligations under the Code, and
- » Encouraging other stakeholders, such as consumer advocates and financial counsellors, to inform the Committee of systemic Code issues.

## the code

The Code of Banking Practice (the Code) is a voluntary code of conduct which sets standards of good banking practice for banks to follow. Once a bank adopts the Code it becomes a binding agreement between the bank and its customers.

Banks' key commitments under the Code include:

- » To continuously work towards improving the standards of practice and service in the banking industry;
- » To promote better informed decisions about banking services;
- » To provide general information about the rights and obligations that arise out of the banker and customer relationship, and
- » To act fairly and reasonably and in a consistent and ethical manner.

In addition to key commitments and general obligations, the Code also contains principles of conduct covering:

- » Account terms and conditions;
- » Privacy;
- » Direct debits;
- » Guarantees, and
- » The provision of credit.

A list of subscribing banks can be found at page 9 of this report.

# 2006–2007 Highlights

Year ended 31 March 2007

In its third year of operation, the Committee:

- received 23 new complaints that alleged breaches of the Code of Banking Practice;
- found 36 breaches of the Code in 20 determinations. (Details pages 6–8.)


The Committee also focussed on stakeholder engagement by:

- significantly updating and improving the utility of its website;
- participating in and sponsoring information fora for financial counsellors and consumer advocates across the country;
- initiating high level meetings with Banks to better understand current banking practice and the application of the Code, and
- producing regular electronic bulletins about Code issues.

The Committee continued to advance an awareness of Code issues, through:

- conducting inquiries into bank compliance with Clauses 14 and 9 of the Code, and
- continuing to monitor the appropriateness of bank responses to handling customers in financial difficulty. (Details pages 16–17.)

Thirteen banks have adopted the  
Code of Banking Practice.  
The Code is now part of the  
contract between each of these  
banks and their customers.



# The members

There has been no change to the membership of the Committee.  
The members are:

## Anthony Blunn AO

Independent chairman  
Current Term May 2006 to May 2009

A S (Tony) Blunn AO *LL.B* is the Chairman of the Committee. Prior to his retirement in 2000, Mr Blunn held many senior appointments in the Commonwealth Public Service across a range of departments including Finance and Business and Consumer Affairs and was the Secretary (CEO) of some six departments retiring as Secretary of the Attorney – General’s Department. Since retiring, Mr Blunn has undertaken a number of consultancies for Commonwealth Ministers, Departments and Agencies and is Chair of a number of boards.



## David Tennant

Consumer and small business representative  
Current Term May 2006 to May 2009

David Tennant *BA/LL.B* of Care Inc. Financial Counselling Service in Canberra, is the consumer and small business representative on the Committee. As well as being Director of Care, Mr Tennant is a past Chair of the Consumers’ Federation of Australia, and the current Chair of the Australian Financial Counselling and Credit Reform Association. Mr Tennant has a number of consumer representative roles, including the ACT Government’s Fair Trading Advisory Committee.



## Russell Rechner

Member with relevant experience at a senior level in retail banking.  
Current Term April 2005 to April 2008

Russell Rechner *B.Ec. (Hons) FCPA, FCIS* is the member of the Committee with relevant experience at a senior level in retail banking. He retired in 2002 as Director of Major Projects, ANZ Bank and was previously a Senior General Manager of the bank. Mr Rechner has also held senior management positions in retailing. His areas of expertise include information technology, risk and compliance and most aspects of retail banking.



## Staff

The activities of the Committee are supported by a Chief Executive Officer and a part time Case Manager. For 2006–07, the Committee was staffed by Barbara Schade (extended leave), Kirsten Trott, Catriona Lowe (resigned) and Michael Kane.

# The Year in Overview

The Committee aims to improve the standards of banking practice and service across the industry through monitoring compliance with the Code. To meet this objective, the Committee has concentrated on conducting inquiries into compliance with the Code, determining whether there have been breaches of the Code, making recommendations of remedial action and sharing best practice. In the past year, the Committee's activities have benefited from increased staffing levels and improved systems and processes.

The Committee continues to receive information from stakeholders about how the Code is working and being applied. This informs the Committee's work and is essential for the Committee to ensure the Code remains an effective tool to improve standards.

The Committee has broadened the fora through which it engages with stakeholders. In the past year, the Committee has used its improved website and electronic bulletins, which are issued quarterly, to communicate with stakeholders.

The Committee has met with bank representatives a number of times over the past year and is in regular contact with the Australian Bankers Association. This engagement has enabled the Committee to remain informed about retail banking practice and issues relevant to the Code.

Consumer advocates inform the Committee of their concerns about bank practice by lodging complaints on behalf of customers, participating in the information fora that take place around the country or through making submissions on particular issues.



stakeholders

The inquiries the Committee conducts into compliance with specific clauses of the Code enable the Committee to facilitate detailed investigation of bank practices. In reaching beyond a bank's specific compliance area and into the business units responsible for relevant products and services, the Committee better tests compliance and identifies root causes of any problems or shortfalls. Staff training, dispute resolution and internal bank compliance will generally be relevant to each of the inquiries. Hence the Committee will seek input from personnel from these areas in most cases. The inquiries use sampling techniques and the results are used to identify and share best practice with all signatory banks and provide guidance on problematic areas.



inquiries

This year has seen the Committee consolidate its monitoring of compliance with the Code. The Committee has focused on issuing determinations on complaints and conducting inquiries to improve standards across the industry.

## monitoring

As part of its broader monitoring role and through its focus on building better relationships with signatory banks, the Committee encourages banks to be proactive in dealing with the Committee and in ensuring compliance with the Code. The Committee expects banks to self report significant breaches. The Committee has also welcomed some banks asking it to review policies and training materials or seeking guidance on how to meet Code requirements in difficult circumstances.

Complaints alleging breaches of the Code continue to be an important means through which the Committee identifies Code issues. Complaints enable the Committee to make specific recommendations on bank compliance and to suggest and monitor remedial action.

## complaints

The Committee also focused on issuing instructive determinations, which provide guidance on its interpretation of the Code and expected practice standards. Guidance has also been provided through the quarterly electronic bulletins. The Committee anticipates further developing the bulletins as a vehicle for information dissemination and shared learning.

The Committee has now made determinations with respect to 11 clauses of the Code. The main areas in which complaints continue to arise are: financial difficulty, the provision of credit, debt collection, dispute resolution and the manner in which financial counsellors, as agents for customers, can access banking information.

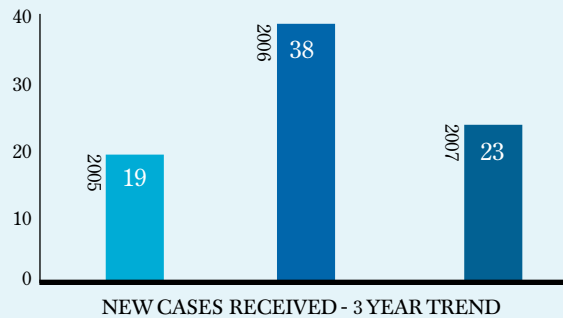
The complaints the Committee has dealt with this year, have exhibited a greater level of complexity than in previous years. One explanation for this may be improved standards of internal dispute resolution. The complexity of the cases has resulted in significant delays in issuing determinations in a few cases. The Committee has made efforts to improve the processing of complaints and, as a result of increased staffing, the back log of cases has been reduced.

# Complaints

The Code of Banking Practice empowers the Committee to investigate and make determinations on any allegation that the Code has been breached (a complaint). In making a determination, the Committee considers the complaint, usually from a Customer or their representative, and provides a copy of the complaint to the bank which is alleged to have breached the Code. After the Committee has completed its investigation and assessed the complaint, the bank and the complainant are provided with a proposed determination and given the opportunity to make submissions to the Committee before the determination is made final. In some cases, where the Committee makes a finding that the Code has been breached, (there may be more than one breach found per complaint) the Committee will recommend in its determination that remedial action is taken by the bank. Such action is then monitored by the Committee.

## New Complaints

The Committee received 23 new complaints during the year relating to 8 banks. An additional 21 complaints remained open from the previous year.

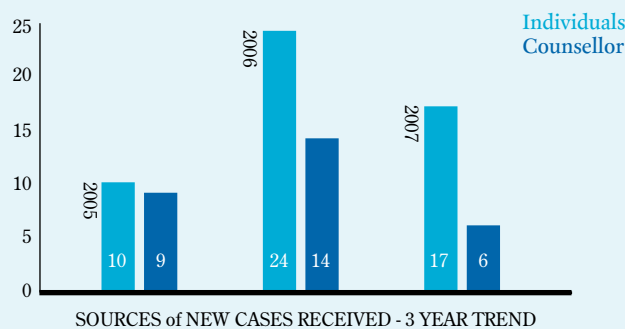


## Sources of New Complaints

Of the 23 new complaints received during the year, 17 were from individuals. The remaining 6 were received from financial counsellors or consumer advocates acting on behalf of the complainant customer.

The Committee is yet to receive a complaint from a small business, although one complaint was made by an individual in relation to personal and small business banking. The Committee continues its efforts to ensure the Code's application to small business is well known.

The new complaints covered a range of areas, however, as in previous years, complaints often concerned the failure of banks to properly assess the capacity to repay credit, failure to assist customers in financial difficulty, inappropriate debt collection techniques and failure to properly resolve disputes.





## Open Complaints

At 31 March 2007 there were 12 open complaints, down from 21 open complaints at 31 March 2006.

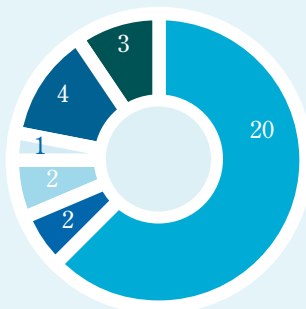


Case under review by the Committee	5
Cases referred to the Bank and awaiting response	1
Cases waiting for further information	3
Cases provisionally closed	3

## Closed Complaints

The Committee dealt with and closed 32 cases throughout the year, up from 26 in the previous year. The Committee has noticed an increase in the complexity of cases. This has led to delay in receiving timely responses and information from the parties to the complaint and required more in-depth consideration by the Committee.

12 cases were closed without the need for a determination by the Committee (for example the case as outside the Committee's jurisdiction or withdrawn by the complainant).



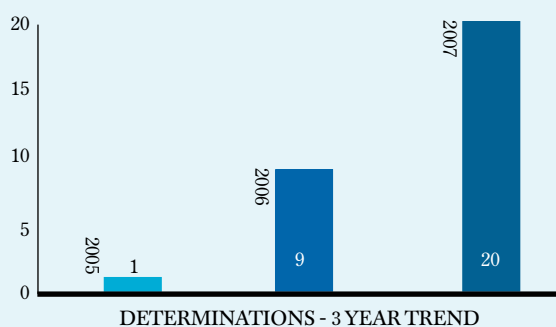
Determinations by the Committee	20
No response from the customer	2
Simple queries	2
Customer nominated BFSO as a more appropriate forum	1
Complaint withdrawn	4
Outside the Committee's jurisdiction	3

## Determinations

The Committee issued 20 determinations. In 4 of those determinations, it concluded that there had been no breach of the Code by the bank.

In 16 of those determinations it found that a bank had breached the Code.

As can be seen from the table over the page of the complaints received, breaches mainly occurred in regard to how banks dealt with customers in financial difficulty. Problems with internal dispute resolution and debt collection processes were also prevalent. Within these areas, some patterns of conduct were evident that cause the Committee concern. It will continue to monitor such conduct closely.



## Types of Breaches

In 2006–07 the Committee found 36 breaches<sup>1</sup> in respect of the following clauses of the Code. This compares to 9 breaches in 2005–06 and nil in 2004–05.

Clause	Description	Number of Breaches 2006–2007	2005–2006	2004–2005
<b>General Commitments</b>				
Clause 2.1	Effective disclosure of information	4	Nil	Nil
Clause 2.2	Acting fairly, reasonably and in a consistent and ethical manner	6	3	Nil
Clause 7	Staff trained and have an adequate knowledge of the Code	1	Nil	Nil
Clause 11	Provision of copies of documents	Nil	1	Nil
<b>Provision of Banking Service</b>				
Clause 24	Provision of statements of account	1	Nil	Nil
<b>Provision of Credit</b>				
Clause 25.1	Exercise the care and skill of a diligent banker in credit assessment	1	Nil	Nil
Clause 25.2	Dealing with customers in financial difficulty	8	4	Nil
Clause 29	Compliance with debt collection guidelines	4	1	Nil
<b>Other</b>				
Clause 33	Electronic communications	1	Nil	Nil
Clause 35	Internal dispute resolution processes	7	Nil	Nil
Clause 37	Information about external dispute resolution processes	3	Nil	Nil
<b>Total Breaches</b>		<b>36</b>	<b>9</b>	<b>Nil</b>
<b>Total Determinations<sup>2</sup></b>		<b>20</b>	<b>9</b>	<b>1</b>

As in previous years, the Committee did not use its power to name a bank. It continues to monitor the performance of particular banks closely.

<sup>1</sup> Some complaints involved the breach of more than 1 clause of the Code.

<sup>2</sup> Includes determinations when no breach was found.

# Subscribing Banks

The following 13 banks have adopted the Code of Banking Practice, including the 14 May 2004 amendments regarding guarantees:

Adelaide Bank

ANZ

Bank of Queensland

BankWest

Bendigo Bank

Citibank

Commonwealth Bank of Australia

HSBC

ING Bank

National Australia Bank

St George Bank (includes its subsidiary Bank SA)

Suncorp-Metway

Westpac

A number of banks with significant retail banking markets in Australia have not subscribed to the Code and the Committee has drawn this to the attention of the Australian Bankers Association.

# Communication with stakeholders

## Bank Forum

On 10 May 2006, the Committee provided detailed presentations at an invitation forum in Sydney, organised by the Australian Bankers Association. The Committee was pleased that the forum was attended by compliance and legal staff from all subscribing banks.

The forum gave the attendees an opportunity to talk to the Committee about its role in monitoring compliance with the Code, its processes and relevant Code issues.

The Committee found it very useful to meet bank personnel face to face and to better understand how banks view and approach the Code. After the success of last year's forum, the Committee plans to hold a similar forum in 2007–08.

Mr Rechner, the Committee member with extensive experience in retail banking, meets with bank representatives on a regular basis to ensure the Committee is fully informed of current industry practice. In addition, the Committee Chairman, Tony Blunn AO, has held meetings with senior bank officers to discuss their approach to Code compliance. The Chief Executive Officer is also in regular contact with bank personnel.

## Electronic bulletins

In February 2007, the Committee issued its sixth electronic bulletin to banks, consumer groups and other stakeholders such as the Banking and Financial Services Ombudsman.

Bulletins are available  
on the Committee's website:  
[www.bankcodecompliance.org](http://www.bankcodecompliance.org)

Stakeholders are encouraged to subscribe to the bulletin online to ensure they will be notified of when a new bulletin is issued.

Electronic bulletins provide information on matters such as the compliance activities of the Committee and information fora. The Committee has also begun to use the bulletins to provide guidance on interpreting and complying with areas of the Code. The Committee hopes to further develop this use by specifically referring to its determinations made in response to complaints of Code breaches.

Meaningful stakeholder engagement is essential to maintaining the relevance and effectiveness of the Code of Banking Practice.



## Consumer group fora

Mr Tennant, the Committee's Consumer and Small Business representative, and the Chief Executive Officer attended two fora for consumer advocates during the year, one in Adelaide and one in Hobart. These followed on from fora held in Sydney and Melbourne in 2005–06.

**The fora present an opportunity for consumer advocates to inform the Committee about current banking practice issues. Many of these issues regarding Code compliance may not otherwise come to attention of the Committee.**

In addition to the valuable information the Committee receives at the fora, the sessions provide an opportunity for the Committee to raise awareness of the Code as a tool to improving industry practice standards and to talk about the Committee's approach to Code compliance.

Mr Tennant and the Chief Executive Officer will continue to meet with consumer advocates and small business groups in 2007–08.

## Website

A new and improved Committee website went live in December. The new design enables the public to access information about the Code, the Committee, its activities and subscribing banks more easily.

The website also provides the Committee's contact details to enable the public to make email, written or telephone enquiries to the Chief Executive Officer. Complaints, alleging breaches of the Code, can be lodged via the electronic complaints form on the website.

**The Committee is committed to keeping the website up to date and to developing new ways in which it can be used to improve processes and inform consumers.**

Management monitors the website usage and ease of access via web search engines.



## Case study : A complete communication breakdown

“A vulnerable customer, represented by a financial counsellor, remained exposed to the harsh impacts of internal bank communication breakdowns”

### What Happened?

Ms X, who suffered from a bipolar disorder, went on a spending spree and exceeded the recently increased limit on her credit card. This occurred after Ms X's parents paid off the previous credit card balance and thought the account was closed. Due to her illness, Ms X could not remember if she had asked for the limit increase or whether the Bank had sent her a pre- approved increase. Her only source of income was a disability support pension.

### What the Bank did

Ms X and her parents engaged and authorised a financial counsellor to act on Ms X's behalf. The Bank was told of this arrangement, provided with a copy of the authority form and asked that all future dealings with Ms X be undertaken through the counsellor. The counsellor wrote to the Bank requesting information about Ms X's credit card and outlined what had happened, including details of Ms X's mental health problems.

Despite receiving that letter, the Bank's collections team telephoned Ms X six times in two weeks, requesting that she make repayments on the credit card.

After the counsellor contacted the Bank again, the Bank apologised in writing but, despite confirming that the counsellor was acting for Ms X, made a further four telephone calls to her chasing the debt.

When the counsellor again asked the Bank to stop calling the customer directly, the case was referred to the Bank's disputes handling area and the Bank agreed to refrain from taking any action or making further calls for one month, while they reviewed Ms X's case. That very day, Ms X was called by the Bank's collections area and two weeks later, Ms X received an automatically generated letter demanding that she pay the credit card debt in full within 7 days or legal action would be taken against her.

The Bank did not respond to the counsellor's second request for information but Ms X received a letter saying that the debt had been referred to a debt collection agency. It was only after the counsellor wrote a letter of complaint to the Banking and Financial Services Ombudsman (BFSO) that the Bank took corrective action which included the write off of the debt.

## The Complaint

The Committee received a complaint from the counsellor that the Bank had not complied with the following clauses of the Code of Banking Practice:

- Clause 25.1 in granting the increased limit on Ms X's credit card in the first place;
- Clause 29, in not following the debt collections guidelines;
- Clause 35, in not properly applying its internal dispute resolution procedures, and
- Clause 2.2, in not acting fairly and reasonably in a consistent and ethical manner.

The Committee also considered whether the Bank had tried to help Ms X with her financial difficulties (Clause 25.2).

## The Outcome

The Committee determined that the Bank had breached each of the above clauses of the Code. The Committee found that there had been a breakdown of the Bank's internal communications such that the collections area remained uninformed of key information and promises made by other areas of the Bank. Given Ms X's vulnerable mental state, which the Bank knew of early on, the communication breakdowns caused undue anguish and stress to Ms X. This should have been avoided by contact being made only through the counsellor.

The Committee also found that the Bank's internal dispute resolution failed to resolve the issues and it took the threat of an external BFSO review to prompt the Bank to act.

## What changed?

The Committee is pleased that the Bank has significantly revised its internal processes, including:

- Enhanced procedures to enable advocates to deal with the Bank more quickly and easily;
- Establishment of a new arm within the Bank's collections area to handle more specialist cases, including hardship requests, and
- Updated policies and associated training, particularly on dealing with customers in financial hardship.



# Compliance Monitoring

The Committee's inquiries are a valuable means of ensuring awareness and compliance with the Code of Banking Practice is driven through to a bank's business units.



The Committee monitors bank compliance with the Code of Banking Practice in a number of ways including:

1. **Inquiries into Code compliance**, including compliance visits with banks and shadow shopping exercises at bank branches;
2. **Annual compliance statements** for all subscribing banks;
3. **Investigation of breach allegations** raised in complaints to the Committee;
4. **Consideration of Code issues** raised with the Committee in information fora;
5. **Collection of general information** regarding Code breaches from the Banking and Financial Services Ombudsman;
6. **Encouraging banks to self report** systemic Code breaches as they arise, and
7. **Consideration of issues raised publicly** (e.g. in the media) which appear to involve compliance with the Code.



## Annual Compliance Statements

In its annual compliance statement, the Committee requires banks to answer questions and provide information about compliance across all sections of the Code. For example, each bank is required to describe its process for dealing with customers in financial difficulties under Clause 25.2.

The annual compliance statement gives the Committee a useful snapshot of compliance across all banks. It also gives the banks the opportunity to self report on areas in which they may not be fully Code compliant. Information provided in the compliance statements is used by the Committee to assist its other compliance monitoring activities.

As part of the annual compliance statement, banks are required to provide data on the number of complaints received and the number of complaints which resulted in a finding of a breach or breaches of the Code. This includes breaches which have been referred to the Banking and Financial Services Ombudsman.

The statistical data provided to date on complaints and breaches by banks is not sufficiently complete and comparable to enable the Committee to summarise results in this report. The Committee is working with the banks to improve the completeness and consistency of the statistical data for future reporting periods.

The following are examples of breaches self reported by banks in the 2005–06 compliance statements.

- Margin lending – Terms and conditions were incomplete but have now been updated to include a financial difficulties statement.
- Payment Systems -Privacy consent did not allow for disclosure of information for payment systems purposes. This has been updated.
- Fees – The bank incorrectly described the circumstances in which a fee for in-branch transactions is charged. The bank stopped charging the fee except as described in the bank's fees booklet. The bank refunded the incorrectly charged amounts.
- Agent Authority – The bank continued to contact a customer rather than the nominated agent. This was resolved through the bank's dispute resolution process.
- Transfer order fee – This fee was not disclosed to a group of customers. Affected accounts were identified and the fee reversed.
- Deposit account interest rate changes – Credit interest rates on some transaction accounts were decreased before the change was advertised. Interest adjustments were made to all affected customers to give them the benefit of the original interest rate. Additional signoff procedures were also introduced for future changes.
- Interest rate on conversion to variable rate loan – A small group of customers were not advised of the new interest rate on conversion from fixed to variable rate loan. Customers were offered the option of continuing with the fixed rate or to swap to a variable rate. Adjustments were made to ensure that customers that chose to convert were not out of pocket.
- Interest Rates – The bank applied the wrong interest rate to a small number of customers. The correct rate was applied and affected customers were compensated. Relevant procedures were reviewed.

## Inquiry into compliance with Clause 14 of the Code of Banking Practice

### Background

In November 2006, the Committee established an inquiry into bank compliance with Clause 14 of the Code.

Clause 14 of the Code relates to account suitability, particularly with reference to disadvantaged and low income customers, including those on Centrelink benefits and reads as follows:

“Account suitability

If **you** tell us that **you** are a low income earner or a disadvantaged person (regardless of whether **you** are an existing or prospective customer but not if **you** are a **small business**), **we** will provide **you** with details of accounts which may be suitable to **your** needs. **We** will also do this if **you** ask for this information or if, in the course of dealing personally with **you**, **we** become aware that **you** are in receipt of Centrelink or like benefits.”

### Methodology

The inquiry involved 3 stages. The Committee engaged Mr Roger Knight, formerly Head of Compliance at the Banking Code Standards Board, UK as consultant to the inquiry. Mr Knight worked with Ms Kirsten Trott, Chief Executive Officer, throughout the inquiry.

#### STAGE 1 – ALL BANKS

An audit was conducted which sought information on:

- the different types of accounts offered relevant to low income earners, disadvantaged consumers or benefit recipients;
- the criteria applied to identify such customers and to ensure they are directed to the correct accounts, and
- statistics on account and complaint numbers relating to Clause 14.

#### STAGE 2 – SHADOW SHOPPING

The Committee engaged a specialist company to conduct a shadow shopping exercise to test compliance with Clause 14 of the Code.

A total of 287 ‘shadow shopping’ visits were conducted in four selected banks using two scenarios. Approximately 65% of visits in each case were to metropolitan branches and 35% to rural branches. Visits took place across 4 states.

#### STAGE 3

##### – COMPLIANCE VISITS

Kirsten Trott and Roger Knight visited each of the 4 banks included at Stage 2. Information was obtained through detailed discussions with each bank’s compliance, products and training teams. Feedback on the shadow shopping results was provided to the banks.

### Findings

The Committee concluded that banks are seeking to meet the needs of low income and disadvantaged customers, both through the products offered and by ensuring appropriate access and direction to those products.

The Committee found that 10 out of 13 subscribing banks offered a product which was specifically aimed at the low income or “concession” customer.

The results of the inquiry indicate that customer satisfaction is strongly correlated to the simplicity of the product and its fee structure. Accounts with complex or multi-layered fee systems, for example, were less popular.

Accounts that were recommended by staff and the marketing material they provided to the shadow shoppers varied within the banks and consistency could be improved. Staff seemed to provide a more accurate and direct message to customers, where:

- the product was clearly identified as a concession or basic account;
- the fee structure and eligibility criteria were simple, and
- there were not too many accounts to choose from.

A copy of the Committee’s report of its inquiry into Clause 14 can be downloaded from the website at [www.bankcodecompliance.org/inquiries.html](http://www.bankcodecompliance.org/inquiries.html)

### Clause 14 Inquiry Scenarios

1. You are receiving Newstart allowance and in receipt of a Health Care Card.  
Your requirements are limited to
  - » ATM and EFT access
  - » the ability to set up direct debits, but,
  - » you cannot afford to pay fees
2. You are an aged pensioner with a Pensioner Concession Card. You have no income apart from the pension. Your requirements are limited to
  - » branch access because you are not confident using ATM or EFT facilities
  - » a direct debit facility with no required minimum balance in the account

## Review of Clause 9 of the Code

Clause 9 of the Code requires subscribing banks to display the Code in branches and on websites and to make copies of the Code available to customers on request. Following discussion with the BFSO, the Committee undertook a review of compliance with this clause across 4 states.

The results were disappointing. A significant number of branches did not have the Code on display or, in some areas, effectively available upon request.

The Committee will continue to remind banks of this obligation and to monitor compliance with it.

## Follow up to Inquiry into compliance with Clause 25.2 of the Code

In 2005, the Committee conducted an inquiry into Clause 25.2 of the Code relating to bank obligations to assist customers in financial difficulty. In 2006, informed by further complaints, comments at consumer fora and submissions by consumer advocates, the Committee reviewed another bank. The results for this bank were not dissimilar to the other banks reviewed, as systems were in place to enable financial hardship cases to be identified and managed in a way which is compliant with the Code. The Committee is however continuing to monitor the effectiveness of the operation of those systems.

The Committee also invited consumer advocates to make submissions on how banks treat customers in financial difficulty as part of its ongoing review of these issues.

Matters raised in submissions included:

- Extending training to all staff on the rights of customers in financial hardship;
- Ensuring that external agents are aware of and comply with Code responsibilities or refer back to banks promptly;
- Better communication with financial counsellors, advocates and customers when notified of financial difficulty;
- Designating a contact point for customers in financial difficulty to enable consistent dealings, and
- Providing information about the hardship variation provisions of the Uniform Consumer Credit Code to all debtors.

The submissions suggested banks should now take a more proactive stance on customers in financial hardship.



## Case study : Financial hardship made harder

“ Customers facing temporary financial hardship were not informed by the Bank of their right to seek a hardship variation under the Uniform Consumer Credit Code (UCCC) before the Bank sought to foreclose on the customers’ house. Further, once notified of a loan repayment dispute by the customers, the Bank did not comply with its established dispute resolution procedures.”

“

### What Happened?

Mr and Mrs Smith were operators of a leasehold farm. As a result of drought, their home loan and line of credit fell into arrears. Despite making partial payments over a 9 month period, they were unable to meet their ongoing promises to pay. The Smiths said that they notified the Bank of their financial difficulties. Both parties agreed that the Smiths were not advised of their statutory rights under the UCCC to negotiate a financial hardship variation.

”

### What the Bank did

The Bank suggested that the Smiths apply for the early release of Mrs Smith’s superannuation funds to assist clearing the arrears. The Bank later claimed that in doing so, that it had fulfilled its obligations under the Code of Banking Practice to assist the Smiths in overcoming their financial difficulties. The Smiths followed the Bank’s advice, but the amount released was insufficient to clear the arrears. At this stage, the Bank referred the matter to its solicitors and instituted legal proceedings to recover the debt, including the issuing of a notice to vacate their home.

Mr and Mrs Smith’s advocate advised the Bank’s solicitors that the repayment arrangements for the loan arrears were in dispute and that the Bank’s failure to inform the Customers of the hardship variation provisions had significantly worsened their financial position.

Eventually, the remaining arrears (which included legal fees for both before and after the dispute was raised) and principal outstanding on the loans were cleared by the Smiths refinancing with another financial institution.

### The Complaint

The Committee received a complaint that the Bank had not complied with the following clauses of the Code of Banking Practice:

- Clause 25.2 of the Code by failing to advise the Smiths of the availability of the hardship provisions under the UCCC, and
- Clause 35, by continuing to have external solicitors manage a dispute at the cost of the customers rather than managing it through its internal dispute resolution procedures.

## The Outcome

The Committee found that the Bank had breached each of these clauses. The Committee held that:

- A hardship variation can provide significant relief to customers in financial difficulty. The Smiths should have been advised of the applicability of the UCCC provisions once it was apparent that they could have been experiencing financial difficulty, and
- The Bank should have dealt with the dispute regarding the failure of the Bank to inform the customers of the UCCC provisions through its internal dispute resolution procedures at no cost to the customer and not through its external lawyers.

## What Changed?

In response to the Committee's findings, the Bank has introduced extensive compliance procedures for collections staff including a specific procedure for dealing with hardship applications.

The Bank also revised its procedures so that where recovery action for a customer's debt is sent to an external solicitor and that solicitor receives notice of a dispute from the customer relating to the recovery action, the dispute will be referred to and handled by the Bank. Once the Bank has responded to the dispute, and assuming it is appropriate to do so, the external solicitor will be re-engaged to pursue recovery action.



# Accounts

## Code Compliance Monitoring Committee

### EXPENDITURE FOR THE YEAR ENDED 31 MARCH 2007

The accounts of the Code Compliance Monitoring Committee are managed on its behalf by the Banking and Financial Services Ombudsman Limited.

These are the Committee's outgoings for this and the previous financial year.

	31 March 2007 \$	31 March 2006 \$
Salaries*	188,573	97,764
Member fees	72,400	75,147
Consultants	43,813	69,360
Travel	34,013	28,555
Staff Recruitment*	15,565	1,379
Technology	14,455	8,825
Occupancy	12,090	9,146
Promotional & Information Costs	8,128	3,418
Telephone	5,265	1,607
Other Expenses	19,729	15,461
Total Expenses	414,031	310,662

\*Increase due to additional staffing and leave payments

The Committee thanks  
the Banking and Financial Services Ombudsman and its staff for their  
administrative support over the past financial year;  
Consultant to the Clause 14 Inquiry Roger Knight,  
and CCMC staff employed during the year, Barbara Schade,  
Catriona Lowe, Kirsten Trott and Michael Kane.



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