

The Code Compliance Monitoring Committee
2007-08 Annual Report





Subscribing banks

The following 12 banks have adopted the Code of Banking Practice, including the 14 May 2004 amendments regarding guarantees:

ANZ
Bank of Queensland
BankWest
Bendigo and Adelaide Bank*
Citibank
Commonwealth Bank of Australia
HSBC
ING
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 (ABA).

* For the purposes of the 2006-07 reporting year, Bendigo Bank and Adelaide Bank were treated as two separate banks.

Highlights : year ended March 2008

Enhanced reporting and disclosure was a key objective of the 2007–08 year. The Committee improved:

- its understanding of banks' compliance regimes;
- the requirements for banks to self-report Code breaches;
- its monitoring of how breaches are remediated.

The Committee focused on key areas of the Code which impacted directly on customers through:

- its inquiry into Clause 29 (Debt Collection) of the Code (details page 10);
- working with the Banking and Financial Services Ombudsman (BFSO) to improve banks' approach to customers in financial difficulty;
- participating in consumer fora on issues relevant to banking customers.

The Committee's monitoring is informed by the complaints it receives. This year it:

- received 24 new complaints;
- found 14 instances of breach in nine determinations (details pages 15-18).

For the first time the Committee has named a bank for serious non compliance with the Code (details pages 12 and 13).

The Committee's work contributed to the following examples of improved banking practice:

- improved arrangements for dealing with customers in financial difficulty;
- more effective communications with customer representatives;
- more comprehensive tracking and analysis of compliance breaches.

Chairman's foreword

In general the year has been a challenging one for the Code Compliance Monitoring Committee and it ends on a challenging note as the Code and the Committee face an uncertain future.

At the end of the reporting period the Ombudsman service was about to undergo major change and it was not clear how these changes would impact on the role of the Committee. The review of the Code of Banking Practice required by Clause 5 of the Code was also initiated. Whilst the existing governance arrangements for the Committee, including its constitution, have been a source of concern since day one, the Code review provides an opportunity to review these arrangements. However, the Committee would be greatly concerned if any new arrangements were to limit it, or any future Committee, in the exercise of its role.

It is of concern to the Committee that there is still confusion in some quarters, and at quite senior levels, about the distinction between dispute resolution, which is the role of the Banking Ombudsman, and compliance monitoring, which is the role of this Committee and which has very little to do with dispute resolution.

The Committee has adopted a strict view of its role. This has obviously caused problems for some, but I am pleased to say not all, banks. That some banks have problems is illustrated by the fact that the Committee has for the first time had to resort to naming a bank for non compliance with the Code (see pages 12 and 13). This action has been decided only after careful consideration and protracted negotiations with the bank. In the view of the Committee given its role, no other approach is possible or sensible if the Code is to be seen by stakeholders as a credible model.

The year has also involved significant work by Committee and staff to further stakeholder relations, improve Committee processes and enhance compliance monitoring.

As I approach the end of my second term as Chairman of the Committee, I must extend my thanks to my fellow Committee members and staff. Their continued hard work and co-operation assists banks to honour their promises to consumers and thereby ensure the Code remains a meaningful and effective piece of self regulation.



Tony Blunn AO

Who we are : 2007–08 Committee members

Independent Chairman

Anthony Blunn AO *centre* Current term May 06 to May 09

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. He 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.

Consumer and small business representative

David Tennant *far right* Current term May 06 to May 09

David Tennant BA/LL.B Principal Solicitor at the Consumer Law Centre in Canberra, is the consumer and small business representative on the Committee. Mr Tennant worked as the principal of the Consumer Credit Legal Service in 1995 before being appointed as the Director of Care Financial Counselling Service 2000. Mr Tennant held this role until March 2008, before stepping down to rejoin the legal practice.

Mr Tennant is a previous Chair of both the Consumers' Federation of Australia and the Australian Financial Counselling and Credit Reform Association as well as an Associate of the Centre for Commercial Law at the Australian National University.

Member with relevant experience at a senior level of retail banking

Russell Rechner *inset* Term Apr 05 to Mar 08

Russell Rechner B.Ec. (Hons) FCPA, FCIS was 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.

Mr Rechner resigned in March 2008 to become the Independent Chair of the Australian Payments Clearing Association.

Julie Abramson *left*

Current term Mar 08 – Mar 11

Julie Abramson BA/LL.B/LLM (Commercial Law) is a lawyer with a background in public policy and financial regulation including as a Senior Adviser to Government, with the Australian Securities and Investments Commission and the National Australia Bank. Over a four and a half year period, Ms Abramson held a number of senior roles at the NAB including the implementation of FSR, Code-related issues and regulatory compliance. In particular she has worked very closely with the retail bank across consumer issues.



Who we are : 2007-08 secretariat

For 2007-08, the Committee was staffed by a small secretariat.

Kirsten Trott (centre)

Chief Executive Officer

Kirsten Trott has been Chief Executive Officer at the Code Compliance Monitoring Committee since October 2006. Kirsten, a qualified lawyer, has a background in both commercial and public interest law and has worked as a consultant on whistleblowing, risk management and governance issues.

Michael Kane (left)

Case Manager

Michael Kane is the Committee's part-time Case Manager. Michael is a qualified accountant and auditor whose experience has included 15 years at ANZ Bank in executive roles in risk management, internal audit and major projects.

Barbara Schade (right)

Manager Compliance Inquiries

Barbara Schade was the Committee's CEO from its inception in April 2004 until October 2006. After taking leave, Barbara returned to the Committee part time as Manager, Compliance Inquiries. Prior to working for the Committee, Barbara had been a Case Officer at the Banking and Financial Services Ombudsman for 15 years.



What we do : the role of the Committee

The Committee's role is to monitor subscribing banks' compliance with the Code of Banking Practice. The significance of this role was recently acknowledged by the Chief Executive of the Australian Bankers' Association (ABA).

“Independent compliance monitoring is an important feature of a Code if the Code is to be credible and seen as of value by customers”

David Bell,
Chief Executive Officer,
ABA.

ABA Media Release 21 December 2007. www.bankers.asn.au

Through monitoring bank compliance with the Code, the Committee assists banks to deliver on their commitments to their customers and to improve banking standards of practice.

In carrying out its role, the Committee:

- requires banks to complete, on an annual basis, a comprehensive statement addressing all aspects of Code compliance;
- undertakes compliance monitoring exercises such as shadow shopping and compliance visits;
- engages in dialogue with subscribing banks on their obligations under the Code;
- assists banks to interpret and meet the requirements of the Code;
- monitors compliance with the Code and recommends remedial action for breaches, and
- investigates and determines allegations that the Code has been breached.

One function of the Committee is to investigate allegations that a bank has breached the Code. This task provides a practical basis on which the Committee can test bank compliance with the Code and identify issues which may be systemic. The Committee's role is fundamentally different from, but complementary to, that of the Banking and Financial Services Ombudsman (BFSO). The BFSO's role is to resolve disputes, often resulting in a customer receiving compensation. The Committee is not concerned with the settlement of disputes, although that may result from its involvement. The issue for the Committee is whether the Code has been breached and, where there has been a breach, how Code compliance can be improved.

Although the Committee monitors compliance with the Code, the Code itself is administered by the ABA, which has responsibility for:

- ensuring sufficient coverage of the Code among industry participants;
- educating subscribers and the public about the Code;
- promoting the Code, and
- managing the process for review of the Code.

Monitoring

In accordance with its remit under the Code of Banking Practice, the Committee focused this year on enhancing the quality of its monitoring of banks' compliance. A major objective was to ensure that the information required in the annual compliance statements was better focused, and that banks were not being asked to provide information that was not essential to the Committee's monitoring function.

After consultation with banks and the Australian Bankers' Association (ABA), the Committee refined banks' breach reporting requirements with the aim of fostering a stronger compliance culture in all subscribing banks. To the extent possible, the Committee aims to use existing systems in banks to source the information it needs to assess Code compliance. Where necessary, the Committee seeks to assist banks to make those systems work better.

The Committee developed an audit program which will enable Code compliance and the self reporting of Code breaches to be further assessed. Onsite audit visits will take place in the 2008-09 year. The Committee envisages that this improved information will assist its assessment of compliance with the Code more generally.

Stakeholders

The Committee continued to meet with banks, consumer organisations and other relevant stakeholders throughout the year.

Meetings with a number of subscribing banks took place this year in order to better understand compliance systems, how breaches are identified and remedied, and to discuss specific problems. These meetings were in addition to the forum organised by the ABA.

Discussions were also held with financial counsellors and consumer advocates, providing the opportunity for the Committee to explain its role and to get feedback about banking practice and Code observance. This year the Committee held three consumer fora across the country.

Another focus was on fostering relationships with other stakeholders to ensure its approach to Code monitoring remains relevant and, where appropriate, consistent. The Committee initiated general discussions with the consumer protection division of the Australian Securities and Investments Commission (ASIC) and the Banking and Financial Services Ombudman (BFSO) about relevant banking issues. Work also continued in an effort to achieve sensible information sharing on Code compliance with the BFSO.

Inquiries

The Committee's inquiry work was assisted this year by the employment of a part-time Manager, Compliance Inquiries. The addition of this position enabled a more streamlined approach to inquiries into bank compliance with specific clauses of the Code and informed closer consideration of bank practices.

The Committee also undertook to review bank policies and procedures where the BFSO has referred a bank to the Committee following the identification of a systemic issue relating to Clause 25.2 (obligation to assist customers in financial difficulty). Four banks submitted their policies for dealing with customers in financial difficulty for review in the 2007-08 year.

Review of the Code

The review of the Code of Banking Practice commenced during the year. It is being conducted by Ms Jan McClelland in accordance with Clause 5 of the Code. The Committee's submissions to the review can be found on the Committee's website www.bankcodecompliance.org and the review website www.reviewbankcode2.com.au.

Complaints

The number of complaints that the Committee received in 2007-08 remained stable, although there was a marked increase in the number of complaints coming through the online complaint form.

As with previous years, most complaints concerned the ways in which banks responded to customers in financial difficulty, internal dispute resolution procedures and adherence to the debt collection guidelines*.

This year, the Committee made nine determinations in which 14 breaches of the Code were found. Seven of these breaches were found in complaints which related to the provision of credit.

* The guideline referred to in the Code is the 1999 publication *Debt Collection and the Trade Practices Act*. This publication was superseded by the joint guidance issued by the Australian Competition and Consumer Commission (ACCC) and ASIC in 2005.

Compliance monitoring

Annual compliance statements

Each year, in accordance with Clause 34(d) of the Code, banks submit an annual compliance statement to the Committee. In these statements banks are required to answer questions and provide information about the measures they have in place to ensure compliance with all sections of the Code. This information is provided on a confidential basis and treated as such.

The annual compliance statement gives the banks the opportunity to notify the Committee of areas in which they may not be fully Code compliant. This information assists the Committee to assess banks' internal compliance frameworks and to identify areas in which it needs to work with banks to improve compliance.

Until the 2007-08 year, banks were required in the statements to provide data on the number of complaints received and the number of potential breaches arising from those complaints. Analysis of this data was hampered by a lack of consistency which has been a concern for the Committee since reporting began in 2004. The information provided by subscribing banks unduly concentrated on identifying complaints received from customers, with less emphasis on the nature and significance of Code breaches identified by banks and the remedial actions undertaken to address those breaches.

In consultation with banks and the ABA over the past year, the Committee changed its reporting requirements. The key changes, which were effective for the 2007-08 compliance statement reporting, are as follows:

- notification of the number of breaches identified according to identification source (the Bank, BFSO or the Committee) and the relevant clause of the Code, and
- notification of additional information on those breaches identified as significant (including details of the breach, its impact and status of remedial actions). Significant breaches are those typically having large customer impacts and include breaches identified as systemic by the bank or other oversight body.

There is no longer a requirement for banks to report statistical data on complaints, although the Committee will continue to monitor the complaints handling areas of banks in the course of normal compliance work. In preparing the compliance statements for submission to the Committee, bank compliance personnel are expected to assess the significance of breaches identified through compliance and complaints systems.

Effective notification by banks of Code-related breaches is critical to the Committee's compliance monitoring function and is an area that will be subject to more rigorous oversight in 2008. An onsite audit program has been developed for the 2007-08 annual compliance statements. This will identify ongoing compliance issues and any difficulties with the new reporting requirements.

As a result of these initiatives, the Committee anticipates that more comprehensive information on the results of compliance reviews undertaken by banks will be available to assist its overall compliance monitoring program.

Breaches reported to the Committee in the 2006–07 compliance statements

The following table identifies the main areas in which banks self-reported breaches in the compliance statements for the year ended 31 March 2007. It includes the remedial actions undertaken by banks.

Fees and Charges (Clause 10)	Banks charging fees to customers in variance to or without adequate disclosure in the banks' Product Disclosure Statements (PDS). The Banks concerned either amended the relevant PDS or discontinued the charging of fees. The amounts incorrectly charged were refunded to the customers impacted.
Disclosure of Terms and Conditions (Clause 10)	One bank incorrectly displayed the terms and conditions of a product on billboard advertising. Another bank incorrectly disclosed some fees and charges on its website. These were breaches of the disclosure provisions of the Code and the banks concerned promptly amended the disclosures to conform with the Code.
Privacy (Clause 22)	One-off instances of banks failing to adhere to privacy requirements, including providing customer information to third parties after bank staff failed to properly identify the customer or as a result of incorrect mailing addresses. Banks generally issued apologies to the customers concerned and instituted procedural improvements.
Customers in Financial Difficulty (Clause 25.2)	One bank advised the Committee that the BFSO had identified a systemic issue in respect to its procedures for dealing with customers in financial difficulty. The issue has since been resolved by the Bank in consultation with the BFSO.
Debt Collection Guidelines (Clause 29)	Bank staff not adhering to the Debt Collection Guidelines referred to in Clause 29 of the Code. The Banks concerned instituted procedural improvements.
Customer Statements (Clause 11)	Customer statements being provided by a bank outside of the Code's prescribed time frame. The Bank refunded any interest and fees relating to the delay period and systems were amended.
Direct Debits (Clause 19)	Banks had failed to promptly process direct debit related instructions resulting, in some cases, in fees being incurred by customers. The errors were corrected by the Banks and any fees involved were refunded.
Interest Rates (Clause 10/ Clause 2.2)	One bank applied the wrong interest rate to a small number of customers. The correct rate was applied and the affected customers were compensated. Procedural improvements were introduced by the Bank.

Compliance reviews

The Committee conducts themed reviews or “own motion inquiries” into bank compliance with specific obligations under the Code. In the 2007–08 year the Committee conducted a major inquiry into compliance with Clause 29 of the Code (Debt Collection) and commenced a minor inquiry into compliance with Clause 19 of the Code (Direct Debits).

Inquiry into compliance with Clause 29 of the Code of Banking Practice

Clause 29 of the Code:

“We and our collection agents will comply with the Australian Competition and Consumer Commission’s guideline “Debt Collection and the Trade Practices Act” dated June 1999 (1999 guideline) when collecting amounts due to us, and we will ensure that our representatives do likewise”.

Although a more recent guideline on debt collection was issued by ASIC and the ACCC in 2005 and had been adopted by all the subscribing banks, the Committee was limited to monitoring compliance with the 1999 guideline as prescribed by the Code. The Committee is hopeful that the current review of the Code of Banking Practice will look at how the Code can be updated on an ongoing basis when an external guideline or standard is superseded.

Why we undertook the inquiry?

Complaints to the Committee about Clause 29, and dealing with customers’ representatives more generally, have comprised about 14% of all written complaints to the Committee since 2004. Further, informal feedback to the Committee indicated that financial counsellors and consumer advocates were having difficulties dealing with banks as representatives for bank customers and banks were contacting customers after a representative had been appointed.

Compliance with Clause 29 is closely aligned with banks’ obligations under Clause 25.2 of the Code, which deals with customers in financial difficulty. The Committee has found, through the complaints that it has investigated, that requests for assistance to overcome financial difficulty by represented customers can be seriously compromised if banks do not comply with Clause 29 of the Code.

For that reason, in September 2007, the Committee commenced an inquiry into bank compliance with Clause 29 of the Code of Banking Practice. A key focus of the Inquiry was on compliance with the principle in the 1999 guideline that a debtor is entitled to have another person represent them when dealing with a collector (in this context, a bank). In accordance with the 1999 guideline and therefore the Code, a bank should not contact a represented customer directly except in limited circumstances. These circumstances are set out in the guideline and include, for example, where the representative does not respond to communications.

The Inquiry Process

The Clause 29 Inquiry involved three steps:

- 1 reviewing all relevant complaints to the Committee and inviting submissions from relevant stakeholders;
- 2 a desk audit of all subscribing banks, and
- 3 compliance visits to four selected banks.

Submissions to the inquiry

The Committee received 13 submissions to the Inquiry from a variety of non-bank stakeholders across almost all states and territories of Australia.

The submissions largely raised concerns similar to those identified by the Committee as key issues for the Inquiry. The key issues involved matters such as:

- poor communication;
- banks refusing to accept a representative’s authority form;
- banks requiring customer representatives to provide personal information for identification purposes, and
- inadequate training of bank staff and agents in the requirements of Clause 29.

Desk audit

All subscribing banks were required to complete a questionnaire and provide supporting documentation, such as policies and procedures and staff training information.

Compliance visits

Following a review of the desk audit responses, the Manager, Compliance Inquiries undertook compliance visits with four selected banks. The compliance visits allowed for in depth discussions with relevant staff from the banks’ compliance, products, customer relations and training areas on matters raised in the questionnaire.

Systemic issues regarding Clause 25.2

Findings

All banks' desk audit responses suggested a strong commitment to compliance with Clause 29. Apart from the four banks that underwent compliance visits, the information provided in the desk audit was not investigated further.

Among the issues identified through the compliance visits were:

- 1 some banks were not clear on their obligations under Clause 29;
- 2 in some cases, the banks' own compliance monitoring programs were failing to identify non compliance with Clause 29, and
- 3 training programs in respect of Clause 29 were often inadequate and in need of improvement. This issue raised questions of compliance with Clause 7 of the Code, which requires staff be trained so that they can discharge their function competently and efficiently and have an adequate knowledge of the provisions of the Code.

Two of the selected banks were found to have breached* Clause 29 for continuing to contact the customer directly despite being on notice that the customer had appointed a representative.

Follow up

Following completion of the Inquiry some banks indicated a lack of certainty as to the interplay between the requirements in the Uniform Consumer Credit Code (UCCC) and the debt collection guidelines. The Committee sought legal advice on the matter. It advised banks that in its view, banks could comply with both the UCCC and Clause 29 of the Code by sending all correspondence relevant to the collection of the debt to the customer's representative and by sending a copy of any regulated documents (those required by the UCCC to be sent to the customer directly) to the customer as well.

Further information on the findings of this Inquiry can be found in the Committee's Inquiry Report which is on the Committee's website at <http://www.bankcodecompliance.org/inquiries.html>.

* These breaches were identified within the 2007-08 year but due to procedural fairness requirements, the final breach determinations were not made until the 2008-09 year. Hence these breaches are not included in the statistics for the 2007-08 year.

This year four banks were referred to the Committee following the identification of a systemic issue relating to Clause 25.2 by the Banking and Financial Services Ombudsman (BFSO). As part of resolving disputes which involved a systemic issue, banks were required by the BFSO to provide their procedures relating to Clause 25.2 to the Committee for a more detailed investigation of bank compliance with that clause.

A problem for the Committee has been that it is not made aware by the BFSO of the systemic issue identified or of whether or how the banks' procedures have been amended as part of resolving the systemic issue. This reflects the need for better information sharing between the Committee and the BFSO, which has been referred to previously in this report.

In addition to the four banks referred to it this year, the Committee has been monitoring the ongoing compliance of two other signatory banks after finding breaches of Clause 25.2.

In the Committee's view, identification of serious issues relating to Clause 25.2 in six out of 13 subscribing banks, suggests some elements of non compliance may be systemic across the industry. However, the Committee notes and has said publicly, that in the four years it has been operative, it has seen a marked improvement in the way banks approach customers in financial difficulty and in the sophistication of systems to better identify and assist such customers.

The Committee will continue to monitor compliance with this clause closely in 2008. This will be especially important as the incidence of financial hardship broadens and increases because of rising interest rates, the impact of the global credit crisis and other economic, social and commercial factors. It appears likely that at least some banks will need to increase their capacity to deal with customers in financial difficulty in order to meet their Code obligations.

Breach of Clause 28.4(d) and 28.5 by Westpac Banking Corporation

Clause 34(i) of the Code records that subscribing banks agree:

to empower the CCMC to name us in connection with a breach of this Code or in the CCMC's report, where it can be shown that we have:

- i been guilty of serious or systemic non compliance;
- ii ignored the CCMC's request to remedy a breach or failed to do so within a reasonable time;
- iii breached an undertaking given to the CCMC; or
- iv not taken steps to prevent a breach reoccurring after having been warned that we might be named.

In December 2007, Westpac Banking Corporation advised the Committee that since July 2007 it had not been complying with subclauses 28.4(d) and 28.5 of the Code in that it had not been providing specific information to a class of potential guarantors in relation to equipment finance guarantees.

Despite having been formally advised of the seriousness with which the Committee regarded the breach and that it might be named, the Bank has indicated that it does not intend to remediate the breach or to take steps to prevent the breach reoccurring. In response to Committee requests, the Bank has made procedural changes that:

- advise guarantors of their rights under Clause 28, and
- provide guarantors with the option to request that the Bank apply the provisions of the Code.

Whilst the Bank has advised that it is of the view that it is meeting the spirit of the Code provisions, the Committee is of the view that the Code requires the Bank to comply with the provisions as agreed if customers are to receive the protection intended by those provisions.

Accordingly, the Committee names Westpac Banking Corporation for non compliance with Clause 28 of the Code of Banking Practice.

The subclauses provide as follows:

- 28.4 We will do the following things before we take a Guarantee from you:
- (d) we will provide you with a copy of:
 - (i) any related credit contract together with a list of any related security contracts which will include a description of the type of each related security contract and of the property subject to, or proposed to be subject to, the security contract to the extent to which that property is ascertainable and we will also give you a copy of any related security contract that you request;
 - (ii) the final letter of offer provided to the debtor by us together with details of any conditions in an earlier version of that letter of offer that were satisfied before the final letter of offer was issued;
 - (iii) any related credit report from a credit reporting agency;
 - (iv) any current credit-related insurance contract in our possession;
 - (v) any financial accounts or statement of financial position given to us by the debtor for the purposes of the Facility within 2 years prior to the day we provide you with this information;
 - (vi) the latest statement of account relating to the Facility (and any other statement of account for a period during which a notice of demand was made by us, or a dishonour occurred, in relation to which we are required to give you information under clause 28.4(b)(i)); and
 - (vii) any unsatisfied notice of demand made by us on the debtor in relation to the Facility where the notice was given within 2 years prior to the day we provide you with this information;
- 28.5 We will not ask you to sign a Guarantee, or accept it, unless we have:
- (a) provided you with the information described in clause 28.4 to the extent that that information is required by this Code to be given to you; and
 - (b) allowed you until the next day to consider that information.

We do not have to allow you the period referred to in clause 28.5(b) if you have obtained independent legal advice after having received the information required by clause 28.4.

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).

When investigating a complaint that a bank has breached the Code of Banking Practice, the Committee considers the complainant's experience within the context of the Bank's policies, procedures and general practice. In coming to its determination, the Committee takes a strict interpretation of the Code provisions. Where a breach is found, the Committee will often recommend the Bank take remedial action which is then monitored.

As a result of the complaints received in the 2007-08 year, the Committee has worked with banks to:

- clarify the circumstances in which accounts can be frozen;
- improve the way in which banks identify and assist customers in financial difficulty;
- facilitate better communications between banks and customers' representatives;
- identify key training needs in a range of areas including cheque deposit procedures and provision of credit, and
- address deficiencies in internal dispute resolution.

Frozen finances

The issue

A Customer in receipt of Centrelink benefits was called by her bank's collection department and asked to make repayments to her credit card. She advised them that she was in financial difficulty and sought their assistance with her repayments. Later on the Bank froze the full balance of the customer's main transaction account and did not reinstate the Customer's access to the account after she made contact with the Bank.

Outcome

The Committee determined that the Bank had breached:

- Clause 25.2
 - » it did not notify the Customer of the right to seek a hardship variation under the UCCC and,
 - » despite being on notice of the Customer's financial hardship, froze the account thereby exacerbating her hardship.
- Clause 29
 - » the bank delayed lifting the freeze after the Customer contacted the Bank, and
 - » by freezing the entirety of the Customer's account, the Bank was exerting unacceptable pressure on the Customer to repay the debt.
- Clause 2.2
 - » due to the range and seriousness of breaches found. The Committee noted that these were not isolated events. The breaches occurred due to the Bank's policy and systems for freezing accounts and the deficiencies would have affected a particularly vulnerable class of customers.



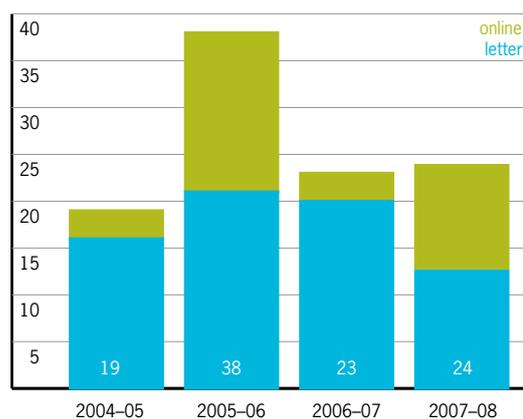
Remedial actions

As a result of the Committee's determination, the Bank, with the support of its internal audit department, undertook a comprehensive review of its procedures for freezing the accounts of Centrelink recipients. A number of changes were also introduced to bank procedures for dealing with customers in financial difficulty.

New complaints

New complaints – by source

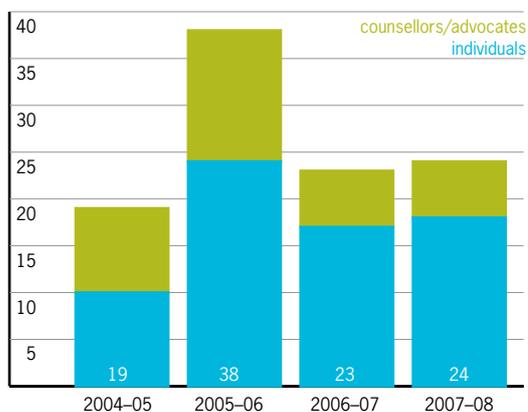
The Committee received 24 new complaints during the year, 11 of those were received online. This compares to 23 and three respectively in 2006–07.



New complaints – by complainant

Of the 24 complaints, 18 were from individuals. The remaining six were received from financial counsellors or consumer advocates acting on behalf of the complainant customer.

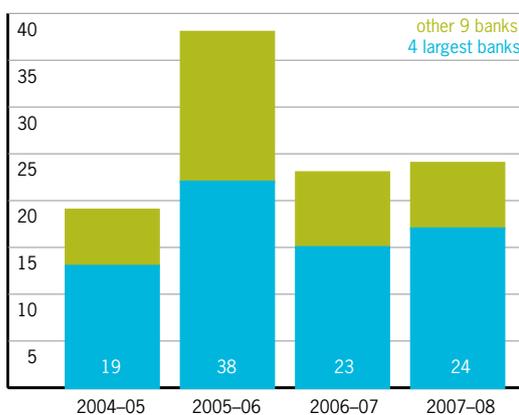
The Committee is yet to receive a complaint from a small business, although complaints have been received from individuals in relation to personal and small business banking. While the promotion of the Code is a matter for the ABA, the Committee continues its efforts to engage with small business in relation to the Code.



New complaints - by banks

The 24 new complaints received during the year were directed to eight of the Code's 13 subscriber banks.

Of these 24 complaints, 17 were directed to the largest four subscriber banks (by market share).



New complaints – by alleged breach

The 24 complaints received by the Committee contained 48 alleged breaches of the Code. The new complaints, as in previous years, included the alleged failure of banks to: act fairly in their dealings with customers; assist customers in financial hardship including dealing effectively with customers' representatives; and to properly resolve disputes.

Alleged breaches – the detail

Clause	Description	Alleged breaches				Total alleged breaches
		2007–08	2006–07	2005–06	2004–05	
General commitments						
Clause 2.1	Effective disclosure of information	1	Nil	6	1	8
Clause 2.2	Acting fairly, reasonably and in a consistent and ethical manner	16	14	19	10	59
Clause 3.1	Compliance with laws	1	3	6	1	11
Clause 7	Staff trained and have an adequate knowledge of the Code	3	Nil	1	Nil	4
Clause 10	Terms and conditions	Nil	1	5	1	7
Clause 11	Provision of copies of information	2	3	3	1	9
Clause 13	Operation of accounts	1	Nil	2	Nil	3
	Total	24	21	42	14	101
Provision of banking service						
Clause 14	Account suitability	1	Nil	Nil	1	2
Clause 17	Account combination	Nil	Nil	Nil	1	1
Clause 19	Direct debits	1	2	2	Nil	5
Clause 24	Provision of statements of account	Nil	Nil	2	Nil	2
	Total	2	2	4	2	10
Provision of credit						
Clause 25.1	Exercise the care and skill of a diligent banker in credit assessment	1	2	3	2	8
Clause 25.2	Dealing with customers in financial hardship	8	5	7	8	28
Clause 27	Joint accounts and subsidiary cards	Nil	Nil	1	Nil	1
Clause 28	Guarantees	1	Nil	1	1	3
Clause 29	Compliance with debt collection guidelines	4	6	5	4	19
	Total	14	13	17	15	59
Other						
Clause 22	Privacy	Nil	3	3	1	7
Clause 30	Advertising	Nil	Nil	3	Nil	3
Clause 33	Electronic communications	Nil	Nil	Nil	1	1
Clause 34	Monitoring and sanctions	Nil	Nil	1	Nil	1
Clause 35	Internal dispute resolution processes	8	6	6	1	21
Clause 36	External dispute resolution	Nil	Nil	1	Nil	1
Clause 37	Information about external dispute resolution processes	Nil	Nil	4	Nil	4
	Total	8	9	18	3	38
Total alleged breaches		48	45	81	34	208

* The complaints received by the Committee are often broad in nature and do not always specify the relevant clause of the Code that was alleged to have been breached. The table includes alleged breaches of the Code identified by the Committee consistent with the circumstances advised in complaints.



Payment difficulties after job loss

The issue

After losing his job, a customer was having difficulties making loan repayments. The Bank referred the matter to its external lawyers who commenced legal proceedings. When the Customer told the lawyers he was having difficulties, they advised him to

access his superannuation funds in order to repay the arrears on his account. The Customer appointed a lawyer from a consumer agency to act on his behalf. That lawyer asked the Bank's lawyers to refer their complaint to the Bank for internal dispute resolution so as not to incur further legal costs. Despite this, the Bank's lawyers told the Customer to continue to deal with them. The Customer found a new job and used his superannuation funds to pay off the arrears, which included \$5000 in enforcement costs.

Outcome

The Committee determined that the Bank had breached:

- Clause 25.2 (second element)
 - » in that neither the Bank nor its lawyers informed the Customer of the hardship provisions of the UCCC. Those provisions give customers the right to seek a variation to the credit contract in a court or tribunal on the grounds of financial hardship.
- Clause 35
 - » because, although the Bank elected for its lawyers to deal with the dispute and eventually bore related legal costs, this was not made known to the Customer or his lawyers.

The Committee determined that the Bank had not breached:

- Clause 25.2 (first element)
 - » because the Customer chose not to avail himself of the Bank's offers to discuss coming to an arrangement.

Remedial actions

The Bank advised, prior to the Committee issuing its final determination on this matter, that it would commence a new project to improve its approach to customers in financial difficulty and that it had reminded staff to inform customers about the UCCC provisions. The Bank has since improved its communication procedures with its lawyers regarding customer disputes.

Getting help from a financial counsellor

The issue

Despite having authorised a financial counsellor to act on his behalf, a customer in financial difficulty continued to be contacted by a bank in relation to his outstanding debt.

Outcome

The Committee determined that the Bank had breached:

- Clause 29 (Debt Collection Guidelines)
 - » by continuing to contact the Customer after a valid authority appointing a counsellor to act on the Customer's behalf, had been received by the Bank.
- Clause 25.2
 - » by failing to advise the Customer of the right to seek a variation to the credit contract as set out in the UCCC.

Remedial actions

Prior to the determination the Bank had instituted a review of its third party authority processes and its procedures for dealing with customers in financial hardship.



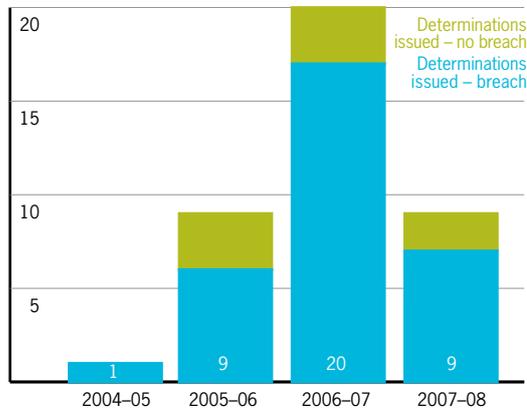
Complaint investigations

Complaint determinations

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 (not infrequently more than one breach is found per complaint), the Committee may recommend in its determination that remedial action is taken by the Bank. The Bank's response is then monitored by the Committee.

Number of Determinations

The Committee issued nine determinations during the year. In seven of those determinations, it concluded that there had been at least one breach of the Code by the Bank.



Determinations of breaches

Breaches determined by the Committee related to matters including:

- banks' dealings with customers in financial difficulty;
- problems with internal dispute resolution;
- poor compliance in debt collection processes, including dealings with customers' appointed advocates.

The Committee continues to monitor patterns of conduct in these areas including remedial actions identified in individual determinations.

In 2007-08 the Committee found 14 breaches compared to 36 breaches in 2006-07 and nine in 2005-06.

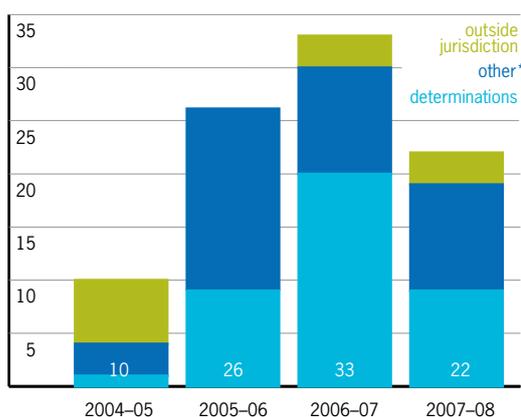
Breaches determined – the detail

Clause	Description	Number of breaches				Total breaches
		2007–08	2006–07	2005–06	2004–05	
General commitments						
Clause 2.1	Effective disclosure of information	Nil	4	Nil	Nil	4
Clause 2.2	Acting fairly, reasonably and in a consistent and ethical manner	3	6	3	Nil	12
Clause 7	Staff trained and have an adequate knowledge of the Code	Nil	1	Nil	Nil	1
Clause 11	Provision of copies of information	1	Nil	1	Nil	2
	Total	4	11	4	Nil	19
Provision of banking service						
Clause 24	Provision of statements of account	Nil	1	Nil	Nil	1
	Total	Nil	1	Nil	Nil	1
Provision of credit						
Clause 25.1	Exercise the care and skill of a diligent banker in credit assessment	Nil	1	Nil	Nil	1
Clause 25.2	Dealing with customers in financial hardship	4	8	4	Nil	16
Clause 29	Compliance with debt collection guidelines	3	4	1	Nil	8
	Total	7	13	5	Nil	25
Other						
Clause 33	Electronic communications	Nil	1	Nil	Nil	1
Clause 35	Internal dispute resolution processes	3	7	Nil	Nil	10
Clause 37	Information about external dispute resolution processes	Nil	3	Nil	Nil	3
	Total	3	11	Nil	Nil	14
Total breaches		14	36	9	Nil	59

* Some determinations involved the breach of more than one clause of the Code.

Closed complaints

The Committee dealt with and closed 22 cases throughout the year, compared to 32 in the previous year. Thirteen cases were closed without the need for a determination by the Committee (for example the case was outside the Committee's jurisdiction or withdrawn by the complainant).



* Includes simple queries, where a customer has withdrawn a complaint or not responded.

Timeliness

The Committee seeks to resolve complaints within 120 days. This benchmark takes account of the Committee's complaints case load, dates of Committee meetings, the 30 days allowed for banks to provide information to the Committee on a customer's complaint and the 30 days to provide comments on draft determinations. Complex cases may exceed the benchmark, although time frames are monitored to prevent unnecessary delay.

Parties have provided detailed comments to the Committee on proposed determinations in a greater number of cases. These factors required more in-depth consideration by the Committee and led to some delays in closing complaints.

During the past year banks have often been slow to provide information to the Committee. This has been very disappointing from the Committee's perspective and will be the focus of on going discussions with subscribing banks and the ABA.

On occasions banks provided inaccurate information or neglected to conduct appropriate internal investigations until after a proposed finding of breach had been made. This made the Committee's task of investigating a complaint more difficult and delayed the process considerably.

It is critical to the efficiency and credibility of the Code process that all relevant staff, whether in internal investigations or compliance, properly understand the role of the Committee and co-operate fully with Committee staff.

In the 2007-08 year, the Committee's case load included a number of complex cases which exceeded the 120 day benchmark.

Open complaints

At 31 March 2008 there were 14 open complaints, up from 12 open complaints at 31 March 2007. Draft Determinations had been issued in five of these open cases.

No checks on cheques

The issue

A customer and his business partner had an account which required two people to sign on withdrawals. During a business dispute, the business partner successfully withdrew funds from the account through a series of cheques, despite the cheques bearing one signature only. Some of the cheques were deposited in the business partner's personal bank account. The Customer complained to the branch manager and later to the Bank's customer complaints area. The Bank's response was that this was an issue between the business partners and had nothing to do with them.

Separately, the Customer also complained that the branch manager was allowing cheques made out to the business to be deposited into the personal account of an employee without endorsement from the business.



Outcome

The Committee determined that the Bank had twice breached:

- Clause 2.2
 - » for failing to act on the Customer's instructions both to require two signatories and also to prevent cheques made out to the business being deposited into a third party's account after the Bank was made aware that this was happening.
- Clause 35
 - » for failing to appropriately deal with the Customer's complaint and failing to provide a written response to the Customer as required under subclause 35.8.

Remedial action

The Committee has asked the Bank to review the training:

- for dispute resolution staff in regard to identifying the key issues of a customer complaint and responding effectively and appropriately;
- for branch staff on the importance of properly recording conversations with customers, acting on customer requests and respecting the customer mandate;
- for branch staff on the procedures for escalating complaints to customer relations if they cannot be promptly resolved.

The Bank is required to report back to the Committee on its implementation of these recommended actions.

Communication with stakeholders

Banks

An effective working relationship with subscribing banks is essential to the Committee being able to effectively perform its monitoring role. Throughout the year, Committee staff and the then Committee member with senior experience in retail banking, Mr Rechner, were in contact with banks to discuss relevant banking practice and Code issues. Individual bank contacts were also consulted on specific projects to enable the Committee to get industry feedback on new initiatives. For example, Mr Rechner and the Chief Executive Officer met with an industry group of internal dispute resolution managers to discuss potential changes to the annual compliance statements.

On 24 April 2007, the Australian Bankers' Association (ABA) organised a bank forum in Sydney. The forum enabled the Committee to discuss Code-related issues with subscribing bank compliance and legal staff. The Committee presented case studies of non Code compliance and provided the results of its Inquiry into compliance with Clause 14 of the Code.

At the invitation of one bank, the Chairman and Mr Rechner met with senior officers of the bank to discuss the findings relating to an Inquiry. The meeting resolved a long standing matter satisfactorily. Chief Executive Officer, Kirsten Trott also accepted invitations to attend bank fora on specific issues relevant to the Code.

Since taking the position at the end of the reporting year, Ms Abramson, who replaced Mr Rechner as the Committee member with senior retail banking experience, has organised meetings with all subscribing banks.

Consumers

Consumer fora were held in Perth, Darwin and Brisbane during the 2007-08 year. The fora continued to provide vital information on Code compliance and bank practice from consumer advocates working at a grass roots level. Mr Tennant, the Committee's Small Business and Consumer representative and the Chief Executive Officer, Kirsten Trott, also met with representatives from the Small Business Development Corporation in Western Australia and attended a meeting of the ABA's Small Business Forum.

These fora and meetings enable the Committee to raise awareness of the Code and talk about the Committee's approach to compliance. The information obtained from discussions at these events assists the Committee in identifying problem areas and key issues for follow up. Mr Tennant also takes part in the ABA's Community and Consumer Consultative Forum meetings.

Other stakeholders

In addition to actively engaging with banks and consumer representatives, the Committee also worked on broadening its stakeholder engagement. Relationships with the BFSO and ASIC have progressed in the past year and general discussions with the Credit Union and Mutual's peak body, ABACUS, and the Code Manager for the General Insurance Code have proved useful.

On the issue of the treatment of customers in financial difficulty, the Chief Executive Officer gave a joint presentation at the BFSO's annual conference and attended a House of Representatives Standing Committee on Economics Finance and Public Administration round table discussion.

Website & bulletins

The Committee's website is its main interface with the general public and contains its media policy. The website is kept up to date with the Committee's bulletins, submissions and Inquiry reports. Given the increased number of online complaints, the Committee plans to enhance the online complaint function in 2008.

The Committee continues to publish quarterly bulletins which enable it to advise banks and consumers of relevant issues and its forward work plan. Interested parties can subscribe online to receive email notification of the bulletins, which are available online at the Committee's website www.bankcodecompliance.org.

The bulletins are also forwarded to consumer representatives registered with the Consumers' Federation of Australia's mailing list.

Code Review

The Committee is pleased that the first three yearly Review of the 2004 edition of the Code is under way.

The Australian Bankers' Association appointed Ms Jan McClelland to conduct the Review and accepted the Committee's request that the Review consider the Committee's governance structure.

The Committee has held discussions with Ms McClelland and made a detailed submission to the Review. The Committee's submission includes comment on:

- how the Code is working in practice;
- practical difficulties faced by the Committee in monitoring the Code;
- Committee governance issues and constitutional limitations.

Further information about the Code Review and a copy of submissions can be found on the Code Review website: www.reviewbankcode2.com.au

The Committee looks forward to the completion of the Review.

As required by the Code, the Committee is also progressing well with plans to commission an independent review of its activities.

Code Compliance Monitoring Committee expenditure for the year ended 31 March 2008

	31 March 2008 \$	31 March 2007 \$
Salaries	247,230	188,573
Member fees	71,923	72,400
Travel	34,423	34,013
Consultants	10,975	43,813
Technology	18,852	14,455
Occupancy	19,924	12,090
Other expenses	34,650	48,687
Total expenses	437,977	414,031

Thanks

The Committee thanks staff for their assistance and hard work over the year. The Committee also especially thanks Mr Rechner for his three years of service to the Committee. Mr Rechner's contribution to the Committee cannot be overstated.

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