

**Code Compliance Monitoring Committee
Annual Report
April 2008 – March 2009**

A time for change and review



This report summarises a more substantive report that can be found on our website www.bankcodecompliance.org

Subscribing banks

The following 13 banks have adopted the Code of Banking Practice:

ANZ

Bank of Queensland

Bendigo and Adelaide Bank

Bank of Western Australia

Citibank

Commonwealth Bank of Australia

ING Bank

HSBC Bank Australia Limited

National Australia Bank

Rabobank Australia Limited

St George Bank (includes its subsidiary Bank SA)

Suncorp - Metway

Westpac

A number of banks with significant retail banking operations in Australia have not subscribed to the 2004 version of the Code.

Snapshot of the year ended March 2009

**Farewell to Chairperson Anthony Blunn, CEO Kirsten Trott,
former CEO Barbara Schade and Committee member David Tennant**

[Read more on page 3](#)

Arrival of new CEO Damian Paull and Committee member Nicola Howell

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Review of the activities of the CCMC

[Read more on page 8](#)

Review of the Code of Banking Practice

[Read more on page 8](#)

Direct debits review

[Read more on page 18](#)

Chairperson's Review



As the newly appointed Chairperson of the Code Compliance Monitoring Committee (CCMC) I am pleased to acknowledge the impressive work undertaken by the Committee in its start up years and its success in establishing its independent role in promoting compliance with the principles set out in the Code of Banking Practice.

The efforts of my predecessor and inaugural Chairperson, Anthony Blunn AO, together with his Committee colleagues and staff, have ensured the Committee's evolving status as an integral component of the subscribing banks' self regulatory scheme. This consists of the banks' commitment to their customers to accord with the provisions of the Code, effective internal dispute resolution processes within the banks, an accessible external dispute resolution service provided by the Financial Ombudsman Service (FOS) and an independent compliance monitoring agency (the CCMC).

Following the recent review of the Code and the independent review of the activities of the Committee (outlined elsewhere in this Report) the coming year will see further developments in terms of amendments to some of the Code provisions and changes to the governance arrangements for the CCMC as it cements a closer relationship with FOS.

I am very much looking forward to working with my fellow Committee members, Julie Abramson and Nicola Howell, in the ongoing work of addressing Code compliance issues in a cooperative framework with the banks as well as contributing to the policy environment in which the Committee operates. We are very fortunate to have the assistance of a small but very competent and energetic team lead by Damian Paull, the CEO.

A handwritten signature in black ink that reads "B. A. Given". The signature is written in a cursive, flowing style.

Brian Given PSM

CEO's Report

This is my first report as CEO and I would like to start by thanking Chairperson Anthony Blunn AO, former CEOs Kirsten Trott and Barbara Schade, and Committee member David Tennant, all of whom left during 2008 - 2009. Their contribution to the development of the CCMC is considerable and can be seen in the numerous advances detailed in 'The Year in Review'.

Meanwhile, I would like to welcome Nicola Howell, who has joined us as Consumer and Small Business representative. A lawyer and academic, Nicola brings considerable experience to the CCMC. Her constructive and optimistic presence is already being felt.

Although I only came on board in January 2009, the evidence shows me that we have had a good 12 months. The CCMC continues to provide a valuable service to the Australian community, a statement endorsed in an independent review of the CCMC by consultant R. T. Viney.

In his executive summary, Mr. Viney observes that the "CCMC's annual compliance monitoring activities and techniques are effective." Moreover "the CCMC has succeeded in educating banks and other stakeholders about its role and the importance of, and benefits to be derived from, compliance with the code."

The recent CCMC review ran parallel to a review of the Code of Banking Practice. Recommendations from both these exercises will, in my view, help drive us forward over the next few years.

For example, I acknowledge that we should emphasise our independence so that we are seen publicly to operate without external influence. We must clearly define our responsibilities so there is a clear understanding of the role of compliance monitoring. Likewise, we need to maintain and improve our accountability for good governance and procedural transparency.

At the same time we need to look at 'interdependence', whereby compliance monitoring complements other regulatory activity and dispute resolution. And finally we must improve access to our service, enabling consumers and small business simple and direct channels of contact with the CCMC.

These five areas, I believe, represent the essential challenges that we face in the immediate future. There are testing times ahead. It is a challenge that we are more than ready to meet.



Damian Paull



Who we are: 2008-09 Committee members



Anthony Blunn AO
Independent Chairperson

Current term May 06 – Jan 09

A S (Tony) Blunn AO LLB was the Chairperson of the Committee. Prior to his retirement in 2000, Anthony 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.



Julie Abramson
Member with relevant experience at a senior level of retail banking

Current term Mar 08 – Mar 11

Julie Abramson BA/LLB/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 Financial Services Reform, Code-related issues and regulatory compliance. In particular she has worked very closely with the retail bank across consumer issues.



Nicola Howell
Consumer and Small Business Representative

Current term Jan 09 – Jan 12

Nicola Howell LLB (Hons), BSc (Hons), LLM is an Associate Lecturer at the School of Law, Queensland University of Technology. Nicola has wide-ranging consumer law experience in Australia, including previous policy and research positions in public, community and private sector organisations. She is currently Deputy Chair of the Consumer Federation of Australia and a member of the Australian Securities and Investments Commission Regional Liaison Committee. Her research interests include consumer credit law, regulation, policy and protection and bankruptcy.



Brian Given PSM
Incoming Chairperson

Brian Given (Dip Law) joined the CCMC as Chairperson in 2009. Brian is a lawyer with an extensive career in the NSW Public Service, including more than 20 years senior executive experience in the Office of Fair Trading where his responsibilities included a strong focus on law enforcement and industry compliance with fair trading principles. Prior to that he worked with the Commonwealth Trade Practices Commission (predecessor to the Australian Competition and Consumer Commission), including two years as NSW Regional Director. During his public sector career Brian also held many official appointments including as a trustee of the national Travel Compensation Fund, a trustee of the Financial Counselling Trust Fund, and chair of the Co-operatives Council of NSW, as well as having chaired a number of the advisory committees of the national Standing Committee of Officials of Consumer Affairs. In 2008 Brian was awarded the Public Service Medal for outstanding public service in promoting industry compliance with fair trading laws.

David Tennant



David worked with CCMC from May 06 to Nov 08 as the Consumer and Small Business representative.

Who we are: 2008-09 secretariat



Damian Paull

Chief Executive Officer

Damian Paull joined the CCMC as Chief Executive Officer in January 2009. Previously with the ANZ Bank, Damian has worked in a number of executive risk and compliance roles at some of Australia's best-known financial and government organisations. With an open and inclusive leadership style, he brings creative thinking and a solutions-focused approach to his role.



Michael Kane

Compliance Manager

Michael Kane is the Committee's Compliance 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.



Tara McInnes

Case Manager

Tara McInnes (BA Law and Sociology (Hons)) joined us in May 2008 from the UK. Tara is a lawyer with extensive experience in property, personal injury and civil and commercial litigation. As a Case Manager with the CCMC, her role involves the investigation of complaints by customers and financial counsellors and the drafting of determinations for the Committee.



Rebecca Baohm

Case Officer

Rebecca Baohm (Grad Dip Law and BA (Hons) Philosophy and Modern Languages) joined us in September 2008. A graduate of Oxford University, Rebecca is legally qualified in the UK and is currently completing her cross over qualifications in order to practise law in Australia. As a Case Officer with the CCMC, her role involves the investigation of complaints relating to breaches of the Code, research and preparing determinations for the Committee.

With thanks

Kirsten Trott

Chief Executive Officer

Kirsten Trott was Chief Executive Officer at the Code Compliance Monitoring Committee from October 2006 to September 2008.

Barbara Schade

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 CCMC as Manager, Compliance Inquiries to June 2008.

What we do: the role of the Committee

The financial services industry is a complex and evolving system. Like many systems there are specialisations with specific objectives and the CCMC is one specialisation that plays an important role in the improvement of standards of practice and services within the banking sector by monitoring compliance with the Code.

This model identifies the various internal and external influences on banking standards and services, and the key stakeholders for the CCMC.



The application of the Code's requirements should improve the standards of practice of the Banks who have subscribed to the Code.

As part of a self regulating system, there are internal checks and balances designed to monitor the commitment of the Banks to the goals and standards of the Code. These exist in areas such as Risk and Compliance, Internal Dispute Resolution or complaints areas, Quality Assurance programs and/or Internal Audit.

Within the broader financial services system there are also a number of external drivers for influencing banking standards relevant to commitments in the Code. These include areas involved in external dispute resolution, identification of systemic issues, feedback from consumer advocates and/or financial counsellors, and activities of the regulators.

The Code Compliance Monitoring Committee is also one of the areas that have an influence on banking standards.

The CCMC is responsible for monitoring compliance with the Code, investigating allegations of Code breaches and conducting reviews across the industry to identify issues and solutions regarding compliance with the Code.

What we do

CCMC functions

Monitoring	Investigating	Reviewing
Compliance Reporting	Complaints of alleged breaches	Major and Minor Industry assessments
Verification	Referrals	Post Implementation Reviews
Code Consultations	Initiated Investigations	Internal Audit Briefings

Determination Process

Whether there has been a breach of the Code
 What rectification is required if it has not been undertaken
 What sanctions are appropriate

Whether the issue is systemic within the organisation or across industry
 What further activities are required to raise industry awareness

This diagram identifies the functions and activities of the Committee that facilitate an active, risk based approach to managing compliance with the Code. The three streams of Monitoring, Investigating and Reviewing allow us to be both strategic in assisting the industry identify issues and emerging risks, while also dealing with individual instances of Code breaches.

Our role

Our role, put simply, is to make sure subscribing banks comply with the Code of Banking Practice.

By monitoring compliance, we encourage banks constantly to improve standards of practice and to honour their promises to customers.

Each year, we ask Code subscribing Banks to complete a comprehensive statement addressing key aspect of Code compliance. We also engage in dialogue with subscribing Banks about their obligations under the Code.

At the same time we operate compliance-monitoring exercises such as 'shadow' shopping and compliance visits.

Code breaches

One of our major functions is to investigate allegations that the Code has been breached. This gives us a practical basis on which we can test bank compliance with the Code.

It is important to stress here that our role differs substantially from the Financial Ombudsman Service (FOS). Their role is to provide an external dispute resolution. While there is some capacity to examine systemic issues, the focus is on resolving individual disputes, considering financial loss and 'fairness'. Code issues may or may not arise in individual disputes and a (FOS) determination of code breaches may or may not be made.

In contrast, the CCMC is not concerned with the settlement of disputes, although that may result from our involvement. We focus on compliance across the Code subscribers. While we respond to complaints of non-compliance, we are also able to be risk focused and proactive. In essence, the work of the two groups is complementary.

Although the Committee monitors compliance, the Code itself is administered by the Australian Bankers' Association (ABA). The ABA's role is to ensure there is sufficient coverage of the Code among industry participants and to educate subscribers and the public about the Code.

The ABA's recent review of the Code of Banking Practice makes a series of recommendations for the future of the CCMC. It is our aim to implement many of them during 2009–10 in consultation with our stakeholders. We want to ensure the Committee remains relevant and is prepared for positive change in the years ahead.

2008–09: year in review

This financial year has been turbulent, with substantial and major shocks to the economy due to the impact of the global financial crisis.

For the CCMC the year 2008 – 2009 can be succinctly characterised by the word ‘change’. It saw the departure of Chairperson Anthony Blunn AO, CEO Kirsten Trott, former CEO Barbara Schade and Committee member David Tennant, and the arrival of new CEO Damian Paull and Committee member Nicola Howell.

In addition to the operational activities of the Committee, it was a year that saw the completion of two major exercises: a review of the activities of the CCMC and a review of the Code of Banking Practice.

The former review, conducted by R.T. Viney, concludes that the CCMC:

- Has developed effective relationships with stakeholders;
- Has implemented effective compliance monitoring activities and techniques;
- Has put in place fair and transparent procedures for dealing with alleged breaches;
- Has adequate systems for the collection, recording and processing of information of the Code; and
- Has lent credibility to the Code as a self-regulatory scheme.

The full report of the review is available on the CCMC’s website at: www.bankcodecompliance.org

The review of the Code of Banking Practice was completed in December 2008 and the recommendations will have a significant impact on the Code and the role of the CCMC.

Perhaps the most significant recommendation for the CCMC, is the proposal for the CCMC “to be established as a separate independent unit within the FOS reporting directly to and accountable to the FOS Board for the performance of its prescribed functions under the Code” (recommendation 9”).

The integration will enable us to avoid duplication of roles, while enabling customers to understand precisely how and where they can complain. Simply expressed, there will be one telephone number and one process.

Once this new structure is implemented, the CCMC will become even more pro-active, with an increased ability to anticipate potential areas of concern. We will expand the role of mystery and shadow shopping. Forums and workshops will also help us to understand the needs and expectations of customers. It is our hope that the recommendations will be implemented by the end of 2009.

Other significant proposals in the Code Review Report include recommendations to:

- Include a clear commitment to “responsible lending”, including a commitment to carefully assess applications for credit that may result in financial hardship;
- Encourage Banks to take a more proactive approach in identifying and helping customers facing financial difficulties at the earliest possible opportunity;
- Require the full disclosure of “exception fees” by the Banks, and that they provide information to customers on how to avoid such fees, which normally apply for overdrawn accounts;
- Formally recognise the role of financial counsellors in managing cases of financial hardship;
- Include a new clause relating to Indigenous customers, including Indigenous cultural and community awareness training for staff operating in indigenous communities;
- Clarify the roles of the Code Compliance Monitoring Committee and the Financial Ombudsman Service in relation to Code compliance monitoring and dispute resolution respectively; and
- Adopt a broader definition of “commercial asset financing guarantor” to include directors, owners or managers in certain circumstances. This is a significant recommendation relating to guarantees as it resolves an issue where the Committee has previously named Westpac (Annual Report 2007-2008) for non compliance.

In summary, it is our intention to build on the recommendations of both reviews and our experiences throughout the year in order to add value and improve service to industry and the wider Australian community.

Monitoring

Introduction

The monitoring of compliance is underpinned by an annual compliance statement and subsequent verification with each of the Banks. This process provides the Committee and the Banks with information relating to issues and potential areas of improvement.

In addition as issues emerge we will monitor how the industry deals with Code related areas and work with the Banks to better understand the issues.

Annual Compliance Statements

This is the first year that data from the Annual Compliance Statements has been published.

Under clause 34 (d) of the Code, Banks lodge with the CCMC an Annual Compliance Statement. In these statements Banks answer questions and provide information about the measures they have in place to ensure compliance with all sections of the Code.

The Annual Compliance Statement process is a significant component of the CCMC monitoring function. The process enables the CCMC to:

- Provide Banks with the opportunity to self report areas of non compliance;
- Form opinions on the overall level of industry compliance (macro view);
- Assess the adequacy of Code compliance frameworks (including training, monitoring, breach identification and remediation); and
- Establish areas for priority attention and follow up.

The annual compliance statement covers the year ended 31 March. The content is in two parts:

Questionnaire

- Describing compliance frameworks and how compliance is achieved for each area of the Code; and

Compliance breach summary

- Total breaches (identified internally by the Bank, by FOS or by the CCMC).
- Significant breaches – more detail is provided on the nature, root cause and remedial actions.

Significant breaches are those typically having large customer impacts and include breaches identified as systemic by the bank or the Financial Ombudsman Service.

The information provided to the CCMC is confidential and treated as such. De-identified industry compliance data is published in the annual report each year by the CCMC.

Monitoring

Recent Changes

The consistency of breach information from subscribing Banks has been a concern for the CCMC since reporting began in 2004.

In consultation with the Banks and the Australian Bankers Association we have made major changes to compliance reporting processes over the last two years.

The introduction of more streamlined and targeted reporting has assisted us

- in obtaining more reliable data and building stronger analytical capabilities; and
- to become more evidence based and risk focused in our monitoring approaches.

For example we have:

- Changed data reporting requirements from what has been fragmented and unreliable complaints information to targeted breach reporting, including advice of significant breaches;
- Our emphasis is now on obtaining data that is or should already be available from Banks' existing systems.

As a result we are in a better position to produce meaningful information regarding individual bank performance and overall industry compliance with the Code.

On Site Visits

Consultative on-site visits by CCMC staff to all subscriber banks were introduced last year.

The main purpose of the visits was to discuss and review the content of the Annual Compliance Statements including; consulting on issues of preparation and interpretation, and matters for further investigation and follow up.

The Future

The improvement to the annual reporting process is an ongoing priority and the CCMC will continue to recast the statements, particularly the questionnaire component, to be more risk focused and targeted. Any changes to statements will be implemented in tandem with the introduction of the new Code in 2009/10.

Compliance Data

2008/09 Annual Compliance Statements

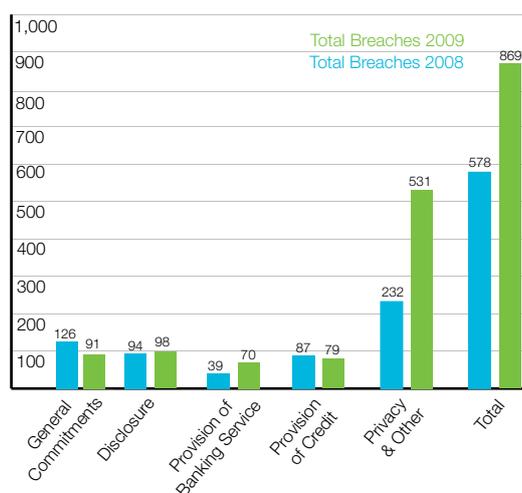
An overview of the 2008/09 data indicates that the better discipline and rigour achieved in 2007/08 reporting has been maintained.

The detailed review of the data, including on site reviews is to be undertaken later in 2009.

Quantitative Results

The graphs on pages 12-13 provide aggregate industry data on the number and types of breaches identified by all Banks.

Total breaches



The aggregate number of breaches identified for all banks has risen 50% from 578 in 2007/08 to 869 in 2008/09. The number of significant breaches has reduced from 33 to 29.

It is the CCMC's view that the increase in breaches identified reflects greater attention to breach monitoring and reporting by banks in the current year rather than any underlying increase in non compliance.

The more significant individual incidents of breach have been in the areas of provision of credit (guarantees, financial difficulty and debt collection), disclosures (interest rates, fees and charges, terms and conditions) and privacy. Comments on the individual significant breaches reported by banks are shown in the graph in the following column.

Privacy related breaches account for 50% of total breaches in 2008/09 (32% in 2007/08). These breaches are typically one off failures by bank staff to identify customers prior to the provision of customer information. The high number reflects a specific targeted monitoring emphasis undertaken by some Banks. The CCMC has been advised that staff processing initiatives have been implemented to address the breaches. In four instances the breaches were reported as being significant in their impact.

Overview Comments

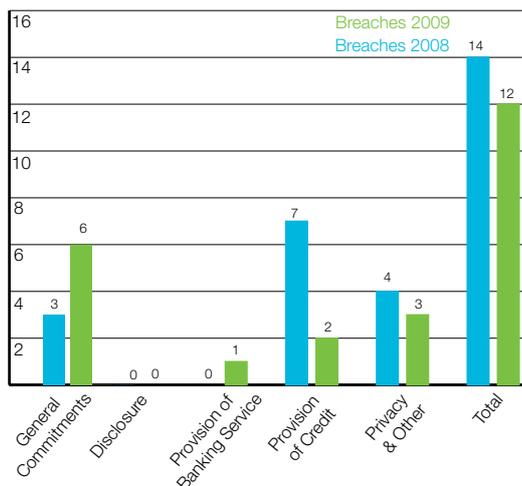
2007/08 Annual Compliance Statements

Details of the opinion provided to subscriber banks in respect to information contained in the 2007/08 Annual Compliance Statements can be seen in the CCMC Annual Report online.

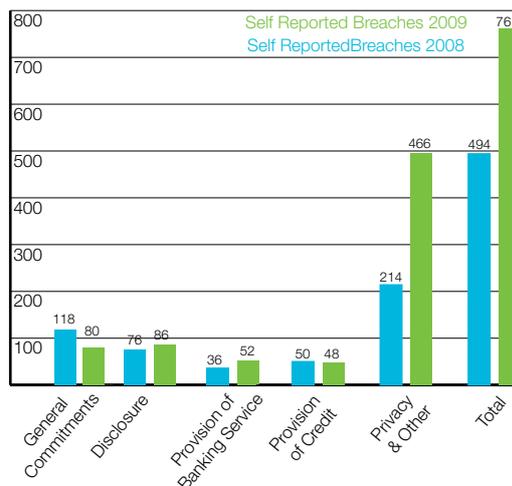
www.bankcodecompliance.org

Breaches reported in the Compliance Statements

CCMC - Breaches identified through Code Monitoring



Banks - Self reported breaches



The CCMC continues to receive complaints and investigate alleged breaches of the Code.

The number of complaints raised with the CCMC has remained relatively constant. The recent review of the Code and the operations of the CCMC noted that the level of complaints is surprisingly low and has suggested that better integration with FOS and increasing profile will raise this number significantly.

Over the next reporting period we will be seeking to understand what activities have been undertaken by Banks to improve the services and compliance levels with the issues identified in this report.

Taking responsibility for managing and regulating the commitments of the Code is a key aspect of self regulation. Code subscribers are continuing to develop and integrate Code breach reporting into their overall breach management systems.

This compliance reporting to the CCMC provides a better understanding of the issues within the Banks that they have identified through internal risk and compliance management around Code requirements.

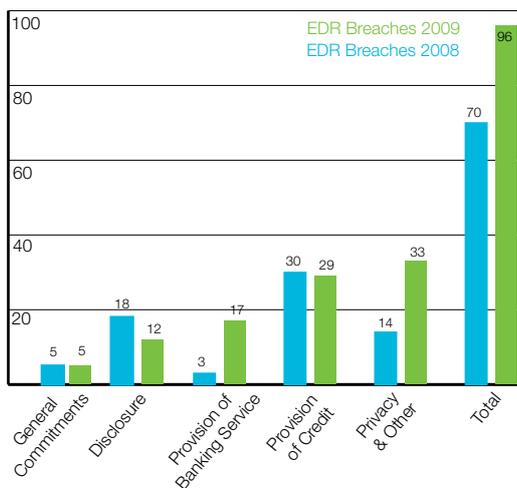
That the bulk of issues in relation to the code have been identified in this way is arguably an indication of the success of self regulation.

The challenges to the CCMC in the next reporting period will be to test the Banks' responses to the breaches identified and examine what improvements have occurred as a result of the breach identification.

Overall the total number of breaches has increased, with two Code subscribers reporting a significant number of privacy related breaches and thus increasing the overall total of breaches identified through internal controls.

Ideally, if process improvements have occurred as a result of addressing the breaches, banks should be able to quantify the benefits of those activities and provide a cost benefit analysis in relation to the improved services.

Breaches identified through EDR



External Dispute Resolution provides the Banks with an opportunity to get an external view of complaints that have not been resolved through internal dispute resolution.

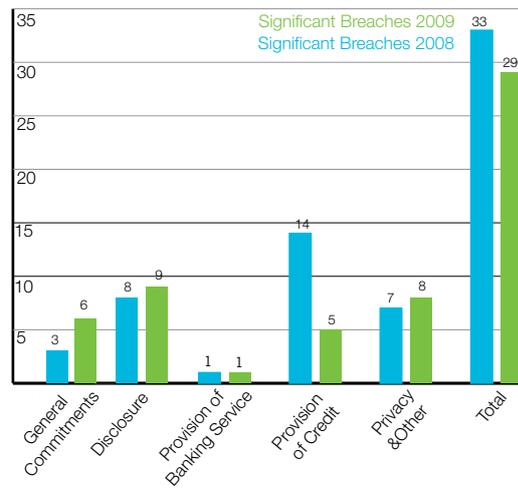
The recommendations and/or determinations provide the Banks with some guidance on how Code related matters will be interpreted and should be a prompt for Banks to undertake further analysis to ensure matters are not systemic or in breach of other obligations.

Banks have identified that through EDR, there have been breaches identified across the Code requirements.

Overall there is an increasing trend in the total number of identified breaches, which is not surprising given the declining economic conditions and increased complaints across financial services.

Over the next reporting period part of our focus will be seeking to understand what activities have been undertaken to improve the services and compliance levels with the issues identified.

Significant Breaches reported to the Committee in the 2007/08 and 2008/09 Compliance Statements



Significant breaches were reported in the following areas:

- guarantees
- interest rate fees and charges
- disclosure of Terms and Conditions
- privacy
- customers in financial difficulty
- debt collection guidelines
- advertising

Over the next reporting period part of our focus will be seeking to understand what activities have been undertaken to improve the services and compliance levels with the issues identified.

Go to the CCMC Annual Report online to view a table which shows more detail on significant breaches.

www.bankcodecompliance.org

Investigating – complaints regarding potential breaches of the code

The CCMC receives and investigates complaints regarding breaches of the Code in an effort to identify and improve compliance. This function allows the CCMC to address specific instances of poor performance while also collating information regarding broader issues that may be emerging.

The investigation of complaints is a similar process to that adopted by external dispute resolution (“EDR”) schemes such as the Financial Ombudsman Service; however the outcome or objective differs. The CCMC cannot make an order of compensation for complainants and is focused on the remediation of the breach to prevent further loss or concern for consumers in contrast to EDR schemes seeking to settle a dispute between a Bank and the customer.

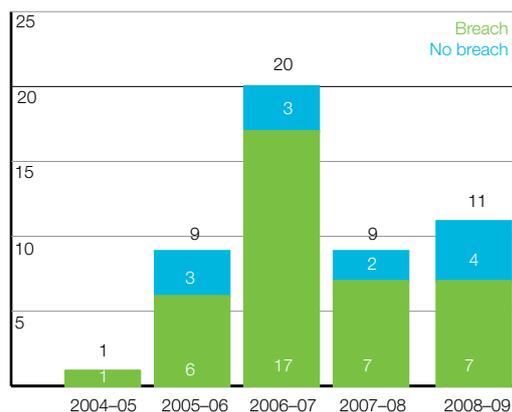
As the CCMC’s objectives differ from that of an EDR scheme, the CCMC investigations are not limited by any financial thresholds regarding loss, either from individual or small business customers as the investigation is not about compensation – instead it focuses on the underlying issues that have caused the breach to occur. Where a person making a complaint is seeking a financial outcome we refer them to the Financial Ombudsman Service as the more appropriate forum.

In addition the CCMC can proactively undertake its own inquiries whether a complaint has been made or not.

Complaint determinations

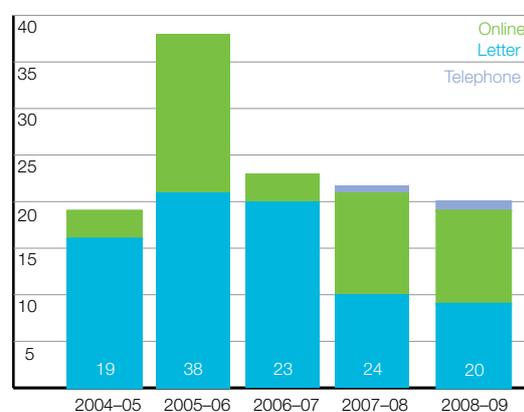
After the CCMC has completed its investigation and assessed the complaint, the Bank and the complainant are provided with a proposed determination and given the opportunity to make submissions to the CCMC before the determination is made final. In some cases, where the CCMC makes a finding that the Code has been breached (not infrequently more than one breach is found per complaint), the CCMC may recommend in its determination that remedial action is taken by the Bank. The Bank’s response is then monitored by the CCMC.

Number of Determinations 2008/09



New complaints

New Complaints – By Source

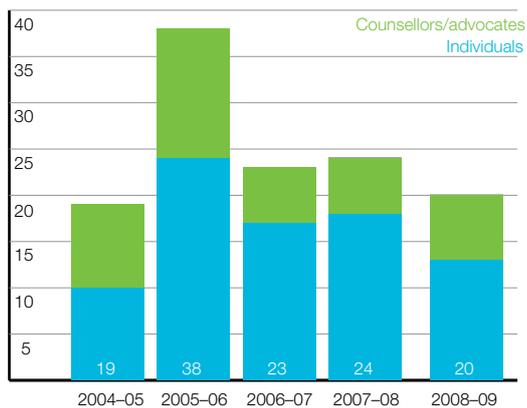


There were 20 new complaints received during the year including 10 complaints which were received online. This compared to 24 and 11 respectively in 2007/08.

See more Complaints information...

www.bankcodecompliance.org

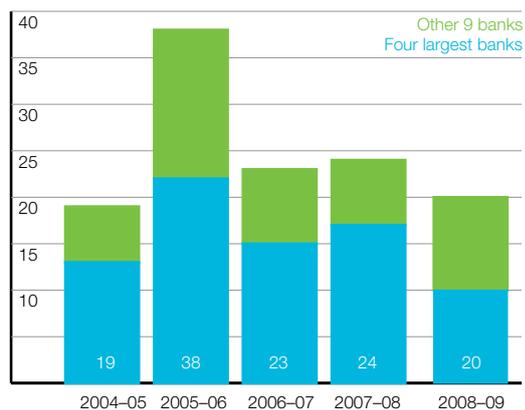
New Complaints – By Complainant



Of the 20 complaints, 13 were from individuals. The remaining 7 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 Australian Bankers Association, the Committee continues its efforts engage with small business in relation to the Code.

New Complaints - By Banks



The 20 new complaints received during the year were directed to 8 of the Code's 13 subscriber banks.

Of these 20 complaints, 10 were directed to the largest subscriber banks (by market share).

“The Committee considered that the bank’s IDR process was not effective on this occasion.”

Case studies

Clearing up a problem

The issue

The customer’s complaint concerned the deposit and clearance of cheques by the bank. The complaint consisted of three parts.

First, that the bank had delayed in clearing two of the customer’s cheques. The bank delayed in clearing one cheque for 12 days. When the customer investigated further, he found that on a previous occasion the bank had delayed in clearing another cheque for more than 100 days.

Second, he claimed it took the bank 37 days to inform him that a cheque deposited in his account had been dishonoured. Third, the customer was concerned by the bank’s Internal Dispute Resolution (IDR) Process and its inefficient handling of his complaint about the cheques.

Outcome

The Committee determined that the bank breached:

1. Clause 2.2

The bank’s conduct towards the customer was contrary to the commitments contained in the bank’s Product Disclosure Statement.

The bank’s conduct was not fair and reasonable as required by clause 2.2 of the Banking Code.

The customer experienced inconvenience and financial detriment resulting from inadequate compliance by bank staff with cheque deposit procedures in its clearing department and at its local branch.

This was compounded by the ineffective handling of the customer’s complaint.

As a related issue, the Committee also noted the failure of the bank to promptly debit the customer’s account following the dishonour of a client’s cheque.

2. Clause 35

The bank took 71 days to respond to the customer’s complaint, which is outside the maximum period of 45 days allowed under clause 35 of the Code.

Additionally, the Committee considered that the bank’s response to the complaint did not adequately address the substance of the customer’s complaint. In particular, its response failed to explain the reason for the delay in crediting the cheques.

The Committee considered that the bank’s IDR process was not effective on this occasion.

Remedial Action

Following the Committee’s Determination, the bank acknowledged its non-compliance and in response sent out communication to all branch staff to remind them of the bank’s process for depositing cheques. It also strengthened its investigation process of unmatched customer deposits and credited the customer with the interest for the additional days it took to clear the cheques.



It was only after the 3rd contact from the customer, raising serious health concerns that the bank took any direct action



It makes you sick

The issue

A customer who suffered from ill health - including depression - complained about the bank's behaviour in relation to his financial hardship and the repossession of his property. As a result of his ill health, the customer had fallen behind in mortgage repayments. He applied to the bank for assistance with his financial hardship. The customer alleged that over a period of several months, the bank refused to consider his application and merely continued to ask him to complete various forms. The customer complained that the bank's failure to consider his hardship situation was made worse by the bank's referral of the matter to external solicitors.

Outcome

The CCMC considered this complaint in light of three Code provisions.

Clause 25.2

The Committee did not believe that the bank responded to the customer's financial assistance application in a timely manner. It was only after the third contact from the customer, raising serious health concerns that the bank took any direct action.

The Committee found that the bank's response to the customer's reports of financial difficulty were neither timely nor adequate.

Clause 2.2

The Committee considered that the bank's representative's failure to honour a settlement agreement with the customer in respect of the arrears also amounted to a breach of clause 2.2. (Duty to act fairly)

Clause 35

The Committee considered that neither the bank nor its solicitors adequately responded to the customer's initial complaints.

The customer was not advised who was dealing with his complaint, that he would be charged for dealing with his complaint, or given the names and contact numbers of the people dealing with his complaint, in accordance with clause 35.

The bank and its representatives failed to respond within the timeframes specified by clause 35.

Remedial Action

The Committee recommended that the bank review and conduct an internal audit of all collection matters referred to the firm of solicitors involved in the complaint within the last six months.

The Committee also recommended that the bank ensure that all external solicitors understand the bank's commitments in respect of financial hardship and its commitments under the Code.

The Committee further asked the bank to revise its current procedures to ensure that all future matters are dealt with in accordance with clause 35.

The Committee has requested that the bank report back to the Committee on the findings of the review within six months.

Reviewing

The Committee conducts themed reviews across the industry or across a section of the industry in an effort to examine and test the practices and services that individual or small business customers are experiencing. This ability to provide a customer's perspective measured against the Banks' own policies and procedures provides some compelling information for Banks regarding their compliance with the Code.

This year the Committee finalised one major review into compliance with the direct debit provisions of the Code (clause 19) and published a comprehensive report, following consultations with each of the Banks.

Direct Debits Review

The nature of Australian banking has moved steadily away from paper and cash towards more convenient ways of conducting financial transactions. The 'direct entry' form of banking – the crediting and debiting directly into and from bank accounts – is increasingly valued by consumers and business alike.

In 2008 the average number of direct debit transactions per business day exceeded two million with the average value per business day exceeding \$17 billion (AUD).

One way consumers and small business can control the direct entry system for direct debits is via clause 19 of the Code of Banking Practice. This enables the customer to cancel direct debits at their own bank rather than through the business or service provider. This clause was added during the last Code Review, to deal with difficulties consumers had cancelling direct debit transactions.

In February 2008, the CCMC began a review into clause 19 to identify how far Code subscribing Banks met their commitments to consumers and small business. The review was divided into two phases: first, the gathering of data and assessment of policy and procedures; second, a program of social and market research to measure compliance from the consumers perspective.

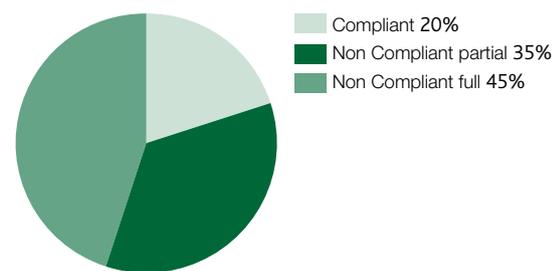
The first phase of the review identified that all banks had systems in place that would provide customers with outcomes required by clause 19. The second – using a research technique known as ‘shadow’ or ‘mystery’ shopping – found that eight out of ten ‘shadow shoppers’ received incorrect or partially incorrect information. The results did not meet the CCMC’s expectations of what would be reasonable given the strong commitments expressed in the Code.

The CCMC met with all of the Banks involved in the review. We are pleased with the way the Banks have received the results and responded to our concerns. We are in agreement that the outcome we wish to achieve is to improve consumer and small business confidence in the use and cancellation of direct debits. As a consequence, the Banks have undertaken a range of activities to identify why the problems occurred.

Having established a benchmark, the Committee will retest compliance in the next six months or so and should be able to identify any shift in the customer service associated with cancelling direct debits.

‘Direct Debits - A review into the operation of Clause 19 of the Code of Banking Practice’ can be found on our website at: www.bankcodecompliance.org

Total - Count of Compliance



Industry results

The results were classified into three possible outcomes:

- Compliant – meets the expectations of the Code and Bank Policy;
- Non Compliant (Partial) - recommends that the cancellation should be lodged with the merchant first and if there was a problem the customer should return to the Bank to cancel; or
- Non Compliant (Full) – Bank cannot accept cancellation and the cancellation can only be lodged with the merchant.

The national result was aggregated across the various state call centres and branch networks and identified that 8 out of 10 ‘customers’ received incorrect or inadequate advice in relation to the cancellation of direct debit request.

Financial Report

Code Compliance Monitoring Committee expenditure for the year ended 31 March 2009

	31 March 2009	31 March 2008
Salaries	244,502	247,230
Recruitment Costs	38,547	0
Member Fees*	85,987	71,923
Travel	27,201	34,423
Consultants	36,419	10,975
Occupancy	30,110	19,924
Insurances	4,436	0
Technology	13,522	18,852
Other	29,088	34,650
Total Expenses	509,812	437, 977

*Member Fees relate to remuneration for the Committee members. In this financial year the payments are higher to cover an accrual from year end March 2008. This has resulted in five quarters of member fees being deducted from the account and brings the Members Fee payments into alignment to avoid future accruals.

Thank you

The Committee thanks the staff for their assistance and hard work over the year.

The Committee also especially thanks:

**Colin Neave and the staff of the
Financial Ombudsman Service**

**The Banks and their staff who deal with the
CCMC on a regular basis**

Australian Bankers Association

Jan McLelland

Richard Viney

**Anthony Blunn AO, David Tennant, Kirsten Trott
and Barbara Schade for their dedication and
contribution to the CCMC.**

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