

The Code Compliance Monitoring Committee  
2009–10 Annual Report

## Making a difference



## Subscribing banks

The following banks subscribe to the Code of Banking Practice (2004)

- 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 retail banking operations in Australia have not subscribed to the 2004 version of the Code. The CCMC looks forward to those banks adopting the new Code when it is released.

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# The Chairperson's Reflections 2009-2010

Brian Given PSM

When I took up the position of Chairperson of the Code Compliance Monitoring Committee ("CCMC") in August 2009, the first quarter of the 2009-2010 reporting year had passed and much of the preliminary work in setting the future direction of the Committee's agenda had been commenced.

Our agenda reflects an evolving approach to the Committee's role in monitoring compliance with the Code of Banking Practice within a framework that aims to enhance the credibility of the self-regulatory scheme underpinning the subscribing banks' commitment to fairness in their dealings with their customers. It involves:

- Improving the Committee's engagement with stakeholders – the banks who subscribe to the Code, financial counsellors and other customer advocates (including small business organisations), and government regulators.
- Focussing more on identifying and addressing sector-wide issues through own motion inquiries and reviews while fulfilling our obligation to investigate all complaints of a Code breach that are within the CCMC's jurisdiction.
- Modifying the banks' Annual Compliance Statement self-reporting process to better ensure the information collected and reported is appropriate and useful to the goal of continuous improvement.
- Reviewing the Committee's operating procedures to improve our effectiveness and transparency in the investigation of Code breaches reported by way of complaint or otherwise.
- Participating in the development by the Australian Bankers' Association ("ABA") of new governance arrangements for the Committee in accordance with the recommendations of the McClelland Code Review.

Reflecting on this agenda, it is fair to say that the year has been characterised by significant progress in most respects:

- Plans for more regular communication with stakeholders have been implemented – the secretariat has established a working group of bank representatives to ensure ongoing dialogue with the banking sector and an increased level of contact with financial counsellors and small business organisations to help identify issues of general concern. There is also regular liaison with the Australian Securities and Investments Commission ("ASIC"). However we did not manage to issue further Information Bulletins which we believe could still be an effective communication tool.
- The Annual Compliance Statement processes have been refined, in consultation with the banks, providing more targeted and useful information for the Committee and the banks themselves.
- Own motion inquiries and reviews have been completed, commenced or planned in relation to compliance with Code requirements for Direct Debits, Internal Dispute Resolution, Web Based Disclosure Issues, Small Business and Financial Difficulty, Disclosure of Terms and Conditions, and Third Party Guarantees.
- New operating procedures have been implemented and will be further refined, enabling complaint/breach investigations to be finalised more quickly if acknowledgement of the breach by the bank involved avoids the need for a formal determination.

Of concern to the Committee was the relatively slow progress in the development of new governance arrangements. However, it is pleasing to note that the ABA has now distributed an Issues Paper and Draft Mandate document prepared by The Navigator Company, for stakeholder consultation.

From the Committee's perspective the closer relationship with the Financial Ombudsman Service (FOS) with accountability to the FOS Board as recommended in the "McClelland Review" would be welcome so long as the independence of its compliance role is maintained and the adequacy of its resources secured. Whatever form the governance arrangements might take in the future, the Committee recognises a close working relationship with FOS is essential to its work. The continued support and assistance the Committee has received from Colin Neave (Chief Ombudsman) and his organisation is very much appreciated.

I am also pleased to acknowledge the level of cooperation the Committee has received from the subscribing banks and the strong support provided by the ABA. It augers well for the capacity of the Committee to continue to make a difference and for the future credibility of the self-regulatory scheme.

Finally, I would like to thank my Committee colleagues, Julie Abramson and Nicola Howell, for their commitment and support during the year. They join me in publicly acknowledging the dedication and professionalism of our small but highly energetic secretariat team lead by Damian Paull, the CEO.

Brian Given PSM



# The CEO's Report

Damian Paul

Well they say that change is the only constant, and for the CCMC, some things have changed quickly while other things that need to change have taken some time.

During the 2009-2010 financial year the team focused on establishing the foundations of a compliance-monitoring program aimed at delivering professional code monitoring and practical compliance resolutions.

It would be fair to say that we have further work to do, however the team has worked hard to keep code compliance proactive, effective, and relevant in these times of change and uncertainty.

I would like to thank them all for their hard work and for the fact that they do care about what we do and how we can make a difference.

The goals and objectives that we set ourselves in 2009- 2010 definitely stretched our capacity to deliver, and some of the projects continue to be “work in progress”. However, we have noticed that there has been a change in the way our stakeholders have started engaging with us and I hope these changes continue to evolve.

- We have seen more proactive engagement by both the banks and financial counsellors and advocates, enabling us to respond quickly to potential systemic issues before they escalate through either the internal or external dispute resolution processes.
- We have received constructive feedback from a range of stakeholders on how to continue to improve.
- We have regular contact with ASIC in order to minimise duplication.

As we continue to work through current and future projects, I hope that we can continue to build effective relationships in an effort to increase our understanding of emerging issues and be able to provide timely advice regarding the requirements of the Code.

It is this ability to be proactive that is the real benefit of effective code monitoring. Where we can be ahead of the complaints curve, we can influence corrective action, potentially reducing the impact on consumers and perhaps stem the flow of complaints.

By identifying potential breaches and tapping into the risk and compliance experts within the banks, we are able to influence timely corrective action where required – that’s making a difference.

## **Melbourne University, Faculty of Business and Economics - Business Practicum**

This year we continued our association with the Business Practicum. The Business Practicum is a final year Bachelor of Commerce subject that brings high achieving students and industry together. Student consulting teams work on a 10-week project to apply their skills and collective knowledge in completing business projects of a strategic nature. The teams produce a comprehensive consulting report analysing the business challenges and proposing courses of action for the client organisation.

To date the CCMC has hosted three teams and they have worked on issues such as:

- developing key performance indicators and compliance triggers for the CCMC
- “Self Regulation – where to from here?”
- Small Businesses and Financial Difficulty

We look forward to working with Melbourne University and the team in 2010-2011 and we have already started looking at the issues of mental health and financial difficulty following some observations made by financial counsellors and banks.

### Where will the CCMC be in 2010-2011?

Over the past year, the CCMC has been working with FOS and the ABA in settling an issues paper and draft operating mandate following the recommendations in the Code of Banking Practice Report released in Dec 2008. ("the Report")

The Report recommended, among other things, that the CCMC integrate with FOS Limited with the Committee reporting to the FOS Board.

With a range of competing priorities, this has taken some time to resolve and with the recent release of the Issues Paper prepared by Phil Khoury, from Navigator we are looking forward to getting this resolved.

Over the next year, we hope that the issues identified in the Report can be resolved and that the CCMC can settle into a new operating model and into new premises as part of the FOS relocation to 717 Bourke Street Docklands, Melbourne.

In addition to a new mandate, there will be a new Code and in the face of the current credit reforms, I believe the challenge will be to lift the standards to the next level as a clear expression of good industry practice that goes beyond the requirements of the law.

### Acknowledgement and Thanks

As we move into a new era for the CCMC I would like to thank Colin Neave, Philip Field and the team at FOS for their assistance and support. We look forward to the challenges in the new year.

I would also like to acknowledge and thank the Committee, Brian, Julie, and Nicola for all their guidance and hard work over the year. The Committee is very active and committed to the work of the CCMC and they definitely keep us on our toes.

Finally, I would again like to thank the team, who have worked so hard over the past 12 months and who have truly made a positive difference.

Damian Paull CEO



## Achievements in 2009-2010

While we are, only a small team, we have been actively working to:

- monitor compliance with the Code
- improve how we investigate alleged Code breaches, and
- develop ways we can influence better practices as identified in, and required by, the Code.

Some examples of what we have achieved this year include:

### Monitoring

- Improved the Annual Compliance Statement reporting by building templates and pre-populating data
- Conducted visits at each of the banks to better understand individual issues and maintain open dialogue
- Monitored a number of significant breaches across a number of banks

### Investigating

- Improved how we manage and investigate alleged breaches by introducing the Recommendation and Determination process
- Increased the Committee activity, introducing teleconferencing and face-to-face meetings
- Increased our profile with financial counsellors and therefore increased our understanding of emerging issues

### Influencing

- Concluded the Direct Debits Review (feedback indicates a general improvement across the industry - with still more work to do)
- Commenced a review of the internal dispute resolution requirements of the Code
- Concluded our Web based disclosure review relating to the Code, internal dispute and external dispute resolutions,
- Commenced quarterly telephone conferences with banks
- Provided quarterly updates and meeting with Financial Counsellors
- Increased our contact with ASIC to build a broader understanding of our activities

### Operations

- Introduced monthly reporting
- Developed a new brand
- Commenced the building of a new website
- Developed a compliance program approach to code management and compliance
- Developed a code monitoring competency framework to provide a career path and training plans for staff



# The CCMC structure

## The CCMC is structured as a Committee and a Secretariat

### Who are the Committee?

The Code Compliance Monitoring Committee (CCMC) is an independent three-person committee, established in accordance with the Code of Banking Practice 2004 (the Code).

The primary purpose of the CCMC is to ensure that banks that have adopted the Code meet the standards of good banking practice set out in the Code.

The CCMC has an independent chairperson, a consumer representative, and a banking industry representative.

### Committee Operations

The Committee meets in Melbourne every second month for a full day and then teleconferences every alternate month for one hour.

The Committee also operates as required out of session.

In addition to the meetings, regular contact occurs between Chairperson and CEO on a weekly basis and other Committee members as required.

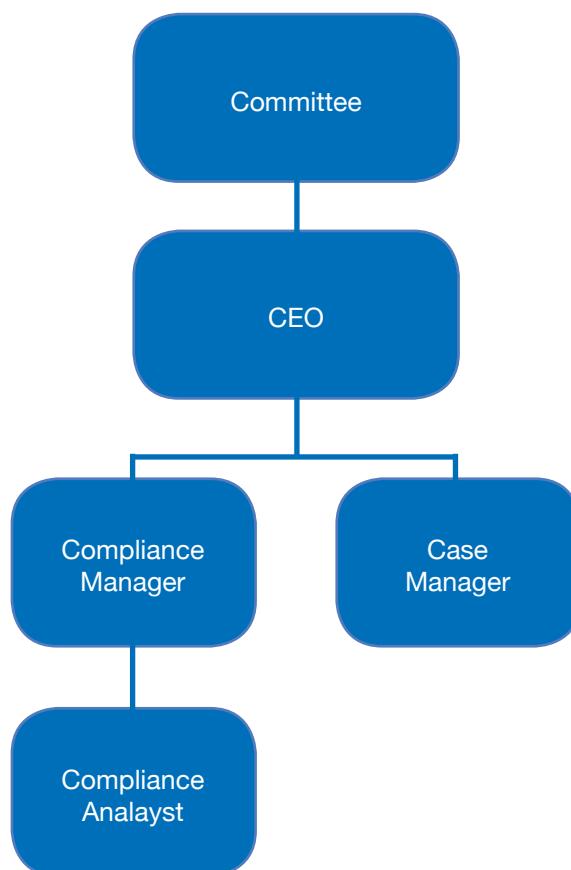
In 2009 – 2010 the Committee met a total of eight times during which the Committee discussed the following standing agenda items:

- Case Management Report
- Compliance Report
- Project updates
- Chief Executive Officer - Report
- Emerging risks or concerns
- Determinations, and
- Recommendations

In the coming year, the Committee and secretariat are focused on delivering the following:

- the CCMC mandate and associated operating procedures
- a case management system upgrade – Jan 2011 (FOSSIC)
- a streamlined determination process, including the “recommendations” stage
- the formation of a Code Advisory Group
- improved contact with stakeholders including the quarterly teleconferences with subscribing banks
- a new website and improved understanding of the role of the CCMC
- stronger engagement with the financial counselling associations and key stakeholders; and
- increased communications with stakeholders.

With the Code recommendations and the draft CCMC mandate project, the Committee has already been active in the early part of 2010 and continues to work with the secretariat to make a difference.



## The Committee members



**Brian Given PSM**

**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.



**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 area of the NAB across consumer issues.



**Nicola Howell**

**Consumer and Small Business Representative**

Current term Jan 09 – Jan 12

Nicola Howell LLB/LL.M (Hons)/ B.Sc. (Hons) 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.



**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.

*"This year I have focussed on building a sustainable model for code monitoring and compliance for the Code. We have looked at how we can improve what we do, how we can better monitor compliance, how we can better identify issues and risks for code subscribers and how we can influence industry improvements and thus assist consumers and industry alike. We are looking forward to the challenges ahead, and I hope that we continue to bring people and issues together in search of practical solutions".*



**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.

*"This year I have focussed on improving my engagement with Counsellors and have attended a number of meetings with Counsellors and banks in an effort to understand how compliance with the Code can be improved.*

*I have also been focussed on improving compliance monitoring and reporting and this year we have streamlined the ACS process and used it to target some specific concerns.*

*I believe that maintaining an effective relationships is based on open dialogue and developing an appreciation for the whole picture. I trust this approach helps to build an approachable and responsive style.*

*I have enjoyed this year and have been active in visiting the banks, particularly the collections areas.*

*I am looking forward to more ongoing liaison with our teleconference forums, and I am always available for any requests for advice or assistance.*

*I truly believe that we are making a difference and I am looking forward to the challenge of the next financial year."*



**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.

*"This year I have been working with other code areas within FOS in an effort to improve and standardise our case handling system. We revised our processes and procedures and have worked to streamline case handling. This has also included streamlining the Determination process to include a more concise Determination document in an easy to read format.*

*This year we also Introduced a new Recommendation stage into the/our case management process as we felt that the banks often identified the breaches and self reported and we were flexible enough to accommodate this while still keeping focus on our overall goal of monitoring compliance.*

*I would say that building on existing relationships with banks and counsellors has been rewarding for me and has resulted in an increase in notification of complaints.*

*Coincidentally it has also helped us be more effective in resolving complaints as the dialogue tends to be more genuine.*

*This year has been one of forming stronger relationship, building closer working ties with the compliance team and between FOS and the CCMC. This has all helped to improve an understanding of our priorities and how we can better work together."*



**Anthony Lee**

A qualified chemical engineer, Anthony has over the past decade worked in corporate development and strategy roles across a range of industries. While completing his MBA at Melbourne Business School, he has brought to bear his critical thinking and analysis while working at the CCMC.

Anthony's skills have added value to the compliance program through investigating industry issues, conducting compliance reviews, enhancing stakeholder engagement and improving internal processes.

## 2009-10 – In Review

### The year in review

#### Principles that underpin Code management and Compliance Operations

The Code of Banking Practice identifies good banking practices. The Code has historically set an industry benchmark that includes a number of general commitments to operate in an open, honest, and fair manner. With the general commitments, and the inclusion of the Code requirements in the terms and conditions of all relevant banking products and services, the Code forms part of the broader consumer protection framework.

As part of the broader consumer protection framework, an effective and independent Code monitoring function is vital in order to build and retain consumer confidence.

As a result of the feedback received as part of the Code review (2008) the CCMC developed 5 key principles that we believe are essential for successful code management and compliance. They are:

#### Independence

The ability to determine and manage operations and make decisions without undue influence, characterised by:

- appropriate governance and administration
- clear organisational separation
- clear jurisdiction, activities, powers and sanctions
- strong internal working relationships
- strong external advocacy
- an effective funding model.

#### Responsibility

Clear policies and guidelines in relation to the role of code management and compliance monitoring, within the broader self-regulatory and regulatory environment, including:

- well documented and understood roles and responsibilities
- strong leadership regarding monitoring and dispute resolution
- effective information sharing to identify trends and issues
- a complaints and breach allegation referral process that is transparent and effective
- consistent processes and outcomes
- appropriate sanctions and remedies

#### Accountability

Good governance and procedural transparency for code operations and monitoring activities characterised by:

- independent oversight
- evidence and risk based compliance activities
- transparency – both in process and our results
- reporting and engagement protocols with key stakeholders
- financial independence and annual reporting.

#### Interdependence

Operating in an environment of strategic partnerships where code monitoring complements existing regulatory activity and external dispute resolution (“EDR”), characterised by:

- strategic working partnerships
- integrated approach to monitoring activities (avoiding regulatory overlap and duplications)
- strong brand for monitoring activities
- aligned code management and compliance programs
- unified communications processes.

#### Accessibility

Simple access to code monitoring and dispute resolution services, including:

- improved profile and understanding of the relationships for EDR and monitoring functions
- one complaints and breach allegations process for consumers
- complaints assessment and referral for disputes and monitoring functions
- data capture and analysis for trends and systemic issues arising from EDR and code monitoring
- consistent expectations for consumers (retail and small business).

In 2010-2011, we will be working to translate these principles into clear and measurable objectives so that we can measure our performance and ensure that we are delivering a professional and credible compliance program.

The compliance program relies on the receipt of and access to information which can take many forms including complaints, breach allegations, disputes, and industry reviews. We aim to refine the information we receive and ensure that banks are able to identify breaches and improve current practices.

## Core streams of the program

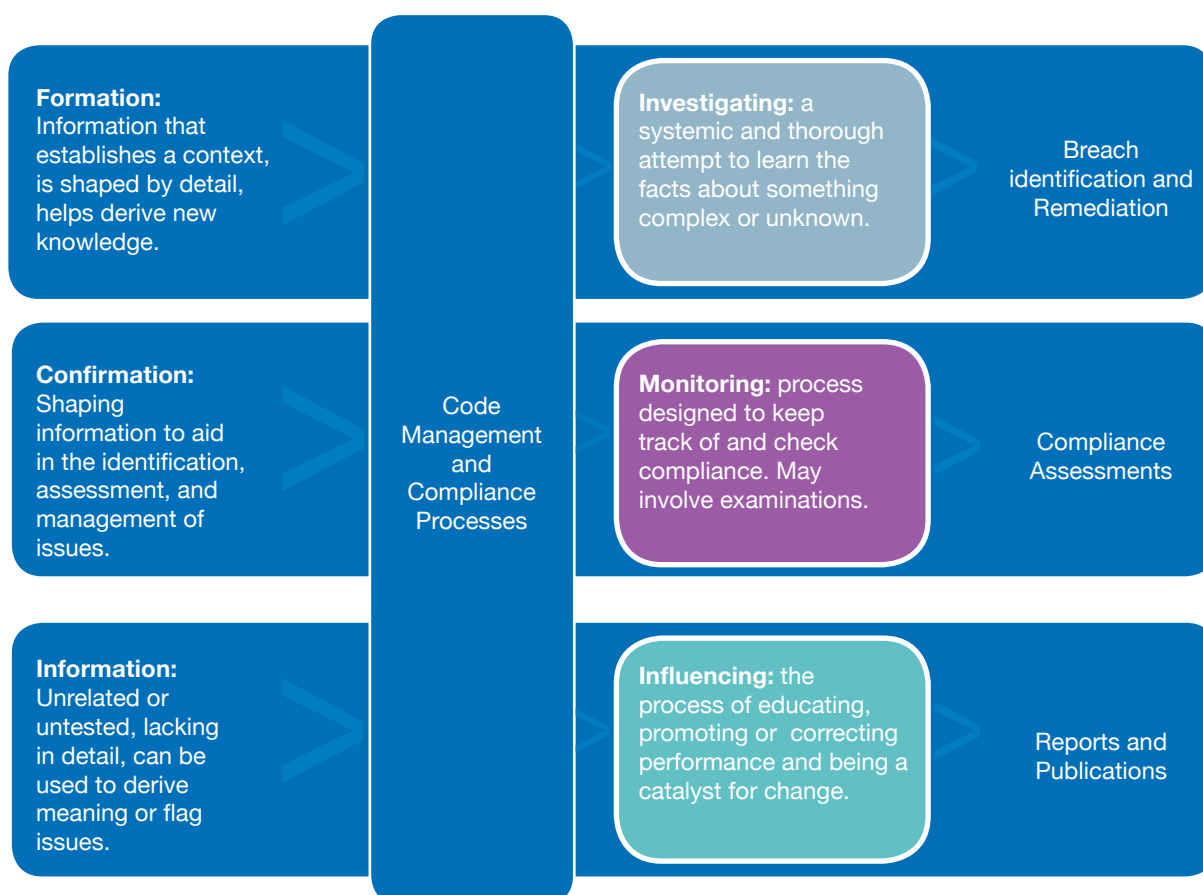
In the last 12 months, we have given some thought to the compliance program and tried to ensure that, with the potential recommendations arising from the “McClelland Review” the program remains relevant as the CCMC mandate evolves.

We have therefore based the program on the core compliance concepts of monitoring and investigating compliance breaches, identifying potential breaches and seeking to “continuously improve” adherence to the standards prescribed by the Code of Practice. These elements are well considered in the Australian Standard AS/ NZ 3806 – Compliance Programs, and we have examined the guidance provided by ASIC in Regulatory Guide 183 and the Australian Competition and Consumer Commission (ACCC) “Guidelines for developing effective voluntary industry codes of conduct.”

Our goals are to:

- be recognized as leaders in code management and monitoring
- be proactive in our engagement with industry, retail and small business consumers, EDR schemes and the Australian Bankers Association who administers the Code be open and transparent in the way we operate
- be open and transparent in the way we operate
- be holistic in our consideration of issues and pragmatic in our application of the Code, and
- assist the industry by raising awareness of good business practices and performance with a view to promoting the benefits of the Code.

## Compliance Program



# Monitoring

The compliance program reflects these goals and through its implementation, we aim to monitor, investigate, and positively influence industry conduct.

In developing an effective compliance program we believe that we have an opportunity to build a reputation that supports the Code by enhancing its credibility.

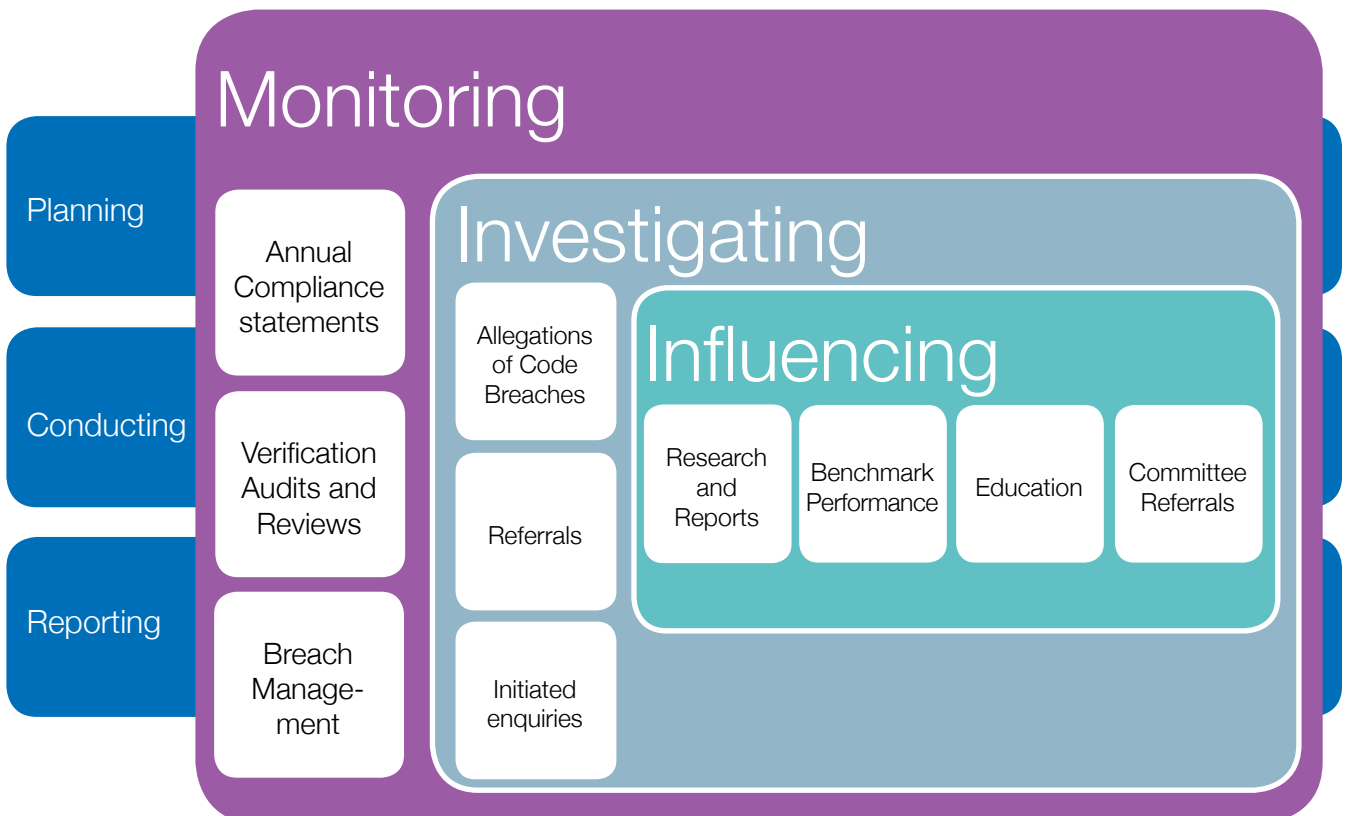
This diagram illustrates the compliance program and identifies the activities for each of the streams that form the basis of the program.

The compliance program is supported by processes and procedures that deal with:

- planning
- execution or “conducting”, and
- reporting.

As part of building a more integrated approach between EDR and code monitoring we are working with FOS to eventually build a consistent work flow and case management system to provide greater access to statistical data and avoid duplication.

The new draft mandate recently released by the ABA, which will ultimately determine how the CCMC operates, will provide a framework for the completion of the FOS systems integration and we look forward to finalising that process in the coming year.



**The monitoring activities of the CCMC, particularly breach reporting, are underpinned by the CCMC’s review of the Annual Compliance Statement (ACS) completed by the banks.**

Each ACS is subject to a verification process involving discussions with each of the banks and the ACS continues to evolve as we identify concerns, observations, and comparisons.

In addition, the ACS process allows us to focus on aspects of monitoring of particular obligations specified in the Code. This year we focused on the monitoring of areas of the Code that dealt with collections activities, including the requirements of the Debt Collection Guidelines published by ASIC and the ACCC and incorporated into the Code by reference.

Utilising the ACS in this way provides the CCMC with some additional insight on areas that may be emerging as a risk or where we suspect there may be variation in how these areas are monitored.

With respect to our focus on Clause 29 of the Code, a number of banks have invited us to visit the collections and call centre operations where we are able to meet the teams and get a better understanding of the compliance monitoring undertaken by the banks and the initiatives being implemented to maintain and improve business practices.

“Clause 29 adopts the provisions of the Australian Competition and Consumer Commission’s guideline “Debt Collection and the Trade Practices Act” dated June 1999 when collecting outstanding debts from customers.

This year, we have seen a positive improvement in the quality of information being provided via the ACS which will assist in better identification of compliance trends across the industry.

In addition to the ACS and verification visits, our monitoring program includes the assessment of breaches identified through reviews, investigations or through our industry research and reports. This ongoing oversight of breach management completes the monitoring program.

**Our monitoring objectives are:**

- to establish data reporting and collection procedures and be able to assess the adequacy of Code compliance across the bank code subscribers
- to verify, test and validate the ACS, to assess the effectiveness of breach identification, reporting, and rectification
- to identify systemic breaches or potential systemic breaches
- to review and assess the breach identification and management of significant and systemic issues relating to the Code
- to engage with the banks via quarterly teleconferences or meetings and raise awareness regarding any identified trends arising from the compliance program
- to identify and report significant breaches, monitor rectification, assess the impact across the industry and, where relevant communicate with other Code stakeholders regarding the risks.

**We:**

- manage and receive an annual compliance statement from banks
- provide banks with the opportunity to self-report areas of non-compliance (breaches)
- 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)
- identify areas for priority attention and follow up
- identify significant breaches and systemic failures.

# Monitoring

## What we found this year

### Annual Compliance Statements (ACS)

The banks have robust risk management and compliance systems that are required by both the Australian Prudential Regulatory Authority (APRA) and the ASIC.

The ACS leverages from the existing risk management and compliance procedures within the banks that includes breach identification, monitoring, and reporting.

The breaches of the Code that the banks report through the ACS have been identified from a range of activities including;

- internal monitoring and quality assurance programs implemented by the banks
- internal dispute resolution (IDR) – complaints analysis by the banks
- external dispute resolution (EDR) – review of findings and recommendations arising from disputes (including systemic issues)
- CCMC – through monitoring activities, investigations or research and reviews, (including any recommendations or determinations).

As part of our verification process we examine monitoring programs to ensure that the visibility of, and emphasis on, Code compliance improvements.

The results of the 2009-2010 ACS process builds upon the momentum of the last two years. We continue to see an increase in the statistics being provided to the CCMC regarding Code breaches, and while the increase may partly be attributable to economic conditions and increases in complaints, the CCMC analysis is that the increased breach numbers largely reflects better breach monitoring and identification by banks

### Breach management

The Australian Compliance Standard 3806, titled “Compliance Programs”, provides authoritative guidance on the principles of effective management of an organisations obligations.

This standard is referenced by both ASIC and APRA in their regulatory and prudential guides and the CCMC use it as a key reference for the Code compliance program.

In order for any continuous improvement to occur there needs to be an effective feedback system within the business. These feedback systems include things like quality assurance, complaints handling, customer surveys, market research and breach management.

The identification of compliance breaches and the effective monitoring of rectification action form an important part of managing compliance and improving business processes.

The compliance standard identifies that all compliance

managers should have a system or process to ensure that they are adequately informed of all relevant compliance failures.

The standard provides that a good compliance system will have internal reporting arrangements to ensure that:

- appropriate criteria and obligations for reporting are set out
- timelines for regular reporting are established
- an exception reporting system is in place that facilitates ad hoc reporting of emerging and crystallised issues
- there are systems and processes in place to ensure the accuracy and completeness of information
- that accurate and complete information is provided to the correct people or areas of the organisation to enable remedial action to be taken
- there is sign-off on the accuracy of reports to the governing body.

Unlike some other industry codes, the Code of Banking Practice does not encompass real time breach reporting.

Under the current system, the CCMC uses the ACS program to catalogue breaches that banks have identified over the preceding 12-month period. As the ACS has evolved, we have now included a significant breach template into the ACS to facilitate consistent reporting of significant breaches.

In addition to the breaches identified as part of the annual ACS process, the CCMC has developed strong liaison arrangements with the banks that have fostered identification and early notification of significant breaches.

The early identification of significant breaches allows the CCMC to assess any potential systemic issues across the industry and ensure, through the quarterly teleconferences or meetings, that emerging risks are communicated.

This allows the CCMC to be more proactive in the breach management process, influence rectification action, and assess potential exposure across the industry, as well as set timeframes for completion of any improvements.

A significant breach relates to a breach or breaches that are deemed by either the CCMC or the bank to be significant having regard to the number of similar breaches, the potential impact of the breach on customers, whether the breach indicates that code compliance arrangements may be inadequate, and / or the actual or potential loss.



### Significant Breaches disclosed by the banks

The breaches that have been reported in the ACS for 2009/2010 include the following issues:

Issue	Background	Outcome
<b>Disclosure of Terms and Conditions</b>	<ul style="list-style-type: none"> <li>• Inadequate or non-disclosure of dishonour fees identified through the analysis of internal disputes data.</li> <li>• Credit card customers of a bank were provided with a letter of offer, which did not disclose annual account fees.</li> <li>• Following a complaint to FOS, it was determined that a bank had provided inadequate disclosure of break costs in the forms and information provided to customers at the time of switching from a fixed to variable rate loan.</li> <li>• The payment of package fee entitled customers of a bank to interest rate, fee and other concessions on bank products. Manual processes open to human error and inadequate monitoring resulted in customers not always receiving these concessions resulting in a breach of the terms and conditions.</li> <li>• Due to a contact centre scripting error, prospective customers purchasing credit card insurance were provided incorrect information on premiums.</li> </ul>	<p>Affected over 7,000 customers and amounted to refunds over \$1 million.</p> <p>A systems update corrected the issue and customers affected received refunds.</p> <p>Remedial actions included updated loan documentation and communications with customers.</p> <p>A major project is underway to identify all customers impacted and provide refunds. A remediation provision of \$4.6m has been set aside by the bank.</p> <p>The issue has been addressed through revised sales scripting and refunds were provided where customers elected not to continue with the product</p>
<b>Guarantees</b>	<ul style="list-style-type: none"> <li>• Credit information required under Clause 28 (Guarantees) omitted due to system changes, affecting over 300 customers. (Rectified)</li> <li>• Clause 28 of the Code includes a requirement that prior to agreeing to act as guarantor for a borrower's loans, guarantors must be provided by the bank with information on available negative repayment history of the borrower (incidence of arrears, dishonours etc). With the introduction of new IT systems and the integration of legacy systems there have been a number of issues that have resulted in some borrowers consolidated repayment history not always being available for disclosure to guarantors as required by the Code.</li> </ul>	<p>The rectification of the issues often requires significant system changes and in the interim a number of manual workarounds have been implemented in order to ensure that the appropriate information is provided. The work continues , with remediation to be completed in 2010-11.</p>

# Monitoring

## What we found this year

Issue	Background	Outcome
<b>Direct Debits</b>	<ul style="list-style-type: none"> <li>In our 2008/09 report, we commented that inadequate compliance with the requirements of Clause 19 was a systemic industry issue. The key concern was that customers were not always able to cancel a direct debit through their bank as provided for by the Code and instead customers were directed by the banks to cancel the direct debit through the merchant. As well as affecting customer service, such practices also restrict customers' ability to manage and control their finances, particularly in situations of financial difficulty.</li> </ul>	<p>Whilst the level of compliance has improved in 2009-10, there is further improvement required. The CCMC believes that this continues to be a systemic industry issue. Banks continue to monitor performance and have implemented additional training and communication programs, enhanced monitoring programs using internal shadow shopping and improved direct debit cancellation processes.</p>
<b>Advertising</b>	<ul style="list-style-type: none"> <li>Following a customer complaint regarding misleading information a bank reviewed its website disclosure concerning lending rates. The issue related to whether the loan rate appearing on the website was advertised at a fixed or variable rate</li> </ul>	<p>The bank revised the disclosure immediately to avoid any confusion.</p>
<b>Privacy</b>	<ul style="list-style-type: none"> <li>A major breach of customer privacy followed the distribution by a bank of over 1300 customer deposit statements to incorrect addresses. The processing error occurred at the bank's outsourced mail house and was detected following the receipt of a customer complaint</li> </ul>	<p>Correct statements were reissued and apologies issued to all impacted customers and the Privacy Commissioner was notified Remedial procedures were introduced at the mailing house to prevent a repetition of this incident.</p>
<b>General Commitments</b>	<ul style="list-style-type: none"> <li>Inadequate procedures and processing of lenders mortgage insurance premiums (LMI) at a bank resulted in customers not always being refunded a portion of lenders mortgage Insurance cover when a loan was discharged within the first 2 years.</li> </ul>	<p>The bank instituted corrective procedures to ensure customer refunds are applied and premiums received are promptly forwarded to LMI insurers</p>
<b>Dispute Resolution</b>	<p>Letters to customers in response to internal disputes raised with the bank did not identify details of the relevant External Dispute Resolution Scheme.</p> <p>Over a 4-month period a backlog of complaints accumulated in a bank's collections department such that the average handling time for addressing complaints was 35 days. This was in contravention of the Code requirement that complaints are addressed within a maximum 21 days (45 days in exceptional circumstances). The bank estimated that approximately two thirds of complainants did not have their complaints addressed within the required time frames. The major area of non compliance was related to the Code's dispute resolution requirements (Clause 35) and there were related breaches identified in respect to staff training (Clause 11) and Debt Collection (Clause 29).</p>	<p>Letter templates were amended and customers have been notified.</p> <p>The backlog was addressed as an immediate priority by the bank and the issues identified contributed to a major review of improving the effectiveness of complaints handling in the area. Remedial actions included revised acknowledgement and monitoring processes, priority hardship referrals and a comprehensive training and communication programme.</p>

### Significant breaches identified through the compliance program

In relation to the significant breaches identified through the ACS program, work has been completed, or is underway, to rectify the issues identified. In addition banks have made provision or have compensated customers where required.

In addition to the ACS program, the CCMC has worked with a number of banks in relation to matters that have been identified through the Code compliance program, including initiated investigations and reviews.

The significant breaches identified through the compliance program include:

Hardship	<p>We received information concerning a number of hardship programs where it was alleged that banks were not meeting the ABA Hardship Principles or the requirements of the Code (Clause 25.2).</p> <p>We alerted the banks concerned, and they responded with a number of initiatives including:</p> <ul style="list-style-type: none"><li>• improved web visibility and access regarding hardship information</li><li>• improved access to hardship teams</li><li>• increased face to face meeting with counsellors to understand the relevant issues</li><li>• increased communication to set expectations regarding specific applications and process</li><li>• implementation of streamlined Statements of Position.</li></ul> <p>In addition, the CCMC worked with banks and created a contact list for financial counsellors of the relevant hardship, collections, and complaints teams For the Code subscribing banks. This is now updated quarterly.</p>
Terms and Conditions	<p>We received information regarding a potential problem with ATM receipts where buffer limits were identified. Buffer limits allow for withdrawals at a time when the ATM may be off line. This allowed customers to overdraw transaction accounts, up to the buffer limits. Overdraft fees were automatically applied to overdrawn accounts. The bank quickly resolved the issue and refunded the overdraft fees to over 500 customers.</p>
Account Suitability	<p>We received a complaint from a counsellor regarding unsolicited credit products being offered to indigenous communities. This was a concern as the communities were dependant on government assistance and the credit amounts being offered were considered unsuitable. The error occurred because of incorrect postcode information being included in the mail out instructions, which formed part of a direct marketing campaign.</p> <p>A number of applications were identified and, where required, they were cancelled or replaced with more suitable product.</p>

# Investigating

**The CCMC, pursuant to Clause 34 of the Code, is able to receive and investigate alleged breaches of the Code in order to identify potential issues and improve overall compliance with the Code.**

The ability to deal with specific allegations allows the CCMC to address instances where compliance has been below the required standard, and to identify any potential issues that may be emerging across the industry.

In order to provide some consistency between EDR and Code investigations, the CCMC has adopted similar processes to those of the Financial Ombudsman Service. The CCMC has continued to refine its procedures over this financial year in an effort to streamline the determination process. The making of a “recommendation” at an earlier stage of an investigation, acknowledges that banks have active risk management and compliance systems and often matters are resolved and rectified before the Committee’s investigation is complete. Where the complainant and the relevant bank agree with the recommendation, the matter can be quickly finalised.

In addition to receiving information about alleged breaches from complainants and others, the CCMC can investigate matters referred to it from the ABA, and/or initiate its own investigation as part of its proactive compliance monitoring.

## **Our investigation objectives are:**

- to have a dedicated case management function that provides access to any person wishing to make an allegation concerning breaches of the Code
- to have a formal process that ensures we can investigate alleged breaches of the codes and determine:
  - whether a breach has occurred
  - the extent of any identified breaches
  - the impact or potential impact on customers
  - the impact of non-compliance on the bank, and
  - the root cause of the breach.
- to analyse allegations and other relevant data sources, determine whether identified breaches are systemic across the organisation or industry.
- to gather data and develop key sources of information and initiate investigations into suspected breaches of the Code
- to identify issues that have not been detected by bank monitoring programs or internal disputes
- to work closely with EDR and ASIC and be able to receive and assess referrals
- to provide regular briefings and insights to the broader team and ensure that additional monitoring of remedial activities
- to have a standardised approach to breach remediation
- to provide recommendations and determinations where appropriate, that includes:
  - an assessment of consumer detriment
  - the identification of the root cause of the breach
  - the identification of activities already undertaken by the FSP in response to the breach
  - any remedial actions that have been agreed or recommended; and
  - an estimated cost of remedial or corrective action.
- To ensure that where there is a requirement for compensation, refer or recommend the matter to the relevant EDR scheme.

## **We:**

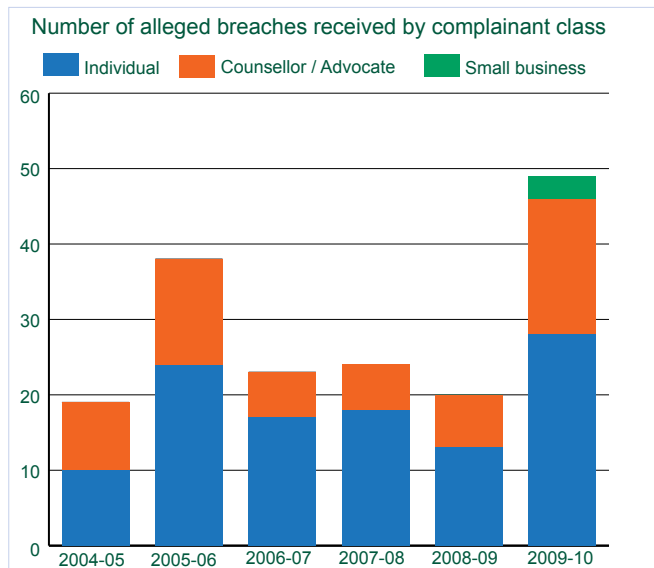
- focus on the remediation of the breaches to prevent further loss or concern for consumers
- follow closely the established processes and procedures utilised within EDR operations, albeit with different objectives
- conduct CCMC- initiated investigations that are not dependent upon a specific allegation or complaint
- provide transparent and open processes
- integrate and co-ordinate with other Code and dispute resolution activities.

### Investigation into alleged breaches.

This year the number of allegations that Code subscribing banks have breached the Code has increased.

While the numbers represent a significant increase, the increase has arisen due to a number of factors, including:

- a number of complaints regarding the same issue made to a number of banks
- an increase in consumers looking at alternatives to IDR and EDR in an effort to have their matter examined, and
- an increase in the understanding of the role of the CCMC by financial counsellors.

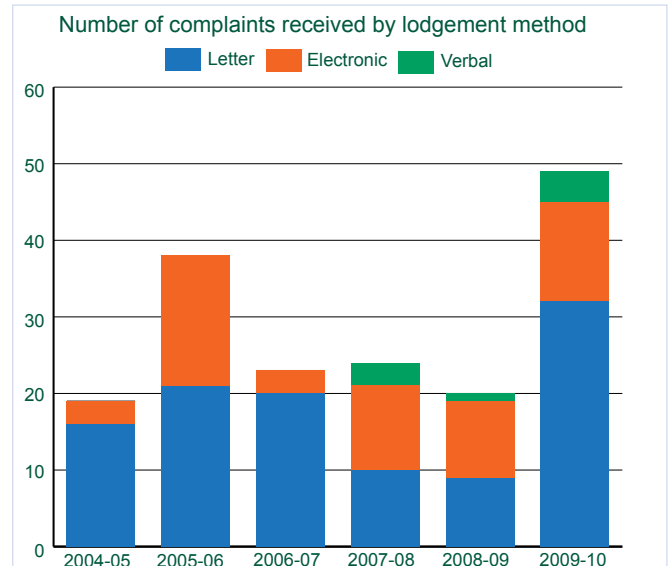


The CCMC continued to get the majority of its complaints regarding alleged breaches via the mail, in the form of letters. The majority of these complaints have been from financial counsellors or consumer advocates.

As the CCMC has engaged more directly with financial counsellors we have seen an increase in complaints via email and through direct conversation as a result of meetings or presentations.

The online complaint form available at [www.codecompliance.org](http://www.codecompliance.org) continues to be a source of information.

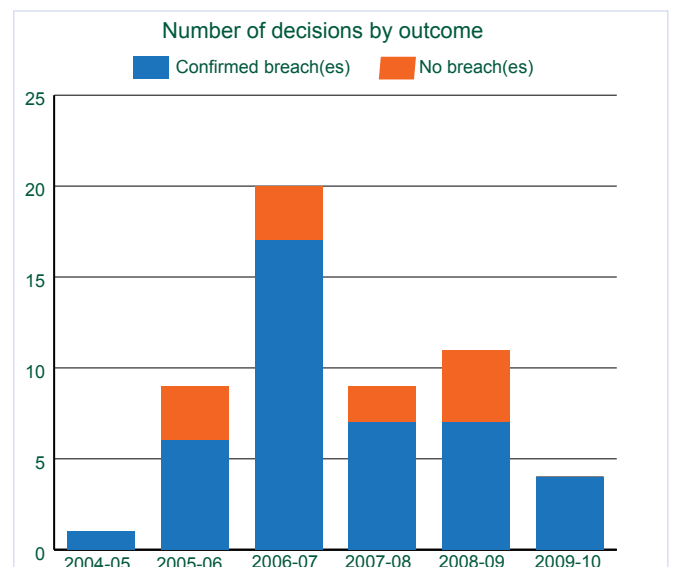
We are currently reviewing our online complaints form as we have received a number of complaints regarding its operation. Working with FOS, we hope to deliver a more robust, and user-friendly method of providing us with information regarding Code breaches.



Following an investigation there are a number of ways that the matters can be resolved.

Matters can be determined as being out of jurisdiction. This may include circumstances such as:

- the allegation does not relate to areas covered by the Code
- the allegation is brought to the CCMC outside the required timeframe
- the matter is before another forum (for example the Courts)
- where the matter is being investigated by an EDR scheme (in this case FOS) the CCMC places the matters on hold pending the resolution of the dispute. Often these matters do not proceed as the complainant withdraws them
- Complainants fail to respond to information requests where the CCMC requires further information.



# Investigating

## What we found this year

Where an investigation is completed, and there is a difference in opinions regarding the existence and/or nature of any breaches, the matter is presented to the Committee for determination.

The Committee is empowered under the Code to make a formal ruling regarding the existence of a breach and the remediation action required to address the compliance failure.

This year the Committee made formal determinations in relation to six matters involving breaches of:

- Clause 2 – General Commitments
- Clause 19 – Direct Debits
- Clause 25.2 – Financial Difficulty
- Clause 29 – Debt Collection
- Clause 35 – Internal Dispute Resolution

### Identified Breaches

#### Total Breaches

This graph identifies the aggregate number of breaches reported for all code subscribing banks. Of note is the significant (98 per cent) increase in reported breaches in comparison with 2008-2009.

Since the ACS program’s introduction in 2008, reported breaches have increased by 197 per cent.

As indicated previously in this report, the CCMC considers the increase in reported breaches is largely due to the greater attention and efforts of the banks in monitoring.

The increase in reported breaches in relation to the provision of credit is an example where the CCMC’s focus on collections monitoring may have had an impact in the reported number of identified breaches.

Privacy related breaches continue to increase in number although the number of significant breaches in this area is down on last year. We will be continuing to work with the relevant banks to understand the issues associated with these breaches and to assess the potential impact on consumers.

#### Significant breaches identified during 2009-2010

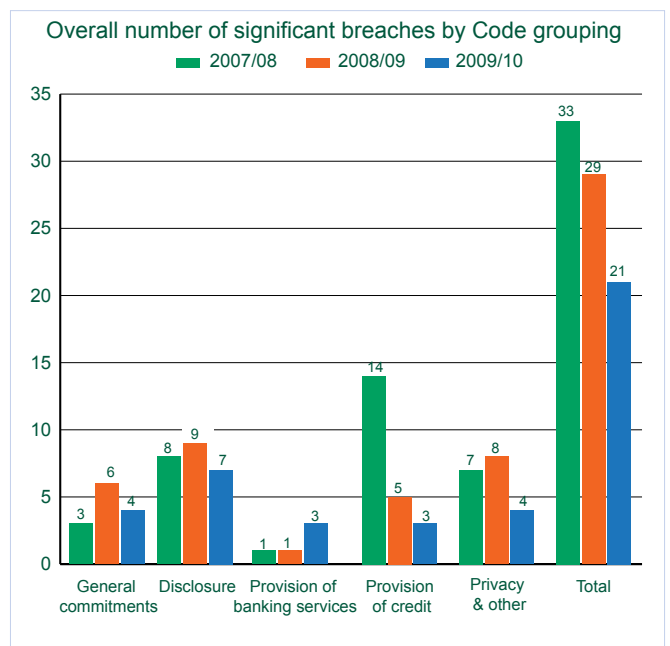
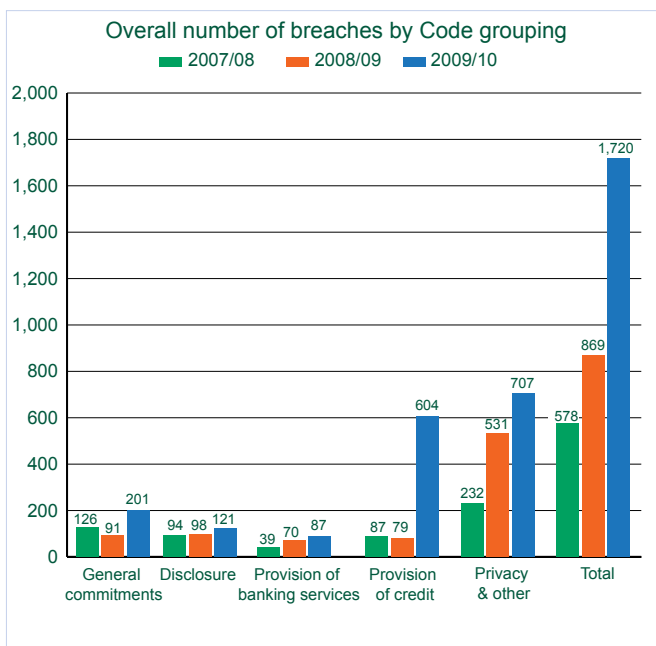
This graph aggregates the main areas of significant breach reported by banks in the Annual Compliance Statements for the three years ended 31 March 2010.

The number of significant breaches has continued to decline.

The areas of the Code where significant breaches have occurred include:

- terms and conditions
- interest rates, fees and charges
- guarantees
- advertising
- direct debits

For more information regarding these and other aspects of breach management please refer to the breach management section of this Report.



**Overall by Code category**

This graph aggregates the breaches across the Code areas for 2009-2010 and provides an insight as to the proportion of significant breaches.

Overall, while breach reporting has increased, significant breaches represent only 1.2 per cent .

As reflected in the table there was an increase in breaches reported relating to the “provision of credit” aspects of the Code, which includes responsible lending, financial difficulty, guarantees, and debt collections, with a reduction in the number categorised as “significant”

When we examined the breakdown of breaches by bank, we have concerns that not all Code obligations are represented in monitoring programs.

While the level of reporting has improved, the CCMC believes that more work is required to assess areas that appear to be under represented in the data.

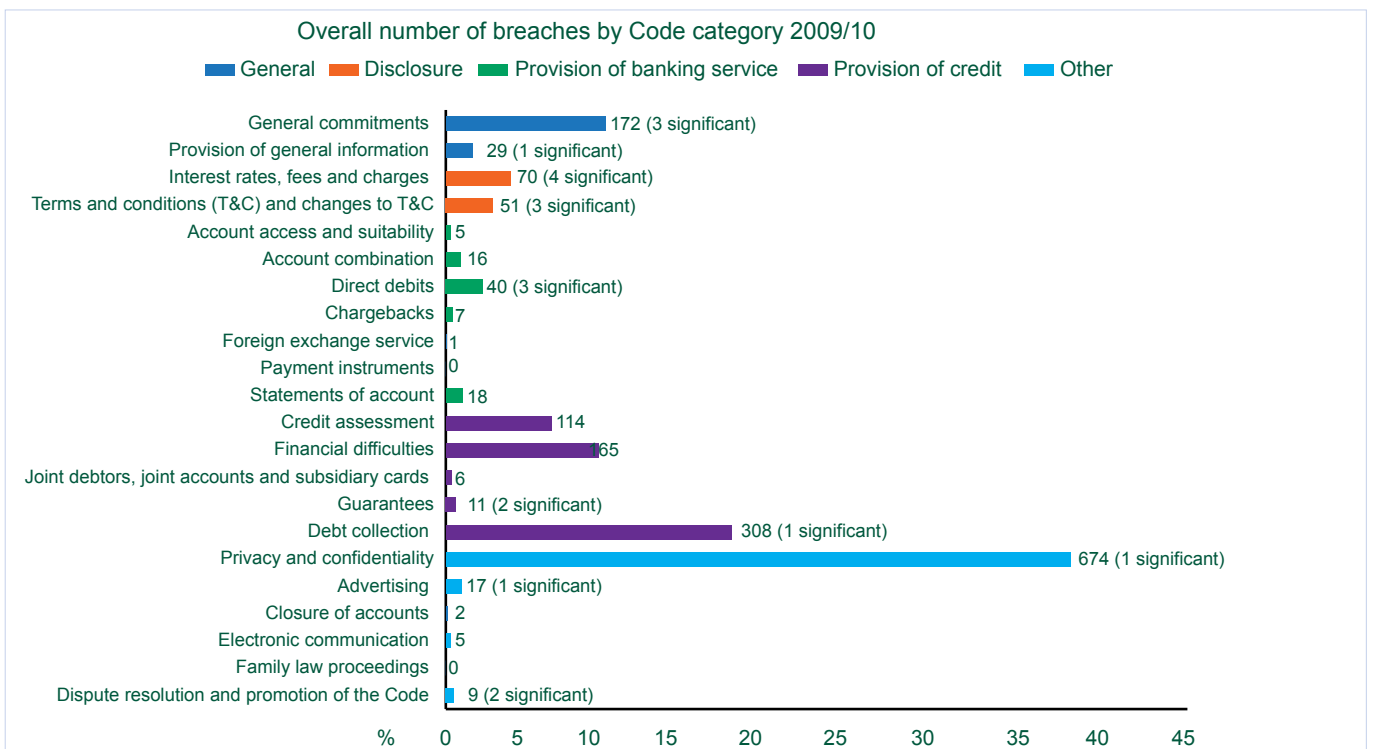
Some variation is to be expected based on scale, product offerings and market share, however given the similar nature of processes, procedures and systems, it appears that some banks could benefit from a closer examination of areas such as the provision of credit- including responsible lending, financial difficulty and collections.

Other areas that may benefit from improved monitoring include:

- account access and suitability
- charge backs
- foreign exchange services
- credit assessment
- joint debtors

Our focus in 2010-2011 will include monitoring programs relating to the higher risk areas of the Code and how underlying legislative breaches are included in Code breach data where required.

**For a comprehensive table of Code breaches see page 28.**



# Investigating

## What we found this year

### Initiated inquiries

One of the key benefits of code monitoring is the ability to be proactive. The CCMC can commence “own motion” or self-initiated inquiries. These inquiries often arise because of information being passed onto the CCMC rather than specific complaints. As part of our investigative process, we endeavour to corroborate the information and then determine if the matter should be passed on as feedback to the bank or banks concerned, or whether a more formal approach needs to be adopted.

This year we had a number of self-initiated inquiries, in areas such as:

- financial difficulty
- reasonable fees
- account suitability and fees
- unsolicited credit
- EFTPOS systems issues

### Financial Difficulty (hardship)

Whilst attending a number of meetings with financial counsellors, it became evident that there was an emerging concern regarding the handling of hardship applications by a number of banks.

### Investigation into Alleged Breaches.

Whilst attending a number of meetings with financial counsellors, it became evident that there was an emerging concern regarding the handling of hardship applications by a number of banks.

The Code (amongst other requirements – National Consumer Credit Act, FOS guidelines, ABA Hardship Principles) requires that banks try to help customers overcome their financial difficulties with any credit facility they have with the bank. Assistance can include working with the customer to develop a repayment plan, seek a hardship variation that could include re-negotiating the debt repayments, loan consolidation, interest rate reductions, waivers or payment moratoriums

It is the view of the CCMC that banks are required to:

- give genuine consideration to any repayment proposal and any reasonable alternatives that will help the customer to overcome their financial difficulty
- in the case of a rejected application or proposal, provide reasons and ensure that those reasons reflect legitimate considerations and are referable to the particular customer’s circumstances

- also inform their customer if the hardship variation provisions of the Uniform Consumer Credit Code could apply to them
- comply with the ASIC/ACCC Debt Collection Guidelines, and
- in their dealings with their customer, act fairly and reasonably in a consistent and ethical manner taking into account the conduct of the parties and the contract.

The CCMC received feedback from financial counsellors indicating general and specific concerns that:

- collections areas that would not consider requests for assistance, or required payments as a “show of good faith” prior to consideration of hardship, and do not refer customers to the bank’s hardship areas
- during the down turn in the economy and the increase in hardship applications, the industry offered short-term moratoriums as a triage response to the increase. These short-term moratoriums provided some immediate relief for customers, however without a full assessment of the customer’s financial circumstances or a repayment strategy, customers again defaulted at the expiration of the moratorium and collections activity recommenced
- the factoring of debt may be actioned whilst a hardship application was being considered
- direct customer contact (collections) continued after the nomination of a third party representative
- collection calls continued whilst hardship applications were being considered.

The CCMC reviewed the feedback and it was evident that two banks featured prominently in the concerns raised. The CCMC commenced separate inquiries with both of the banks.

Following the CCMC inquiries, both banks responded and launched a number of initiatives in an effort to improve performance and provide access to specific information relating to dealing with hardship. Other initiatives included:

- an internal review of hardship processes
- independent audits
- increased monitoring of compliance requirements with the Code
- updated websites
- increased communication with financial counsellors
- increased training for staff
- specific hardship contact centres, and
- streamlined credit discretions for collections staff to facilitate quicker access to hardship relief.



## Reasonable Fees

During 2009, we received a number of complaints in relation to the cost of issuing replacement statements.

The statements concerned were not available from the customer's online history and the complainant was advised by the bank that replacement statements could be provided at a cost per statement. In this case, the request was for 6 years of replacement statements, which would have resulted in an aggregate cost to customer of \$1008.

The complainant alleged that the cost was unreasonable and a breach of Clause 11.7 of the Code. Clause 11.7 identifies that banks may charge a reasonable fee for providing copies of documents including statements.

In considering the case, the CCMC determined that the 'reasonable' test would be satisfied if banks were able to show transparency in its fees, in terms of both amount and the breakdown of how the cost was determined.

To assist in the review of the specific complaint and to provide analysis for our compliance monitoring of Clause 11.7, the CCMC conducted a survey across all subscriber banks to ascertain comparative fees charged across the industry.

Banks were requested to provide the following information

- details of the fee that would be charged by the bank to process a request by a customer to provide a duplicate historical statement for a savings, transaction or credit card account, and
- how the bank has determined that the fee is considered reasonable in terms of Clause 11.7. For example - a brief overview of the nature of the banks retrieval related costs and the frequency of review for reasonableness

Upon initial investigation, the CCMC identified that the application of a fee varied across the banks and the banking channels. The CCMC asked banks to identify how they complied with the requirements of Clause 11.7 in determining whether the fee was "reasonable".

All banks were able to provide the CCMC with an explanation as to the method used to calculate the costs associated with producing copies of documents and the fees did not appear to be unreasonable.

The fee structures varied from a flat rate of \$3 to \$15, or a time based fee of up to \$15 per quarter hour and we identified that the fees had all been disclosed by each bank in their fee schedule. Customers able to access statement information on line through internet banking are best placed to avoid fees for replacement statements with a number of banks providing online access to statements for up to 7 years at no cost. To access the data, customers must be registered as internet banking customer.

Banks confirmed that existing levels of fees were considered reasonable, reflecting the costs of providing the service after taking into account staff, processing, printing, postage and overhead costs.

In order to get a better perspective on the fee structure the CCMC also examined how this issue was dealt with in other industries.

For comparison purposes, bank retrieval fees compare to the following charges:

- Freedom of Information Costs – charged an application fee and an access charge.  
Application fee = fixed \$22.70  
Access charges – Search charges \$20 per hour/part  
Supervision charges \$5.00 per quarter hour  
Photocopying charges 20c per page  
(other charges apply for tape transcripts etc)
- ASIC search fees for searches against Companies – vary depending on search required but start from \$12 per extract to \$36 per extract.
- Health Records fee for copies of medical records – charge 20 cents per page, plus reasonable costs not exceeding \$20 for searching; and \$10 if records are stored at a different location.

This review also coincided with banks reviewing their fee structure generally and as a result, a number of banks revised their fees for the provision of statements. In addition, the CCMC identified that there was considerable discretion in relation to the application of the fee and consumers should always question and negotiate with their bank.

## Accounts suitability and fees

The CCMC received advice that there appeared to be a number of issues that were causing concerns in remote communities. The issues included

- a systems error that allowed overdrawn accounts resulting in dishonour fees
- unsolicited credit card increases for centre link recipients in indigenous communities, and
- EFTPOS system issues that allowed cash advances on overdrawn transaction accounts with dishonour fees.

### Systems Issue Allowing Overdrawn Accounts

It was observed that customers were able to over draw funds from an ATM resulting in an overdrawn balance of the customers transaction account. The ATM receipt provided for the transaction indicated that there was an overstated available balance for the customer's account at the time of the withdrawal.

Upon seeing that the account had additional available funds, the customers withdrew the available funds and subsequently incurred a penalty fee of \$30. The majority of the customers impacted by the systems error were on Centrelink benefits and often in financial difficulty.

After investigation, the bank identified that that there was a systems problem over a 9-day period arising from an unintended consequence when the ATM software was modified to implement industry ATM fees.

*Outcome:*

The error impacted 513 customers across Australia and was rectified by the bank concerned. The bank refunded a total of \$38,400 collected as penalty or overdraft fees charged on overdrawn balances.

## Unsolicited Credit Cards

The CCMC was advised of an instance where an unsolicited credit card offer was made and accepted by a financially disadvantaged customer on Centrelink benefits.

The customer, resident in remote Australia, had received an invitation to apply for a credit card limit increase and subsequently accepted an \$8000 credit limit offer. A financial counsellor intervened and had the customer cancel the application.

After an investigation, it was discovered that there was a marketing campaign in November 2008, directed at existing customers and which entailed unsolicited offers for new credit cards.

The following was identified:

- There was a human error made in the distribution of the letters.
- 24 customers had been affected and offered the credit card limits
- 6 customers had taken up the offer.

*Outcome:*

The credit applications were cancelled and any credit that was incorrectly provided was written off.

Controls were implemented to ensure that the marketing campaigns are only directed to correct customer segments.

### **EFTPOS System providing an overdraw facility**

The CCMC received advice that customers were regularly overdrawing their transaction accounts by accessing EFTPOS machines that provided inconsistent balances.

It appeared that customers could access funds beyond the available balance, effectively operating an overdraft facility.

After initial inquiries it was identified that the issue was as a result of the application of an unadvised buffer limit that allowed, at the banks discretion, the ability for customers to overdraw transaction accounts. This feature is disclosed in the bank's terms and conditions and it appeared customers in this instance were accessing additional funds as an "overdraft".

The issue in this case caused some concern, as customers did not understand the product features of their accounts and were constantly overdrawing, resulting in penalty fees. The overdrawn accounts would be brought back into credit upon the regular receipt of Centrelink payments or other benefits.

The use of these unadvised limits raised the broader issue regarding suitability of accounts particularly given the impacts of penalty fees, penalty interest, and financial difficulty.

The bank identified that there were legitimate concerns and that they had concessional products that may have been more suitable. The bank further indicated that that the provision of discretionary overdrafts is an industry wide practice and that it would continue to provide this service and review the amount available to individual customers.

#### *Outcome:*

The CCMC is planning a review of Clause 17 of the Code dealing with account suitability in particular how subscribing banks comply with the requirements of the "Code of Operation for Centrelink Direct Credit Payments". The CCMC aims to be a leader in code management and compliance relating to the Code of Banking Practice. We do this by utilising a range of methods These include:

- reports and research
- benchmarking evaluations to measure improvement
- education; and
- recommendations and determinations.

### **Our influencing objectives are to:**

- conduct specific organisational or industry-focused inquiries
- identify and highlight continuous improvement and better business approaches to Code requirements
- conduct research and publish issues papers, providing an opinion on compliance with relevant Code requirements
- identify current trends and better practices
- communicate using regular updates and keep industry and consumer advocates informed
- share information and conduct regular meetings with other regulators to minimise regulatory overlap or gaps
- provide forums and access to consumer advocates and financial counsellors, providing opportunities for the identification of issues and breaches
- develop consistent and transparent process and provide quality recommendations and determinations and
- create debate concerning current practices as a catalyst for change and improvement.

### **We**

- challenge current thinking and test accepted practices with an aim to positively influence and changing industry behaviour
- undertake research projects with a view to publishing issues papers and reports
- aim to test the customer experience
- evaluate the impacts, benefits and or changes that have been undertaken as a result of the code management and compliance program
- examine any changes in the short, intermediate and long-term to assist the program to identify appropriate metrics regarding Code compliance
- build broader awareness and acceptance of the Code
- advise the ABA (Code owner) of the effectiveness of the Code and Code provisions
- advise industry of trends and issues in an effort to reduce complaints and compliance issues and
- build confidence in the CCMC as a key provider of monitoring activities.

## Reports and Reviews

### Issues Reports and Research

The CCMC is able to undertake research projects with a view to publishing reports. The projects may be at the level of an individual organisation or across a section of the industry where current practices are tested in an effort to examine the customer's experience.

The CCMC is able to use a range of investigative and monitoring techniques when conducting these reviews including mystery or shadow shopping, focus groups, surveys, and public forums. In addition, the CCMC has access to academic and specialist knowledge in conducting and finalising the reports. The final research papers do not identify individual banks or consumers and after a period of consultation, they publicly available.

We raise any concerns or issues identified during the review with the relevant bank to understand what remedial action has been or should be undertaken.

Any significant or serious breaches identified during the review may become the subject of an investigation or further monitoring activity.

### Internal dispute resolution

In 2009, we commenced a review of the Code requirements relating to Clause 35 of the Code relating to internal dispute resolution.

“Clause 35 relates to the requirement to have an internal process for handling disputes and includes that the process should:

- (a) be free of charge;
- (b) meet the standards set out in Australian Standard AS4269-1995 or any other industry dispute standard or guideline which ASIC declares to apply to this Code;
- (c) adhere to the time frames specified in this clause 35; and
- (d) require the banks to provide written reasons for their decision on a dispute.

The CCMC identified this area as a concern due to a number of observations including:

- There had been an increasing number of complaints to the banks and to the external dispute resolution scheme provided by FOS, due to the down turn in the economy.
- The CCMC had received a number of complaints regarding the time taken by banks in dealing with and responding to disputes; and
- The ACS results indicated that there were few breaches of the Code in this area, indicating either a possible gap in monitoring.

Clause 35 of the Code establishes a number of requirements that have been supplemented by additional guidance contained in ASIC's Regulatory Guide 165 and in the Australian Standard AS ISO 10002 Customer Satisfaction – Guidelines for Complaints Handling in Organisations.

At the time of the review the financial services industry was in the process of implementing the new Australian Standard that was due by 1 January 2010. As a result, the CCMC delayed the timing of the IDR review by three months to allow banks additional time to implement the new requirements.

Clause 35 of the Code applies to all Code subscribers and established four key criteria for an internal process established to handle disputes:

- be free of charge
- meet the standards set out in Australian Standard AS4269-1995 or any other industry dispute standard or guideline which ASIC declares to apply to this Code
- adhere to the time frames specified in the Code; and
- provide written responses to the complainant outlining the reasons for any decision on a dispute.

Other specific obligations include:

- providing the details of the name and contact number of the person investigating the dispute
- Completing the investigation within 21 days and inform the complainant of the outcome or, if more time is required, inform the complainant
- unless there are exceptional circumstances, complete any investigation within 45 days of receipt of the dispute
- if more time is required beyond 45 days;
  - inform the complainant as to why and provide monthly updates regarding progress
  - provide a date when a decision can reasonably be expected; and

- notify the complainant at the time the dispute arises and within 5 days after expiry of EDR timeframes that a dispute may be lodged with the EDR scheme.

The review focused on two of the 12 areas identified in the Australian Standard, namely:

- Visibility - requires that information about how and where to complain be well publicised to customers, personnel and interested parties.
- Accessibility - requires that there is an open and easy to use complaints process accessible to all complainants.

In addition, the review aimed to identify

- the organizational structures, reporting and auditing of the complaints handling process
- the involvement and commitment of top management, including resourcing
- the continual improvement of the complaints handling process
- regular reviews of IDR procedures and any subsequent improvements; and
- the specific monitoring activities relating to Clause 35 reporting requirements (21 and 45 days thresholds).

This review is still work in progress and we recently published a review into web-based disclosure of the Code, IDR and EDR as part of this review. A copy of this report is available at our website [www.codecompliance.org](http://www.codecompliance.org)

### Streamlining Communications

During 2009–2010 the CCMC attended a number of counsellor meetings and forums. During these meetings, a common theme emerged in relation to accessing key areas within each of the banks. Counsellors reported finding it difficult getting access to the decision makers regarding, collections activities, hardship issues and in general following up on disputes lodged with the bank.

In order to improve access to the banks the CCMC created a template contact sheet containing the current telephone numbers for key areas within each of the banks. Each of the banks have provided contact details that can be collated into a simple contact guide. The Guide has been distributed via the Australian Financial Counsellors and Consumer Rights Advocates (“AFCCRA”) and the Financial and Consumer Rights Council (Vic).

The contact sheet is now updated every three months and re-distributed via AFCCRA.

### Small Business and Financial Difficulty

As part of our commitment to developing future leaders, the CCMC is involved in hosting undergraduate students from the Melbourne University Business practicum. This full semester study involves a group of students from the top 5 – 10 % of the Business and Economics Faculty.

In early 2010, a group commenced a study into the issues of Small Businesses and financial difficulty.

The Code of Banking Practice applies to retail and small business customers and in recent times, the banking industry has made a number of public comments regarding assistance to retail consumers who may have been experiencing financial difficulty.

A number of Code subscribing banks have also adopted a similar approach in dealing with small business and financial difficulty.

With the economic volatility over the past 12 months, an increasing number of small businesses were seeking assistance from the Financial Ombudsman Service (“FOS”) and identifying alleged breaches of the Code to the CCMC.

Under the Code, a small business is defined as being a business having:

- Less than 100 full time (or equivalent) people if the business is or includes the manufacture of goods; or
- In any other case, less than 20 full time (or equivalent) people.

The purpose of the review was to assess how banks were complying with the Code of Banking Practice in relation to financial hardship and small businesses, and to develop recommendations to both lenders and borrowers in how to improve compliance with the Code.

Initial research has identified a relatively low level of understanding amongst small business operators regarding the Code generally and more specifically regarding the obligations of subscribing banks when faced with small businesses in financial difficulty.

FOS has recently published guidance (Circular No. 2) for small business operators and their lenders. This guidance is useful in helping establish some expectations for small businesses experiencing financial difficulty and dealing with their credit provider.

As part of the review the CCMC surveyed small business operators and identified some key issues for small business operators, including;

- a reluctance to discuss financial difficulty with their lenders for fear of increased adverse credit ratings and therefore increased costs
- a practice of informing their lenders at the last moment thereby often minimizing the types of assistance can be offered
- a belief that increased credit was the solution to financial difficulty
- a practice of co-mingling personal and business assets and expenses; and
- that business loans were primarily secured by residential property or by guarantee.

The CCMC has met with all the subscribing banks and provided feedback in relation to the interim results and the CCMC that small business will be a focus for CCMC operations over the next 12 months.

A copy of the report will be available on the website in late 2010.

### Future Reviews

We have identified that the following areas will be reviewed during 2010 and 2011.

- Guarantees, Clause 28 of the Code.
- Terms and Conditions – Clause 11 of the Code
- Debt and Mental health – the implications for dealing with Clause 25.2 (financial difficulty) .
- Account suitability – complying with Clause 17.2 and the impact of “Code of Operation for Centrelink Direct Credit Payments”.

### Recommendations and Determinations

Under the Code, the Committee has the authority to make formal determinations of breaches, seek remedial activities and undertakings and where appropriate apply sanctions.

While breaches have traditionally been determined as a result of a complaint, any of the compliance activities undertaken as part of the program may result in a formal determination of a breach.

The Committee is comprised of an independent Chair (Brian Given), a member representing consumers and small business interests (Nicola Howell), and a member with relevant industry experience (Julie Abramson).

While the CCMC endeavours to resolve compliance matters through agreement in the form of recommendations or self reported breaches, a number of matters are referred to the committee for a formal assessment and a final determination as to whether a breach has occurred or not.

This is particularly relevant for the Code of Banking Practice where a breach of the Code may affect the legal relationship between the subscribing bank and the customer arising from a breach of the terms and conditions of the product or service.

The CCMC makes recommendations to the Committee regarding compliance outcomes, remedial actions, and additional sanctions as provided for under the Code. In determining outcomes, the Committee considers these recommendations.

In addition, the CCMC Secretariat has a range of delegated authorities and responsibilities with respect to provision of code management and compliance services.

The secretariat provides a range of services to the Committee, including the scheduling and hosting of meetings, taking and distribution of committee minutes, and producing and publishing the annual report.

## Financial statements

Code Compliance Monitoring Committee expenditure for the year ended 31 March 2010

	Actual 31 March 2010	Actual 31 March 2009
<b>SALARIES</b>		
Gross Salaries	279,825	244,502
Salaries Costs - Payroll Tax	20,442	
Salaries Costs - Super	31,156	
Salaries - Annual Leave	39,069	
<b>TOTAL SALARIES</b>	<b>370,492</b>	<b>244,502</b>
Member Fees	72,000	85,987
<b>EXPENSES</b>		
Recruitment	0	38,547
Consultants	16,569	36,419
Information and IT - Expenses	28,605	13,522
Insurance - PI and FOS	3,358	4,436
Occupancy Expenses	34,642	30,110
Travel Expenses	26,777	27,201
Training and Other	12,265	29,088
<b>TOTAL EXPENSES</b>	<b>122,216</b>	<b>179,323</b>
<b>TOTAL EXPENDITURE</b>	<b>564,708</b>	<b>509,812</b>

Member's fees relate to remuneration for the Committee members.

In the last financial year the payment was higher to cover an accrual from year end March 2008.

This resulted in five quarters of Committee member fees being deducted from the account. The members' fees are now aligned to the financial year.

# Code of Banking Practice – Code Compliance Monitoring Committee

## Compliance Breach Summary: All Subscribing Banks

### Year Ending 31 March

Code category (Code clauses comprised)		Number of Code breaches by source			
		CCMC		Bank	
		2008/09	2009/10	2008/09	2009/10
<b>General</b>					
A	General commitments (2,3,4,7)	5	0	80	171
B	Provision of general information (11,13,16.1,32)	1	1	5	28
		6	1	85	199
<b>Disclosure</b>					
C	Interest rates, fees and charges (12,15)	0	0	31	71
D	Terms and conditions (T&C) and changes to T&C (10,18)	0	0	67	51
		0	0	98	122
<b>Provision of banking service</b>					
E	Account access and suitability (6,14)	0	0	2	5
F	Account combination (16.2,17)	0	0	18	16
G	Direct debits (19)	1	4	17	36
H	Chargebacks (10.5,20)	0	0	10	7
I	Foreign exchange services (21)	0	0	2	1
J	Payment instruments (23)	0	0	3	0
K	Statements of account (24)	0	0	17	18
		1	4	69	83
<b>Provision of credit</b>					
L.1	Credit assessment (25.1)	0	1	36	113
L.2	Financial difficulties (25.2)	1	3	15	162
L	[Obligations when providing credit (25)]	1	4	51	275
M	Joint debtors, joint accounts and subsidiary cards (26,27)	0	0	0	6
N	Guarantees (28)	0	0	8	11
O	Debt collection (29)	1	1	18	307
		2	5	77	599
<b>Other</b>					
P	Privacy and confidentiality (22)	0	0	431	674
Q	Advertising (30)	0	0	32	17
R	Closure of accounts (31)	0	0	56	2
S	Electronic communication (33)	0	0	1	5
T	Family law proceedings (38)	0	0	0	0
U	Dispute resolution and promotion of the Code (8,9,35,36,37)	3	2	8	7
		3	2	528	705
Total breaches		12	12	857	1708



Significant breaches

Overall		included Overall			
2008/09	2009/10	2008/09	2009/10	2008/09	2009/10
85	171	6	3	7.1%	1.8%
6	29	0	1	0.0%	3.4%
91	200	6	4	6.6%	2.0%
31	71	0	4	0.0%	5.6%
67	51	9	3	13.4%	5.9%
98	122	9	7	9.2%	5.7%
2	5	0	0	0.0%	0.0%
18	16	0	0	0.0%	0.0%
18	40	0	3	0.0%	7.5%
10	7	0	0	0.0%	0.0%
2	1	0	0	0.0%	0.0%
3	0	0	0	0.0%	-
17	18	1	0	5.9%	0.0%
70	87	1	3	1.4%	3.4%
36	114	2	0	5.6%	0.0%
16	165	1	0	6.3%	0.0%
52	279	3	0	5.8%	0.0%
0	6	0	0	-	0.0%
8	11	2	2	25.0%	18.2%
19	308	0	1	0.0%	0.3%
79	604	5	3	6.3%	0.5%
431	674	4	1	0.9%	0.1%
32	17	3	1	9.4%	5.9%
56	2	0	0	0.0%	0.0%
1	5	1	0	100.0%	0.0%
0	0	0	0	-	-
11	9	0	2	0.0%	22.2%
531	707	8	4	1.5%	0.6%
869	1720	29	21	3.3%	1.2%

