Code Compliance Monitoring Committee
Annual Report

For the year ended 31 March 2011

CCMC

Code of Banking Practice

The Code of Banking Practice 2004 (the **Code**) is a voluntary code of conduct which sets standards of good banking practice for subscribing banks to follow when dealing with persons who are, or who may become, an individual or small business customer of the bank or a guarantor.

Those banks that have subscribed to the Code (the **Banks**) have made a commitment to work continuously to improve the standards of practice and service in the banking industry, promote better informed decisions about their banking services and act fairly and reasonably in delivering those services.

Given the market share held by the Banks, the principles and obligations set out in the Code apply to the majority of banking services delivered to individuals and small businesses across Australia. In that sense, the Code forms an important part of the broader national consumer protection framework and the financial services regulatory system. The Code is published by the Australian Bankers' Association (the **ABA**). A copy can be downloaded here*.

Note:

Unless described otherwise, a reference to 'Bank' or 'Banks' in this document is a reference to a bank or banks that have subscribed to the Code of Banking Practice.
References to clauses are to clauses of the Code of Banking Practice unless otherwise stated.

*http://www.Bankers.asn.au/ABAS-CODE-OF-BANKING-PRACTICE/default.aspx

List of Code Subscribing Banks

As at 31 March 2011, the following 14 banks had subscribed to the Code:

- AMP Limited (as of 10 December 2010)
- 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 (including its subsidiary, Bank SA)
- Suncorp-Metway
- Westpac

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Chairperson's Message 2010-2011

Brian Given PSM

The Annual Report of the CCMC is an opportunity to reflect on the overall effectiveness and commitment of the Banks in fulfilling their key obligations under the Code

> *to continuously work towards improving standards of practice and service in the banking industry, to promote better informed decisions about their banking services and to act fairly and reasonably to their customers.*

It is pleasing to note that the major compliance monitoring activities and investigations undertaken by the CCMC and highlighted in this year's report, indicate a generally positive picture of the efforts of the Banks to improve their self-monitoring and identification of Code breaches, as well as their responsiveness in addressing problems that are brought to their attention.

Nevertheless, our experience also demonstrates the need for Banks to remain vigilant in their efforts to ensure their staff training and systems are adequate to meet the continuing difficulties and complexities involved in important issues, such as the handling of Financial Hardship cases and Debt Collection processes generally. Even in relation to some of the relatively more straight forward Code requirements, such as Direct Debits and the Visibility and Access of Information, there continues to be room for improvement. Certainly there is no room for complacency.

Likewise, the CCMC itself will remain vigilant in fulfilling its responsibilities to identify areas of risk and need for improvement, as well as holding Banks to account for lapses when they occur.

In the CCMC's previous Annual Report I mentioned our concern about the relatively slow progress in the development of new governance arrangements for the CCMC. It is disappointing to report that a proposed new Mandate for the CCMC has, at the time of writing, not yet been finalised while the ABA continues its consultation process.

The CCMC's input to that process has emphasised that our primary concern is the maintenance of the CCMC's independence in carrying out its compliance monitoring role. We have also suggested some modest improvements to help streamline our processes for considering potential Code breaches and an ability to name an errant Bank in a more timely fashion. Whether or not new governance arrangements also involve a closer formal relationship with the FOS Board, we regard a close working relationship with FOS and its administrative services as important to the CCMC's ongoing effectiveness.

It is appropriate that I take this opportunity to again acknowledge the valuable support and assistance the CCMC has continued to receive from Colin Neave, the outgoing Chief Ombudsman. My colleagues and I wish Colin well in his future endeavours and look forward to a similarly productive relationship with his successor, Shane Tregillis.

During the year there have also been significant personnel changes within the Committee itself and its Secretariat.

Firstly, I would like to thank Carmel Franklin who stepped in as an alternate Committee member for Nicola Howell for a few months, during Nicola's leave of absence for the birth of her son. Congratulations to Nicola and her family and my sincere thanks to Carmel for the significant contribution she made to the Committee's work, including involvement in our inaugural Banking Forum.

Secondly, we sadly said farewell to Julie Abramson who did not seek reappointment to the Committee due to changes in her employment. We very much miss Julie's expertise and good humour. However, we are very lucky to have welcomed Angela Green to the Committee, who, like Julie, has a strong background and expertise in the banking sector.

Finally, we have also had a number of personnel changes in the Secretariat. Most notably, at end of April 2011, we had to say farewell to our Chief Executive Officer, Damian Paull. Damian was a very energetic and capable leader of the team. I and my colleagues are truly indebted to him for his support and contribution in forging a clear direction for the CCMC's work. Fortunately, the Committee has been able to find a very worthy successor and I warmly welcome Dr June Smith to the role. June has outstanding credentials and is supported by a small, but dedicated and talented, team which continues to serve the Committee and our stakeholders very capably.

Brian Given, PSM

Chairperson

The CEO's message

This last year has been another period of significant legislative change in the Australian financial services sector.

In some ways this has been a continuing response to the Global Financial Crisis. In others, it is because the law must keep pace with stakeholder expectations of the minimum standards that financial service providers should meet in the provision of services and products to Australian consumers.

When legislation creeps into what was once the domain of good industry practice however, the value of Codes of Practice and where they fit within the broader regulatory and consumer protection framework is often questioned. Yet self regulation can and should continue to play a vital and significant role in this framework. Codes of Practice often espouse promises about the ethical obligations that Code Subscribers will meet in their stakeholder relationships. It is appropriate therefore that these commitments should sit above minimum legal standards and continue to evolve in line with stakeholder expectations of good industry practice. It is also appropriate that the Banks are held accountable against those commitments, so as to ensure that stakeholder confidence is maintained.

Reflections on the past year

The work of the CCMC and the Secretariat over the past year has been aimed at the latter objective in particular and in ensuring that Banks are meeting their Code obligations. The key milestones achieved in the work program are outlined in this Report and include the completion of Annual Compliance Statements by all Banks. This activity allows the CCMC to monitor and verify compliance against the Code's obligations. Other activities included the release of a good practice guide to industry about the visibility of, and access to, information for consumers concerning the Code, Code obligations and dispute resolution mechanisms; a project undertaken with the University of Melbourne concerning account suitability; and a review of collections processes and procedures within Banks.

In September 2010, the Secretariat also undertook a relatively smooth transition to new premises in Bourke Street Melbourne. In addition, work commenced on the development of a new CCMC website, which is due for launch in October 2011 and a new corporate logo was adopted. Operationally, the Secretariat also revised its case handling processes and procedures.

The Next Phase

In the coming year, the CCMC will be focused on delivering a number of initiatives associated with the evolution of the Code to its next phase. This will include the implementation of the new CCMC Mandate and associated operating procedures and in delivering proactive and relevant solutions to emerging Code issues in the sector. In addition, the new CCMC website should help raise the awareness amongst all stakeholders of CCMC's role.

I am looking forward to a period of active engagement with a broad cross section of our stakeholders. This will be coupled with the delivery of an Annual Work Plan that includes Code projects associated with Clause 20 regarding Chargebacks, Clause 28 in relation to Guarantees and Foreign Exchange Services as outlined in Clause 21. Code Compliance and Complaints Handling Guidelines will also be developed.

Thank You

I would like to acknowledge and thank the Committee members, and Brian Given in particular, for their guidance and hard work over the past year and thank Damian and the small, but dedicated, Secretariat under his leadership. I have been very impressed with the team's commitment and enthusiasm in the short time I have been in my role. Their efforts have made a real difference towards improving standards of practice and service in the banking industry.

The next year promises to be an exciting and challenging phase of renewal and reform and I welcome the opportunity to work with the CCMC, the Secretariat and our stakeholders to achieve the objectives set by the CCMC.

Dr June Smith

Chief Executive Officer
Code Compliance Monitoring Committee

The Code Compliance Monitoring Committee

The Code Compliance Monitoring Committee (the CCMC) is an independent compliance monitoring body established under Clause 34 of the Code of Banking Practice.

Key Functions

The CCMC's key functions are set out in the Code and include:

- monitoring the Banks' compliance under the Code;
- investigating and determining allegations from any person that a Bank has breached the Code;
- monitoring aspects of the Code referred to the CCMC by the ABA; and
- initiating its own enquiries into Banks' compliance with the Code.

CCMC's Vision

To promote compliance with the Code and thereby contribute to the improvement of standards of practice and service by the Banks.

Principles

To achieve its vision, the CCMC supports the Code, proactively promotes the Code's benefits and aims to influence positive and effective changes in industry behaviour. Its work is based on five key principles:

1. **Independence** in its operations, governance and decision making;
2. **Responsibility** in undertaking its functions, for the benefit of both the self regulatory scheme of the banking industry and the broader regulatory environment in which the Banks operate;
3. **Accountability and Transparency** in its processes, reporting, communications and engagement with stakeholders;
4. **Interdependence**, including the establishment of strategic working partnerships and a strong and reputable brand; and
5. **Accessibility** to its Code monitoring and investigations services.

The Committee Members

Chairperson
Brian Given (PSM)

Current term:
August 2009 – August 2012

Brian is a lawyer with an extensive career in the NSW Public Service, including more than 20 years in senior executive roles 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 held many Ministerial appointments including as a trustee on the Board of the national Travel Compensation Fund, a trustee of the Financial Counseling Trust Fund, and Chair of the Co-operatives Council of NSW. Brian also 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.

Consumer and Small Business Representative
Nicola Howell

Current term: Jan 2009 – Jan 2012

Nicola is a lecturer in the School of Law, Queensland University of Technology (QUT). She has wide-ranging consumer law experience in Australia, including previous policy and research positions in public, community and private sector organisations and has previously held executive positions with the Consumers Federation of Australia.

Nicola is involved with the Credit, Commercial and Consumer Law research program at QUT, and her work includes consumer, credit and bankruptcy law and policy.

Alternate Consumer and Small Business Representative

Carmel Franklin

Carmel is the current Chairperson of Financial Counselling Australia (FCA - formerly known as the Australian Financial Counselling and Credit Reform Association or AFCCRA) and the Director of both the Care Financial Counselling Service and the Consumer Law Centre (ACT). Carmel's roles allowed her to provide the CCMC with valuable insights into the potential impact of issues on Australian consumers.

Industry Representative

Julie Abramson

March 2008 – February 2011

Julie is a lawyer with a background in public policy and financial regulation. She has been a senior government adviser and has also worked with the Australian Securities and Investments Commission (ASIC) and the National Australia Bank (NAB).

Julie held a number of senior roles at the NAB and was responsible for the internal implementation of the 2001 Financial Services Reforms, Code-related issues and regulatory compliance. In particular she worked very closely with the retail area of the NAB across consumer issues.

Angela Green

Current term: March 2011 – April 2014

Angela Green is currently the Executive Director Policy Planning and External Relations with the University of New England. Previously, Angela worked for the National Australia Bank. During her career with the NAB, Angela gained extensive policy, compliance, credit and regulatory risk experience in the retail and business banks as well as Group Business Services. Prior to joining the NAB, Angela worked as a management consultant for a range of clients and was an enlisted member of the Royal Australian Air Force.

Committee Meetings

The Committee holds regular meetings with the Secretariat. In 2010-2011 it met on eight occasions, namely:

Table 1: 2010-11 Committee Meeting Attendance

Date	Committee member attending
23 April 2010*	Brian Given, Julie Abramson, Nicola Howell
21 May 2010	Brian Given, Julie Abramson, Nicola Howell
22 July 2010	Brian Given, Julie Abramson, Carmel Franklin
3 September 2010	Brian Given, Julie Abramson, Carmel Franklin
22 October 2010*	Brian Given, Julie Abramson, Carmel Franklin
10 December 2010	Brian Given, Julie Abramson, Nicola Howell
4 March 2011	Brian Given, Angela Green, Nicola Howell
25 March 2011*	Brian Given, Angela Green, Nicola Howell

* Indicates Committee meetings conducted by teleconference

The CCMC's Relationship with the Financial Ombudsman Service

The CCMC Secretariat receives operational and administrative support from the Financial Ombudsman Service (FOS) pursuant to a service agreement between the CCMC, ABA and the FOS. This agreement includes access to accommodation and common office resources such as telephone, HR services and IT support.

During the next year, it is envisaged that a Memorandum of Understanding will be established between the CCMC and the FOS to facilitate the exchange of information concerning Code obligations and compliance, including statistical data, complaint trends and referrals. Throughout this process, the CCMC will continue to ensure that it retains its independence in its governance arrangements, processes and decision making.

The Secretariat

Chief Executive Officer
Dr June Smith

July 2011 - current

Dr June Smith is a former Principal at Argyle Lawyers Pty Ltd, with significant expertise in corporations law, professional standards, ethics, compliance and regulatory frameworks in the financial services sector. June has a PhD in Law from Victoria University specialising in professional and business ethics and organisational decision making within financial services organisations. She also holds a Bachelor of Arts (Hons) and a Bachelor of Laws degree from the University of Melbourne.

In addition to her CEO role June is the Executive Manager of the Code Compliance Committee (Mutuals) and is also responsible for Code management of the Insurance Broker's Code of Practice. Her external appointments include Chair of the Disciplinary Appeals Tribunal of the Financial Planning Association of Australia Ltd, Deputy Chair of its Conduct Review Commission and Member of Racing Victoria's Racing Appeals and Disciplinary Board. June also lectures in Governance in the MBA Program at Victoria University and is a member of the Lexis Nexis Financial Services Editorial Committee.

Damian Paull

January 2009 - April 2011

Damian Paull held the position of CEO from January 2009 to April 2011. Previously with the ANZ Bank, he had also worked in a number of executive risk and compliance roles at some of Australia's best known financial and government organisations. Damian played a crucial role in developing the CCMC's current operational framework and broadening its compliance approach.

CCMC staff

Michael Kane *Compliance Manager*

Michael Kane is a qualified accountant and auditor whose experience includes 15 years at ANZ Bank in executive roles in risk management, internal audit, and major projects. A significant part of his role included oversight of the Annual Compliance Statement program.

Ralph Haller-Trost *Investigations Manager*

Ralph has a background in law, dispute resolution and federal regulatory compliance. His role includes investigating alleged breaches of the Code, CCMC governance issues and conducting CCMC initiated enquiries.

Iris Goh *Compliance Analyst*

Iris has a background in finance and risk management. Her role at the CCMC includes responsibility for the delivery of the Annual Compliance Statement field visits, conducting empirical reviews as well as data and trend analysis. In addition, she plays a key role in the delivery of the Secretariat's functions.

Sarah Manos *Compliance Analyst*

Sarah has a background in collections and risk assessments with a major card provider. Her role includes compliance assessments and stakeholder engagement. A valuable member of the team, Sarah is currently on 12 months leave.

Justine Percey *Compliance Analyst*

Justine has over 10 years experience in business banking across two major Australian banks and commenced her role with the CCMC in June 2011. Her experience assists the CCMC to conduct its compliance activities, especially in relation to small business banking services.

Robert McGregor *Compliance Analyst*

Robert has a strong compliance background that includes four years with the Institute and Faculty of Actuaries (UK) and significant experience with a large UK retail bank. Starting with the CCMC in June 2011, his experience assists the CCMC in enhancing its compliance program as well as delivery of individual projects.

2010-2011: Year At A Glance

The 2010-2011 reporting period has been a very positive and successful year for the CCMC and its Secretariat, marked by key achievements in its three strategic focus areas: Monitoring, Investigating and Influencing.

Monitoring

The 2010-2011 Annual Compliance Statement program (the **ACS**) revealed an overall increase in self reported breaches among Banks but a corresponding fall in self reported significant breaches. This matches the trends the CCMC noted in 2009-2010. Self reported breaches are breaches that a Bank has itself identified and reported to the CCMC – an important cooperative factor with a voluntary self regulatory Code.

The increase in self reported breaches can be attributed to a number of factors, including some unusually high reporting of incidents by two Banks due to changes to their monitoring and reporting systems during the year and continual improvement in Banks' internal compliance programs as a result of significant legislative reform in areas such as complaint handling, credit law, debt collection and privacy. The Banks' identification of Code related issues, positive reporting and awareness amongst staff are also factors to be noted. There continues to be room for improvement however. Certainly there is no room for complacency.

Investigating

The CCMC registered 24 new cases for investigation and closed 37 cases. Collectively, the new cases alleged 42 Code breaches. In the course of its investigations the CCMC made five Determinations, issued one Recommendation and identified two Code breaches.

Influencing

As part of its program to influence compliance outcomes, and so contribute to improvements in the Banks' standards of practice and service, the CCMC initiated the following projects:

- **The Internal Dispute Resolution (IDR) Compliance Review**.
  This Review coincided with the introduction of changes to Australian Securities and Investments Commission (**ASIC**) Regulatory Guide 165 and assessed Banks' practices the against Internal Dispute Resolution (**IDR**) obligations in Clause 35 of the Code. The Review sought information about how Banks informed customers of the IDR and External Dispute Resolution (**EDR**) mechanisms available to them and whether complaint handling timelines were being met. The Review demonstrated that 95% of complaints made by customers to Banks were being resolved within prescribed timeframes.
- **The Visibility and Access Report and its associated Good Practice Guide.**
  This Report presented the CCMC's findings from its IDR Compliance Review and identified a number of positive changes made by Banks pursuant to Clause 37 of the Code by improving consumer access to information about IDR and EDR mechanisms on their websites. The Report also noted additional improvements to template letters and systems by some Banks.
- **The Financial Hardship Review**.
  This Review was prompted by concerns raised by financial counsellors about the hardship program offered by a major Bank in the context of the 2009 Hardship Principles published by the Federal Treasury. In response to the Review, the Bank made various improvements to its hardship processes including changes to its standard template letters, processes and policies and enhanced its staff training to actively identify customers who may be suffering financial difficulty.
- **The University of Melbourne Student Program**
  The CCMC facilitated research through this undergraduate program to investigate the relationship between debt and mental health and also commenced research concerning Banks' account suitability practices.
- **The Inaugural Bank Forum**.
  The Forum took place in Sydney in July 2010 and provided a valuable opportunity for the CCMC to exchange information with Banks about the CCMC's current activities, discuss emerging issues in the banking regulatory sector and obtain valuable feedback on current Code compliance issues.
- **CCMC Governance Arrangements**
  The CCMC has consulted with key stakeholders on new governance arrangements and ways to assist Banks in reporting on the outcomes of self initiated Code compliance reviews.
- **The CCMC brand**
  This project included the development of a new website (due in November 2011), a new logo and corporate colours.

CCMC's Operations

The CCMC's key compliance functions can be grouped into three broad categories:

- **Monitoring** the Banks' compliance under the Code and any aspects of the Code referred to it by the ABA;
- **Investigating** and determining allegations from any person that a Bank has breached its obligations under the Code; and
- **Influencing** continuous improvement in banking practice and standards through stakeholder engagement and by initiating own motion inquiries into the Banks' compliance with the Code.

Diagram 1 illustrates how these categories inter-relate with each other.

Diagram 1: CCMC's Primary Compliance Functions

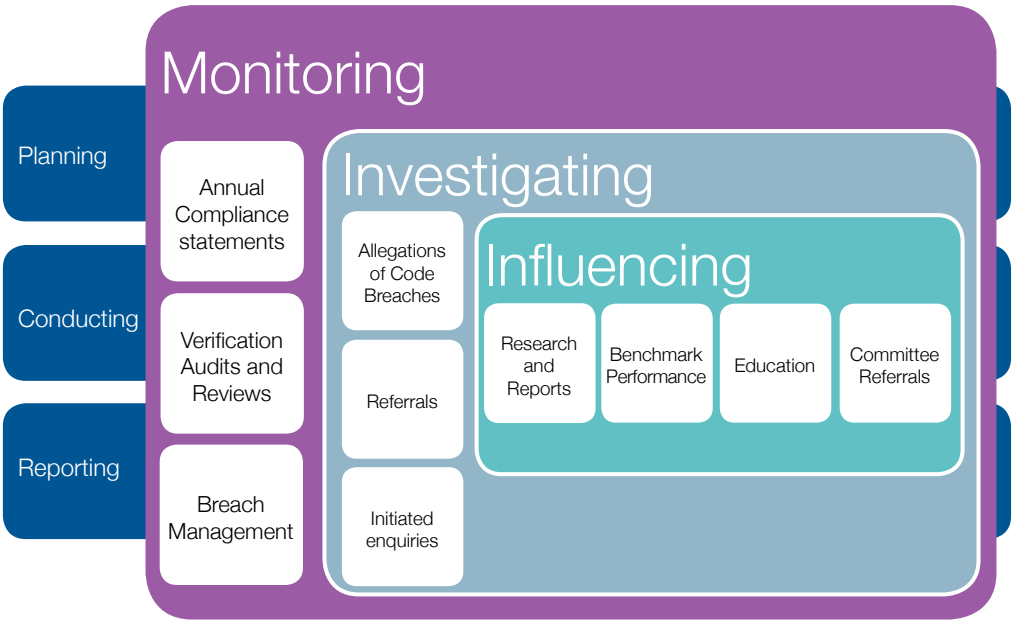


Diagram 2: Code Management and Compliance Processes adopted by the CCMC

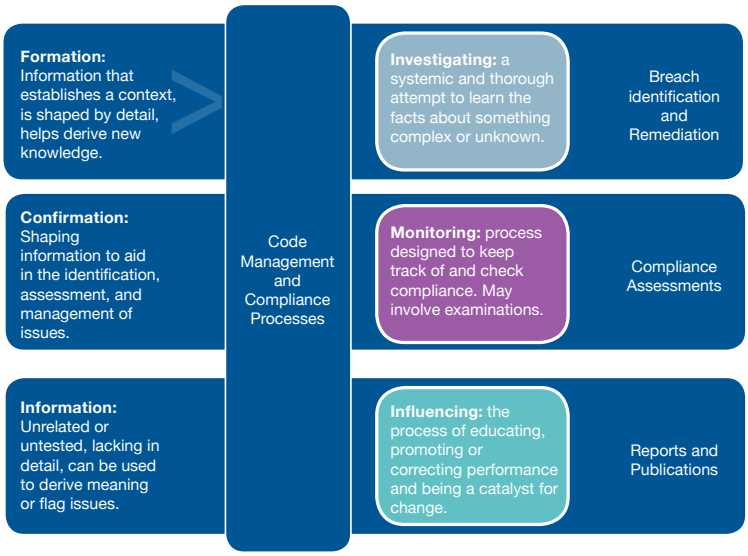


Diagram 2 expands on these primary functions and also identifies the core activities for each category. In its role, the CCMC is able to use a range of investigating and monitoring techniques including:

- requests for information from the Banks;
- on-site compliance visits; and
- market research activities, such as mystery shopping, surveys and forums.

Monitoring:
The Annual Compliance Statement (ACS)

Under the Code each Bank agrees, among other things, to lodge an annual Code compliance report.

Since 2008, this report has been generated as part of the ACS program. The key objective of the ACS program is to assist the CCMC to assess, monitor and verify that Banks are meeting their Code obligations. In assessing the overall compliance framework adopted by the Banks to meet these obligations, the program builds on the Banks' existing robust risk management and compliance systems, as required by both the Australian Prudential Regulatory Authority (**APRA**) and ASIC.

Developed in consultation with key stakeholders, the first element of the ACS program comprises an annual, retrospective questionnaire that uses a clause by clause self assessment format based on the Code. The second element of the program comprises a field visit to each Bank to verify the answers to the questionnaire. These elements are conducted from 1 April to 30 September in each year.

In conducting the ACS program, the CCMC focuses on several aspects of Code compliance, including:

- identifying, reviewing and assessing breach; identification and breach management within the Banks;
- identifying and reporting on significant breaches; monitoring rectification activity and assessing industry impact;
- reviewing and assessing the management of significant and systemic issues relating to the Code; and
- where relevant, communicating with key stakeholders about emerging risks.

The results provide the CCMC with a holistic overview of industry and individual Bank performance against each Code obligation. In addition, it helps the CCMC identify where future compliance activity may be beneficial and where industry improvements have occurred, or may be required.

For Banks, the program provides an opportunity to self-report on areas of good practice and as well as non-compliance, to highlight areas for priority attention or follow up and to identify any significant breaches and systemic failures in meeting their Code obligations.

Breach Management

Banks require effective internal feedback systems to implement ongoing improvements to their business practices. Such systems include quality assurance and complaints handling processes, customer surveys, market research and compliance management programs. The CCMC's role in identifying breaches and monitoring remedial actions through the ACS program forms an important part of this framework.

In this context, the Australian Standard™ AS-3806 – 2006 on 'Compliance Programs' provides the CCMC with authoritative guidance on how Banks should effectively manage their Code compliance obligations. This Standard requires the Banks, amongst other things, to maintain effective internal breach reporting arrangements. The criteria applied by the Standard include timelines for the regular reporting of breaches, exception reporting, systems to facilitate ad hoc reporting of emerging and crystallised issues and ensuring appropriate information is provided to key staff to enable effective remedial action to be taken.

By working with Banks on emerging Code related issues and breach management, the CCMC aims to assist in identifying areas of key risk, reduce the impact of any non-compliant activity and engage in dialogue on effective remedial or mitigation strategies.

What constitutes a 'significant breach'?

A 'significant breach' is one that is deemed by either the CCMC or an affected Bank to be significant having regard to a number of factors. Generally speaking, the CCMC expects Banks to consider the factors found in section 912D of the Corporations Act (2001) when determining whether a significant breach has occurred. These factors include the number or frequency of similar previous events that have occurred, the impact of the breach on the ability to supply the service, whether the event indicates that Code compliance arrangements may be inadequate and the actual or potential loss experienced by consumers arising from the breach.

Over time, the CCMC has incorporated a 'significant breach' template into the ACS program to allow such breaches to be independently recorded from general breaches and complaints statistics. Given the retrospective nature of the ACS reporting, any 'significant breaches' reported in the ACS should already have been considered by the relevant Bank and been the subject of rectification activity.

ACS Outcomes 2010-2011

Whilst the Banks self reported against their obligations under each Code provision, the CCMC also used the 2010-2011 ACS program to focus attention on compliance with a number of specific Code obligations.

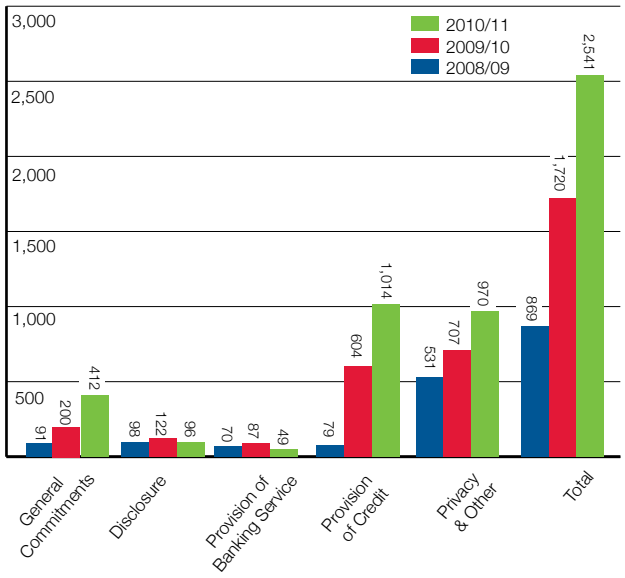
These areas of focus included Banks' collections monitoring programs and, in particular, compliance with the obligations under Clauses 29 (debt collection) and 25.2 (financial hardship). In addition, the program concentrated on IDR obligations under Clause 35 of the Code and compliance with the obligations under Clauses 28 (Guarantees) and 21 (Foreign Exchange Services).

Self Reported Compliance Breaches by Code Grouping for 2010-2011

The key findings and trends in self reported compliance breaches for 2010-2011 are outlined in Graphs 1 and 2. Graph 1 identifies the aggregate number of breaches reported for all Banks and the three year historical trends in breach reporting across five broad groups of Code obligations, namely 'General Commitments', 'Disclosure', 'Provision of Banking Service', 'Provision of Credit' and 'Privacy and Other'.

Through the 2010-2011 ACS program, the Banks reported 2,541 compliance breaches, an increase of 48% from 2009-2010. Most individual breaches in 2010-2011 related to the 'Provision of Credit' category (1,014 breaches or 40%) and the 'Privacy and Other' category (970 breaches or 38%), which together represented 78% of the total number of reported breaches. When compared to 2009-2010, the number of self reported breaches in the 'General Commitments' category also increased, up by 106% from 200 breaches to 412.

Graph 1: Trends in Self Reported Compliance Breaches by Code Grouping for 2010-2011



Significantly, there were also decreases in the number of breaches reported in other categories, namely:

- 'Disclosure', down by 21% (from 122 to 96 breaches); and
- 'Provision of Banking Service', down 44% (from 87 to 49 breaches).

A table summarising the ACS outcomes for the 2010-2011 reporting year can be found at Appendix 1 to this Report.

In assessing any trends in the number and type of breaches reported, the CCMC has also taken into account information provided by the Banks during the field visit program about significant compliance initiatives and systems upgrades in some areas of Banking practice over the previous 12 to 18 months.

In response to the overall increase in reported breaches, as well as across several reporting categories, the CCMC notes that it has encouraged a culture of positive breach reporting by the Banks. Accordingly, the increase in breach numbers does not, of itself, mean an increase in non compliant behaviour. In this regard, the CCMC can report that:

- in 2010-2011 the Banks responded to numerous legislative changes, in particular in relation to privacy, consumer credit and responsible lending obligations. This response included audits and reviews of existing

operations and the implementation of significant changes to operational systems and procedures. This activity allowed the Banks to self assess their performance against Code obligations in these areas more rigorously;

- the new requirements in ASIC Regulatory Guide 165: Licensing Internal and External Dispute Resolution has resulted in changes in complaints handling within banks and an increase in awareness training across the sector;
- some Banks have significantly upgraded their central complaint and breach identification systems which enable them to more efficiently tag potential Code breaches by specific clause. This in turn allows them to more effectively identify, report and rectify breaches and their root causes;
- breach reporting awareness is being continuously communicated within Banks. Improved internal communication and training means that staff are more confident in identifying and reporting breaches which previously may have only been recorded as process errors;
- there have been a number of other specific initiatives in this area that have come to the CCMC's attention, including the introduction of an 'Awareness Week' at one Bank where competitions and other communications such as newsletters were used to increase staff real time awareness of different legislative and Code requirements as they applied to different banking services;
- other Banks have introduced specific face-to-face scenario based training programs partnering with business units and for inductees to improve staff ability to immediately recognise instances where Code obligations may apply in the delivery of banking services; and
- the Banks have improved their monitoring levels in specific areas, such as collections, in part as a result of CCMC compliance activity during 2010-2011, thus leading to an increased focus on non compliant behaviour in these areas.

Accordingly, despite the increase in the number of breaches reported, as identified in Graph 2, the number of significant breaches reported has decreased.

These are positive developments and additional proposed regulatory changes are likely to result in Banks further improving their monitoring and reporting processes which, in turn, may result in further increases of breach numbers in the future. In that context, the CCMC expects Banks to remain vigilant and pro-active about the monitoring, reporting and rectifying of Code breaches in the year ahead, while strengthening their efforts to minimise the overall occurrence of Code breaches.

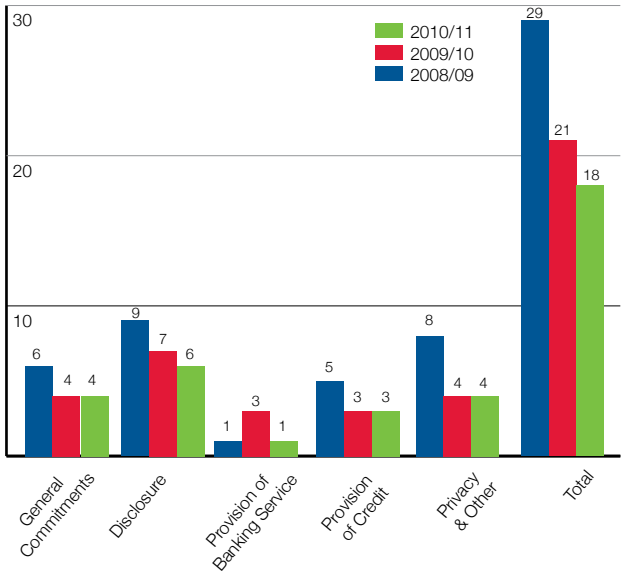
Overall Number of Significant Breaches by Code Grouping

Graph 2, below, captures the overall number of significant breaches reported in the 2010-2011 ACS, by Code grouping. This data is compared to data for the 2008-2009 and 2009-2010 years.

As noted above, whilst the number of reported breaches has increased, the number of significant breaches reported has decreased in the 2010-2011 reporting year from 21 to 18. Since 2008-2009, the number of significant breaches reported has decreased by almost 40%.

A table outlining the number and type of significant breaches reported to the CCMC in the 2010-2011 reporting year can be found in Appendix 2 of this Report.

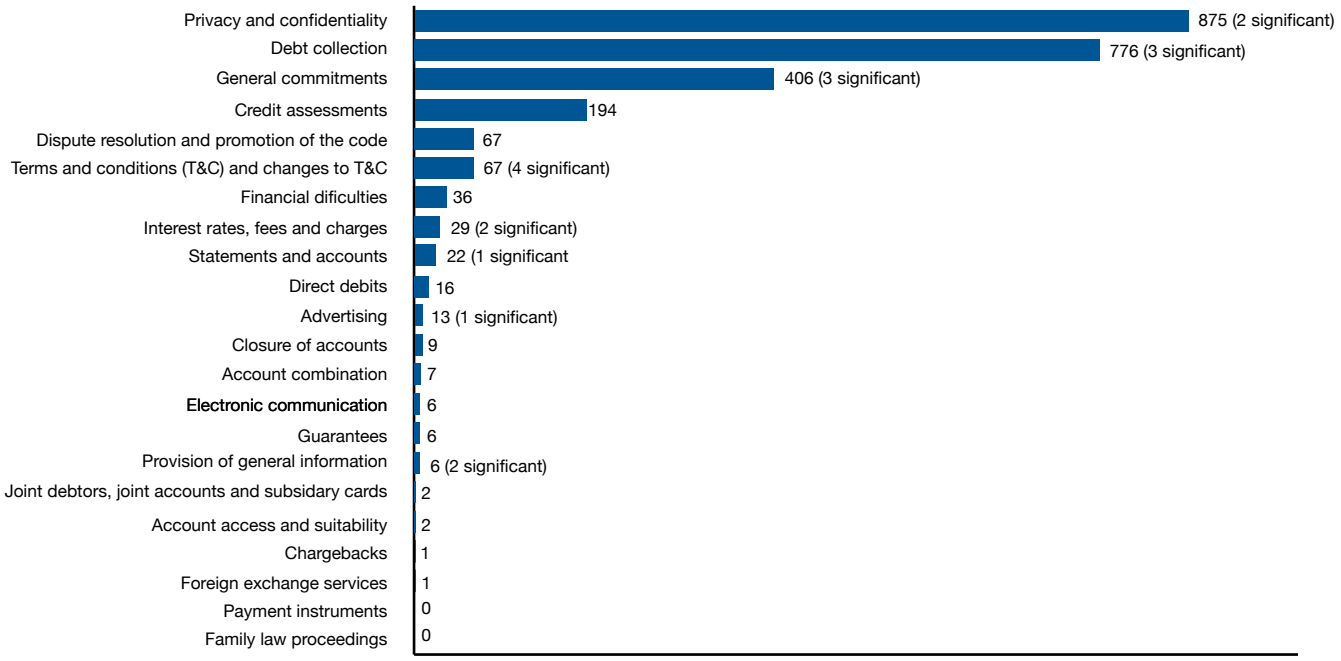
Graph 2: Overall Number of Significant Breaches by Code Grouping for 2010-2011



ACS Outcomes 2010-2011 *continued*

Overall, the CCMC identified a number of trends, together with areas of non-compliance and good industry practice from the 2010-2011 ACS program.

Graph 3: 2010-2011 Self Reported Compliance Breaches by Expanded Code Category



Self Reported Compliance Breaches by Expanded Code Category

Graph 3, aggregates the 2010-2011 self reported breaches by Code category in more detail, including the number of significant breaches reported as part of the ACS program.

The CCMC notes the following:

- Notably, six of the 18 significant breaches reported were directly attributable to problems with IT. In these instances large numbers of customers were affected as a result of each breach and the outcomes highlight how important it is for Banks to have robust technology platforms, with high levels of supervision.
- 'Terms and Conditions' and 'Changes to Terms and Conditions' remain as the area with the highest number of significant breaches (four). This is consistent with the results in 2009-2010.
- Significant breaches in 'Privacy and Confidentiality' have increased to two, but represent only 0.2% of the total breaches reported in this area.
- Significant breaches only represent 0.7% of all ACS reported breaches.
- The reduction in significant breaches could be the result of better monitoring and earlier intervention to prevent significant events from occurring.

An overview of the reported significant breaches and the remedial steps taken by the relevant Banks can be found in Appendix 2 to this Report.

Trend Analysis

Overall, the CCMC identified a number of trends, together with areas of non-compliance and good industry practice from the 2010-2011 ACS program. A report on these key findings and the CCMC's recommendations for improved practice standards is set out below.

Privacy and Confidentiality (Clause 22)

'Privacy and Confidentiality' breaches represented 34% of the total breaches reported. The majority were reported by the major Banks, although one smaller Bank reported a 97% increase in breaches in this area. Some examples of the privacy related breaches reported include:

- call centre staff not informing customers that calls were being recorded;

- call centre staff mistakenly providing information to an unauthorised third party;
- information being given to an unauthorised third party via mail or in person at the branch level;
- statements being sent to a third party or to an incorrect address; and
- emails being sent to the wrong customers.

The CCMC has concluded that the rise in privacy related breaches in the 2010-2011 reporting year can be attributed in significant part to increased staff awareness of breach reporting obligations and related training programs associated with the introduction of ASIC Regulatory Guide 165 and other regulatory initiatives. The CCMC notes however that an overreliance on the efficiency of IT and other systems without corresponding monitoring checks (in addition to increasing reported instances of human error), may have also contributed to the figures.

The two significant breaches reported in this category are cases in point. The first occurred when as a result of human error, an unsecured server allowed customer details to be available on the internet for a short time. The second significant breach occurred when an outsourced service provider inadvertently attached a spread sheet containing personal information to an internal group email. In both instances the breach was voluntarily reported to the relevant regulator and rectification made.

CASE STUDY:

Clause 29 (debt collection) – third party representatives

Mr B had fallen behind in his credit card payments. His Bank agreed to a payment plan but a few months later he fell behind again and the Bank advised him to apply for financial hardship. Mr B agreed to complete and return the necessary forms. After two months the Bank had not heard from Mr B and sent him a default notice. Shortly after, Mr B contacted a financial counsellor who sent the Bank an Authority appointing her as Mr B's representative. The Bank registered this document on its system.

Under the Debt Collection Guidelines, the Authority required the Bank's collections staff to contact the financial counsellor instead of Mr B. Instead, they contacted Mr B on at least three occasions. Each time Mr B informed collections staff that he had appointed a representative.

During the CCMC's investigation the Bank confirmed its staff had failed to comply with internal requirements to check customer profiles before engaging in collections activity. In addition, the Bank stated it was preparing a training program for its collections team to ensure that all relevant staff were aware of the Debt Collection Guideline and the Bank's internal policy on Authority forms.

The Bank accepted the CCMC's Recommendation in which it acknowledged a breach of Clause 29 of the Code (Debt Collection) and agreed that it would continue with its training and report back to the CCMC within 6 months. The Bank's subsequent update confirmed that appropriate training had been rolled out across relevant sections in the Bank. The CCMC noted it would continue to monitor the matter as part of its ACS program.

Debt Collection (Clause 29)

776 breaches were reported in relation to 'Debt Collection' (Clause 29) which represents an increase of 152% (468) compared to last year. The majority of these breaches were reported by one Bank (68% of the total breaches reported). That Bank informed the CCMC it had two significant breaches in this area. This prompted an internal audit. The audit and additional monitoring activity resulted in an increased number of breaches being identified.

The two significant breaches occurred as a result of a call dialler being inadequately monitored. This led to some Victorian customers receiving calls on Melbourne Cup day (being a public holiday in Metropolitan Melbourne) and a failure to take into account the time difference between the time set for the dialler and customers in Western Australia. In each case, this meant that calls were made to some customers on days or at times that fell outside range set out in the 'Debt Collection Guideline' published by ASIC and the Australian Competition and Consumer Commission (**ACCC**).

These breaches were identified by the Bank's quality assurance program. The Bank contacted affected customers, rectified the cause and has since adopted a more stringent monitoring process.

One Bank reported a significant breach in circumstances where debt collection agents used Facebook as a tracking tool to locate customers in arrears so as to facilitate recovery action. In response, the Bank decommissioned the page, removed staff and agent access to Facebook within the Bank's premises and conducted an assurance review through self assessment questionnaires.

ACS Outcomes 2010-2011 *continued*

The CCMC has identified that Banks use many different triggers to actively identify customers that may be in financial hardship.

Other examples of 'Debt Collection' breaches identified during the ACS were:

- a customer being sent a demand letter from collections despite the debt having been settled;
- customers being contacted directly even though they were represented by a financial counsellor or a third party representative;
- calls to customers that were made outside of the contact hours set out in the Debt Collection Guideline;
- an error in the call dialler; and
- the frequency of contact with debtors beyond that set out in the Debt Collection Guideline.

One major Bank reported no breaches in this area in its ACS response. In view of that Bank's market share and the trends in debt collection breaches at other Banks, the CCMC sought reassurance that this result was not due to gaps in its breach reporting or compliance monitoring processes. Following this discussion the Bank informed the CCMC that:

- after the 2010-2011 ACS, it had conducted its own quality assurance review. This review identified that breaches were in fact occurring in its debt collection processes;
- changes to its internal regulatory framework and the transfer of QA monitoring to business units during the year, may have been the reason why breach data had not been recorded; and
- it believed that any collections errors identified in 2010-2011 had been rectified.

The Bank has informed the CCMC that it has taken remedial action to improve its compliance processes. To review the effectiveness of these changes, the CCMC will conduct an onsite visit of the Bank's collection centre in 2011-2012.

Financial Hardship (Clause 25.2)

The Code requires a Bank to help customers overcome financial difficulties with any credit facility they have with the Bank and to inform them of the hardship variation principles that may apply to their circumstances.

The CCMC has identified that Banks use many different triggers to actively identify customers that may be in financial hardship. Some examples include triggers within conversations such as employment status, health and family relationship issues. Other triggers may include information picked up in a review of a customer's loan and credit card payment history. These triggers appear to be consistent with recommendations in ASIC's Report 152: "Helping home borrowers in financial hardship".

CASE STUDY:

Clause 2.2 (to act fairly and reasonably) - failure to unlink accounts

Mrs A was in a difficult marriage. She had an account for the family's savings and her husband linked his account at another bank to her account without telling her. Mrs A's Bank told her about the link and provided her with online login details for her account. As she lived in fear of her husband, Mrs A shared those details with him. When Mrs A tried to change the link from her account to a different account that Mr A held at the same Bank, her Bank told her such a link was against Bank policy as the two accounts were in different names. About a year later all funds in Mrs A's account were suddenly transferred out of her account and without her consent.

During the CCMC's investigation, the Bank stated that, as a general policy, it warned its customers that linking accounts could result in financial loss, if the other account holder had access to the account details. The Bank agreed that by allowing Mr A to link his account to Mrs A's account, it had breached its own policies as the two accounts had been in different names. The Bank confirmed that this had been an isolated incident and amended its processes so that customers wanting to link accounts in future would have to provide copies of statements to verify the names of the account holders.

In its Determination, the CCMC found that the Bank should have unlinked the two accounts when it became aware they were in different names. As the Bank had not done so, the CCMC found the Bank had failed to act fairly or reasonably towards Mrs A and had breached Clause 2.2. The CCMC asked the Bank to monitor its processes over the following six months. In its subsequent update, the Bank confirmed that it continued to warn customers of the risks associated with linking accounts, had implemented updated verification processes and had highlighted the issue in staff training.

Overall, the CCMC is satisfied that the Banks have processes and policies in place to actively identify potential hardship applicants consistent with the 2009 National Hardship Principles recommended by the Federal Treasury and which allow Banks to meet their obligations under the Code.

The CCMC has, however, identified that some Banks that outsource collection activities to offshore service centres may be exposed to additional risks. The CCMC recommends that these Banks increase their monitoring activities and training of staff in these circumstances, in particular in relation to the active identification of customers facing financial hardship.

There was one significant breach reported in this area which related to a Bank's failure to respond to financial hardship applications within the 21 day time limit set out in the National Consumer Credit Protection Act 2009 (**NCCP** Act). The breach occurred due to a reported increase in the volume of hardship applications the Bank received at the time. The Bank has since reviewed its processes and increased staffing numbers to assist with processing requests within the prescribed time limits set out in the National Credit Code (which forms part of the NCCP). The breach has been classified in the Significant Breach Table in Appendix 2 under Clause 3 of the Code, 'Compliance with Laws'.

The CCMC recognises that there have been some important initiatives in the Bank/customer interface in the hardship area over the past year, particularly in response to the recent East Coast flood crisis. Additional activities undertaken by Banks during this time include sending potentially affected customers an sms to encourage contact with their Bank to discuss financial hardship and other matters and stopping collections activity for certain affected postcodes for a three month period. The CCMC commends such initiatives as being consistent with the key commitments made by the Banks under the Code.

Credit Assessment (Clause 25.1)

The CCMC notes that the area of consumer credit and responsible lending has been a significant focus within the Banks, and most recently since the introduction of the NCCP in July 2010. This has included the implementation of new audit, risk and compliance frameworks in these areas.

This activity may account for the 70% increase in the number of breaches reported (194 breaches) under this heading as compared to the previous year. Again, the majority of breaches were reported by one Bank (92% of the total breaches reported).

General Commitments (Clauses 2, 3, 4 and 7)

The significant increase in reported breaches in the 'General Commitments' category in 2010- 2011, is largely related to one Bank reporting 91% of the 406 breaches recorded. These breaches were reported against Clause 2.2 ('acting in a fair and reasonable manner' – the reported breaches included by the Bank under this heading include training issues and overcharging of fees and interest) and Clause 3.1 ('compliance with laws' – the Bank included issues relating to the NCCP and Tax File Numbers under this heading).

The CCMC's discussions with the Bank have revealed that some of these breaches may have been more appropriately classified as breaches under other categories, such as 'Privacy' and 'Terms and Conditions'. In turn, this may have resulted in differences in the identified breach profile for both that Bank individually and the breach categories generally.

Some examples of the types of breaches that may have been misreported include Bank staff failing to identify customers correctly, sales of insurance products without customer consent during telephone sales and incomplete disclosures of sales commissions.

Two significant breaches were identified in this category. In one case, a Bank incorrectly applied fees on customer accounts related to a Debit Card as a result of a systems failure. Affected customers have been reimbursed and were sent a letter advising of the error. The other significant breach related to the mistaken use of a trust account for purposes other than those for which it was established, contrary to the requirements of the Corporations Act 2001. The bank has taken remedial action to reverse the error.

ACS Outcomes 2010-2011 *continued*

In relation to IDR, the CCMC's 2010 IDR Review and changes to ASIC Regulatory Guide 165 meant that many Banks reviewed their operations in relation to complaint handling and dispute resolution

Terms and Conditions (Clause 10)

The CCMC has seen a 31% increase in breaches reported in this category. The number of significant breaches reported has also risen to four. The primary root cause of breaches in this area seems related to systems errors and in some cases led to an incorrect calculation of interest in customer accounts dating back over numerous years. Other examples include:

- errors where offset accounts were not manually linked to mortgage accounts, resulting in customers being overcharged interest;
- the interest rate for a passbook account not being updated;
- discounts associated with a mortgage package were not correctly applied, resulting in customers being charged higher interest than expected;
- incorrect interest codes were applied for an online savings product;
- switch fees on mortgages were not disclosed; and
- accounts were 'delinked' during account maintenance.

Because one error or breach can result in numerous customers being affected at the same time, such breaches can also be quite complex to fix. In most cases they require a Bank to identify all affected customers, usually over a wide period of time and rectification often involves reconciling numerous account details. The CCMC therefore recommends that Banks rigorously check their systems and processes to ensure the correct application of interest and other charges to customers' accounts.

Direct Debits (Clause 19)

In 2008 the CCMC conducted a review of the direct debit obligations under Clause 19 of the Code. Based on that review, Banks were providing 8 out of 10 customers with inadequate or incorrect information about the Bank's obligations to stop direct debits on transaction accounts at a customer's request. Two Banks were not included in the 2008 review – one of the excluded Banks did not offer direct debits at all; under the business model used by the other excluded Bank, all direct debits were handled by the Bank's relationship managers which meant that the CCMC could not conduct a shadow shop review.

Recent discussions between the CCMC and financial counsellors indicate that this may still be an issue affecting customers. Financial counsellors in particular rely on Banks to meet their obligations in this area to cancel direct debits and provide customers with accurate information about the Bank's role in the cancellation process. This is because this is one of the first steps that financial counsellors often take in the management and control of a customer's finances.

Following the 2008 review, the CCMC asked all Banks to provide a remedial and monitoring plan with a view to improving practice standards in this area. The CCMC then conducted two follow up reviews between September 2010 and May 2011. These reviews used a total of four telephone contacts with each Bank previously reviewed in 2008. One of the Banks that had been excluded in 2008 was now included in the 2011 review as it had started offering direct debits on its transaction accounts.

The results of the shadow shop were shared with each Bank during the 2010-2011 ACS field visit program. While the sample range was relatively small, the results reiterate the CCMC's concerns that there has been little improvement in this area of service across the Banks.

> **The CCMC acknowledges that the relatively low volume of related complaints or calls means that this an area which can be quite difficult to monitor using complaints data or recorded call monitoring as a risk trigger. However, the CCMC also notes that this is an area that has a higher potential impact on customers, particularly those in financial difficulty, as it often results in overdrawn fees, additional charges and other imposts. It is also an area where consumers are often unsure of their rights and often rely on Banks to provide effective and accurate advice.**

On that basis, the CCMC will continue to monitor improvements to direct debit practices in 2012.

Complaints Handling and Dispute Resolution (Clauses 35, 36 and 37)

2010-2011 was the first year the CCMC requested information from Banks about their IDR processes as part of the ACS program.

In relation to IDR, the CCMC's 2010 IDR Review and changes to ASIC Regulatory Guide 165 meant that many Banks reviewed their operations in relation to complaint handling and dispute resolution in 2010-2011. The field visits also verified that in the past year most Banks had devoted a great deal of time and resources to the development and implementation of new complaints handling and IDR systems and processes. In addition there appears to have been a general trend towards the more effective capture of information for analysis and continuous improvement.

This focus by the Banks also led to a significant increase in reported breaches (from 9 to 67) in the areas of IDR and promotion of the Code. The majority of the breaches were reported by two major Banks, which account for 82% of the total breaches reported in the 'Dispute Resolution' category.

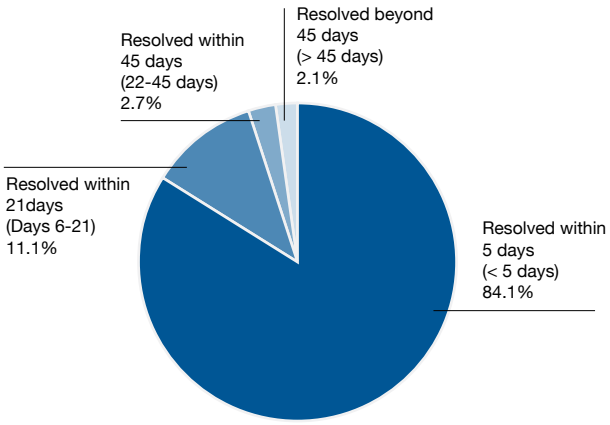
Some of the breaches reported against Clause 35 include:

- template letters informing complainants of the outcome of a Bank's investigation into their complaint did not provide EDR information;
- non compliance with timeframes to resolve financial hardship complaints;
- staff not providing customers with IDR and EDR information/process when customers lodged a complaint; and
- customers not being provided with the contact name and details of the staff member responsible for the complaint.

Graph 4, below, provides an overview of the timeframes in which complaints to Banks are resolved within prescribed periods. The ACS data indicates that 95% of complaints received by Banks are being resolved within prescribed timeframes. The Banks informed the CCMC during its field visits that aged complaints (i.e. post 45 days) generally related to complaints lodged with the FOS and tended to be more complex in nature. The CCMC is satisfied that these complaints are being appropriately monitored and that customers are updated on the progress of these complaints, either through IDR or EDR processes.

Graph 4: Complaints Handling Statistics for 2010-2011

This data, including the information on those cases that fall into the 'over 45 days' bracket, will provide an important source information for a follow up review in 2012 of compliance with Clause 35 of the Code.



ACS 2011-2012: Looking ahead

In 2012 the CCMC will also be reviewing its ACS program to consider how that program can more effectively fulfil the CCMC's monitoring functions as well as operating as a self assessment tool for Banks to monitor their internal compliance and risk frameworks associated with the Code. As part of this process, the CCMC will consult with the Banks on the ACS format and its timelines.

Investigations

The Code empowers the CCMC to investigate and determine any allegation from any person that a Bank has breached the Code.

The Code empowers the CCMC to investigate and determine any allegation from any person that a Bank has breached the Code. The CCMC can also conduct its own, self-initiated investigations. When investigating a matter, the CCMC considers:

- whether a breach has occurred and its extent;
- the broader and potential impacts;
- the effect of non compliance on the Bank;
- the root cause of the breach and whether it may be systemic; and
- any remedial action proposed or taken by the Bank.

Unlike FOS or a Court, the CCMC cannot make orders for compensation or make declarations on the rights and entitlements of parties. Similarly, the CCMC cannot issue fines or penalties. Instead, its focus is on compliance outcomes that result in overall improvements to Banks' practices and improved levels of internal compliance monitoring.

In that regard, the ability to deal with specific allegations allows the CCMC to investigate instances where compliance is alleged to be below the required standard and also to identify any potential issues that may be emerging across the industry and should be included in the ACS program.

The CCMC also engages in a continuous assessment process to improve its procedures and streamline its decision making framework. The CCMC aims to ensure that any person wanting to make an allegation against a Bank concerning a breach or breaches of the Code can do so and to provide a structured process to investigate these matters.

Table 2, below, provides an overview of the case numbers recorded by the CCMC for 2010-2011.

Table 2: Overview of Case Numbers for 2010-2011

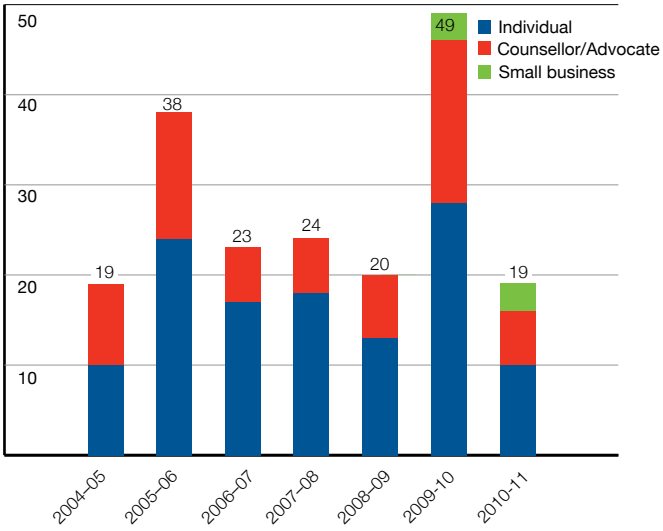
Description	No. Cases
Total number of new cases received	24
Total number of alleged breaches across all the new cases received	42
The total number breaches confirmed	2
The total number of cases closed	37
Number of cases closed by Determination	5
Number of cases closed by Recommendation	1
Number of cases open as at 31 March 2011	22 (nine on hold pending outcomes in other forums).

Trends in Case Numbers

Graph 5, below, identifies the number of cases registered with the CCMC since 2004-05.

Although 2010-11 saw fewer registered cases than 2009-10, the registration trends remain generally consistent with those of other previous years. In that regard, the CCMC notes that in 2009-10 it registered a number of case clusters e.g. where the same concern was raised in relation to a number of different Banks or where a customer representative made the same allegation against one or two Banks but in relation to a number of different clients.

Graph 5: Cases registered by the CCMC in 2010-2011



Allegations from individuals continue to be the main driver for CCMC investigations. However, the CCMC has been working hard to engage more closely with consumer representatives about Code compliance issues. This ongoing dialogue recognises that these professionals are usually well placed to provide real time examples of wider concerns that may indicate significant or systemic Code breaches or policy shifts by individual Banks.

Allegations that the Code has been breached are an important source of information for the CCMC's compliance functions. In many cases the concerns are raised by individual customers or financial counselors. This is particularly important as the Code forms part of the terms and conditions that exist between Banks and their individual and small business customers. In addition, and

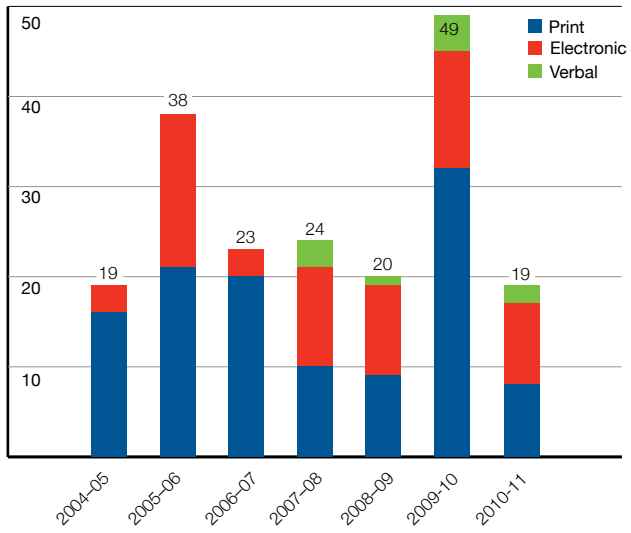
in contrast to the ACS, such allegations provide the CCMC with day-to-day, real-time examples of potential Code related issues.

Where an allegation is being considered by another forum, such as FOS or a Court, the CCMC puts its investigation on hold until that other forum has finished its review.

Case Receipt

Graph 6, below, demonstrates the cases received in 2010-2011 by lodgment method such as printed form, electronic through email or verbally. The data highlights that the majority of cases are received electronically and most persons contacting the CCMC appear to prefer email and electronic communication tools. For the reasons mentioned above, while the statistics for 2009-2010 are disproportionate when compared to previous years, they are more comparable to those before 2009-2010.

Graph 6: Case Statistics by Type for 2010-2011



CCMC initiated investigations

In most cases, CCMC initiated investigations arise either from matters identified in the ACS program or from allegations about general business practices rather than individual complaints. Initiated investigations provide the CCMC with the opportunity to broaden the scope of its examination of matters relevant to the compliance issues involved.

Case Outcomes

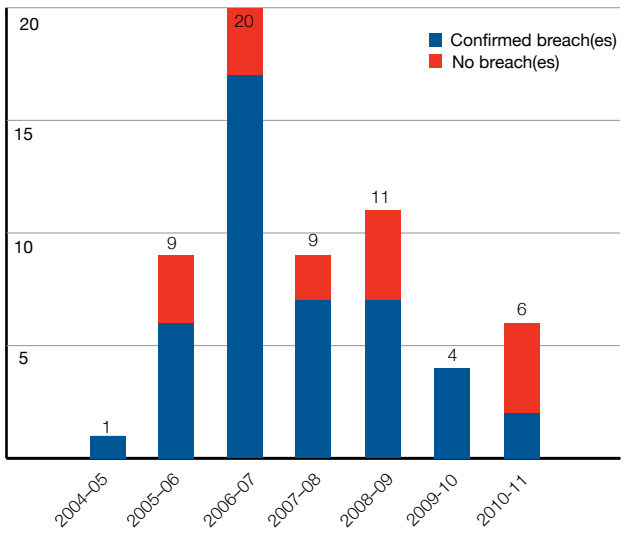
Case outcomes can generally be classed into two categories:

- Recommendations: where possible the CCMC tries to achieve early compliance outcomes through discussion aimed at appropriate compliance results. This process not only acknowledges that Banks already have active risk and compliance management systems in place, but also that matters that have been quickly addressed may not require a formal Determination process.
- Determinations: where a Recommendation cannot be made, the CCMC may make a formal Determination. In appropriate cases, the CCMC may also apply sanctions under the Code.

In either case, the CCMC will take into account any remedial activities and undertakings that a Bank may have put in place and consider how to best integrate the issue into its broader compliance framework.

Graph 7, below, identifies the numbers of case outcomes (Determinations and Recommendations) for the 2010-2011 year, highlighting whether those outcomes confirmed if a breach had or had not occurred. The graph shows that of the outcomes in 2010-2011, over half were not found to involve a breach of the Code.

Graph 7: Case Outcomes for 2010- 2011



Graph 8, right, summarises the CCMC's case statistics for 2010-2011 by reference to how the case was closed. This graph shows that of the 37 cases closed, 38% were outside jurisdiction, 14% were withdrawn, 24% were closed due to the lack of a further response from the person making the breach allegation, 8% were referred to compliance investigation and 16% were the subject of either a Recommendation or Determination.

CASE STUDY:

Clause 11 (provision of documents) – request for account information

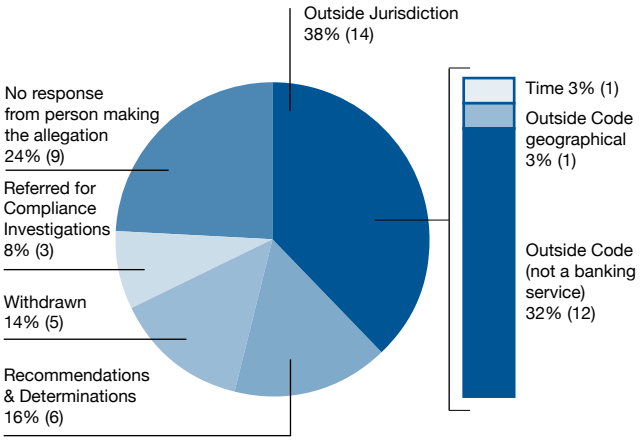
Mr C had engaged a third party (D Pty Ltd) to review the accuracy of his bank fees and charges. D Pty Ltd asked the Bank for details of all penalty charges and exception fees incurred on Mr C's account over a six year period. It also asked the Bank to advise of the costs of supplying that information prior to providing it.

The Bank stated it would not make any reimbursements as all fees had been charged in accordance with the Bank's legal and regulatory obligations. D Pty Ltd alleged the Bank had breached the Code by failing to provide copies of Mr C's statements under Clause 11.

The CCMC found the Bank had not breached the Code as D Pty Ltd's letter had not asked the Bank for documents. It also found that the Bank's delay in providing the costs advice was unreasonable but noted the Bank's difficulty in processing the original request and that the information was subsequently provided.

The CCMC informed the Bank that in handling the matter, the Bank should have considered contacting D Pty Ltd to clarify the request and suggested that the Bank consider a review of its processes for such requests.

Graph 8: Case Statistics by Type for 2010-2011



Process review

In 2010-2011 the CCMC conducted a comprehensive review of its investigative framework. This is part of an ongoing process aimed at creating a more pro-active approach in highlighting potential Code compliance issues with Banks, to improve the level and quality of the information provided to persons contacting the CCMC and Banks and to better capture statistics on general enquiries.

CASE STUDY:

Clause 25.2 (financial hardship) – inconsistent application of Bank policy

A financial counsellor contacted the CCMC as her organisation had noticed that staff in the hardship team at a particular Bank appeared to be providing conflicting and unclear advice to customers.

The CCMC considered that Clause 25.2 was the most relevant and followed up the matter with the management team in charge of the Bank's collections department. The CCMC facilitated a meeting between the Bank and the financial counsellors at which the Bank clarified its processes, sought feedback on the counsellors' concerns and nominated a Bank officer as a direct contact for further discussions. A formal Determination was not required.

In this case the CCMC's approach provided an effective means of facilitating the discussion between the parties to address individual concerns whilst allowing the CCMC to review any broader issues as part of its general compliance monitoring program.

Influencing

A key CCMC goal is that its compliance activities influence positive changes in industry behaviour.

The CCMC has, and will continue to engage in projects that challenge current thinking and accepted practices, test the customer experience against Code obligations, identify areas of good industry practice and build awareness and acceptance of the Code.

While each project is unique, the CCMC uses a broad range of techniques in this arena, including shadow shopping, focus groups, surveys, public forums and academic specialists.

The CCMC publishes the outcomes of completed research projects on a de-identified basis and engages in compliance discussions with individual Banks on the results. Where issues are identified, the CCMC raises these with relevant stakeholders and follows up with an assessment of any remedial actions. Any potentially significant or serious issues may also become the subject of later investigations or monitoring activity.

Reports and Reviews completed in 2010-2011

The CCMC completed a number of Inquiries and Reports in 2010-2011. Some of its key achievements and ongoing projects are outlined below.

The 'Visibility & Access Report' and the associated 'Good Practice Guide' (Clauses 9 and 37)

In 2010, the CCMC reviewed Banks' websites to identify how they managed their obligation to provide visible and accessible information relating to the Code as well as IDR and EDR mechanisms. It also included a general assessment of whether Banks' websites complied with these obligations by considering such factors as the number of clicks required to access relevant web pages and the ease with which information could be found.

The CCMC found that 92% of websites complied with the basic Code requirements and met basic standards regarding visibility and access to Code, IDR and EDR information. Only one website failed to comply.

Following its review, the CCMC issued its 'Visibility and Access: Good Practice Guide' to all Banks. This in turn resulted in several Banks implementing a range of improvements to lift the visibility and accessibility of their web-based content.

The Financial Hardship Review (Clause 25.2)

This Review followed concerns raised by financial counsellors about the hardship program offered by a major Bank in the context of the hardship principles set out by the Federal Treasury in 2009.

In response to the CCMC's review, the Bank made various improvements to its hardship processes including changes to its standard template letters, processes and policies, and staff training particularly in relation to identifying customers who may be in financial difficulty.

This also prompted a discussion with all Banks in regard to their hardship processes and policies. Some positive changes adopted by Banks include having a toll free number on their websites, a dedicated financial hardship team to assist customers, conducting a national road show in conjunction with financial counselling forums to raise awareness of available hardship assistance, fridge magnets promoting hardship assistance and other promotional materials for distribution to financial counsellors concerning Bank initiatives in this area.

The CCMC has also developed a list of Bank contacts responsible for internal financial hardship and IDR activities for distribution to key stakeholders.

Internal Dispute Resolution (IDR) Compliance Review (Clause 35)

This review coincided with changes in the regulatory framework to IDR processes. The CCMC examined Banks' IDR processes, in particular their obligation to inform customers of the availability and function of IDR and EDR mechanisms. All Banks reviewed their processes and many implemented a number of improvements to their policies, procedures and systems. Preliminary indications are that 95% of complaints made to Banks in 2010-2011 were resolved within prescribed timeframes.

Debt Collection (Clause 29)

The CCMC received anecdotal information from financial counsellors of inconsistencies in the approach by some Banks towards their obligations under the Debt Collection Guideline. For example, some Banks considered that an unsuccessful attempt to contact a customer nevertheless constituted a 'contact' under the Guideline as did an sms asking a customer to contact the Bank.

The CCMC met with several Banks to better understand their collections processes and their approaches in this area. These meetings included discussions with members of collections teams, call monitoring and reviewing collections procedures.

As a direct result of the CCMC's work in this area, one Bank in particular reviewed its procedures in detail and implemented various IT enhancements.

'Multiple Credit Providers' and 'Credit Assessment' (Clauses 25.1)

These two reviews are inter-linked and stem from concerns raised by financial counsellors around responsible lending obligations and consumer access to multiple credit cards. The reviews form part of the CCMC's work program in 2011-2012 and it expects to report on its findings in next year's Annual Report.

Branch Closure Protocol (Clause 32)

The CCMC reviewed the Code obligations on protocols for branch closures as part of its 2009-2010 ACS follow up. It noted that while the closure of a branch operated by one Bank had resulted in a Code breach, the event was an isolated case that had been caused by extenuating circumstances and did not indicate the existence of a wider concern.

However, as a collateral outcome, the CCMC noted that the wording of Clause 32 of the Code gave rise to potential interpretation issues and it raised this concern with the ABA.

Chargebacks (Clause 20)

The CCMC conducted a mystery shopping exercise of all Banks that provided credit cards. The results identified a number of potential issues concerning the procedures for making a chargeback request and the applicable timeframes.

The CCMC is now conducting a wider review of the issue. That review will form part of its work in 2011-2012 and is expected to be concluded by January 2012.

Account Suitability (Clause 14)

In March 2011 the CCMC facilitated research by students from the Faculty of Business and Economics at the University of Melbourne to examine how Banks complied with their obligations under Clause 14 of the Code.

The CCMC is in the process of summarising the key research findings and will report individual results to each Bank.

Guarantees (Clause 28)

In 2011 the CCMC performed a preliminary compliance analysis of the obligations under Clause 28 of the Code. This work focused on an investigation of the nature, use and prevalence of guarantees, in particular in the small business environment.

In 2011-2012 the CCMC will look at this issue in greater depth and review:

- policies and procedures for pre-contract and post contract disclosure, contract execution and cooling off periods;
- compliance challenges where English is a customer's second language;
- compliance monitoring and control testing; and
- disputes and complaints monitoring in this area.

Stakeholder engagement

Stakeholder engagement continues to be a key influencing mechanism for the CCMC. In that regard, it has conducted a number of initiatives aimed at improving and broadening the scope and depth of its compliance dialogue with stakeholders. These include:

- developing new processes to assist Banks in reporting on any internal, self-initiated compliance reviews;
- promoting the CCMC's role with consumer representatives (especially financial counsellors) through meetings and publications;
- providing forums for Banks to have formal and informal communication channels on compliance related matters such as the CCMC's annual Bank Forum or via tele-conferences;
- providing input towards the development of a new CCMC governance structure;
- developing the CCMC's working relationship with FOS, and;
- facilitating research such as that performed by the University of Melbourne student groups.

ABA REFERRALS

The Code empowers the CCMC to monitor any aspects of the Code referred to it by the ABA.

This provision ensures that the ABA, as the banking industry's peak body, can refer matters of concern to the CCMC when it considers it appropriate to do so.

The ABA did not refer any matters to the CCMC in 2010-2011.

CCMC Financial Statements 2010-2011

Code Compliance Monitoring Committee expenditures for the year ended 31 March 2011.

	ACTUAL 31 MARCH 2011	ACTUAL 31 MARCH 2010
Salaries		
Gross Salaries	310,726	279,825
Salaries Costs - Payroll Tax	21,555	20,442
Salaries Costs - Super	33,773	31,156
Salaries - Annual & Long Service Leave	16,388	39,069
Committee Members' tenure fees	78,900	72,000
TOTAL SALARIES	461,342	442,492
Expenses		
Recruitment	0	0
Consultants	0	16,569
Information and IT - Expenses	26,236	28,605
Insurance - PI and FOS	520	3,358
Occupancy Expenses	30,813	31,972
Travel Expenses	35,688	26,777
Other	34,437	14,935
TOTAL OTHER EXPENSES	127,694	122,216
Total Expenses	**589,036**	**564,708**
Total Funding	**607,450**	**607,450**
Surplus/(Deficit)		
Current Year	18,414	42,742
Accumulated Funds	98,693	80,627

Appendix 1:

CCMC Compliance Breach Summary for all Banks for the Year Ended 31 March 2011

	CODE CATEGORY	NUMBER OF CODE BREACHES BY SOURCE						SIGNIFICANT BREACHES			
	(Specific Code clauses in brackets)	CCMC		Bank		Overall		included Overall			
		09/10	10/11	09/10	10/11	09/10	10/11*	09/10	10/11*	09/10	10/11*
	General										
A	General commitments (2,3,4,7)	0	0	171	406	**171**	**406**	3	2	1.8%	0.5%
B	Provision of general information (11,13,16.1,32)	1	2	28	4	**29**	**6**	1	2	3.4%	33.3%
		1	2	199	410	**200**	**412**	4	4	2.0%	1.0%
	Disclosure										
C	Interest rates, fees and charges (12,15)	0	0	71	29	**71**	**29**	4	2	5.6%	6.9%
D	Terms and conditions (T&C) and changes (10,18)	0	0	51	67	**51**	**67**	3	4	5.9%	6.0%
		0	0	122	96	**122**	**96**	7	6	5.7%	6.3%
	Provision of Banking service										
E	Account access and suitability (6,14)	0	0	5	2	**5**	**2**	0	0	0.0%	0.0%
F	Account combination (16.2,17)	0	0	16	7	**16**	**7**	0	0	0.0%	0.0%
G	Direct debits (19)	4	0	36	16	**40**	**16**	3	0	7.5%	0.0%
H	Chargebacks (10.5,20)	0	0	7	1	**7**	**1**	0	0	0.0%	0.0%
I	Foreign exchange services (21)	0	0	1	1	**1**	**1**	0	0	0.0%	0.0%
J	Payment instruments (23)	0	0	0	0	**0**	**0**	0	0	-	-
K	Statements of account (24)	0	0	18	22	**18**	**22**	0	1	0.0%	4.5%
		4	0	83	49	**87**	**49**	3	1	3.4%	2.0%
	Provision of credit										
L.1	Credit assessment (25.1)	1	0	113	194	**114**	**194**	0	0	0.0%	0.0%
L.2	Financial difficulties (25.2)	3	0	162	36	**165**	**36**	0	0	0.0%	0.0%
L	[Obligations when providing credit (25)]	4	0	275	230	**279**	**230**	0	0	0.0%	0.0%
M	Joint debtors, joint accounts and subsidiary cards (26,27)	0	0	6	2	**6**	**2**	0	0	0.0%	0.0%
N	Guarantees (28)	0	0	11	6	**11**	**6**	2	0	18.2%	0.0%
O	Debt collection (29)	1	4	307	772	**308**	**776**	1	3	0.3%	0.4%
		5	4	599	1010	**604**	**1014**	3	3	0.5%	0.3%
	Other										
P	Privacy and confidentiality (22)	0	0	674	875	**674**	**875**	1	2	0.1%	0.2%
Q	Advertising (30)	0	0	17	13	**17**	**13**	1	1	5.9%	7.7%
R	Closure of accounts (31)	0	0	2	9	**2**	**9**	0	0	0.0%	0.0%
S	Electronic communication (33)	0	0	5	6	**5**	**6**	0	0	0.0%	0.0%
T	Family law proceedings (38)	0	0	0	0	**0**	**0**	0	0	-	-
U	Dispute resolution and promotion of the Code (8,9,35,36,37)	2	1	7	66	**9**	**67**	2	1	22.2%	1.5%
		2	1	705	969	**707**	**970**	4	4	0.6%	0.4%
	Total breaches	**12**	**7**	**1708**	**2534**	**1720**	**2541**	**21**	**18**	**1.2%**	**0.7%**

Appendix 2:

Significant Breaches Reported in 2010-2011 by Code Subscribing Banks

ISSUE	BACKGROUND	OUTCOME
Disclosure of Terms and Conditions.	The interest rate for one product had not been updated in the IT system, resulting in a loss of interest payable to customers.	Interest was credited to customers and the IT systems updated.
	A promotional interest rate was fixed for 12 months but communicated as variable, resulting in customers expecting an interest rate rise.	40,000 customers had additional interest credited to their accounts. System changes were made in respect of the interest rate changes.
	There was a difference between the fees and charges disclosed in Statements of Advice and those actually applied.	The Bank rebated additional fees and charges to affected customers. Additional training was provided to advisers and the Bank introduced further controls.
	Switch fees were not disclosed in particular loan offer documents.	A remediation project was implemented to refund switch fees to the 80,000 impacted customers.
Privacy and Confidentiality	An unsecured server allowed customer details to be available on line for a short time.	The unsecured server was taken offline and all data transferred to a secure server.
	A group email to potential employees inadvertently contained personal details of all potential employees	All recipients of the email were contacted by telephone and asked to delete the email.
Interest rates, Fees and Charges	Offset accounts were not linked to mortgages resulting in higher interest charges.	Any overpaid interest was refunded and long term technology changes were implemented.
	Discounts associated with mortgages were not correctly applied.	The Bank is currently reconstructing the accounts of affected customers and developing long term solutions.
Debt Collection	Telephone calls were made to customers outside permitted hours and during public holidays.	The Bank upgraded its IT systems to prevent automatic dialling outside the Debt Collection Guidelines.
	Social media was used to trace 80 debtors without disclosing the identity of the Bank.	Access to social media websites was removed.
Statements of Accounts	IT issues resulted in customers' transactions either being processed twice or not at all over a three day period. Inter-Bank transactions were also affected.	Customers' positions were restored and the Bank is reviewing its technology control environment.
General Commitments	Changes to charges were implemented incorrectly on the Bank's systems resulting in some customers experiencing a higher charge than that disclosed.	Incorrectly debited amounts were refunded and systems upgraded to make sure charges were correctly disclosed.
Compliance with Laws/ Dispute Resolution	Due to a large increase in volumes after natural disasters, some hardship requests were processed outside the required 21 day period.	Additional resources were allocated to the Collections area, with an overall increase in personnel of 60%. This breach has been classified with the Bank's approval under the Clause 3 of the Code: 'Compliance with laws'.
Advertising	The advertised interest rate was not applied to 360 customer accounts.	The affected customers received the additional interest and processes were updated.

Contacting the CCMC

Do you want to:

- report a concern that a Bank has breached the Code ?
- make a general enquiry ?
- provide feedback ?
- make a media enquiry ?

If so, please email, write to or call the CCMC using the contact details below.

Do you want to know more about the Code?

If you would like to know more about the Code of Banking Practice, you can refer either to the CCMC's website, or alternatively, you can visit the ABA's webpage.

Code Compliance Monitoring Committee

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