

CODE COMPLIANCE MONITORING COMMITTEE

ANNUAL REPORT

For the Year Ended 31 March 2012



GOVERNANCE

Best Practices
Missions
Governance team
Value
Staff
roles
responsibilities
Ethics
Board
committees

CODE COMPLIANCE MONITORING COMMITTEE ANNUAL REPORT

For the Year Ended 31 March 2012

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CODE OF BANKING PRACTICE

The Code of Banking Practice (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 their guarantor. The Code is published by the Australian Bankers' Association (the ABA). A copy can be downloaded from the ABA's website at this address: <http://www.bankers asn.au/Industry-Standards/ABAs-Code-of-Banking-Practice>.

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. The Code forms an important part of the broader national consumer protection framework and the financial services regulatory system.

LIST OF CODE SUBSCRIBING BANKS

- AMP Limited
- Australia and New Zealand Banking Group Ltd
- Bank of Queensland
- Beirut Hellenic Bank (effective 1 January 2012)
- 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
- Suncorp-Metway
- Westpac (including its subsidiaries St George Bank, Bank of Melbourne and Bank SA)



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.

KEY FUNCTIONS

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

- monitoring banks' compliance with 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 inquiries into banks' compliance with the Code.

VISION

The CCMC's vision is to promote compliance with the Code and thereby contribute to the improvement of standards of practice and service by banks.

PRINCIPLES

To achieve its vision, the CCMC's 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.
5. **Accessibility** to its Code monitoring and investigations services.

The CCMC adopts a collaborative approach to working with all stakeholders to achieve compliant outcomes and continuously improve industry standards.

CHAIRPERSON'S MESSAGE 2011-2012

Brian Given PSM



A new Mandate for the CCMC is now expected to be in place by November 2012, coinciding with the publication of the revised Code of Banking Practice. Together they will reconfirm and reinforce the independence of the CCMC in discharging its compliance monitoring role, as well as giving its governance arrangements greater transparency and clarity.

Developed by the ABA and endorsed by the banks, the new Mandate does not expand the powers of the CCMC in relation to breaches of the Code, but it does give the CCMC more discretion in deciding what matters to pursue or discontinue and greater flexibility in the mechanism for publicly naming a bank for serious or continuing breaches. Significantly, other aspects are potentially more limiting:

- the CCMC compliance, investigating and reporting functions will not extend to the Key Commitments and Compliance with Laws provisions of the revised Code, unless the conduct that may be in breach of those provisions may also be a breach of another provision of the Code;
- a 12 month time limit continues to apply for a party alleging a breach of the Code to bring the allegation to the attention of the CCMC and a 12 month time limit will now also apply for the CCMC to commence an investigation of a matter identified through the CCMC's own monitoring processes (the bank in question can agree to a matter being investigated beyond the relevant time limit).

While the banks and their customers can expect the CCMC to continue to approach its investigative and monitoring role with vigour, independence and transparency, we will also carefully assess the impact of these changes to ensure any perceived problems are brought to notice.

During the year under review the CCMC's administrative ties with the Financial Ombudsman Service (FOS) progressed significantly. I would particularly like to thank Mr Shane Tregillis, the Chief Ombudsman, for his support and to also acknowledge the support of the FOS Board.

The banking sector continues to experience regulatory change however, from a CCMC perspective, it is clear the Code subscribing banks continue to recognise the importance of the self-regulatory scheme to their customer relationships. Nowhere is that more evident than the banks' co-operation with, and support for, their obligation to provide to the CCMC an Annual Compliance Statement (ACS) involving the self-reporting of code breaches and information about their compliance systems. This is a key tool in the CCMC's monitoring of compliance with the Code.

For the 2011-12 reporting year the ACS process painted a mixed picture about compliance levels, with a notable increase in total breaches identified and a reduced number of Significant Breaches reported by the banks. As recorded elsewhere in this Annual Report, the CCMC is continuing to analyse these results and to seek explanations from individual banks where appropriate. In particular we are looking to see that potential problem areas are being identified and addressed.

Having been recently reappointed to the role of Chairperson of the CCMC I am looking forward to continuing to work with my colleagues on the Committee and the Secretariat in effectively monitoring compliance with the Code, thereby contributing to the credibility of the self-regulatory scheme and promoting fair and reasonable conduct by the Code subscribing banks in their dealings with their customers.

In that regard I would like to acknowledge the considerable contributions of Nicola Howell (consumer/small business representative) and Angela Green (industry representative) who were not able to continue to serve on the Committee due to other commitments. I would also like to extend a warm welcome to Sharon Projekt (incoming industry representative) and Gordon Renouf (incoming consumer/small business representative) who both bring to the Committee extensive experience and expertise.

Finally I would like to thank our dedicated and professional Secretariat team under the very capable leadership of Dr June Smith.

A handwritten signature in black ink, appearing to read "B. A. Given".

Brian Given, PSM
Chairperson



FROM THE CHIEF EXECUTIVE OFFICER

I am pleased to report that the CCMC and the Secretariat successfully completed the work program set by the CCMC for the 2011-12 reporting year. In doing so, the CCMC's objectives were to support the principles and obligations of the Code, proactively promote the Code's benefits and to influence positive and effective changes in industry behaviour, thereby contributing to the improvement of standards of banking practice and service.

In undertaking this work program in 2011-12, we chose to adopt a collaborative approach to working with participating banks and consumer advocates, in order to achieve compliance outcomes and improve industry standards. The key achievements of our year are documented in the 'Year at a Glance' page. These achievements include the publication of four CCMC Inquiry Reports into banks' compliance with their account suitability, chargebacks, foreign exchange contracts and direct debits obligations.

The CCMC developed and delivered a revised stakeholder consultation and engagement program in 2011-12 to ensure the transparency of our operations and share our experience on code compliance. These initiatives included the launch of the new CCMC website in November 2011, which we hope has improved the understanding of the CCMC's role amongst all stakeholders and within the broader Australian community. The website provides information on our current research projects and other code monitoring news.

We also launched a quarterly information bulletin in November 2011 as part of our ongoing commitment to improve communication and engagement with our stakeholders. The Bulletin can be accessed by current subscribers to the CCMC website. I encourage you to subscribe if you have not already done so.

Other stakeholder engagement initiatives during the year included the convening of a quarterly Bank Stakeholder Liaison Group and the Annual Bank Forum, held in Melbourne. In relation to our engagement with consumer advocates, we developed and delivered a training program for the Financial and Consumer Rights Council (FCRC), the peak body for financial counsellors in Victoria as part of their continuing professional development program for financial counsellors. This workshop module includes information about the CCMC's code compliance activities. A number of training sessions have already been conducted with financial counsellors and we are hopeful that this program can be extended in 2012-2013 to financial counsellors beyond Victorian and other consumer advocates.

Operationally, it was a hectic year with the development of a new internal case management reporting system. This Code specific system (CODEX) will be used to capture data and information from Code subscribers and consumers arising from our code monitoring and investigations activities.

We had some movement in personnel during the year. In October 2011, the CCMC was pleased to announce the appointment of Robert McGregor to the role of CCMC Compliance Manager. Robert has an extensive background in compliance in the UK.

Looking Ahead

We look forward to working with the ABA and Code Subscribers during the transition to our new operating environment once the new CCMC Mandate is published. The 2012-13 year will also see the CCMC transition to a financial and reporting year ending 30 June. This year the CCMC will operate in a transitional phase from 1 April 2012 to 30 June 2013 and annually thereafter.

The code compliance monitoring program in 2012-13 will include two self initiated inquiries. The first into how well the banks comply with their obligations in relation to Guarantees under clause 28 of the Code and the second in relation to their obligations under clause 25.2 of the Code to try to assist customers to overcome financial difficulties associated with the repayment of credit facilities.

Thank You

I would like to acknowledge and thank Brian Given and Committee members, past and present, for their guidance and support over the past year. In addition, I want to recognise and thank the small but dedicated Secretariat whose work ethic and commitment make a real difference in improving the standards of practice and service in the banking industry.

The next year promises to be an exciting and challenging phase of renewal and reform. I look forward to working with the CCMC and the Secretariat team to achieve the objectives set in the year ahead.

Dr June Smith

Chief Executive Officer

Code Compliance Monitoring Committee



COMMITTEE MEMBERS

Chairperson

Brian Given (PSM)

Current term:

August 2009 - August 2015

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 roles as a trustee on the Board of the national Travel Compensation Fund, a trustee of the Financial Counselling 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

Resigned June 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. Nicola has previously held executive positions with the Consumers Federation of Australia and is involved with the Credit, Commercial and Consumer Law research program at QUT. Her work includes consumer, credit and bankruptcy law and policy.

Industry Representative

Angela Green

Resigned June 2012

Angela Green was the Executive Director Policy Planning and External Relations with the University of New England, prior to her departure in June 2012 to return to 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.

New Committee Members

Consumer and Small Business Representative

Gordon Renouf was appointed for a 2 year term from July 2012 - July 2014.

Gordon is a lawyer and consumer advocate and works as a consultant specialising in consumer policy, legal services, stakeholder engagement and campaign communications.

Industry Representative

Sharon Projekt was appointed for a 3 year term from August 2012 - August 2015.

Sharon is a lawyer with an extensive background across the Australian retail banking sector in the area of legal advice, compliance and both internal and external dispute resolution.

Committee Meetings

Committee Meetings are scheduled each month to consider the work of the Secretariat, to make formal decisions relating to alleged breaches of the Code and to plan and direct future activities. In 2011-12, the Committee comprising Brian Given, Angela Green and Nicola Howell met on 10 occasions (four in person and six by teleconference).

THE CCMC Relationship with the Financial Ombudsman Service (FOS)

The Secretariat receives operational and administrative support from FOS pursuant to a service agreement between the CCMC, ABA and FOS. This agreement includes access to accommodation and common office resources.

Following the introduction of the revised Code, the CCMC will be specifically authorised to enter into agreements with bodies such as FOS to facilitate the exchange of information concerning Code obligations and compliance. It is envisaged that a Memorandum of Understanding will then be established between the CCMC and the FOS to formalise an ongoing exchange of referrals and statistical data. Throughout this process, the CCMC will continue to ensure that it retains its independence in its governance arrangements, processes and decision making.

SECRETARIAT

Chief Executive Officer

Dr June Smith

July 2011 - current

Dr June Smith has 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 also the General Manager of Code Compliance and Monitoring at FOS, which includes responsibility for the management and administration of the codes of practice for the Mutual Banking, General Insurance and Insurance Broking sectors. Her external appointments include the following roles: Chair of the Disciplinary Appeals Tribunal of the Financial Planning Association of Australia Ltd, Deputy Chair of its Conduct Review Commission, Member of Racing Victoria's Racing Appeals and Disciplinary Board, Member of the Lexis Nexis Financial Services Editorial Committee and Member of the Victorian Department of Health's Human Research Ethics Committee. June has also recently accepted an appointment as a Victoria University Ambassador.

CCMC staff

Robert McGregor **Compliance Manager**

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 to enhance its compliance program as well as delivery of individual projects.

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, conducting CCMC initiated Inquiries, delivery of Code training and delivering the Secretariat's overall investigation framework.

Iris Goh **Compliance Analyst**

Iris' background is in finance and risk management. Her role at the CCMC during the reporting year included responsibility for the delivery of the Annual Compliance Statement field visits, conducting empirical reviews as well as data and trend analysis. In addition, she played a key role in the delivery of the Secretariat's functions. Iris left the Secretariat in May 2012 to take up an external role.

Justine Percy **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.

CCMC OPERATIONS

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

Monitoring

banks' compliance under the code and any aspects of the Code referred to it by the ABA

Investigating

and determining an allegation from any person that a bank has breached its code obligations

Engaging

with stakeholders to ensure transparency of CCMC operations and to share code compliance experience



2011-12 YEAR AT A GLANCE

The 2011-12 reporting period has been an important year for the CCMC and its Secretariat, marked by key achievements in its three operational areas of Monitoring, Investigating and Engaging.

Compliance Monitoring

The self-reporting of code breaches by the banks and the provision of information about code compliance systems are key tools in the CCMC's ability to monitor compliance with the Code. It also assists banks to understand emerging areas of code compliance risk. The CCMC has worked with the banks in 2011-12 to encourage a positive culture of reporting and this was evident in this year's statistics. The key findings from this year's ACS were:

- A 128% increase in the total number of code breaches reported by the banks (5,794 breaches compared to 2,541 last year).
- One bank accounted for 43% of all breaches reported. These breaches were primarily associated with Debt Collection and Financial Difficulty obligations and were identified following a significant internal review of both areas.
- Excluding the data from this bank, reported breaches increased overall by 33% (at least in part attributable to better recording of code breach activity within banks).
- There was a reduction in the number of significant breaches recorded (10 compared to 17 last year).
- The largest number of breaches were recorded against the Key Commitments and General Obligations provisions, including fair and reasonable conduct and compliance with laws. In all, 2,009 breaches were recorded in these categories, representing a 395% increase from 2010-11.
- It is important to note that as a result of proposed changes to the Code, breaches of these provisions may only be recorded in future if the conduct also breaches another provision of the Code.
- Banks reported significantly increased breach numbers in the areas of Privacy and Confidentiality (1,489 compared to 875 last year), Debt Collection (1,395 compared to 776 last year) and Financial Difficulty (191 compared to 36 last year).
- Several categories reflected a decrease in the number of reported breaches including Dispute Resolution (67 compared to 40 last year), Direct Debits (13 compared to 16 last year), and Statements of Account (11 compared to 22 last year).

Own Motion Inquiries

Throughout the 2011-12 reporting period the CCMC also conducted four Inquiries to monitor banks' compliance with specific clauses of the Code:

- **Chargebacks (Clause 20)**

The results revealed that chargeback processes were adequate to ensure compliance with code obligations. Some bank staff, however, provided shadow shoppers with inaccurate or incorrect information about chargeback obligations.

- **Account Suitability (Clause 14)**

The CCMC concluded that banks have strong policies and procedures in place to assist customers who require basic no frills bank accounts. Sampled bank staff also exhibited a good knowledge of these products and their features.

- **Foreign Currency Loans (Clause 21)**

The CCMC identified that the six banks that provide these services were generally meeting their obligations to communicate the risk of exchange rate movements and the availability of risk mitigation strategies to customers. The CCMC believes that this information should be provided to customers before they receive the Letter of Offer.

- **Direct Debits (Clause 19)**

Banks continue to give inaccurate information to customers about their obligations to cancel direct debits upon request. Only 33% of sample calls in a CCMC mystery shopping exercise were judged to be fully compliant.

Investigating

The CCMC registered 25 new cases for investigation and closed 34 cases. Of these 34 cases, five matters were considered to be outside the CCMC's jurisdiction. Collectively the new cases alleged 67 code breaches.

In 2011-12, the CCMC made three Determinations and issued five Recommendations which collectively identified 28 code breaches by the banks. Over 60% of these breaches related to dispute resolution obligations.

Engaging

The CCMC developed a revised stakeholder engagement program in 2011-12 to ensure transparency in its operations, share its experience of code compliance and improve compliance outcomes. This revised program included:

- an annual Bank Forum,
- the re-introduction of a quarterly information Bulletin for stakeholders,
- the establishment of a Quarterly Stakeholder Liaison Group meeting with the banks,
- the development and delivery of a training module for financial counsellors on code compliance, and
- a new CCMC website and complaints handling portal.

New Code Subscriber

The CCMC was pleased to welcome Beirut Hellenic Bank as a new Code subscriber on 1 January 2012.



COMPLIANCE MONITORING - ANNUAL COMPLIANCE STATEMENT (ACS)

Clause 34 (d) of the Code requires the banks to lodge an Annual Compliance Statement with the CCMC about their compliance with the Code.

Since 2008 this statement has been generated as the first stage of the CCMC's ACS program. In 2011-12 the annual statement took the form of a questionnaire, which was developed by the CCMC in consultation with key stakeholders and distributed in June 2012. This questionnaire covered the period 1 April 2011 to 31 March 2012.

The second stage of the ACS program comprises an onsite visit to each bank to:

- discuss their individual code compliance results arising from their statement response,
- verify information provided within their statement, and
- share the CCMC's findings on overall industry compliance rates.

The CCMC conducted these onsite visits with each bank between 17 August 2012 and 28 August 2012.

One of the key objectives of the ACS program is to assist the CCMC to assess and verify that individual banks have systems and procedures in place to meet and monitor compliance with their code obligations. In conducting this program, the CCMC also aims to gain a holistic overview of industry performance against code obligations and the effectiveness of code compliance frameworks. The self-reporting of code breaches and information about bank compliance systems is a key tool in monitoring compliance with the Code and assists the CCMC to identify areas where future code monitoring activity may be beneficial or where industry improvements have occurred or may be required.

In its assessment of the annual statements, the CCMC also considers:

- the effectiveness of code monitoring frameworks across the industry,
- the identification and management of code breaches by the banks,
- the banks' rectification of code breaches and assessment of the consumer impact arising, and
- the management of any significant and systemic issues relating to the Code.

For banks, the ACS program provides the opportunity to self report areas of non compliance with code obligations, share information with the CCMC about areas of good industry practice and highlight areas that banks have identified for priority attention or follow up.

Outcomes of the 2011-12 ACS Program

It is pleasing to report that the banks worked co-operatively with the CCMC to introduce a number of agreed changes to the 2011-12 ACS questionnaire. These changes meant the CCMC could undertake a more targeted approach to reviewing specific aspects of the code monitoring and compliance activities of banks.

Code obligations associated with Credit Assessment, Debt Collection and Financial Difficulty were identified for particular attention in the ACS program for 2011-12 on the basis of breach allegations from the CCMC in previous years, data reported by external dispute resolution schemes, information concerning the continuing challenges in the economy and the resulting increase in consumers potentially facing financial difficulty.

The ACS program also sought specific information about the actions that banks had taken to implement recommendations made by the CCMC following its 2011-2012 Inquiries into Chargebacks, Direct Debits, Account Suitability and Foreign Currency Loans.

The 2011-12 ACS results painted a mixed picture about compliance levels across the Industry. The banks reported a significant increase in total breaches identified but a reduced number of significant breaches reported.

The key outcomes of the 2011-12 ACS program are described below in more detail.

Breach Management

The ability to identify, report and rectify code breaches is an important part of any code compliance framework. The CCMC has regard to the Australian Standard™ AS-3806 – 2006 Compliance Programs (the Standard) when considering how banks should effectively manage their code compliance obligations, including the maintenance of effective internal breach reporting arrangements. The criteria outlined in 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.

Banks require effective internal feedback systems to implement ongoing improvements to their business practices. Such systems include quality assurance and

COMPLIANCE MONITORING - ANNUAL COMPLIANCE STATEMENT (ACS)

continued

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.

Charts 1 and 2 below illustrate the total number of breaches reported by banks during the 2011-12 ACS program and the breakdown of those breaches across broad categories, compared with the 2010-11 results. The categories in which the greatest number of code breaches were reported remain unchanged from 2010-11, namely Key Commitments, Privacy and Debt Collection.

In 2011-12, the total number of breaches self reported by banks as part of the ACS program increased by 128% (from 2,541 in 2010-11 to 5,794 breaches in 2011-12). Whilst, the CCMC does not believe that the increase in numbers of breaches reported is necessarily associated with an increase in non compliant activity, the figure is significant and warrants further comment.

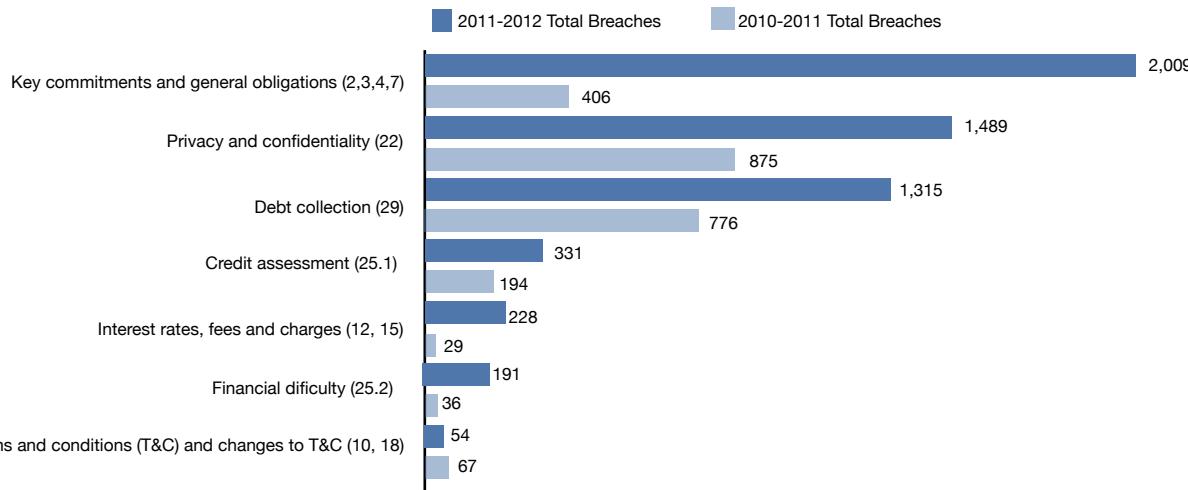
One bank accounted for 42.6% of all breaches reported, or 33% of this increase. This bank has advised that its increased breach reporting activity in 2011-12 was the direct outcome of a significant emphasis on internal quality assurance processes in the reporting year, particularly in its debt collection areas, together with an improved ability to identify and report on potential breaches of the Code from its root cause analysis of consumer complaints. The CCMC accepts that these initiatives would have played a role in increased breach reporting activity within the bank, but will continue to work with this bank in relation to the effectiveness of its code monitoring framework over the next reporting year.

Other banks have indicated to the CCMC that they also undertook higher levels of quality assurance associated with code compliance in the reporting year. Banks have also been training staff to identify and report code breaches within individual business units. These initiatives are very encouraging and, together with the CCMC's efforts to engender a positive culture of breach reporting, seem to have contributed to the increased number of code breaches reported in 2011-12.

Whilst these bank initiatives are important the CCMC believes there may be a disconnect between the number of breaches reported and the number of complaints received by the banks in any reporting year. For example, whilst 5794 breaches of the Code were reported in 2011-12, the total number of consumer complaints recorded by banks across all business units increased by 10.7% to 620,741. At first glance, this suggests that on average, one code breach is reported for every 107 consumer complaints made to the banks.

The CCMC acknowledges that consumer complaints arise in a range of situations, not all of which are associated with code obligations or wrongdoing by the banks and not all of which are resolved in favour of the consumer. Further, where non compliance with the Code is identified, banks are able to report one code breach resulting from one event, even if that event impacted a number of consumers.

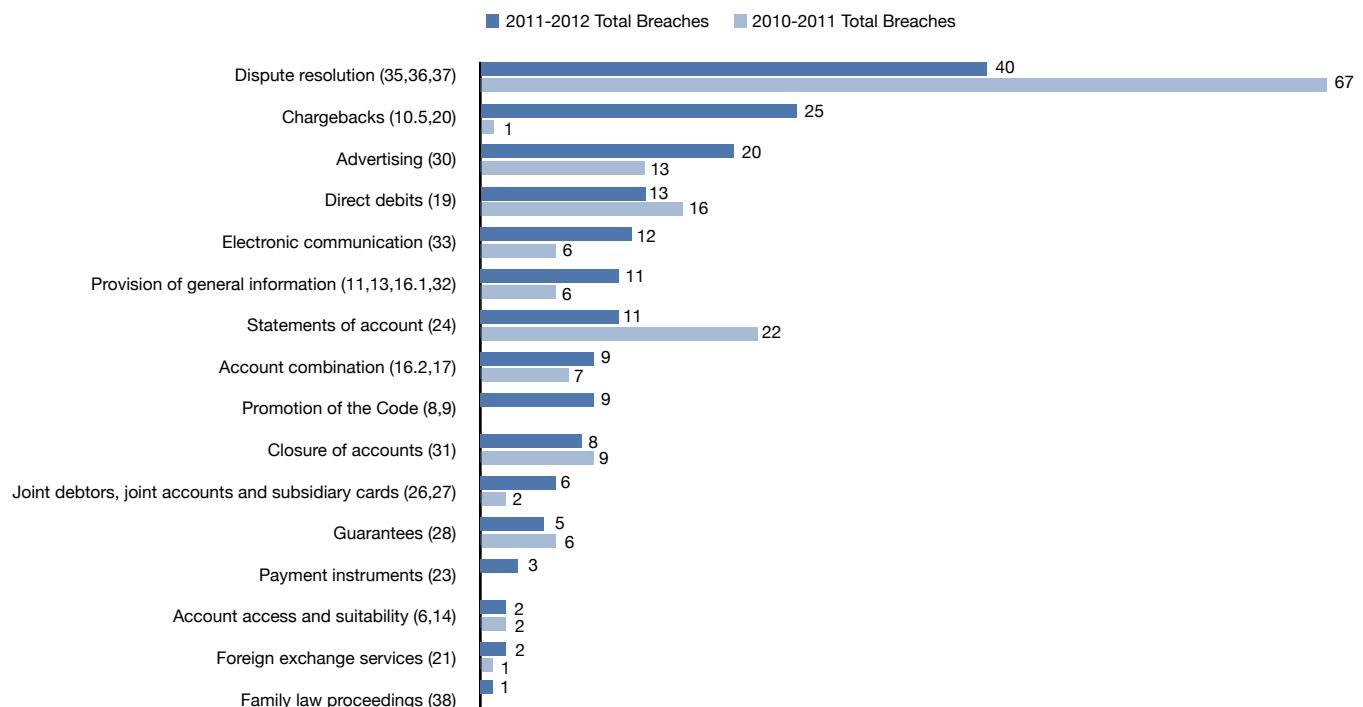
Chart 1 Breaches reported to the CCMC in 2011-12 – Main Categories



COMPLIANCE MONITORING - ANNUAL COMPLIANCE STATEMENT (ACS)

continued

Chart 2 Breaches reported to the CCMC in 2011-12 - All Other Categories



Nevertheless, the ratio of code breaches identified to consumer complaint numbers seems very low. This is supported by the fact that the majority of code breaches reported by the banks during the ACS process are identified through internal quality assurance and audit programs and not from root cause analysis of disputes lodged. This suggests that the banks have further work to do to identify and resolve code breaches that arise in consumer complaints.

This year's ACS program has also highlighted that there may be inconsistent approaches to how each bank defines and records breaches of the Code. The CCMC will work with banks over the next reporting period to ensure a more consistent approach to code breach reporting in future.

Key Commitments and General Obligations

This category of reported breaches relates to Part B of the Code and is the most prevalent group of code breaches reported by banks. The category relates to the obligations within Clause 2 (Key Commitments), Clause 3 (Compliance with Laws), Clause 4 (Retention of Rights) and Clause 7 (Staff Training and Competency).

The number of breaches reported by banks against these provisions has increased by 395%, from 406 breaches in 2010-11 to 2,009 breaches in 2011-12. The banks have informed the CCMC that the majority of these breaches were caused by human error and were recorded against Clause 2.2 which requires a bank to act fairly and reasonably towards customers.

In its 2010-11 Annual Report the CCMC commented that some code breaches recorded against this category may be additionally and/or more appropriately recorded against other clauses of the Code. This comment remains relevant in this reporting period. It is the CCMC's experience that breaches associated with human error are also commonly associated with a breach of an internal policy or procedure or a systems failure. The CCMC will be engaging with banks over the next reporting year to ensure that the root cause of non compliance with code obligations is adequately identified. This will be particularly important in transition to the revised Code where the CCMC's compliance, investigating and reporting functions will no longer extend to these obligations, unless the conduct also breaches another provision of the Code.

COMPLIANCE MONITORING - ANNUAL COMPLIANCE STATEMENT (ACS)

continued

Privacy and Confidentiality

Clause 22 of the Code acknowledges that, in addition to requirements under the Privacy Act 1998, banks have a general duty of confidentiality towards customers.

The number of breaches recorded against this clause has increased by 70% in this reporting year, from 875 last year to 1,489. The principal causes of these breaches include human error and systems and procedures failures associated with matters such as:

- the inclusion of incorrect tax file numbers in correspondence,
- incorrect customer details held for customers' accounts,
- correspondence being sent to incorrect addresses, and
- unauthorised disclosure of personal information.

The banks have reported that the code breaches in this area were primarily identified through internal quality assurance programs.

Debt Collection

The significant increase in the numbers of code breaches reported concerning debt collection (from 776 in 2010–11 to 1,315 in 2011–12) has been affected by the reporting of one bank, which has recorded 1128 breaches. The CCMC has been informed by the bank that its breach numbers are associated with rigorous monitoring of the bank's adherence to revised internal policies and procedures in respect of debt collection during the reporting period.

Under Clause 29 of the Code, banks are required to comply with the Debt Collection Guidelines issued jointly by ASIC and ACCC. These guidelines set the parameters, amongst other things, in respect of the frequency of calls that can be made by banks to customers when collecting debt and the times during which these calls can be made by debt collection staff.

In its breach reporting to the CCMC, the bank cited a number of areas of non compliance with the debt collection obligations which are of concern. These areas included breaches associated with the incorrect application of the bank's automatic telephone dialler programming, resulting in calls being made to some customers on state public holidays. The CCMC notes that the ASIC/ACCC Debt Collection Guidelines only recommend no contact on national public holiday. However, the CCMC would expect banks to consider the impact on consumers of debt collection on any public holiday related to their operations. The CCMC is currently liaising with this bank on these matters. The CCMC also notes that this bank has introduced enhanced systems to address these problems.

Total Debt Collection breaches reported by the other banks

show a slight decrease. These figures suggest that these banks may have improved their compliance with Clause 29 during the reporting period. Compliance with the Code's Debt Collection obligations has been an ongoing area of concern for the CCMC. Responses to the 2011–12 ACS suggest that generally banks have applied a greater focus and more resources in this area and introduced a number of initiatives to improve compliance with Debt Collection obligations. These include:

- regular refresher training by collections staff on both ASIC/ACCC Debt Collection Guidelines and bank internal policies and procedures,
- establishing revised quality assurance processes to identify breaches of the guidelines, and
- retraining/coaching procedures used to rectify weaknesses in staff knowledge.

Continuing difficult economic conditions may result in more credit accounts being referred to Collections functions within banks. It is important, therefore, that banks continue to develop robust processes to ensure that they remain compliant with code obligations.

Financial Difficulty

Clause 25 of the Code relates to the provision of credit. Clause 25.2 requires banks to try to help customers, with their agreement, to overcome financial difficulties they may have with any credit facility they hold with a bank. 'Financial Difficulty' and 'Financial Hardship' are two terms that are often used interchangeably, but can be given different meanings within different banks.

Overall, the banks reported 206,472 formal requests made for financial difficulty assistance during the reporting period of which 149,484 (69%) resulted in some type of formal assistance being granted. The CCMC has identified that some banks record only hardship applications seeking a variation to the credit contract (as defined under the National Consumer Credit Protection Act (2009) - the NCCP Act). Other banks additionally record requests for a short term suspension of payments as a request for assistance, even if the customer is not in arrears.

The CCMC notes that breaches of the Financial Difficulty obligations have increased substantially since 2010–11 from 36 to 191 in 2011–12. Discussions with the banks suggest that one of the primary causes of non compliance is the failure to meet the National Credit Code's 21 day time limit to respond to requests for financial difficulty assistance. The banks have advised that this is in part due to what they describe as a significant increase in the volume of requests for assistance and the changing nature of the banks' responses to such requests, which are no longer always to

COMPLIANCE MONITORING - ANNUAL COMPLIANCE STATEMENT (ACS)

continued

simply extend the period of a loan or delay repayments for a short period of time.

The CCMC believes that this is a complex area of banking and accordingly it announced its intention in its 2012-13 Annual Work Plan, to conduct an Inquiry in 2013 into how well banks are complying with their Clause 25.2 obligations.

Credit Assessment

The requirement under Clause 25.1 of the Code to apply the care and skill of a diligent and prudent banker is consistent with the requirements of the NCCP Act. The CCMC has identified that changes to the NCCP Act resulted in greater levels of quality assurance and oversight by banks in this area during the reporting period.

Chart 1 identifies 331 breaches of Clause 25.1 were reported by banks in the reporting year. There were 291 breaches reported by one bank which primarily accounted for the 70.5% increase in reported breaches this year.

The bank has advised that the breaches were identified by its quality assurance and oversight functions within its business units and related to non compliance with the reasonable enquiries provisions under the bank's responsible lending and income verification process.

The bank undertook a remedial program which included additional staff training and coaching. Other incidences of non compliance included random staff errors and the failure to follow internal policies and procedures associated with fee charging, product features and credit assessment.

In the 2011-12 ACS, the CCMC also asked a number of questions regarding the banks' approaches to complying with their code obligations to lend responsibly. The questions did not seek to obtain information of a commercial nature regarding the risk appetite of banks, but concerned:

- the steps taken by banks to assess an applicant's ability to repay a credit facility before that facility is offered,
- whether these steps differ for increases to credit facilities or applications made via the internet,
- whether these steps differ for small business lending, and
- the monitoring procedures the banks have in place to assess their compliance with their Clause 25.1 code obligations.

The ACS responses demonstrated that the banks share a consistent approach to monitoring compliance with their obligations under Clause 25.1 of the Code. Banks report that quality assurance of credit assessments is undertaken

by business units at first instance. The majority of banks also report that there is regular scrutiny by compliance functions of credit assessments, to ensure that decision making is in line with the credit policy and compliance obligations. The CCMC notes that compliance with an internal credit policy does not, however, necessarily mean that individual staff are correctly applying their obligations in all circumstances.

Reductions in Reported Breaches

While the number of reported breaches overall has increased, as outlined in Chart 2 above, there are several categories of Code obligation where reported breaches have decreased. These include Dispute Resolution (down from 67 to 40), Direct Debits (down from 16 to 13) and Statements of Accounts (down from 22 to 11).

Significant Breaches Reported.

As illustrated in Chart 3 below, there was a notable decrease in the number of significant code breaches reported by the banks to the CCMC In 2011-12 (from 17 in 2010-11 to 10 in 2011-12). Whether or not a matter was reported to the CCMC as a significant breach was determined by the individual bank.

Generally speaking, the CCMC expects banks to consider the factors identified in section 912D of the Corporations Act (2001) when determining whether a significant breach of the Code has occurred. These factors, which are also used by the CCMC, include:

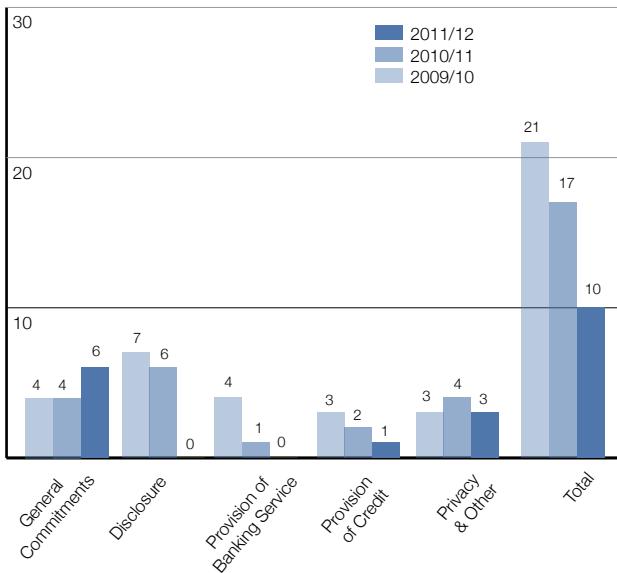
- the number or frequency of similar previous events that have occurred,
- the impact of the breach on the ability to supply the service,
- whether the event indicates that code compliance arrangements may be inadequate,
- the number of consumers affected by the breach, and
- the actual or potential loss experienced by consumers arising from the breach.

The 2011-12 ACS specifically requested banks to report on the criteria they use to determine whether a significant Code breach has occurred and should be reported. The CCMC has concluded from this process that banks appear to use the set of criteria outlined above. The CCMC will remain vigilant however about how the banks apply these criteria to breach reporting activity.

COMPLIANCE MONITORING - ANNUAL COMPLIANCE STATEMENT (ACS)

continued

Chart 3 Significant Breaches reported to the CCMC in 2011-12



The six significant breaches recorded in this reporting period under the 'General Commitments' category included:

- four breaches of Clause 3 (Compliance with Laws), and
- two breaches of Clause 2 (Key Commitments).

Of the three significant breaches recorded under the "Other" category:

- two were in respect of Privacy (Clause 22), and
- one was in respect of Advertising (Clause 30).

The significant breach recorded under Provision of Credit was in respect of Guarantees (Clause 28).

Full details of the significant breaches reported by banks, and remedial action taken, are outlined in Appendix 2.

In the 2011-12 reporting year, four significant breaches related to technology, including both Privacy breaches. The Privacy breaches were recorded by the same bank, with the second breach resulting from an attempt to rectify the first. The initial breach allowed account information to be accessed via the browser history of a computer, even after a person had logged out of internet banking. Attempts to correct this matter resulted in another error whereby account information could be shared between customers, if two customers simultaneously made online requests for statements. Both breaches were identified quickly and no customer complaints were recorded by the bank as a result of these matters.

The other two significant breaches associated with technology were recorded by two separate banks under the Key Commitments category (Clauses 2 and 3). These issues resulted from major outages in core banking systems. One breach resulted in customers not having access to funds for an extended period of time. Approximately \$1.2 million in interest and fee remediation was paid to approximately 70,000 affected customers as a result. A fully tested solution was implemented to address the underlying systems capacity issues.

The other significant breach arose when customers were incorrectly charged overdrawn fees during an unplanned outage period following a major systems upgrade. Fee refunds were provided to approximately 120,000 customers impacted through reversal of the incorrect transactions.

The number of significant code breaches related to technology demonstrates that issues in this area can affect large numbers of people and result in significant resources being devoted to remediate the issues.

Two banks recorded significant code breaches associated with advertising and promotional material in 2011-12. One significant breach was reported under Clause 30 of the Code and related to a potentially misleading advertisement for certain deposit accounts which inadequately disclosed the deposit balances needed to qualify for higher interest rates. The advertisement was withdrawn by the bank and reissued with correct information.

The other significant code breach was recorded under Clause 3. It concerned misleading communications sent to internet banking customers seeking their consent to receive credit card increase invitations, contrary to amendments in the NCCP Act. Corrected communications were issued to affected customers as part of an enforceable undertaking to ASIC.

The significant code breach recorded under 'Provision of Credit' related to the failure of one bank to provide guarantor packs to company directors when guaranteeing commercial loans. On identifying the breach, the bank provided the required packs to those customers affected and altered procedures to prevent a re-occurrence.

COMPLIANCE MONITORING - ANNUAL COMPLIANCE STATEMENT (ACS)

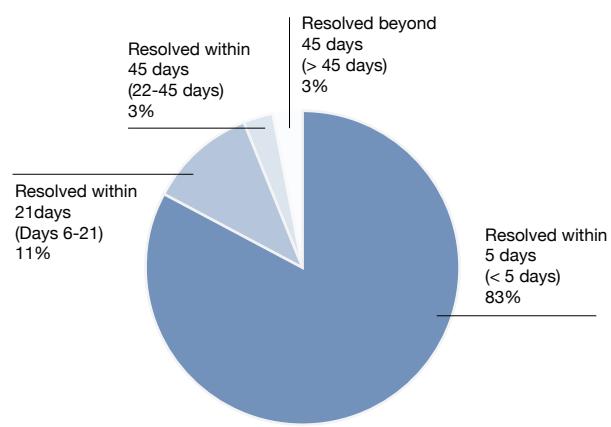
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Customer Complaints Data

The CCMC requests statistical information from banks about customer complaints and complaint resolution times in each reporting year. This allows the CCMC to assess compliance with obligations to have appropriate internal dispute resolution processes in accordance with Clause 35 of the Code.

The total number of customer complaints received by banks and reported to the CCMC in 2011-12, increased by 10.7% to 620,741. While the number of complaints reported increased overall, some individual banks reported a decrease in complaints received. There was also a slight increase in complaint resolution times. As indicated in Chart 4 below, the proportion of complaints resolved in less than five days decreased slightly from 84.1% to 83% and the proportion of complaints taking over 45 days to resolve increased from 2.1% to 3.4%.

**Chart 4 Complaints Handling Statistics
– All Banks 2011-12**



Code Compliance Risk Frameworks

The CCMC recognises that banks have devoted significant resources during the reporting period to the enhancement of internal quality assurance and risk reporting frameworks associated with their numerous legal and codified obligations. The increase in reported non compliance with code obligations in this reporting period is indicative in part of the enhanced frameworks.

The CCMC will however look to the banks to demonstrate in the next reporting period that they are effectively identifying the root causes of non compliance with the Code's obligations and are taking the necessary action to prevent recurrences.

Code Obligations - Internet and Mobile Banking Services

The way in which customers interface with banks has evolved in recent years with the introduction of internet and mobile banking services, amongst other initiatives. The banks have also informed the CCMC that customers are increasingly utilising internet and mobile payment services from other non traditional providers.

The provisions of the Code apply irrespective of the interface between the bank and the customer. Whilst the Code is designed to be technology neutral, the CCMC considers that its application to new banking services, however, will remain a challenge for banks in the coming year and beyond.

The CCMC is pleased to note that banks reported strong controls in place to prevent either a breach of the Code or non adherence to their own standards, in respect of social media such as Facebook and Twitter. The CCMC seeks to work with banks in the next reporting period to ensure a shared understanding of how code obligations apply in an extended electronic environment.

Looking Ahead - ACS 2012-13

The 2012-13 reporting period is likely to be one of change and reform for both the CCMC and for banks. The move to a 30 June reporting period and the introduction of a new CCMC Mandate and revised Code will all provide challenges in how information regarding code compliance is recorded and submitted. As a result, the CCMC will consult with the banks in the development of the 2012-13 ACS program.



OWN MOTION INQUIRIES

Clause 34 (e) of the Code empowers the CCMC to conduct Own Motion Inquiries into banks' compliance with the Code.

The CCMC publishes aggregated outcomes of these Inquiries on a de-identified basis and engages in discussions with individual banks about their own results and those of the industry more generally. Issues identified are also communicated to relevant stakeholders. The CCMC may undertake follow up activity to ensure remedial actions taken by banks to remedy non compliance with Code obligations are effective.

The CCMC completed or commenced a number of Inquiries in 2011-12 as follows.

Chargebacks (Clause 20)

A chargeback is a term associated with the refunding of a disputed or unauthorised credit card transaction. The process is governed by credit card scheme rules, which apply to the interaction between customers, merchants, banks and credit card providers.

The CCMC completed an Inquiry into the banks' compliance with the Clause 20 chargeback provisions of the Code and reviewed their chargeback processes and controls to ensure compliance with the Code's obligations. The Inquiry was conducted through a questionnaire issued to each bank and a mystery shopping exercise where a number of calls requesting chargeback information were made to each bank.

The questionnaire results revealed that banks' chargeback processes appeared robust. The CCMC also observed that the level of customer complaints made to banks in this area was comparatively low compared to the 800,000 chargeback requests estimated to be received annually by the banks.

The results of the mystery shopping exercise, however, identified instances of inconsistent and inaccurate information being provided by bank staff when dealing with our enquiries. The CCMC recommended that banks:

- update communications to customers to raise awareness of processes and time limits for disputed transactions,
- ensure more user friendly processes including availability of chargeback dispute forms on websites,
- provide ongoing training of contact centre staff in relation to chargeback processes, and
- establish better performance metrics on the numbers of transactions, timeframes, refunds and complaints.

The full report is available on the CCMC website at <http://www.ccmc.org.au/cms/wp-content/uploads/2012/04/Chargebacks-Final-Report-Jan-2012.pdf>

Account Suitability (Clause 14)

The CCMC facilitated research by students from the Faculty of Business and Economics at the University of Melbourne to examine the extent to which banks complied with their obligations under Clause 14 of the Code.

The research demonstrated that banks have strong policies and procedures in place to assist customers requiring basic 'no frills' bank accounts. This conclusion was supported by the results of a mystery shopping exercise undertaken as part of that research. Students visited a series of bank branches in Victoria requesting information about bank accounts that may suit their circumstances. The research found that the sampled bank staff exhibited a good knowledge of these products and their features.

The full report is available on the CCMC website at <http://www.ccmc.org.au/cms/wp-content/uploads/2011/11/Account-Suitability-November-2011.pdf>.

OWN MOTION INQUIRIES

Foreign Currency Loans (Clause 21.2)

A review was undertaken of compliance by banks with Clause 21 of the Code following a referral from FOS. Clause 21.2 of the Code requires banks to inform their customers of the exchange rate risks inherent in foreign currency loans and the availability of risk mitigation mechanisms, before they enter into a Foreign Currency Loan contract.

The review was undertaken through the distribution of a questionnaire. The CCMC found that the six banks providing this type of service were meeting their obligations under Clause 21.2 of the Code to provide:

- a general warning in writing of the risks arising from exchange rate movements, and
- information about possible risk mitigation mechanisms.

The information was provided prior to the granting of a Foreign Currency Loan contract. Two banks, however, appeared to provide the required information only at the time the Letter of Offer was produced.

The CCMC recommended, amongst other things, that banks provide information to consumers about the risks associated with a Foreign Currency Loan and possible risk mitigation strategies, before a Letter of Offer is issued.

In the CCMC's view, this would allow a more appropriate period of time for a customer to consider the information before deciding whether to proceed with the loan. This approach would also assist banks to meet their obligations under Clause 2.1(b)(i) of the Code to promote better informed decisions by consumers considering this type of loan.

The full report is available on the CCMC website at <http://www.ccmc.org.au/cms/wp-content/uploads/2012/07/Foreign-Currency-Inquiry-Report-Final.pdf>.

Guarantees (Clause 28)

In 2011-12 the CCMC performed a preliminary compliance analysis of the obligations in Clause 28 of the Code related to Guarantees. This work included an investigation of the nature, use and prevalence of guarantees, in particular in the small business environment.

In 2012-13 the CCMC will commence a compliance review across banks focusing on policies and procedures for pre-contract and post contract disclosure in relation to guarantees.

Direct Debits (Clause 19)

The ability of customers to cancel direct debits at their bank is a powerful safeguard, especially for those who are in financial difficulty. The failure of banks to accept or act on a direct debit cancellation request may cause customers who are already in financial difficulty to be further affected when exception and penalty fees are imposed on the account.

During 2011-12 the CCMC carried out a follow up to its 2009 Inquiry into banks' compliance with Clause 19 of the Code in relation to Direct Debits.

The results of this follow up Inquiry demonstrated that the levels of compliance had not improved since 2009. Only 33% of calls made to each bank to cancel a direct debit were judged to be fully compliant with code obligations.

Whilst the number of reported breaches in 2011-12 in this area fell from 16 to 13, the CCMC Inquiry results indicate that the level of compliance with Clause 19 needs to improve.

The full report is available on the CCMC website at <http://www.ccmc.org.au/cms/wp-content/uploads/2012/05/Direct-Debits-Inquiry-follow-up-2012.pdf>.



INVESTIGATIONS

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 of a breach,
 - the effect of non compliance on the bank and its customers,
 - the root cause of the breach and whether it may be systemic or significant, and
 - any remedial action proposed or taken by the bank.

Unlike an external dispute resolution scheme or a court, the CCMC cannot provide 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.

The ability to deal with specific allegations allows the CCMC to investigate instances where compliance is alleged to be below the required standard. It also enables the identification of potential issues that may be emerging across the industry and should be included in its monitoring program.

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 within a well understood and structured investigation process.

To this end, the CCMC also engages in a continuous assessment process to improve its complaints handling procedures and streamline its decision making framework.

Case Investigation Process

The case investigation process is outlined in Diagram 2 below.

Case outcomes resulting from this process fall into two categories:

1. Recommendations:

Where possible, the CCMC tries to achieve agreed compliance outcomes through early follow up and communication with the parties. This process acknowledges situations where banks, through their existing risk and compliance management systems, may have already addressed compliance concerns and instituted any required remedial actions. The process often includes an admission of a code breach by the bank.

2. Determinations:

Where a Recommendation is not appropriate, the CCMC undertakes a detailed investigation and may make a formal Determination as to whether there has been a breach of the Code.

In either case, the CCMC will take into account any initiatives and undertakings that a bank may have put in place when considering what remedial actions are required to address the identified breaches.

The CCMC may also initiate wider investigations with a bank or across all banks as a result of concerns identified in individual cases. These investigations may be undertaken as part of the ACS program or as an Own Motion Inquiry. For example, the Own Motion Inquiries relating to Foreign Currency Loans and Guarantees In 2011-12 all originated from matters initially raised with the CCMC as breach allegations.

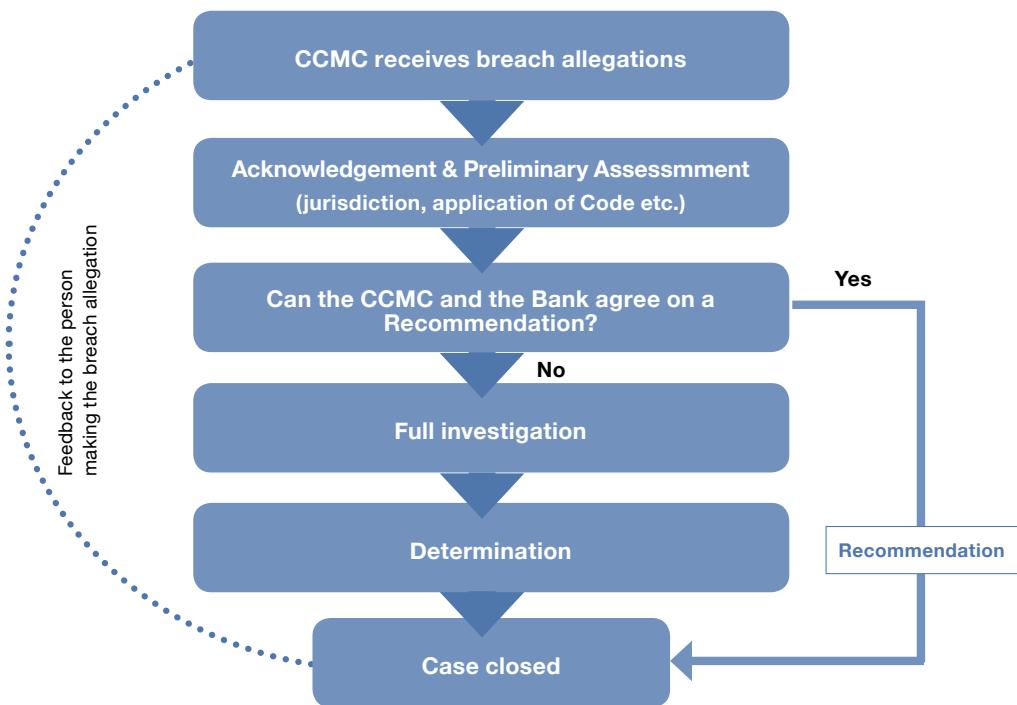
INVESTIGATIONS

continued

Case investigation process

The case investigation process is outlined in the following diagram

Diagram 2 Compliance Investigation Process



Case Work Flow 2011-12

Table 1 provides an overview of the CCMC case work flow in 2010-11 and 2011-12.

Table 1 Overview of Case Numbers

Description	2010-11	2011-12
Number of cases open at beginning of year - 1 April	35	22
Total number of new cases	24	25
Total number of alleged breaches	42	67
Total number of code breaches confirmed	2	28
Total number of cases closed	37	34
Number of cases closed by Determination	5	3
Number of cases closed by Recommendation	1	5
Number of cases open at end of year - 31 March	13 (including 7 on hold*)	22 (including 9 on hold*)

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

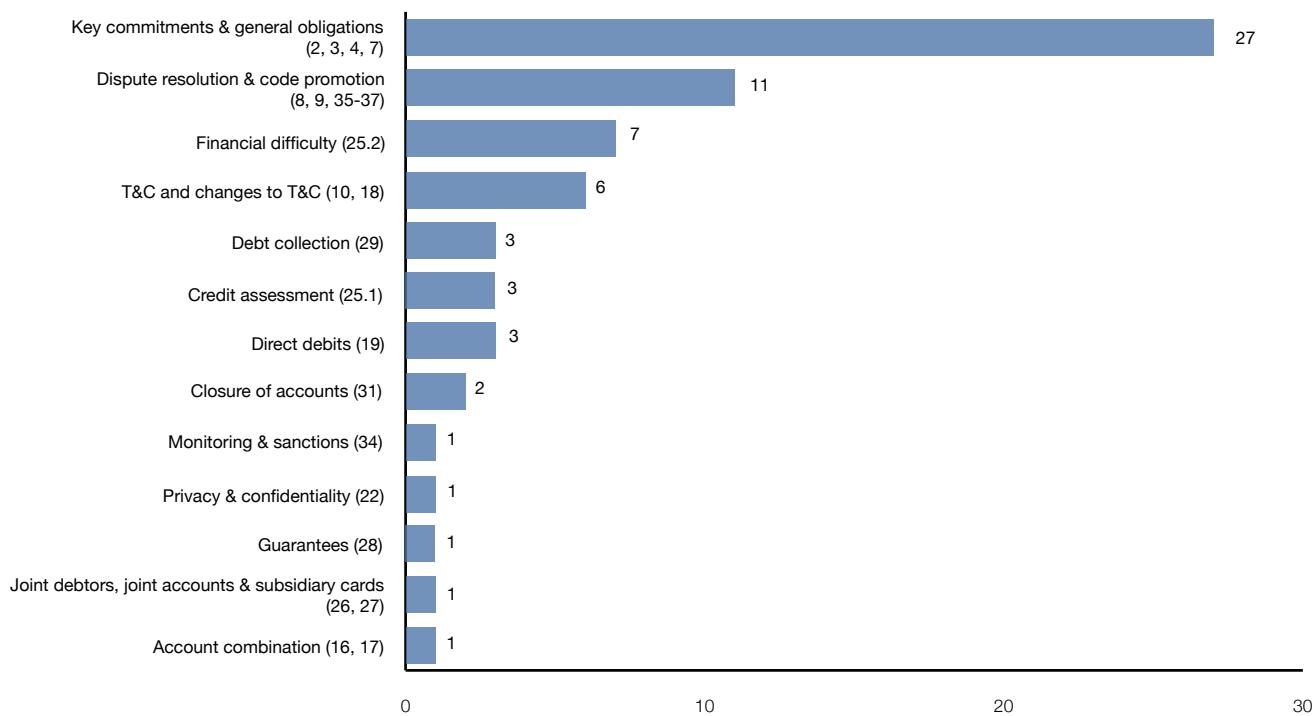
INVESTIGATIONS

continued

Overview of Alleged Code Breaches

Chart 5 below summarises the code breach allegations raised with the CCMC in 2011-12. In the 25 cases registered in 2011-12 there were 67 breaches alleged with the major code breach category of allegations related to Clause 2.2 General Commitments.

Chart 5 Alleged Breaches by Code Category - New Cases received in 2011-12



INVESTIGATIONS

continued

Cases Closed

There were 34 cases closed during 2011-12 of which eight were closed through the Recommendation and Determination process. However, not all matters that are raised with the CCMC result in investigations. In those instances the CCMC is unable to determine whether or not the relevant bank has complied with its obligations under the Code.

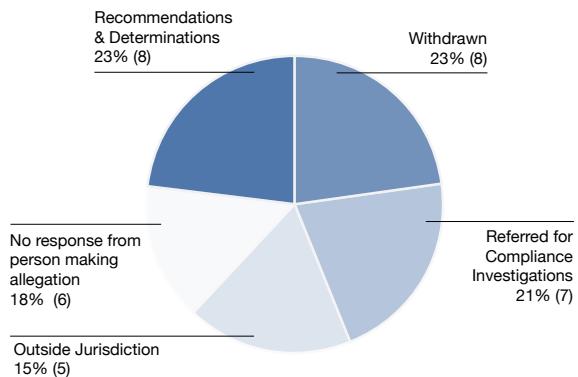
Some of the more common reasons why allegations of a code breach might not be investigated include:

- the concern falls outside the CCMC's jurisdiction (e.g. it was not lodged with the CCMC within 12 months, it does not relate to a code subscribing bank or a banking service, or a court has made orders regarding the issue etc), and
- the person raising the issue does not want to pursue the matter (e.g. because their concerns were addressed in the course of a concurrent FOS dispute investigation) and/or a Privacy Authority is not provided.

In these cases, the CCMC and the bank may be unable to exchange the individual customer information required to investigate the allegation in detail. In such matters the CCMC reviews the allegation to consider whether the issue raises broader compliance concerns that should be the subject of a separate, general compliance inquiry.

Chart 6 below illustrates the outcomes of the 34 cases closed in the 2011-12 reporting year.

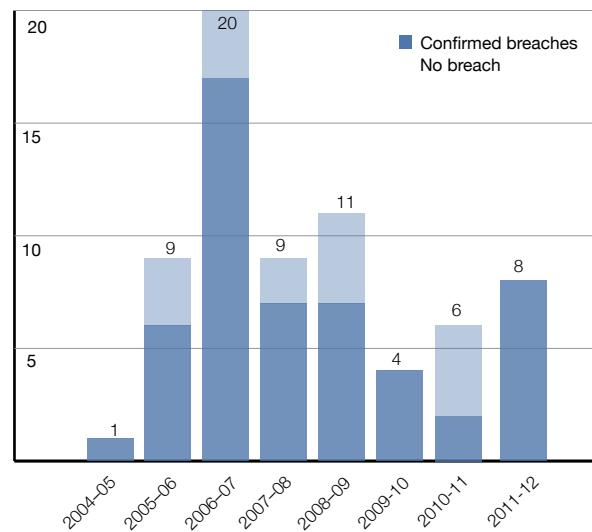
Chart 6: Cases Closed 2011-12



Breach Outcomes

As identified in Chart 7 below the CCMC found that breaches of the Code had occurred in all eight matters that went to decision in 2011-12.

Chart 7 CCMC Decision Outcomes 2011-12

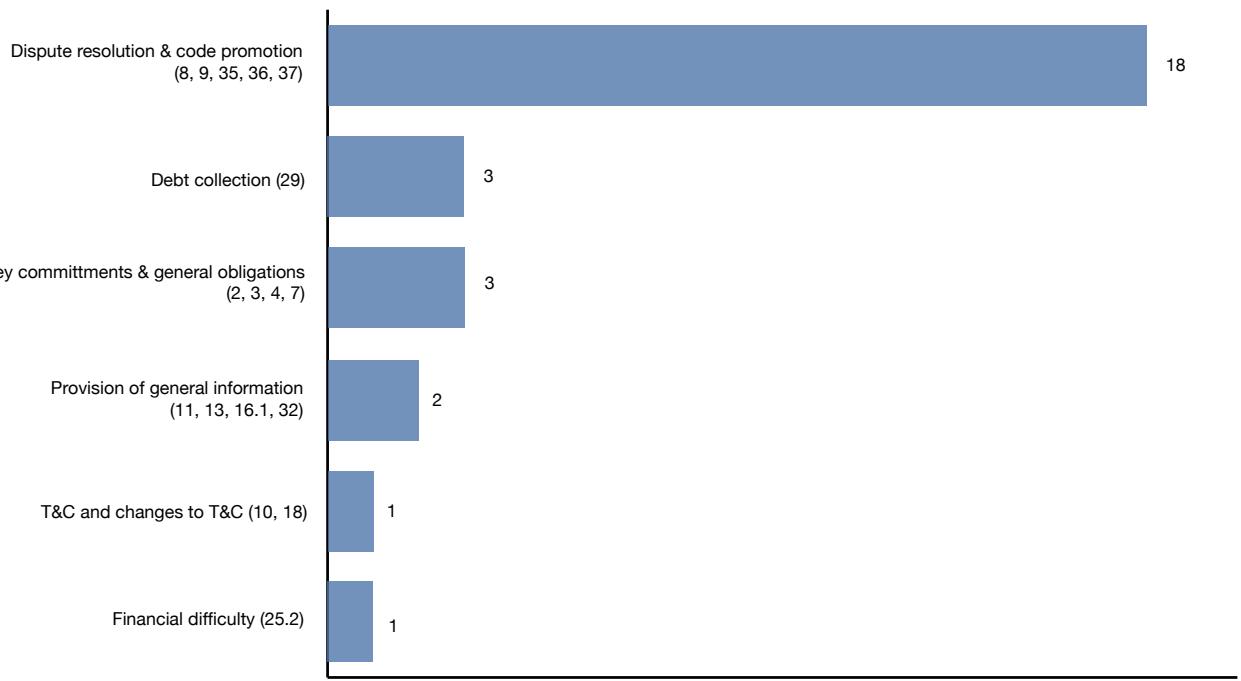


INVESTIGATIONS

continued

Chart 8 below provides details of the 28 breaches identified in these eight decisions. The largest proportion of code breaches concerned Internal Dispute Resolution (Clause 35) and predominately involved the failure by banks to meet the required minimum timeframes for resolving complaints. This report contains two case studies that provide examples of CCMC determinations in 2011-12.

Chart 8 CCMC Decisions: Breach Findings by Code Category 2011-12



INVESTIGATIONS

continued

CCMC Investigations - Case Studies

The following two case studies are examples of the types of breach allegations investigated by the CCMC during the 2011-12 reporting year. They raise a number of code obligations including Clause 2 'Key Commitments', Clause 35 'Internal Dispute Resolution' and Clause 11 'Provision of Documents'.

CASE STUDY 1

A customer needed copies of various statements from her bank in order to review her business records. She arranged for her father to assist her and prepared a document for the bank appointing him as her representative. The customer's father went to the branch where the manager provided most of the documents requested. However a number of issues arose when the customer's father subsequently tried to get a copy of the remaining documents.

The main issues related to the bank's process of recognising the customer's appointment of a representative; the way it handled the father's request for the remaining documents and its response to his subsequent complaint.

In its investigation, the CCMC found that the bank had failed to comply with the following Code obligations:

- Clause 2.2: to act in a manner that was fair and reasonable in the circumstances. In this regard, the CCMC took into account:
 - the delays by the bank in communicating with the father, and
 - the bank's failure to properly explain its requirements regarding the appointment of representatives, which prevented the father from taking steps to ensure the bank would communicate with him about his daughter's account.
- Clause 11: to provide copies of the remaining documents.
- Clause 35: to engage in dispute resolution. The CCMC took into account that the bank:
 - had not informed the father of the person who would handle its investigation of his complaint,
 - took more than the 45 day period referred to in the Code to investigate the father's complaint; and
 - had not provided the father with information about available external dispute resolution options.

The CCMC noted that the bank had since provided the missing documents and taken various remedial steps in response to the concerns raised.

In each case, the matters were raised with the CCMC after the consumer and the relevant bank were unable to resolve the issues. As in all CCMC cases, the CCMC's focus was on identifying whether a breach had occurred and to review the banks' remedial actions to ensure the breach was rectified. The CCMC role does not cover the resolution of outstanding issues between the parties.

CASE STUDY 2

A company asked its bank to establish a repayment schedule for a fixed term loan to ensure the loan would be fully re-paid by the end of the term. However, when the term ended, there were still funds owing. As a result the loan was renewed and new fees and charges arose. On behalf of the company, one of the directors questioned these matters with the bank.

Following an exchange of correspondence with the bank, the company director contacted the CCMC to raise concerns regarding the bank's actions in responding to these matters. The bank acknowledged that some of its actions had been non-compliant and proposed a number of remedial actions to the CCMC's satisfaction including:

- code training for staff directly involved in these events,
- a review of service fee establishment options, and
- developing internal training material to improve the identification and handling of disputes.

The CCMC considered that in view of the bank's acknowledgements, a Determination was not required and that the investigation should instead be concluded by way of a Recommendation. Accordingly, the CCMC recommended, and the bank agreed, that the following breaches of the Code be recorded against the bank:

- Clause 2 (Key Commitments). The CCMC noted that an error in the establishment of the loan had only been identified during the CCMC's investigation. This also meant that bank staff could not adequately explain why the loan had not been paid in full at the end of the period;
- Clause 10 (Terms and Conditions), as bank staff had been unable to adequately explain to the company or the director the operation of fees and charges that applied to the loan; and
- Clauses 35 and 37 (Dispute Resolution) as the information required by the Code was not given to the director at the time he made his complaint or when he asked for it to be escalated.

ENGAGING WITH STAKEHOLDERS

Stakeholder engagement continues to be a key mechanism for the CCMC to ensure that transparency in its compliance monitoring activities and can promote positive changes in industry behaviour.

In 2011-12 the CCMC developed a number of initiatives aimed at improving and broadening the scope and depth of its code compliance dialogue with stakeholders. These included the following:

- **Bank Forum**

A successful annual forum was held in Melbourne in September 2011 where there was a valuable exchange of information with the banks about the CCMC's current activities and discussion of current code compliance issues in the banking sector. The forum complements the regular quarterly meetings convened by the CCMC with nominated bank representatives (Stakeholder Liaison Group).

- **Code Training and Awareness**

The CCMC continued to forge closer relationships with consumer advocates and financial counsellors and CCMC staff assisted the Financial and Consumer Rights Council (FCRC) to develop a training module on code compliance. A number of presentations were also made to FOS staff and other consumer advocates to foster greater awareness of the CCMC role and its activities.

- **Quarterly Bulletin**

The CCMC re-launched its quarterly information Bulletin, which provides an update on the work of the CCMC and highlights case studies arising from the CCMC's monitoring and investigations activities.

- **Quarterly Stakeholder Liaison Group**

The CCMC established a quarterly liaison teleconference with banks. This allows the CCMC to update its key bank contacts about the current work program and share its code compliance experience. It also allows banks the opportunity to raise code compliance issues with the CCMC.

- **New Website**

The CCMC launched its new website in November 2011. The website provides details on the role of the CCMC and its staff and the work it undertakes. It also provides an on-line portal for raising concerns regarding bank compliance with the Code.

- **Industry Liaison**

The CCMC presented at four industry conferences on code compliance activities during 2011-12 and attended

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 2011-12.

Code Compliance Monitoring Committee Financial Statement for the year ended 31 March 2012

	31 MARCH 2012	31 MARCH 2011
	\$	\$
SALARIES		
Salaries - Gross	307,618	310,726
Salaries - Annual & Long Service Leave	33,124	16,388
Salaries - Super	32,855	33,773
Salaries - Payroll Tax	21,421	21,555
Committee Member Fees	78,900	78,900
TOTAL SALARIES	473,918	461,342
 EXPENSES		
Occupancy and Outgoings	66,211	30,813
Travel	30,938	35,688
Technology Support	21,541	26,236
Annual Report and Publications	18,418	10,640
Recruitment and Consultants	10,760	-
Insurances	8,992	520
Conferences and Training	5,859	8,053
Other	10,178	15,744
TOTAL EXPENSES	172,897	127,694
 TOTAL SALARIES AND EXPENSES	 646,815	 589,036
 TOTAL FUNDING	 607,450	 607,450
 SURPLUS/(DEFICIT)		
Current Year	(39,365)	18,414
Accumulated Surplus/(Deficit)	59,327	98,693

APPENDIX 1 COMPLIANCE BREACH SUMMARY FOR THE YEAR ENDED 31 MARCH 2012

Code category	Number of code breaches by source						Significant breaches		
	CCMC		Bank		Total				
(Specific code clauses are in brackets)	2010-11	2011-12	2010-11	2011-12	2010-11	2011-12	2010-11	2011-12	
General									
Key Commitments and General obligations (2,3,4,7)	0	3	406	2,006	406	2,009	2	6	
Provision of general information (11,13,16,1,32)	2	2	4	9	6	11	2	0	
	2	5	410	2015	412	2,020	4	6	
Disclosure									
Interest rates, fees and charges (12,15)	0	0	29	228	29	228	2	0	
Terms and conditions (T&C) and changes (10,18)	0	1	67	53	67	54	4	0	
	0	1	96	281	96	282	6	0	
Provision of Banking service									
Account access and suitability (6,14)	0	0	2	2	2	2	0	0	
Account combination (16,2,17)	0	0	7	9	7	9	0	0	
Direct debits (19)	0	0	16	13	16	13	0	0	
Chargebacks (10,5,20)	0	0	1	25	1	25	0	0	
Foreign exchange services (21)	0	0	1	2	1	2	0	0	
Payment instruments (23)	0	0	0	3	0	3	0	0	
Statements of account (24)	0	0	22	11	22	11	1	0	
	0	0	49	65	49	65	1	0	
Provision of credit									
Credit assessment (25.1)	0	0	194	331	194	331	0	0	
Financial difficulties (25.2)	0	1	36	190	36	191	0	0	
[Obligations when providing credit (25)]	0	1	230	421	230	522	0	0	
Joint debtors, joint accounts and subsidiary cards (26,27)	0	0	2	6	2	6	0	0	
Guarantees (28)	0	0	6	5	6	5	0	1	
Debt collection (29)	4	3	772	1,312	776	1,315	2	0	
	4	4	1,010	1,323	1,014	1,326	2	1	
Other									
Privacy and confidentiality (22)	0	0	875	1,489	875	1,489	2	2	
Advertising (30)	0	0	13	20	13	20	1	1	
Closure of accounts (31)	0	0	9	8	9	8	0	0	
Electronic communication (33)	0	0	6	12	6	12	0	0	
Family law proceedings (38)	0	0	0	1	0	1	0	0	
Dispute resolution and promotion of the Code (8,9,35,36,37)	1	16	66	52	67	49	1	0	
	1	16	969		970	1,598	4	3	
Total breaches		7	28	2,534	5,766	2,,541	5794	17	10

APPENDIX 2 SIGNIFICANT BREACHES REPORTED BY BANKS 2011-212

Code Clause	Issue	No. of Breaches	Background	Outcome
Compliance with Laws (Clause 3)	Advertising/ Unsolicited Credit Card offers	1	A communication sent to internet banking customers seeking their consent to receive credit card limit increase invitations was considered as being misleading.	Revised communications were issued to affected customers as part of an enforceable undertaking given to ASIC.
	Batch Payment Processing	1	A major outage of a bank's core banking system resulted in customers not having access to funds for an extended period of time.	Teams were established to manage all issues as a matter of urgency and implement corrective actions. Approximately \$1.2 million in interest and fee remediation was paid to approximately 70,000 customers. A fully tested solution has been implemented to address the underlying systems capacity issues.
	Unsolicited Credit Card offers	1	Bank staff in a localised region inappropriately arranged for unsolicited credit card offers to be issued to customers, in contravention of bank policy and the National Consumer Credit Code.	The bank has ensured that the 233 customers potentially affected by receiving the offers have not been financially disadvantaged. Changes to systems and internal controls have been implemented to prevent any recurrence.
	External Fraud	1	Bank staff identified fraudulent conduct by an external party that significantly impacted customers over an extended period of time.	The bank notified impacted customers, state police and regulators. The bank has reviewed its processes to prevent recurrence. Affected customers have been compensated.
Privacy and Confidentiality (Clause 22)	Privacy / Confidentiality	2	Errors within an internet banking application resulted in some customers being able, in limited circumstances, to view the financial statements of other customers through access to a shared computer history. An additional significant breach occurred while rectifying the first breach when a software change allowed information to be shared between customers when online requests for statements were made simultaneously.	Access to online statements was discontinued until a fully tested software upgrade was successfully implemented.
Advertising (Clause 30)	Advertising	1	An advertisement for deposit accounts was considered potentially misleading to customers through the inadequate disclosure of the deposit balances needed to qualify for higher interest rates.	The advertisement was withdrawn and then reissued with the correct information on the deposit balance criteria. Additional due diligence procedures have been added to the bank's advertisement approval process to prevent any recurrence.
Key Commitments (Clause 2)	Fair and reasonable conduct	1	Customer fee waiver eligibility criteria were incorrectly coded in a systems upgrade which resulted in customers being incorrectly charged with monthly account fees.	Fee refunds were provided to the 52,000 customers impacted after systems changes were implemented.
	Fair and reasonable conduct	1	Customers were incorrectly charged overdrawn account fees during an unplanned outage period occurring resulting from a major systems upgrade.	Fee refunds were provided to the 120,000 customers impacted through reversal of the incorrect transactions.
Provision of Credit (Clause 28)	Guarantees	1	Directors providing guarantees on commercial loans were not issued with a guarantors pack containing the required information.	On identification, the packs were issued to the guarantors and systems were changed to ensure packs are issued in future instances.

Do you want to know more about CCMC or the Code?

If you would like to know more about the Code of Banking Practice or the CCMC, you can refer to the CCMC's website at: <http://www.ccmc.org.au>

Alternatively you can visit the ABA's webpage on the Code at:

<http://www.bankers.asn.au/Industry-Standards/ABAs-Code-of-Banking-Practice>

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?

You can contact the CCMC using the contact details below.

Code Compliance Monitoring Committee

P.O. BOX 14240

MELBOURNE VIC 8001

PH: 1300 78 08 08

www.ccmc.org.au

info@codecompliance.org.au