

A trusted and valued partner



CODE COMPLIANCE MONITORING COMMITTEE
Code of Banking Practice

2014–15 Annual Report



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About this report

A reference in this report to a bank means a code-subscribing bank as defined below.

On 31 January 2013, the Australian Bankers' Association (ABA) published the 2013 version of the Code of Banking Practice, which came into effect on 1 February 2014 and replaced the 2004 version. All references in this report to the Code refer to the 2013 version unless otherwise stated.

Code-subscribing banks

The following 13 banking groups subscribe to the Code:

- AMP Bank Limited
- Australia and New Zealand Banking Group Limited
- Bank of Queensland Limited
- Bank of Sydney Limited
- Bendigo and Adelaide Bank Limited
- Citigroup Pty Limited
- Commonwealth Bank of Australia (including its subsidiary, Bank of Western Australia)
- ING Bank (Australia) Limited
- HSBC Bank Australia Limited
- National Australia Bank Limited
- RaboBank Australia Limited
- Suncorp–Metway Limited
- Westpac Banking Corporation (including its subsidiaries St George Bank, Bank of Melbourne and Bank SA)

CCMC purpose and principles

The Code Compliance Monitoring Committee (CCMC) is an independent compliance monitoring body established under clause 36 of the 2013 Code of Banking Practice. The CCMC came into existence on 1 April 2004 and monitored a 2004 version of the Code until its replacement by the 2013 Code.

CCMC purpose

The CCMC's purpose is to monitor compliance with the Code of Banking Practice, thereby contributing to the improvement of standards of practice and service by code-subscribing banks.

The CCMC's aim is to be a trusted and valued partner, assisting banks to comply with their code obligations, ultimately creating a better banking experience. To achieve this, the CCMC Secretariat adopts a responsive, focused and collaborative approach to working with participating banks.

Principles

The CCMC bases its work on five key principles to achieve its vision:

1. **Independence** in its operations, governance and decision-making.
2. **Responsibility** in undertaking its functions, for the benefit of both the banking industry's self-regulatory scheme 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.

Key functions

The CCMC's powers and functions are set out in its Mandate, which is published by the Australian Bankers' Association (ABA), along with the Code. By adopting the 2013 version of the Code, banks have endorsed this Mandate.

The Code framework states that the CCMC has the following functions:

- To monitor code-subscribing banks' compliance with the Code's obligations.
- To investigate, and to determine, an allegation from any person that a code-subscribing bank has breached the Code.
- To monitor any aspects of the Code that are referred to the CCMC by the ABA.

The CCMC's role does not include:

- mediating and resolving individual disputes
- making declarations on the rights and entitlements of parties, or
- monitoring or investigating alleged breaches by banks that have not subscribed to the Code.

CODE OF BANKING PRACTICE

The Code of Banking Practice is a voluntary code of conduct that sets standards of good banking practice for code-subscribing banks.

Code-subscribing banks must follow these standards when dealing with persons who are, or who may become, an individual or small business customer of the bank, or their guarantor.

These banks have also 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.
- Act fairly and reasonably in delivering those services.

Given the market share held by code-subscribing banks, the principles and obligations set out in the Code apply to most banking services delivered to individuals and small businesses across Australia.

The Code is published by the Australian Bankers' Association (ABA), and forms an important part of the broader national consumer protection framework and financial services regulatory system. A copy can be downloaded from the ABA's website at www.bankers.asn.au.

2014–15 year at a glance

The Code

13 banking groups
subscribe to the Code

\$681 billion*
– value of household deposits held
by banks subscribing to the Code,
an increase of 8% since last year

\$1.4 trillion*
– value of household debt held by
banks subscribing to the Code,
a 12% year-on-year increase

95%* percentage of the Australian
retail banking market
(deposits and credit) covered by the Code

4,953* number of branches
operated by
code-subscribing banks

Compliance monitoring and breach reporting

6,558 self-reported breaches
of the Code by banks,
up 14% (see page 11)

1,319 self-reported breaches
of the provision of credit
obligations, up 131% (see page 12)

16 significant breaches of the Code
self-reported by banks (see page 8)

1.2 million complaints reported
by banks, up 11.5% (see page 15)

92.9% of these complaints
resolved within five days

296,000 requests for financial
difficulty assistance
received by banks, up 2.7% (see page 17)

70% of all these requests granted
assistance, up from 63%
in 2013–14, (see page 16)

* Based on Australian Prudential Regulation Authority figures
at 30 June 2015

Investigations

44 new investigations started, raising 71 alleged Code breaches (see page 21)

49 investigations finalised including two by Determination and 19 by delegated decision (see page 24)

19 Code breaches identified (see page 24)

Stakeholder engagement

Banks

23 meetings held with code-subscribing banks (see page 28)

23 participants representing 11 banks and the ABA attended the CCMC annual Bank Forum (see page 28)

Consumer advocates

5 presentations at financial counselling conferences (see page 27)

4 'Code days' conducted with the Telecommunications Industry Ombudsman and State energy regulators (see page 27)

6 meetings with financial counselling organisations (see page 27)

Other stakeholders

12 meetings with the Australian Bankers' Association (ABA), Financial Ombudsman Service (FOS) Australia and Australian Securities and Investments Commission (ASIC) (see page 28)

Publications

6 publications issued (see page 28)

2,699 visitors to the CCMC website from within Australia (see page 28)

13,058 pages viewed on the CCMC website

Chair and Chief Executive Officer's message

In 2014–15, the CCMC delivered on the first year of its newly adopted three-year work plan. This plan seeks to build trust in the Australian banking industry by supporting banks to comply with their code obligations – ultimately to create a better banking experience for customers.

This year's compliance outcomes demonstrate the CCMC has made good progress. In response to our Annual Compliance Statement (ACS) program, banks collectively reported 6,558 breaches of the Code, an increase of 14% compared to 2013–14. Banks attributed this result in part to a greater awareness of code obligations among staff and improved monitoring of specific areas, such as provision of credit.

Banks also reported a dramatic increase in significant breaches of the Code, up 100% on the previous reporting period. This suggests banks are now better able to identify and resolve issues to maintain high service standards. As a large proportion of these breaches related to systems issues, the CCMC encourages banks to continue to diligently test, operate and monitor their IT systems so that they can reduce any impact on customers.

In 2014–15, the CCMC refined the ACS program after consultation with the Australian Bankers' Association and individual banks to develop a more targeted ACS questionnaire in order to enable banks to provide consistent, comparable data. While these enhancements will help the CCMC to better identify and report bank and industry issues and trends, it continues to look for ways to further improve the program.

This year, the CCMC streamlined its approach to compliance investigations through a delegated decision process. Where the CCMC is satisfied that an investigation is not warranted, or has been dealt with in another forum, it may decide to exercise its discretion and take no further action.

As in previous years, the main type of allegation

received by the CCMC fell into two categories: the key commitment to act fairly and reasonably towards customers, and banks' obligations to assist customers who are experiencing financial difficulty. These allegations primarily concerned credit contracts, particularly the adequacy of banks' credit assessments, and the assistance provided to customers unable to meet their loan repayments.

Stakeholders confirm that financial difficulty remains one of the most significant and sensitive areas of engagement between banks and their customers. While the CCMC recognises that banks have enhanced the way they help customers experiencing financial difficulty, there remains room for further improvement. The CCMC encourages industry to consider the results of its recent Own Motion Inquiry into compliance with financial difficulty obligations, which offers valuable insights into good industry practice.

In the coming year, the CCMC proposes to conduct an Own Motion Inquiry into how banks meet their provision of credit obligations and expects to complete this in late 2016. The CCMC will also work with banks to help them improve their compliance with the key commitment to treat customers fairly and reasonably.

Ensuring the CCMC's operations are both transparent and consistent remains a high priority. Guidance Note No. 12, developed this year, outlines the CCMC's likely approach to classifying, recording and reporting non-compliance (breaches) with the Code's obligations. It also sets out the CCMC's likely approach to appropriate ways of remedying non-compliant activity or imposing sanctions against the bank.

Throughout the year, the CCMC engaged with stakeholders to raise awareness of the Code and available services. Consultations with consumer advocates proved to be particularly productive. Following concerns raised by consumer advocates about direct debit cancellation fees, the CCMC contacted all banks to establish which banks charged a fee, whether they considered it to be a fair reflection of their costs and in what circumstances it could be waived. Of the four banks that reported charging this fee, three have since discontinued the practice – a good outcome for consumers.

Banks collectively reported 6,558 breaches of the Code, an increase of 14% compared to 2013–14

Other successful initiatives included providing consumer advocacy training to community lawyers in all States and conducting a plain English review of the CCMC's website, aimed at making the CCMC's services more accessible.

Consumer and Small Business Representative, Gordon Renouf, and Banking Industry Representative, Sharon Projekt, continue to provide valuable guidance and insight to the CCMC's work, and we thank them both. Sharon has recently been re-appointed to her role for a further three years. The CCMC looks forward to working with Sharon and Gordon during 2015–16 and beyond.

The CCMC has achieved significant outcomes this year thanks to the support of its dedicated Secretariat. Under the leadership of Chief Executive Officer Dr June Smith, the staff continued to improve the efficiency of the CCMC's operations through an enhanced code database and a secure online portal, which will streamline the CCMC's exchange of information with code subscribers.

On 1 July 2015, June left the CCMC to take up the role of Lead Ombudsman (Investments and Advice) at the Financial Ombudsman Service (FOS) Australia. The Committee would like to thank June for her outstanding contribution to the CCMC over the past four years and wishes her every success in her new position. Sally Davis has been appointed as June's successor and the Committee looks forward to building a successful working relationship with her during 2015–16.



Over the coming year, the CCMC will endeavour to remain a valued and trusted partner to its stakeholders and continue working to ensure better practice by banks through adherence to the service standards reflected in the Code of Banking Practice.

Christopher M Doogan AM
Independent Chair

Sally Davis
Chief Executive Officer

CCMC operations

The CCMC's key functions can be grouped into three main categories: monitoring, investigating and engaging. The operations, powers and functions of the CCMC are outlined in its Mandate, which came into effect on 1 February 2013.

CCMC Mandate

During 2014–15, the CCMC continued to review and refine its operating procedures to ensure they comply with its Mandate and principles of good governance. In particular, the CCMC consolidated its investigations procedures into one process manual and revised key performance indicators associated with investigations.

In 2014–15, the CCMC completed the first year of its three-year work plan, which was developed in accordance with clause 1.6 of the Mandate following consultation with FOS and the ABA.

The CCMC
achieved
all its key objectives
for 2014–15 set out in
the work plan.

The CCMC achieved all its key objectives for 2014–15 set out in the work plan. After reviewing key risk information, the CCMC revised the work plan for 2015–16 to ensure that the highest priority of work is always completed first. This work plan has been published on the CCMC's website and distributed to key stakeholders.

The CCMC has published 12 Guidance Notes since the Mandate came into effect. A full list of Guidance Notes can be found in Appendix 3. The CCMC will continue to publish additional Guidance Notes on its interpretation of the Code and Mandate where it identifies further information is required.

2013 Code of Banking Practice

The 2013 Code was adopted by all code-subscribing banks by 1 February 2014, and banks are now monitored against these revised obligations. The Own Motion Inquiry conducted in April 2015, for example, assessed banks' compliance with the enhanced obligations related to customers in financial difficulty.

The CCMC still receives allegations related to banks' compliance with the 2004 version of the Code. It will continue to investigate these matters where the jurisdictional framework set out in the Mandate allows it to proceed.



CASE STUDY

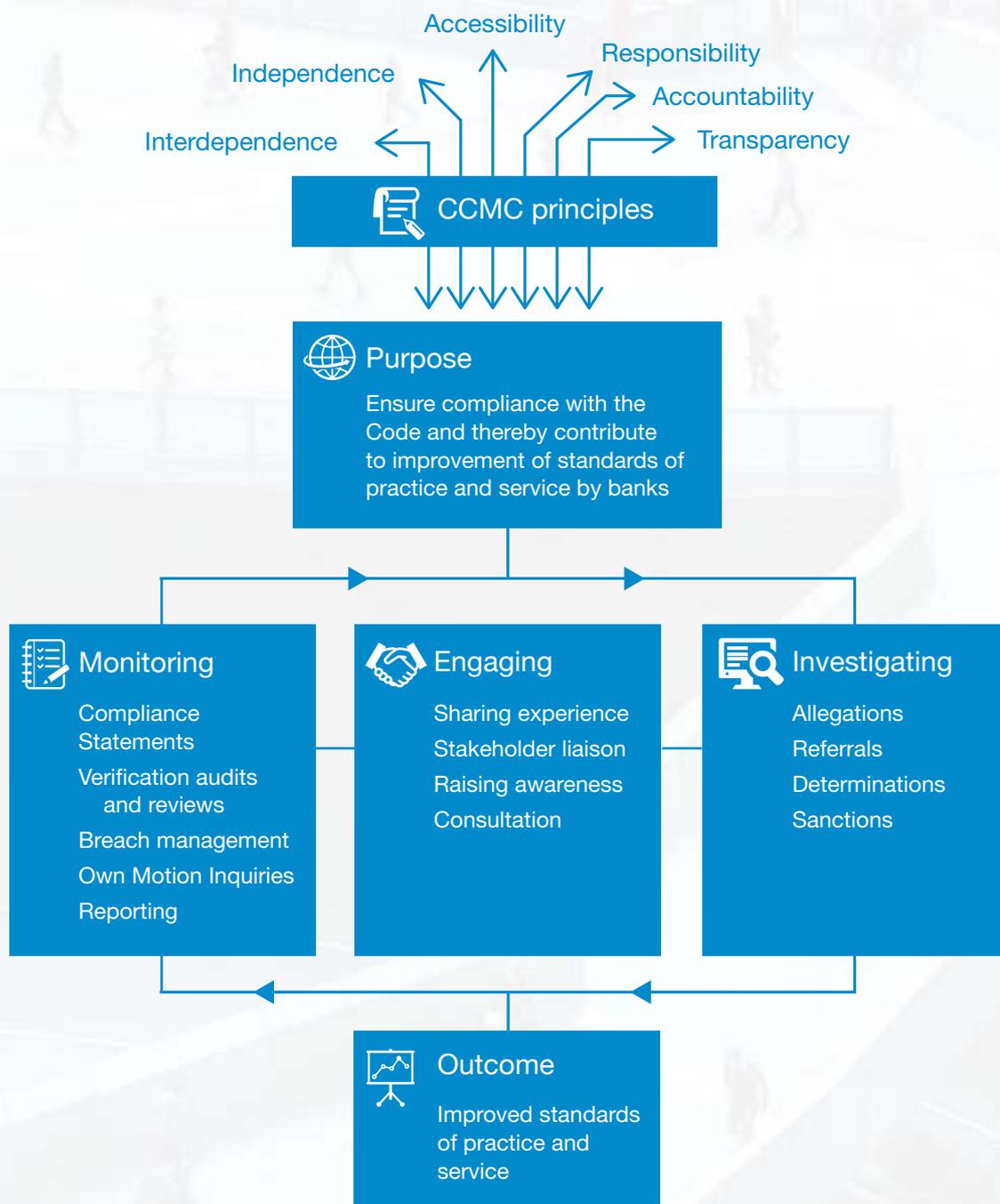
Personal loans in 60 seconds

A member of the CCMC Secretariat received a marketing letter from a bank regarding personal loans. The letter stated the bank would let a customer know if it had approved the loan within 60 seconds of an application being received. The message also appeared on the bank's website.

The CCMC was concerned that, given the short time for approval, the bank would be unable to fulfil its obligations under clause 27 of the Code regarding the provision of credit and the need to verify a customer's financial position. The CCMC contacted the bank for further details.

The bank confirmed that in only some cases it held enough information about a consumer to make a lending decision within 60 seconds and in other cases it would ask the customer for more information. The bank agreed to revise the wording of its letters and website to state that a *response* would be provided in 60 seconds, rather than a decision. The CCMC was happy with this approach and took no further action.

Diagram 1: Key CCMC functions



Monitoring code compliance

The CCMC's compliance monitoring program reflects the objectives of the Code and includes the Annual Compliance Statement (ACS) program and Own Motion Inquiries.

Annual Compliance Statement program 2014–15

Each year, the CCMC conducts an Annual Compliance Statement (ACS) program under clause 5 of its Mandate. Code-subscribing banks are required to complete this ACS under clause 36(f) of the Code.

Through its ACS program, the CCMC assesses each bank's:

- compliance with the Code
- compliance monitoring frameworks, including code breach identification
- compliance performance compared to other banks
- processes for remedying significant breaches and systemic issues related to code compliance, and
- areas of emerging code compliance risk.

Banks are required to complete a questionnaire on their code compliance performance, before discussing their individual results with the CCMC Secretariat during an onsite visit.

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

The CCMC uses a risk-based approach to determine the questionnaire's themes and content for the year in consultation with key stakeholders.

16 significant breaches

6,558 self-reported breaches

1.2 million complaints

Focus areas in the 2014–15 ACS were:

- provision of credit
- copies of documents, and
- dispute resolution, including the effective analysis of root causes.

The CCMC conducted onsite visits with each bank in October 2015 and, as in previous years, can report that banks actively engaged with the ACS program.

ACS program results

An important part of any code compliance framework is the ability to identify, report and rectify code breaches. The CCMC refers to the Australian Standard™ AS-3806 – 2006 Compliance Programs (the Standard) when considering how banks should effectively manage their code compliance obligations, including how they maintain internal breach reporting.

The CCMC expects the banks to also demonstrate that they are successfully identifying the root causes of non-compliance with the Code's obligations and are taking the necessary action to prevent recurrences.

In 2014–15, the banks actively engaged in the self-reporting process and provided information that allowed the CCMC to assess compliance with the Code. The CCMC remains satisfied that banks have in place frameworks to identify and rectify instances of non-compliance. Responses to the ACS indicate that these frameworks are regularly

reviewed and amended to ensure that they remain appropriate in the context of the size and complexity of the bank.

Banks have also advised that they continue to operate the 'three lines of defence' model to identify code breaches, take remedial action and compensate affected consumers for any loss. These three lines of defence generally consist of:

- business unit quality assurance checks
- Risk and Compliance oversight and monitoring, and
- independent verification by the banks' Internal Audit functions.

Significant code breaches

A significant breach of the Code is defined as non-compliance that is deemed significant by either the CCMC or a bank due to several factors. Generally speaking, the CCMC expects banks to consider the factors identified in section 912D of the *Corporations Act 2001 (Cth)* when determining whether a significant breach of the Code has occurred. These include:

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

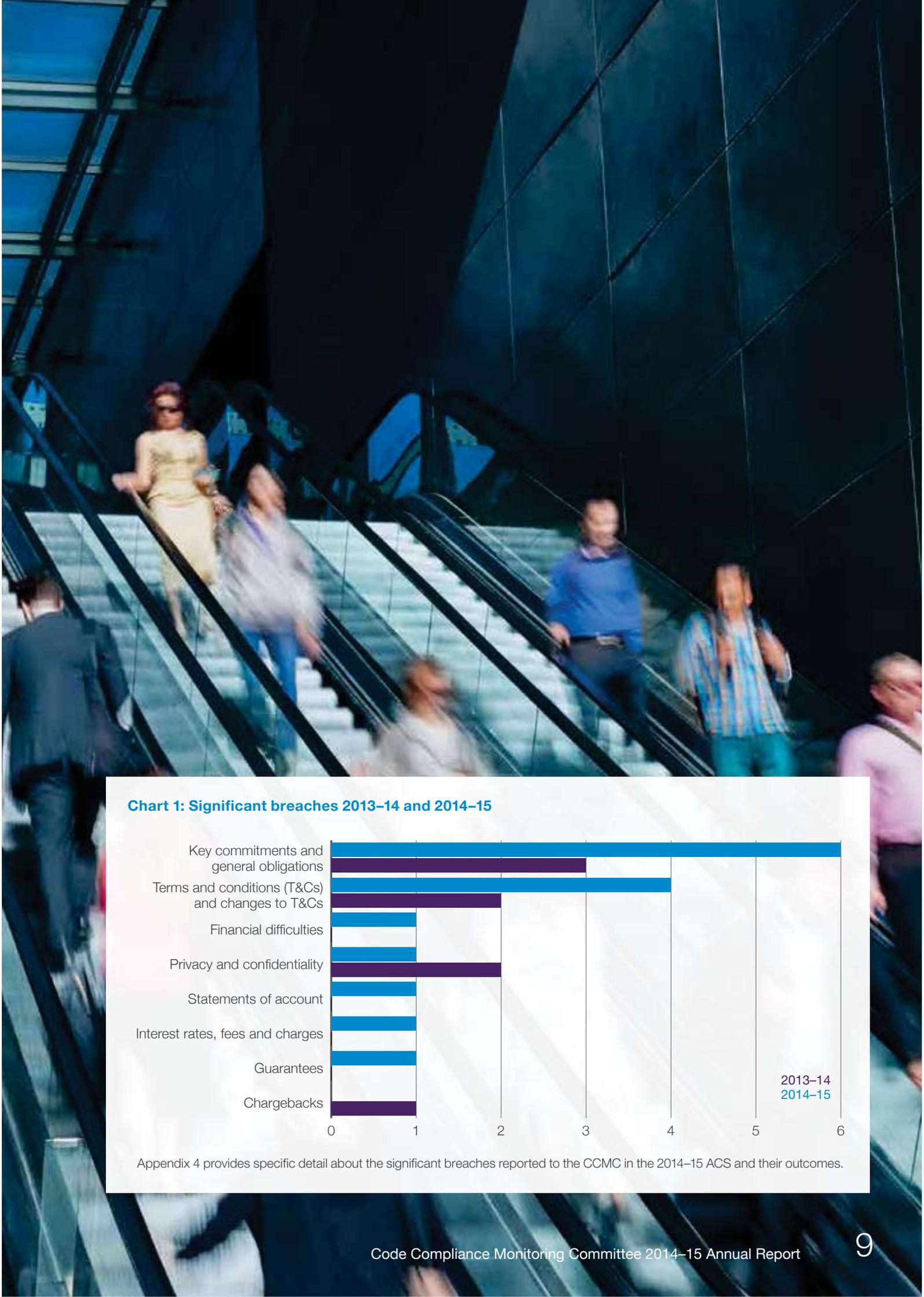
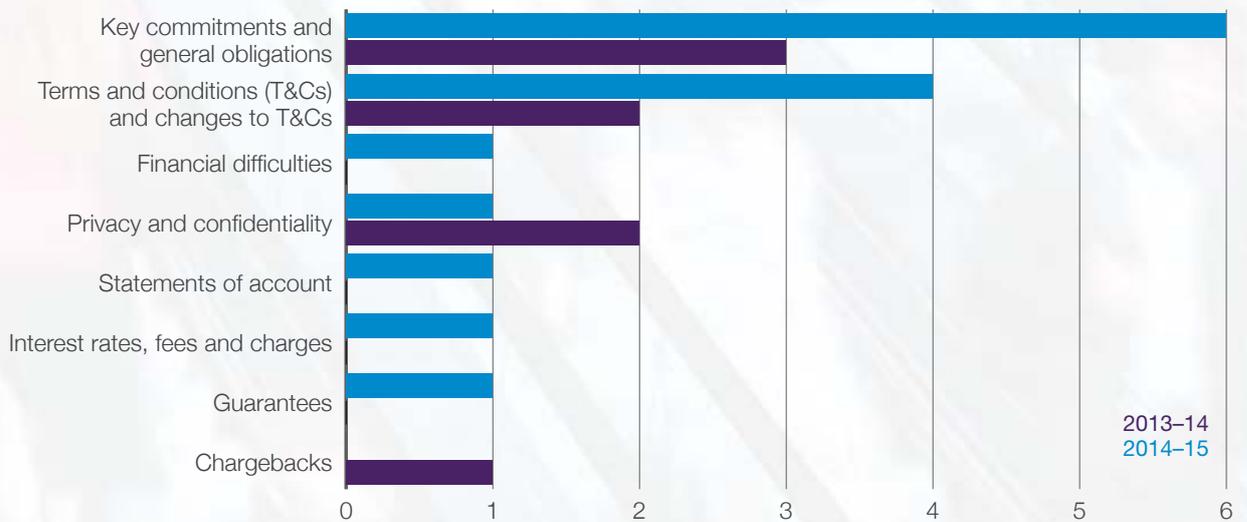


Chart 1: Significant breaches 2013–14 and 2014–15



Appendix 4 provides specific detail about the significant breaches reported to the CCMC in the 2014–15 ACS and their outcomes.

Monitoring code compliance continued

Clause 36 requirements

It should be noted that clause 36 (b)(iii) of the Code prevents the CCMC from monitoring, investigating or reporting breaches of clause 3 (key commitments) or clause 4 (compliance with laws) unless a breach of clause 3 or 4 is also a breach of another provision of the Code.

For example, a breach of the Code's privacy and confidentiality obligations (clause 24), which requires banks to meet the provisions of the *Privacy Act 1988 (Cth)*, may also be a breach of clause 4, which requires banks to comply with all relevant laws relating to banking services.

However, several banks have indicated that they would prefer to record and report *all* instances of non-compliance with clauses 3 and 4, including those where a breach of another clause of the Code was not identified. These breaches may, for example, include breaches of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*, which does not have a corresponding Code obligation, or where the bank considers it has not dealt with a customer in a fair and reasonable manner.

In light of this approach by banks, the CCMC revised the ACS to capture this data in 2014–15. Consequently, banks reported:

- A total of 615 breaches of clause 3 (key commitments), including 375 breaches unique to this clause with no corresponding breaches of other provisions of the Code (See Chart 2).
- A total of 2,608 breaches of clause 4 (compliance with laws), including 1,125 breaches unique to this clause with no corresponding breaches of other provisions of the Code (See Chart 2).

The total of 6,558 self-reported breaches of the Code does not include the 240 breaches of clause 3 and 1,483 breaches of clause 4 that were identified by banks as a result of another breach of the Code.

Banks reported 16 significant breaches of the Code in 2014–15. This is a 100% increase from 2013–14 and reverses the trend of recent years of fewer self-reported significant breaches (see Chart 1).

The CCMC has previously expressed concern that a reduction in reported significant breaches may reflect that banks are unable to identify issues, a concern it shared with ASIC. The increase in significant breaches reported in 2014–15 may reflect that banks are now better able to do so. The CCMC will continue to engage with banks to ensure they take appropriate action following significant breaches.

More than 150,000 customers were affected by significant breaches reported in 2014–15, with a total estimated financial impact of nearly \$13 million. As in previous years, a large proportion of these significant breaches relate to systems issues, either within the bank or with third-party providers. The CCMC continues to remind banks to diligently test, operate and monitor their IT systems.

More than 150,000
customers were
affected by significant
breaches
reported in 2014–15.

Self-reported code breaches not classified as significant

The self-reporting of non-significant code breaches and information about banks' compliance systems are key tools in the CCMC's monitoring of compliance with the Code. They are also an indicator of a bank's ability to understand emerging areas of code compliance risk.

While some banks recorded a reduction in the number of breaches in 2014–15, others reported significant increases. The reasons given by banks include lack of staff to cope with increased turnover, greater staff awareness of obligations and a higher degree of monitoring in specific areas, such as provision of credit.

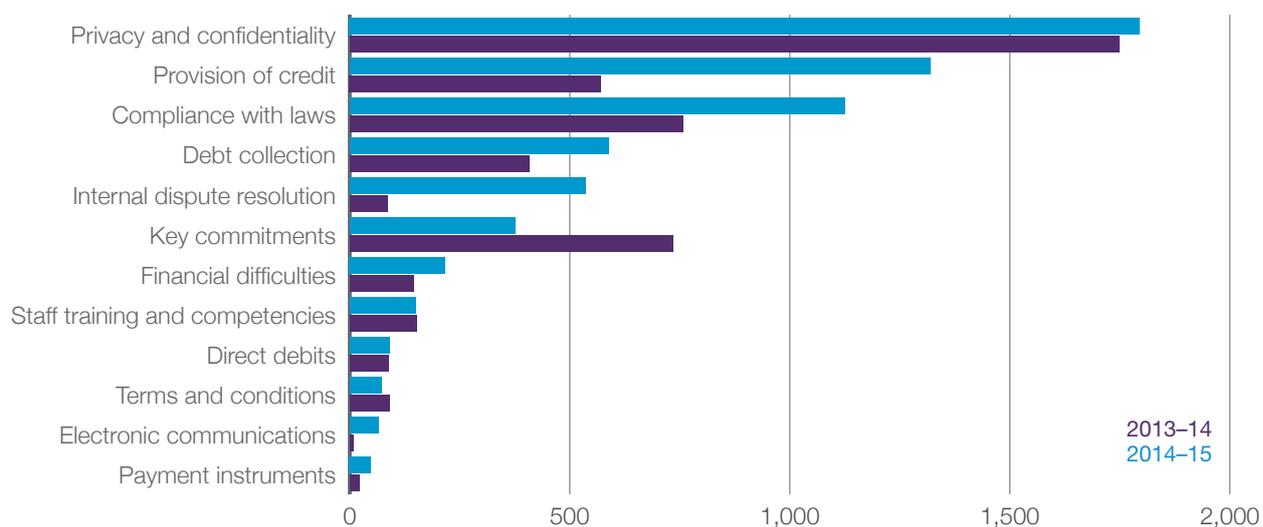
Chart 2 illustrates the number of breaches reported by banks in 2014–15 according to the main categories.

Key findings for 2014–15

The key findings from the ACS were:

- 6,558 self-reported breaches in total, up 14% on 2013–14
- 1,319 self-reported breaches of 'provision of credit' obligations, up 131%
- 1,795 self-reported breaches of privacy and confidentiality obligations, broadly consistent with the previous reporting period
- 536 self-reported breaches of internal dispute resolution obligations, up 523%
- 1.2 million complaints reported by banks, up 11.5%
- 92.9% of complaints resolved within five days
- 296,000 requests for financial difficulty assistance, up 2.7%
- 70% of financial assistance requests granted, up 7% from 2013–14

Chart 2: Main categories of breaches reported to the CCMC in 2014–15*



* Full details of breaches of all clauses of the Code are provided in Appendix 2.

ACS program outcomes

Responses to our ACS questionnaire indicate that banks have each developed and implemented initiatives to improve their compliance with the Code and provide a better service to customers. Examples provided by banks include:

- Continuing to provide Code-specific training.
- Using both customer and staff feedback to identify areas for improvement.
- Initiating and developing 'customer fairness' programs.
- Improving the readability of documents and websites.
- Conducting internal 'mystery shopping' to assess customers' experiences and monitor compliance with code obligations.
- Developing technology solutions, such as video conferencing.
- Providing customers with better access to trained banking specialists.

The key outcomes of the ACS program were as follows:

Provision of credit (clause 27)

The Code requires banks to "exercise the care and skill of a diligent and prudent banker in selecting and applying credit assessment methods and in forming an opinion"¹ about a customer's ability to repay the credit facility, before providing that credit.

Breaches of the Code's provision of credit obligations self-reported by banks through the CCMC's ACS program have consistently been high.

Breaches of the Code's provision of credit obligations self-reported by banks through the CCMC's ACS program have consistently been high. This year, the CCMC sought to

understand the steps taken by banks to ensure compliance with these obligations.

Banks reported 1,319 breaches of the provision of credit obligations in 2014–15. This is an increase of 131% on last year and is comparable to the level of breaches reported two years ago. One bank accounted for most of the breaches (1,258). This bank has advised that it has increased the amount of monitoring in this area and is in the process of implementing improvements to their systems.

Most banks made changes to their procedures to meet their obligations under clause 27 during 2014–15.

These changes are in response to guidance issued by both the Australian Prudential Regulatory Authority (APRA) and the Australian Securities and Investments Commission (ASIC) and include:

- Increasing the buffer rate used to calculate whether a client can afford to repay the credit.
- Adopting the 'Household Expenditure Measure' (HEM) as a more accurate comparison to stated expenses when establishing a client's financial position.
- Re-assessing how variable income, such as overtime and bonuses, is treated for calculating income.
- Assessing the impact of providing an interest-only period on the ability to repay a credit facility.
- Reducing the proportion of rental income that can be included in income calculations for investment loans.

Banks reported that a sample of cases, typically between 5% and 10%, are reviewed for each lending officer to monitor compliance with the bank's lending policy. Any issues identified are then discussed with the lending officer and reported to senior management and risk committees.

¹ As defined under clause 27 of the Code.

Banks reported that these issues include:

- human error
- misinterpretation of internal lending policy
- errors in affordability and serviceability assessments, and
- non-compliance with requirements of the *National Consumer Credit Protection Act (NCCP Act)*.

Issues identified through monitoring are remediated generally through ‘consequence management’ and include:

- remedial training
- increased monitoring
- reduction of lending authority
- removal of lending authority, and
- loss of remuneration (bonuses) or disciplinary action.

Banks reported that they have structured training regimes for accredited credit officers.² The level of training reflects the level of authority and complexity of products the lender deals with and includes refresher training.

The CCMC intends to conduct an Own Motion Inquiry into the provision of credit in early 2016.

² An accredited credit officer is an officer of the bank who is authorised to make lending decisions.



CASE STUDY

Removing direct debit fees

In the 2013–14 Annual Compliance Statement, the CCMC asked banks whether they charged a fee for cancelling a direct debit, following concerns raised by financial advocates. Four banks confirmed that they charged a fee, ranging between \$10 and \$15.

The CCMC wrote to each of the four banks to establish:

- How and when the fee for cancelling a direct debit is disclosed to the customer.
- The process for cancelling a direct debit and the estimated time it takes to complete that process.
- Whether the bank would waive the fee in particular circumstances, including if the customer was in financial difficulty.
- How the bank considers direct debit cancellation fees to be consistent with its Code obligations under clauses 21 and 3.2.

Three of the banks confirmed that they had decided to stop charging the fee after a review of costs. The fourth bank stated its fee represented a fair reflection of costs involved in cancelling a direct debit, and that it had procedures in place to waive any fee for a customer in financial difficulty or other exceptional circumstances.

ACS program outcomes continued

Copies of documents (clause 13)

Over the last two years, the CCMC has identified several instances where the bank has failed to provide copies of documents when requested by a customer. This issue has also been highlighted by consumer advocates.

All banks reported that a documented procedure regarding copies of documents is in place. Generally these policies cover what can and cannot be provided to a customer, as well as who is able to make a request for information.

There were 13 breaches of clause 13 reported by banks in 2014–15, a reduction from 53 in 2014–15. Ten of these breaches were reported by one bank.

Most of these policies are geared towards requirements stipulated under the *Privacy Act 1988 (Cth)* rather than under the Code. In most instances these two obligations are compatible. However, the timeframes for information to be provided to customers differs, with the Code requiring some documents to be provided within 14 days. The Privacy Act sets out a timeframe of 30 days. The shorter Code timeframes are not reflected in banks' procedures.

The CCMC encourages banks to ensure, where applicable, the shorter timeframe of the Code is complied with when providing documents to customers.

While banks did not generally impose a fee for providing copies of documents in the reporting period, it was identified that the most commonly applied charge was for copies of statements and older documents.

Some banks advise staff to direct customers to obtain the information via online banking. The CCMC considers this to be a good

initiative to keep costs down for consumers and to enable them to access information quickly and easily.

On those occasions where fees may be charged, banks advise that staff have authority to waive them.

While banks reported that copies of some documents will be provided, there are others that will not be provided. These include:

- documents of a commercially sensitive nature
- documents where provision would contravene the *Privacy Act 1988 (Cth)*
- operational policies/procedures
- valuation reports
- documentation regarding legal proceedings, and

- documents that related to the bank's internal credit policy and scoring.

Privacy and confidentiality (clause 24)

The obligations of clause 24 impose on banks a general duty of confidentiality towards customers, in addition to obligations under the *Privacy Act 1988 (Cth)*. This continues to be an area of risk identified in the ACS program.

This year, banks reported 1,795 breaches of clause 24. In addition, one bank reported a significant breach of this clause (see Appendix 4). This is broadly consistent with 2013–14. These breaches were generally identified by staff or through customer complaints, with four banks advising that breaches were identified by FOS or the Office of the Australian Information Commissioner (OAIC).

The majority of self-reported breaches generally resulted from isolated human error rather than systemic issues. However, banks continued to provide annual or bi-annual training to all staff and introduced several initiatives in the reporting period, including:

- an email scanning system to prevent confidential information being shared with third parties
- appointing a Chief Data Officer and establishing Information Security Committees, and
- enhancing the security measures of data held by the banks.

It is encouraging to see that banks undertake root cause analysis of disputes to identify where services can be improved.

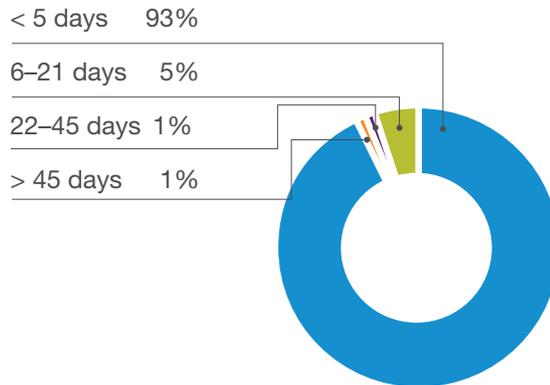
Several banks also reported taking part in 'Privacy Awareness' week, an initiative designed to raise awareness among staff of privacy issues and obligations.

Internal dispute resolution (clause 37)

The Code requires banks to have internal dispute resolution procedures that are free and accessible (clause 37). Clause 37.2 also requires banks' internal process to meet the standards set out in the Approved Standard – ASIC's Regulatory Guide (RG) 165. By assessing compliance with these obligations, the CCMC can determine whether banks have systems and procedures in place to deal with complaints in a genuine, fair, prompt and consistent manner.

Banks self-reported 536 breaches of clause 37 in 2014–15, an increase from 86 in 2013–14. One bank, however, accounted for 65% of these breaches. The bank experienced a high turnover of staff in its customer relations department during the reporting year. At one point, it was unable to comply with the timeframe obligations under both the Code and ASIC's RG 165. The bank's complaint handling department has now returned to full staffing levels and the bank has improved its compliance with the Code's obligations in this area.

Chart 3: Dispute resolution times



In total, banks recorded 1,226,093 complaints in 2014–15, an 11.5% increase on the previous period. The increase in complaints was attributed to:

- better systems to record disputes
- greater staff awareness
- an increase in customer numbers, and
- one-off issues such as system and process failures.

Overall, dispute resolution times improved, with 92.9% of all recorded disputes resolved under five days. Only 1.1% of complaints took more than 45 days to resolve. Dispute resolution times are illustrated in Chart 3.

Analysing disputes data provides valuable insight into issues being experienced by consumers. It is encouraging to see that banks undertake root cause analysis of disputes to identify where services can be improved. The method for doing this differs between banks and the approach taken often depends on the complexity and size of a bank. The CCMC urges all banks to consider how they can improve this analysis, better identify issues and ultimately improve services to customers.

The CCMC will also work with banks during 2015–16 to develop a common approach to reporting categories of disputes in the ACS. This will improve the CCMC's ability to analyse the data and identify both bank and industry issues.

ACS program outcomes continued

Compliance with laws (clause 4)

Banks reported a total of 2,608 breaches of clause 4 of the Code. Of these, 1,483 breaches were identified by banks as a result of another breach of the Code. Banks advised that most of these breaches were due to:

- Breaches of the privacy and confidentiality obligations – also a breach of the Privacy Act.
- Breaches of the provision of credit obligations – also a breach of the NCCP Act.

Banks recorded 1,125 breaches of clause 4 where the breach did not occur as a result of a breach of another Code obligation.

Among the causes of these breaches were:

- Non-compliance with aspects of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.
- Failure to meet reporting obligations under the *Foreign Accounts Compliance Tax Act (FATCA)*.

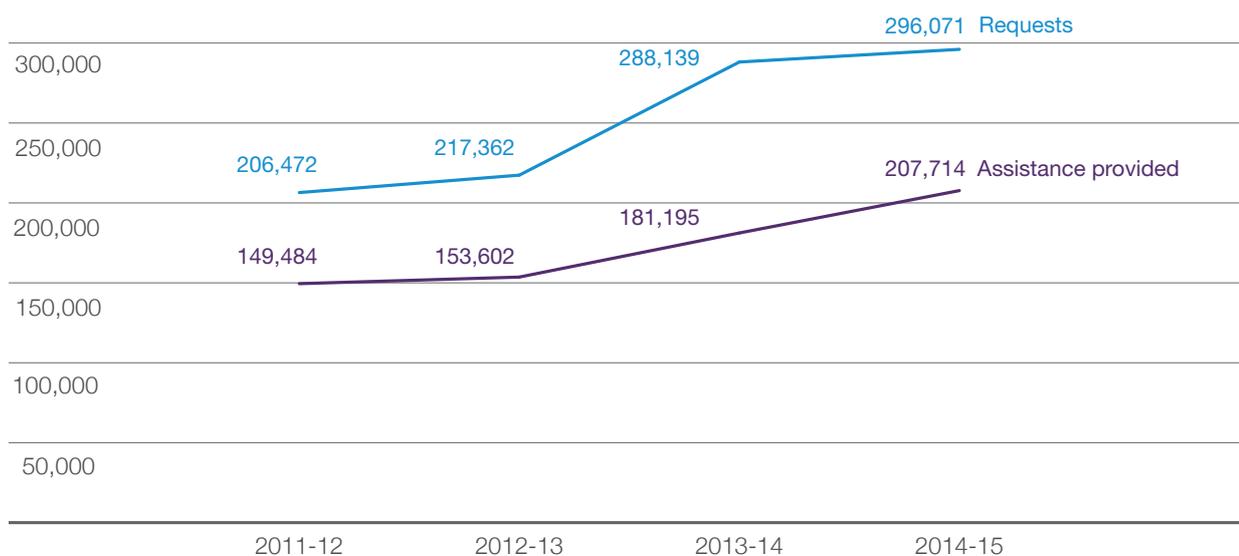
Own Motion Inquiry: financial difficulty obligations

Financial difficulty remains one of the most significant and sensitive areas of engagement between banks and their customers. The obligations under the Code demonstrate banks' commitment to assisting customers who are experiencing financial difficulty.

In conducting the inquiry, the CCMC:

- Engaged with all banks to better understand the processes and procedures they have in place to assist customers experiencing financial difficulty.
- Surveyed consumer advocates including financial counselling groups, state-based community legal centres and small business representatives to gain insight into customers' experiences when dealing with their bank.
- Reviewed bank websites and visited bank branches to establish the information about financial difficulty assistance that is available to customers.

Chart 4: Requests for financial difficulty assistance and assistance provided 2011–2015



The inquiry identified that all code-subscribing banks have procedures in place to try to help customers overcome their financial difficulties with credit facilities they have with their bank, as required by the Code. In addition, banks confirmed it is their policy to engage actively and co-operatively with customers to ensure effective outcomes.

The results of the survey completed by consumer advocates suggest that, overall, banks have improved the way in which they deal with customers experiencing financial difficulty. This is consistent with the findings of the 2015 'Rank the Bank' survey conducted by Financial Counselling Australia, which also highlighted improvements.

While acknowledging that banks have worked to improve outcomes for customers experiencing financial difficulty, the CCMC has identified ways in which banks could further improve their level of compliance with the Code:

- Ensure that their processes and procedures are applied consistently for all customers, including those who are not represented by a consumer advocate.
- Ensure their processes are appropriate for customers with

particular issues, for example those related to poor mental health or family violence.

- Ensure they can identify when a customer requests financial difficulty assistance a second or subsequent time.
- Consider whether their procedures are adequate to avoid making unnecessary or inappropriate requests for information that may be difficult or time consuming for customers to fulfil.
- Continue to identify areas where further improvements can be made.

A copy of the CCMC's inquiry report, which includes details of the CCMC's findings and recommendations, is available on the CCMC website, www.ccmc.org.au.

As part of the ACS program, the CCMC has been collecting data over the last four years about the number of requests for financial difficulty assistance and the number of times where this assistance is provided. This data shows that, while the number of requests for assistance has increased over this period, the increase has slowed to 2.7% in 2014–15. The data suggests that, with the historically low interest rates currently prevailing,

financial burdens on individuals and businesses may be easing slightly.

The CCMC notes an increase over four years in the number of requests for financial difficulty assistance and the risk that the number of requests may increase rapidly if and when economic circumstances change.

Banks provided assistance on 207,714 occasions in 2014–15. While the proportion of requests resulting in assistance differs between banks, the overall rate of assistance of 70% represents an increase of 7% from 2013–14. Chart 4 on page 16 illustrates the number of requests for assistance reported by banks in the four years the CCMC has been collecting this data, along with the number of requests where assistance was provided by banks.

The total number of self-reported financial difficulty obligation breaches did, however, increase from 146 in 2013–14 to 217 in 2014–15. This increase was predominantly due to one bank, which reported that an increase in requests, combined with a high degree of staff turnover, resulted in instances where the requirements of the Code were not met.

Investigations

The Code of Banking Practice empowers the CCMC to investigate allegations from any person that a bank has breached the Code.

While every investigation is unique, they share a singular focus: to achieve compliance outcomes that improve banking standards.

The ability to deal with specific allegations allows the CCMC to investigate instances where compliance is alleged to be below the required standard, and to identify and monitor potential issues emerging across the industry. 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.

Compliance investigations process

The compliance investigations process is outlined in Diagram 2 on page 19. This process continues to evolve as the CCMC refines its procedures for handling allegations and streamlines its decision-making. The CCMC's aim is to ensure people wishing to make an allegation can do so within a well understood and structured investigation process. In 2014–15, the CCMC continued to use its powers under the Mandate to make delegated decisions.

Full details of the CCMC's compliance investigations process, including delegated decisions, are available at www.ccmc.org.au.

CASE STUDY

Obligations towards guarantors

Frank contacted the CCMC as he alleged his bank had breached its obligations under the Code when it failed to provide him with copies of bank statements for a loan facility that related to his company.

Frank was the director of a company that had formed a syndicate to develop a company. The syndicate borrowed funds from the bank for the development and Frank acted as guarantor for the loan.

After a series of repayment difficulties and loan extensions, Frank wanted to review the payment history. When he asked for copies of the bank statements, bank staff informed him that, as a guarantor, he was not entitled to copies of statements.

The approach taken by the bank was correct in the context of Frank's role as a guarantor. The Code sets out banks' obligations towards guarantors, which includes providing information about the borrower. However, statements of account in relation to the borrower's loan facility are not covered by these obligations and



guarantors are unable to access that information.

In this case, bank staff should have identified that Frank was also one of the borrowers in the syndicate and was entitled to request copies of the statements of account.

When the CCMC contacted the bank about the matter, it acknowledged it had breached its obligations to provide copies of documents. It arranged for the copies of statements to be provided to Frank and reviewed its processes and training to prevent a re-occurrence.



Diagram 2: CCMC compliance investigations process

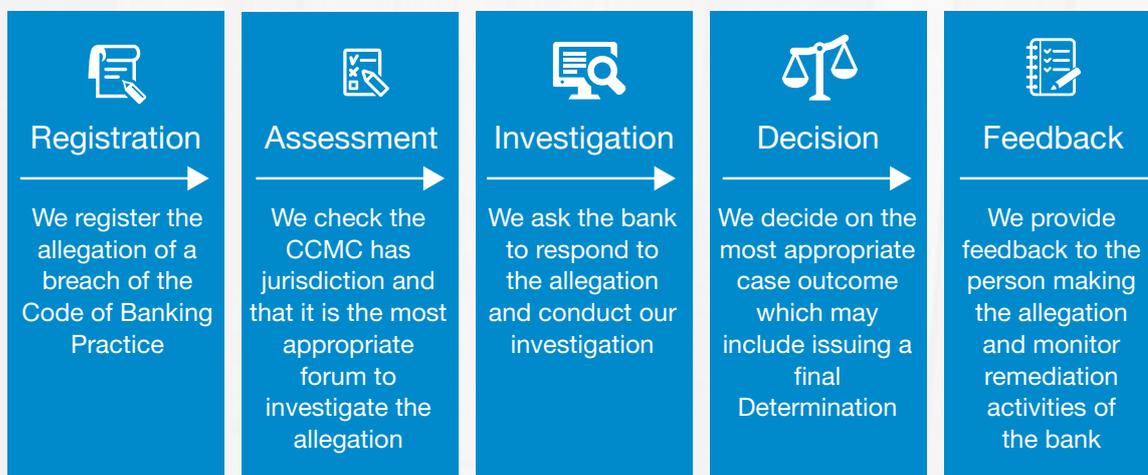




Chart 5: Allegations received by State or Territory



Investigations: case work

All breach allegations received by the CCMC are initially assessed, but not all matters raised result in an investigation.

The CCMC received 45 new matters in 2014–15 but was unable to investigate one of these because the allegations did not relate to a banking service. Table 1 below provides an overview of matters investigated in 2013–14 and 2014–15.

Of the 44 cases the CCMC investigated in 2014–15, 41 concerned individual consumers and three related to small business. Nine individual consumers were represented by consumer advocates (see Chart 6 below).

Most allegations were received directly from individuals and small businesses via the CCMC’s website. The CCMC began one investigation following a referral from FOS and initiated another investigation as a result of its Own Motion Inquiry.

These individual and small business consumers were located throughout Australia, with most (38%) based in New South Wales (see Chart 5 on page 20).

Allegations outside jurisdiction

The CCMC’s Mandate sets out the scope of its jurisdiction and the CCMC’s initial review of cases assesses whether an investigation can be conducted. In 2014–15, one case was judged to be out of jurisdiction as the allegations did not relate to a banking service.

In two other cases, the CCMC found that some of the allegations were outside of its jurisdiction, and only investigated those allegations that were within its jurisdiction.

The key commitment of ‘fair and reasonable’ and financial difficulty obligations remain the primary sources of Code breach allegations received by the CCMC.

Chart 6: Allegations received by source



Table 1: Overview of case numbers

Cases	2013–14	2014–15
Number of cases open at beginning of year	30	31
Number of new cases	36	44
Number of cases closed	35	49
Number of cases open at end of year (30 June)	31 (including 6 on hold*)	26 (including 9 on hold*)
Breaches	2013–14	2014–15
Number of alleged Code breaches	54	71
Number of Code breaches confirmed	26**	19**
Closed cases	2013–14	2014–15
Number of cases closed by Determination	2	2
Number of cases closed by delegated decision	9	19

* Where an allegation is being considered by another forum, such as the Financial Ombudsman Service Australia (FOS) or a court, the investigation is placed on hold until that other forum has finished its review.

** Includes one breach finding by FOS adopted by the CCMC and breaches the banks have agreed to self-report in the ACS, in acknowledging that a breach has occurred.

Investigations: case work continued

Referrals from FOS and the ABA

In 2014–15, FOS referred one matter to the CCMC, which it is currently investigating. No matters were referred by the ABA during the reporting period.

Consumer enquiries

In 2014–15, the CCMC received 24 general enquiries from consumers about expectations of banking standards and services under the Code, six more than the previous year. The CCMC referred some cases to FOS where the consumer sought redress, and investigated others as the allegations indicated potential breaches of the Code.

Overview of alleged code breaches

The 44 new cases received in 2014–15 contained 71 alleged code breaches. Chart 7 below summarises these allegations.

In 2014–15, the CCMC recorded for the first time the type of products to which the allegations related (see Chart 8 on page 23).

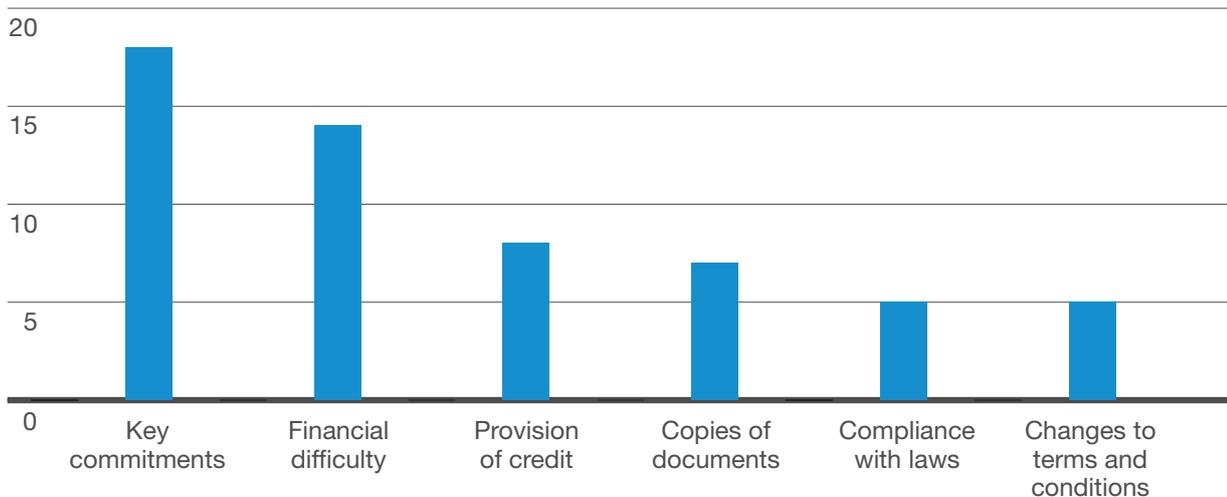
The small number of allegations the CCMC receives each year are, on their own, too small to determine any trends or risks in banking. However, year-on-year comparisons demonstrate that the key commitment of ‘fair and reasonable’, and the financial difficulty obligations, remain the primary sources of Code breach allegations received by the CCMC.

Analysis of these allegations by product type illustrates that credit contracts are the most common source of allegations.

To address these issues, the CCMC conducted an inquiry into how well banks comply with their financial difficulty obligations (see page 16) in 2014–15, and plans to conduct an inquiry into provision of credit obligations in 2015–16. These inquiries allow the CCMC to better assess banks’ compliance with these obligations, identify issues for attention and share good industry practice.

The CCMC will also work with banks over 2015–16 to better understand the underlying causes of ‘fair and reasonable’ breaches.

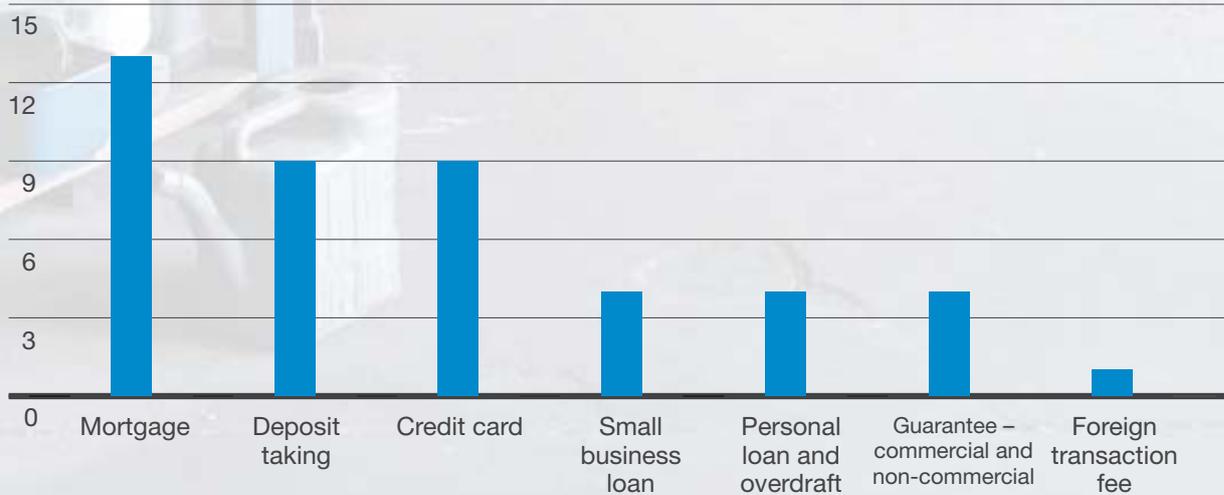
Chart 7: Alleged breaches by Code category – new cases received in 2014–15 (top six categories)



See Appendix 2 for a full list of alleged breaches in 2014–15.



Chart 8: Cases per product type

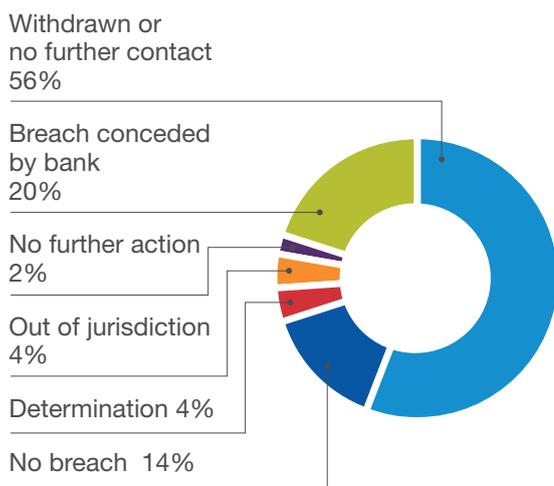


Investigations: outcomes

Cases closed

The CCMC closed 49 cases during 2014–15; the outcomes of these cases are illustrated in Chart 9 below.

Chart 9: Cases closed 2014–15



The 28 cases shown in Chart 9 as ‘withdrawn or no further contact’ include those cases where the person making the allegation did not provide a Privacy authority, withdrew the case or did not respond to the CCMC’s requests for information to continue to investigate the case.

In the ten cases recorded as ‘breach conceded by bank’, individual banks concerned accepted that a breach had occurred when a matter was raised with them. The CCMC closed these cases without further action where it considered the remedial action by the individual bank was appropriate and the bank agreed to self-report the breaches in the 2014–15 ACS. A breakdown of breaches identified in this way is given in Table 2.

Two cases were closed as a result of the Determination process – one case concluding that the individual bank had breached its code obligations in respect of provision of credit, and the other adopted the FOS Determination that a breach had occurred.

In one other case, which was raised with the CCMC in 2013–14, further investigations identified that it was out of jurisdiction and was closed in 2014–15.

Breach outcomes

The CCMC identified 19 breaches of the Code in 2014–15, which are detailed in Table 2 below.

The 13 breaches conceded by banks were self-reported in the 2014–15 ACS and are included in the total number of breaches detailed on page 11 and in Appendix 1.

The outcomes of investigations are, on their own, too small to determine any trends or risks in banking. They do, however, form a key risk indicator, which combines with the results of the CCMC’s monitoring work in its overall risk assessment modelling and helps determine the CCMC’s work plan for the year ahead.

Own Motion Inquiries

The CCMC may conduct an Own Motion Inquiry where it is unable to begin an investigation but believes the issue raises broader compliance concerns.

The CCMC concluded one inquiry of this type during 2014–15. Further details of how and why the CCMC may conduct an Own Motion Inquiry can be found in Guidance Note 7, available on the CCMC website at www.ccmc.org.au.

Table 2: Breach finding by Code category 2014–15

Breach identification	Clause description	No. of breaches
Breaches identified by CCMC Determination	Provision of credit	5
Adoption of FOS Determination of a code breach	Joint debtors	1
Breaches conceded by banks	Copies of documents	2
	Compliance with laws	1
	Debt collection	1
	Direct debits	1
	Privacy and confidentiality	1
	Financial difficulty	2
	Fair and reasonable	5



CASE STUDY

Processing a 'garnishee' order

Brian contacted the CCMC after his bank had processed a 'garnishee' order made by a State debt recovery office.

Brian was concerned that the bank had taken a \$13 fee for processing the order without disclosing it on his statement. Brian only learned of the fee through correspondence with the debt recovery office. Brian alleged that the bank had breached clause 12.4 of the Code, which requires standard fees and charges to be disclosed in Terms and Conditions.

The CCMC reviewed the circumstances of the allegations. However, the processing of a garnishee order does not fall within the definition of a 'banking service' under the Code and the CCMC was unable to investigate the matter further.

Regardless of whether the Code applied, the bank was entitled to retain the fee under the *Fines Act 1976*. As the \$13 was retained by the bank from the total amount due, there was no additional cost to Brian and no need for the bank to disclose the fee on his bank statement.



CASE STUDY

Provision of credit

In 2014–15, the CCMC issued two Determinations concerning banks' compliance with their provision of credit obligations under the Code of Banking Practice.

The Code sets out an obligation for banks when offering, giving or increasing an existing credit facility that is designed to ensure they engage in diligent and prudent lending. This obligation features in both the 2004 and 2013 versions of the Code, and states:

“Before we [the bank] offer or give you [the customer] a credit facility (or increase an existing credit facility), we will exercise the care and skill of a diligent and prudent banker in selecting and applying our credit assessment methods and in forming our opinion about your ability to repay it.”

The first Determination followed an inquiry into a bank's lending decision for one of its customers, who was 69 years old and self-employed in a physically demanding occupation at the time she refinanced a previous home loan. The bank had limited information about her banking history, which was reviewed by the CCMC, but this indicated she had been making repayments using money drawn down when she refinanced a previous loan with the bank some two years earlier.

The CCMC considered that in the circumstances of this case, a prudent and diligent banker would have made further enquiries about the customer's circumstances,

long-term financial plans and the ability to continue to repay the loan, before making a decision to approve the loan. The bank's failure to make those enquiries placed it in breach of the provision of credit obligations.

The second Determination arose from an investigation that found a bank had failed to make adequate enquiries before increasing the limit on a credit card account. In this case the bank increased the credit limit even though there were events on the account that should have triggered further enquiries. The bank argued that it had relied on the customer's self-declaration when applying for the credit that he could afford the repayments on the increased limits.

As a result of these Determinations, the CCMC developed a three stage test to assess whether a bank complied with its obligations. A key feature of the test relates to the steps banks take to consider a customer's individual circumstances, and to making appropriate enquiries where the information available to the bank is limited, unverified or inconsistent.

The three stages of the CCMC's test are set out in Guidance Note 9 – Provision of Credit, which was published as a result of these Determinations. A copy is available on the CCMC website, www.ccmc.org.au.

This test aligns with FOS's approach when considering maladministration disputes and the principles in the National Consumer Credit Protection reforms.

Engaging with stakeholders

In 2014–15, the Committee engaged with stakeholders to influence positive changes in industry behaviour, share its experience of code compliance and highlight areas of good industry practice and service delivery.

Consumer advocates

During 2014–15, the CCMC met with consumer advocates and financial counsellors in every State and Territory to:

- identify potential areas of risk in code compliance
- inform code monitoring activity
- guide the scope of its Own Motion Inquiries, and
- raise their awareness of the CCMC.

Along with the Telecommunications Industry Ombudsman, the Credit and Investment Ombudsman and state-based Energy and Water Ombudsman services, the CCMC participated in ‘code’ days in Victoria, New South Wales and South Australia. These days equipped financial counsellors with the awareness and tools to help their clients, particularly those experiencing financial difficulty.

The CCMC also met with the following five consumer advocate and financial counselling organisations throughout the year:

Financial Counselling Australia (FCA)

Dr June Smith attended and presented at FCA Tasmania’s Annual General Meeting. All Committee members and CCMC Secretariat staff attended the FCA’s annual conference in Canberra in May. Issues discussed at the conference will inform the CCMC’s future work.

Anglicare Tasmania

Dr June Smith presented ‘Unlocking the Codes’ for Anglicare Tasmania in August.

Financial and Consumer Rights Council (FCRC)

The CCMC provided a code training session for financial counsellors enrolled in the FCRC’s professional development and Diploma programs, which are run in conjunction with Victoria University.

Money Workers Association of the Northern Territory (MWANT)

CCMC Investigations Manager Ralph Haller-Trost attended the MWANT annual conference in Alice Springs and presented on the Code. The conference gave the CCMC the opportunity to interact with financial counsellors who deal with consumers in remote Indigenous communities, and better understand the issues their clients face with banking.

Financial Counsellors Association of Western Australia (FCAWA)

Ralph Haller-Trost attended and presented at the FCAWA conference in Perth.

Small business representatives

As part of its Own Motion Inquiry into how banks meet their financial difficulty obligations, the CCMC invited several small business advocacy organisations to distribute a survey among their members. As a result the CCMC received valuable insight into small business advocates’ experience of dealing with banks on behalf of customers who have trouble repaying credit.

CCMC Compliance Manager Robert McGregor attended the National Small Business Forum in July, and met with representatives of the Council of Small Businesses of

Australia to discuss issues related to small business and banking.

Consumers

The CCMC received several enquiries from consumers in 2014–15, which generally related to their expectations of banking standards and services under the Code. While in some cases it was appropriate to refer the consumer to FOS, other enquires resulted in CCMC investigations.

During 2014–15,
the CCMC met with
consumer advocates
and financial counsellors
in every
State and Territory

Engaging with stakeholders continued

ABA, FOS and ASIC

Under the CCMC Mandate, the CCMC is required to consult with the Australian Bankers' Association (ABA) and Financial Ombudsman Service (FOS) Australia when developing operating procedures. In 2014–15 it consulted with both organisations to develop its Guidance Notes.

The CCMC Chair and CEO met with the ABA on several occasions to discuss the operation of the Code and Mandate and issues arising from the CCMC's monitoring and investigation activity. It also continued its strong working relationship with ASIC, meeting five times with the regulator to discuss their respective work programs.

The CCMC Secretariat helped to develop a web-based training module for FOS staff related to codes of practice, and also provided staff with face-to-face training.

Code subscribers

Bank Forum

Twenty-three participants representing 11 banks and the ABA attended the annual CCMC Bank Forum on 18 November to discuss:

- the CCMC's work program for 2015–16
- the ABA's outlook for the year ahead

- case studies based on the CCMC's investigations
- breach identification and reporting
- the outcomes of the 2013–14 Annual Compliance Statement (ACS) program and development of the 2014–15 ACS
- approaches to financial difficulty for consumers and small business, and
- banking issues related to remote Indigenous communities.

The Committee would like to thank all participants who attended the forum, the presenters from five different banks, and the Westpac Banking Corporation for hosting the event at its Sydney offices.

Quarterly Stakeholder Liaison Group

The CCMC held three Stakeholder Liaison Group teleconferences in 2014–15 to build on the Annual Forum. The teleconferences allowed the CCMC to raise issues identified from its monitoring and investigation work, get feedback from bank stakeholders on these issues, and provide further information on its upcoming work program.

Onsite visits

In addition to the ACS program's onsite verification visits, CCMC members and staff met with bank representatives on 10 occasions

in 2014–15 to discuss code compliance issues and identify emerging issues.

Publications

Quarterly Bulletin

The CCMC published four editions of its e-newsletter *The Bulletin*, which highlights compliance issues and industry data arising from its monitoring and investigations work. *The Bulletin* is distributed to key stakeholders and subscribers to the CCMC website.

Website

During 2014–15, the Committee's website www.ccmc.org.au was accessed 4,455 times by 2,699 separate users in Australia.

Committee members and Secretariat staff



Committee members and Secretariat staff continued

The CCMC is an independent three-member committee, established in accordance with the Code. Its work is supported by the CCMC Secretariat, which provides code monitoring and administrative services.

Committee members

Christopher Doogan AM

Independent Chair

Current term: 1 February 2014 to 31 January 2017

Chris is a company director and lawyer by background, having occupied several senior positions in both the private and public sectors.

His public sector positions included Deputy Comptroller-General and Comptroller-General of Customs prior to his appointment to the High Court of Australia as inaugural Chief Executive and Principal Registrar.

In addition to partnership in a leading law firm of which he was the Managing Partner, he has been CEO of the National Capital Authority; Chairman of a company owned by the Commonwealth of Australia and the State of New South Wales – Law Courts Limited; Chairman of a health insurance company – Australian Health Management Group Limited; and Chairman of Community CPS Australia Limited – a mutual bank (trading as Beyond Bank Australia).

He has written an administrative law textbook, is a trained mediator from Harvard Law School and has filled many community positions including Vice President of the Australian Institute of Management and membership of advisory bodies relating to tertiary education, health and finance.

He has been a member of several regulatory agencies including the Commonwealth Tax Practitioners Board and the ACT Legal Practitioners Admission Board, and was a member of the Australian Business Foundation Board. He is the Principal Member of a specialist Commonwealth Appeals Panel and the independent Chairman of the Audit and Risk Committee for the Family Court of Australia and the Federal Circuit Court of Australia. He is also Chairman of the Board of the Centre for Customs and Excise Studies.

Sharon Projekt

Industry Representative

Current term: August 2012 – August 2015

Sharon has a legal background with broad experience across the Australian retail banking sector in the areas of legal advice, compliance, and internal and external dispute resolution. She has extensive experience in escalated and complex complaint handling and investigations, having worked on a number of high-profile projects.

Sharon has also worked on compliance-related projects including coordinating and implementing a terms and conditions project to ensure banking compliance following the introduction of the Financial Services Reform Act, Code of Banking Practice and anti-money laundering legislation.

Sharon has worked in debt recovery, providing legal advice on insolvency issues related to mortgage and small to medium business banking customers. She completed the Insolvency Practitioners Association of Australia Advanced Insolvency Law and Practice course in 2002.

Gordon Renouf

Consumer and Small Business Representative

Current term: July 2014 – July 2017

Gordon is a lawyer and consumer advocate. He is a co-founder and CEO of Ethical Consumers Australia, which operates the 'Good on You' ethical shopping service and *Otter* e-newsletter. He is the Chair of the Board of Good Environmental Choice Australia and serves on the Boards of Justice Connect and the Consumers' Federation of Australia. He recently finished two terms as a member of the Commonwealth Government's Consumer Affairs Advisory Council, and from 2007 to 2009 he was a member of the executive of Consumers International, the global peak body for national consumer organisations. Gordon has worked as Director, Policy and Campaigns, for the consumer group CHOICE, Director of the National Pro Bono Resource Centre, Director of the North Australian Aboriginal Legal Aid Service and Director of the Northern Territory Government's 2004 Alcohol Framework Inquiry.

Committee meetings

In 2014–15, the CCMC met on ten occasions (seven meetings in person and three by teleconference). These meetings allow the Committee to consider the work of the Secretariat; make formal decisions relating to alleged breaches of the Code; and plan and direct future activities. As necessary, the Committee considers matters electronically between meetings. In addition, the Independent Chair and the Chief Executive Officer exercise delegated decisions on behalf of the Committee.

CCMC Secretariat

Dr June Smith

Chief Executive Officer

Appointment:
July 2011 – June 2015



Dr June Smith has significant expertise in Corporations law, professional standards, ethics, integrity, compliance and regulatory frameworks. 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. On 1 July 2015, June left the CCMC to take up the role of Lead Ombudsman (Investments and Advice) at the Financial Ombudsman Service (FOS) Australia.

Sally Davis

Chief Executive Officer

Appointment:
1 September 2015 – current



Sally was appointed as Chief Executive Officer on 1 September 2015. She was previously Senior Manager of Systemic Issues at FOS, having worked at FOS and its predecessor schemes for almost 15 years. Sally is an accredited mediator and holds a Bachelor of Commerce and a Bachelor of Laws degree from the University of Melbourne and a Graduate Diploma (Arts) from Monash University. She is also the General Manager of Code Compliance and Monitoring at FOS. Sally brings to this position extensive experience in financial services, as well as good relationships with regulators, industry and consumer groups from her work at FOS.

Robert McGregor

Compliance Manager

Appointment: October 2011 – current



Robert has more than 25 years' experience in financial services, primarily in the United Kingdom. He has held compliance positions with insurers, banks and a professional body. He is responsible for delivering the CCMC's code monitoring program and the CCMC's stakeholder engagement with small business advocates. Robert is an Associate of the Governance, Risk and Compliance Institute.

Committee members and Secretariat staff continued

Ralph Haller-Trost

Investigations Manager

Appointment: July 2011 – July 2015



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 enquiries and the CCMC's stakeholder engagement with

consumer advocates. Ralph is currently on a 12-month leave of absence and will return to the CCMC Secretariat in August 2016.

Linh Nguyen

Compliance Analyst

Appointment: July 2014 – current



Linh has a background in finance and accounting and joined the CCMC Secretariat after three years with FOS. She assists in both investigations and monitoring and will assume the role of Investigations Manager during Ralph's absence.

Liam Cronin

Compliance Analyst

Appointment: January 2013 – current



Liam has a number of years' experience across financial services, including in a compliance monitoring role with a large UK bank. His strong analytic skills assist the CCMC in scoping and developing inquiries and in the interpretation and reporting of industry data.

Gina Vasquez

Compliance Administrator

Appointment: January 2007 – current



Gina is the Coordinator for the Code Compliance and Monitoring at FOS. She is the first point of contact for organising the logistics and administrative functions with the CCMC. Gina is qualified in administration and completed her Certificate in Legal Studies.

CCMC financial statements

1 July 2014 to 30 June 2015

	30 June 2015 \$	30 June 2014 \$
SALARIES		
Salaries – Gross including Committee remuneration		
Leave provisions, Super and Payroll Tax	581,984	514,141
EXPENSES		
Occupancy and Outgoings	34,359	37,468
Travel	38,706	34,127
Technology Support	18,333	9,315
Annual Report and Publications	13,743	12,577
Recruitment and Consultants	14,500	14,716
Insurances	1,889	1,889
Conferences and Training	13,836	4,484
Other	6,952	4,929
TOTAL EXPENSES	142,318	119,505
TOTAL SALARIES AND EXPENSES	724,302	633,646
FUNDING		
Bank subscriptions	680,903	711,520
Allocation from previous years	70,841	57,967
TOTAL FUNDING	751,744	769,487
SURPLUS/(DEFICIT)		
Accumulated Surplus/(Deficit)	27,472*	135,841

Actual expenditure in 2014–15 was 3.6% less than the forecast budget, principally due to lower than anticipated expenditure on IT and professional advice.

Consistent with 2013–14, a portion of this surplus will be retained as an operating reserve against any unforeseen expenditure. The remainder of the surplus will be carried forward to the 2015–16 budget, offsetting the contributions required from code subscribers. The operating reserve for 2015-16 has been maintained at an equivalent of two months operating expenses.

NOTES

* \$23,364 of the accumulated surplus at 30 June 2015 allocated to the 2015–16 budget. \$4,108 retained as an operating reserve.

Compliance breach summary 2014–15

Code category	Identified by the Bank	Identified by other forum	Significant breaches	Total breaches (exc. CCMC identified)	CCMC determination	CCMC other (see Table 2)	Total code breaches
General	1,593	68	6	1,667	0	8	1,675
3 Key commitments	320	54	1	375	0	5	380
4 Compliance with laws	1,106	14	5	1,125	0	1	1,126
5 Retention of rights	1	0	0	1	0	0	1
9 Staff training and competency	150	0	0	150	0	0	150
13 Copies of documents	13	0	0	13	0	2	15
15 Operation of accounts	1	0	0	1	0	0	1
18.2 New account information - ID requirements and TFN legislation	0	0	0	0	0	0	0
34 Branch closure protocol	2	0	0	2	0	0	2
Disclosure	90	0	5	95	0	0	95
14 Cost of credit	8	0	0	8	0	0	8
18.1 Pre-contractual information	2	0	1	3	0	0	3
17 Bank cheques & inter-bank transfers	1	0	0	1	0	0	1
12 Terms and conditions	72	0	3	75	0	0	75
20 Changes to terms and conditions	7	0	1	8	0	0	8
Provision of banking service	189	6	1	196	0	1	197
7 Customers with special needs	4	0	0	4	0	0	4
8 Customers in remote Indigenous communities	0	0	0	0	0	0	0
16 Account suitability	7	0	0	7	0	0	7
18.3 New account information - Account combination	0	0	0	0	0	0	0
19 Account combination	5	0	0	5	0	0	5
21 Direct debits	90	1	0	91	0	1	92
12.5 Terms and conditions - Chargebacks	2	2	0	4	0	0	4
22 Chargebacks	3	1	0	4	0	0	4
23 Information relating to foreign exchange services	11	0	0	11	0	0	11
25 Payment instruments	48	0	0	48	0	0	48
26 Statements of account	19	2	1	22	0	0	22

Code category	Identified by the Bank	Identified by other forum	Significant breaches	Total breaches (exc. CCMC identified)	CCMC determination	CCMC other (see Table 2)	Total code breaches
Provision of credit	2,059	95	3	2,157	5	4	2,166
27 Provision of credit	1,300	19	0	1,319	5	0	1,324
28 Financial difficulty	164	51	2	217	0	2	219
29 Joint debtors	0	3	0	3	0	1	4
30 Joint accounts and subsidiary cards	0	0	0	0	0	0	0
31 Guarantees	17	11	1	29	0	0	29
32 Debt collection	578	11	0	589	0	1	590
Other	2,428	14	1	2,443	0	1	2,444
24 Privacy and confidentiality	1,781	13	1	1,795	0	1	1,796
33 Closure of accounts in credit	14	0	0	14	0	0	14
35 Electronic communications	66	0	0	66	0	0	66
40 Family law proceedings	0	0	0	0	0	0	0
37 Internal dispute resolution	535	1	0	536	0	0	536
38 External dispute resolution	19	0	0	19	0	0	19
39 Availability of information about dispute resolution processes	0	0	0	0	0	0	0
10 Promotion of Code	1	0	0	1	0	0	1
11 Availability of copies of the Code	12	0	0	12	0	0	12
Total breaches	6,359	183	16	6,558	5	14	6,577

Appendix 2:

Alleged breaches by code category

Code obligation	Number of allegations
Key commitments	18
Financial difficulty	14
Provision of credit	8
Copies of documents	7
Compliance with laws	5
Changes to terms and conditions	5
Dispute resolution	5
Debt collection	4
Privacy and confidentiality	3
Customers with special needs	1
Guarantees	1
Total	71

Where the CCMC received an allegation of a breach of the 2004 version of the Code, it has been recorded for the purposes of this table against the corresponding clause of the 2013 version of the Code.

Appendix 3:

CCMC Guidance Notes

Guidance Note	Title
1.	Monitoring – the CCMC’s monitoring programs such as the ACS and Own Motion Inquiries.
2.	Discretion – when the CCMC may or may not conduct or continue to conduct a compliance investigation.
3.	‘The 12 Month Rule’ – where the events giving rise to the allegation were, or could have reasonably been, known more than 12 months before the allegation was made.
4.	Rules of Evidence – describing the CCMC’s likely approach to evidence and previous CCMC Determinations.
5.	Concurrent Forums – where a matter is being considered by, for example, FOS or a Court.
6.	Failure to respond – describing the CCMC’s likely approach where the person making an allegation does not respond to the CCMC, withdraws their allegation or requests that the CCMC re-opens a closed investigation.
7.	The Interrelationship between Investigations and Monitoring Activities – the CCMC’s likely approach when it considers the interrelationship between its code monitoring and compliance investigations powers.
8.	Guarantees – obligations under clause 31 of the Code.
9.	Provision of Credit – obligations under clause 27 of the Code.
10.	Direct debits – obligations under clause 21 of the Code.
11.	Chargebacks – obligations under clause 22 of the Code.
12.	Classification, Reporting and Remediation of Non-Compliance with the Code of Banking Practice – the classification, recording and reporting of non-compliance and the CCMC’s enforcement and sanctions.

Copies of the latest versions of the Guidance Notes are available on the CCMC website.

Significant breach summary 2014–15

Table 1: Significant breaches

Issue	Background	Outcome
Key commitments (clause 3)		
Not applying interest in a fair and reasonable manner	<p>A legacy credit card product of the bank guarantees to apply an interest rate within the lowest quarter of rates available in the Australian market. Following an internal review, the bank identified that there were ineffective controls and procedures in place to ensure this comparison took place.</p> <p>As a result, 67,000 customers had a higher interest rate applied to outstanding balances from November 2012 to June 2015.</p>	The bank is formulating a customer remediation plan, which will return the customer to the position they would have been in if the correct interest rate had been applied.
Not providing services where a fee has been charged	The bank identified a financial planner who was not providing ongoing advice services where an ongoing advice fee was being charged.	The bank is reviewing client files to determine which services were provided. The bank will refund fees where it identifies agreed services were not provided.
Compliance with laws (clause 4)		
Not complying with Financial Services laws	An employee of the bank fraudulently set up a number of dormant customer accounts with life insurance policies, with a view to obtaining a higher bonus as a result of the sale of these policies. As the employee was also a regional manager, he was able to allocate customers to his own portfolio.	<p>The bank has implemented a '2-up' approval process when customers are transferred to another planner. In addition they are investigating control improvements in planner monitoring and workflow.</p> <p>The bank also reported this breach to ASIC.</p>
Inappropriate disclosure documents provided to customers	The bank identified up to 2,000 instances where sales of Foreign Exchange (FX) transactions were made in circumstances that required a Product Disclosure Statement (PDS) to be provided to clients, but where there was no evidence of this statement being provided.	<p>The bank wrote to all active FX clients (clients who have executed an FX transaction in the last two years), providing them with a copy of the recently updated PDS for the product.</p> <p>The bank is now conducting regular reviews to detect instances where a PDS may not have been provided to clients as required. Staff involved in these services are also receiving further training.</p>
Inappropriate advice	During a recent update of foreign currency term deposit documentation, the bank identified that retail customers had received advice about this non-basic retail product from staff who did not have RG146 competency in non-basic deposit products.	Relevant advisers have been instructed not to provide general advice on non-basic deposit products until additional training assessments are completed to establish staff meet the minimum standard under ASIC Regulatory Guide 146.
Terms and conditions provided instead of PDS.	The bank identified that customers of the foreign currency term deposit product were provided with a terms and conditions document, rather than a PDS.	The bank wrote to all 180 current customers who hold a Foreign Currency Term Deposit, providing them with a copy of the new PDS for the product and advising that this new disclosure document would apply to any new deposits established, as well as to any term rollovers.

Issue	Background	Outcome
Terms & conditions (clause 12)		
Incorrect charging of late payment and over-limit fees	Since 2008, a total of 23,500 account holders were charged late payment and over-limit fees in error as the bank's systems were not correctly aligned with the terms and conditions of the product.	The bank has implemented fee waivers to affected accounts and has implemented a quality assurance process to test that the waiver process is working. A permanent systems fix to prevent the breach re-occurring has been implemented. The bank will also refund an estimated \$3.4 million in overcharged fees to affected customers and expects to finalise refunds by early 2016.
Not applying 'offset amounts' to linked credit accounts	The bank identified a specific circumstance where, although an offset account was properly linked to a loan, its system incorrectly applied an offset amount of zero to the loan account for one interest cycle. The issue only affected home and business loan accounts with a linked offset which were 'restructured' on the same day that interest was due to be charged to the loan. The issue dates back to at least 2008 and from this time, approximately 5,800 home and business loan customers have been impacted.	In April 2015, a temporary manual process to calculate and apply the appropriate offset adjustment to the affected accounts was implemented. The bank currently generates daily reports to identify any accounts impacted by this issue. The bank is in the process of refunding up to \$1.3 million in overpaid interest charges. A permanent system fix for the issue is expected to be implemented in early 2016.
Letters of offer containing incorrect interest rates	The bank identified that a letter of offer generated for a particular subset of commercial credit card customers incorrectly stated the relevant interest rate. As a result, the bank reviewed commercial cards letters of offer, which highlighted a number of other inconsistencies between the interest rates and fees set out in the letters of offer and those actually charged by the bank's systems to some customers. The inconsistencies date back to 2009 and were caused by breakdowns in document management processes for the letters of offer. The issues have affected some small business customers, to whom the Code applies.	The bank has reviewed and corrected letters of offer for new customers and implemented new controls and quality assurance checks on letters of offer. It has also established a remediation program to refund customers who received incorrect letters of offer and are impacted by these issues. Refunds to impacted customers are expected to begin in mid- 2016.
Not complying with the terms and conditions of the product	In September 2014, the bank identified issues with its specialist rural and agri-business product. Processing issues when establishing the package meant that some of the benefits of the product were not applied. The bank also identified some discrepancies with the product's terms and conditions, which did not reflect that the customer needed to notify the bank in writing which products they would like concessions to apply to. The bank's documentation suggested this would be done automatically.	The bank has reported the issue to ASIC and is undertaking a remediation program, which is overseen by ASIC. This remediation program includes writing to impacted customers who will be refunded where they have been financially disadvantaged.
Pre-contractual and new account information (clause 18)		
Failure to provide information	The bank recommends managed funds to retail clients via third-party platforms. The bank identified that it had not provided a Product Disclosure Statement (PDS) of the underlying managed fund to 1,285 clients.	The bank wrote to all affected clients, advising them of the issue and providing them with the appropriate PDS. The bank also changed its processes and procedures and provided additional training to advisers to ensure that a PDS is provided at the appropriate time.

Issue	Background	Outcome
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Statements of accounts (clause 26)

Failure to provide a statement	Credit card statements were not issued on one day due to a technical issue arising from an upgrade to the bank's credit card systems. The bank identified that this was an isolated incident.	Statements were re-issued to 13,000 affected customers. Any customer who had failed to make a contractual payment on time had late payment reminder fees and over limit arrangement fees waived. In addition, the bank did not apply interest charges on purchases made with the impacted credit cards for customers who did not make a repayment and who had historically paid the outstanding balance in full each month.
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Privacy and confidentiality (clause 24)

Disclosing personal information to a third party	The bank was alerted to an issue by customers who had received statements that contained some pages related to other customers of the bank. The bank, in conjunction with its printing supplier, identified that 6,800 customers had received erroneous statements. This had occurred due to an issue with the vendor's printing equipment.	<p>The bank immediately ceased printing further statements until it had identified the cause of the incident. Once this was established and rectified, the statements were re-printed and sent to customers with an apology letter. As part of its investigation, the bank identified 101 instances where personal information was disclosed to a third party.</p> <p>The bank and vendor have put in place additional controls to ensure the breach does not re-occur.</p>
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Financial difficulty (clause 28)

Not responding within appropriate timeframes	When a printing vendor made a change to their firewall, some letter files were unable to be processed. Consequently, some letters were not issued, including notices of the bank's decisions in respect of requests for financial difficulty assistance. While customers had received verbal confirmation of decisions, written confirmation is required under clause 28.6 of the Code.	The bank re-issued the letters in March 2015. All hardship offers were honoured and where assistance was declined, the bank suspended its collection activities until the letters were re-issued. The bank has implemented an additional control to ensure all letters are issued and is working with the vendor to implement a permanent system solution.
Notice of defaults issued to customers where a financial difficulty arrangement was in place	<p>The bank was advised by the Financial Ombudsman Service that it had identified several accounts involving customers in financial difficulty that had been issued Notice of Default (NOD) letters while under a hardship arrangement.</p> <p>The bank undertook root cause analysis, which identified an inability to systematically prevent auto-generated NOD letters from being issued on day 14 to customers already under hardship arrangements.</p>	The bank has put in place a manual process to track all customers under a hardship arrangement and to remove all NOD letters generated by its systems. It is developing a systems solution to automatically identify these customers and suspend the NOD letters to them.

Guarantees (clause 31)

Non-compliant processes and documentation	The bank took over a finance company in 2014, at which time the Code became applicable to the finance company's business. Due to delays in the integration project, the systems and procedures are not compliant with the Code.	A change project is being implemented to roll out training and new processes and procedures.
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Do you want to know more about the Code or the CCMC?

If you would like to know more about the Code of Banking Practice or the CCMC, you can refer to the CCMC website: www.ccmc.org.au

Alternatively you can visit the ABA's webpage about the Code at: www.bankers.asn.au

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.



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