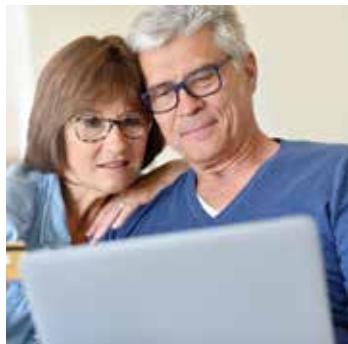


# Banking Practice in Australia 2015-16

---

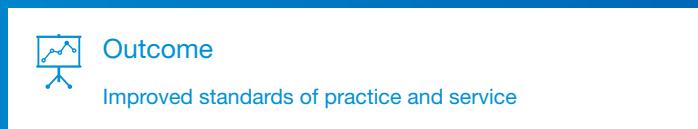
THE ANNUAL REPORT OF THE CODE  
COMPLIANCE MONITORING COMMITTEE  
CODE OF BANKING PRACTICE



A TRUSTED AND VALUED PARTNER

## CCMC Purpose Principles and Key Functions

The diagram below sets out the CCMC's purpose and principles, along with its key functions. These key functions can be grouped into three main categories: monitoring, investigating and engaging.



# Banking Practice in Australia 2015-16

## THE ANNUAL REPORT OF THE CODE COMPLIANCE MONITORING COMMITTEE CODE OF BANKING PRACTICE

### CONTENTS

Chair and CEO message	2
2015–16 at a glance	4
Key observations	5
CCMC operations	6
Monitoring Code Compliance Annual Compliance Statement program 2015-16	8
Key Findings of the ACS Program	12
Focus on customers in remote Indigenous communities	20
Monitoring Code Compliance Own Motion Inquiries	22
Investigations	24
Engaging with stakeholders	29
Committee members and staff	32
CCMC financial statements	34
Compliance Breach Summary 2015-16	35
Alleged breaches by code category	36
CCMC Guidance Notes	37
Significant breach summary 2015–16	38

### About this report

This is the Annual Report of the Code Compliance Monitoring Committee (CCMC), the Independent Committee established to monitor the Code of Banking Practice (the Code). The Code is published, along with the CCMC's Mandate, by the Australian Bankers' Association (ABA). Any reference in this report to 'the Code' relates to the 2013 version unless otherwise stated.

The banks which subscribe to the Code and to which this report relates are:

- 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).

# Chair and CEO message

2015–16 was another busy year for the CCMC as it worked to monitor the Code, at the same time preparing for periodic reviews of both the Code and the CCMC's own operations.

Banks reported 22% more breaches than last year and an increase in significant breaches. Banks have somewhat different approaches to breach reporting and the CCMC are working with banks to address this. Of the thirteen Code-subscribing banks, nine banks reported an increase in breaches and four reported a decrease. The CCMC believe that banks have improved their internal monitoring and processes for identifying and reporting breaches of the Code and that this partly explains the increase in breaches reported.

Code breach reporting is, however, only one aspect of Code compliance. Banks must use their breach identification to drive improvements to processes and procedures, ultimately providing a better service to customers. Where a bank has ongoing year-on-year increases in breaches of a particular Code clause, the CCMC will discuss with the bank what steps it is taking to rectify non-compliance and better its customer service. Improving standards of practice is a key commitment of Code-subscribing banks and the fundamental purpose of the Code.

The CCMC regularly conducts 'deep dives' into specific areas of Code compliance in the form of Own Motion Inquiries. In 2015–16, the CCMC completed and published its well-received report on compliance with the financial difficulty provisions of the Code.

The trends in both consumer Code breach allegations and self-reported breaches over recent years alerted the CCMC to compliance risk with regard to the Code's provision of credit obligations. The CCMC responded with an Own Motion Inquiry (OMI) into banks' compliance with these obligations. Using the comprehensive information provided by banks, the CCMC has assessed current compliance. A report on the OMI will be issued in December 2016. The CCMC thanks banks for their active cooperation with this major inquiry into a key Code commitment.

Contrasting with the increase in self-reported breaches, the CCMC in 2015–16 saw a drop in the number of Code breach allegations it received. The CCMC conducts an engagement program in an effort to raise awareness. In the coming year, the Committee encourages banks and the ABA to contribute to this awareness by highlighting to both individual and particularly small business customers their right to refer matters to the CCMC.

On 26 April 2016, the ABA announced a review of the Code. This review requires the CCMC to arrange a parallel review of its own activities as the independent Code monitor. Performance and governance specialist Phil Khoury has been appointed to conduct both reviews.

Drawing on a deep understanding of the Code and its operation in practice, the CCMC made a submission to the review of the Code, identifying areas for potential improvement. The Committee also conducted a self-assessment ahead of the review of the CCMC. This review of the CCMC will assess the Committee's performance against the requirements in its Mandate, taking into consideration its investigative, monitoring and stakeholder engagement work alongside the governance arrangements it has established. The CCMC looks forward to receiving Mr Khoury's report by the end of 2016.

Signalling that the Code and the CCMC are an increasingly important part of the regulatory landscape, during the year the Committee was invited to make a submission and appear before a public hearing of the Parliamentary Joint Committee on Corporations and Financial Services' inquiry into the impairment of customer loans. The CCMC Independent Chair, the CEO and the Compliance Manager advised the Parliamentary Joint Committee of the Code's unique small business protections, which exceed legislated minimum standards, highlighting the Code's role in promoting a higher standard of service in the banking industry.

This year, the CCMC's Banking Industry Representative, Sharon Projekt, and Consumer and Small Business Representative, Gordon Renouf, continued their valuable contributions to Committee discussions and activities, offering special insights from their respective sectors.

In meeting its work plan objectives for 2015–16, the CCMC has again relied on the support of its Secretariat, led by Sally Davis. In her first full year as Chief Executive Officer, Sally has built a productive relationship with the CCMC and its stakeholders. The work of the Secretariat has been crucial to the CCMC's successes this year, and the Committee thanks the staff for their important contributions.

Looking ahead to 2016–17, the CCMC's work will be shaped, in part, by the outcomes of the current reviews of the Code and the Committee. While it will be business as usual for CCMC monitoring and investigations, the Committee will also have to work to respond to and implement approved review recommendations and work with banks as they develop their processes and procedures for the transition to a revised Code. The CCMC looks forward to tackling these new challenges.



**Christopher Doogan AM FAIM FAICD**  
Independent Chair

**Sally Davis**  
Chief Executive Officer

December 2016

# 2015–16 at a glance



## COMPLIANCE MONITORING AND BREACH REPORTING

7,987	<b>breaches of the Code</b> self-reported by banks (page 10).	↑ 22%
21	<b>significant breaches of the Code</b> self-reported by banks (page 9).	↑ 5
2,328	<b>self-reported breaches of provision of credit obligations</b> (page 13)	↑ 76%
1.19m	<b>complaints</b> reported by banks (page 17)	↓ 3%
92.3%	<b>of these complaints resolved</b> within five days	➔ no change
279,000	<b>requests for financial difficulty assistance</b> received by banks (page 14)	↓ 6%
70%	<b>of these requests granted assistance</b> (page 14)	➔ no change

Own Motion Inquiry on Financial Difficulty completed (page 22)



## INVESTIGATIONS

41	<b>investigations finalised</b> including 1 by Determination and 27 by Delegated Decision (page 27)	↓ 8 cases
18	<b>Code breaches</b> identified (page 28)	↓ 1 breach



## PUBLICATIONS

- Annual Report for 2014–15
- 4 Quarterly bulletins
- Own Motion Inquiry Report on Financial Difficulty
- Guidance Note on Financial Difficulty

# Key observations

---

## Breach reporting

Self-reported breaches and significant breaches increased from last year, indicating that banks continue to enhance staff awareness of the Code and develop and refine their breach reporting frameworks. Effective identification of breaches is only the first stage in dealing with Code non-compliance. The CCMC encourages banks to use improved identification processes to address issues within their banks. This will not only improve compliance, but also the standard of banking services provided to customers.

---

## Remote Indigenous communities

All banks reported that they have processes and procedures in place to meet Code obligations regarding service to customers in remote Indigenous communities. The CCMC will continue in 2016–17 to understand and share areas of good practice among all banks for servicing remote Indigenous communities.

---

## Provision of credit

Provision of credit obligations now account for the largest proportion (29 per cent) of self-reported Code breaches. Credit products and issues related to the provision of credit also account for the majority of CCMC investigations.

Recommendations made by the CCMC in its 2016 Own Motion Inquiry are designed to improve banks' compliance with this aspect of the Code, while recognising the large number of credit applications dealt with across the banking sector. The CCMC encourages banks to review their systems and procedures, improving the outcomes for consumers through better decisions when providing credit.

---

## Investigations – Delegated decisions

The Independent Chair of the CCMC exercised the powers delegated to him by the Committee under the Mandate to finalise 27 cases that did not involve the Determination of a Code breach. This power was exercised where the bank involved admitted to a breach and took corrective action to prevent a re-occurrence, where another forum such as FOS or a court had already made a decision about the Code breach, or it was clear that a breach had not occurred.

On seven occasions, the CCMC was unable to investigate allegations because the consumer notified the CCMC more than 12 months after becoming aware of the events which formed the basis of the allegation (the 12 month rule). The CCMC has raised the limitations of this time frame in its submission to the reviews of the Code and the CCMC currently in progress.

# CCMC operations

The CCMC is the independent compliance monitoring body established under clause 36 of the 2013 Code of Banking Practice. Its powers and functions are set out in its Mandate, which is published by the ABA along with the Code.

## Annual Work Plan

Each year, the CCMC develops a business plan and the 2015–16 work plan was prepared in light of key risks, ensuring that the highest priority work was completed during the year.

The CCMC achieved all key objectives in its 2015–16 work plan, including:

- investigating and finalising allegations that Code subscribers breached the Code
- conducting its Annual Compliance Statement (ACS) program and publishing the results in its Annual Report
- undertaking an Own Motion Inquiry into banks' compliance with provision of credit obligations
- publishing a Guidance Note setting out the CCMC's likely approach to assessing banks' compliance with financial difficulty obligations
- engaging with stakeholders to share experiences of Code compliance.

## Review of the Code and the CCMC

On 20 April 2016, the ABA announced a review of the Code would be conducted in 2016. To coincide with this review, the CCMC arranged a review of its activities, as required under clause 14.3 of the Mandate. Both reviews are being conducted by Phil Khouri of Cameronralph Navigator. The CCMC's work plan for 2016–17 was amended to incorporate tasks relating to the reviews.

The review of the CCMC will assess the performance of its functions and operations against the requirements in the Mandate. The review will consider the CCMC's:

- performance of its investigations role
- performance of its monitoring role
- performance of its role monitoring aspects of the Code referred by the ABA
- external relationships
- governance arrangements.

In preparation for this review, the CCMC conducted a self-assessment of its operations during the reporting year. The self-assessment considered the requirements of the Mandate along with guidance set out in the Australian Securities and Investments Commission's (ASIC) *Regulatory Guide 183: Approval of financial services sector codes of conduct* (RG183).

The self-assessment indicates that, while the CCMC complies with the terms of the Mandate, in some areas the constraints of these terms impact the CCMC's ability to fully monitor or investigate banks' compliance with the Code and meet the good industry practice set out in RG183.

The CCMC highlighted these issues in its submission to the review of the Code, available on the review website: [www.cobpreview.cameronralph.com.au/](http://www.cobpreview.cameronralph.com.au/).

Both reviews are expected to be completed by 31 December 2016. The final report of the review of the CCMC will be published on the CCMC website.

## Guidance Notes

In 2015–16, the CCMC published *Guidance Note 13 – Financial difficulty*, which sets out the CCMC’s likely approach when it considers potential breaches of the financial difficulty obligations under clause 28 of the Code.

The Guidance Note was published as a result of the CCMC’s Own Motion Inquiry into financial difficulty in 2015 and was developed in consultation with the ABA, the Financial Ombudsman Service (FOS) Australia and Code-subscribing banks.

Guidance Notes outline the CCMC’s approach to its activities and functions under the Mandate and the Code and our interpretation of Code obligations. A list of CCMC Guidance Notes is in Appendix 2.

**The CCMC achieved all key objectives in its 2015–16 work plan**

## Committee meetings

In 2015–16 the CCMC met nine times (five meetings in person and four by teleconference). In its meetings, the Committee considers the work of the Secretariat, makes formal decisions relating to alleged breaches of the Code, and plans and directs future activities.

Following a May 2015 meeting of the Independent Chairs of the four Code Compliance Committees that are supported by FOS, the industry and consumer representatives each attended meetings with their counterparts on the other Committees. These meetings allowed the representatives to share experiences of Code monitoring.

Along with senior Secretariat staff, the Committee members also attended an annual Banking Forum at which senior compliance managers represented all subscribing banks. Senior representatives from the ABA and FOS also attended the Forum. The Forum provided a valuable opportunity to exchange ideas, share better practice experiences and work towards the common goal of improving customer service across the banking sector.

# Monitoring Code Compliance

## Annual Compliance Statement program 2015-16

The Annual Compliance Statement (ACS) program is the CCMC's principal monitoring activity. Through the ACS, the CCMC assesses banks' compliance with the Code, understands the compliance framework and remediation processes within banks and identifies areas of emerging risk.

The ACS program each year consists of a questionnaire completed by banks which includes data about breaches and complaints, followed by an onsite visit to discuss the responses provided.

The program allows banks 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.

Self-reported breaches are a key indicator of a bank's ability to identify and understand areas of emerging risk in Code compliance. This information also informs CCMC decisions about future monitoring activity.

The CCMC uses a risk-based approach to determine the questionnaire's themes and content for the year in consultation with key stakeholders. Focus areas in the 2015–16 ACS were:

- remote Indigenous communities
- terms and conditions
- debt collection
- dispute resolution.

In 2015–16, the banks actively engaged in the self-reporting process and provided information that allowed the CCMC to assess compliance with the Code. The ACS program results were discussed at meetings held with each bank in October 2016. These meetings identified that banks have differing approaches to identifying and assessing breaches of the Code. The CCMC will work with banks to develop a consistent approach to this important area.

### Significant Code breaches

Banks reported 21 significant breaches of the Code in 2015–16 compared with 16 in 2014–15 (see Chart 1).

A significant breach of the Code is defined as non-compliance that is deemed significant by either the CCMC or a bank. When determining whether a significant breach of the Code has occurred, the CCMC generally expects banks to consider the factors identified in section 912D of the *Corporations Act 2001* (Cth). 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
- the value of the actual or potential loss experienced by consumers.

In 2015–16 banks reported:

- five significant breaches again related to IT systems not accurately applying the correct interest rates or fees and charges.
- two significant breaches, reported by different banks, related to bank staff acting fraudulently for financial gain.

There are more details in relation to each of the 21 significant breaches reported this year in Appendix 4.

The CCMC in its 2013–14 Annual Report expressed concerns about the low number of reported significant breaches that year. The increase over the last two years may indicate that banks are improving their processes to identify and remediate issues that impact many customers. The CCMC will continue to discuss with banks how they assess 'significance' when reporting breaches to work towards ensuring that no significant breaches are overlooked and with the aim of developing a consistent approach to such reporting.

As banks are still in the process of identifying all customers affected, it is not yet possible to report on the scale of the significant breaches reported this year. For those significant breaches where the identification phase of the remediation projects is complete, banks have reported that over 200,000 customers were impacted with remediation costs of over \$16 million.

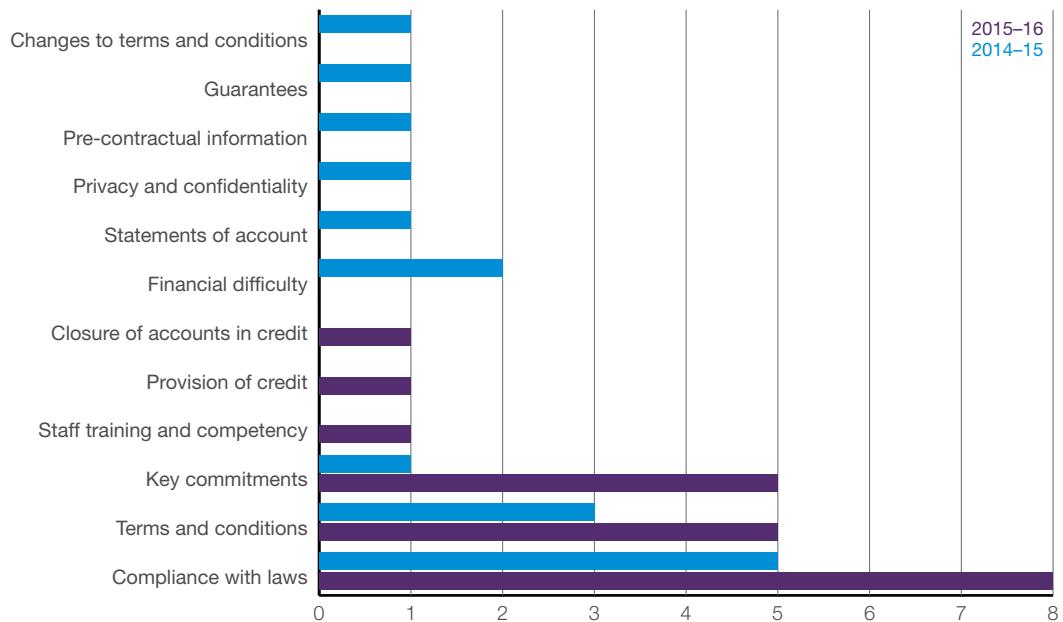
Breaches increased by 22% this year

## ACS Program results

The key findings from the ACS were:

- 7,987 self-reported breaches in total, up 22% on 2014–15
- 21 significant breaches of the Code, up from 16 last year
- 2,238 self-reported breaches of provision of credit obligations, up 76%
- 2,108 self-reported breaches of privacy and confidentiality obligations, up 17%
- 1.19 million complaints reported by banks, down 3%
- 92.3% of complaints resolved within five days
- 279,000 requests for financial difficulty assistance, down 5.7%
- 70% of all requests were granted some form of assistance, broadly similar to last year.
- Banks meet the requirements of the Code in respect of banking services provided to members of remote Indigenous communities.

**Chart 1: Significant breaches 2014-15 and 2015-16**



# Monitoring Code Compliance continued

## Self-reported breaches not classified as significant

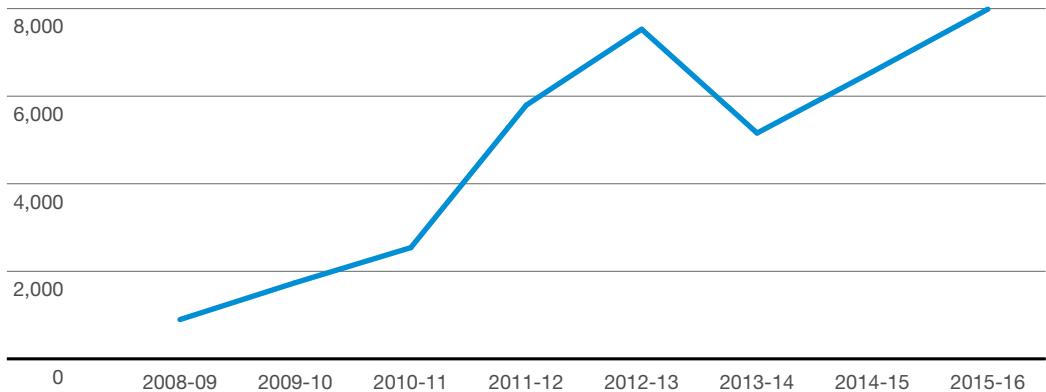
Banks self-reported 7,987 breaches in 2015–16, which is a 22% increase over the previous reporting period and continues the trend of increasing breaches of the Code (see Chart 2). Provision of credit (clause 27) saw the largest growth in breaches, and is now the biggest category of reported breach, accounting for 29% of the total. This is discussed later in the report.

Privacy and confidentiality (clause 24) remains one of the main categories of breaches self-reported by

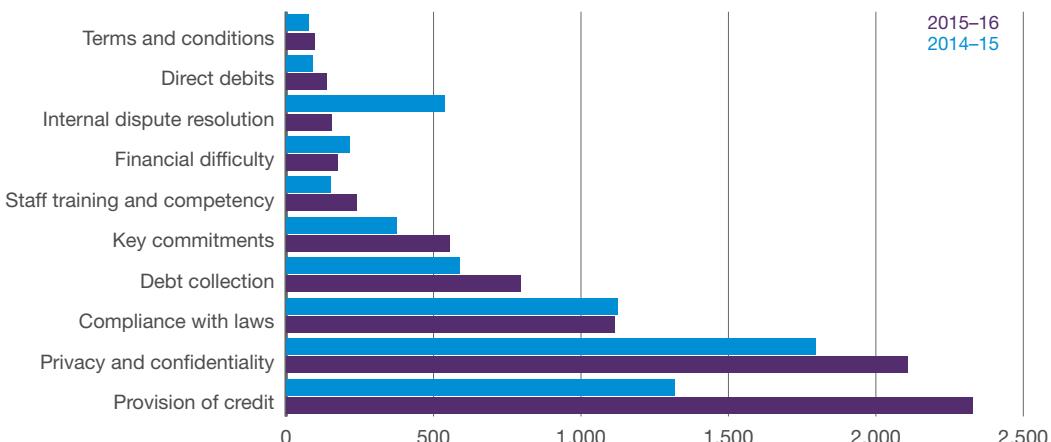
banks, with 2,108 breaches in 2015–16. This is a 17% increase on last year. Banks have previously reported that these breaches tend to be minor, commonly involving, for example, the failure to advise a customer that a call is being recorded or a staff member's failure to comply fully with internal identification procedures.

Chart 3 below highlights the 10 most significant categories of Code breaches. Full details of breaches of all clauses are in Appendix 1.

**Chart 2: Number of breaches reported by banks 2008-2016**



**Chart 3: Main categories of breaches reported to the CCMC in 2015–16**



## Breaches of the provision of credit obligations, compliance with laws, privacy and confidentiality and debt collection all increased

### Reporting on breaches of the key commitments

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 such a breach 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. As such, the CCMC may monitor, investigate and report on both breaches.

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 not involving a breach of another clause. These may include, for example, breaches of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), which does not have a corresponding Code obligation; or instances where the bank considers it has not dealt with a customer in a fair and reasonable manner.

The CCMC therefore revised the ACS to capture this data. Consequently, banks reported for 2015–16:

- 784 breaches of clause 3 (key commitments), including 555 breaches unique to this clause with no corresponding breaches of other provisions of the Code (see Chart 2).
- 2,198 breaches of clause 4 (compliance with laws), including 1,114 breaches unique to this clause with no corresponding breaches of other provisions of the Code (see Chart 2).

The total of 7,987 self-reported breaches of the Code does not include the breaches of clause 3 and of clause 4 that were identified by banks as a result of another breach of the Code.

# Key Findings of the ACS Program

## Key commitments

One of the Code's key commitments is that banks will work towards improving the standards of practice and service in the industry. This year, banks reported several improvement initiatives, typically related to customer service and website or mobile applications.

A number of banks introduced programs that aimed to treat customers fairly, increasing communication, improving customer service and reducing customer complaints. Examples of some of the initiatives include:

- redesigning forms to make applying for a product easier
- reducing duplicate requests for information
- introduced checklists for accepting Guarantees
- providing better banking tools for small business
- using complaints data to identify and rectify sources of customer dissatisfaction.

In respect of websites and mobile applications, banks:

- made information easier to find on their websites
- improved small business online account opening
- developed e-conveyancing to improve settlement times for home loans
- enhanced the layout of mobile applications to improve readability
- included additional information on mobile applications.

A number of other initiatives are discussed throughout this report.

## Application of terms and conditions

Over the years, banks have reported several significant breaches involving incorrect application of product terms and conditions, including fees, interest rates and benefits. As these breaches generally relate to IT systems, they can affect a considerable number of customers and involve large amounts of money. Some of these breaches are reportable to ASIC and have resulted in media coverage.

The CCMC, therefore, included questions in this year's ACS about the procedures banks use to ensure systems accurately reflect the terms and conditions of a product, both at launch and over time.

Responses indicated that, generally, banks have appropriate processes and change management programs in place to ensure that the interest rates, charges and conditions of any product available are applied accurately and consistently in accordance with the terms and conditions.

Any changes to IT systems, including the launch of new products, go through various pre- and post-installation steps, including testing prior to implementation, sign-off by relevant teams and sample checking after the new product or change has gone live.

Banks also have in place frameworks to identify any issues with a product. These frameworks consist of:

- analysing complaints, including systemic issues identified by FOS
- reviewing revenues from interest and charges against expected levels to identify any discrepancies
- conducting a program of internal audits to ensure that products are operating correctly
- monitoring daily exception reports from IT systems to identify issues.

One bank advised that it had introduced a new product management framework to provide a consistent and controlled approach to product management.

Banks nevertheless identified a number of issues with IT systems not accurately reflecting terms and conditions. The issues were due to system problems or human error when inputting the parameters, which resulted in incorrect application of interest, charges, discounts or benefits.

A number of these issues were reported as breaches. Five of the 21 significant breaches reported in 2015–16 relate to the inaccurate application of terms and conditions.

The CCMC again stresses the need for banks to be vigilant in ensuring that IT systems are accurate in applying fees and charges. There is potential for many customers to be affected and even the smallest issues can lead to significant remediation activity.

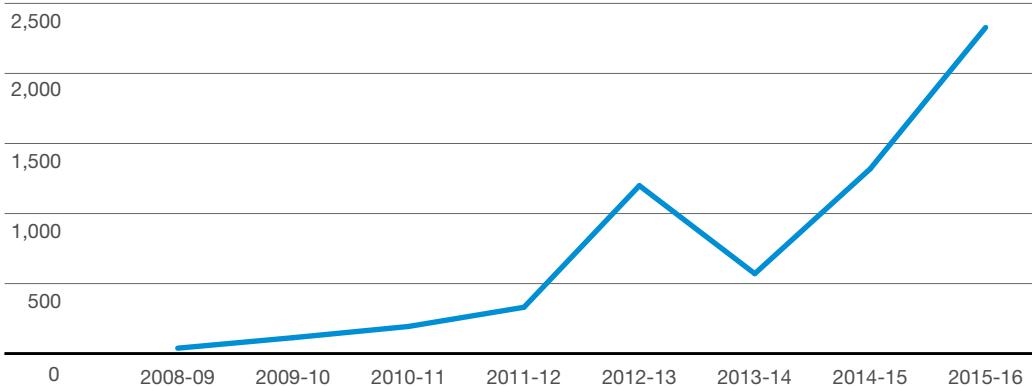
## Provision of credit

In the 2015–16 ACS, banks reported 2,328 breaches of the provision of credit obligations, up 76% from the previous year. Following increases over the last few years, provision of credit is now the highest category of self-reported breach (see Chart 4).

One bank, however, reported 95% of all provision of credit breaches, and is responsible for the majority of the increase. The bank attributed this to greater call monitoring of its sale of credit products and its more rigorous approach to reporting breaches, commenting that breaches are nevertheless low as a proportion of calls monitored. Excluding this bank, breaches recorded by the other banks increased by 96%.

The increase in breaches over the last few years, along with the number of allegations of breaches raised by consumers, prompted the CCMC to conduct an Own Motion Inquiry into banks' compliance with the provision of credit obligations of the Code.

**Chart 4: Breaches of provision of credit obligations 2008–2016**



# Key Findings of the ACS Program continued

## Financial difficulty

For the first time since the CCMC began collecting information about requests for assistance because of financial difficulty, banks have reported a decrease in the number of these requests. In 2015–16, banks received 279,000 requests for assistance, a 5.7% decrease from 2014–15 (see Chart 5).

The proportion of requests where some form of assistance was provided varied between banks. The overall industry percentage of requests granted, however, remained consistent with 2014–15 at 70%.

The industry-level reduction in requests may be attributed to historically low interest rates. However, some banks reported an increase in requests for assistance. This may be due to exposure to areas where house prices have decreased and unemployment has increased, such as mining regions in Queensland and Western Australia.

The CCMC recognises the improvements that banks have made to their financial difficulty processes and encourages them to continue these efforts. A reduction in breaches of financial difficulty obligations from 217 to 174 may suggest that the service provided

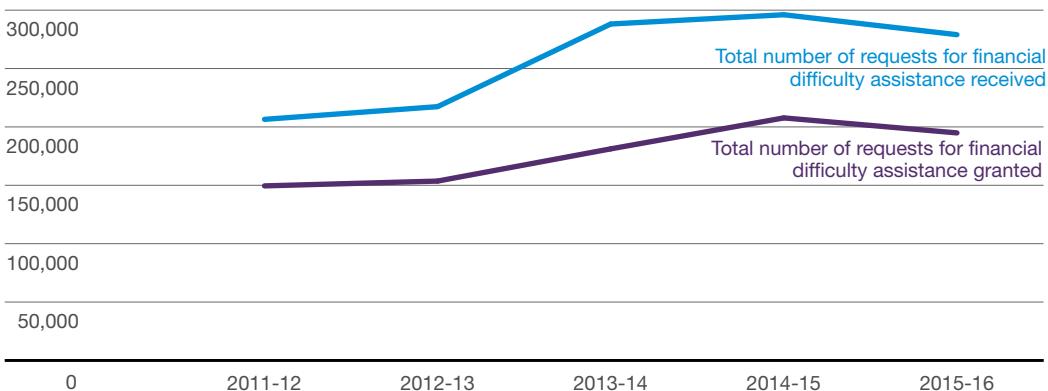
to customers in financial difficulty has improved. However, worsening economic conditions could result in a rapid increase in applications for assistance. Banks should therefore ensure that processes and resources are robust enough to maintain acceptable levels of service in these circumstances.

## Debt collection

Debt collection has, over recent years, been one of the main sources of self-reported breaches. While the number of breaches is less than the peak of 2012–13, the CCMC has seen a steady rise over the last three years (see Chart 6). The Code obligations on debt collection require the bank to comply with the Australian Competition and Consumer Commission (ACCC) and ASIC *Debt collection guideline for collectors and creditors*.

Of the 796 debt collection breaches in 2015–16, 84% were reported by one bank. The bank advised that this was largely due to increased call monitoring put in place in the Collections Department. The bank has introduced new processes and procedures and expects the number of breaches to reduce.

**Chart 5: Requests for financial difficulty assistance and assistance granted 2011–2016**



This is similar to the CCMC's experiences with other banks in previous years, where an issue has been identified either through monitoring or complaints. Typically, issues involve automated dialler systems either contacting customers too frequently or outside allowed contact times. The bank then improves its approach and the number of breaches decreases. These issues continue to demonstrate the need for appropriate monitoring in order to identify and correct issues promptly.

Banks have also reported that breaches can be caused by:

- not recording details (or all required details) of customer conversations or payment arrangements
- contacting customers on public holidays or outside allowed hours
- contacting customers when a payment arrangement was already in place.

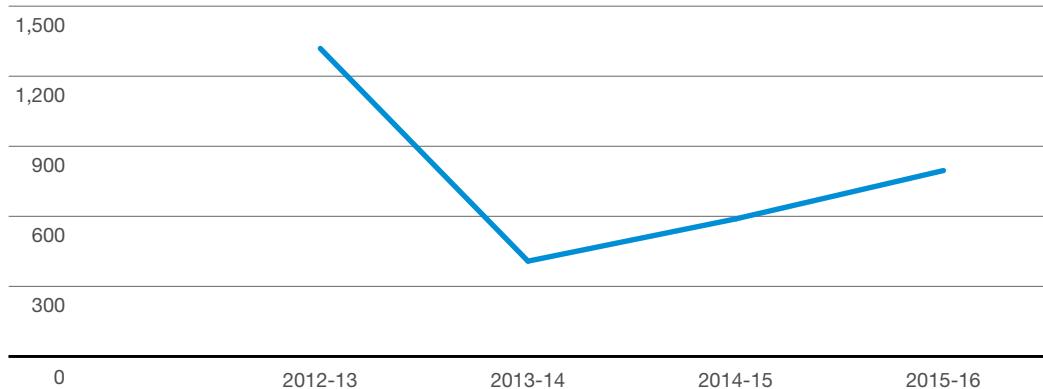
To prevent such breaches, banks reported that they monitor both automatic dialler systems and collections staff.

Banks also advised that debt collection activities continue to evolve and improve. During the year, one bank introduced a new debt collection system, improving its compliance with the debt collection guideline. Others reported that they had:

- improved the provision of documents to debtors and their representatives
- improved the compliance of dialler systems
- improved processes for contacting representatives rather than the debtors
- provided additional training to staff on the guideline.

At the CCMC's Annual Forum, one bank demonstrated its mobile banking application, which had been enhanced to include a debt collection function. Within limits, this function allowed the customer to arrange their repayment of debts using the application and without speaking to the bank. Initial results indicated that the application achieves a much better rate of customer compliance with arrangements than traditional debt collection methods. The bank recently advised the CCMC that it has further improved the application, adding a function for customers to make financial difficulty assistance applications.

**Chart 6: Debt collection breaches 2012–13 to 2015–16**



#### CASE STUDY

## Debt Collection

During the reporting period, the CCMC received an allegation that a bank had breached the debt collection guideline, and therefore the Code, by asking the debtor if a family member or friend could help with the debt.

The guideline states that a debtor cannot be ‘pressured’ to ask family and friends for help with a debt.



The CCMC listened to the call recording and agreed with the bank that the debtor had not been pressured. However, the CCMC considered that by asking the question about family and friends helping with debt, the bank ran the risk of breaching the debt collection guideline, as any discussion of this nature may be considered by the customer as ‘pressure’. The bank agreed to remove the question from its standard call scripts to reduce the risk of breaching the Code.

As a result of this allegation, the CCMC asked all banks how they ensure that collections staff do not pressure debtors to borrow to pay the debt, either from family or friends or by releasing superannuation funds. A number of banks reported that collections staff are not permitted to ask customers to borrow or release superannuation to repay the debt. However, they have a process in place to assist customers who request this. Other banks indicated that the release of superannuation is part of scripted discussions, but that is presented as an option for the customer to consider. In all cases, banks require customers to obtain independent financial advice before accessing superannuation. Several banks’ procedures include referring customers to financial counsellors.

## Key Findings of the ACS Program continued

### Internal dispute resolution

Customer access to dispute resolution is a cornerstone of the Code and banks' commitment to treating customers in a fair and consistent manner. By assessing compliance with clause 37 of the Code, the CCMC can determine whether banks have systems and processes in place to deal with disputes in a genuine, fair and prompt manner.

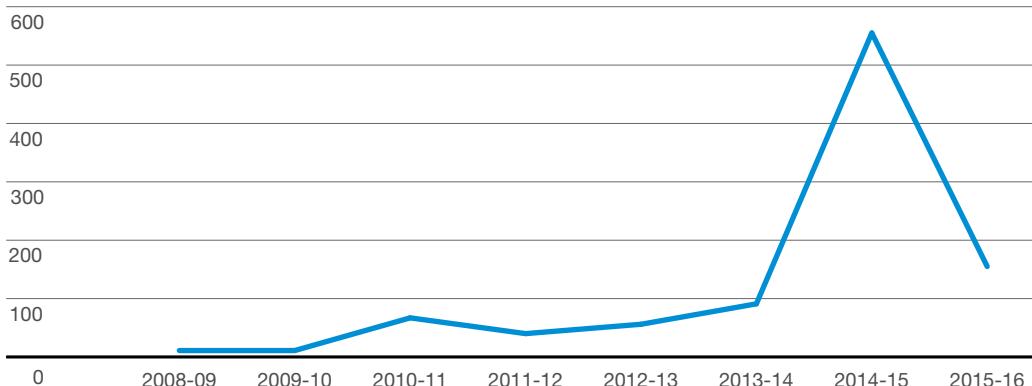
Banks reported a total of 155 breaches of clause 37 in 2015–16, which is a reduction of 73% since last year. Last year's figure was inflated by the issues one bank experienced, which have now been resolved. Setting those breaches aside, the number of breaches has continued to increase over the last five years (see

Chart 7). This increase can be partly attributed to the increase in complaints received by banks and the enhanced monitoring systems now in place.

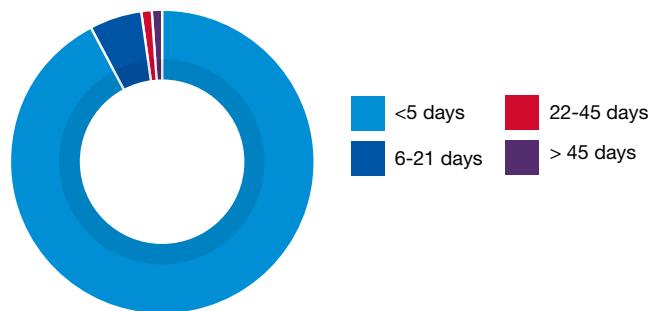
In total, banks reported 1,189,832 complaints in 2015–16, a 3% reduction since last year. While overall industry complaints decreased, eight banks reported an increase. The banks advised that the increases were a result of both issues with particular products and greater staff awareness and recording of complaints.

Banks resolved 92% of all complaints within five working days (see Chart 8), which is consistent with 2014–15. As the CCMC has previously reported, banks record complaints differently. Some banks use sophisticated systems to capture all expressions of

**Chart 7: Breaches of dispute resolution obligations 2008–2016**



**Chart 8: Dispute resolution times**



## Key Findings of the ACS Program continued

dissatisfaction, regardless of the point of contact or the time taken to resolve. Other banks only record those disputes that are not resolved immediately and require follow-up action. Both approaches are acceptable.

Those banks that record complaints resolved at the first point of contact indicate that around 80% of all complaints are resolved immediately. These are likely to be simpler matters such as issues regarding queue times or where the staff member has the discretion to refund a fee immediately.

Banks also differ in how they determine whether a complaint is settled in a customer's favour. This year the CCMC asked what percentage of complaints were resolved where the bank either conceded it had erred or made a commercial decision to settle with the customer. Three banks could not provide this figure due to system limitations. Among the 10 other banks, the rate varied from 18% to 80%. The CCMC will engage with banks in the coming year to better understand this variation and work towards a consistent reporting approach.

Banks reported that they have strong monitoring frameworks in place to ensure compliance with Code obligations and regulatory requirements on dispute resolution.

These frameworks include:

- Quality Assurance checks of letters responding to customer complaints
- review of databases to ensure responses are sent within timeframes
- monitoring of closed complaints to ensure that final response letters have been sent
- review of standards for identifying, investigating, referring, escalating, resolving and recording complaints
- internal and external audit programs to test and determine the effectiveness of controls.

Data about complaints and disputes are also analysed to identify root causes. Several banks indicated that complaints data is regularly discussed in business forums and senior management meetings.

In this year's ACS, the CCMC sought further detail about complaint issues and products. The issues and products involved in complaints vary between banks and generally depend on a bank's product mix.

Across the industry, however, the main issues were 'about the bank' (including website, internet & mobile banking, bank policies and sponsorships) (39%) and 'customer service' (24%). 20% of all complaints received were about 'rates, fees and charges' (see Chart 9).

**Chart 9: Complaints issues**



Across banks, complaints most commonly related to credit cards (23%), with 11% about home or investment loans. 22% of all complaints did not relate to a product (see Chart 10).

The CCMC will continue to gather this information and will analyse any changes to the makeup of complaints. This information will also inform the CCMC's risk analysis to decide future areas of monitoring activity.

## Staff competency

Banks continue to report that both new and existing staff receive regular training on Code obligations. While generally this is part of broader training on regulatory requirements, three banks reported that staff received Code-specific training. In addition, several banks delivered Code-related training to specialist functions, such as collections and financial difficulty staff. Two banks indicated that specific training was delivered to their bankers following recent court cases highlighting the importance of the Code in Guarantees.

**Chart 10: Complaints products**



# Focus on customers in remote Indigenous communities

## New obligations related to customers in remote Indigenous communities (clause 8) came into effect on 1 February 2014.

These obligations include:

- making information about suitable accounts available
- assisting with meeting identification requirements
- appropriately training staff who deal with customers in remote locations to be culturally aware.

When the CCMC tested compliance with these obligations in the 2013–14 ACS, banks reported that they had established processes and procedures to meet their obligations under clause 8.

The CCMC is pleased that responses to the 2015–16 ACS indicates that this continues. Banks that have a presence in remote Indigenous communities reported a range of initiatives, including:

- creating new remote account opening policies and procedures, including specific identification forms for elders in remote Indigenous communities to complete
- establishing processes to take into account the cost of living in remote areas when making credit decisions
- having call centres and business managers who deal primarily with customers in remote areas
- engaging authorised representatives who are members of remote Indigenous communities to assist customers to open accounts and request general services.

These banks also have in place, or are currently refreshing, Reconciliation Action Plans (RAPs). RAPs set out a bank's commitment to Indigenous Australians in providing banking services, education and employment opportunities.

One bank advised that its Indigenous call centre deals with over 150,000 calls a year, while another noted that it is developing an Indigenous banking guide to assist its branches and representatives in remote Indigenous communities to explain key account features.

A number of banks have training modules specific to dealing with remote Indigenous communities, developed in conjunction with specialists in Indigenous cultures. This training is mandatory for staff who are likely to have direct contact with customers in remote Indigenous communities. One bank has developed three levels of training to address different needs. The foundation level, which introduces Aboriginal and Torres Strait Islander cultures and history and identifies how the bank can best serve its Indigenous customers, has been made publicly available.

Banks that have no physical presence in remote areas, including online-only banks, reported that the processes and procedures in place in 2014 to meet the Code obligations have not been amended. These banks do not provide specific training on customers in remote Indigenous communities, however, they do provide training in areas such as diversity and inclusion, which deals with the needs of all customers.

Products developed for low earners and disadvantaged people, which generally attract low or no fees, are suitable for customers in remote Indigenous communities. All banks indicated that these products are promoted on the banks' websites. Banks with a presence in remote areas reported that suitable products are also promoted via:

- branch networks
- money management offices and other government bodies
- community engagement
- financial literacy training.

The CCMC notes that the ABA published a revised Indigenous Statement of Commitment in 2015. This statement sets out banks' commitments to Indigenous Australians through:

- improved financial literacy and financial inclusion
- accessibility of appropriate banking products and services
- employment opportunities for Indigenous Australians
- cultural awareness and advocacy.

As part of this commitment, the ABA and subscribing banks worked with the Australian Transaction Reports and Analysis Centre (AUSTRAC) to develop more flexible approaches to helping Indigenous Australians meet identification requirements. This culminated in AUSTRAC issuing revised guidance in July 2016.

The Code does not define 'remote Indigenous communities' and responses to the ACS indicated that the definition varies between banks. The CCMC noted this in its submission to the current review of the Code.

The CCMC also discussed banking services provided to remote Indigenous communities with ASIC, who

provided a case study as an example of some of the issues facing customers in these communities. The CCMC encourages banks to consider how they engage with members of remote Indigenous communities when providing banking services.

This is an area of ongoing interest for the CCMC. The Committee will work with banks and financial counsellors to better understand how the initiatives and processes reported are applied in practice; identify issues that still exist for customers in remote Indigenous communities; and identify any areas where industry practices can be improved.

#### CASE STUDY

## Resolving account issues away from a branch

This case study has been provided by ASIC to illustrate the challenges faced by members of remote Indigenous communities when dealing with banks.

---

Alkira, a resident of a remote Indigenous community, contacted ASIC's Indigenous Outreach Program (IOP) helpline. Her online bank account had been locked, presumably after she entered an incorrect password, and she had also lost her bank card. She had called her bank's customer service line twice to unlock the account and have a replacement card issued. Each time, Alkira had been told that she would need to identify herself at her local branch. However, her nearest branch was in Cairns, some 700km away.

When Alkira contacted the IOP helpline, she was upset: she could not afford to travel and, in any case, did not have her bank card to withdraw money. The IOP helped Alkira to contact her bank via conference call and explained her situation. The bank's call centre still stated that Alkira would need to travel to the closest branch to identify herself.

The IOP representative then contacted the main offices of the bank and a bank representative was able to work with Alkira and the bank branch to come up with a solution. Alkira was asked to go to the post office in her community and have them assist the bank to identify her. Her online bank account was unlocked the same day, and a new bank card was put in the post.



# Monitoring Code Compliance Own Motion Inquiries

Own Motion Inquiries (OMIs) allow the CCMC to examine banks' compliance with specific Code obligations. These inquiries have a narrower but more in-depth focus than the ACS program and help to identify not only areas of concern but also good practice.

## Financial Difficulty

In 2015, the CCMC published its Own Motion Inquiry report into financial difficulty. The report made several recommendations to improve compliance and banks' engagement with customers.

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 CCMC identified ways in which banks could further improve their level of compliance with the Code, including:

- Ensuring that their processes and procedures are applied consistently for all customers, including those who are not represented by a consumer advocate.
- Ensuring their processes are appropriate for customers with particular issues, for example those related to poor mental health or family violence.
- Ensuring they can identify when a customer requests financial difficulty assistance a second or subsequent time.
- Considering 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.
- Continuing to identify areas where further improvements can be made.

Pleasingly, banks reported that they have incorporated many of these recommendations into their procedures. These include increasing financial difficulty information and its visibility on their websites and displaying information posters in branches.

Two banks reported that, as a result of the report's recommendations, staff had been given new specialist training on dealing with vulnerable customers, including those suffering mental illness.

Banks also advised that they have amended and improved their procedures by:

- simplifying the online Statement of Financial Position or accepting information over the phone
- being more flexible about the documents that are acceptable as evidence of hardship and allowing more time for these documents to be provided
- providing links to external agencies
- improving processes for keeping customers informed about their financial difficulty applications.

In 2015–16, two banks began accepting agreements to vary credit contracts over the phone. Varying the credit contract, often by extending the term and reducing the repayments, is one way banks can help customers in financial difficulty. Agreeing over the phone rather than in writing means that assistance can be provided more quickly. The CCMC encourages all banks to consider using this approach where it benefits the customer.

Family violence and financial abuse is another area where a number of banks have introduced new processes for identification and assistance, including staff training. One bank has begun providing grants to customers who have experienced family violence and are in financial difficulty. These grants enable the customer to leave a dangerous household.

A copy of the Report can be found on our website [www.ccmc.org.au](http://www.ccmc.org.au)

## Provision of credit

The 2014–15 ACS program results and consumer allegations in recent years highlighted the Code's provision of credit obligations (clause 27) as an area of potential risk. As a result, in 2016, the CCMC conducted an Own Motion Inquiry on banks' compliance with the provision of credit obligations of the Code, focusing on unsecured credit.

Information was collected from banks about how they:

- select the credit assessment method applied to a credit facility or credit increase
- apply the selected credit assessment method to the customer
- form an opinion on the customer's ability to repay the credit facility.

The information provided by banks and by consumer advocates allowed the CCMC to assess the level of compliance with the Code obligations. The CCMC has made a number of recommendations to banks to improve the provision of credit to individual and small business customers. Further details will be included in next year's Annual Report.

#### CASE STUDY

## Providing credit without verifying liabilities

Tom contacted the CCMC because he was concerned that his mother, Gillian, had been provided with a level of credit that her income and living expenses could not support. The CCMC investigated whether there had been a breach of the provision of credit obligations (clause 27).



When Gillian applied to the bank for a credit card with a \$20,000 limit, the bank applied its standard credit assessment, which uses automated systems to verify income, expenses and liabilities.

The bank's automated systems identified that Gillian's stated income was considerably above the income benchmark for her job. The bank contacted Gillian's accountant for further details and the income figure used by the bank to assess the ability to repay the credit was subsequently revised downward by 30%.

Gillian also declared that she had mortgages for both her home and an investment property, but the monthly repayment amounts detailed on the application form by Gillian were considerably lower than would be expected, given the value of the mortgages. However, the bank did not make further inquiries about the true cost of the mortgages and provided Gillian with the full \$20,000 credit limit.

Had the bank used a more realistic liabilities and expenses figure along with the lower income, it would likely have made a different decision regarding the amount of credit it provided.

The CCMC considered that the discrepancies with Gillian's income was a red flag which should have prompted a diligent and prudent banker to make further inquiries into all expenses and liabilities before deciding whether to provide credit to Gillian. The CCMC therefore determined the bank had breached clause 27 of the Code.

The CCMC used some of the issues identified in this case regarding verification of income, expenses and liabilities to scope its Own Motion Inquiry into provision of credit.

# Investigations

The Code empowers the CCMC to investigate allegations from any individual or small business that a bank has breached the Code.

The CCMC is able to investigate instances of alleged non-compliance, and to identify and monitor emerging industry issues. 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
- any remedial action proposed or taken by the bank.

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

## Case work

The CCMC received 34 new cases in 2015–16. This is a reduction of 25% from the 44 received in 2014–15.

41 cases were closed in 2015–16, down from 49 in 2014–15. The Committee finalised two cases by decision in 2015–16, one of which was a Determination where the Committee determined the relevant bank had breached the Code (see Table 1).

Of the 34 cases the CCMC received in 2015–16, 30 concerned individual consumers and four related to small business. Six individual consumers were represented by consumer advocates and four were represented by family members. Most allegations were received directly from individuals and small businesses via the CCMC's website.

Banks' provision of credit and key commitments obligations continue to be the main Code breaches allegations. Almost all (94%) breach allegations in 2015–16 concerned a credit product.

**Table 1: Cases received and closed, 2014–15 and 2015–16**

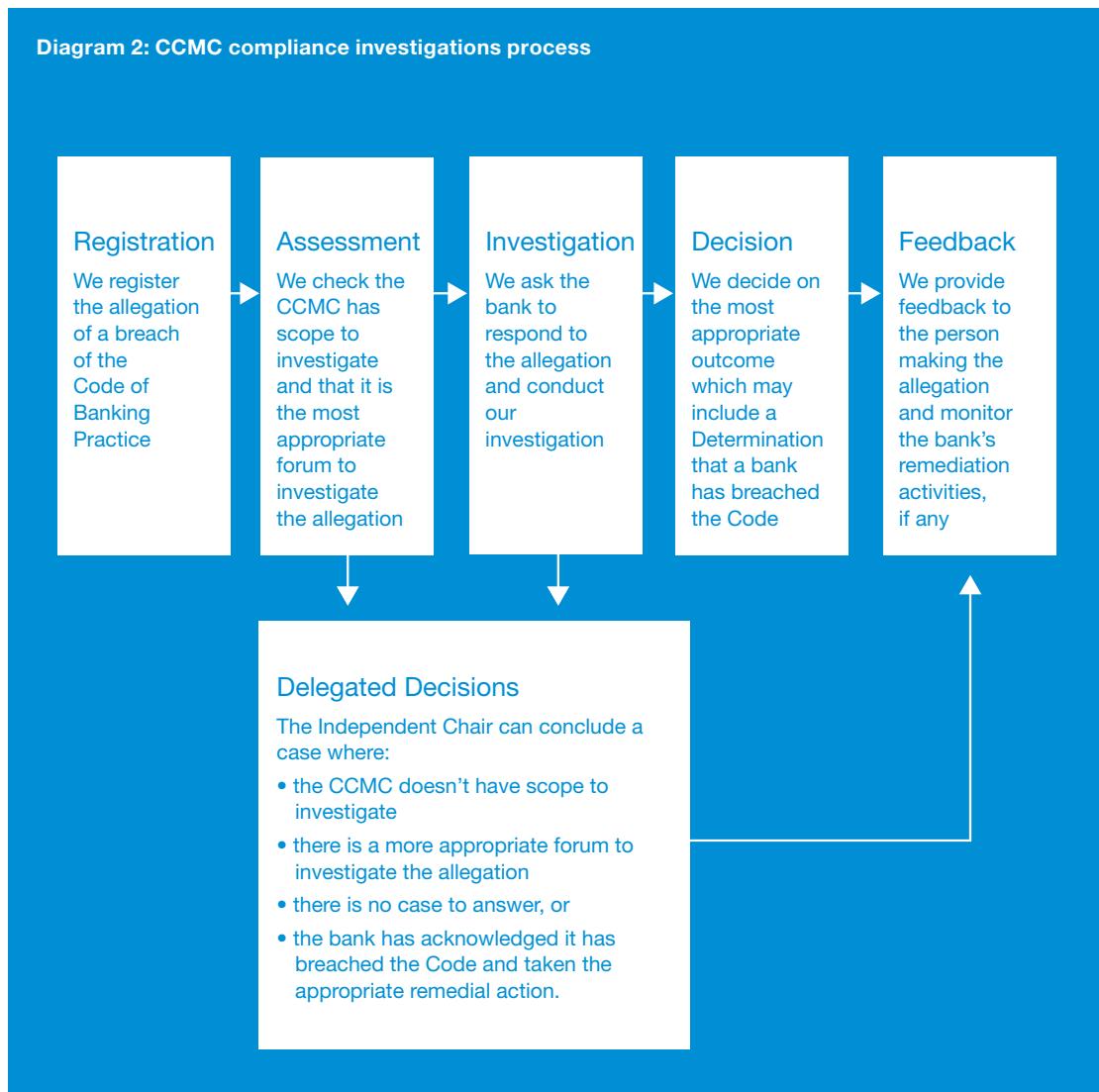
<b>Number of cases</b>	<b>2014–15</b>	<b>2015–16</b>
Open at beginning of year (1 July)	31	26
New	44	34
Closed	49	41
Open at end of year (30 June)	26 (including 9 on hold*)	19 (including 14 on hold*)
<b>Number of code breaches</b>	<b>2014–15</b>	<b>2015–16</b>
Alleged	71	67
Confirmed	19**	18
<b>Number of closed cases</b>	<b>2014–15</b>	<b>2015–16</b>
Closed by Decision	2	2
Closed by delegated decision	19	27

\* 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.

\*\* 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.

## Compliance investigations process

The investigation process, illustrated in Diagram 2 reflects the CCMC's powers and functions under its Mandate and is supported by the CCMC's Guidance Notes. Full details of the investigation process, along with the Guidance Notes, are on the CCMC website.



## Investigations continued

These individual and small business consumers were located throughout Australia, with most (38%) based in Queensland (see Chart 11).

No matters were referred by the ABA or FOS during the reporting period.

### Outcomes of Investigations

The outcomes of the 41 cases the CCMC closed in 2015–16 are illustrated in Chart 12 below.

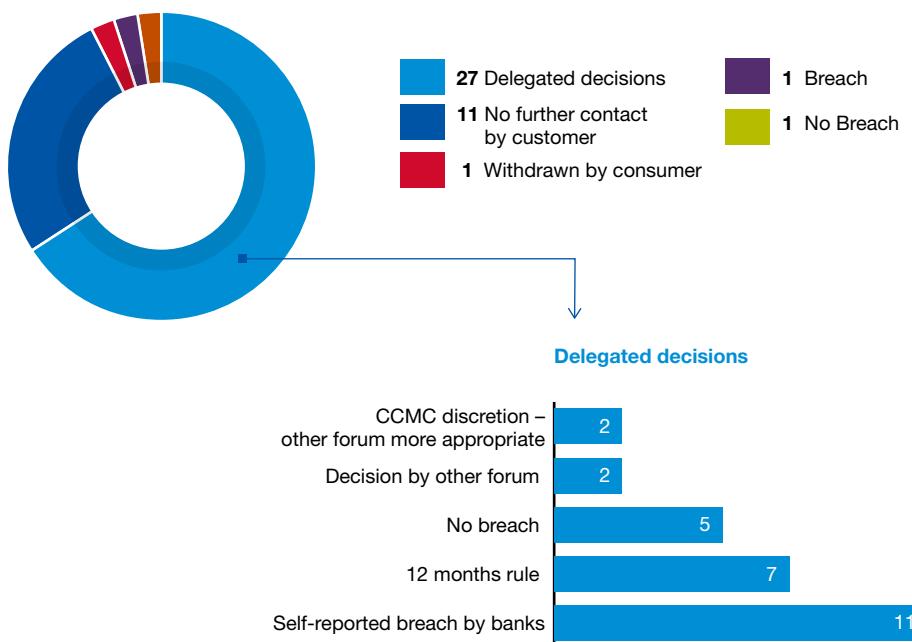
Two cases were closed by Committee decision. In one case the CCMC determined that the individual bank had breached its Code obligations in respect of provision of credit. In the other, it concluded that the bank concerned had not breached the debt collection obligations of the Code.

The 11 cases shown in Chart 12 as ‘no further contact by customer’ include those cases where the person making the allegation did not provide a Privacy Authority, or did not respond to the CCMC’s requests for information necessary to continue an investigation.

**Chart 11: Number of investigations received by State or Territory**



**Chart 12: Cases closed 2015–16**



## Delegated decisions

Under its Mandate, the CCMC can decide whether to start or continue a compliance investigation. This means that where the CCMC is satisfied, given the circumstances of the allegation, that an investigation or further investigation, is not warranted, it may decide to exercise its discretion and take no further action.

In 2015–16, the Committee continued to use this power under the Mandate to make delegated decisions. This power allows the Independent Chair to conclude an investigation where:

- the CCMC does not have scope to investigate
- there is a more appropriate forum to investigate the allegation
- there is no case to answer, or
- the bank has acknowledged it has breached the Code and taken the appropriate remedial action.

In total, 27 cases were closed under this process in 2015–16, details of which are given in Chart 12.

## Breaches

Along with the CCMC's monitoring work, investigation outcomes are a key risk indicator, and help to determine the CCMC's work plan for the year ahead. The CCMC identified 18 breaches of the Code in 2015–16 (see Table 2).

**Table 2: Breach finding by Code category 2015–16**

Breach identification	Clause	No. of breaches
Breaches identified by CCMC Determination	Provision of credit	1
Breaches conceded by banks through the delegated decision process	Internal dispute resolution	6
	Key commitments – Act fairly and reasonably	3
	Guarantees	2
	Direct debits	2
	Copies of documents	1
	Terms and conditions	1
	Financial difficulty	1
	Debt collection	1

The 17 breaches conceded by banks were self-reported in the 2015–16 ACS and are included in the total number of breaches detailed in Appendix 1.

#### CASE STUDY

## Demonstrating compliance with Guarantee provisions

Alison contacted the CCMC about a Guarantee she and her elderly parents had provided for a loan for her brother and sister-in-law. While the Guarantee had not, at that time, been enforced, Alison's brother and sister-in-law were in the process of divorcing and Alison believed that the loan repayments were not being made. She was therefore concerned that she and her parents would be called upon for the outstanding debt.



Alison raised a number of concerns:

- Her parents were pensioners and unable to afford to repay the loan if the Guarantee was enforced.
- The terms and risks associated with the Guarantee were not explained.
- The bank representative did not recommend that independent legal advice be obtained.
- She was not given 24 hours to consider the Guarantee documents.

The Victorian Supreme Court of Appeal ruled in *Doggett v CBA* (2015) VSCA 351 that the provision of credit obligations of the Code regarding exercising the care and skill of a prudent and diligent banker extend only to assessment of the borrower's capacity to repay a loan, and not to the guarantor's ability. The CCMC was therefore unable to consider Alison's concerns about whether her parents could afford to act as guarantors.

The CCMC did investigate Alison's other concerns, however. The bank provided the CCMC with its records and file notes regarding the Guarantee along with its standard procedures that applied at the time.

The bank's records indicated that while the Guarantee documents were printed three weeks in advance, the covering letter enclosing these documents was signed by the bank representative on the same day Alison and her parents signed the guarantee, suggesting that they had not been given 24 hours to consider the documents, as required by the Code.

Internal documents regarding the explanation of risks and the need for independent legal advice were incomplete. They did not demonstrate that the warnings had been given by the bank representative or that Alison and her parents had been advised to seek legal advice. The importance of this provision of the Code was enforced in the Victorian Supreme Court of Appeal in the case of *NAB v Rose* (2016) VSCA 169.

In view of the CCMC investigation, the bank acknowledged that it had twice breached Code obligations and agreed to the report these breaches in its ACS. The bank representative undertook additional training to help prevent a reoccurrence.

# Engaging with stakeholders

In 2015–16, the Committee continued its strategy of engaging with stakeholders, influencing positive changes in industry behaviour by sharing its experience of Code compliance and highlighting areas of good industry practice.

## Inquiry into the impairment of customer loans

The CCMC made a submission to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the impairment of customer loans, and as a result, was asked to appear at a public hearing. Chris Doogan (Independent Chair), Sally Davis (Chief Executive) and Robert McGregor (Compliance Manager) attended on behalf of the CCMC.

While the CCMC has not received a complaint solely about revaluation of loan security or loan impairment, it informed the Parliamentary Joint Committee of Code provisions that provide small businesses with unique and important consumer protections. These include provisions:

- to act as a prudent and diligent banker in assessing a customer's ability to repay a credit facility (clause 27)
- to try to assist customers, with their agreement and co-operation, to overcome financial difficulties with any credit facility held with the bank (clause 28)
- to provide at least 10 days' notice to a small business customer of any changes to terms and conditions, where the change will be materially adverse to the customer and only affects that customer (clause 20).

The CCMC's submission and the Committee's final report are available on the Parliament of Australia website at [www.aph.gov.au](http://www.aph.gov.au).

## ASIC

The CCMC continues to have a strong relationship with ASIC. In addition to quarterly liaison meetings to discuss issues and work plans, the CCMC and ASIC met during the reporting period to discuss ASIC's experience of banking services in remote Indigenous communities, helping to inform the ACS program.

Chris Doogan (Independent Chair), Sharon Projekt (Industry representative), Sally Davis (Chief Executive) and Robert McGregor (Compliance Manager) also attended the ASIC Forum 2016 in Sydney.

## ABA

The CCMC Chair and CEO met several times with the ABA to discuss the operation of the Code and Mandate and issues arising from the Committee's monitoring and investigation activity.

Following the ABA's announcement that the Code would be reviewed in 2016, the CCMC worked with the ABA to appoint a reviewer and plan the reviews.

## Code subscribers

### Annual Forum

For the first time, all 13 banks were represented at the CCMC Annual Forum. Twenty bank representatives attended along with the ABA and Lead Ombudsman – Banking and Finance at FOS. The representatives discussed:

- the Committee's work program for 2016–17
- the ABA's outlook for the year ahead
- how FOS considers the Code in resolving disputes
- applying the Code in a digital environment
- the Committee's investigations procedures
- approaches to using dispute data to identify issues
- the key themes to be included in the 2015–16 ACS.

## Engaging with stakeholders continued

**For the first time, all 13 banks were represented at the CCMC Annual Forum.**

The Committee thanks all participants and presenters as well as Bendigo and Adelaide Bank, which hosted the event at its Adelaide offices.

To build on the Annual Forum, the CCMC also held three Stakeholder Liaison Group teleconferences in 2015–16.

### Meetings with banks

CCMC members and staff met with bank representatives on 12 occasions in 2015–16 to discuss Code compliance issues and identify emerging issues, giving the CCMC valuable insights into banks' systems and procedures. These meetings were in addition to the ACS program's onsite visits.

As part of its Financial Difficulty Awareness month, one bank invited the CCMC to present to over 150 staff on the findings of the CCMC's Own Motion Inquiry on financial difficulty. The CCMC encourages other banks to consider similar awareness-raising initiatives.

### Consumers and advocates

The Committee received a number of enquiries from consumers in 2015–16, generally related to their expectations of banking standards and services under the Code. In some cases, the consumer was referred to FOS or a CCMC investigation was begun.

Discussions with consumer advocates, financial counsellors and small business organisations allow the CCMC to:

- identify potential areas of risk in Code compliance
- inform Code monitoring activity
- plan Own Motion Inquiries
- raise awareness of the CCMC.

During 2015–16 the CCMC engaged with a number of organisations including:

- Financial Counselling Australia
- Legal Aid NSW
- Financial and Consumer Rights Council
- Financial Counsellors' Association of Queensland
- Consumer Action Law Centre
- Business Enterprise Centres.

### FOS

The CCMC and its staff met regularly with FOS throughout the year, and contributed to the development of FOS online training on Codes of Practice for use by consumer advocates, which will be launched in late 2016.

### Publications

#### The Bulletin

The Committee 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 CCMC website subscribers.

#### Website

During 2015–16, the Committee's website was accessed 4,070 times by 2,815 separate users in Australia.

# Committee members and staff



The CCMC is an independent three-member committee, established in accordance with the Code.

Its work is supported by the CCMC staff, which provides code monitoring and administrative services

## **Christopher Doogan AM**

### **Chairperson**

*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 was 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

## Committee members and staff continued

### 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 the Telecommunications Industry Ombudsman (as a Director with Consumer Experience), Justice Connect and the Consumers' Federation of Australia. He served 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.

### Sharon Projekt

#### Industry Representative

*Current term: August 2015 - August 2018*

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 2001 (Cth), 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.

### CCMC staff

#### 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 nearly 30 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.

**Linh Nguyen****Investigation Manager**

*Appointment: July 2014 – current*

Linh has a background in finance and accounting and joined the CCMC Secretariat after three years with FOS. After a year as a Compliance Analyst, she was appointed as Investigation Manager on 1 July 2015, to cover a 12 months leave of 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 – June 2016*

Gina is the Coordinator for Code Compliance and Monitoring at FOS. She is the first point of contact for organising the logistics and administrative functions with the CCMC. Gina left the CCMC in June 2016 to take up a new role in FOS.



# CCMC financial statements

1 July 2015 to 30 June 2016

	30 June 2016 \$	30 June 2015 \$
<b>SALARIES</b>		
Salaries – Gross including Committee remuneration	568,527	581,984
Leave provisions, Super and Payroll Tax		
<b>EXPENSES</b>		
Occupancy and Outgoings	27,436	34,359
Travel	40,080	38,706
Technology Support	17,405	18,333
Annual Report and Publications	13,850	13,743
Recruitment and Consultants	387	14,500
Insurances	1,001	1,889
Conferences and Training	15,746	13,836
Other	10,217	6,952
TOTAL EXPENSES	126,122	142,318
<b>TOTAL SALARIES AND EXPENSES</b>	<b>694,649</b>	<b>724,302</b>
<b>FUNDING</b>		
Bank subscriptions	753,098	680,903
Allocation from previous years	23,364	70,841
<b>TOTAL FUNDING</b>	<b>776,462</b>	<b>751,744</b>
<b>SURPLUS/(DEFICIT)</b>		
Accumulated Surplus/(Deficit)	81,813	27,472*

Actual expenditure in 2015–16 was 10.6% less than the forecast budget, principally due to lower than anticipated expenditure on salaries.

All \$81,813 of the accumulated surplus at 30 June 2016 has been allocated to the 2016–17 budget. In addition, a portion of the CCMC's operating reserve has been allocated to the 2016–17 budget. These additional funds have been made available to meet the cost of the independent review of the CCMC currently taking place.

# Appendix 1:

## Compliance Breach Summary 2015-16

<b>Code category</b>	<b>Identified by the Bank</b>	<b>Identified by other forum</b>	<b>Significant breaches</b>	<b>Total breaches</b>
<b>GENERAL</b>	<b>1,817</b>	<b>102</b>	<b>14</b>	<b>1,933</b>
3 Key commitments	490	60	5	555
4 Compliance with laws	1,088	18	8	1,114
5 Retention of rights	0	0	0	0
9 Staff training and competency	218	19	1	238
13 Copies of documents	14	3	0	17
15 Operation of accounts	5	2	0	7
18.2 New account information - ID requirements and TFN legislation	2	0	0	2
34 Branch closure protocol	0	0	0	0
<b>DISCLOSURE</b>	<b>108</b>	<b>9</b>	<b>5</b>	<b>122</b>
14 Cost of credit	2	0	0	2
18.1 Pre-contractual information	13	3	0	16
17 Bank cheques & inter-bank transfers	0	3	0	3
12 Terms and conditions	88	3	5	96
20 Changes to terms and conditions	5	0	0	5
<b>PROVISION OF BANKING SERVICE</b>	<b>199</b>	<b>24</b>	<b>0</b>	<b>223</b>
7 Customers with special needs	2	0	0	2
8 Customers in remote Indigenous communities	0	0	0	0
16 Account suitability	13	1	0	14
18.3 New account information - Account combination	0	0	0	0
19 Account combination	2	0	0	2
21 Direct debits	127	9	0	136
12.5 Terms and conditions - Chargebacks	0	0	0	0
22 Chargebacks	12	9	0	21
23 Information relating to foreign exchange services	5	1	0	6
25 Payment instruments	9	2	0	11
26 Statements of account	29	2	0	31
<b>PROVISION OF CREDIT</b>	<b>3,248</b>	<b>97</b>	<b>1</b>	<b>3,346</b>
27 Provision of credit	2,279	48	1	2,328
28 Financial difficulty	148	26	0	174
29 Joint debtors	3	3	0	6
30 Joint accounts and subsidiary cards	8	1	0	9
31 Guarantees	27	6	0	33
32 Debt collection	783	13	0	796
<b>OTHER</b>	<b>2,337</b>	<b>25</b>	<b>1</b>	<b>2,363</b>
24 Privacy and confidentiality	2,086	22	0	2,108
33 Closure of accounts in credit	12	2	1	15
35 Electronic communications	75	0	0	75
40 Family law proceedings	3	0	0	3
37 Internal dispute resolution	153	1	0	154
38 External dispute resolution	1	0	0	1
39 Availability of information about dispute resolution processes	0	0	0	0
10 Promotion of Code	1	0	0	1
11 Availability of copies of the Code	6	0	0	6
<b>TOTAL BREACHES</b>	<b>7,709</b>	<b>257</b>	<b>21</b>	<b>7,987</b>

## Appendix 2:

# Alleged breaches by code category

<b>Code obligation</b>	<b>2014–15</b>	<b>2015–16</b>
Provision of credit	8	14
Key Commitments	18	9
Debt collection	4	7
Financial Difficulty	14	5
Internal dispute resolution	5	5
Dispute resolution	External dispute resolution	1
Availability of information about dispute resolution processes		1
Statements of account		3
Compliance with laws	5	3
Guarantees	1	2
Changes to terms and conditions	5	2
Privacy and confidentiality	3	2
Staff training and competency		2
Direct debits		1
Account suitability		1
Copies of documents	7	1
Joint accounts and subsidiary cards		1
Joint debtors		1
Operation of accounts		1
Pre-contractual and new account information		1
Retention of your rights		1
Terms and conditions		1
Customers with special needs	1	
Obligation not recorded		2
<b>Total</b>	<b>71</b>	<b>67</b>

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.
13.	Financial difficulty – obligations under clause 28 of the Code.

Guidance Notes are available on the CCMC website.

## Appendix 4:

# Significant breach summary 2015–16

Issue	Background	Outcome
<b>KEY COMMITMENTS (CLAUSE 3)</b>		
Incorrect notification of Interest rates	As a result of a human error, an email inviting customers to roll over maturing Notice accounts contained an incorrect interest rate. The email was sent to over 400 customers.	The bank contacted all affected customers and fully compensated them with a total of \$12,000. Affected customers were also offered the opportunity to close the accounts without penalty. The bank reviewed its processes and procedures with a view to preventing a reoccurrence.
Automatic Teller Machines (ATMs) retracting cash without refunding the customer's account	When a customer attempted to withdraw cash from the bank's ATM, removed their debit or credit card and didn't remove the cash from the dispenser, to secure the cash again, the cash was retracted back into the ATM. There were a number of incidents when the amount retained by the ATM was not proactively refunded to the customer's account.	The bank has amended its processes to prevent a reoccurrence of the issue and is currently proactively refunding customers who are impacted by a cash retraction at one of its ATMs. It is estimated that up to \$4 million will be refunded to customers who have been historically impacted by this issue.
Account benefits not being applied	In order for interest and fee benefits to non-for-profit business customers to be applied, frontline staff need to complete certain processes. However, these internal processes were not followed by staff and around 2,800 accountholders did not receive the benefits.	The bank is in the process of developing a revised control to ensure that accounts of this type are established correctly. It has also began refunding approximately \$500,000 of unpaid interest or overpaid fees to affected accountholders.
Misleading advertising	ASIC contacted the bank about a poster which was displayed in a select number of the bank's branches which stated "We're totally independent so customers matter more to us". ASIC was concerned the use of the word 'independent' may be misleading in the context of the poster.	The bank removed the post from the banks. In addition it altered its processes to ensure all advertising was reviewed before publication and provided additional training to its Marketing team.
Fraudulent activity	Two bank employees raised fraudulent travel insurance policies for the purposes of increasing incentive payments.	The matter is currently ongoing and the bank is reviewing its control framework to prevent a reoccurrence. The matter is also subject to a police investigation.
Failure to provide Disclosure documents	As a result of staff not completing mandatory training, the bank identified that it had failed to provide required disclosure documents. This issue was identified as part of a 'mystery shopping' exercise and no customers were affected.	The bank has confirmed that all affected staff members have now completed the mandatory training.
<b>COMPLIANCE WITH LAWS (CLAUSE 4)</b>		
Inadequate assessment of expenses	Due to a system programming error, there was an issue with the calculation regarding the ability to service Personal Overdrafts. This resulted in the bank underestimating expenses and overstating the customer's capacity to repay for approximately 10,700 applications.	The bank has amended its systems to ensure that the assessment of expenses is calculated correctly. For affected customers, it has also taken the following steps: <ul style="list-style-type: none"> <li>• prevented debt collection activity in relation to these accounts,</li> <li>• written off amounts that were over limit and over 30 days in arrears</li> <li>• prevented marketing material being distributed to these customers, and</li> <li>• reduced or closed the overdraft facility where it has not been used</li> </ul>

Issue	Background	Outcome
Failure to provide a fee waiver	A number of customers did not receive monthly account keeping fee and withdrawal fee waivers in accordance with disclosures in the product terms and conditions.	The bank reimbursed all affected customers and amended its terms and conditions to ensure they accurately reflected applicable fees.
Failure to send required documents	The bank failed to send system generated variation letters to 54,000 loan customers to inform them of changes to their loans, in breach of the <i>National Consumer Credit Protection Act</i> .	The bank wrote to each customer to apologise for the error and compensated all customers who had suffered a loss. The bank also completed a review of its process controls to prevent a re-occurrence.
Default credit listing	Due to a staff error, the bank provided default listings on 17 customers' credit report while the customers were complying with payment arrangements. The breach was identified as a result of a FOS determination.	It was determined that the processes in place were appropriate. The 17 identified incorrect listings were removed and the staff member received additional training.
Breach of Anti Money Laundering regulations	Controls in the technology environment were not executed effectively, which led to customer name scanning and risk rating not occurring in some instances. In total approximately 160,000 documents were not scanned as a result of the issue.	The bank has now scanned all outstanding information and has identified two suspicious activities were identified and reported to AUSTRAC.  The bank is currently implementing changes to its technology controls to prevent a re-occurrence.
Fraudulent credit applications	Through a Whistleblower alert, it was identified that some bankers were circumventing internal policy and process, including those relating to Conflicts of Interest and third party introducers, for financial gain through increased incentives.  Work is still ongoing to establish how the full extent of the issue but at this time it is estimated 300 – 400 customers were affected.	The bank is currently in the process of identifying impacted customers and designing its remediation plan.
Failure to send default notices	Due to a failure to follow the bank's collections processes, the bank's third party provider failed to send 9,800 default notices as required by the <i>National Consumer Credit Protection Act</i> .	The bank instituted a remediation plan, which was substantively completed by October 2016. Collections processes and systems were also enhanced to address the root cause of this failure.
STAFF COMPETENCY AND TRAINING (CLAUSE 9)		
Mandatory training	The bank failed to ensure that staff undertook Mandatory training to provide advice to customers. This training related to a product where advice is required.	The bank has confirmed that all affected staff members have now completed the training.
TERMS & CONDITIONS (CLAUSE 12)		
Incorrect calculation of fees related to some consumer asset finance contracts and commercial chattel mortgages.	As a result of an error in one of the inputs to the calculation of break costs for certain fixed term asset finance contracts where the loan has been repaid early, it appears some customers have paid more than required under the terms and conditions of their contract.	The bank is continuing to investigate the cause of the error and identify an appropriate solution. It is currently arranging refunds of any overpaid amount resulting from the issue.
Application of fees	The bank failed to apply a monthly fees discount benefit in respect of some accounts for students and people under 18 and under 21.	The bank is amending its processes to ensure the discount benefit is automatically applied based on customer age. The bank provided refunds to customers to address the missed benefits.

<b>Issue</b>	<b>Background</b>	<b>Outcome</b>
Dynamic Currency Conversion of foreign transactions	<p>A customer complained to the bank that he had been charged a 'Foreign Transaction Fee (FTF) where he had used his credit card to pay for an online service in Australian dollars. The retailer was based overseas.</p> <p>The bank reviewed its Conditions of Use in respect of FTF and identified that these were potentially not clear about when the fee would apply.</p>	The Conditions of Use have been amended to bring further clarity about when the FTF will be charged. Impacted customers were proactively refunded the FTF due to the lack of clarity with the disclosures.
Incorrect interest rate applying	<p>The bank launched a special credit card promotion offering 0% interest on balance transfers and purchases for a set period of time. If the customers first transaction on their credit card account was a purchase (as opposed to the balance transfer), then they did not get the full benefit of the 0% interest rate. Approximately 24,000 customers were impacted.</p> <p>The bank received 79 complaints as a result of the issue.</p>	On identifying the issue, the bank withdrew the offer. The bank's remediation project is expected to commence in November 2016.
Loans not reverting from interest only to principal and interest	A process inconsistency meant that a number of Interest Only loans did not revert to Principal and Interest at the appropriate time.	The bank is currently in the process of developing its remediation project.
<b>PROVISION OF CREDIT (CLAUSE 27)</b>		
Objective of loan not appropriately assessed	Due to human error, the bank processed a number of loans as Investment property loans. The loans were in fact for the benefit of the customer's Self-Managed Super Fund. This error had tax implications for the customer and a number received correspondence from the Australian Tax Office.	The bank is currently in the process of remediating those customers who have been affected.
<b>CLOSURE OF ACCOUNTS IN CREDIT (CLAUSE 33)</b>		
Unclaimed moneys	When the legislation regarding when money not accessed in an account could be classed as 'unclaimed' changed from 3 to 7 years, the bank failed to make the necessary change to its systems. The bank subsequently closed a number of accounts in error.	The impacted accounts were reactivated, the funds were returned and the interest was remediated in order to return accounts to their previous state (prior to the error).



## **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](http://www.ccmc.org.au)

Alternatively you can visit the ABA's webpage about the Code at: [www.bankers.asn.au](http://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.



### **CODE COMPLIANCE MONITORING COMMITTEE**

P.O. BOX 14240  
MELBOURNE VIC 8001

PH: 1800 367 287  
[www.ccmc.org.au](http://www.ccmc.org.au)  
[info@codecompliance.org.au](mailto:info@codecompliance.org.au)