



# Monitoring Compliance with the Code of Banking Practice

2017–18 YEAR IN REVIEW



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## Year in review

### Monitoring



#### ANNUAL COMPLIANCE STATEMENT

- **10,123 Code breaches** in 2017-18, a 9.5% decrease from 11,191 breaches in 2016-17
- **3.43 million customers impacted** – at least \$95 million financial impact
- banks told us **93% of breaches are caused by human error**
- **corrective actions taken in only 39%** of breaches, to address customers individual issues



#### SHARING OUR KNOWLEDGE

- **presented to** the Annual Credit Law Conference, National Elder Abuse Conference and Financial Counselling Australia Conference
- **provided training to** Financial Ombudsman Service staff and financial counsellors in South Australia, Victoria and Tasmania
- held **more than 100 meetings** with stakeholders.



#### INVESTIGATIONS

- prompted **improvement in banks' practices** through compliance investigations



#### DIRECT DEBITS

- **improved information available** for customers on banks' websites
- **improving compliance** with the Code's **direct debit obligations** in some banks
- **planned ongoing monitoring** to encourage continued improvement



#### BREACH REPORTING INQUIRY

- **increased transparency** in banks' compliance with the Code
- **developed new insights** to support targeted inquiries and investigations
- **shared learnings** to promote better outcomes for customers

# Message from the Chair and CEO



This year brought more change and challenges for the banking sector and the CCMC. In 2017-18 we faced a formidable workload as preparations for the new Banking Code of Practice hit full swing and we were invited to contribute to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

Despite these additional demands on our time, we kept a strong business-as-usual focus. Maintaining a robust compliance monitoring program is the CCMC's top priority. To that end, this year we devoted substantial time to improving our ways of working, improving our data collection strategy and building on our Code compliance risk framework to inform our investigations and inquiries. We've also prioritised recruitment to bring in new compliance analysts to bolster our work capacity and expertise.

Through our Annual Compliance Statement we've implemented our new data collection strategy and have been able to examine a comprehensive data set that better articulates banks' compliance with the Code. In the past we have detailed ACS results in the CCMC's annual report.

However, this year we decided to present only a summary of the data, setting out banks' full end-of-year results in a separate, dedicated report released in November 2018.

Due to ongoing and systemic noncompliance, the cancellation of direct debits has been a consistent focus of our monitoring program over a number of years. We are determined to oversee major improvement to banks' direct debit practices, and while our renewed focus on direct debits prompted some progress this year, banks still have a long way to go. The CCMC will keep the pressure on banks to do better on direct debits, and will be reporting on the results of a new large-scale mystery shopping activity in the first half of 2019.

Another focus for 2017-18 was improving the quality and consistency in the way banks identify, record and report Code breaches. Reporting on our breach reporting inquiry in June 2018, we presented a clearer picture of banks' Code breaches and identified a way forward for their monitoring processes. We expect banks to have robust compliance frameworks that review staff, processes and systems to ensure errors do not

go unnoticed. The CCMC also set the expectation that banks should assess customer impact for all breaches. Breaches that affect customers must be corrected and where appropriate, the customer should be compensated.

As the CCMC prepares for the new year, we remain focused on providing robust monitoring and leading a smooth transition to the new Code. As set out in our Strategic Plan, we intend to develop guidance for banks to encourage a consistent approach and ensure that they are ready to comply with the new Code from 1 July 2019.

As always, I thank my colleagues Gordon Renouf and Sharon Projekt for their support and expertise during the year. Sharon's term on the Committee came to an end on 26 October 2018 and we take this opportunity to express our thanks to Sharon for her invaluable contribution to the CCMC where she fulfilled the role of Industry Representative for over 6 years. Anne O'Donnell has been recently appointed by the Australian Banking Association as the new Industry Representative for a three-year term. Welcome to the CCMC Anne, we look forward to working with you in the years to come.

Finally, the Committee also thank our secretariat staff led by Chief Executive, Sally Davis, who has once again provided us with expert guidance and support over the last 12 months.

**Christopher Doogan AM**

**Sally Davis**



## Annual Compliance Statement

The Annual Compliance Statement (ACS) was once again the centrepiece of our monitoring efforts, providing a big-picture overview of how well banks are complying with their Code obligations.

Data received through the ACS is used by the CCMC to identify emerging risks, set its priorities for inquiries and in-depth investigations, and advise banks on where they can improve.

A full summary of the CCMC's analysis of bank's ACS responses can be found in the Data Report.



### OVERALL COMPLIANCE

10,123 breaches

↓ 9.5% since 2016-17



at least

3.43 million people impacted



at least

\$95 million financial impact

### THE RESULTS: CODE COMPLIANCE IN 2017-18

This year, banks self-reported 10,123 breaches of the Code, a decrease of approximately 9.5% from 11,191 in 2016-17. The main categories for self-reported breaches - [provision of credit, privacy and confidentiality, and debt collection] - have remained largely unchanged for the last three years.



## COMPLAINTS

**1,130,037**  
complaints received

**↓ 6%** since 2016-17

**91%** closed within  
**5 days**

**6%** closed between  
**6 - 21 days**

**3%** closed after  
**21 days**



## FINANCIAL DIFFICULTY

**298,569**  
applications for assistance

**↓ 1.6%** since  
2016-17

**207,545**  
applications approved

**69.5%** of all applications  
received

**↓ 3%** since  
2016-17



## TOP 5 BREACH CATEGORIES FOR 2017-18

	Privacy and Confidentiality	Provision of Credit	Debt Collection	Compliance with Laws	Internal Dispute Resolution
Breaches	4,464	2,489	725	594	406
People Impacted	465,166	12,649	18,214	733,148	1,203
Financial Impact	\$678,656	\$8,436,790	\$141,550	\$9,434,113	\$39,300

See the CCMC's Code Breach Data Report 2017-18 for more detail on banks' self-reported breaches in 2017-18.

# Direct debits

The Code gives customers the right to cancel a direct debit with their bank. But while our continued focus on direct debit practices prompted some improvement this year, banks still have a long way to go.

## PREVIOUS WORK ON DIRECT DEBITS

In early 2017, the CCMC conducted mystery shopping in response to mounting customer concerns that banks were not complying with their direct debit obligations. This revealed ongoing and systemic non-compliance: bank staff provided compliant advice in only 46% of interactions.

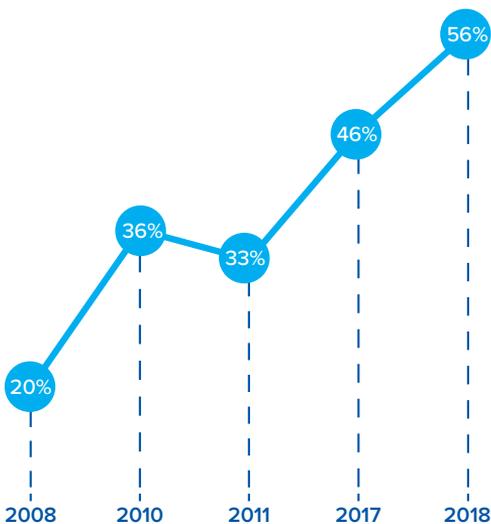
Reporting on these results, we sent a clear message that ongoing non-compliance was unacceptable. We challenged banks to improve their practices, recommending that they:

- improve the direct debit information on their websites
- enable customers to cancel direct debits themselves with online banking
- provide direct debits training to more staff, more often
- measure compliance with internal mystery shopping
- make sure compliance and quality assurance staff identify and manage breaches, and
- develop ways for customers to cancel both direct debits and recurring card payments.

## MYSTERY SHOPPING IN 2018

Follow-up mystery shopping this year showed some compliance improvement.

### Direct debits compliance trend, 2008 to 2018



PERCENTAGE OF CONTACTS THAT RESULTED IN COMPLAINT RESPONSES



## MARCH 2018 RESULTS

Call centre compliance:

**75%** (up 23% from 2017)

Branch compliance:

**45%** (up 20% from 2017)

**4 banks**

updated information for customers on their websites

## LOOKING AHEAD

Industry has a long way to go to comply with its direct debit obligations. In 2018-19, we will conduct another large-scale mystery shopping exercise, and banks will have to report on what they have done to implement our 2017 recommendations. We will report on our findings in the first half of 2019.

# Breach reporting

This year the CCMC conducted an in-depth review of banks' breach identification, management and reporting processes. This renewed focus on banks' breach reporting has increased transparency, holding banks to account for non-compliance.



## THE FOUR PILLARS OF CCMC DATA COLLECTION

- 1 What was the root cause?
- 2 How was it identified?
- 3 What was the customer impact?
- 4 How did the bank fix it?

## BENEFITS OF BETTER BREACH REPORTING



**more transparency** about banks' compliance with the Code



inquiries and investigations can **target the critical issues**



**better oversight** of how banks remediate breaches



**learning is shared** for better customer outcomes

## BREACH REPORTING INQUIRY FINDINGS

### Breach numbers

Code breaches reported in the 2016-17 Annual Report were revised upwards by almost 8% to 11,191

### Breach causes

Banks reported that:

- 98% of breaches were caused by human error
- 75% of breaches had a secondary cause, most commonly a process deficiency or a process not being followed
- 1% due to a system error
- <1% a result of staff misconduct

### Identification

- 64% call monitoring
- 16% credit control or credit quality assurance
- 6% other compliance quality control activities
- 14% through another means including through a compliant and self-identified by a staff member

### Corrective action

- 25% of breaches had no corrective action

Where corrective action does take place the most common actions are:

- » 48% further staff training
- » 18% performance management/disciplinary action of staff
- » 6% enhancing processes, systems or controls

## LOOKING AHEAD

In our June 2018 report<sup>1</sup>, we set out our ongoing expectations of banks when monitoring and reporting on Code compliance. In short, the CCMC expects:

- clear and consistent Code breach recording and reporting
- greater transparency on system testing and controls and the outcomes of these activities
- transparent remediation, particularly addressing any customer impacts in addition to steps to prevent re-occurrence, and
- oversight from senior members of the bank.

<sup>1</sup>See Breach Reporting Inquiry <http://www.ccmc.org.au/cms/wp-content/uploads/2018/06/CCMC-Inquiry-Report-Breach-Reporting-June-2018.pdf>

# Investigations

The CCMC has powers to investigate allegations that a bank has breached the Code. Investigations allow us to focus on concerns raised by individual customers, and to consider compliance issues within individual banks.

In 2017–18, the CCMC received 32 new matters containing 53 Code breach allegations.

## Alleged Code breaches in 2017–18

CODE OBLIGATION	ALLEGED BREACHES
Key commitments – Act fairly and reasonably	11
Financial difficulty	8
Internal dispute resolution	7
Provision of credit	6
Compliance with laws	5
Copies of documents	4
Chargebacks	4
Debt collection	2
Privacy and confidentiality	2
Direct debits	1
Terms and conditions	1
Statements of account	1
Information relating to foreign exchange services	1
<b>TOTAL</b>	<b>53</b>

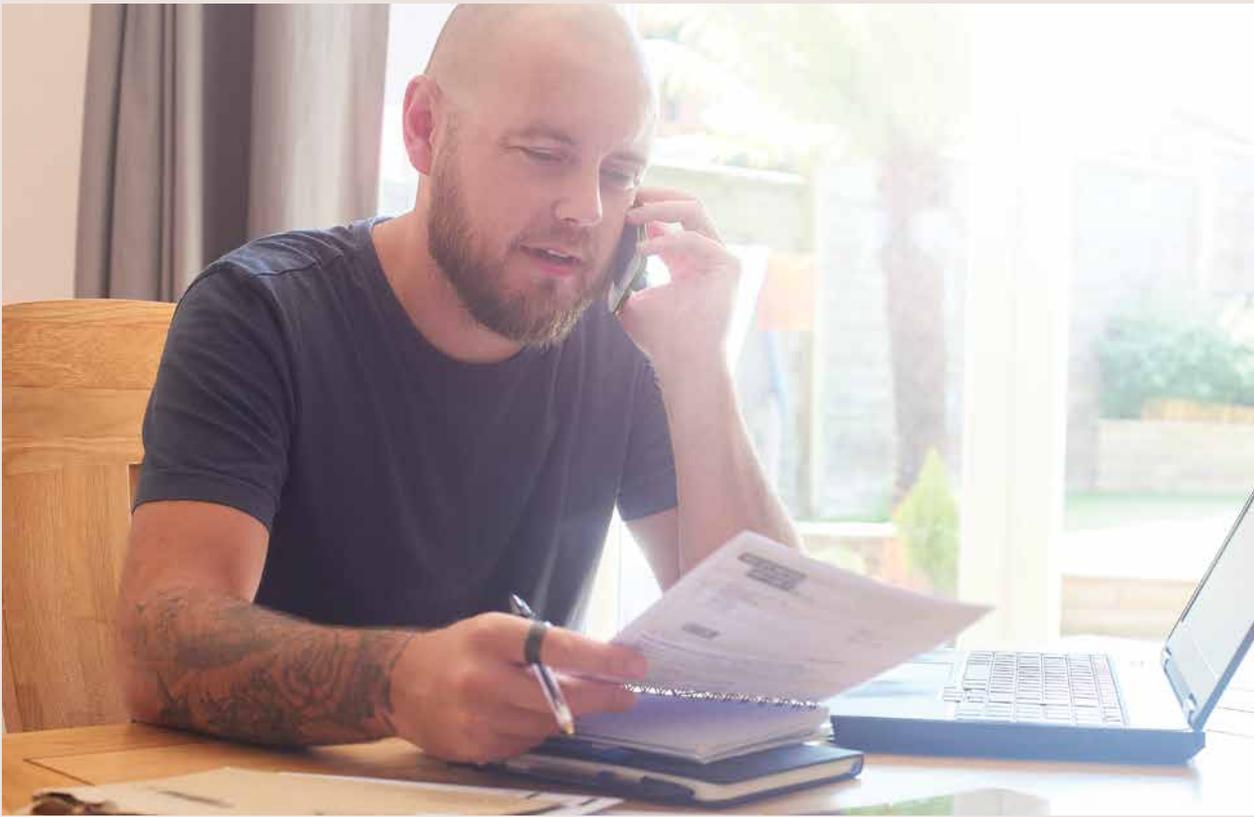
The CCMC closed 35 matters during 2017-18. Of those only 10 fell within our jurisdiction and could be investigated. Of these:

- 5 matters were used to inform the direct debits inquiry, which identified systemic non-compliance and a need for ongoing monitoring.
- 2 matters resulted in three confirmed breaches of financial difficulty, debt collection and internal dispute resolution obligations. The banks involved acknowledged the breaches and demonstrated to the CCMC that they had remediated the customers affected and changed their processes to prevent future breaches.
- 3 matters were investigated with the CCMC finding that no breach had occurred.

## Matters that we could not investigate:

Withdrawn/no further contact	13
Not a Code-subscriber/product not covered by the Code	7
Unable to investigate (clause 3 and/ or 4 <sup>2</sup> )	4
Adopt finding of another forum	1

<sup>2</sup>Code clause 36(b)iii states that the CCMC's compliance monitoring functions and powers do not extend to clauses 3 and 4 of the Code unless a breach of clause 3 or 4 is also a breach of another provision of the Code.



**Case study:** thousands of customers were sent incorrect information about financial difficulty arrangements – in breach of Code clause 32.1

In November 2016, a community legal centre approached the CCMC with concerns about how one bank was communicating with its customers about financial difficulty arrangements.

The community legal centre told the CCMC that the bank was writing to customers, advising them that they had been approved for financial difficulty assistance and would not receive further collections calls. However, the bank also advised customers that it may issue default or other legal notices, close the account or default list the customer.

The CCMC's investigation found that for three years, the bank had been issuing this letter to all customers with an approved financial difficulty arrangement. Over this time, the bank estimated, about 75,000 customers had received the letter.

The bank acknowledged the breach of Code clause 32.1 and removed the letter from circulation.

**Don't set and forget – all communications require regular review for compliance**

The CCMC is very concerned that this letter remained in circulation for such a long period, without being identified by the bank's compliance or legal teams. The bank's oversight – both in approving the letter and allowing it to remain in circulation for so long – demonstrates a breakdown in the bank's financial difficulty and debt collection compliance framework.

The CCMC puts banks on notice that all customer communications must be regularly reviewed against legal, regulatory and Code obligations.



**Case study: a bank failed to act on a customer’s letter of authority, and continued pursuing her for debt – in breach of Code clause 32.1**

Customers have the right to appoint a third-party representative

A customer may wish to appoint a third-party representative for a range of reasons, such as illness

or language difficulties. The Code requires banks to have processes to swiftly accept and act on those authorities and instructions.

In late 2016 a community legal centre employee raised concerns that a bank was not acting on her letter of authority. The representative told the CCMC that she had advised the bank that the customer was particularly vulnerable and unable to manage her financial affairs. After providing a standard form authority to the bank, the customer continued to receive phone calls and text messages.

Through its investigation, the CCMC found that the breach had been caused by human error. The letter of authority had not been loaded to the system correctly, and the bank failed to follow-up and understand the nature and extent of the authority.

The bank acknowledged that it had breached the Code, and said that it had remediated the breach by providing refresher training on letters of authority to all financial difficulty and debt collection staff. The bank advised that it had also improved its engagement with community legal centres

and financial counsellors to foster better working relationships. The CCMC understands that the bank now assigns represented customers to specialist staff for assistance.

**If an authority is in any way ambiguous bank staff should make further enquiries, rather than rely on assumptions.**

The CCMC expects banks to build strong working relationships with not-for-profit community lawyers and financial counsellors, helping customers to overcome their financial difficulty by communicating and working flexibly with their representatives.

**Referrer’s location, matters received in 2017–18**



**Referral source, matters received in 2017–18**

REFERRAL SOURCE	NUMBER
Direct (individual customer)	28
Direct (small business customer)	1
Consumer advocate	2
The Financial Ombudsman Service (FOS) <sup>3</sup>	1
Australian Banking Association	0

**LOOKING AHEAD**

In last year’s Annual Report, we highlighted challenges in the investigations process and flagged our intention to revise the approach to compliance investigations. While this remains a priority, implementation has been set back due to the delay in the approval of 2019 Banking Code of Practice and the associated Committee Charter.

At the time this Report is printed, both the Code and Charter have now been settled and approved, and the CCMC are actively working toward its revised investigations process.

<sup>3</sup>The Financial Ombudsman Service (FOS) was replaced by the Australian Financial Complaints Authority (AFCA) on 1 November 2018.

# Working with stakeholders and the community

This year, the CCMC continued to build strong relationships with community and consumer organisations, whose work on the front line provides invaluable assistance to customers.

## WORKING WITH CONSUMER ADVOCATES AND REPRESENTATIVES

Part of the CCMC's role is to educate and provide guidance to consumer advocates and representatives about the Code's benefits and its relevance to their work. During 2017-18, the CCMC held Code training sessions with financial counsellors in Victoria, Tasmania and South Australia; covering key Code protections and how to refer potential breaches to the CCMC.

The CCMC was also pleased to present at the Annual Credit Law Conference, National Elder Abuse Conference and 2018 Financial Counselling Australia Conference.

The CCMC thanks the organisations that reported potential non-compliance and contributed to CCMC's investigations and inquiries this year. Drawing on this input, the CCMC was able to target and improve direct debits compliance and begin a wide-ranging inquiry into how banks assist customers in financial difficulty.

## WORKING WITH INDUSTRY AND PREPARING FOR A NEW CODE

The CCMC was pleased to increase its engagement with industry this year. Preparing for the 2019 Banking Code of Practice was a focus, and we met regularly with the Australian Banking Association and ASIC on its development. Our priority was to put in place a strong governance framework that empowers the new Banking Code Compliance Committee to robustly monitor compliance, share and encourage good practice and hold banks to account when things go wrong. We also engaged with banks who are planning to subscribe to the new Code, and were encouraged by some banks' proactive approach.

This year the CCMC made significant changes to our operations, data collection and inquiries. We acknowledge Code subscribers' cooperation and their contributions to this work.



### Presented at

- Annual Credit Law Conference
- National Elder Abuse Conference
- Financial Counselling Australia Conference



### Provided training to

- Financial counsellors in Victoria, Tasmania and South Australia
- FOS staff



### Held more than 100 meetings, including with

- FOS
- Australian Securities and Investments Commission (ASIC)
- Australian Banking Association
- Code-subscribing and non-subscribing banks
- Financial Counselling Groups
- Consumer Advocacy Groups

# The Committee

Three representatives make up the Committee. The CCMC's Independent Chair is jointly appointed by the ABA and the Australian Financial Complaints Authority (AFCA) Chief Ombudsman. The Chair is joined by an Industry Representative, appointed by Code-subscribing banks, and a Representative of Individual and Small Business customers, appointed by the consumer representatives of the AFCA Board of Directors.



**Christopher Doogan AM**  
*FIML FAICD, Independent Chairperson*

**Current term:** 31 January 2017 – 30 January 2020

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, the Principal Member of a specialist Commonwealth Appeals Panel, the independent Chairman of the Audit and Risk Committee for the Family Court of Australia and the Federal Circuit Court of Australia; and Chairman of the Board of the Centre for Customs and Excise Studies. He is currently the independent member of the ACT Community Services Directorate Audit and Risk Committee, an Adjunct Professor at Charles Sturt University, a Director of ACT & Southern NSW Rugby Union Limited (the Brumbies) and a member of The Winston Churchill Memorial Trust fellowship selection panel.



**Sharon Projekt**  
*Industry Representative*

**Current term:** 7 August 2015 – 26 October 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 was first appointed to the CCMC in August 2012.

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:** 1 July 2017 – 30 June 2020

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. He is Deputy Chair of Justice Connect and the Consumers' Federation of Australia and serves on the boards of the Telecommunications Industry Ombudsman (as a Director with Consumer Experience) and Good Environmental Choice 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.

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The Committee met  
**11 times** in 2017–18

## The secretariat

The Committee is supported by a secretariat through a business arrangement with the AFCA.

The secretariat is led by Chief Executive Officer, Sally Davis, and is supported by a team made up of a Code Compliance Manager, an Investigations Manager and Compliance Analysts.



**Sally Davis**  
*GAICD, Chief Executive Officer*

September 2015 – current

Sally was appointed as Chief Executive Officer on 1 September 2015. Sally previously worked as Senior Manager of Systemic Issues at FOS and has worked at FOS and its predecessor schemes for over 18 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.

Sally brings to this position extensive experience in financial services, as well as good relationships with regulators, industry and consumer groups.

Sally is also General Manager of Code Compliance and Monitoring at the AFCA. Her work as General Manager involves the oversight of four other codes of practice in the financial services industry in addition to the Code of Banking Practice.

	30 JUNE 2017	30 JUNE 2018
<b>Salaries</b>		
Salaries, gross including Committee remuneration, leave provisions, Super and Payroll Tax	\$656,815	\$697,451
<b>Expenses</b>		
Office Costs	\$8,943	\$10,575
Professional Assistance	\$82,659	\$19,950
Communications and Stakeholder Relations	\$79,742	\$108,594
Technology	\$14,324	\$8,998
Occupancy Costs	\$28,424	\$51,511
<b>Total Salaries and Expenses</b>	<b>\$870,907</b>	<b>\$897,079</b>
<b>Total Funding</b>	<b>\$944,069</b>	<b>\$1,120,919</b>
<b>Annual Surplus/ (Deficit)</b>	<b>\$73,162</b>	<b>\$223,840*</b>

\* Noting that the new Banking Code of Practice was approved later than expected, the CCMC's expenses for the 2017–18 period were less than anticipated. The CCMC has therefore committed to contribute a portion of the surplus to the 2018–19 budget.

No determinations were made during the 2017–18 period.

CASES	2016-17	2017-18
Number of cases open at beginning of year (1 July)	19	23
Number of new cases	49	32
Number of cases closed	45	35
Number of cases open at end of year (30 June)	23	20
	(including 12 on hold*)	(including 8 on hold*)
<b>BREACHES</b>		
Number of alleged Code breaches	77	53
Number of Code breaches confirmed	4	3
<b>CLOSED CASES</b>		
Number of cases closed by decision	1	3
Number of cases closed by delegated decision	16	2

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

# About the CCMC

The CCMC is an independent compliance monitoring body established under clause 36 of the 2013 Code of Banking Practice.

Its purpose is to monitor and drive best practice Code compliance, through a collaborative approach with the banking sector and other key stakeholders.

To do this the CCMC will:

- examine banks' practices
- identify current and emerging industry wide problems
- recommend improvements to bank practices, and
- consult with and keep stakeholders and the public informed.

## 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)

## 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.

## BANKING CODE COMPLIANCE MONITORING COMMITTEE

- m.** PO Box 14240 Melbourne VIC 8001
- e.** [info@codecompliance.org.au](mailto:info@codecompliance.org.au)
- p.** 1800 931 678 (please ask for 'Code Compliance')
- w.** [www.ccmc.org.au](http://www.ccmc.org.au)



**BANKING CODE COMPLIANCE  
MONITORING COMMITTEE**

[www.ccmc.org.au](http://www.ccmc.org.au)