

BCCC Guidance Note No. 3

COVID-19 Special Note – Complaints handling timeframes and customer notifications

In June 2020, the Australian Banking Association (ABA) added a COVID-19 Special Note to the Banking Code of Practice (the Code). The Special Note came into effect on 1 July 2020 and describes how the effects of COVID-19 may mean Code-subscribing banks (banks) are unable to fully comply with strict timing requirements for notices and communications under the Code.

This Guidance Note explains how the Banking Code Compliance Committee (BCCC) will assess Code-subscribing banks' compliance with the complaints handling requirements of the Special Note.

About the BCCC

The Banking Code Compliance Committee (BCCC) is an independent compliance monitoring body established under clause 207 of the Banking Code of Practice (Code).

The purpose of the BCCC is to monitor and drive best practice Code compliance. To do this the BCCC will:

- a) examine banks practices
- b) identify current and emerging industry wide problems
- c) recommend improvements to banks' practices
- d) consult with and keep stakeholders and the public informed.

Guidance Notes

Guidance Notes are subject to change by the BCCC and this document reflects the BCCC's views as at the date of publication. The BCCC considers all matters on the basis of their individual circumstances and this document does not anticipate all possible issues that might come before the BCCC.

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Introduction

1. In June 2020, the ABA submitted a proposal to amend the Code to the Australian Securities and Investments Commission (ASIC). ASIC approved the inclusion of the COVID-19 Special Note (**Appendix 1**) and it came into effect on 1 July 2020 and originally applied until 1 March 2021. ASIC approved variations to the Code in January 2021, including an extension of the applicable time period for the COVID-19 Special Note to 1 September 2021.
2. The Special Note refers to the extraordinary circumstances banks and their customers are experiencing due to the COVID-19 pandemic and provides that:
 - a. In certain circumstances banks may not always be able to meet the timelines for customer communications outlined in some provisions of the Code, and in such circumstances banks will not breach the Code if they make good faith efforts to comply.
 - b. A bank's obligations when lending to small business customers, to engage in a fair, reasonable and ethical manner, and to exercise the care and skill of a diligent and prudent banker, will be informed by the circumstances and effects of COVID-19 generally.
3. This Guidance Note only addresses the following provision in the Special Note:
 1. ***On acknowledging your complaint, we will advise you of the possibility of delays to the usual required notifications during the complaints process.***

The applicable complaints handling Code obligations

4. Chapter 48 (*How We Handle Your Complaint*) and clauses 205 and 206 of the Code provide timeframes for when banks must notify customers of the progress and outcome of their complaints. The Special Note provides for circumstances where a bank may not be able to meet the timeframes under clauses 205 and 206 and obliges banks to notify customers of a potential delay.

How the BCCC will assess banks' compliance with the complaints handling requirements of the Special Note

Timing and method of notifications about delays

5. The BCCC has been notified by banks and the ABA that there may be circumstances in which it is **not** necessary to notify a customer that there may be a delay when acknowledging a complaint.

6. For instance, it may be clear to a bank employee that the complaint can be resolved immediately or within a very short period of time, and therefore there would be no need to inform the customer of potential delay.
7. The BCCC considers that the requirement under the Special Note to notify customers of potential delays only applies to banks' written correspondence with customers and not during initial verbal conversations.
8. Subject to the exemption outlined below, a failure to include the notification in written complaints correspondence with customers **will** constitute a Code breach and must be recorded and reported in line with banks' Code breach reporting requirements.

Exemption to the complaints handling notification requirements

9. The BCCC understands some banks do not wish to inform customers that there may be delays in the handling of their complaint(s).
 10. These banks are confident that their resources and systems are such that, despite the extra demands due to the COVID-19 pandemic, their complaints handling processes will not be delayed and they will be able to continue to meet the required timeframes under clauses 205 and 206 of the Code.
 11. These banks have expressed concern that providing such notifications would impose additional and unnecessary stress on their customers.
 12. The BCCC is aware that there is a variation in size and resourcing across subscribing banks, and that the impacts of the pandemic will be different for each bank. The BCCC acknowledges that some banks may not experience delays to their complaints handling systems.
 13. The Code's Guiding Principles provide, "[A]n ethical, customer-oriented and sustainable framework", and a key principle is that banks will deliver high customer service standards. The BCCC agrees that there are circumstances where notifying a customer of a potential delay that will not occur may impose unnecessary stress on that customer.
14. Therefore, the BCCC will not consider a failure to notify customers of possible delays to be a breach of the Special Note's requirements providing the bank complies with the Code's existing timeframes.
15. However, if the bank identifies it has failed or is likely to fail to meet the required timeframes, it should notify the customer of the delay.

16. In addition, if the bank has failed to meet the required timeframes it should be reported to the BCCC as a breach of the relevant complaints handling Code obligations.

Notifying the BCCC about the bank's approach

17. The BCCC requires each bank that proposes to operate under this exemption to notify it in writing that it:

- a. does not consider it necessary or appropriate to notify customers of potential delays because it can comply with the Code's existing requirements
- b. does not anticipate any delays in its complaints handling systems, and
- c. will be able to provide evidence that during the applicable timeframe for the Special Note, it did not experience delays in complaints handling.

Concluding remarks

18. The BCCC requires all banks to monitor, record and report any breach of the Special Note's requirements in line with Code compliance reporting responsibilities.

Appendix 1 - COVID-19 Special Note

COVID-19 has changed the way we live, work and conduct business

Added to The Banking Code in June 2020

This Special Note is part of the Banking Code of Practice (1 March 2020 Release) and applies in relation to the coronavirus known as COVID-19.

This Special Note commences on 1 July 2020 and applies until 1 September 2021 in relation to banking services and guarantees during that time.

COVID-19 has changed the way we live, work and conduct business. It continues to have a significant impact on the Australian economy. The financial sector has a key role to play in supporting our customers and helping build a bridge to recovery.

Like the key Government and regulatory agencies, the banking industry acknowledges the importance of the continued flow of credit to affected customers and industries in the current environment.

We note that the Council of Financial Regulators, which includes the Australian Treasury, The Reserve Bank of Australia, the Australian Securities and Investments Commission (ASIC), and the Australian Prudential Regulation Authority (APRA), have committed to take account of the circumstances in which lenders are currently operating when administering their respective laws and regulations.

Other agencies with an important role in enforcing this Code, such as the Australian Financial Complaints Authority (AFCA), and the Banking Code Compliance Committee (BCCC), have issued similar statements recognising the effect of COVID-19 on the industry.

In this environment, and in keeping with the commitments made by the agencies outlined above, it is important that banks have regard to both their obligations under this Code and the broader critical need to preserve and restore the functioning of the economy when making decisions on the provision of banking services during this period.

These extraordinary circumstances may affect our internal resources and capacity, and the types of problems confronting our customers.

Consequently, the effects of COVID-19 may mean we are unable to fully comply with strict timing requirements for notices and communications under the Code.

While this special note applies, where we do not meet, but have made good faith efforts to comply with, the timing requirements in following paragraphs, we do not breach the Code: 101(b)&(c), 102, 148, 164, 205, and 206. The substantive obligations in those paragraphs, along with all other requirements in other parts of this Code, continue to apply as usual.

During the period for which this Special Note operates:

1. On acknowledging your complaint, we will advise you of the possibility of delays to the usual required notifications during the complaints process.
2. Despite anything in this Special Note, we will inform you, within 45 days of your complaint (or such other time as specified for the relevant dispute in ASIC's Regulatory Guide 165), of your rights to apply for external dispute resolution if we have not resolved your complaint.

The effects of COVID-19 may also be relevant to our obligations under the Code when considering providing new or increased loans to your small business.

These effects include the inherent difficulties in making predictions for matters such as the pace of economic recovery, and in assessing your ability to service such loans.

In these circumstances, our obligation to engage with you in a fair, reasonable and ethical manner, and to exercise the care and skill of a diligent and prudent banker, will necessarily be informed by these matters and the effects of COVID-19 generally.