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Independent Review of the Banking Code Compliance Committee

Final Report

November 2021

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2. Executive Summary

1. The Banking Code Compliance Committee (BCCC) is required to arrange periodic reviews of its activities. Our Review is the first review since the BCCC replaced the former Code Compliance Monitoring Committee (CCMC) in July 2019.
2. We found an environment that was continuing to change quite dramatically. The new Banking Code of Practice (Code) that came into effect in July 2019 is significantly broader than the previous version of the Code. Changes to ASIC's powers vis a viz approved industry codes have complicated the Code's status as industry self-regulation. Banks are now required to report much more information about complaints and breaches to ASIC, leading to more overlap with their reporting to the BCCC.
3. These changes have brought some positive developments. Whilst attitudes of banks vary, in general, we found that banks were much more aware of and committed to the Code and the work of the BCCC, than had been the case when we last reviewed the Code and the activities of the CCMC in 2016/17.
4. However, the changes have caused the role and purpose of the BCCC again to be questioned. Because of this, we think that more needs to be done to clarify and build a shared understanding of the BCCC's role as both monitoring banks' compliance with the Code and promoting best practice by banks in Code implementation.
5. Our Review looked in some detail at the BCCC's functional activities to carry out these roles. We found that the BCCC has successfully pivoted from the CCMC. Its work highlights the importance of Code compliance to banks and provides the Australian community with valuable assurance of the level of compliance. The BCCC Compliance Statement reports provide a broad overview of Code compliance, whilst Inquiry Reports provide an in-depth look at specific areas of Code implementation. The BCCC has also taken enforcement action against individual banks where particular issues have arisen. We heard respect from stakeholders for the BCCC's work.
6. There are, however, opportunities for further improvement. All stakeholders would like the BCCC to provide more timely reports at the conclusion of pieces of work. To achieve this, we think some shift in emphasis, improved sophistication and some increase in resourcing will be required.
7. The increasing importance of the BCCC role is also leading to a desire by stakeholders for more engagement with the BCCC, which will also require some resource increase.
8. A particular issue for the BCCC will be to revisit the data and other information that banks must report to the BCCC twice yearly. We set out in this Report various options for consideration, but conclude that detailed work by the BCCC with the ABA and banks will be required to resolve the best way forward. Whilst this work must aim for efficiency for banks and the BCCC, it must also meet the needs of other stakeholders and the primary importance of the data collection enabling the BCCC to provide credible assurance to the community as to banks' compliance with the Code.
9. Our Review also examined the BCCC governance framework and we were satisfied that the 3 person Committee who govern the BCCC bring significant expertise and commitment. We identify, however, opportunities to enhance expertise in relation to small business and agribusiness matters.
10. Lastly, our Review Terms of Reference asked us to consider BCCC powers and other matters that pertain to Code framing. We have done so, aware that this overlaps with the review of the Code being undertaken by Mike Callaghan AM PSM. We have discussed this with Mr Callaghan and our conclusions in relation to Code framing are offered for his consideration.

3. Introduction

11. The BCCC came into effect in July 2019 when an expanded Australian Banking Association (ABA) Code commenced operation. The BCCC succeeded the CCMC which oversaw the previous Code (most recent version was in 2013).
12. The Code specifies that the BCCC is an independent 3 person committee. It is supported by a Secretariat (currently provided by the Australian Financial Complaints Authority (AFCA)). As referred to in the Code, the BCCC has a Charter that provides more detail in relation to its role and functions. This requires the BCCC to arrange a periodic review of its activities - to coincide with the periodic review of the Code by the ABA.
13. In July 2021, the ABA appointed Mike Callaghan AM PSM to review the Code. In August, the BCCC appointed Phil Khoury of *cameron. ralph. khoury* (CRK) to review the BCCC. Phil Khoury is the former reviewer (in 2016/17) of the 2013 version of the Code and the then CCMC.
14. The Terms of Reference specify that our Review will consider the performance of the BCCC taking into account good practice standards including relevant parts of the Australian Securities and Investments Commission (ASIC) Regulatory Guide 183: Approval of financial services sector codes of conduct and the Consumer Federation Australia (CFA) Good Practice Principles for the development and review of industry codes and EDR schemes. At a high level, we are required to consider:
 - a. The BCCC's powers and roles
 - b. The BCCC's performance of its monitoring role
 - c. The extent to which its external relationships are appropriate for its role
 - d. Whether the BCCC has appropriately implemented recommendations of the 2016 review of the CCMC
 - e. Whether the BCCC has acted fairly, independently and appropriately with respect to its role under the Code and its Charter
 - f. Any other issues we consider are relevant.
15. Because the Code itself provides the framing for the BCCC, our Terms of Reference overlap with those of the Code Reviewer to the extent that we are asked to consider the BCCC's powers and roles.
16. We have discussed this issue with the BCCC and the Code Reviewer and have benefited from the insights the Code Reviewer has given us as to his thinking. If we have strayed into the realm of Code content, we ask that our report should be seen as thinking offered to the Code Reviewer for his consideration.
17. We are also aware that in some of our consultations and in submissions to our Review of the BCCC, stakeholders raised issues with us that are clearly within the remit of the Code Reviewer. These have been discussed with the Code Reviewer and access provided to all submissions made to us.

Review steps to date

18. Our review began with a BCCC Media Release inviting submissions to our review website: bcccreview@crkhoury.com. We received one submission and also reviewed the submissions made in response to Mr Callaghan's Consultation Note.

19. We met with a range of stakeholders including banks, consumer groups, the ABA, ASIC and AFCA.
20. We undertook a review of BCCC's documents and received detailed briefings from staff on their processes.
21. In September, we published an Interim Report summarising the information that we had gathered including through our preliminary consultation and analysis. It set out some of the options that we were considering and questions for stakeholders.
22. We received a number of written submissions in response. These are accessible at <http://bcccreview.crkhoury.com.au/public-submissions/>. We also met with some stakeholders and the banking industry to discuss the questions raised in the Interim Report.

Definitions

23. This report uses the following terms:

ABA –	Australian Banking Association
AFCA –	Australian Financial Complaints Authority
ASIC –	Australian Securities and Investments Commission
BCCC –	Banking Code Compliance Committee
CCMC –	Code Compliance Monitoring Committee
Charter –	BCCC Charter
OAIC –	Office of Australian Information Commissioner

Developments since review of CCMC

24. Our review of the CCMC in 2016/17 recommended a future role that emphasised assurance to the community through active monitoring of banks and promoting higher standards and continuous improvement. The report recommended:
 - a. A risk-based approach to investigative effort that prioritised systemic non-compliance over breach allegations that had a single person impact.
 - b. A strong data focus by the CCMC – responsibility to gather quarterly breach information and to regularly publish information to promote transparency and trust in banks' compliance with the Code.
 - c. Support for continuous improvement of banking practice by providing feedback on implementation and compliance, identifying and promoting good practice conduct and identifying areas for new and strengthened Code provisions or industry guidelines.
25. Much has changed in the external environment since our last review.

Royal Commission, Code rewrite and ASIC approval

26. The Financial Services Royal Commission was established in December 2017 and made far-reaching recommendations in its February 2019 report.
27. The ABA undertook a complete rewrite of the Code and Charter during the period of the Royal Commission. The revised Code commenced in July 2019 and received ASIC approval under Part 7.12 of the Corporations Act 2001 and ASIC's Regulatory Guide 183.
28. In considering this Review, it is important to note that the revised 2019 Code has significantly greater reach than earlier versions – with the addition of new provisions, the removal of former exclusions and with plain English redrafting increasing the scope of some provisions. This has changed the extent of the code monitoring responsibilities of the new BCCC.

Enhanced ASIC enforcement powers

29. In 2019, a number of the Corporations Act financial services licensee general obligations became civil penalty provisions including the obligation to act efficiently, honestly and fairly. This has opened the possibility of ASIC taking enforcement proceedings seeking a civil penalty for a breach of the Code on the basis that the breach amounts to a failure to act efficiently, honestly and fairly.
30. In 2020, the Financial Sector Reform (Hayne Royal Commission Response) Act 2020 was enacted, providing ASIC with the power to specify provisions of approved codes as enforceable code provisions, liable to a civil penalty for a breach.
31. In view of this new legislation, ASIC intends next year to revisit Regulatory Guide 183 with a view to deciding which Code provisions will be enforceable code provisions.
32. If ASIC specifies some provisions of the Code to be enforceable code provisions, ASIC will be able to take enforcement proceedings in relation to breaches of the Code, even if these do not also amount to a breach of a legislative obligation.

New ASIC reporting regimes

33. From October 2021, banks have been subject to a new reporting regime replacing the previous significant breach reporting regime.¹ Banks are now required to report to ASIC all 'reportable situations'. This includes a significant breach of a core obligation, an investigation that has been on foot for more than 30 days to determine whether there is a reportable situation, conduct that constitutes gross negligence and serious fraud.
34. A breach of a core obligation may be significant having regard to matters such as the frequency of similar breaches, impact of the breach and extent to which the breach indicates that compliance arrangements are inadequate.
35. In addition, a new deeming provision expands the ambit of the reporting obligation. Amongst other things, this means that the reporting regime captures any breach of civil penalty provisions and a breach of misleading or deceptive conduct prohibitions.
36. Reportable situation reports to ASIC are made via ASIC's Regulatory Portal.
37. ASIC must within 4 months of each financial year end publish information about lodged reportable situation reports. This information may include the name of the licensee, volume of reported breaches, breakdown of breach reports by corporate group and number of breaches compared to the size, activity or volume of business.² ASIC's first report will be published by 31 October 2022.
38. In October 2021, new internal dispute resolution (IDR) requirements also came into effect. Amongst other things, financial firms including banks will be obliged to report on complaints in their annual reports.³ In the near future, financial firms will also have to begin reporting to ASIC each consumer/ retail client complaint against ASIC-specified data elements. At least initially, reporting will be required at each half year end.
39. ASIC has power to publish firm-specific complaints information or information derived from it. ASIC has indicated that it will refine its approach as a result of the IDR data reporting pilot, but that it intends eventually to publish data at the financial firm level.⁴ ASIC's expectation is that firms will use the data to benchmark their performance against their peers, for example, in relation to timeframes for resolving complaints, outcomes, volumes of complaints relative to firm size, proportion of complaints escalated to AFCA, complainant demographics.⁵
40. These developments, in part, re-open the issue of how the BCCC best fits into the regulatory and quasi-regulatory landscape and what role it can best play – considered in the next Chapter of this report.

¹ Corporations Act 2001 Part 7.6 Division 3 Subdivision B

² Financial Sector Reform (Hayne Royal Commission Response) Bill 2020 Explanatory Memorandum to p.239

³ ASIC Regulatory Guide 271.185

⁴ ASIC Report 693, July 2021, p.30

⁵ ASIC Report 693, July 2021, p.31

4. Role and purpose of BCCC

Background

41. An ASIC approved code must have “effective administrative systems for monitoring compliance with the code and making information obtained as a result of monitoring publicly available”.⁶ As stated by ASIC in Regulatory Guide 183: “Without formal independent monitoring mechanisms and appropriate access to remedies, breaches of a code may go undetected or uncompensated and there may be little incentive for subscribers to continue to comply.”⁷
42. The BCCC fulfills this role for the Code. Paragraph 207 of the Code states that the BCCC has been established to monitor banks’ compliance with the Code.
43. Paragraph 1.1 of the BCCC Charter states that the purpose and function of the BCCC is “to monitor and drive best practice Code compliance”. The Charter also sets out guiding principles for the BCCC:
 - a. Be transparent and accountable
 - b. Prioritise industry wide, serious and systemic issues
 - c. Provide community assurance by regularly publishing its work
 - d. Act in a fair, reasonable, independent and effective manner
 - e. Promote its work
 - f. Provide guidance to industry to promote best practice code compliance
 - g. Act with integrity and impartiality.
44. The BCCC’s most recent Strategic Plan (posted to its website in June 2021) outlines its 4 strategic priorities for the period from 1 July 2021 to 30 June 2024:
 - a. Monitoring banks’ compliance with the Code
 - b. Improving practices and outcomes for customers
 - c. Building strong relationships with banks, consumer and small business organisations
 - d. Enhancing data capabilities to support effective monitoring
45. The Chair’s message at the start of the Strategic Plan also notes the BCCC’s aim to improve the visibility of the BCCC.
46. The Strategic Plan states that the BCCC will be mindful of the challenges caused by the pandemic for individual and business customers and banks when planning and conducting the BCCC’s program of work.

⁶ Corporations Act 2001 s1101A(3)(c)(ii)

⁷ Regulatory Guide 183.36

47. The BCCC prepares annual business plans that provide further information about the BCCC's priority areas. The 2021/22 Business Plan notes the following priority areas:
 - a. Challenges caused by the COVID-19 pandemic including financial difficulty
 - b. Customers experiencing vulnerability
 - c. Small business and farming customers
 - d. Banks' organisational capacity to comply with the Code
 - e. Deceased estates
 - f. Banks' communications with customers and provision of information
48. Our Terms of Reference set out specific questions relevant to the BCCC's role:
 - a. The extent to which the BCCC achieves its purpose to monitor and drive best practice and provide benefits to individual and small business customers (and guarantors) by monitoring banks' compliance with the Code
 - b. Whether the BCCC is properly interpreting its role under the Code and Charter and the extent to which the Code and Charter clearly set out the BCCC's powers and role.

Stakeholder views

49. In our consultations with banks, we heard concern about overlap between the BCCC and ASIC, in particular with data reporting, and to a lesser extent overlap with AFCA's Systemic Issues Team.
50. Some banks thought that, as a corollary to ASIC's expanding enforcement remit in relation to Code obligations, the BCCC should be less focused on compliance activities and more focused on sharing and promoting good practice.
51. A number of banks would like the BCCC to choose its areas of focus with a clearer aim to avoid duplication with those other bodies. Some banks also expressed a desire for more consultation with them about the BCCC's annual proposed priority areas. The ABA's submission in response to our Interim Report also supported greater consultation with banks as to this.⁸
52. On the other hand, it was clear from our discussions with ASIC that it places much importance on BCCC oversight and monitoring of compliance with the Code and considers the BCCC to be the primary Code monitoring body.
53. Likewise, consumer groups regard the BCCC as "the lead body for enforcing the Code"⁹ and place considerable importance on this role. "Enforceability of the Code is essential to its efficacy. Without substantial oversight, the Code is more a piece of marketing than anything else."¹⁰
54. Like banks, consumer groups would welcome more input into the BCCC's selection of its annual priority areas. They proposed a "formal and transparent process under which the attending

⁸ Consumer groups submission to the Code Reviewer p.4

⁹ Consumer groups response to our Interim Report p.15

¹⁰ Consumer groups submission to the Code Reviewer p.6

[consumer] organisations rotate to ensure all interested and appropriate consumer representations get a chance to provide input over time”¹¹.

55. Consumer groups have also urged more information sharing between the BCCC and ASIC and AFCA including to divide areas of focus between the BCCC and ASIC, to the extent their powers allow.¹²
56. A number of stakeholders raised issues with us that are clearly within the responsibilities of the Code Reviewer. These included matters such as discrimination, access to banking services, “de-banking”, provision of code information to small business and so forth. These matters have been raised with the Code Reviewer and we leave the substantive issue of whether they should be the subject of any recommended change to him.
57. There is an observation that arises from these inputs which is within our scope, and that is the role of the BCCC in identifying areas where the Code is not meeting stakeholder expectations, including where there are matters ‘falling between the cracks’, where the Code’s wording could be improved and where new issues are arising in the market. The BCCC’s monitoring activity means that it has a unique perspective of how well the Code is working and we think that progressive improvement of the Code is a key element of its role and responsibilities – and something that could be given some greater prominence.

Discussion

58. It might be seen as disappointing that in revisiting this Code Committee some years after our last review, we find that its purpose, philosophy, focus, capabilities and limitations still seem to be unclear in the eyes of stakeholders. However, given the array of changes that have impacted banking detailed in the previous section, we are not surprised.
59. There are also other reasons for both stakeholder and BCCC focus on role and purpose, that we see as evidence of a healthy maturing.
60. In part, this challenge to role and purpose is a function of a stronger and more comprehensive Code. It is occupying more of the banks’ attention simply by its reach. To the industry’s credit, there is also a higher level of attention to compliance with the Code evident within banks. The difference is marked. Amongst other things, interest from the banks in this Review of the BCCC was much greater and at a more senior level than we experienced when reviewing the CCMC in 2016/17.
61. It is also a product of more active, ambitious and targeted effort from the BCCC – which is challenging bank operations and risk and compliance managers and creating some tension and pushback around the detail of how BCCC activity should work. Both BCCC and industry are looking to role and purpose for guidance on this. This is to be expected in bedding down a new Code and we are conscious that this process has been slowed by the COVID-19 pandemic.
62. To our thinking, despite the changes that impose on its framing and operation, the Code remains at its core a self-regulatory promise to the community. Banks are accountable for complying with its provisions and the BCCC is responsible for providing the community with independent assurance that the Code is working – providing public commendation for excellent performance and public exposure for poor performance.

¹¹ Consumer groups response to our Interim Report p.4

¹² Consumer groups response to our Interim Report p.3

63. This independent assurance is (must be) composed of:
- a. Monitoring of compliance – in two dimensions
 - i. Are banks actually complying?
 - ii. Do banks have the systems, processes and capabilities to consistently comply?
 - b. Identification and sharing of good practice in applying the Code
 - i. Feeding this back to banks so that they can improve customer outcomes
 - ii. Gathering information for progressive improvement of the Code (identifying gaps, improving the clarity of Code provisions, making compliance more efficient, etc).
64. Accordingly, we accept ASIC's view that the BCCC continues to have an important role in evaluating and reporting on Code compliance, notwithstanding recent legislative changes. If the BCCC fulfils its role well, ASIC should spend less of its scarce resources on Code enforcement, allowing the Code to largely operate as self-regulation, consistent with its origins.
65. At the same time, it is clear that the BCCC should not be solely focused on whether minimum levels of compliance are met, but also has an important role in promoting higher (above minimum) practice across the industry. As referred to in paragraphs 57 and 63.b.ii, we see this as including a role in progressive improvement of the Code. This better practice role is particularly important in relation to principles-based Code obligations, where interpretations, practices and customer outcomes across industry may otherwise differ quite markedly.
66. Ideally the Code and the BCCC's Charter would make these two main functional obligations clear and both the Code and the Charter would do so using the same language. As noted in paragraphs 42 and 43, the Code currently emphasises the BCCC's role in monitoring compliance and the Charter currently emphasises the best practice role.
67. If the framing is clear, the issue for the BCCC (as the ABA has recognised) becomes whether it is achieving the optimal balance in carrying out the two functional responsibilities.¹³
68. To do this, we think that the BCCC needs to be continuously assessing the benefit to the community of its planned activities, whether this is collating and analysing Code compliance data, undertaking topic-specific monitoring projects or investigating and taking action about specific Code breaches. In doing so, the BCCC needs to do its best to keep abreast of what other regulatory and quasi-regulatory bodies are doing and to take this into account in the interests of minimising duplication by the BCCC. For example, the BCCC acknowledges that its breach data collection needs revisiting in light of ASIC's new breach reporting regime. The BCCC also needs to take account of the best available intelligence as to where it will have the most impact in improving customer outcomes.
69. From our discussions with the BCCC, we are satisfied that it sees itself as having both a compliance role and a good practice role and its aim is squarely focused on the best customer outcomes. These are all matters specified as strategic priorities in the BCCC's 2021 / 2024 Strategic Plan. It may be, however, that the Strategic Plan (and other communications by the BCCC) are not achieving a sufficient shared understanding with stakeholders about the BCCC's role. As pointed

¹³ ABA Submission in response to our Interim Report p.1

out by Legal Aid Queensland, it is also important that the BCCC strive to enhance community groups' understanding of the BCCC's role and work.¹⁴

70. There is also the issue of the BCCC's annual selection of priority areas. The BCCC must have complete independence in choosing these, but it is clear that there would be value in the BCCC consulting a little more openly and gathering intelligence as to areas that are likely to derive most customer benefit. This additional transparency would be consistent with the BCCC's guiding principles.
71. Consultation is able to include ASIC. We are, however, conscious that ASIC is constrained by secrecy provisions and so is not able in these consultations to give the BCCC advance notice of ASIC's areas of focus, before these are made generally known.

Recommendation 1.

The Code and the Charter should be amended so that both describe the BCCC's role as "monitoring Code compliance and promoting best practice Code implementation".

Recommendation 2.

The BCCC should do more to build a shared understanding amongst stakeholders of:

- a) its role and how this fits with the roles of ASIC and AFCA
- b) its proposed priority areas

Recommendation 3.

The BCCC should continue to evaluate and improve its approach to monitoring and reporting, working with stakeholders to improve outcomes and efficiency over time and reporting back on progress as part of the BCCC Annual Report.

¹⁴ Legal Aid Queensland response to our Interim Report p.2

5. BCCC governance framework

Background

72. Chapter 49 of the Code specifies that the BCCC is an independent code monitoring body, comprised of an independent chairperson appointed jointly by AFCA and the ABA, a consumer representative appointed by AFCA consumer directors and a banking representative appointed by the ABA.
73. The Charter addresses BCCC governance and operations in more detail including maximum terms for BCCC members, automatic vacancies and the powers of the Chair. The Charter provides that the BCCC will meet and discharge its responsibilities as it determines. In practice, a meeting of the members of the BCCC is held most months of the year (typically a half day meeting).
74. Like the Code, the Charter can only be amended by the ABA after consultation with stakeholders.
75. Our Terms of Reference specify questions relevant to BCCC governance including:
 - a. The adequacy of the BCCC's Small Business and Agribusiness Advisory Panel's (Panel) Terms of Reference and the extent to which the Panel assists the BCCC to meet its purpose with regard to small business and agribusiness matters.
 - b. The extent, if any, to which the BCCC has been prevented from fulfilling its purpose because of any requirements or restrictions of its Charter and/or and Chapter 49 of the Code.

Small Business/ Agribusiness expertise

76. Paragraph 207 of the Code requires the BCCC to appoint a person or panel with expertise in small business and/ or agribusiness to act as a consultant on small business and agribusiness issues.
77. To meet this requirement, the BCCC has appointed a Small Business and Agribusiness Advisory Panel. The Panel's Terms of Reference specify its role is "to provide the BCCC with insights and advice on small business and/or agribusiness matters". "The Panel will also be asked to provide advice and assistance on the BCCC's work as it relates to Small Business and Agribusiness customers and their banking."
78. The Panel currently comprises a couple of people who work with regional and rural financial counselling organisations, an Australian Small Business and Family Enterprises Ombudsman (ASBFEO) executive, a legal aid solicitor with agribusiness clientele and an ex-banker who has established a not-for-profit organisation that supports and advocates for small business. This representation spans South Australia, New South Wales, Queensland and Victoria as well as national representation via ASBFEO.
79. The practice is for the Panel to attend part of a BCCC meeting once each year. Panel members also meet as a group with the BCCC Secretariat once each year. We understand that meetings are fairly unstructured and provide an opportunity for Panel members to advise the BCCC of banking issues in small business and agribusiness.
80. Outside meetings, the BCCC Secretariat sometimes email Panel members to seek their views about matters. There is not, however, a regular practice of consulting Panel members about such matters as the BCCC's workplan, proposed Inquiries, Inquiry scope documents and so on.

81. Panel members are entitled to be paid an hourly fee for time they spend on behalf of the BCCC, although in practice they have not charged for their time.

Stakeholder views

82. Consumer advocates suggested to us that the Panel could usefully be expanded to include a caseworker with the Small Business National Debt Helpline.
83. In its submissions, ASBFEO suggested that the BCCC Committee itself should include someone with small business expertise. The ASBFEO would like this to be in addition to the Panel.
84. On the other hand, the ABA submitted in response to our Interim Report that the Panel has not had enough time to allow a proper assessment of its effectiveness. “If the Panel was ultimately deemed to be ineffective, the ABA would not necessarily object to a small business representative being added to the BCCC. In selecting any such representative, we note that independence should be a key criterion”, rather than the appointed person operating as a “partisan advocate” for the sector.¹⁵

Discussion

85. From discussions with the Panel, the BCCC and its Secretariat, it is clear that the Panel is still in the process of settling into its role and finding its rhythm and that the pandemic has in large part delayed this from happening.
86. We would expect that next year will provide the Panel with opportunity to meet in person and to discuss with the BCCC and its Secretariat how the Panel can best provide value to the BCCC.
87. The BCCC has acknowledged that the Small Business and Agribusiness Advisory Panel could be better supported and have committed to revitalising its effectiveness and a more systematic use of its expertise. We offer a recommendation along those lines, for the record and irrespective of the view taken of Recommendation 5 below.

Recommendation 4.

The BCCC should revitalise its Small Business and Agribusiness Advisory Panel, incorporating systematic ways of engaging with it in developing strategy, business planning, in planning Inquiries and wherever its expertise can be applied. Once its processes are strengthened, it should also consider adding other useful perspectives from amongst the diversity of the sector.

88. Even so, the question remains whether the Panel is a sufficient mechanism for small business input into the work of the BCCC. Discussions with the Code Reviewer (and our own consultations) underscored a sense that small business feel unrecognised and overlooked in the operations of the Banking Code.
89. In part, we think this is because in many ways, banks practically treat micro businesses in the same way as retail customers. It is also because small business lobbyists have for many years focused

¹⁵ ABA Submission in response to our Interim Report p.2

mostly on access to credit and have argued against making lending practices for small business any more 'protective' or restrictive.

90. We also see some evidence that the huge diversity of the small business sector results in something of an 'averaging' that leaves important nuances unrecognised.
91. Diversity of the sector notwithstanding, we observed a more effective presence of small business in our stakeholder discussions, than we had in 2016/17. Quite some credit for this must go the ASBFEO, which has built some quite effective networks into different parts of the small business community over the past few years.
92. While any future changes to the Code itself are for the Code Reviewer, it may be that the time is now right for the recommendation we made in 2016/17 (but which was not then accepted) for a fourth member of the Committee with small business and/ or agribusiness skills and experience (as well as other relevant skills). Our recommendation then was that appointment should be by the Financial Ombudsman Service (now AFCA) in consultation with representative organisations from the small business and farming sectors. To ensure against deadlock in a 4 person committee, we recommended that the Chair should have an additional casting vote.
93. We recognise that there are no doubt many other sectors or categories of bank customers who could also mount an argument for some representation on the Committee. We also recognise that the Committee is not meant to be made up of advocates for a narrow set of interests and that there are practical limitations on the workable size of the Committee. Nevertheless, we think that this would be a worthwhile symbolic and practical addition to the Committee's expertise.

Recommendation 5.

The BCCC should include a fourth member with expertise in small business/ agribusiness. For efficiency and fairness, the implementation should feature:

- a) Selection by AFCA, ABA and the Committee Chair in consultation with relevant organisations from the small business and farming sector
- b) The appointment process should make it clear that the aim is to broaden the perspectives and skills of the Committee – and that the role is not to advocate for the sector
- c) The Chair should have a casting vote to deal with any deadlock

Charter

94. In its submission to the Code Reviewer, the BCCC has suggested that it would be better if there were a single governance document rather than the Code and a Charter. The BCCC think that this would minimise duplication or confusion. By way of example, the BCCC points to clause 4.1 of the Charter which sets out some but not all of the BCCC's monitoring powers specified in the Code.
95. The question of whether the Code should be expanded to incorporate the provisions currently in the BCCC Charter is within the Code Reviewer's remit – and we think should be left to him. We note, however, that one option would be for the Code to have an annexure that sets out the types of BCCC provisions currently in the Charter – rather than setting out all provisions through the body of the Code. If a Charter is retained (whether as a discrete document or an annexure to

the Code), our advice is that the Charter merits a revision to more carefully dovetail with the Code and to address a range of issues set out in this and other chapters of our Interim Report.

96. The BCCC's Charter sets out meeting mechanics including quorum and voting. Clause 12.5 allows a BCCC member (other than the independent Chair) to appoint an alternate to take part in a meeting. We understand, however, from the BCCC that this power has not been exercised and that meeting dates are set, taking account of the availability of all BCCC members.
97. The BCCC has suggested that, rather than a BCCC member being able to appoint an alternate, in the event of a prolonged absence or inability of a member to participate in Committee meetings, the Code should provide for the appointing bodies to appoint alternate members. The ABA submission agreed with this.¹⁶
98. Consumer groups also agree that the appointing bodies should designate the alternate, but consider that an alternate should be possible for any absence, whether short or long-term.¹⁷ They suggest standing alternates are able to be appointed. We do not support this. Our concern is that an alternate member inevitably does not have the background and depth of knowledge of the person they are replacing. We think that current BCCC meeting arrangements including flexible scheduling practices and electronic participation in meetings are preferable to regular reliance on alternates.
99. Clause 12.4 deals with the conflict posed by a material personal interest. If a material personal interest arises for a BCCC member in relation to a matter being considered at a meeting of the BCCC, the person is unable to be present. However, the Clause says that a material personal interest does not arise solely by reason of a BCCC member's current or previous employment with a Code subscriber. The result is that if, for example, the BCCC were considering whether to sanction a bank that employed a BCCC member, that person could be part of the deliberations.
100. A stricter approach would be to provide that, where a BCCC member's employment or recent employment creates a material personal interest in a matter being considered by the BCCC, that person may only participate in the BCCC's deliberations about that matter if the other BCCC members agree. If they do not agree, the conflicted person's appointing body is entitled to appoint an alternate member to participate in the conflicted person's stead.
101. The ABA submission in response to our Interim Report supported this proposal.¹⁸ So too did the consumer groups submission, but noting that a BCCC consumer member would not have a material personal interest in a matter their employer referred to the BCCC on behalf of a client, unless the BCCC consumer member had been directly involved in the referral.¹⁹ After all, a BCCC referred matter would not impact the business interests of the BCCC consumer member's employer. Whilst we see the logic of this position, we think that the question of what constitutes a material personal interest is best left to the BCCC to delineate.

Recommendation 6.

¹⁶ ABA Submission in response to our Interim Report P.5

¹⁷ Consumer groups response to our Interim Report p.5

¹⁸ ABA Submission in response to our Interim Report P.5

¹⁹ Consumer groups response to our Interim Report P.5

The BCCC Charter (whether this document remains separate from the Code or whether it is incorporated into the Code) should provide:

- a) An alternate member should only be able to be appointed where a BCCC member is absent or unable to participate for a prolonged period – and that in this case the appointing body should appoint the alternate rather than the BCCC member
- b) There should be tighter provisions to deal with conflicts of interest in the interests of maintaining the confidence of stakeholders.

6. BCCC Compliance Statements

Introduction

102. A key method used by the BCCC to monitor banks' compliance with the Code is to require them to provide twice yearly Compliance Statements. We set the processes out in some detail below – as they are a matter of some complexity and controversy.
103. BCCC Guidance Note No.1, issued 13 September 2019, sets out the BCCC's expectations as to what banks should do to ensure high quality reporting to the BCCC of all breaches, regardless of their level of significance or materiality. It specifies when an incident affecting multiple customers should be counted as one breach and when as multiple breaches. The guidance requires banks to:
 - a. Assess all incidents to determine whether one or more breaches of the Code have occurred
 - b. Record all Code breaches, not just the most obvious or relevant breach
 - c. Record actions to stop the breach recurring and to remediate affected customers
 - d. Report all Code breaches by listing the total number of breaches per chapter of the Code
 - e. Provide more detail about some breaches ie. incident, product or service information, Business Unit, cause of breach, how identified, remediation and other action taken, type and number of customers affected, financial impact etc.
104. Guidance Note No. 1 also requests banks to notify the BCCC of any breach report to ASIC and to do so within 21 business days of the ASIC report.
105. Our Review Terms of Reference pose a number of questions that are particularly relevant to this work.
 - a. Whether the BCCC has adequate systems for the collection, recording and processing of data about Code compliance
 - b. The extent to which the BCCC has met its reporting requirements and whether its reporting would be improved by publicly benchmarking banks' compliance in an identifiable manner
 - c. Whether the BCCC's compliance monitoring activities and techniques are effective in ensuring high levels of compliance by banks with the Code.
 - d. Whether the BCCC has timely access to necessary information from stakeholders to enable it to assess bank's compliance with the Code.

Compliance Statement processes

106. After a number of rounds of consultation with the banks, the BCCC settled its Compliance Statement requirements in September 2019. Section A must be completed by each bank at each half year end. Section B must be completed once a year. Compliance Statements are due 2 months after the reporting period end.

Section A

107. This collects information about the number of Code breaches per Code Chapter. Each bank is also asked to explain the reasons where there has been considerable variation since the previous

report in the number of breaches of a particular Code obligation (at least 25% variability where more than 50 breaches occurred).

108. In addition, more detailed information is requested about incidents that involved:
 - a. Systemic or serious breaches (these terms are defined by the BCCC in its Guidance Note)
 - b. Breaches that had an impact on more than one customer or a financial impact of more than \$1,000 on one customer, and
 - c. Breaches where the nature, cause and outcome of more than one breach was the same.
109. The more detailed information includes a description of incident, product and business unit, cause of breach, how identified, actions to prevent recurrence, number and type of customers, financial impact and Code chapter breached.
110. Each bank is also required to make a random selection of 5% of the breaches for each Code Chapter that do not meet the criteria set out in paragraph 108 above and provide more detailed information about these as per paragraph 109.
111. The net result of these requirements is that, for around one-third of reported breaches, this more detailed information is provided²⁰.

Section B

112. Section B requires each bank to provide:
 - a. Information about its efforts during the reporting year to monitor compliance with specified obligations: responsible lending, debt recovery, complaints, financial difficulty and guarantees
 - b. Complaints information for the reporting year - the total number of complaints from individual customers and their guarantors and from small businesses, the total number of complaints per product type, the total number of complaints per issue type, the total number of complaints resolved at the first point of contact/ within 5 days, the number of complaints referred to the Customer Advocate
 - c. Information about financial difficulty assistance during the reporting year - the total number of requests for assistance received from individual customers and from small businesses, a breakdown of the types of assistance provided, a breakdown of the reasons why financial difficulty assistance was not provided, details about why assistance was requested, details of the location of customers who requested assistance, how many requests for assistance were received by customers who have been granted assistance in the previous 12 month period and how many of these further requests resulted in assistance, how many customers the bank had contacted because they identified that the customer may be in financial difficulty, details about whether contacts with customers were by telephone, letter, email, SMS or other
 - d. Information about lending during the reporting year – the number of applications for credit, the number of co-borrower loans, how many applications were made for the bank's suitability assessment, the percentage of credit applications where consumer credit insurance was applied for, how many claims were made on consumer credit insurance products and whether these

²⁰ 38% of total reported breaches for six months to June 2020 and 34% for six months to December 2020

- were approved, declined or withdrawn, for how many credit applications lenders mortgage insurance was required, the number of requests to reduce a credit card limit
- e. Information about debt collection during the reporting year – the number of accounts subject to debt collection activities on 4 specified days of the year and how many of these were individuals, how many small business accounts were in debt collection during the year, the number and vehicle for successful contacts between customers and the bank’s collection teams during the reporting year, various details about small business defaults, how many defaults were reported to a credit reporting body and how many debts were sold to another party
 - f. Information about guarantees – loans that were guaranteed and how many enforced
 - g. Information about direct debits – how many cancellation instructions were received and how many complaints about these were received, how many requests for lists of direct debits and recurring payments were received
 - h. Information about inclusivity and accessibility – the number of remote community customers and the number of customers with a basic, low or no fee bank account
 - i. The number of staff who undertook training about the Code during the period and a breakdown of the type of training
 - j. Size of bank information – number of employees, customer facing employees, branches, transaction accounts, individual customers
 - k. Information about banking channels and percentage of bank customers using the various channels and about the percentage of hard copy v. electronic statements
 - l. The number of credit card and debit card transaction disputes and information about credit card customer cancellations
113. For the period July 2019 to June 2020, a reduced version of Section B applied, recognising the stress on banks caused by COVID-19. This only required the provision of the information set out in paragraphs 112.a and some of the information set out in paragraphs 112.b, 112.c and 112.d.
114. This year’s reporting for the period July 2020 to June 2021 was the first time that the full Section B applied. In addition, the BCCC collected information about the impact of the COVID-19 Special Note to the Code that provided some relief for banks from strict timing requirements in the Code.

BCCC analysis

115. The BCCC undertakes a resource intensive process to review and cleanse the data before importing it into its analysis software for the purposes of analysis and reporting.
116. A public report was issued by the BCCC in April 2021 in relation to Compliance Statements for the 6 month period to 30 June 2020 (over 9 months later). The most recent BCCC report was issued in August 2021 in relation to reporting for the 6 month period to 31 December 2020 (over 8 months later). These respectively reported 19,766 and 22,473 Code breaches. Both reports disaggregated the total into the number of breaches per bank (on an anonymised basis) and the number of breaches per Code Part.
117. The public reports drew upon the more detailed information about incidents and breaches (see paragraphs 108 to 110) and provided information about how these are identified, the total financial impact to customers and customer remediation and corrective actions. They provided some trend information and banks’ explanations as to trend movement. The April 2021 report also included some information drawn from Section B data that put compliance data in context, for example, lending data, requests for financial difficulty assistance and complaints data.

118. In addition to the twice-yearly public reporting, the BCCC provides each bank twice yearly with an individualised report that provides high level benchmarking of the bank's performance as compared with other banks along with the BCCC's feedback.
119. For the financial year ending 30 June 2020, this provided observations about the number of breaches as compared with other banks, the BCCC's confidence in the bank's causality analysis, the range of ways in which breaches are being detected and the BCCC's confidence in these, the bank's monitoring activities and observed good practices and possible gaps, the BCCC's feedback on data quality and comparative information about complaint resolution timeframes.

Stakeholder views

120. A number of submissions to the Code Reviewer acknowledged the benefits of the Compliance Statement reporting of breaches.²¹
121. There have been some calls for more detailed public reporting. The ASBFEO submission suggested that compliance data should be disaggregated between customer types so as to specifically identify where the Code may not be meeting the standards of specific communities including the small business community.²²
122. On the other hand, a number of banks have commented about the very considerable resource impost for banks of the Compliance Statement process and have questioned whether the benefits justify this.
123. They noted that there is no materiality threshold for their reporting of breaches and doubted the value of data about very minor breaches that are easily corrected and have minimal customer impact.
124. Several banks told us about the difficulty of comparing banks that count and categorise breaches differently. This is notwithstanding the BCCC's guidance as to this in its Guidance Note No.1. Banks also take different approaches to the analysis and attribution of breach causation, that is, whether the breach is caused by human error, system issues, procedural weakness, training deficiency etc. Further, some banks are more fulsome than others in describing in their Compliance Statements their monitoring of compliance. All of these matters, we were told by banks, make it difficult for the BCCC to draw reliable comparative conclusions from the information that the banks provide.
125. Some banks also told us that they found reporting by every Chapter in the Code problematic – in particular Chapters that are framed at a very general level of principle.
126. A number of banks were also concerned that the BCCC's Compliance Statement reports are typically finalised 8 or 9 months after the end of the reporting period (2 months of which is for the banks to submit their data) and that this delay makes the reports less relevant.
127. Lastly, a number of banks considered that breach reporting to the BCCC needs a re-think in light of changes to ASIC reporting. We were told that banks expect that a very high proportion of Code breaches will fall within ASIC's new reporting regime because the incident giving rise to a Code breach will likely also involve an ASIC reportable situation. Reporting to ASIC will be a larger data set and so systems and processes will be focused on delivering that reporting. Banks

²¹ Eg. FINSIA Submission to the Independent Banking Code Review p.1, Law Council of Australia Submission p.22, Tasmanian Small Business Council Submission to the ABA Review of the Code of Banking Practice p.17, Submission by Legal Aid Queensland p.16

²² ASBFEO submission in response to our Interim Report p.2

argue the inefficiency of an overlapping BCCC reporting regime that requires the manual extraction of much data.

128. The ABA's submission to the Code Reviewer set out these and related issues.

"The current format of the BCCC's feedback makes it difficult to determine if the key objectives of the code are being met, to what degree each clause is being complied with and how the bank has improved in the BCCC's view across reporting periods.

The BCCC's feedback on banks' compliance statements is generally based on comparing banks' reporting to the industry average, based on percentages. It can be challenging to derive insights from these comparisons. It's implicit that the industry average is the right level, and banks should aspire to meet it, without much analysis supporting this. We understand the comparisons are based on percentages which are unweighted, meaning a small bank's effect on the industry average is the same as a big bank's, despite breach numbers per bank per reporting period ranging from 3 to over 8,000.

The BCCC's feedback on banks' compliance statements is usually released about six months after the compliance statements are submitted, when the next compliance statement is nearly due (Part A at least). While the feedback is appreciated and taken seriously, banks' ability to respond to it is effectively deferred to the next compliance statement, which is submitted 12 months after the period to which the feedback relates. Remediation of any systemic issues is usually well underway by the time the BCCC provides feedback."

"The BCCC's reporting requirements are extensive and constitute a significant burden on subscribing banks' resources. The impact of this is felt all the more acutely in the context of the radical reforms to the breach reporting framework under the Corporations Act, and the introduction of a parallel reporting regime under the Credit Act, which will take effect from October 2021. These changes will greatly increase the overall burden of reporting required of banks.

In this context, it is apt that this review considers whether large scale breach data reporting (by banks) and analysis thereof (by the BCCC) is an efficient process for monitoring Code compliance.

It should also be noted that, unlike the regimes under the Corporations and Credit Acts, the reporting requirements set by the BCCC are not filtered by any materiality threshold. This has the result that banks are required to capture, identify and report any breach, regardless of significance.

The absence of a materiality threshold for reporting Code breaches means that the costs of the exercise may exceed its benefits for customers, banks, and the BCCC. The exercise requires extensive attention and input from bank staff who, in many cases, could otherwise be more focused on remediation and uplift efforts. We consider there is little customer benefit in assessing and reporting on isolated, low-impact incidents that were quickly resolved to customer satisfaction months before the compliance statement is prepared; and likely little to be gained by the BCCC in the way of trends, areas for monitoring focus, or other industry insights. The ABA acknowledges there are thresholds in place for providing further details of breaches in the "Q2" sheet of compliance statement Part A – these comments relate to identifying and reporting breaches for the "Q1" sheet as well. The ABA considers banks' resources would be better focused on identifying and reporting serious or systemic breaches, which serve as better indicators of areas for focus or compliance uplift.

In our view it would be appropriate to set out in the BCCC Charter, that breach reporting should be subject to a materiality threshold.

In addition, where the code contains reference to other regimes, for example that of privacy law, the risk arises that banks will be required to report breaches to the BCCC even where reports have been made to other regulators such as the OAIC. This raises a broader issue of whether provisions such as clause 11 – which commits banks to meeting their confidentiality obligations under law – have a place in the Code.

Finally, breaches of any provisions designated as enforceable under the new regime will become reportable to ASIC under the Corporations Act reporting regime. Having a parallel requirement to report these breaches to the BCCC would be superfluous.”

129. In view of bank concerns about BCCC compliance reporting, the ABA engaged Ernst & Young to identify opportunities to achieve a more consistent approach to reporting so that the data is more useful. Ernst & Young’s August report raised issues that included:
- a. Whether there should be a materiality threshold and/ or increase or change to existing thresholds to determine the reporting of further breach details
 - b. The value of reporting on broadly drafted clauses given the inconsistency issues that arise
 - c. Development of a common understanding as to why breach reporting is being collected and the insights expected to be generated from the data
 - d. Streamlining and reducing duplication in breach reporting to the Office of the Australian Information Commissioner, ASIC and the BCCC
 - e. Lack of codified fields in Compliance Statement Section A (eg. causes, identification method, customer remediation, actions to prevent recurrence, type of customer impacted) leading to variance of responses and a requirement for specificity that requires considerable manual data collection.
130. Consumer groups had a different perspective. They place high value on BCCC reporting about non-compliance and other matters, such as how the banks respond to customer requests for financial difficulty assistance. Moreover, consumer groups think that BCCC reporting should be on a bank-identified basis. Their view is that this would create the incentive for banks to address problematic practices that are giving rise to repeat breaches. They argue that this would also acknowledge the good work of banks that the BCCC identifies as having leading practices.
131. Likewise, the BCCC’s submission to the Code Reviewer suggested that it should be able to report about compliance on a bank-identified basis.

“While we acknowledge the potential risks of identifiable public reporting, such as potentially more conservative reporting to the BCCC, we consider that it would be an effective tool to achieve greater compliance with the Code due to the level of competition in the industry and would provide greater transparency for the community about how well banks comply with the Code.

In addition, the BCCC considers the identification of banks displaying good practice(s) in its reports may encourage banks to readily adopt the practices identified in an effort to be industry leaders or to visibly differentiate themselves from their direct competitors.”

Discussion

132. Before commenting, we offer a reminder of what we consider to be the role and purpose of the BCCC – set out in paragraph 63 above. While we have no doubt there are ways to improve the effectiveness and efficiency of the collection of breach information, ultimately, the test should not be whether the task of reporting is difficult but must be whether the BCCC is able to effectively answer the questions:
- a. Are banks capable of and actually compliant with the Code?
 - b. What is good practice and (to the extent practicable) how do banks compare?
133. In other words, there is a strategic question that goes to the credibility of the Code and the confidence of the community in the Code, which must come before the important issues of operational convenience and efficiency.
134. There are also a number of operational benefits that likely arise through the Compliance Statement reporting:
- a. For each bank, the process of collating data for the BCCC intensively focuses the bank on Code obligations at regular intervals, which we would expect to help improve Code compliance.²³ The reporting process should also assist banks to identify Code obligations where the volume of breaches suggest that systems, procedures, processes or training may not be sufficient – leading to banks taking action themselves.
 - b. The BCCC’s analysis of bank data has the potential to identify specific bank issues to raise with the bank. Even if the bank has already identified the issue, the BCCC attention underscores the importance of addressing the issue.
 - c. Recent BCCC Compliance Statement analysis reports demonstrate specific bank issues that the BCCC has identified and worthwhile outcomes that result. In particular, the April 2021 report identified that one smaller bank undertook no monitoring of its compliance with debt recovery, financial difficulty and guarantee obligations and did not report any breaches of those obligations. The Report highlights BCCC follow up and that the bank “has confirmed that it will allocate a dedicated resource for the monitoring function moving forward”.²⁴
 - d. The BCCC’s collation and reporting of the banks’ data enables comparisons to be made over time.
 - e. The BCCC’s individualised reports to banks provide them with information about how they compare with their peers. A number of banks told us that they value these insights. For example, one bank told us that the BCCC’s report led them to question whether there is scope for their Line 1 Risk reviews to operate as a greater check on Code compliance.
 - f. Bank Compliance Statements constitute an ongoing and historical source of intelligence that helps the BCCC to decide the areas of focus for its Inquiries.
135. Because of the strategic and the operational benefits, we think that some form of periodic compliance reporting by banks to the BCCC continues to be important, despite the new ASIC reporting regimes and notwithstanding that it can be difficult to draw bank-specific conclusions from Compliance Statement data. The ABA submission to the Code Reviewer provides an example to demonstrate this, pointing out that a bank that extends financial difficulty assistance to a lower proportion of its customers than other banks may have poor practice financial difficulty assistance

²³ The consumer groups response to our Interim Report p.6 places emphasis on this benefit.

²⁴ Banks’ compliance with the Banking Code of Practice, January – June 2020 p.14

processes – or it may have good practice lending processes whereby fewer customers need assistance.²⁵

136. In our view, the potential to misinterpret data is not of itself a reason to avoid collecting it. All effectiveness measurement goes through these stages and it is the continuous process of collecting data, understanding it (including its flaws), learning from it and refining it that is of greatest value. We also saw evidence that the BCCC generally goes to some trouble to check any conclusions it might draw from data reporting and that its processes provide an opportunity for banks to point out any flawed conclusions.
137. From the perspective of BCCC credibility, the most important improvement required of the BCCC's periodic Compliance Statement process is speed. The requirement of the banks that they report within 2 months is clearly a 'stretch' that is being met, with some stress. It is clearly unacceptable that the BCCC is taking another 6 to 7 months to analyse Compliance Statements and to make its own reports to the public and to individual banks.
138. It is evident that there is no single cause nor a single solution for this. This Report identifies issues that are likely root causes including:
 - a. The scale of the data requests
 - b. Incomparability of the data reported by banks
 - c. Insufficient accommodation of the different scale of reporting banks
 - d. BCCC capabilities and resourcing
139. It is also evident to us that the scale of speed improvement needed is beyond incremental change – it will require significant steps forward in a number of aspects of BCCC operation. We think that for credibility, the time taken to report should be at least halved within (say) 3 years.
140. Elsewhere in this Report, we have made recommendations addressing these root cause matters, which we think will help to speed BCCC's reporting, however we also think that the question of speed of response should be formally recognised as a strategic priority (which a number of actions will contribute to) by the BCCC.

Recommendation 7.

The BCCC should commit to a strategic priority of significant improvement within 3 years in the speed of its reporting on banks' periodic Compliance Statements. To achieve credibility, the BCCC reporting should be complete within 90 to 100 days of the close of the banks' reporting deadline.

141. It is also important from the banks' perspective that the BCCC is proactive in looking for opportunities for efficiencies in bank Compliance Statement reporting, including ways to minimise any duplication with ASIC reporting, particularly once ASIC begins publishing information about lodged financial services provider/ credit provider reportable situation reports (due to occur by 31 October 2022) and quite possibly also firm-specific complaints information.

²⁵ ABA Submission to the Code Reviewer p.16

142. Depending upon what information is made publicly available through ASIC, possible options for streamlined breach reporting at that time include:

- a. A materiality threshold so that there is no obligation to report the number or details of breaches unless they have a serious impact on a customer or are systemic affecting multiple customers. The ABA strongly supports this option.²⁶ Consumer groups are, however, sceptical about this.²⁷ We also have some concerns about this given that a number of small banks advised us that, under a materiality threshold, they would have no breaches to report. We are inclined to think that the BCCC should continue to expect data as to the total numbers of breaches and that materiality is more likely to be a useful technique for limiting the collection of more detailed information as per the next paragraph.
- b. The BCCC could dispense with the collection of the additional more detailed information (or pare the detail back) for incidents and breaches as described in paragraphs 108 and 110. Alternatively, at least for the largest banks, the BCCC could collect this detailed data for incidents/ breaches that occurred for part only of the reporting period – eg. a particular month or months nominated by the BCCC with input from the banks.
- c. Confining detailed BCCC breach reporting to a defined subset of Code obligations, for example; obligations that go beyond the law, are transaction specific and where the risk of customer detriment is greatest. This might mean that breach reporting would not be required of Chapter 2 obligations (publication and review of the Code), Chapter 3 (honouring of commitments in the Code), Chapter 4 (trained and competent staff and engaging in a fair, reasonable and ethical manner), Chapter 6 (compliance with laws), Chapter 7 (closing a branch) amongst other Chapters. One possibility would be supplementation by qualitative, rather than quantitative, reporting in relation to the less transaction specific, more principles based ‘higher’ obligations within the Code.
- d. Lesser information collection by the BCCC for a Code breach that constitutes an ASIC reportable situation. One possibility would be for the BCCC to only collect the total number of these breaches. Other possibilities would be to collect minimal details only or to collect identical information to that provided by the bank to ASIC.

143. Options for streamlining Section B of the Compliance Statement include:

- a. Dispensing with collecting selected complaints information on the basis that this duplicates ASIC complaints reporting
- b. Paring back or dispensing with collecting annual information about compliance monitoring – the view might be taken that compliance monitoring information is best collected as part of a BCCC topic-specific Inquiry that has sufficient depth of focus to enable more meaningful conclusions to be drawn. Consumer groups have, however, suggested that at the very least there should be an ongoing requirement that any bank claiming in a reporting period to have improved breach identification should explain what those improved efforts involve.²⁸
- c. Paring back the information about financial difficulty assistance and lending (as for the information collected for the year ending 30 June 2020). Consumer groups have, however, singled out this information as being of particular value to them.²⁹

²⁶ ABA response to our Interim Report p.7

²⁷ Consumer groups response to our Interim Report p.7

²⁸ Consumer groups response to our Interim Report p.10

²⁹ Consumer groups response to our Interim Report p.8

- d. Dispensing with all or much of the other information collected – again on the basis that this information requires a deep dive via a BCCC topic-specific Inquiry in order to permit meaningful conclusions to be drawn
- 144. If reporting is simplified, we think a corollary should be a joint endeavour by banks and the BCCC to identify ways to make the data that is provided by banks more comparable. Codification of some text data fields might be part of the answer as suggested by Ernst & Young. But we think more will be required than this.
- 145. We support a detailed, collaborative approach by the BCCC Secretariat working with banks and the ABA, to refine data collection bearing in mind the expectations and needs of other stakeholders. The Code is in place to benefit banks and customers through higher levels of trust and it is in everyone's interest to help develop thorough, transparent, timely and efficient reporting on compliance.

Recommendation 8.

The BCCC should work closely with the ABA and banks, bearing in mind the expectations and needs of other stakeholders, to refine the BCCC's Compliance Statement data collection to optimise the reporting process's effectiveness and efficiency. In doing so, the following principles should apply:

- a) Credibility - The BCCC's data collection must be sufficient to enable the BCCC to provide assurance to the community as to banks' compliance with the Code
- b) Clarity – There should be clarity for the banks as to the reasons for data requests
- c) Accommodating diversity – Data collection requirements must take into account the diversity of banks, large and small
- d) Efficiency – Data requirements should be framed to be as resource efficient as possible for banks and the BCCC, consistent with other principles being met
- e) Comparability – Whilst recognising the difficulties of accommodating the various banks' diverse systems and practices, banks should commit to data provision practices that maximise comparability
- f) Change management – Changes in data collection should be timed in a way that gives banks sufficient opportunity to prepare for and respond to new requirements
- g) Continuous improvement – Within change management constraints, a continuous improvement approach should be taken to evolve data collection over time in light of experience and changes in the external environment

- 146. There is also the issue of whether the BCCC's public reporting should be able to be on a bank-identified basis.

147. The ABA does not support this because of inconsistency concerns, arguing that “publishing data on a bank-identified basis may be inequitable and confusing”.³⁰
148. We think that this is an argument for more consistency in reporting, rather than argument for the BCCC refraining from reporting on a bank-identified basis. It seems to us that organisation-identified reporting is the ‘new normal’ for regulatory and quasi-regulatory reporting in the credit/ financial services sector. AFCA publishes its complaints data and determinations on a named-financial services provider basis. ASIC’s reportable situations reporting will be on a named basis. It is consistent with the BCCC’s transparency provision and would enhance bank accountability, and to be frank, to avoid this for the Code may well stand out as somewhat coy.
149. We recognise that there is some risk that an unfair perception might be created from time to time, but to persist with anonymity could also be seen as unfairly hiding poor performance from time to time and does little to strengthen banks’ reputations. We would also be confident that reasonable BCCC processes should allow for banks to call-out any misleading reporting and provide an additional incentive for the BCCC to publish explanations of its reporting. On balance, we think that the advantages of the greater transparency would be worthwhile and that some advance notice would give banks and the BCCC time to identify problem areas.
150. It could also help to find a way forward with some Code non-compliances that have been long identified but where improvement has been slow or uneven, such as direct debit cancellations.
151. The Code would, however, require amendment to give the BCCC the power to reveal confidential information.

Recommendation 9.

The BCCC should transition to public reporting about bank Compliance Statements on a named basis for the financial year beginning July 2023, providing both banks and the BCCC with a full cycle of reporting before then to iron out problems.

Other breach reporting

152. The BCCC’s Guidance Note 1 (13 September 2019) states that it is good practice for banks to report to the BCCC any non-compliance with the Code that is reported to ASIC. Banks are asked to do this within 21 business days of the matter being reported to ASIC.³¹
153. Since December 2019, 11 banks have notified the BCCC about a total of 227 self-reported breaches to ASIC. Whereas some banks provide notifications quite regularly, other banks have provided only a handful of notifications.
154. In August 2021, the BCCC decided to suspend this request for a 6 month period in light of the forthcoming changes to ASIC reporting that are expected to greatly increase the volume of ASIC breach reporting. The BCCC wrote to banks and the ABA on 24 August 2021 to this effect.
155. Particularly if, as expected, there is a large flow of matters from the banks to ASIC, we think that the BCCC would not be well served by receiving all of these reports.

³⁰ ABA response to our Interim Report p.9

³¹ Paragraphs 27 and 28 Guidance Note No. 1

156. One option would be for the BCCC to specify that it wants to see some selected breach reports that are to be provided to ASIC. For example, depending upon how many Code provisions are designated by ASIC as enforceable Code provisions, it would be possible for the BCCC to require banks to provide it with reports involving a breach of these provisions.
157. Some stakeholders took the view that if a reportable situation report is made to ASIC, then it is for ASIC to deal with the matter and the BCCC should not become involved at all. While we completely support elimination of unproductive duplication of effort, we think that fails to recognise the role and purpose of the BCCC, which is to be able to answer the question – is the Code being complied with?

Recommendation 10.

Once practices for reportable situation reports by banks to ASIC have achieved a settled rhythm, the BCCC should revisit which of these matters it wants banks to contemporaneously report to the BCCC and how this can occur in a way that is efficient for banks and the BCCC.

7. BCCC Inquiries

Introduction

158. The BCCC conducts both major inquiries (that typically monitor all banks' compliance with a Code obligation) and targeted inquiries (that examine a narrow issue across the industry or a smaller subset of banks or single bank).³²
159. Major inquiries can be exploratory in nature and seek to identify good practice.³³
160. Our Review Terms of Reference specify a number of questions that are particularly relevant to the BCCC's Inquiry work.
- The extent to which the BCCC achieves its purpose to monitor and drive best practice Code compliance and provides benefits to individual and small business customers (and guarantors) by monitoring banks' compliance with the Code.
 - Whether the BCCC has adopted an appropriate and effective approach to compliance monitoring and how well the BCCC has prioritised the various compliance monitoring activities it undertakes.
 - The extent to which the BCCC has met its reporting requirements and whether its reporting would be improved by publicly benchmarking banks' compliance in an identifiable manner.
 - Whether the BCCC's compliance monitoring activities and techniques are effective in ensuring high levels of compliance by banks with the Code.
 - The BCCC's use of external resources, or requirements for banks to use external resources, to support its monitoring activities.
 - Whether the BCCC identifies and responds to the areas of greatest compliance concern for each type of consumer, for example individuals, small businesses and farmers.

Intelligence gathering and targeting

161. The BCCC has developed a Compliance Monitoring Priority Framework (draft June 2021) "to ensure its monitoring activities focus on areas that may cause significant consumer detriment" by "track[ing] and identify[ing] emerging issues and matters of serious concern that may warrant further examination or in some cases result in formal inquiries and enforcement action".³⁴ This requires Code breach allegations, bank/ industry intelligence and stakeholders referrals to be captured and classified in a data base and risk rated and then taken into account together with the insights that emerge from Compliance Statement data to identify the areas of focus for future monitoring and investigative activities by the BCCC.
162. The Priority Framework sets out the governance arrangements. The Secretariat provide quarterly assessment reports to the BCCC highlighting issues identified, the nature and scale of the impact and proposed actions to address the issues. In addition, the BCCC proposes that a 6 monthly

³² Banking Code Compliance Committee Operating Procedures Appendix 1 para 1

³³ Banking Code Compliance Committee Operating Procedures Appendix 1 para 1a)

³⁴ Code Monitoring Priority Framework p.1

review is undertaken of the residual risks and to take account of any environmental or regulatory changes.

163. The database that sits within the Priority Framework is extensive. It currently includes some 500 line items that can be sorted by issue, Code obligation, source of information, bank and date.

Stakeholder views

164. In our consultations, consumer groups questioned whether the BCCC was taking full advantage of the intelligence available through AFCA's complaints database as to poor practice in meeting Code obligations.
165. The ABA has also questioned whether the BCCC takes full advantage of AFCA's data analysis methodology, the outputs of which industry finds to be quite insightful.³⁵

Discussion

166. Our understanding is that the BCCC Secretariat meet more regularly with AFCA staff, particularly its Systemic Issues Team, than used to be the case. The information flow includes AFCA's analysis of emerging issues.
167. Most communications are, however, at a general level, because AFCA and the BCCC still do not have a documented agreement for information sharing (after some years). This is required under paragraph A.11.5 of AFCA's Rules as a precondition to the release of confidential information. AFCA has, however, told us that this is a priority action item in their workplan.
168. Stakeholders agreed that this is an urgent priority and for the record we make that recommendation.

Recommendation 11.

The BCCC should prioritise working with AFCA to establish an agreement regarding the exchange of confidential information under AFCA's rules.

Inquiries

169. As noted earlier in this report, the BCCC's sets out each year in its Business Plan, published on its website, what Inquiries it intends to pursue.
170. The Inquiry process is set out in the BCCC's Operating Procedures.³⁶ It typically involves:
- Preliminary research
 - Documenting the scope of the Inquiry and consulting on this with stakeholders
 - Questionnaire to banks collecting data and supporting documents

³⁵ ABA response to our Interim Report p.9

³⁶ Banking Code Compliance Committee Operating Procedures Appendix 1

- d. Engaging with or seeking information from third parties that may include (amongst others) AFCA, ASIC and other regulators and consumer and small business representatives
 - e. Analysis of information
 - f. Individual feedback and engagement with banks
 - g. Preparing an Inquiry Report for public release
 - h. Follow up post-Inquiry of banks' progress in addressing BCCC recommendations.
171. Our Interim Report provided a detailed summary of recent BCCC inquiries:
- a. Banks' transition to the 2019 Banking Code of Practice (November 2019 report)
 - b. Building Organisational Capability: How banks can improve compliance with the Banking Code of Practice and deliver better customer outcomes (February 2021 report)
 - c. Guarantees Inquiry (August 2021 report)
 - d. Inquiry into compliance with Code inclusivity, accessibility and vulnerability obligations (in progress)
 - e. BCCC Compliance update: Cancellation of direct debits (September 2021 report)

Stakeholder views

172. Whilst we found a desire by many stakeholders to have more input into areas of focus chosen by the BCCC, for the most part, stakeholders felt that the BCCC has chosen appropriate parts of the Code to focus on in recent Inquiries.
173. The ABA's submission in response to our Interim Report highlighted the value of Inquiries that focus on contemporaneous compliance practices – rather than those that are backwards looking and rely on old data.³⁷
174. Some banks commented about regulatory duplication – particularly the BCCC's Guarantees Inquiry which overlapped an ASIC project examining guarantees (although we have been told by ASIC that it sees its work as having a different focus). We also heard a desire for a clearer explanation from the BCCC as to the reasons for its areas of focus. But generally, banks told us that they value the insights in the BCCC's reports, particularly those that take a deep dive into an area of compliance such as guarantees and accessibility/ customer vulnerability obligations.
175. Consumer groups view Inquiry reports as the BCCC's most valuable contribution to date. Their submission commented, however, that more published detail in the initial stages of an Inquiry about the planned process would be beneficial for them.³⁸
176. More significantly that these issues, the principal concern that we heard from banks and other stakeholders was that the BCCC's Inquiries are taking a long time to report, with the risk that bank practice has moved on in the intervening period and generally delaying the start of work to

³⁷ ABA response to our Interim Report p.12

³⁸ Consumer groups response to our Interim Report p.12

implement the BCCC's recommendations.³⁹ It has been recognised, of course, that the pandemic has played a role in delaying Inquiries.

177. In discussions with us, the BCCC and its Secretariat noted the amount of work involved in analysing data and other information obtained from banks for the purposes of Inquiries. They are considering the benefits of targeting Inquiries more narrowly and other ways to expedite Inquiry outcomes.
178. The consumer groups submission to the Code Reviewer suggested that the BCCC could make greater use of banks' resources and could require banks to report regularly about progress. The examples given were the Code commitment to have plain language terms and conditions, timely provision by banks of loan documents on customer request and customer complaint withdrawals.⁴⁰
179. Some banks have also pointed to the benefits of the BCCC leveraging resources within banks, for example, their internal audit and risk teams. The audits undertaken by 4 banks as part of the Guarantees Inquiry were pointed to as an example of this being done effectively.
180. For this to work, it would, however, be important for the BCCC to provide as much advance notice as possible given that banks set their internal audit priorities two or even three years in advance. The ABA submission in response to our Interim Report noted that the current BCCC Business Plan is not sufficiently granular in its detail to provide this notice. Moreover "activities and timings in the Plan often change" (recently because of the pandemic) and "improved engagement when any changes to the Plan" would be needed.⁴¹
181. By way of another option, the ABA submission suggested that the BCCC could sometimes benefit from interviewing bank staff to understand practices and processes (as was done by Deloitte on behalf of the BCCC during the Organisational Capability Review), rather than just asking for written information.⁴²
182. As for reporting about Compliance Statements, consumer groups would like BCCC Inquiry reports to be on a bank-identified basis to create the incentive for banks to address problematic practices and to acknowledge the banks with leading practices.⁴³

Discussion

183. Our view, as confirmed by our consultations and our own investigations, is that the BCCC Inquiry work is making a considerable contribution to promoting good practice compliance with the Code.
184. The critical issue for the BCCC is how to reduce the elapsed time for its Inquiries so that recommendations follow sooner after the investigative work – and potentially so that the BCCC can undertake more Inquiries to achieve better coverage of key Code obligations.
185. We see the way forward as including the BCCC:
 - a. Focusing its Inquiries more narrowly

³⁹ See also consumer groups submission to the Code Reviewer p.56

⁴⁰ Consumer groups submission to the Code Reviewer Recommendations 38, 62 and 63

⁴¹ ABA response to our Interim Report p.11

⁴² ABA response to our Interim Report p.10

⁴³ Consumer groups response to our Interim Report p.13

- b. At times engaging more directly with banks eg by interviewing bank staff or bank staff making presentations to BCCC Secretariat
 - c. Finding ways to rely more on banks' own quality and risk/ assurance resources, with some adaptation for different scale banks, and
 - d. Working with banks to improve data comparability.
186. BCCC's public reporting would be more meaningful if it could report on a bank-identified basis. As noted earlier, this would require a Code amendment to give the BCCC this power.

Recommendation 12.

The BCCC should plan, scope and implement its Inquiries in a way that permits timely Inquiry reporting (usually within 12 months of first information collection from the banks). This will likely involve:

- a) scoping its Inquiries more tightly
- b) as appropriate, engaging directly (orally) with banks
- c) to the extent practicable, leveraging banks' own quality and risk/assurance resources, and
- d) working with banks to improve data comparability.

8. Investigations and sanctioning powers

Background

187. The BCCC is able to, but it is not obliged to investigate a breach allegation that is within its mandate, and not expressly excluded by its Charter – see paragraph 190 below. In exercising its discretion not to investigate a breach allegation, the BCCC is able to take into account factors such as the significance and currency of the alleged breach. The BCCC's Guiding Principles, which direct the BCCC to prioritise industry wide, serious and systemic issues, are also relevant.
188. The Code specifies the BCCC's sanction powers.
189. Our Terms of Reference pose the following questions particularly relevant to BCCC investigations:
- The extent to which the BCCC responds appropriately and in a timely manner to individuals or organisations who raise allegations of breaches of the Code.
 - Whether the BCCC's application of its sanction powers supports Code compliance and deters Code breaches.
 - Whether the powers, including sanctions powers, available to the BCCC are appropriate for it to achieve its purpose.
 - Whether the BCCC has developed appropriate operating procedures for the application of sanctions on banks.
 - Whether the BCCC has timely access to necessary information from stakeholders to enable it to assess bank's compliance with the Code.

Charter

190. Clause 5.3 of the Charter prevents the BCCC from investigating an allegation:
- Relating to a bank's commercial judgment in decisions about lending, security or enforcement unless it is alleged that there would have been a different decision but for a significant breach
 - Made by a person within 2 years of them becoming aware of the relevant events
 - Based on the same events and facts as a previous allegation to the BCCC
 - That has already been heard or investigated in another forum
 - Not directly related to compliance with the Code.
191. Clause 5.4 provides that when conducting a compliance investigation, the BCCC must consider the relevant provisions of the Code and any applicable laws.

Submissions

192. In its submission to the Code Reviewer, the BCCC suggested that contrary to clause 5.3b) of the Charter it should be able to investigate a breach allegation if sufficiently serious or widespread, even if more than 2 years have elapsed from the relevant events.

193. Whilst consumer groups agree,⁴⁴ the ABA disagrees, pointing out that our review in 2016/17 led to an extension of the time limit from one to two years.⁴⁵

194. The BCCC's submission also criticised the breadth of clause 5.3d) and said that this may operate to prevent the BCCC from investigating a matter where another body has not fully considered the matter.

"The clause contains the phrases 'heard by' and 'declined to determine whether a breach of the Code has occurred' when a matter has been considered by another forum. The BCCC should not be limited from investigating matters that have been excluded by other bodies or where breaches of the Code have occurred but have not been investigated. In this regard meaning of the terms 'heard by' and 'declined' should be clarified."

195. Consumer groups have a broader concern with clause 5.3d). Their submission in response to our Interim Report stated that this clause might be viewed as preventing the BCCC from considering a matter that AFCA is dealing with or has dealt with. Because the two bodies have different functions, consumer groups consider that the BCCC should not be excluded from also dealing with the matter. So too, consumer groups contend that the BCCC should be able to undertake a concurrent investigation with a regulator such as ASIC, with ASIC's agreement.

196. On the other hand, the ABA's response to our Interim Report supported only a modest change to clause 5.3d) to allow BCCC to take on a matter if there has been that no finding regarding a Code breach. "[It would need to be clear] that the BCCC does not have power to overrule findings of fact by another forum".⁴⁶

197. The BCCC's submission also queried the necessity for clause 5.4 of the Charter.

"We do not consider this clause is required when the Charter states that BCCC is empowered to investigate alleged breaches of the Code and all investigations are to be undertaken in line with the BCCC Guiding Principles."

198. The ABA's submission to our Interim Report was to the contrary. It argued that the Charter injunction to consider the Code and laws is appropriate.⁴⁷

Discussion

199. We think that it is appropriate to consider the 2 year timeframe in clause 5.3b) of the Charter in the context of the longevity of many customers' banking arrangements.⁴⁸ For example, the impact of a non-compliant loan or guarantee – and sense of grievance and desire for BCCC to investigate – may not be felt until many years after the person first became aware of the relevant events.

200. The BCCC may also be delayed in commencing an investigation into a breach allegation because it is waiting for AFCA to deal with the customer's request for compensation. This delay could render a BCCC investigation outside the 2 year timeframe.

⁴⁴ Consumer groups response to our Interim Report p.14, Legal Aid Queensland response to our Interim Report p.6

⁴⁵ ABA response to our Interim Report p.12

⁴⁶ ABA response to our Interim Report p.12

⁴⁷ ABA response to our Interim Report p.13

⁴⁸ The 2 year timeframe in clause 5.3b) is consistent with the recommendation we made in our previous review of the Code and the CCMC. The 2013 Code had a very restrictive 1 year timeframe to make a breach allegation.

201. We recognise, however, that as banks have rightly pointed out, the constant evolution of their compliance arrangements as rules, products and systems change may mean that learnings from an aged breach may no longer be relevant.
202. For this reason, if the timeframe exclusion is made more flexible (special circumstances or the like), there would clearly need to be judgement applied. In 2020/21 (Figure 3 below), BCCC closed 6 matters because they were beyond the 2 year limit. If any of these were to be considered by the BCCC for investigation, they would have to meet the BCCC's other 'normal' criteria before being resourced. Given that only a small proportion of individual matters referred to BCCC are ever investigated, we are confident that these instances would be rare – and we think that the BCCC's judgement, as in other matters, could be reasonably relied upon.
203. In our view, clause 5.3d) of the Charter should also be revisited. The BCCC's request to have the ability to investigate a matter where it has been before another forum, but that forum has not directly addressed the question of whether a breach of the Code has occurred, seems to us to be entirely reasonable and consistent with the intended purpose of the exclusion.
204. We do not, however, agree with the consumer groups that the BCCC should be able to investigate an allegation of a Code breach where the relevant bank can demonstrate to the BCCC that the matter is in the process of investigation by another body, such as AFCA or ASIC. Nor should the BCCC reopen findings of fact by other forums. Were the BCCC to do this, the inefficiencies would not be justified by the benefits. However, if for example, AFCA has determined that the Code has been breached, it might be appropriate for the BCCC (without re-opening AFCA findings of fact) to inquire as to how serious or widespread the problem was, and the adequacy of the bank's rectification action, so as to avoid repeat occurrences. We understand this to be the ABA's intention. Clause 5.3d) of the Charter should be amended to clarify all of these issues.
205. While we agree that Clause 5.4 of the Charter is strictly a statement of the obvious, we do not see that it creates any harm and as it evidently provides some assurance to banks, we think it should remain.

Recommendation 13.

The BCCC Charter provisions for exclusions should be amended to:

- a) permit the BCCC, in special or appropriate circumstances, to consider matters that are beyond 2 years of the customer becoming aware of the relevant events
- b) clarify Clause 5.3d).

Investigation process

206. The BCCC's investigation process is set out in its Operating Procedures.⁴⁹ This involves:
 - a. Registration of all breach allegation matters in the BCCC's case management system (Codex)

⁴⁹ Banking Code Compliance Committee Operating Procedures Appendix 2, Banking Code Compliance Committee Investigations Delegation Matrix

- b. A documented triage process that determines whether the matter is within the BCCC’s mandate – this is undertaken by the BCCC Secretariat under delegation from the Committee⁵⁰
- c. For matters within the BCCC’s mandate, an assessment as to whether it is appropriate to investigate

Again, the BCCC Secretariat have a delegation from the Committee to do this⁵¹. Where the decision is made not to investigate, a letter of explanation is provided to the person who raised the matter with the BCCC. Whilst an individual investigation is not launched, the information is used to assist the BCCC to target its monitoring efforts.

- d. For matters where the BCCC exercises its discretion to investigate, an investigation plan is created and implemented⁵² – the investigation may be closed down at any stage if the BCCC considers this appropriate
- e. Reaching a conclusion as to whether the Code has been breached

This responsibility is retained by the Committee. Procedures are set out in Banking Code Compliance Committee Operating Procedures Appendix 3 and BCCC Investigations Process Guide.

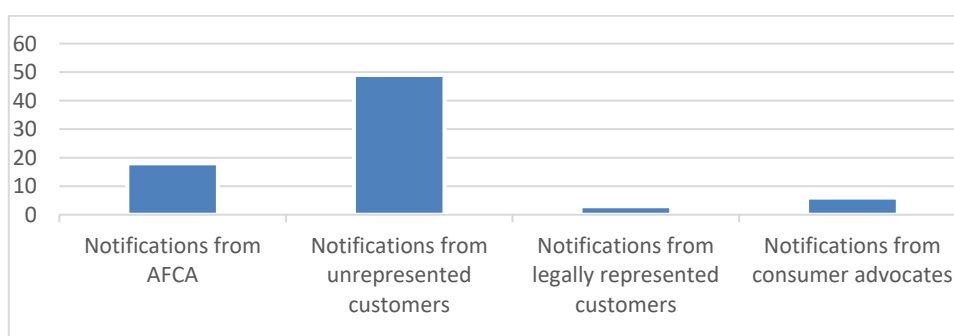
- f. Where the BCCC finds a bank has breached the Code, deciding whether to sanction the bank

This responsibility is also retained by the Committee. Procedures are set out in Banking Code Compliance Committee Operating Procedures Appendix 4 and BCCC Investigations Process Guide.

207. The BCCC Investigations Process Guide sets out expectations for staff as to timeframe, record keeping, privacy compliance, quality assurance etc.

208. In the 2020/2021 financial year, 76 allegations of breaches were received by the BCCC (79 in the previous financial year).

Figure 1: Source of 76 breach allegations in financial year to 30 June 2021



Source: BCCC data

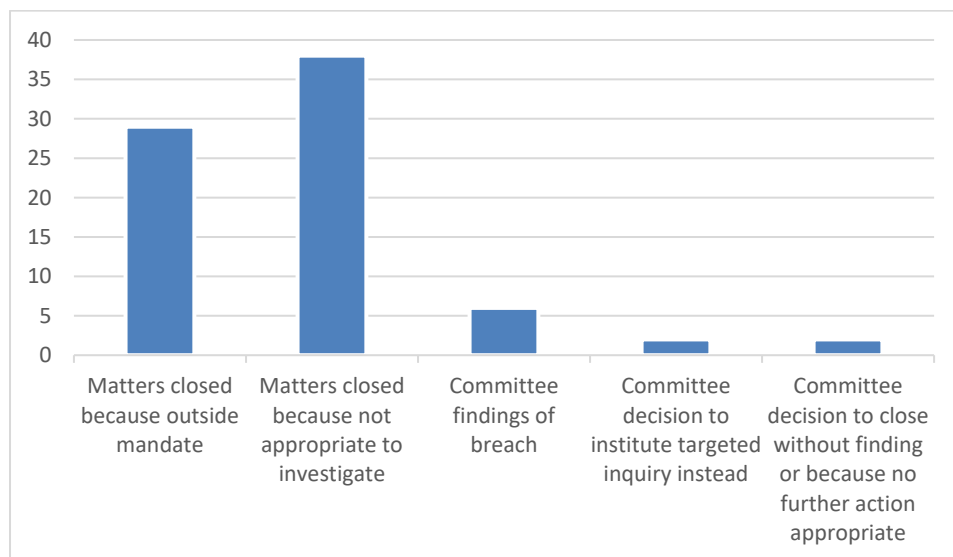
209. In the financial year to 30 June 2021, 77 breach allegation/ investigation matters were closed.

⁵⁰ Banking Code Compliance Committee Operating Procedures Appendix 2, Banking Code Compliance Committee Investigations Delegation Matrix

⁵¹ BCCC Investigations Process Guide – June 2021

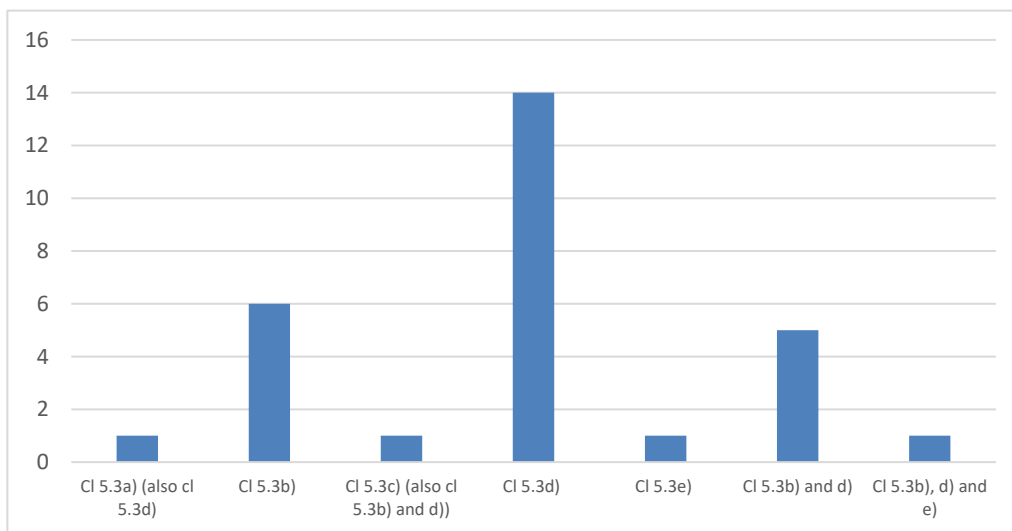
⁵² BCCC Investigations Process Guide – June 2021

Figure 2: Outcome of breach allegations/ investigations closed in the year to 30 June 2021



Source: BCCC data

Figure 3: Reasons for closure of matters outside mandate in year to June 30, 2021



Clause 5.3a) –

- Commercial decision
- Clause 5.3b) – Outside 2 year period
- Clause 5.3c) – Same events and facts as previous allegations
- Clause 5.3d) – Under investigation or heard by another forum
- Clause 5.3e) – Not related to compliance with Code

Source: BCCC data

Stakeholder views

210. In our consultations, we heard no criticism from banks about the fairness and professionalism of the way in which the BCCC approaches its investigative work.

211. We spoke with a number of organisations that had referred breach allegations to the BCCC. Whereas BCCC policy is that an organisation referring a breach allegation is advised of the outcome of the matter, our consultations suggested that this may not uniformly occur.

Discussion

212. As we recommended in our last review of the CCMC in 2016/17, we think that someone who refers a breach allegation to the BCCC should be provided with a written explanation of the reasons for any decision not to pursue a referred matter. In particular, where a consumer group refers a matter and the BCCC decides not to pursue it, BCCC feedback can help the consumer group to better understand the types of matters that the BCCC is interested in – for future information.

Recommendation 14.

The BCCC should review its processes for advising organisations of the outcome of referrals of allegations of breaches to ensure that they are given the opportunity to provide any additional relevant information and that they are sufficiently informed of the ultimate outcome.

Sanctions

213. Paragraph 214 of the Code gives the BCCC the power to sanction a bank for a breach of the Code where:
- the breach is serious or systemic;
 - the bank has failed to act on the BCCC's request to remedy a breach, or failed to do so within a reasonable time;
 - there has been a breach of an undertaking given to the BCCC;
 - the bank has not taken adequate steps to prevent a serious or systemic breach from reoccurring; or
 - the bank has not co-operated and complied with reasonable requests of the BCCC in the performance of its monitoring and Investigative activities.
214. Paragraph 215 specifies that the sanctions available to the BCCC are:
- requiring the bank to rectify or take corrective action on the breach identified;
 - requiring a bank to undertake a compliance review of our remediation actions;
 - formally warning a bank;
 - requiring a bank to undertake a staff training program on the Code;
 - naming a bank in the BCCC annual report or website; and
 - reporting serious or systemic ongoing instances where a bank has been non-compliant to ASIC.
215. Since its July 2019 establishment, the BCCC has twice named a bank for serious and systemic breaches of the Code.

- a. On 30 September 2020, the BCCC named Bendigo and Adelaide Bank for breaches within its Great Southern Loans business unit between 2015 and 2019 relating to debt collection practices and treatment of customers in financial difficulty.
 - b. On 4 May 2021, the BCCC named Members Equity Bank for breaches relating to its communications with customers about changes to redraw accounts.
216. The BCCC media releases in both cases acknowledged that the bank was taking steps to rectify these issues.

Stakeholder views

217. The ABA in its submission to the Code Reviewer affirmed the importance accorded by banks to findings from targeted investigations and the focus within banks on addressing issues.⁵³ The submission expressed the view that the current range of sanctions available to the BCCC is appropriate. The naming sanction “serves as a push/ incentive for all other banks to re-examine their compliance with the Code” and the power to report serious and systemic breaches to the ASIC is significant, with the potential of high penalties being attracted.⁵⁴ Accordingly the ABA argued that there is no need for the BCCC to also have the power to impose financial sanctions.⁵⁵
218. However, other submissions to the Code Reviewer doubted the efficacy of the BCCC’s naming sanction.
- a. FINSIA’s submission suggested that rather than sanctioning banks by naming them, it would be more effective if the BCCC were to require bank executives, middle management and frontline staff to undertake appropriate education and continuing professional development that supports an approach that relies more on sound judgement and less on rigid rules.⁵⁶
 - b. The Law Council submission suggested that rather than the BCCC naming a bank, a more effective sanction would be for the BCCC to have the power to refer a bank to APRA, as the primary bank regulator, or to ASIC and for a regulator to name the bank⁵⁷. The Law Council considered that there was little recognition in the press of BCCC sanctions.
219. Other submissions argued for additional BCCC’s sanction powers.
220. WEsjustice⁵⁸ and Legal Aid Queensland⁵⁹ submitted that the BCCC should be able to impose a similar monetary sanction to the \$100,000 community payment benefit that the General Insurance Code Governance Committee can impose.
221. The consumer groups submission stated:

“We believe its [the BCCC’s] impact could be far greater if its sanctions powers were expanded for situations where Code breaches warrant more significant responses.”⁶⁰

⁵³ ABA Submission to Code Reviewer p.29

⁵⁴ ABA Submission to Code Reviewer p.30

⁵⁵ ABA Submission to Code Reviewer p.30

⁵⁶ FINSIA Submission to Code Reviewer p.5

⁵⁷ Law Council of Australia Submission p.22

⁵⁸ WEsjustice Submission to the Code Reviewer p.14

⁵⁹ Legal Aid Queensland response to our Interim Report p.7

⁶⁰ Consumer groups submission to Code Reviewer p.54

Specific issues raised were:

- a. The BCCC's Code clause 215b) power to order a compliance review should not be restricted only to an assessment of remediation actions – but rather should be available for any clause 214 breach.
 - b. The clause 215f) power to report serious or systemic non-compliance with the Code to ASIC should not be restricted to where the non-compliance is ongoing – but rather should apply to any serious or systemic non-compliance.
 - c. The BCCC's sanctioning powers should be expanded to incorporate those available to the General Insurance Code Governance Committee – ie. to order corrective advertising; to identify banks in all BCCC publications relating to compliance with the Code; to order a bank to compensate an individual for any direct financial loss or damage caused by a breach of the Code; to suspend or expel banks from the ABA if their conduct is serious and ongoing; and to impose financial penalties for serious or systemic breaches, as well as for a failure to report known Code breaches.
222. Likewise, the BCCC submission to the Code Reviewer suggested some enhancement of its powers, in particular strengthening the naming regime by being able to require a bank to publish any corrective action it has taken as a result of a breach.

“To further strengthen the current sanctions regime and provide greater community assurance, the current naming sanction should be broadened to include a requirement for a bank to publish any corrective actions taken to prevent future occurrences of an issue, such as systemic improvements or staff training, on its website and apps as acknowledgement of the breach and the resulting action.

With a view to increasing the effectiveness of the naming sanction, the sanction imposed should also be considered for inclusion on the ABA's or the relevant bank's website and apps. This may lead to greater confidence in the Code and BCCC's compliance monitoring of the Code, due to the higher degree of visibility of the ABA's and banks' websites in comparison to the BCCC's, as in most cases the affected parties will be current or previous bank customers.”⁶¹

223. The BCCC also argued that there should be clarification of the BCCC's role in customer remediation activities that a bank may need to undertake to address issues raised in a BCCC investigation.

“Clause 6.4 of the Charter precludes the BCCC from determining redress for a customer in the event of non-compliance. (This is AFCA 's role when a matter is considered on an individual basis.) The BCCC has set out its approach in its Operating Procedures based on its interpretation of the current wording of the Charter. However, it would be beneficial to clarify the BCCC's role regarding customer remediation in the Code by reflecting the BCCC's position set out in 51-53 of the Operating Procedures. We also note that one of the sanctions available to the BCCC is to require a bank to undertake a compliance review of its remediation activities, but it is not clear when this should be applied given the other references to customer remediation/redress.”⁶²

224. Lastly, there have been submissions questioning whether the BCCC has been applying its current sanction powers sufficiently. ASBFEO raised the issue of whether the available sanctions are being

⁶¹ BCCC Submission to the Code Reviewer p.32

⁶² BCCC Submission to the Code Reviewer p.33

applied frequently enough to support Code compliance and deter Code breaches.⁶³ WESjustice pointed to the fact that the BCCC has only named 2 banks and suggested that the BCCC could possibly be more proactive in its compliance measures.⁶⁴ The consumer groups response to our Interim Report recommended that the BCCC's power to name banks for non-compliance should be interpreted more broadly and used more readily to address significant non-compliance.⁶⁵

Discussion

225. ASIC Regulatory Guide 183 Approval of financial services sector codes of conduct refers to the importance of sanctions for code breaches. "These sanctions might include: formal warnings, public naming of the non-complying organisation, corrective advertising orders, fines, suspension or expulsion from the industry association and/ or suspension or termination of subscription to the code."⁶⁶
226. Our review of the Code and CCMC in 2016/17 emphasised the promotion of continuous improvement rather than applying penalties. Nevertheless, we thought some toughening of consequences for non-compliance was important for completeness and credibility, including power to require:
- Rectification or implementation of recommendations in Inquiry reports within a reasonable period of time determined after consultation with banks
 - Corrective advertising and/ or publication of information relating to the breach
 - An independent compliance audit of the bank's remediation at the bank's expense, with the report provided to the CCMC
 - Suspension or termination of status as Code signatory.
227. These past recommendations were adopted, save for the power to suspend or terminate the status of a Code signatory. This may not have happened in part because, after our review, the ABA changed membership requirements so that all ABA members were required to be Code signatories.
228. Our checking of other Australian financial sector codes including the General Insurance Code of Practice 2020 suggests that suspension or termination of code signatory status is not generally a sanction available to the code administrator. As recognised in the consumer groups response to our Interim Report, to expel or suspend a bank from the Code would disadvantage the bank's customers because they would lose the benefit of the protections afforded by the Code.⁶⁷ But a bank should not be able to hold itself out as offering the higher standards afforded by the Code if, for example, the bank's conduct shows complete disregard for the Code. In practice, however, we think that this issue is more theoretical than likely in practice to occur.
229. In relation to the Code clause 215b) power to require a compliance review of remediation actions, this could usefully be broadened to allow the BCCC to require a compliance review of breach rectification actions (not just remediation actions). System, process and procedural improvements to ensure Code compliance are core to the BCCC's purpose – and if bank non-compliance has

⁶³ ASBFEO Submission to the Code Reviewer p.1

⁶⁴ WESjustice Submission to the Code Reviewer p.14

⁶⁵ Consumer groups response to our Interim Report p.16

⁶⁶ Regulatory Guide 183.70

⁶⁷ Consumer groups response to our Interim Report p.16

caused the need for significant re-engineering of these, a compliance review to assess implementation of the changes might be important.

230. The ABA's response to our Interim Report stated that the ABA is not opposed to this position, which would of course require amendment of the Code.⁶⁸

Recommendation 15.

The BCCC should have the power to require a bank to undertake a compliance review of any rectification action (not just remediation action) to address a breach if the BCCC considers the seriousness of the breach warrants this.

231. We also support the consumer groups' submission that the BCCC should have the power to report any serious or systemic non-compliance with the Code to ASIC, whether or not the matter has been adequately remedied by the bank.
232. We recognise, as the ABA has pointed out, that an ongoing systemic breach could be characterised as more serious if the causal event has not been remedied. This would need to be taken into account by the BCCC when considering whether it should exercise its discretion to report the matter to ASIC. Moreover, if the BCCC did report a fully remedied matter, it would be appropriate for the BCCC to inform ASIC of the remedy.
233. A broad power to report serious and systemic issues, whether or not remedied, is in our view now good practice for a financial services code compliance committee or like body. The General Insurance Code Governance Committee is not limited to reporting ongoing breaches.⁶⁹ Nor is AFCA.⁷⁰ Further, we would be concerned if this wording introduced an artificial time pressure over the state of remedy or an incentive for banks to argue with the BCCC over this.

Recommendation 16.

The BCCC power to report serious or systemic non-compliance to ASIC should not be limited to situations where the non-compliance is ongoing.

234. As at the time of our last review of the CCMC, we continue to think that there is force in the BCCC's power to name a bank for serious non-compliance – and that this is something that belongs in a self-regulatory context and should not be referred off by the BCCC to a regulator to action.
235. As set out earlier, consumer groups think that the BCCC should be readier to use this power. From long experience in regulatory and quasi regulatory environments, we are hesitant to make this kind of judgment in the absence of detailed knowledge of particular facts. Suffice to say that our discussions with the BCCC and Secretariat suggested that the BCCC takes an independent and responsible approach to the exercise of its non-compliance naming power.

⁶⁸ ABA response to our Interim Report p.13

⁶⁹ General Insurance Code of Practice paragraph 176

⁷⁰ AFCA Rule A.18

236. We support the BCCC's suggestion to strengthen the naming regime by requiring publication by the bank on its website including information about its corrective action. (We do not think that the ABA should be compelled to be the channel for this publication.)
237. As noted by the ABA, there will be practical issues about the detail and form of the bank's publication of the BCCC sanction by naming – some of which will depend on the content of the message. Rather than specifying the mechanics, we think it should be a matter for the BCCC to determine in the circumstances, consistent with a few brief principles.

Recommendation 17.

The BCCC should have the power to compel a signatory bank that has been named by BCCC to publish on its website:

- a) the fact of its naming
- b) information about the cause and impact of the breach(es)
- c) information about its corrective action.

The messaging must be factual, succinct, reach a sufficient audience (website positioning, format and length of time displayed) and be satisfactory to the BCCC.

238. As noted earlier, the BCCC has also suggested that its role in relation to customer remediation should be clarified.
239. Clause 6.4 of the Charter specifies: "The role of the BCCC does not include determining what redress, including compensation for financial or non-financial loss, should be provided to a customer as a result of non-compliance with the Code." Consistent with this, the BCCC has focused on tracking breach remediation rather than commenting on the appropriateness or otherwise of breach remediation.
240. Where the BCCC finds non-compliance that warrants customer financial remediation (usually this would be to a group of customers rather than an individual customer), in the interests of leveraging available expertise and maintaining the clear distinction between the roles of BCCC and AFCA, we think that the BCCC should refer the issue of customer remediation to AFCA's Systemic Issues Team to discuss with the bank. The ABA supports this.⁷¹ Of course, referral protocols would need to be settled between the BCCC and AFCA.
241. To be clear, we see it as essential that in these cases, the BCCC continue to take responsibility for tracking a bank's rectification of its compliance systems and processes.

Recommendation 18.

The BCCC should enter into an arrangement with AFCA so that when the BCCC finds non-compliance that warrants customer remediation, it can refer the issue of remediation to AFCA's Systemic issues Team to discuss with the bank.

⁷¹ ABA response to our Interim Report p.13

242. Lastly there is the issue of whether the BCCC should have the ability to sanction a bank by requiring it to make a community payment of up to \$100,000. Here we understand that the Code Reviewer is not supportive of this and that he sees the imposition of fines as a blurring of the role of a self-regulatory organisation. This is consistent with our view at the time of our last review.

9. External relationships

Background

243. The BCCC's Strategic Plan identifies as a strategic priority for the organisation the building of strong relationships with banks and consumer and small business organisations.
244. The 2021-22 Business Plan includes a number of activities within this strategic priority:
- a. Developing and implementing a stakeholder engagement plan
 - b. Publishing updates about the BCCC's work on its website and social media
 - c. Holding a BCCC forum
 - d. Engaging with consumer stakeholders through regular meetings with consumer organisation representatives, attendance at consumer forums, consultation when scoping monitoring activities and developing guidance
 - e. Engaging with key industry stakeholders through regular meetings with the ABA, the ABA Council and banks and liaison with banks through periodic workshops
 - f. Engagement with small business and farmer stakeholders including regular meetings with the BCCC's Small Business and Agribusiness Advisory Panel
 - g. Regular engagement with other stakeholders including AFCA and ASIC.
245. Our Review Terms of Reference specify some questions relevant to this:
- a. Whether the BCCC has an appropriate and sufficient public profile and is accessible to stakeholders.
 - b. The effectiveness of the relationships the BCCC has developed with its stakeholders.
 - c. Whether the BCCC is adequately promoting the Code.

Stakeholder meetings

246. From our consultations, it seems that the BCCC Secretariat meet 3 or 4 times per year one-on-one with each of the larger banks and that these meetings are highly valued by those banks. The smaller banks with which we spoke observed a drop off in recent times in the frequency of their meetings with the BCCC and said that they would like to see more engagement.
247. A review of the activity logs from BCCC shows that these scheduled engagements are only part of the picture with numerous other ad-hoc interactions around Inquiries, breach investigations, during Compliance Statement processes and in response to issues of the day.
248. Consumer representatives also expressed a desire for more engagement and at a more specific (work-plan oriented) level.
249. There are regular meetings of the BCCC Secretariat and AFCA's Systemic Issues and Remediations Team, in recent times every 2 months. There are also twice-yearly meetings of Committee Chairs with AFCA's leadership.
250. The BCCC also meets from time to time with ASIC and with the ABA.

Discussion

251. In our consultations to date, we have been told that the BCCC's engagement with stakeholders is professional and valued. However, it would seem that some further structure to this engagement would be beneficial. This year's project to develop and implement a stakeholder engagement and communications plan should assist in this regard.
252. We mentioned early in this Report that we had observed a much greater level of interest in the BCCC's work from banks and some other stakeholders. A more far-reaching Code, new legislation and an industry determined to improve its compliance and community trust means that stakeholder expectations of engagement from the BCCC has substantially increased - and we think for some time to come. We discuss the implications for resourcing in the following Chapter.

10. Secretariat support and resourcing

Background

253. Paragraph 211 of the Code specifies that the ABA will provide the BCCC with sufficient resources to carry out its functions.
254. Our Terms of Reference ask us to consider the appropriateness of the current structure of the BCCC and its secretariat staff, including whether it has sufficient resources to fulfil its role and purpose.

Resourcing

255. The BCCC Secretariat are part of AFCA's Code Team, which also monitors the General Insurance, Life Insurance, Insurance Brokers and Customer-owned Banking codes. Currently the BCCC Secretariat is comprised of 10 staff (a lead, 4 senior analysts and 5 more junior analysts) who work solely on BCCC matters. There are also 6 AFCA Code Team staff who are shared resources across all five codes (Code Team General Manager (CEO), Executive Assistant, Project Analyst, Senior Data Analyst, Senior Analyst Investigations and Deputy General Manager). This creates a total FTE of 11.5 staff for the Banking Code.
256. Staffing costs account for about 75% of the BCCC's budget. AFCA's charge for occupancy, office costs and IT accounts for about 8% of the BCCC's budget. During the pandemic, there has been an underspend in other budget items such as travel.
257. The BCCC's budget process begins in January. In March, the BCCC provides the ABA with the budget and business plan for the next financial year. The ABA consider that it does not have power to veto the BCCC's budget and that the BCCC effectively sets its own budget.⁷² In fact, the BCCC budget has been steadily increased over the last couple of years. In particular, the 2021/22 budget represents a 7.5% increase on the previous year's budget.

AFCA support

258. Location of the BCCC function within the AFCA organisation provides significant benefit for the BCCC secretariat, providing the support of a much larger organisation with skills and capabilities (purchasing, IT, HR, etc) that a very small independent organisation could not hope to replicate.
259. It also provides a strategic benefit – in providing proximity to a significant body of expertise – both in complaint-handling, the law and intelligence about the practical application of the Code. There is of course, also advantage in sharing resources and knowledge, both formally and informally, with the AFCA secretariat staff that support the other industry codes.
260. Belonging to a larger organisation can also have downsides, with policies and rules that may not appropriately apply to the specialised Code environment, the need for pay scales to be equitable across organisational functions and what can be a longer chain of command for decision-making and recruitment.

Scale

⁷² ABA Submission to the Code Reviewer p.31, ABA response to our Interim Report p.14

261. Importantly, the 5 code committees supported by AFCA are markedly different in the scale of the industry members they monitor and the resourcing of the committees. The BCCC is the largest both in terms of the scale of the code subscribers and the staff resourcing supporting the code committee and can be contrasted with what is a much smaller operation supporting (say) the Insurance Broker Code. While there is effort made to share resourcing and expertise across the 5 industry codes, inevitably, the BCCC's staff support is at something of a size advantage.

Structure and span of control

262. During our Review, the BCCC was operating a little under strength. The usual (shared) Investigations Manager was acting in the General Manager (CEO) of the Code Team role. This has been rectified with the appointment of a permanent GM (CEO) for the Code Team.
263. From our review and discussions with senior management, we concluded that the small team has likely outgrown its management structure. It was evident that the Code Compliance and Operations Manager role has become something of a bottleneck position – with most staff needing to go through that position for feedback and approvals. Given the nature of the work, we think the structure and workflow should be looked at with a view to considering some team leader role(s).

Skills and capabilities

264. In our 2016/17 Review, we made recommendations about boosting the data analytics capability of the BCCC.
265. Since then, AFCA has been investing in software and skills to strengthen its own data capability for disputes – and there has been some flow-on benefit to the Code Team progressively from access to improved software. That said, AFCA is part way through a significant organisation-wide technology transformation project which will inevitably prioritise complaint-handling - meaning that it will take some time before the Code Team staff are able to customise and fully leverage this investment.
266. Some progress has clearly been made on the skills front, with a shared, experienced data analyst providing support to all of the Code Team activity and a couple of Code staff (without formal data analysis qualifications) working on data management and analysis tasks.
267. Without any criticism of the current staff, we think that the evidence is that there is room for strengthening capability in this area. While there are clearly extenuating circumstances (a new Code, COVID, staff vacancies etc), there is a clear gap in creating a shared understanding with banks of the purpose of the Compliance Statement data collection, it is taking too long for the BCCC to report about bank Compliance Statements and some Inquiries are overly lengthy. We would like to see some additional data skills added to the BCCC staffing, both at a strategic level and at an intermediate/technical level.
268. We are conscious that many of the banks have significant data analytics expertise within their own staffing along with world-class technology support. We do not expect the BCCC to compete with this, but it is critical that the BCCC's analysis and reporting about data collected from banks is both credible and timely.
269. The same principles apply to the management of stakeholder relations. The feedback we received from stakeholders was highly positive about the skills and competence of BCCC people, but there was clearly a desire from many for more (and more timely) engagement. The additional importance of the Code, and the more intense scrutiny that follows, means that the standing, skills

and effort applied by the senior BCCC staff and Committee members need to be credible in the eyes of stakeholders.

External resources

270. In our previous review, we recommended that the CCMC's resourcing should permit it to temporarily hire in specialist expertise for specific investigations or projects. For example, we suggested that external advice about banking compliance metrics could be useful.
271. The BCCC has experimented with this, using external consulting firm Deloitte to assist with the Building Organisational Capability Inquiry.
272. Another approach that has found some support from industry, is to ask the banks themselves to apply either internal or external audit resources to implement an Inquiry or to monitor implementation of agreed remediation of processes (discussed in Chapter 7).

Stakeholder views about funding

273. The consumer groups submission to the Code Reviewer observed:

“while there appears to be many good ideas and proactive plans coming out of the BCCC, there is often a significant time between these plans being announced and their execution. It may be that this has been influenced by the COVID-19 pandemic or other factors, but it may warrant a review of the funding available to the BCCC.”

274. A couple of banks also thought that the BCCC might benefit from a small increase in funding if this could be shown to improve its effectiveness and timeframes. Others were more wary of this – wanting to see a business case to justify resource increases.

Discussion

275. It is evident that there are no clear benchmarks to help determine what an appropriate level of resourcing is for the BCCC (or any other code monitoring body for that matter). Resourcing for the BCCC is determined largely by applying judgment to the risks and taking into account the expectations of stakeholders, devising a business plan – and seeking enough resources to complete the proposed activities.
276. The feedback from stakeholders is quite consistent. They see the effort made to lift professionalism and quality. They see good value-adding work. They respect the people that they are interacting with. They also see BCCC activity taking far too long – to the point that the reporting can be out-of-date and no longer relevant.
277. Whilst we agree with the ABA that there are opportunities for some efficiencies in the way that the BCCC and its Secretariat operate, we also think that some stepping up of the BCCC budget will be needed. Here we are also conscious that there will be short to medium term resourcing demands in implementing our recommendations.

Recommendation 19.

In consultation with stakeholders and taking expert advice as needed, the BCCC should review its resourcing with a view to ensuring that:

- a) data analytics capability and capacity, at a strategic and intermediate level is adequate
- b) its internal team structure is effective and enabling time-efficiency
- c) its ability to engage effectively with stakeholders is keeping up with increased focus and scrutiny
- d) it has the resources for projects to implement our recommendations.

11. List of Recommendations

Recommendation 1.

The Code and the Charter should be amended so that both describe the BCCC's role as "monitoring Code compliance and promoting best practice Code implementation".

Recommendation 2.

The BCCC should do more to build a shared understanding amongst stakeholders of:

- a) its role and how this fits with the roles of ASIC and AFCA
- b) its proposed priority areas.

Recommendation 3.

The BCCC should continue to evaluate and improve its approach to monitoring and reporting, working with stakeholders to improve outcomes and efficiency over time and reporting back on progress as part of the BCCC Annual Report.

Recommendation 4.

The BCCC should revitalise its Small Business and Agribusiness Advisory Panel, incorporating systematic ways of engaging with it in developing strategy, business planning, in planning Inquiries and wherever its expertise can be applied. Once its processes are strengthened, it should also consider adding other useful perspectives from amongst the diversity of the sector.

Recommendation 5.

The BCCC should include a fourth member with expertise in small business/ agribusiness. For efficiency and fairness, the implementation should feature:

- a) Selection by AFCA, ABA and the Committee Chair in consultation with relevant organisations from the small business and farming sector
- b) The appointment process should make it clear that the aim is to broaden the perspectives and skills of the Committee – and that the role is not to advocate for the sector
- c) The Chair should have a casting vote to deal with any deadlock.

Recommendation 6.

The BCCC Charter (whether this document remains separate from the Code or whether it is incorporated into the Code) should provide:

- a) An alternate member should only be able to be appointed where a BCCC member is absent or unable to participate for a prolonged period – and that in this case the appointing body should appoint the alternate rather than the BCCC member
- b) There should be tighter provisions to deal with conflicts of interest in the interests of maintaining the confidence of stakeholders.

Recommendation 7.

The BCCC should commit to a strategic priority of significant improvement within 3 years in the speed of its reporting on banks' periodic Compliance Statements. To achieve credibility, the BCCC reporting should be complete within 90 to 100 days of the close of the banks' reporting deadline.

Recommendation 8.

The BCCC should work closely with the ABA and banks, bearing in mind the expectations and needs of other stakeholders, to refine the BCCC's Compliance Statement data collection to optimise the reporting process's effectiveness and efficiency. In doing so, the following principles should apply:

- a) Credibility - The BCCC's data collection must be sufficient to enable the BCCC to provide assurance to the community as to banks' compliance with the Code
- b) Clarity – There should be clarity for the banks as to the reasons for data requests
- c) Accommodating diversity – Data collection requirements must take into account the diversity of banks, large and small
- d) Efficiency – Data requirements should be framed to be as resource efficient as possible for banks and the BCCC, consistent with other principles being met

- e) Comparability – Whilst recognising the difficulties of accommodating the various banks’ diverse systems and practices, banks should commit to data provision practices that maximise comparability
- f) Change management – Changes in data collection should be timed in a way that gives banks sufficient opportunity to prepare for and respond to new requirements
- g) Continuous improvement – Within change management constraints, a continuous improvement approach should be taken to evolve data collection over time in light of experience and changes in the external environment

Recommendation 9.

The BCCC should transition to public reporting about bank Compliance Statements on a named basis for the financial year commencing July 2023, providing both banks and the BCCC with a full cycle of reporting before then to iron out problems.

Recommendation 10.

Once practices for reportable situation reports by banks to ASIC have achieved a settled rhythm, the BCCC should revisit which of these matters it wants banks to contemporaneously report to the BCCC and how this can occur in a way that is efficient for banks and the BCCC.

Recommendation 11.

The BCCC should prioritise working with AFCA to establish an agreement regarding the exchange of confidential information under AFCA’s rules.

Recommendation 12.

The BCCC should plan, scope and implement its Inquiries in a way that permits timely Inquiry reporting (usually within 12 months of first information collection from the banks). This will likely involve:

- a) scoping its Inquiries more tightly
- b) as appropriate, engaging directly (orally) with banks
- c) to the extent practicable, leveraging banks' own quality and risk/assurance resources, and
- d) working with banks to improve data comparability.

Recommendation 13.

The BCCC Charter provisions for exclusions should be amended to:

- a) permit the BCCC, in special or appropriate circumstances, to consider matters that are beyond 2 years of the customer becoming aware of the relevant events
- b) clarify Clause 5.3d).

Recommendation 14.

The BCCC should review its processes for advising organisations of the outcome of referrals of allegations of breaches to ensure that they are given the opportunity to provide any additional relevant information and that they are sufficiently informed of the ultimate outcome.

Recommendation 15.

The BCCC should have the power to require a bank to undertake a compliance review of any rectification action (not just remediation action) to address a breach if the BCCC considers the seriousness of the breach warrants this.

Recommendation 16.

The BCCC power to report serious or systemic non-compliance to ASIC should not be limited to situations where the non-compliance is ongoing.

Recommendation 17.

The BCCC should have the power to compel a signatory bank that has been named by BCCC to publish on its website:

- a) the fact of its naming
- b) information about the cause and impact of the breach(es)
- c) information about its corrective action

The messaging must be factual, succinct, reach a sufficient audience (website positioning, format and length of time displayed) and be satisfactory to the BCCC.

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- d) it has the resources for projects to implement our recommendations.