



8 February 2022

Ms Prue Monument  
Chief Executive Officer  
Banking Code Compliance Committee  
Melbourne

By email: [info@codecompliance.org.au](mailto:info@codecompliance.org.au)

Dear Prue,

## BCCC Priorities for 2022-23

The Australian Banking Association (ABA) welcomes the opportunity to provide input to the Banking Code Compliance Committee (BCCC) consultation on its 2022-23 compliance priorities.

At the outset, the ABA wishes to acknowledge the critical role the BCCC plays in both monitoring and enforcing banking sector compliance with the Banking Code of Practice (the Code) and identifying best practice for banks to help achieve compliance in the best interests of customers.

The ABA also acknowledges the BCCC submission to the Banking Code Triennial Review and we look forward to working closely as the ABA leads the development of an updated Code.

In responding to this consultation, the ABA has sought both the views of member banks and recent independent reports relating to BCCC priorities.

The ABA provides the following responses to the six consultation questions.

### Consultation Questions

#### What are the key risks for non-compliance with the Code?

ABA member banks submit large amounts of qualitative and quantitative Code breach data to the BCCC as part of the biannual Compliance Statement process. This includes data around compliance in the critical areas of lending, financial difficulty and complaint resolution. Banks view the Compliance Statements as the most direct insight into the overall level of compliance with the Code, and those aspects of the Code that may require greater focus in achieving compliance.

The ABA encourages the BCCC to make use of the compliance statements (Parts A and B) as the primary source in determining key risk areas and priorities for 2022-23. We also note consumer group submissions to the Code review highlighted the rich insights this data provides.

If the compliance statements are not fit for purpose as a tool for identifying key risk areas for non-compliance, the ABA and member banks are ready and willing to work with the BCCC to refine the information it requires.

The ABA will also consider amending the Code in line with recommendation 106 of the 2021 review to introduce a materiality threshold for defining what is reportable as a breach. The intention of this is to simplify the process of reporting inputs and importantly, to sharpen the focus on systemic risks that will likely have a greater impact on achieving effective Code compliance.



This is consistent with both the Ernst Young Breach Reporting (EY Report) issued in August 2021 and, the Independent Review of the Banking Code Compliance Committee Report (Khoury Report) issued in December 2021. Specifically, the Khoury report reiterated the ABA's statement in our submission to the BCCC review that "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" (page 22; paragraph 128).

The ABA and members look forward to further engagement with the BCCC on this important issue.

### What are the potential and actual causes of detriment to bank customers?

Consistent with the comments above, the ABA considers that data about the causes of detriment to bank customers can be found in the Compliance Statements already provided to the BCCC.

Two further issues should be considered by the BCCC in relation to this question. The first being the clarification of "detriment". Does this mean causes of detriment relating to factors outside member banks control such as natural disasters? If so, this should be considered independently to issues identified in Compliance Statements. It is however worth noting the significant support provided by banks to customers over recent years in response to COVID-19, bushfires, floods and drought.

Secondly, as Code breaches do not always impact large numbers of customers, the materiality of customer detriment including the number of customers affected and the financial impact should be taken into account when determining potential BCCC priorities.

Finally, the ABA and its members remain committed to providing updates as appropriate to the BCCC on changes such as lending policy settings to provide a broader context on initiatives undertaken to prevent and reduce customer detriment.

### What are the actual issues or barriers to compliance with the Code?

As stated above, the ABA believes the best method to identify actual issues and barriers to compliance with the Code lies in the use of existing compliance statements provided by members to the BCCC and, in particular, banks own assessments of the root causes of material breaches.

We appreciate the BCCC's concern about human error being overstated as a cause of breaches. However we wish to state that the impost on frontline bank staff and systems to ensure compliance with a Code that is wide in scope, and simultaneously stay up to date with a regulatory environment characterised by large and rapid change is extremely challenging. The second half of 2021 was a demonstration of this change impact with banks having to implement a large reform program to implement new Design and Distribution Obligations, updated Anti Hawking Reform and Deferred Sales Obligation guidance and, new ASIC breach reporting guidance.

These changes are not simple. They require significant effort by banks to support their staff to understand their obligations. Coupled with the unprecedented impacts of COVID-19, the scale of change for bank employees has been significant. Given the heavy regulatory pipeline and ongoing challenges of the pandemic, this will likely continue during 2022.

While significant investment in both systems and root cause analysis continues to be made by banks, eliminating human error will continue to be a challenge in achieving compliance with the Code despite bet endeavours.



Finally, it is critical the BCCC consider competing breach reporting obligations imposed on members. As expressed in both the EY and Khoury Reports, harmonisation of breach reporting requirements should be pursued to streamline and reduce duplication in meeting both regulatory and BCCC obligations. A continued lack of harmonisation and overlap in this area presents a real barrier to compliance given the significant investment in time and resources required by members.

The ABA looks forward to further engagement with the BCCC on the opportunity to refine and simplify breach reporting requirements given the recommendations made in the EY Report and, the opportunities afforded by ASIC's breach reporting reforms and the forthcoming data to be published.

### What parts of the Code could be better explained or supported by guidance?

The ABA prefers efforts to draft Code clauses in plain English rather than production of additional guidance. That is, the Code should be capable of being easily understood by all stakeholders including customers and banks without the need for guidance published in separate documents.

This objective will again be pursued in the latest review of the Code by the ABA and we will seek stakeholder input as part of the review process to determine where clarity is required in the expression of Code obligations.

### What are the emerging issues where we can support and encourage compliance?

While the Code is about to undergo revision following the recent independent review, the ABA considers the issues already identified by the BCCC in recent inquiry reports and 2021-22 Business Plan priorities remain relevant and should continue to be the areas of focus in supporting and encouraging Code compliance.

Again, the use of Compliance Statements to identify current compliance issues is strongly recommended.

The ABA also notes the large number of submissions in the Code review from community stakeholders identifying issues, such as accessibility and financial hardship / difficulty to name a few, are being considered as part of the Code review and it's specific drafting.

Members have also highlighted the risk in devoting time and resources to issues already being considered in the current Code review and may continue to evolve while the review continues. Any decision to pursue new activities in this regard could become rapidly outdated prior to or once the Code update is finalised.

### Are there any areas of recent focus that the BCCC should continue to prioritise?

The ABA believe that 2022-23 is a time for the BCCC to consolidate existing Code inquiries and reports. Given the volume, and importance, of work currently underway, the ABA supports the BCCC continuing to focus on existing priorities including:

- receipt of BCCC feedback from the January to June 2021 Compliance Statement, both at an industry and individual bank level, that will likely require further analysis and action,
- responding to the recommendations from the BCCC's Part 7 (guarantees) report, including an audit plan, and implementing actions that arise from those recommendations,
- responding to the recommendations from the BCCC's Part 4 (inclusivity, vulnerability, and accessibility) report, and implementing actions that arise from those recommendations,



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- selected banks carrying out an audit as requested in the course of the BCCC's deceased estates inquiry, and anticipating a report in the coming months with recommendations requiring an industry response and action plans,
- continuing to consider and act in response to the BCCC's Building Organisational Capability report, and
- continuing to consider and act in response to the BCCC's report on cancellation of direct debits.

Finally, the ABA also notes that within banks there is a finite number of key stakeholders who coordinate activities in response to BCCC requests and findings. We suggest the BCCC allocates suitable periods of time to allow these teams and individuals to absorb, and make improvements in response to, recently completed BCCC inquiry reports and other activities.

Thank you for the opportunity to respond to this important consultation and we welcome further discussion of the matters raised as the BCCC continues the consultation process.

Please do not hesitate to contact myself or [REDACTED] at [REDACTED] or [REDACTED] in this regard.

Yours sincerely,

[REDACTED]

[REDACTED]

[REDACTED]

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