

Banking Code Compliance Committee

FINDING

Subject	CX4423
2013 Code of Banking Practice obligations	Clauses: 31.3, 31.4, 31.8, 31.16, 9 and 3.2
Date of this document	27 April 2022

Summary

1. The Banking Code Compliance Committee (BCCC) required the Code-subscribing Bank subject to this targeted inquiry (Bank) to undertake an external investigatory audit (Audit) into its compliance with the guarantee provisions of the 2004 and 2013 Banking Codes of Practice (Code).
2. Following the completion of the Audit review, the BCCC issued a Notice of Proposed Finding (Notice) to the Bank. The Notice was prepared with reference to the Audit findings and the Bank was provided an opportunity to respond to the BCCC's proposed findings.
3. Having considered the Bank's response, the BCCC issues this Finding in accordance with clause 6 of the BCCC Charter and Section 3 of its [Operating Procedures](#).
4. The BCCC finds that the Bank has breached the following 2013 Code obligations and their equivalent provisions under the 2004 Code:

2013 Code clause	2013 Code obligation
Clause 9	Staff training and competency
Clause 3.2	Fair and reasonable conduct
Clause 31	
31.3	Guarantee must include a statement that relevant provisions of the Code apply
31.4(a)(ii)	Give notice that Guarantor can refuse to enter into Guarantee
31.4(a)(iv)	Give notice that Guarantor has right to limit their liability
31.4(a)(v)	Give notice that Guarantor can request information about the transaction or facility to be guaranteed
31.4(d)(iii)	Provide Guarantor a copy of any credit report
31.4(d)(iv)	Provide Guarantor any credit-related insurance contract
31.4(d)(v)	Provide Guarantor any financial accounts or statement of financial position of the debtors, if applicable
31.8	Ensure a warning notice appears directly above the place where the Guarantor signs
<i>The following non-compliant provisions are only in relation to director guarantors:</i>	
31.16(a)(i) and (ii)	Tell the guarantor that they have the right to receive the documents described in clause 31.4(d) and that those documents contain information that may affect their decision to give a Guarantee.
31.16(c)	Tell the guarantor how they can make choices to not receive some or all of these documents
31.16(d)	Provide the guarantor with a copy of any document described in clause 31.4(d) that they have requested.

5. The BCCC's Operating Procedures provide that a Finding will include comments as to whether an identified breach is serious and/or systemic. The [BCCC's Guidance Note No 1 – Breach Identification and Reporting](#) (Guidance Note 1) provides guidance on what constitutes a 'systemic' and 'serious' breach.
6. The BCCC finds that the Bank's breaches of clauses 3.2, 9 and 31 of the 2013 Code and their equivalent of the 2004 Code are both systemic and serious.
7. **Appendix 1** to this Finding contains good practice guidance to assist banks to continually improve their compliance with the Code.

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Background

Targeted inquiry CX4423

8. The Banking Code Compliance and Monitoring Committee (CCMC) commenced targeted inquiry CX4423 into the Bank's compliance with the 2004 Code of Banking Practice (Code) and 2013 Code in June 2019. Since 1 July 2019, the BCCC has had carriage of the matter pursuant to its Charter.¹
9. In March 2018, the Bank reported to the CCMC that it had not, on every occasion, provided the information that a guarantor is entitled to under clause 31.4(b) and clauses 31.4(d)(iii) – (vii) of the 2013 Code.
10. The Bank identified this issue via an inquiry made by a staff member about the current process for providing information to guarantors – 'guarantor packs'.
11. The Bank subsequently commenced an investigation into this matter and found that:
 - a. its staff failed to understand the requirements under the Code's guarantee provisions
 - b. the compliance framework, incorporating internal processes and business controls was insufficient and employees did not implement them in full, and
 - c. a key control performed by a third-party supplier failed.
12. The Bank's historical files did not include copies of all information provided to the guarantor. As a result, the Bank was unable to determine whether all the required information was provided to a particular guarantor. The Bank was also unable to pinpoint the date of the commencement of its failure to provide the information required by the Code.
13. The Bank stated that, notwithstanding these failures, it has always provided the guarantor with details of the loan agreement between the Bank and a borrower, so the guarantor could understand the debt they were being asked to guarantee.
14. Throughout targeted inquiry CX4423 (during the period September 2018 to May 2019), the Bank identified and reported to the CCMC various breaches of the guarantees provisions of the 2004 and 2013 Code.
15. Based on the information available to the CCMC/BCCC regarding this investigation, it had the following concerns:
 - a. since the Bank first reported the matter to the Australian Securities and Investments Commission (ASIC) in February 2018, the Bank has been unable to ascertain the extent of potential breaches of the Code, the number of those affected and the timeframe of non-compliance
 - b. the Bank's assessment of its compliance with the guarantee provisions appeared to be fragmented and inconsistent
 - c. the Bank was unable to sufficiently identify and report its breaches of the guarantees provisions between 2010 and 2018
 - d. the breaches identified appeared to be systemic and a significant number of guarantors may have been impacted by the Bank's non-compliance

¹ On 1 July 2019, the BCCC replaced the Banking Code Compliance Monitoring Committee (CCMC). The CCMC was established under clause 36 of the [2013 Code of Banking Practice](#) (2013 Code).

- e. while the Bank carried out several internal reviews, these were not focused directly on the compliance with the Code's guarantees provisions, or otherwise only focused on those provisions that the Bank considered relevant.

Investigatory Audit

16. Given its concerns outlined in paragraph 15 above, the BCCC required the Bank to conduct an investigatory audit assessing its compliance with the guarantee provisions of the 2004 and 2013 Code.²
17. The Audit commenced in August 2020 (following delay in commencement during to COVID-19 impacts) and was conducted by an external auditor over the course of three months.
18. The Audit assessed whether the Bank complied with clause 31 of the 2013 Code, or where applicable, clause 28 of the 2004 Code, on a sample of guarantors provided between 1 December 2010 and 4 July 2018.
19. The Auditor selected a sample of 166 guarantors and for each file, they performed the following procedures:
 - a. audited information provided to each guarantor against the requirements of the relevant clauses of the Code, and
 - b. for any non-compliance identified, audited the remediation by the Bank for sufficiency in remediating against the instances of non-compliance.
20. 147 files were tested against the 2013 Code and 16 against the 2004 Code.
21. A copy of the final Audit report was provided to the BCCC and the Bank on 1 December 2020.

Summary of Audit findings

22. A summary of the non-compliance identified by the Audit is outlined below:

Time period of guarantees provided	Sample size	Samples non-compliant
Between 10 December 2010 and 16 March 2018	51	51 samples non-compliant with clauses 31.4(d)(iii) – (v)
Between 16 March 2018 and 4 July 2018	51	1 sample non-compliant with clauses 31.4(d)(iii) – (v)
Between 10 December 2010 and 16 March 2018	58	51 samples non-compliant with clauses 31.4(d)(iii) – (v), 31.8 and 31.16(a)(i), (ii) and (c), (d)
Between 16 March 2018 and 4 July 2018	58	3 samples non-compliant with clauses 31.4(d)(iii) – (v), 31.8 and 31.16(a)(i), (ii) and (c), (d)
Between 10 December 2010 and 16 March 2018	53	4 samples non-complaint with clauses 31.3, 31.4(a)(ii), (iv) and (v). 7 samples non-compliant with clause 31.8
Between 16 March 2018 and 4 July 2018	53	28 samples non-compliant with clause 31.8

² Clause 14(d) of the BCCC's Operating Procedures allows the BCCC to require a bank to conduct an external audit in its targeted inquiries

The BCCC's Findings

Clauses 31.3 of the 2013 Code and 28.3 of the 2004 Code

23. The above clauses required a guarantee to include a statement to the effect that the relevant provisions of the Code apply to the guarantee.

Audit report findings

24. The Audit's review of the guarantee documentation provided for Business Loans showed that there was no explicit reference made to the Code being applicable.
25. The Bank said that the guarantee documentation contains references to the Code and it was implicit in this communication that the Code was applicable to the guarantee.
26. Guarantee documentation provided for Residential Loans does include a statement that the relevant provisions of the Banking Code of Practice apply to this Guarantee. This is quite clear and does not leave room for interpretation.

The BCCC's position

27. The [BCCC's Inquiry Report on Banks' compliance with the Banking Code's guarantee obligations](#) (Guarantees Report) states that compliance with clause 31.3 of the 2013 Code is essential to raise awareness of the Code's application and the guarantor's rights under the Code.
28. While the Bank's guarantee documentation for Business Loans contain references to the Code, there was no explicit statement to the effect that the relevant provisions of the Code apply to the guarantee.
29. Clause 31.3 of the 2013 Code clearly requires this statement to be included and the BCCC considers that making references to the Code is not sufficient to meet this requirement.
30. Therefore, the BCCC finds that the Bank breached clauses 31.3 of the 2013 Code and 28.3 of the 2004 Code in relation to guarantee documentation provided for Business Loans.
31. The Audit found that guarantee documentation for 26 Business Loans was not compliant with the abovementioned clauses of the Codes, indicating that a wider proportion of guarantors across the Business Loans portfolio would have been impacted by this breach.
32. Therefore, the BCCC finds the Bank's breaches of clauses 31.3 of the 2013 Code and 28.3 of the 2004 Code to be systemic.

Clause 31.4(a) of the 2013 Code and 28.4(a) of the 2004 Code

33. The above clauses set out what information banks are required to provide to the guarantor before they can obtain a guarantee.

Audit report findings

34. The Audit found that the Bank:
- a. provided notice to all sampled guarantors to seek legal and financial advice on the effect of the Guarantee (clause 31.4(a)(i)) – compliant
 - b. did not provide notice to all sampled guarantors that they can refuse to enter into a guarantee (clause 31.4(a)(ii)) – non-compliant
 - c. provided notice to all sampled guarantors that there are financial risks involved (clause 31.4(a)(iii)) – compliant
 - d. did not provide notice to all sampled guarantors that they can limit their liability in accordance with the Code and as allowed by law (clause 31.4(a)(iv)) – non-compliant
 - e. did not provide notice to all sampled guarantors that they can request information about the transaction or facility to be guaranteed (clause 31.4(a)(v)) – non-compliant

The BCCC's position

35. The Guarantees Report states that the disclosure obligations under clause 31.4(a) are to protect prospective guarantors by ensuring that they are given relevant information to make an informed decision about whether to guarantee a loan.
36. Entering into a guarantee poses inherent risks for guarantors and it is crucial that they are provided the relevant notices which may affect their choice to guarantee a loan. For example, a guarantor should be aware that they may decide to limit their guarantee if they are unable to guarantee the whole loan given their individual circumstances.
37. Given that the Bank failed to provide all required notices under clauses 31.4(a) of the 2013 Code and 28.4(a) of the 2004 Code, the BCCC proposes to find that the Bank breached these clauses.
38. The Audit found that the guarantees for 26 Business Loans were not compliant with the abovementioned clauses of the Codes, indicating that a wider proportion of guarantors across the Business Loans portfolio would have been impacted by this breach.
39. The BCCC therefore finds that the Bank's breach of clauses 31.4(a) of the 2013 Code and 28.4(a) of the 2004 Code to be systemic.

Clauses 31.4(d) of the 2013 Code and 28.4(d) of the 2004 Code

40. The above clauses required banks to provide the guarantor with a copy of:
- a. any related credit contract together with a list of any related security contract
 - b. the final letter of offer provided to the debtor by the bank
 - c. any related credit report from a credit reporting agency
 - d. any current credit-related insurance contract in the bank's possession
 - e. any financial accounts or statement of financial position given to the bank by the debtor

- f. the latest statement of account relating to the facility for a period during which a notice of demand was made by the bank or a dishonour occurred
- g. any unsatisfied notice of demand made by the bank on the debtor in relation to the facility.

Audit report findings

- 41. The Audit found the Bank did not comply with its obligations referred to in paragraphs 40(c), (d) and (e) above.

The BCCC's position

- 42. Similar to clause 31.4(a) of the 2013 Code, the information a bank is required to provide under clause 31.4(d) was intended to support the guarantor to better understand the risk of the transaction and make an informed decision about whether to guarantee the credit provided.
- 43. Given the Bank did not provide all required information under clauses 31.4(d) of the 2013 Code and 28.4 of the 2004 Code, the BCCC finds that the Bank breached these clauses.
- 44. The Audit found that 110 files (out of 166) were not compliant with the abovementioned provisions of the Codes, indicating that a wider proportion of guarantors across the portfolio would have been impacted by these breaches.
- 45. The BCCC therefore finds that the Bank's breaches of clauses 31.4(d) of the 2013 Code and 28.4(d) of the 2004 Code to be systemic.

Clauses 31.5(a) of the 2013 Code and 28.5(a) of the 2004 Code

- 46. The above clauses stated that a bank will not ask the Guarantor to sign or accept a Guarantee unless it has provided them with the information required in clauses 31.4(d) of the 2013 Code and 28.4(d) of the 2004 Code (see paragraph 40 above).

The BCCC's position

- 47. Non-compliance with clauses 31.4(d) of the 2013 Code and 28.4(d) of the 2004 Code would in turn result in non-compliance with clauses 31.5(a) of the 2013 Code and 28.5(a) of the 2004 Code respectively.
- 48. Based on a review of the files within the sample, the Audit found that there were instances where the Bank had not provided the information required under clause 31.4(d).
- 49. Therefore, the BCCC finds the Bank breached clauses 31.5(a) of the 2013 Code and 28.5(a) of the 2004 Code.
- 50. The Audit found evidence of non-compliance with clause 31.4(d) in 110 files (see paragraph 44 above). Given the number of files impacted, the BCCC finds that the Bank's breaches of the abovementioned clauses are systemic.

Clauses 31.8 of the 2013 Code and 28.8 of the 2004 Code

51. The above clauses required that a warning notice (substantially in the form required by section 55 of the National Credit Code and detailed in Form 8 of the National Consumer Credit Protection (NCCP) Regulations 2010, and which is consistent with the Code), appear directly above the place where the guarantor signs.

Audit report findings

52. The Audit found that the Bank complied with these clauses in relation to Individual & Individual Trustee Guarantors (that are not also the borrowers for Residential and Business Loans). However, for all other guarantors, this clause was not complied with.

The BCCC's position

53. The warning notice mentioned in paragraph 51 above is required to contain important information, including that the guarantor:

- a. read the guarantee, credit contract document and information statement
- b. obtain independent legal and financial advice
- c. make their own enquiries about the credit worthiness, financial position and honesty of the debtor
- d. understand they could personally become responsible to pay the amounts which the debtor owes and if the debtor does not repay the loan, they could lose their home, and
- e. talk to a legal advisor to understand how they may be able to withdraw from the guarantee or limit their liability under the guarantee.

54. The contents of the notice and the place it should be located is clearly prescribed in the Code and relevant regulations – anything short of what is required under these obligations will be considered non-compliant with clause 31.8.

55. Given the Audit found that this notice was not present in the appropriate place for guarantors other than Individual & Individual Trustee Guarantors, the BCCC finds that the Bank breached clauses 31.8 of the 2013 Code and 28.8 of the 2004 Code.

56. The Audit review found that 116 files (out of 166 files) were not compliant with the abovementioned provisions of the Codes, indicating that a significant proportion of guarantors would have been impacted by the bank's breach across the portfolio.

57. Therefore, the BCCC finds the Bank's breach of clauses 31.8 of the 2013 Code and 28.8 of the 2004 Code to be systemic.

Clauses 31.16 of the 2013 Code and 28.15 of the 2004 Code

58. The above clauses stated that if the guarantor is a director guarantor, clauses 31.4(d) and 31.5 (and their equivalent of the 2004 Code) will apply as follows:

- a. the bank will tell the guarantor that they have the right to receive the documents in clause 31.4(d)/ 28.4(d), and those documents contain important information that may affect the guarantor's decision to give a guarantee.
- b. the guarantor may choose to receive some or all of these documents
- c. the bank will tell them how they can make these choices
- d. the bank will provide them with a copy of any document prescribed in clause 31.4(d) that the guarantor has requested

- e. the guarantor can tell the bank they do not wish to have the benefit of having until the next day to consider the information
- f. the bank will provide the guarantor with the required information but will not attempt to influence their choices.

Audit report findings

- 59. The Audit found that the Bank did not comply with the obligations referred to in paragraph 58 (a), (c) and (d) above.
- 60. The Bank said that it provided guarantors the option to opt out from providing the guarantee. However, the Audit notes that this was not captured in the Bank's system records. In any event, the Audit found no evidence of the Bank influencing guarantors' choices as per clause 31.16(f) of the Code which states that a bank will provide the guarantor with the required information but will not attempt to influence their choices.

The BCCC's position

- 61. As noted above, the Bank did not comply with the requirements under clause 31.16 because it did not inform the guarantor that they have the right to receive the documents prescribed in clause 31.4(d) and that the Bank will provide them with these documents if requested.
- 62. Therefore, the BCCC finds that the Bank breached clauses 31.16 of the 2013 Code and 28.15 of the 2004 Code.
- 63. The Audit found that 58 director guarantor files (100%) were not compliant with the above provisions of the Codes, indicating that a wider range of guarantors would have been impacted by the Bank's breach across the whole portfolio.
- 64. The BCCC therefore finds the Bank's breach of clauses 31.16 of the 2013 Code and 28.15 of the 2004 Code to be systemic.

Clauses 9 of the 2013 Code and 7 of the 2004 Code

- 65. The above clauses required banks to ensure its staff were trained to:
 - a. competently and efficiently discharge their functions and provide banking services in compliance with the Code, and
 - b. have adequate knowledge of the Code provisions and its application.

The BCCC's position

- 66. The [BCCC's Organisational Capability Report](#) emphasises the need for banks to educate their staff about the Code's role in customer protection and the importance of staff meeting their Code obligations.
- 67. The BCCC expects banks to offer appropriate systems and support and provide all-inclusive training that will enable staff to competently and effectively discharge their functions and provide banking services to customers in compliance with the Code.
- 68. Without understanding the Code obligations, staff members will not be able to promptly identify and report Code breaches. This affects the Bank's ability to rectify any breaches and prevent them from recurring.

69. If the Bank's staff members were provided training (both theoretical and practical) that enabled them to acquire adequate knowledge and understanding of the Guarantee provisions of the Code, the Bank could have avoided the breaches identified by the Audit.
70. Given the above, the BCCC finds that the Bank breached clauses 9 of the 2013 Code and 7 of the 2004 Code.
71. Not providing comprehensive training to its staff members affects the capability and competency of the staff and could in turn lead to breaches caused by 'human error'. If staff members did not have the capabilities and competency to comply with the Code, there was a high likelihood that guarantors would have been impacted by the Bank's breaches.
72. Therefore, the BCCC finds that the Bank's breaches of clauses 9 of the 2013 Code and 7 of the 2004 Code to be systemic.

Clause 3.2 of the 2013 Code and 2.2 of the 2004 Code

73. Clause 3.2 of the 2013 Code required banks to act fairly and reasonably towards its customers in a consistent and ethical manner.

The BCCC's position

74. The Bank has not been transparent in its communication with its guarantors by not providing the required pre-disclosure information to them in order for them to make an informed decision on whether they should enter the guarantee.
75. As a Code subscriber, the Bank has committed to earning the trust of its customers and community by upholding promises made in the Code to deliver appropriate consumer outcomes. However, the Bank has not upheld this commitment by breaching 11 of its obligations under the guarantee provisions of the Code for about eight years.
76. Further, the Bank did not have adequate and appropriate training about its compliance obligations under the guarantee provisions of the Code to ensure that staff could competently identify possible breaches, and investigate, record and report instances of non-compliance.
77. Therefore, the BCCC is not satisfied that the Bank's engagement with its guarantors:
- a. was guided or informed by clause 3.2 of the 2013 Code and/or clause 2.2 of the 2004 Code, or
 - b. met its customers' and the wider community's expectations.
78. For the reasons outlined above, the BCCC finds that the Bank did not act fairly and reasonably towards the affected guarantors in a consistent and ethical manner, breaching clauses 3.2 of the 2013 Code and 2.2 of the 2004 Code.
79. As identified through the customer testing component of the Audit review, the Bank's failure to comply with the guarantees provisions of the Code has impacted a significant number of customers.
80. The BCCC therefore finds the Bank's breaches of clauses 3.2 of the 2013 Code and 2.2 of the 2004 Code to be systemic.

Serious non-compliance

Clause 31 of the 2013 Code and 28 of the 2004 Code (Guarantees)

81. The BCCC finds the Bank's breach of its obligations under the guarantees provisions of the Code is serious because:

- a. the breaches were not one-off instances, rather they were a result of inadequacy in the business unit's policies, processes and framework to ensure compliance with clause 31 of the 2013 Code and were ongoing for about eight years prior to being identified.
- b. non-compliance with any guarantee provisions may, in some cases, result in serious repercussions for the guarantors as guarantors may not have an in-depth understanding of what their rights and liabilities are and may suffer financial and/or non-financial harm if the Guarantee is enforced.
- c. staff members play an important role in providing guarantors with key information, explaining the contract and answering any queries so that the guarantor can make an informed decision. If the relevant staff members are not appropriately trained, it could result in significant customer detriment and financial impact for both the customer and the Bank.

82. The Bank notes that had to take a conservative approach in:

- a. remediating guarantors by making an assumption that would ensure all potentially impacted guarantors were contacted
- b. quantifying the number of impacted guarantors and assumed all guarantors were required to be provided with the information required by the Code back to the earliest possible date of failure.

83. The BCCC notes that the Bank needed to take such an approach in the first place due to its poor record keeping and limitations in its historical records and systems. The Bank did not have appropriate records to identify the date on which the breach commenced, how many customers have been impacted and what particular information they were not provided prior to accepting the guarantee.

84. However, the BCCC recognises that the Bank has been forthcoming and transparent in both its initial report of the significant breach and in responding to the CCMC/BCCC's enquiries.

85. The Bank also promptly and efficiently implemented a range of corrective actions and undertook substantial work to enhance its processes/policies to minimise the breaches from reoccurring.

Clause 9 of the 2013 Code and 7 of the 2004 Code (Training and competency)

86. The available information suggests that the Bank did not provide sufficient guarantee Code provision training to its staff members during the in-scope period which is approximately eight years.

87. Banks need to be committed to providing their staff members with the resources they need to ensure they are performing their duties in line with the Code obligations as a lack of knowledge and understanding of the Code could have detrimental consequences for customers.

88. The Bank failed to take steps to make compliance with the Code a pertinent part of its strategy and culture. Staff members were not appropriately educated or made aware of the importance of the guarantee obligations under the Code and this led to them not being able to comply with the Code, as well as being able to:

- a. identify and address the root causes of Code breaches
- b. promptly identify and report Code breaches, and
- c. remediate Code breaches and prevent them from recurring.

89. For the reasons outlined above, the BCCC proposes to find the Bank's breaches of clauses 9 of the 2013 Code and 7 of the 2004 Code to be serious.

Clause 3.2 of the 2013 Code and 2.2 of the 2004 Code (Fair and reasonable conduct)

90. In determining whether the Bank's breaches of its fair and reasonable obligations under the Codes were serious, the BCCC had regard to the following factors:

- a. The total number of files within the sample that were affected by the Bank's non-compliance with the guarantee provisions of the Code (138 of 166 files – approximately 80%).
- b. The potential detrimental impact or harm a guarantor could suffer as a result of not being provided sufficient information and/or notices in order to make an informed decision about whether to enter into a guarantee
- c. The prolonged period of non-compliance (eight years)
- d. The inadequacy of the Bank's compliance framework (policies and processes) to ensure compliance with the Code's guarantee obligations
- e. The lack of training provided by the Bank to its staff members in relation to the Code's guarantee obligations

91. For the reasons above and those provided in paragraphs 74 to 79 of this Finding, the BCCC finds the Bank's breaches of clauses 3.2 of the 2013 Code and 2.2 of the 2004 Code to be serious.

Remediation

Corrective actions

92. As noted in paragraph 85 above, the Bank has undertaken a range of corrective actions to ensure that its internal processes are aligned with the requirements of the 2019 Code and to prevent the occurrence of further breaches.
93. As part of the [BCCC's Guarantees Inquiry](#), the Bank also provided information on how its processes, policies and training ensure compliance with the guarantees provisions of the Code.
94. The Bank considers that it now has adequate processes in place to meet the Code's guarantee provisions which is supported by the fact that it has identified only a limited number of incidents relating to these provisions. The Bank was able to identify these incidents due to the additional controls it had put in place and the incidents were rectified in a timely manner.
95. The Bank has also invested in providing additional Code compliance training and guidance to relevant staff and has substantially improved its processes to ensure Code compliance.
96. Having reviewed the available information, the BCCC is largely satisfied that the corrective actions undertaken by the Bank has resulted in the Bank having an adequate compliance framework (systems, policies and procedures) to enable it to comply with the Code's guarantee provisions moving forward.

Customer remediation

97. In March 2018, the Bank sent letters to relevant guarantors and borrowers advising them of the Bank's possible failure to provide all information required by the Code, and that they should contact the Bank if they had concerns or wished to discuss.
98. The Bank has issued a total of 10,285 letters to borrowers/guarantors – comprising of 6,698 to guarantors and 3,873 to borrowers.
99. The Audit identified small subsets of Guarantors that did not receive the relevant letters and made recommendations that the Bank send out these letters as soon as possible. The Bank implemented the recommendations by issuing the relevant letters to the applicable guarantors in the first half of 2021.
100. The Bank has also committed to undertaking an assessment to consider the fairness and reasonableness of enforcing any guarantee entered into during the period of non-compliance. This will include examining on a case by case basis, any non-compliance with the Code, considering the factual circumstances of each guarantor's circumstances as the situation arises.

Application of sanctions

101. Section 7.1 of the BCCC Charter gives the BCCC power to apply sanctions for serious or systemic breaches of the Code³ while section 7.2 of the Charter allows the BCCC to use its discretion to determine which sanctions to apply after considering the seriousness of a Code breach.
102. For the reasons outlined in paragraph 90 of this Finding and considering other factors such as the corrective actions undertaken by the Bank, the BCCC is applying a sanction to formally warn the Bank.⁴ Should similar instances of non-compliance occur in the future, the BCCC may apply another sanction.



Ian Govey AM
Independent Chairperson
Banking Code Compliance Committee

³ Section 7.1 of the BCCC Charter states 'The BCCC has the power to apply sanctions to a Code Subscriber for a breach of this Code where a finding has been made that: (a) the breach is serious or systemic; (b) the bank had failed to act on BCCC's request to remedy a breach, or failed to do so within a reasonable time; (c) there has been a breach of an undertaking given to the BCCC; or (d) the bank has not taken adequate steps to prevent a serious or systemic breach from reoccurring'.

⁴ As per clause 215(c) of the 2019 Code and clause 7.2(c) of the BCCC Charter

Relevant 2013 Code obligations

Clause 3.2:

We will act fairly and reasonably towards you in a consistent and ethical manner. In doing so we will consider your conduct, our conduct and the contract between us.

Clause 9:

We will ensure our staff (and our authorised representatives) will be trained so that they:

- (a) can competently and efficiently discharge their functions and provide the banking services they are authorised to provide in compliance with this Code; and*
- (b) have an adequate knowledge of the provisions of this Code and its application to banking services.*

Clause 31.3:

A Guarantee must include a statement to the effect that the relevant provisions of this Code apply to the Guarantee but need not set out those provisions.

Clause 31.4(a)(ii), (iv) and (v):

We will do the following things before we take a Guarantee from you:

- (a) give you a prominent notice that, you can refuse to enter into the Guarantee; you have a right to limit your liability in accordance with this Code and as allowed by law; and you can request information about the transaction or facility to be guaranteed.*

Clause 31.4(d)(iii), (iv) and (v):

We will do the following things before we take a Guarantee from you:

- (d) provide you with a copy of any related credit report from a credit reporting agency, any current credit-related insurance contract in our possession and any financial accounts or statement of financial position given to us by the debtor for the purposes of the Facility within 2 years prior to the day we provide you with this information*

Clause 31.8:

We will ensure that a warning notice (substantially in the form required by section 55 of the National Credit Code, and detailed in Form 8 of the National Consumer Credit Protection Regulations 2010 and which is consistent with this Code) appears directly above the place where you sign.

Clause 31.16(a) – (d):

If you are a director guarantor, clauses 31.4(d) and 31.5 apply as follows:

- (a) we will tell you that you have the right to receive the documents described in clause 31.4(d) and those documents contain important information that may affect your decision to give a Guarantee*
- (b) you may choose not to receive some or all of the documents described in clause 31.4(d)*
- (c) we will tell you how you can make these choices*
- (d) we will provide you with a copy of any document described in clause 31.4(d) that you have requested.*