

Banking Code Compliance Committee

FINDING

Subject	CX6212
2013 Code of Banking Practice obligations	Clauses: 3.1(c), 7, 8(a), 9, 12.2 – 12.4, 15.1, 21.1, 29.2, 31.16, 3.2, 36(g), 27
Date of this document	20 May 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 three of its business units' compliance with the 2013 Banking Code of Practice (2013 Code).
2. Following the completion of the Audit, the BCCC issued a Notice of Proposed Finding (Notice) to the Bank. The Notice was prepared with reference to the Audit Report 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:

Business Unit	2013 Code clause	2013 Code obligation
Business Units 1, 2 and 3	Clauses 3.1(c)	Providing general information about rights and obligations
	Clause 7	Recognising needs of older persons and customers with a disability
	Clause 8(a)	Assisting customers in remote indigenous communities
	Clauses 9	Staff training and competency
	Clauses 12.2(e), 12.3, 12.4(c), 12.4(h) and 12.4(i)	Disclosure of information in Terms and Conditions
	Clauses 15.1(b), (c), (e) and (f)	Disclosure of information regarding operations of accounts
	Clause 21.1(b)	Promptly processing complaints regarding direct debits
	Clause 29.2	Ensuring joint debtors understand their liabilities
	Clauses 31.16(a) – (d)	Disclosure of information to guarantors
	Clause 3.2	Fair and reasonable conduct
	Clause 36(g)	Co-operating and complying with CCMC requests
Business Unit 1 only	Clause 27	Provision of Credit

5. In its correspondence to the BCCC in December 2020, the Bank acknowledged that it has breached the 2013 Code provisions listed in the table above.
6. 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.
7. The BCCC finds that the breaches of the following clauses are serious and/or systemic:

Relevant Code provision	BCCC finding
Clause 3.1(c)	Systemic
Clause 3.2	Systemic and serious
Clause 9	Systemic
Clause 12.2 – 12.4	Systemic
Clause 27	Systemic
Clause 29.2	Systemic
Clause 31.16	Systemic and serious

8. **Appendix 1** to this Finding also contains good practice guidance to assist banks to continually improve their compliance with the Code.
9. The BCCC is applying a sanction to formally warn the Bank.¹ Should similar instances of non-compliance occur in the future, the BCCC may apply another sanction.

¹ As per clause 215(c) of the 2019 Code and clause 7.2(c) of the BCCC Charter

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Background

Business units' compliance with the 2013 Code

10. The Banking Code Compliance Monitoring Committee (CCMC) commenced targeted inquiry CX6212 into the Bank's compliance with the 2013 Code in June 2019. Since 1 July 2019, the BCCC had carriage of the matter pursuant to its Charter.²
11. As part of targeted inquiry CX6212, the CCMC received information from the Financial Ombudsman Service (a predecessor scheme of the Australian Financial Complaints Authority) that raised concerns regarding the Bank's three business units' compliance with the 2013 Code. These Business Units will be referred to as **Business Unit 1**, **Business Unit 2** and **Business Unit 3**.
12. Further, when responding to the CCMC's 2017-18 Annual Compliance Statement, the Bank notified the CCMC that it had identified issues concerning the business units' compliance with the 2013 Code.
13. The Bank indicated that this non-compliance, which spanned over several years, may have impacted a significant number of customers and the breaches could have at the very minimum affected its compliance with staff training, pre-contractual guarantee and statements of accounts obligations.

Investigatory Audit

14. Based on the above information, the BCCC requested the Bank to conduct an investigatory audit (Audit) into the three business units' compliance with the 2013 Code.³
15. The Audit commenced in January 2020 and was conducted by an external auditor over a period of eight months (as a result of the delays caused by the impacts of COVID-19).
16. The Audit examined a randomly selected sample of 118 customer files from Business Unit 1 (from the population of 643,542), eight customer files from Business Unit 2 (from the population of 44,168) and 24 customer files from Business Unit 3 (from the population of 123,822).
17. The scope of the Audit covered the period:
 - a. 1 February 2014 to 30 June 2019 in relation to Business Unit 3, and,
 - b. 1 March 2015 to 30 June 2019 in relation to Business Units 1 and 2.⁴

² On 1 July 2019, the BCCC replaced the CCMC. The CCMC was established under clause 36 of the 2013 Code.

³ 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.

18. In addition to assessing the business units' compliance with the 2013 Code, the Auditor completed the following:
- a. an assessment of the design effectiveness of key controls to meet compliance with the Code for the in-scope period
 - b. performance of customer outcome testing to assess the application of the Code across the customer journey to identify any non-compliance, and
 - c. if non-compliance was identified, an assessment of customer impact (this assessment was limited to evidence within the Bank's systems).
19. A copy of the final Audit report was provided to the BCCC and the Bank on 14 October 2020.
20. The Audit highlighted that the testing to establish the extent of non-compliance was impacted by the lack of available evidence to assess Code compliance for several areas of the 2013 Code, especially during the earlier periods.
21. Of the 172 in-scope 2013 Code provisions, the Audit identified 92 provisions (53%) where the assessment was limited due to lack of information or the nature of the provision requiring activation by the customer for which there was no evidence on file.
22. The BCCC notes the limitations of the Audit review and for the purposes of this Finding, has only relied on the definite findings resulting from the review.

Summary of Audit findings

23. The Audit identified several areas where there was evidence of non-compliance with the 2013 Code across the business units, namely:
- a. failure to provide certain information in the Terms and Conditions (T&Cs) as required by clause 12 of the 2013 Code
 - b. failure to implement training covering compliance for all areas of Code prior to 2017 and 2019
 - c. failure to comply with the Director Guarantor disclosure requirements as outlined in clause 13.16 of the 2013 Code, and
 - d. failure to comply with 2013 Code provisions relating to key commitments – while the customer's obligations were available throughout the T&Cs, these were not presented in a single section to make it clear to the customer i.e. they were fragmented throughout the T&Cs.
24. Of the 150 customer files (see paragraph 16 above), the Audit identified 68 instances of non-compliance:
- a. All 68 relate to Code provision 'Our key commitments to you'
 - i. 56 relate to review period 2014 – 2018 and 12 relate to 2019
 - ii. 38 relate to Business Unit 1; 6 for Business Unit 2 and 24 for Business Unit 3
 - b. 30 out of the 68 files did not comply with the Guarantor provisions
 - i. 28 relate to review period 2014 – 2018 and 2 relate to 2019
 - c. There were issues relating to credit assessment procedures performed for 5 of the 68 files
 - i. 2 occurred in 2015 and 3 occurred in 2016

The BCCC's Findings

Clause 3.1 of the 2013 Code

25. Clause 3.1(c) of the 2013 Code required banks to provide general information about the rights and obligations that arose out of the banker and customer relationship in relation to banking services.

Audit report findings

26. The Audit found that, across all business units, the T&Cs of commercial and novated leasing products did not contain a specific section which explicitly called out the rights and obligations between a customer and the business unit.
27. The Audit also noted that the fragmented way in which the rights and obligations were documented in the T&Cs made it difficult for customers to understand them.
28. In relation to customer outcome testing for clause 3.1(c), the Audit found:

Business Unit	Outcome
Business Unit 1	Identified 38 files (31%) where compliance was not met. All impacted products were either Novated Lease, Goods Loan or Hire Purchase products.
Business Unit 2	Identified six files (75%) where compliance was not met. All impacted products were either Goods Loan or Hire Purchase products.
Business Unit 3	Identified 24 files (100%) where compliance was not met. All files were Goods Loan products.

The BCCC's position

29. As outlined above, the T&Cs for certain products provided by the business units did not state the rights and obligations of a banker and customer relationship. Therefore, the BCCC finds that the Bank has breached clause 3.1(c) of the 2013 Code.
30. The Audit identified a total of 68 files where compliance was not met. A considerable number of customers have been affected across the sample, indicating that a wider proportion of customers may have been impacted by breaches of clause 3.1(c) across the business units' portfolio.
31. The BCCC therefore finds the Bank's breach of clause 3.1(c) of the 2013 Code to be systemic.

Clause 7 of the 2013 Code

32. Clause 7 of the 2013 Code required banks to recognise the needs of older persons and customers with a disability to have access to transaction services and take reasonable measures to enhance their access to those services.

Audit report findings

33. The Audit found that between 2014 and 2017, there was no training observed which covered the 2013 Code requirements relating to customers with special needs. A module containing training on how to interact with customers with special needs was only rolled out in May 2017.
34. Another training module rolled out in April 2019 for staff in a customer facing role, raised awareness and trained staff on how to deal with different types of vulnerabilities through scenarios and situation examples, addressing the requirements of clause 7.
35. The Audit found that the lack of staff training relating to customers with special needs may have meant that staff were less equipped to recognise the needs of these customers and to take measures to enhance their access to transaction services.

The BCCC's position

36. As outlined in the Australian Banking Association's (ABA) ['Accessibility principles for Banking Services'](#) published in November 2018, banking products and services are an essential part of life and banks need to make sure that their services are optimally placed to deliver the best accessibility and inclusive experience for their users.
37. The requirement for banks to provide accessible services to elderly customers and customers with disability is a pertinent protection under the Code. Staff members, especially those customer-facing need to be educated and trained on the requirements of this clause for them to be able to assist these customers appropriately and adequately.
38. Providing no such training between 2014 and 2017 reflects the Bank's failure to ensure that staff can competently and efficiently discharge their functions when dealing with elderly customers or customers with a disability.
39. Therefore, the BCCC finds that the Bank has breached clause 7 of the 2013 Code.

Clause 8 of the 2013 Code

40. Clause 8(a) of the 2013 Code required banks to take reasonable steps to make information about banking services available to remote Indigenous customers in an accessible manner.

Audit report findings

41. This provision was assessed through reviewing available training material and identifying whether training exists to support compliance with making information available in an accessible manner.
42. The Audit found that Indigenous Cultural Awareness Training, which was available across 2014 – 2019, addressed obligations for cultural awareness of Indigenous communities.
43. However, this training was only mandatory for staff located in specific postcode/areas who regularly assisted customers in remote Indigenous communities. The Audit was unable to assess whether the staff members in call centres were trained on assisting Indigenous customers due to insufficient information.

44. The Audit could not identify any customers within its sample who were from remote Indigenous communities. However, it did find that the lack of staff training relating to customers in remote Indigenous communities may have meant that staff were less equipped to recognise the needs of these customers and support them in accessing banking services.

The BCCC's position

45. The BCCC considers it imperative that banks provide Indigenous cultural awareness training that is open and promoted to all staff members, particularly those in key management and customer facing roles.⁵
46. As noted in paragraph 5 above, the Bank has acknowledged that it breached clause 8 of the 2013 Code.
47. From the information provided, it is not clear how the Bank identified which staff members required mandatory training based on their postcode or area in order to assist remote indigenous customers.
48. All staff members should have been required to undergo mandatory Awareness Training to ensure that remote Indigenous customers received appropriate and adequate assistance in all areas of banking.
49. The Audit could not find any evidence of whether all call centre staff have been trained in identifying and assisting Indigenous customers. Training for frontline staff should be comprehensive and cover all areas of the Code as they may be the first point of contact for some customers.
50. If call centre staff have not undergone mandatory awareness training, they may not be able to appropriately identify and assist remote Indigenous customers in the first instance.
51. Therefore, the BCCC find that the Bank has breached clause 8 of the 2013 Code.

Clause 9 of the 2013 Code

52. Clause 9 of the 2013 Code required banks to train their staff so that they:
- a. can competently and efficiently discharge their functions in compliance with the Code, and
 - b. have an adequate knowledge of the Code and its application

Audit report findings

53. The Audit found that prior to May 2017, no Code specific training existed. Training provided only covered some clauses of the Code across the in-scope period. Some shortcomings in the training designs were as follows:
- a. Between 2014 – 2017, there was no training available which covered customers with special needs
 - b. The training on hardship provisions of the 2013 Code did not cover clause 28.9(a) and (b) regarding early release or seeking advice on the option of release of superannuation benefit to repay a credit facility for a customer who is experiencing financial difficulties.

⁵ [CCMC Special Report: Access to Banking Services by Indigenous Customers](#)

54. In relation to third party training:

- a. Business Unit 1: there was no specific Code training program for third party dealers
- b. Business Units 2 and 3: there was no training available to third party brokers on the 2013 Code requirements. Training provided to brokers covered some of the Code requirements, but documented evidence of this training was not available.

The BCCC's position

55. The [BCCC's Organisational Capability Report](#) emphasises the need for banks to educate staff across the business about the Code's role in customer protection framework and the importance of all staff meeting their Code obligations to customers.
56. The report also highlights that learning and development are crucial for ensuring Code competency among all staff and education about the Code go beyond awareness.
57. 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.
58. Without understanding their Code obligations, staff members will not be able to recognise when Code breaches occur and report them promptly. This affects the bank's ability to remediate any breaches and prevent them from recurring.
59. The Audit demonstrates that some training modules provided by the Bank to the business unit staff members either did not support 2013 Code compliance or only some elements of the training did. Further, the Audit found that third party brokers and dealers (acting on behalf of the Bank) were not provided training for a number of 2013 Code provisions.
60. Therefore, the BCCC finds that the Bank has breached clause 9 of the 2013 Code.
61. Due to the inadequacy of training provided by the Bank, staff within the business units would not have been equipped with the relevant skills or knowledge to discharge its functions in relation to the Code. This may in turn have led to breaches caused by 'human error'.
62. If the Bank did not ensure its staff had the right capabilities and competency to comply with the 2013 Code, there was a high likelihood that customers across the portfolio who were provided a financial service by the business units relating to those provisions would have been affected.
63. The BCCC therefore finds the Bank's breach of clause 9 to be systemic.

Clause 12 of the 2013 Code

64. Clause 12.2(e) of the 2013 Code required banks to specifically mention the availability of certain information in the bank's T&Cs.
65. Clause 12.3 required any T&Cs to include a statement to the effect that the relevant Code provisions apply in the banking services but need not set out those provisions.

66. Clause 12.4 required banks' T&Cs to contain certain information, including the manner in which a customer will be notified of changes, the frequency with which statements of accounts will be provided and a statement that information on current interest rates and standard fees and charges will be made available on request.

Audit report findings

67. The table below outlines the Audit's findings in relation to the business units' compliance with clause 12:

Clause	Details
12.2(e)	All T&Cs for Insurance Premium Funding (IPF) products and all other T&Cs prior to May 2019 (prior to December 2017 for Business Unit 2) lacked information on account opening procedures, complaint handling procedures and did not advise the customer to inform the business unit when in financial difficulty. The T&Cs for some products across the business units did not advise customers to read the T&Cs.
12.3	The T&Cs for all products prior to May 2019 (prior to November 2016 for Business Unit 3) did not include any reference to the Code. Further, the T&Cs for all IPF products did not include any reference to the Code for all years.
12.4(c)	The T&Cs for some products across the business units did not specify the way customers would be notified of the changes to the T&Cs
12.4(h)	The T&Cs for some products across the business units did not specify the frequency of providing statements of accounts
12.4(i)	The T&Cs for some products across the business units did not include a statement that information on current interest rates and standard fees and charges was available on request

The BCCC's position

68. Given that the T&Cs of products across all business units did not contain the information required under clauses 12.2(e), 12.3, 12.4(c), (h) and (i) (as shown in the table above), the BCCC finds that the Bank breached clause 12 of the 2013 Code.

69. The lack of information provided to customers on account opening procedures, financial difficulty, complaint handling and the advisability of reading T&Cs could mean customers across the business units' portfolio were not fully aware of some of the key features and mechanisms available to them as a product holder.

70. Therefore, the BCCC finds the Bank's breach of clause 12 to be systemic.

Clause 15 of the 2013 Code (Operation of Accounts)

71. Clause 15 of the 2013 Code provided a list of descriptive information concerning its banking services that a bank is required to provide a customer, on request.

Audit report findings

72. The Audit report could not identify any documents that addressed clause 15 across all business units.

73. Further, limited training was observed between 2014 –2017 which covered obligations for operation of accounts. For example, one module covered obligations regarding privacy and confidentiality obligations under the Privacy Act but did not explicitly raise awareness for staff to provide general descriptive information on confidentiality and the internal complaints handling procedure.

74. A subsequent module released in May 2017 provided more Code specific training and coverage of these obligations.

The BCCC's position

75. Given that:

- a. there was no identifiable documentation available to customers addressing the requirements of clause 13 across the business units, and
- b. between 2014 – May 2017, staff members were only provided with limited training which covered the obligations for operation of accounts

the BCCC finds that the Bank breached clause 15 of the 2013 Code.

Clause 21 of the 2013 Code (Direct Debits complaints)

76. Clause 21.1(b) of the 2013 Code required banks to take and promptly process a customer's complaint that a direct debit was unauthorised or otherwise irregular.

Audit report findings

77. The Bank verbally informed the Auditors that direct debit complaints received by the business units are part of a quick resolution process and are targeted to be resolved within 5 – 10 days. However, the auditors could not evidence this in the documentation they reviewed.

78. The Audit also found that the business units' policies did not indicate any immediate actions for such direct debit complaints and as such were not mentioned as part of the complaints category that require a higher priority.

The BCCC's position

79. While the BCCC considers that complaints regarding unauthorised or irregular direct debits should be promptly recorded and assessed, it does not require banks to prioritise these over other types of complaints.

80. The BCCC agrees with the Bank that resolving direct debits complaints within 5 – 10 days is considered as 'prompt assessment'. However, based on the Audit review, there is no evidence to suggest that the Bank resolved these complaints within that time period.
81. As noted in paragraph 5 above, the Bank has acknowledged that it breached clause 21 of the 2013 Code.
82. Therefore, based on the above information, the BCCC finds that the Bank breached clause 21 of the 2013 Code.

Clause 27 of the 2013 Code (Provision of Credit)

83. Clause 27 of the 2013 Code required banks to exercise the care and skill of a diligent and prudent banker in forming its opinion about a customer's ability to repay the credit facility before it offers, gives or increases an existing, credit facility.

Audit report findings

84. In relation to Business Unit 1, the Audit identified five files where the care and skill of a diligent and prudent banker in the credit assessment procedures was not applied.
85. The credit assessment was found to be performed on the personal financial position of the director of a company rather than on the legal entity which was a party to the contract.
86. The Bank further noted that a review of its process for approving loans under the Self-Declared Income Policy has identified that verification of the Financial Details Statement to determine serviceability did not occur.

The BCCC's position

87. Given the Audit's findings that Business Unit 1 did not apply the standard required under the 2013 Code when it conducted its credit assessment procedures for five files, the BCCC finds that the Bank breached clause 27 of the 2013 Code.
88. The Bank also identified a process issue affecting its compliance with this Code provision. Therefore, the BCCC finds the Bank's breach of clause 27 to be systemic.

Clause 29 of the 2013 Code (Joint Debtors)

89. Clause 29.1 of the 2013 Code required a bank to not accept a customer as a co-debtor under a credit facility where it is clear, on the facts known to the bank, that the customer will not receive a benefit under the facility.
90. Clause 29.2 required a bank to ensure that a customer understands that they may be liable for the full amount of the debt and what their rights are, before it signs them up as a co-debtor.
91. If the customer is jointly and severally liable under a credit facility, clause 29.3 of the 2013 Code allows the bank to terminate a customer's liability in respect of future advances or financial accommodation upon them giving the bank written notice. This right only applies where the bank can terminate any obligation it has to provide further credit to any other debtor under the same credit facility.

Audit report findings

92. The Audit found the following in relation to clause 29:

Clause	Business Unit	Non-compliance observed	Files affected
29.1	Business Unit 3	Between 2014 – May 2017, there was no training observed which covered obligations for joint debtors.	There were no joint debtor accounts identified in the files sample.
29.2	Business Unit 1	The loan contract only acknowledged that the customer had received a copy of the T&Cs but not inclusive of reading and understanding them.	16 files tested – non-compliance identified in 2 samples.
	Business Unit 2		1 file tested – non-compliance identified in this sample.
29.3	Business Unit 1	The T&Cs noted that a co-debtor could terminate their liability in respect of future advances. However, it did not note that this right only applied where the Business Units can terminate any obligation they have to provide further credit to any other debtor under the same credit facility.	There were no joint debtor accounts identified in the files sample.
	Business Unit 2		There were no joint debtor accounts identified in the files sample.

The BCCC's position

93. As noted in the table above, the Audit finds gaps in the Bank's compliance with clauses 29.1 to 29.3. Therefore, the BCCC finds that the Bank breached clause 29 of the 2013 Code.

94. The table shows that a number of customers within the sample were affected by the Bank's non-compliance with clause 29. Further, since the loan agreement did not advise joint debtors to read the T&Cs before signing, joint debtors may not have been fully aware of their rights and obligations which may have resulted in negative customer impact.

95. Given the above, the BCCC finds that the Bank's breach of clause 29 is systemic.

Clause 31 of the 2013 Code (Guarantees)

96. Clause 31.3 of the 2013 Code required guarantees to contain a statement to the effect that the relevant provisions of the Code apply.

97. Clause 31.4(a) required the bank to provide prominent notice to a guarantor before it can obtain a guarantee. This notice should include information that the guarantor:

- i. should seek independent legal and financial advice
- ii. can refuse to enter into the Guarantee
- iii. take on certain financial risks when providing a guarantee
- iv. can limit their liability, and
- v. can request information about guarantees transaction(s).

98. Clause 31.8 of the 2013 Code required banks to place a warning sign directly above the place where the Guarantor signs.

99. Clause 31.16 stated that if a customer is a director Guarantor:

- a. the bank will tell the customer that:
 - i. they have the right to receive the documents described in clause 31.4(d); and
 - ii. those documents contain important information
- b. the customer may choose not to receive some or all of the documents described in clause 31.4(d)
- c. the bank will tell the customer how they can make these choices
- d. the bank will provide the customer with a copy of any document described in clause 31.4(d) that they have requested.

Audit report findings

100. The Audit report found the following through its customer outcome testing:

Business Units 1 and 2

Clause	Non-compliance – customer outcome testing across review period
31.3	17 files (100%) were non-compliant with this clause as the Guarantees documentation did not include a statement to the effect that the relevant product of the Code apply to the guarantee.
31.4(a)	17 files (100%) identified where compliance could be improved. These files did not contain prominent notice that the guarantor may refuse to enter into the Guarantee, limit their liability or that information about the transaction or facility to be guaranteed can be requested
31.8	12 commercial files were not compliant with this clause. The warning notice provided was not 'substantially in the form required by section 55 of the NCC'.
31.16(a) – (d)	17 commercial files (100%) were assessed as non-compliant with this clause as there was no documentation available to address requirements of this Code provision. This was self-identified by the Business Units as an area of uplift for the 2019 Code.

Business Unit 3

Clause	Non-compliance – customer outcome testing across review period
31.3	10 files (53%) were non-compliant with this clause as the Guarantees documentation did not include a statement to the effect that the relevant product of the Code apply to the guarantee.
31.4(a)	10 files (53%) identified where compliance could be improved. For nine of these samples, the Guarantees documentation did not contain a prominent notice that the guarantor may refuse to enter into the Guarantee or that information about the transaction or facility to be guaranteed could be requested.
31.8	13 files (68%) were not complaint with this clause. The warning notice provided was not 'substantially in the form required by section 55 of the NCC'.

The BCCC's position

101. As noted in the tables above, the business units have not complied with various clauses of the Guarantee provisions of the 2013 Code. Therefore, the BCCC finds that the Bank breached clause 31 of the 2013 Code.

102. As there have been a considerable proportion of customers within the sample size that were subject to the business units' non-compliance with clause 31 of the 2013 Code, the BCCC finds the Bank's breach of this clause to be systemic.

103. Given the significant legal and financial implications a Guarantee may have on a guarantor or customer, the BCCC expects strict compliance with a bank's obligations under the Guarantee provisions of the Code.⁶
104. The breaches identified by the Audit were not one-off instances. Rather, they occurred as a result of inadequacy in the business unit's policies, processes and framework to ensure compliance with clause 31 of the Code.
105. The Audit also found that only some elements of the training provided by the business units in relation to clause 31 supported Code compliance. This indicates that there were gaps in relation to training staff members regarding their obligations under the Guarantee provisions.
106. Staff members play an important role in providing guarantors with key information, explaining the contract and answering any queries so that the guarantor has enough time to consider the information and make an informed decision.
107. If staff members, especially those in lending, are not appropriately and adequately trained, it could result in significant repercussions for customers as well as negative financial impact for both the customer and the bank.
108. While customer impact resulting from non-compliance of the Guarantee provisions may not eventuate until and unless the bank takes enforcement action, this does not negate the seriousness of harm that a Guarantor could suffer at that time.
109. Given the above, the BCCC find the Bank's breach of clause 31 of the 2013 Code to be serious.

Clause 36(g) of the 2013 Code

110. Clause 36(g) of the 2013 Code required banks to co-operate and comply with all requests of the CCMC in pursuance of its functions.

The BCCC's position

111. The CCMC and BCCC have had concerns throughout this investigation about the timeliness and adequacy of the Bank's response to its requests for information.
112. CCMC sent its first information request to the Bank on 11 September 2018 in relation to this investigation. The Bank did not provide an adequate response until 14 December 2018 and certain information remained outstanding in February 2019. The Bank subsequently informed the CCMC that it would need a further three months to collate the relevant data.
113. It appears that the Bank did not have adequate systems and/or processes in place within the bank and its business units in order for it to provide the required information to the CCMC in a timely manner.
114. In a teleconference on 28 August 2019, the BCCC again raised concerns about the Bank's response dated 19 August 2019, noting that it had not sufficiently addressed certain questions.

⁶ See [BCCC's Inquiry Report: Banks' compliance with the Banking Code's Guarantee obligations](#)

115. The CCMC had to continuously follow up with the Bank in order to receive responses or updates and at one stage, the Bank failed to inform the CCMC that its contact person for this investigation was no longer working with the Bank. This complicated the CCMC's review and analysis of responses by providing incomplete or delayed responses.

116. The quality and timeliness of the Bank's responses and its level of engagement with the BCCC improved significantly after early 2019. However, this does not negate the fact that the bank did not provide sufficient and timely information to the CCMC and BCCC to enable it to fulfil its investigate functions effectively and efficiently.

117. The BCCC therefore finds that the Bank breached clause 36(g) of the 2013 Code by not reasonably co-operating and complying with the CCMC's reasonable requests.

Clause 3.2 of the 2013 Code

118. 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

119. The BCCC considers that as the Bank breached various provisions of the Code (as outlined throughout this Finding) this has resulted in the bank breaching its obligations under clause 3.2 to act fairly and reasonably towards its customers in a consistent and ethical manner.

120. The BCCC finds that the Bank:

- a. did not have adequate systems, processes or policies in place to ensure its business units were complying with the 2013 Code
- b. did not have sufficient oversight of its business units to identify that they were not complying with the 2013 Code for a number of years
- c. breached ten provisions of the 2013 Code in relation to its three business units – six of which are systemic and one serious
- d. needed to make numerous changes to its business units' documents and processes to enable it to comply with its Code obligations
- e. did not provide sufficient training to the staff members or third-party brokers regarding the requirements of the Code, and
- f. did not co-operate and comply with reasonable requests of the CCMC in pursuance of its functions (see assessment of clause 36(g) above).

121. The BCCC is not satisfied that the business units' engagement with its customers:

- a. was guided or informed by clause 3.2 and the key commitments outlined under Part C of the 2013 Code,
- b. met the community's standards and expectations, and
- c. met the standards set by AFCA (or its predecessor, FOS).

122. The BCCC therefore finds that the Bank (and its business units as the Code-subscribing entity) did not act fairly, reasonably or ethically in a consistent manner and therefore breached clause 3.2 of the 2013 Code.

123. The Bank notes the following reasons as to why the relevant business units were not complying with the 2013 Code:

- a. The Bank did not apply the focus on the 2013 Code at that time that it would apply today, nor did it approach the 2013 Code in the way it would today
- b. In relation to Business Units 1 and 2, structural changes and other business issues prevalent since 2015 diverted management focus away from ongoing consideration of the 2013 Code. However, there has been a change in ongoing maturity in the way the bank now approaches changes to its business structures and changes due to external obligations.

124. The BCCC takes a Code-subscribing bank's compliance with the Code seriously and this applies to all relevant subsidiaries and/or business units. Banks should be able to promptly identify which of its business units are required to comply with the Code and apply robust monitoring and oversight to ensure these business units meet the Code's standards and requirements.

125. The Bank has not provided adequate or compelling reasons as to why its relevant business units were not complying with the 2013 Code. The Bank's overall failure to maintain adequate oversight of its governance matters and the compliance framework of its business units has likely resulted in detrimental consequences for a number of customers.

126. Taking into account the number of breaches, the impact it might have had on the customers overall, the lack of the bank's oversight of its business units and its non-cooperation with the CCMC during the early stages of the investigation, the BCCC finds the Bank's breach of clause 3.2 of the 2013 Code to be systemic and serious.

Remediation

Corrective actions

127. The Bank has undertaken a range of corrective actions to prevent recurrence of the concerns identified in this Finding, completed internal reviews and is also currently remediating customers that were impacted, where appropriate.

128. In summary, the corrective actions include:

- a. **Banking Code Implementation Project** – a program that identified and uplifted activities to ensure compliance with the 2019 Code was completed at the end of June 2019. Streams of work included:
 - i. **Document Refresh:** a major project to rewrite consumer collateral in the Business Units, update T&Cs and other relevant collateral to ensure the right and obligations between customers and banks are clearly articulated.
 - ii. **Process Updates:** implementation of process changes which resulted in ceasing to provide certain types of guarantees and changing the way that guarantees were taken.
 - iii. **Compliance plans** reviewed and updated for the Business Units
 - iv. **Training uplift:** implementation of a number of training initiatives to uplift banker/customer interaction
- b. Conducting an **internal independent line 2 review** on 2 July 2021 that assessed the control environment in relation to external Audit review recommendations against compliance with the 2019 Code. While the review identified some areas for improvement, it did not identify any areas of non-compliance with the 2019 Code.

129. The Bank is also providing the following additional training for its business units' staff members to address any gaps in its non-compliance with clause 9 of the 2013 Code:

- a. **People Leader Training:** relevant leaders were provided training and guidance on helping their teams understand the Code changes and what it means for their roles
- b. **Indigenous Customers Cultural Awareness:** eLearning module and face-to-face training for staff who regularly interact with Indigenous customers
- c. **Vulnerable Customers Role Specific:** additional face-to-face training, providing additional content, particularly on vulnerability and extra care in different scenarios, and support options
- d. **Guarantor Role Specific:** face-to-face training for staff involved in lending products and processing loan applications.
- e. **Products:** communications and support tools on updated product features
- f. **Third Party:** communications and training provided to third party brokers and motor dealers

130. The BCCC acknowledges the corrective actions and organisational changes undertaken by the Bank to ensure it has appropriate and adequate systems, policies and practices in place to comply with the Code moving forward.

Customer remediation

Guarantees

131. The Bank will be remediating all guarantors who were impacted by the breaches for the in-scope period.⁷ It has classified the impacted accounts into three cohorts as per the table below:

Cohorts
Cohort 1 Guarantors that have suffered financial harm due to legal action
Cohort 2 Guarantors that may have suffered financial harm due to collections activity
Cohort 3 Guarantors on active accounts where enforcement or collections activity has not occurred

132. The Bank is in the process of remediating customers under each cohort:

- a. Cohort 1: The Bank processed remediation payments on 28 and 30 July 2021 to guarantors that it confirmed suffered financial harm due to legal action.
- b. Cohort 2: On 29 June 2021, the Bank sent letters to the pilot group (17% sample of guarantors from Business Unit 3). In its communications, the bank asked the guarantor whether they had made payments directly to the bank on behalf of the borrower, or to the borrower to them pay to the bank after the bank had issued a default notice to the borrower. If so, the bank will make remediation payments to them.
- c. Cohort 3: The Bank will seek to prevent any future enforcement activity and will not rely on the guarantee for these customers. The bank is designing new processes, or enhancing existing processes, to facilitate the prevent of any enforcement activity against them.

Provision of credit

133. Business Unit 1 has committed to remediating customers who suffered harm from completing an *Income & Expenditure* form marked 'Individual Use Only'. This may have led them to provide financial information on the guarantor director as opposed to the company borrower.

134. Business Unit 1 will review all company borrower accounts approved from 1 March 2015 where either an *Income & Expenditure* or *Financial Details* form was a condition of approval. As a general principle, the customers who completed the relevant forms and suffered collections enforcement will be remediated.

135. Overall, given the number of customers impacted, the BCCC understands that customer remediation will be ongoing for the Bank.

⁷ In-scope period: Business Unit 3 (1 February 2014 to 30 June 2019), Business Units 1 and 2 (1 March 2015 to 30 June 2019).

Application of sanctions

136. Section 7.1 of the BCCC Charter gives the BCCC power to apply sanctions for serious or systemic breaches of the Code⁸ 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.

137. For the reasons outlined in paragraphs 119 – 126 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.⁹ 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

⁸ 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'.

⁹ As per clause 215(c) of the 2019 Code and clause 7.2(c) of the BCCC Charter

Relevant 2013 Code obligations

Clause 3.1(c):

We will:

...

(c) provide general information about the rights and obligations that arise out of the banker and customer relationship in relation to banking services;

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 7:

We recognise the needs of older persons and customers with a disability to have access to transaction services, so we will take reasonable measures to enhance their access to those services.

Clause 8(a):

If you are a member of a remote Indigenous community, we will take reasonable steps to make information about banking services that may be relevant to you available in an accessible manner;

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 12.2(e):

The terms and conditions of our banking services will:

...

- (e) draw attention to the availability of the general descriptive information and where relevant, specifically mention the availability of information about account opening procedures, our obligation regarding the confidentiality of your information, complaint handling procedures, bank cheques, the advisability of you informing us promptly when you are in financial difficulty and the advisability of you reading the terms and conditions application to the relevant banking service.*

Clause 12.3:

Any written terms and conditions will include a statement to the effect that the relevant provisions of this Code apply to the banking service but need not set out those provisions.

Clause 12.4(c), (h), (i):

We will include in, or with, our terms and conditions:

- (c) the manner in which you will be notified of changes to the terms and conditions, fees and charges and interest rates.*

...

- (h) *subject to clause 26, the frequency with which statements of account will be provided;*
- (i) *a statement that information on current interest rates and standard fees and charges is available on request*

Clauses 15.1(b), (c), (e), (f):

We will provide to you or a prospective customer, on request, general descriptive information concerning our banking services, including:

- (b) *our obligations regarding the confidentiality of your information;*
- (c) *complaint handling procedures;*
- ...
- (e) *the advisability of you informing us promptly when you are in financial difficulty so that we may discuss your situation; and*
- (f) *the advisability of you reading the terms and conditions applying to the relevant banking service.*

Clause 21.1(b):

We will take and promptly process your complaint that a direct debit was unauthorised or otherwise irregular.

Clause 29.2

We will, before signing you up as a co-debtor, take all reasonable steps to ensure that you understand that you may be liable for the full amount of the debt and what your rights are under clause 29.3.

Clauses 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;*

Clause 27:

We will exercise the care and skill of a diligent and prudent banker in selecting and applying our credit assessment methods and in forming our opinion about your ability to repay the credit facility.

Clause 36(g):

We agree:

- ...
- (g) *to co-operate and comply with all reasonable requests of the CCMC in pursuance of its functions;*