

Banking Code Compliance Committee Operating Procedures

The Operating Procedures were developed pursuant to clause 13.1 of the BCCC Charter to support the BCCC's compliance monitoring program and key monitoring activities.

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Introduction

1. The Banking Code Compliance Committee (BCCC) is an independent compliance monitoring body established under clause 207 of the Banking Code of Practice (the Code).
2. The purpose of the BCCC is to monitor and drive best practice Code compliance. To do this the BCCC:
 - a. examines banks' practices
 - b. identifies current and emerging industry wide problems
 - c. recommends improvements to bank practices
 - d. sanctions banks for serious compliance failures, and
 - e. consults and keeps stakeholders and the public informed.

Compliance Monitoring program

3. To fulfill its purpose, the BCCC has a comprehensive compliance program that actively monitors Code subscribing banks' (banks) compliance with the Code.¹
4. The BCCC's key monitoring activities are:
 - a. inquiries
 - b. investigations
 - c. data collection (the Banking Code Compliance Statement).

Code Monitoring Priority Framework

5. The BCCC conducts its compliance monitoring program with reference to its Code Monitoring Priority Framework.
6. The Code Monitoring Priority Framework:
 - a. ensures that the BCCC's monitoring work focuses on industry-wide serious and systemic issues and leads to improved banking practice
 - b. operates like a risk model to identify which areas of banks' compliance with the Code the BCCC should prioritise as part of its monitoring and investigation activities.
7. The BCCC uses data analytics and a subjective assessment of both quantitative and qualitative information to understand the significance of known issues or identify emerging problems.

¹ Clause 2.1 of the BCCC Charter (Charter) also empowers the BCCC to monitor and investigate Code subscribing banks' compliance with the 2013 and 2004 Codes, as applicable, in accordance with the principles and powers set out in the Charter.

8. The BCCC records, assesses and tracks information from a wide variety of sources including:
- a. Code-subscribing banks
 - b. consumer Code breach allegations
 - c. consumer advocacy organisations (for example, financial counselling organisations, community law centres and Legal Aid)
 - d. consumer focus groups
 - e. the BCCC's Small Business and Agribusiness Advisory Panel
 - f. the Australian Financial Complaints Authority (AFCA)
 - g. regulators and other government bodies
 - h. the financial services Royal Commission and other major inquiries
 - i. other stakeholder engagement activities, and
 - j. general media coverage and publications.
9. There are three stages to the operation of the framework. The BCCC:
- a. collects data from banks² and other parties³
 - b. assesses this information to identify and prioritise issues which warrant further examination⁴
 - c. conducts a monitoring activity to address the issues identified.
10. The output of the priority assessment is both influenced by and influences the BCCC's compliance monitoring activities. For example, the BCCC may identify an issue from its Banking Code Compliance Statement that, when assessed within the context of the wider framework, requires the BCCC to conduct a targeted inquiry into one or several banks' compliance with the Code.

Operating Procedures

11. To support its compliance monitoring program and its key monitoring activities, the BCCC has developed four operating procedures:
- a. Inquiries
 - b. Investigations
 - c. Making findings of non-compliance
 - d. Imposing sanctions.
12. These operating procedures were developed pursuant to clause 13.1 of the BCCC Charter and are set out below.

² Clauses 4.1 (a) and 4.2 of the Charter

³ Clauses 4.1 (b) and 4.5 of the Charter

⁴ Clause 3.1 (b) of the Charter

Section 1 – Inquiries

Inquiries

13. The BCCC conducts two types of inquiries:

- a. 'Major inquiries' typically monitor all banks' compliance with a broad Code obligation. They can be exploratory in nature and seek to identify good practice.
- b. 'Targeted inquiries' examine a narrow issue across the industry or a smaller subset of banks or a concern about a single bank's compliance with the Code.

Monitoring methods

14. The BCCC may use one or more of the following monitoring methods in either type of inquiry, as set out in clauses 4.1 to 4.5 of the Charter:

- a. require a bank to provide, or provide access to, information, documents or systems.
- b. require a bank to provide an appropriate representative to attend an interview.
- c. visit a bank's premises.
- d. require a bank to conduct an internal or external audit.
- e. require a bank to complete a questionnaire.
- f. conduct a desktop audit of material provided by a bank or its website.
- g. conduct or commission market research or mystery shopping activities.
- h. request a person who alleges a breach of the Code to provide information.
- i. engage with and/or seek information from third parties. Third parties may include:
 - i. The BCCC's Small Business and Agribusiness Advisory Panel
 - ii. AFCA
 - iii. the Australian Securities & Investment Commission (ASIC)
 - iv. the Australian Competition & Consumer Commission (ACCC)
 - v. the Australian Prudential Regulation Authority (APRA)
 - vi. the Office of the Australian Information Commissioner
 - vii. the Australian Small Business and Family Enterprise Ombudsman
 - viii. financial counsellors
 - ix. state based legal aid organisations
 - x. community legal centres, and
 - xi. any other relevant consumer, academic, government or private sector organisation or individual that the BCCC considers may assist it in its role to monitor compliance with the Code

Inquiry schedule

15. Where possible, the BCCC will give banks advance notice of a major inquiry and publish a notice of its intention to conduct an inquiry in the BCCC's annual business plan.

16. The BCCC will aim to address emerging priorities in a timely manner and may, as a result, provide limited notice before it undertakes some major inquiries and most targeted inquiries.

17. Where possible, the BCCC will provide notice of the full lifecycle of a major inquiry. This includes the time frame for scoping, data collection, engagement, reporting, and follow up.

18. Ordinarily the stages of a major inquiry will include:

- a. research and scope (establishing purpose and methodology)
- b. initial consultation
- c. information gathering
- d. assessment and analysis
- e. individual feedback and engagement with banks
- f. public reporting (including any recommendations)
- g. requests for banks to inform the BCCC about how they will address the findings and recommendations
- h. follow up with banks on the implementation of recommendations, and
- i. ongoing compliance monitoring through data collection or other means as appropriate

19. A targeted inquiry may follow the same stages as a major inquiry (above) or be undertaken in accordance with the procedure for a BCCC Investigation (see **Section 2** below).

Banks' obligations

- 20. In response to reasonable requests from the BCCC, banks must cooperate, investigate and report back to the BCCC within 21 days unless otherwise agreed, as outlined in clause 4.3 of the Charter.
- 21. If any of the exceptions listed under clause 4.3 i) to iv) of the Charter apply to a request from the BCCC, a bank must inform the BCCC, preferably once the bank is aware that the exception applies and certainly within 21 days of the BCCC's request. The bank's response should be sufficiently detailed to satisfy the BCCC that the exception applies.
- 22. Clause 213 of the Code requires banks to co-operate and comply with all reasonable requests of the BCCC in the performance of its monitoring and investigative activities. The BCCC may assess a bank's compliance with this clause during the course of an inquiry or investigation.
- 23. If the bank considers that a request made by the BCCC is not reasonable, the bank should discuss its concerns with the BCCC.

Reporting

- 24. The BCCC may issue one or more of the following types of report or publication to inform stakeholders of the outcomes of an inquiry:
 - a. individual reports to each bank to highlight any specific issues the BCCC has identified.
 - b. a major report that sets out the findings and recommendations at an industry level.
 - c. guidance notes developed or amended to reflect the BCCC's approach to compliance with a Code obligation.
 - d. case studies that demonstrate how a Code obligation should apply in practice.
 - e. smaller reports or news articles on the BCCC website that outline findings of smaller targeted inquiries.

Section 2 – Investigations

Investigations

25. The BCCC is empowered to investigate alleged breaches of the Code. The BCCC will give priority to matters it considers to be serious or systemic.
26. Clause 5.1 of the Charter allows the BCCC to commence a compliance investigation:
- a. as an outcome of the BCCC's monitoring and information gathering activities.
 - b. in response to an allegation, by any person, that a bank has breached the Code, provided that the allegation is made within two years of the complainant becoming aware of the events that gave rise to that allegation.
27. Where a bank subscribed to the 2004 and/or 2013 Code, the BCCC may, as it considers appropriate, monitor and investigate that bank's compliance with those Codes in accordance with clause 2.1(b) of the Charter.
28. This Investigations Procedure sets out how the BCCC will investigate Code breach allegations it receives from:
- a. members of the public
 - b. consumer representatives such as financial counsellors, community legal centres, and Legal Aid
 - c. AFCA, ASIC and the Australian Banking Association (ABA), and
 - d. any other individual or body.
29. The BCCC will operate in accordance with its Privacy Policy when it collects, stores and deals with an individual's personal information during the course of an investigation or inquiry. The BCCC's Privacy Policy is available on its website.

Investigations procedure

Stage 1: Triage

30. The BCCC will acknowledge notification of an allegation of a Code breach within 48 hours of receiving it.
31. The BCCC will then conduct a preliminary assessment to determine whether it has the power to investigate. Under clause 5.3 of the Charter, the BCCC must not commence a compliance investigation where the allegation:
- a. relates to a bank's commercial judgement in a decision about lending or security
 - b. has not been made within two years of the complainant becoming aware of events that give rise to the allegation, unless by mutual agreement between the BCCC and the bank
 - c. is based on the same events and facts as a previous allegation to the BCCC by the person making the new allegation
 - d. is, or will be, heard by another forum, noting that if the relevant forum has declined to determine whether a breach has occurred, the BCCC can consider the matter
 - e. has regard to matters that are not directly related to compliance with the Code.

32. The BCCC may gather additional information from the relevant parties about the allegation to inform its preliminary assessment.
33. Where the BCCC decides that an allegation is excluded from the scope of its investigative powers, it will close the matter and notify the person who made the allegation. The BCCC will capture and retain any information relevant to its monitoring activities (pending or future).

Stage 2: Assessment

34. If an allegation of a Code breach falls within its jurisdiction, the BCCC will assess whether it is appropriate to investigate, taking into account the powers set out in clause 211 of the Code.
35. As part of its assessment, the BCCC may take into account anything it considers reasonable and appropriate, such as:
 - a. the nature of the allegations, including the significance of the alleged breach
 - b. the period of time since the alleged event occurred
 - c. whether another forum may be more appropriate
 - d. whether the matter is frivolous or vexatious
 - e. whether the BCCC has undertaken previous work to monitor or review practices and procedures of the bank.

36. Notwithstanding the above criteria, the BCCC retains the discretion to decide whether or not to commence a compliance investigation, as granted by clause 5.2 of the Charter.
37. Where the BCCC exercises its discretion and decides not to commence a compliance investigation, it will close the matter and notify the person who made the allegation. The BCCC will capture and retain any information relevant to its monitoring activities (pending or future).

Stage 3: Investigation

38. If the BCCC decides to commence a compliance investigation, it will investigate the allegation in accordance with clauses 5.4 to 5.6 of the Charter.
39. The BCCC will use one or more of the powers conferred to it through the Charter to investigate Code breach allegations.
40. Throughout the investigations process, the BCCC retains the discretion granted by clause 5.2 of the Charter to decide whether to continue or discontinue a compliance investigation.
41. Where the BCCC exercises its discretion and decides to conclude an investigation or inquiry without making any findings, it will close the matter and notify both the bank and the person who made the allegation. The BCCC will capture and retain any information relevant to its monitoring activities (pending or future).

Stage 4: Concluding an investigation

42. Where the BCCC exercises its discretion to commence an investigation or inquiry, it may proceed to make a Finding outlining whether the BCCC finds that the bank breached the Code.

43. When making a Finding, the BCCC will have regard to the process set out in **Section 3** of these operating procedures.
44. Consistent with the BCCC's purpose to drive best practice Code compliance, the BCCC may publish observations, recommendations, and/or guidance arising from any of its findings on a de-identified basis to encourage continuous improvement within the banking industry.
45. Where the BCCC decides to impose a sanction to name a bank, it may apply its discretion to publish an identified Finding accompanied by a Notice of Sanction on its website (see **Section 4**).
46. The BCCC may notify the person who made an allegation of a relevant decision, depending on the circumstances of the investigation.
47. The BCCC will endeavour to progress and conclude an investigation in a timely manner. Timeframes for each stage of an investigation will be determined on a case by case basis. However, the BCCC will aim to conclude investigations within 12 months and will provide the parties with at least quarterly updates

Stage 5: Corrective actions and customer remediation

Corrective actions

48. Where the BCCC exercises its power to make a Finding that a bank has breached one or more Code obligations as a result of an investigation or inquiry, the BCCC may request the bank to provide information on the steps it proposes to take to fix the cause(s) of the breach(es) and improve existing practice.
49. The BCCC may monitor and/or provide feedback on the adequacy and appropriateness of the bank's implementation of its corrective actions and efforts to ensure compliance with the Code.
50. Where appropriate, the BCCC may also make additional inquiries and/or conduct additional monitoring activities to ensure that the bank has effectively and adequately implemented its corrective actions.

Customer remediation

51. It is a bank's responsibility to develop and implement plans to remediate customers who have suffered loss or detriment, whether monetary or non-monetary, as a result of a Code breach, taking into account any relevant regulatory guidelines.
52. The BCCC will not approve or oversee a bank's customer remediation plan and will not provide feedback on the adequacy of compensation to be provided to a customer as a result of a bank's non-compliance with the Code.
53. Where appropriate, the BCCC may make further inquiries and comments about a bank's customer remediation plan and request updates as to its progress and completion.

Stage 6: Sanctions

54. Where the BCCC identifies that a bank has breached the Code, the BCCC is authorised to impose sanctions in accordance with clause 214 of the Code and clause 7.1 of the Charter.
55. When applying a sanction, the BCCC will have regard to **Section 4** of these operating procedures.

Section 3 – Making a Finding

Making a Finding

56. Where the BCCC carries out an investigation or inquiry and finds that the bank has complied or failed to comply with the Code, it may, at its discretion and pursuant to these operating procedures, issue a Finding.

57. The process by which the BCCC will make a Finding is set out below.

Before the BCCC makes a Finding

58. Before a Finding is made, the BCCC will give the bank and, if applicable, the person who has made the allegation, notice of the BCCC's intention to make a Finding (Notice of Proposed Finding).

59. The Notice of Proposed Finding will include:

- a. a brief description of the BCCC's proposed findings and the basis on which it made the findings
- b. comments as to whether any breach identified is serious and/or systemic, and
- c. comments on the corrective actions undertaken by the bank to prevent recurrence of the breach(es) and to remediate customer(s) (see **Section 2, Stage 5: Corrective actions and customer remediation**).

60. The BCCC will issue the Notice of Proposed Finding to the bank and, if applicable, the person who has made the relevant allegation.

61. The relevant parties will be requested to provide their comments on the Notice of Proposed Finding within 21 days or as otherwise agreed.

Making a Finding

62. After the BCCC has allowed a reasonable timeframe for the relevant parties to respond and provide final comments to its Notice of Proposed Finding, the BCCC may proceed to make a Finding.

63. Pursuant to clause 11.3 of the Charter, the BCCC will exercise its power to make a Finding and cannot delegate that power.

64. Where the BCCC makes a Finding that a bank has breached the Code, it will include:

- a. a brief description of the BCCC's findings and the basis on which it made the findings
- b. comments as to whether the breach identified is serious and/or systemic
- c. comments on the corrective actions undertaken by the bank to prevent recurrence of the breach(es) and to remediate customer(s) (see **Section 2, Stage 5: Corrective actions and customer remediation**), and
- d. Good Practice Guidance setting out the BCCC's expectations for how banks should ensure ongoing compliance with the applicable Code provisions.

65. Once a Finding has been made, the BCCC will notify the bank and, if applicable, the person(s) who made the allegation (notification of a Finding). In instances where a broader inquiry was initiated as a result of individual customer allegation(s), the BCCC may provide the relevant customers with a copy of the BCCC's outcome.

66. Where applicable, the notification of a Finding of non-compliance to the bank will include information on whether the BCCC is considering imposing sanctions on the bank (see **Section 4**). The bank will then be provided 21 days to comment on the proposed sanction.
67. Where the BCCC is not applying a sanction, the notification of a Finding to the bank will inform the bank that the BCCC will publish its Finding on its website on a de-identified basis. The bank will then be provided five business days before publication of the Finding to notify the BCCC if they have any concerns.

Section 4 – Imposing sanctions

68. The Code empowers the BCCC to impose sanctions. Specifically, clause 214 of the Code 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 has 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.*

69. The BCCC may apply sanctions to a bank for a breach of the Code where it can establish that at least one of the subsections under clause 214 apply.

70. With respect to the sanctions available to the BCCC, clause 215 of the Code states:

The BCCC may impose one or more sanctions after considering the seriousness of the breach. Sanctions available to the BCCC are:

- a. requiring the bank to rectify or take corrective action on the breach identified;*
- b. requiring a bank to undertake a compliance review of our remediation actions;*
- c. formally warning a bank*
- d. requiring a bank to undertake a staff training program on the Code;*
- e. naming a bank in the BCCC annual report or website; and*
- f. reporting serious or systemic ongoing instances where a bank has been non-compliant to ASIC.*

71. Where the BCCC identifies that the bank has breached one, both or all of the Codes, the BCCC may apply one or more of the sanctions from clause 215 of the Code, pursuant to clause 214 of the Code and these operating procedures.
72. The BCCC will advise a bank whether it is considering imposing a sanction in the notification of Finding (see **Section 3**) and will provide the bank with a further 21 days, or as otherwise agreed, to provide final comments regarding the BCCC's proposed sanction(s).
73. The BCCC will take the bank's comments into consideration before making a final decision on whether it will impose the applicable sanction(s).

Sanction – warning a bank

74. Where the BCCC decides to apply a sanction to formally warn a bank (clause 215(c)) for breaches of the Code, the BCCC will advise the bank that, should it find similar instances of non-compliance in the future, the BCCC may apply another sanction.

Sanction – naming a bank

75. The naming sanction (clause 215(e)) will be applied in more serious cases.
76. Where the BCCC decides to apply a sanction to name a bank (clause 215(e)) for breaches of the Code, the BCCC has the discretion to publish the Finding of non-compliance, identifying the bank, on its website.
77. In addition to the Finding of non-compliance, the BCCC will publish a Notice of Sanction on its website. This Notice, identifying the bank, will contain a summary of the BCCC's reasons for its findings and decision to impose a naming sanction.
78. The BCCC will provide the bank with at least 48 hours' notice before it publishes the identified Finding and Notice of Sanction. The BCCC will also proceed to name the bank in its Annual Report.

Section 5 – Civil and criminal implications

Civil implications

79. Non-compliance with certain provisions of the Code may also constitute breaches of the law. Where the BCCC finds that a bank's breaches of these provisions of the Code to be serious or systemic ongoing breaches, the BCCC may apply a sanction under clause 215(f) of the Code to report the matter to ASIC.
80. In instances where the BCCC does not impose a sanction under clause 215(f), the bank has an obligation to consider whether it should report any breaches of the law to the relevant authorities.

Criminal implications

81. The BCCC generally applies its discretion to not investigate matters which involve criminal conduct by a bank. The BCCC may suggest or request the person who made an allegation about the criminal conduct to contact other more appropriate forums or authorities.