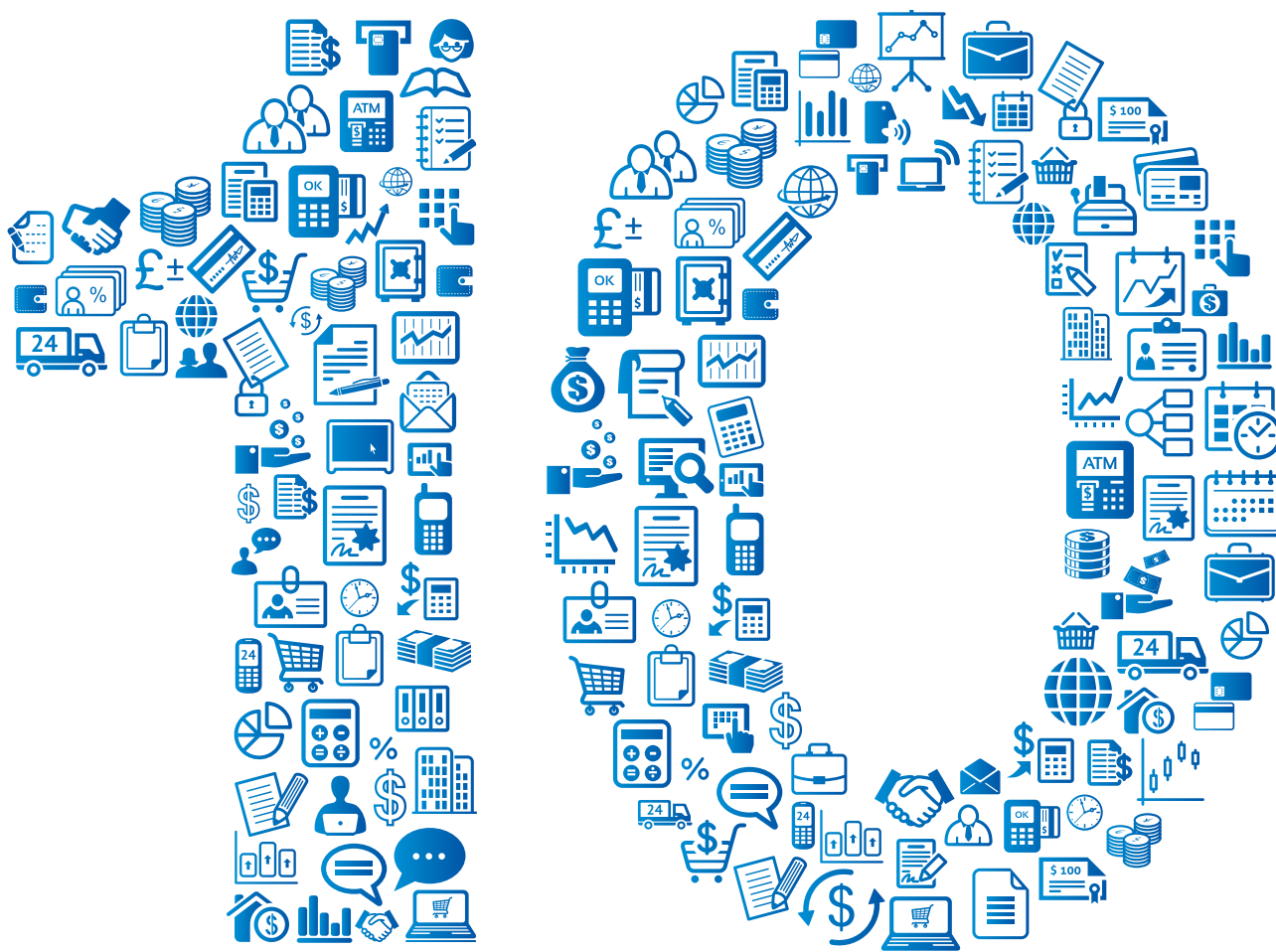




CODE COMPLIANCE MONITORING COMMITTEE  
Code of Banking Practice  
2013–14 Annual Report

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10 years of working together for better customer banking experiences.

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## About this report

A reference in this report to a bank means a subscribing bank as defined on Page 3.

### The Code of Banking Practice

On 31 January 2013 the ABA published the 2013 version of the Code of Banking Practice, which came into effect on 1 February 2014. From 1 February 2014 the conduct of banks is considered under the 2013 version of the Code, which is referred to in this report as 'the Code (2013 version)'. Before 1 February 2014, banks' conduct was considered under the 2004 version of the Code, which is referred to in this report as 'the Code (2004 version)'.

### Data reporting

This report covers the period 1 July 2013 to 30 June 2014. Until 31 January 2014, banks reported against the obligations of the Code (2004 version). This report therefore contains information related to compliance with both the 2004 and 2013 versions of the Code.

## The Code Compliance Monitoring Committee (CCMC) is an independent compliance monitoring body established under clause 36 of the 2013 Code of Banking Practice.

### CCMC Purpose

The CCMC's purpose is to ensure compliance with the Code and thereby contribute to the improvement of standards of practice and service by banks.

Its aim is to be a trusted and valued partner, helping the subscribing banks to comply with their Code obligations, ultimately creating a better banking experience. To achieve this, the CCMC and its Secretariat adopt a collaborative approach to working with the subscribing banks.

### Principles

The CCMC bases its work on five key principles:

1. **Independence** in its operations, governance and decision-making.
2. **Responsibility** in undertaking its functions, for the benefit of both the banking industry's self-regulatory scheme and the broader regulatory environment in which the banks operate.
3. **Accountability and transparency** in its processes, reporting, communications and engagement with stakeholders.
4. **Interdependence** including the establishment of strategic working partnerships and a strong and reputable brand.
5. **Accessibility** to its code monitoring and investigations services.

### Key functions

The CCMC's powers and functions are set out in its Mandate. The Mandate is published by the Australian Bankers' Association (ABA) along with the Code. By adopting the 2013 version of the Code, the subscribing banks have endorsed this Mandate. The Code framework states that the CCMC has the following functions:

- to monitor the subscribing banks' compliance with the Code's obligations
- to investigate, and to determine, an allegation from any person that a subscribing bank has breached the Code, and
- to monitor any aspects of the Code that are referred to the CCMC by the ABA.

In addition, the CCMC engages with stakeholders with a view to ensuring transparency about its compliance activities and influencing positive changes in industry behaviour.

The CCMC's role does not include:

- mediating and resolving individual disputes
- making declarations on the rights and entitlements of parties, or
- monitoring or investigating alleged breaches by banks that have not subscribed to the Code.

### Code Of Banking Practice

The Code of Banking Practice (the Code) is a voluntary code of conduct that sets standards of good banking practice for subscribing banks to follow when dealing with persons who are, or who may become, an individual or small business customer of the bank, or their guarantor.

The Code is published by the Australian Bankers' Association (ABA). A copy can be downloaded from the ABA's website at: <http://www.bankers.asn.au/Industry-Standards/ABAs-Code-of-Banking-Practice>.

Banks that have subscribed to the Code (subscribing banks) have made a commitment to work continuously to improve the standards of practice and service in the banking industry, promote better informed decisions about their banking services and act fairly and reasonably in delivering those services.

Given the market share held by subscribing banks, the principles and obligations set out in the Code apply to most banking services delivered to individuals and small businesses across Australia. The Code forms an important part of the broader national consumer protection framework and the financial services regulatory system.

# 2013-14 Year at a glance

The Code Compliance Monitoring Committee (CCMC) is an independent compliance monitoring body established under clause 36 of the 2013 Code of Banking Practice.



## THE CODE IN NUMBERS

**95%** of the Australian retail banking market covered by the Code

**\$627b** value of household deposits held by banks subscribing to the Code

**4,953** number of branches operated by subscribing banks

**1/02/14** the date the Code (2013 version) commenced

**18** the number of banks that have adopted the Code (2013 Version) (13 banking groups) (see page 10)

**5** the number of Guidance Notes developed to help stakeholders understand how the CCMC will interpret its powers and functions under the Code (2013 version) and Mandate. (see page 10)

Based on APRA figures at 30 June 2014



## CCMC STAKEHOLDER ENGAGEMENT



### BANKS

**33** meetings with Code subscribing banks (see page 29)

**19** participants representing 11 banks and the ABA attended the CCMC annual Bank Forum (see page 29)



### CONSUMER ADVOCATES

**5** training sessions for financial counsellors on Code awareness (see page 28)

Code toolkit and Code transition guide developed (see Page 28)

Professional development content on Code awareness developed for FCRC diploma program (see Page 28)



### OTHER STAKEHOLDERS

**20** meetings with the Australian Bankers' Association (ABA), Financial Ombudsman Service (FOS) and Australian Securities and Investments Commission (ASIC) (see page 29)

**2** meetings with Small Business Commissioners (see page 28)



### COMMUNICATIONS

**11** publications issued

**December 2013** – redeveloped website launched (see page 29)

**4,854** visitors to the CCMC website (see page 29)

**3,367** new visitors to the CCMC website

**100%** increase in subscribers to The Bulletin, the CCMC's e-newsletter, since 1 July 2013 (see page 29)



## COMPLIANCE MONITORING AND BREACH REPORTING

**5,762** self-reported breaches of the Code by banks, down 23.7% (see page 12). This includes:

**1,745** breaches of the Privacy and Confidentiality obligations, up 3.6% (see page 16)

**2,247** breaches of Key Commitments and General Obligations, up 9% (see page 16)

**8** significant breaches of the Code self-reported by banks (see page 12)

**1.1 million** complaints reported by banks, up 53% (see page 20)

**91%** of complaints resolved within five days by banks

**288,139** requests for financial difficulty assistance received by banks, up 32.5% (see page 20)

**63%** of financial difficulty requests granted assistance, down from 70.7% in 2012–13 (see page 20)



## INVESTIGATIONS

**33** new investigations started, raising 48 alleged Code breaches – six related to the Code (2013 version) (see page 24)

**28** investigations finalised including two by Determination and nine by Delegated Decision (see page 27)

**26** Code breaches identified (see page 27)



## CODE SUBSCRIBING BANKS

AMP Bank Limited

Australia and New Zealand Banking Group Limited

Bank of Queensland Limited

Bank of Sydney Ltd

Bendigo and Adelaide Bank

Citigroup Pty Limited

Commonwealth Bank of Australia (including its subsidiary Bank of Western Australia)

ING Bank (Australia) Limited

HSBC Bank Australia Limited

National Australia Bank Limited

Rabobank Australia Limited

Suncorp–Metway Limited

Westpac Banking Corporation (including its subsidiaries St George Bank, Bank of Melbourne and Bank SA)

# Independent Chair and Chief Executive Officer's message

It has been a year of significant change for the CCMC and the Code of Banking Practice – with both now well positioned to build on existing high standards of service and practice in the Australian banking industry.



A handwritten signature in black ink, appearing to read 'Doogan', written in a cursive style.

**Christopher Doogan AM**  
*Independent Chair*

On 1 February 2014, a revised Code of Banking Practice came into effect. It reinforces consumer protection in a range of areas, including debt collection and financial difficulty, and introduces new obligations when servicing remote Indigenous communities.

By adopting this Code, banks have accepted these strengthened obligations and reconfirmed their commitment to act fairly, honestly and transparently in their dealings with consumers and small businesses.

Banks have engaged proactively and openly with the CCMC throughout the transition to the new Code. They have advised us that they reviewed their processes and procedures and have successfully aligned their operations to the Code's revised obligations.

At the same time, the CCMC has undergone a transition of its own. Since 1 February 2013, the Committee has been operating under a new Mandate that has changed the way the CCMC works in several ways.

While this governance framework has not expanded the CCMC's investigative powers, it has given the Committee more discretion in deciding what matters to pursue or discontinue, and the ability to make delegated decisions. Both these measures have streamlined the CCMC's decision-making processes.

Under the new Mandate, the CCMC can no longer monitor, investigate or report on breaches of the Code's 'key commitments' and 'compliance with laws' obligations unless a breach of another clause is also identified. The CCMC remains restricted by the 12-month rule when events that might give rise to a breach allegation have been known, or should have been known, for more than 12 months. We will continue to monitor the impact of these limitations in 2014–15.

Importantly, the Mandate has given the CCMC's governance arrangements

greater transparency and clarity, qualities that have underpinned our engagement with stakeholders throughout the year.

In February, the CCMC engaged an external consultant to independently survey its key stakeholders to more fully understand their priorities, their concerns and their expectations of the CCMC. Generally, their responses were positive, with participants describing the CCMC as a 'valued and trusted partner' achieving

positive outcomes in code compliance.

The survey results were used in the development of the CCMC's three-year work plan. This has been published on the Committee's website for the first time as part of our commitment to transparency. This commitment is also inherent in the CCMC's new series of Guidance Notes that have been developed in conjunction with banks, the ABA and FOS to ensure the CCMC's operations and procedures are clear, readily accessible and easy to understand.

**"In the CCMC's 10 years of operation, it has worked with banks to resolve problems, provide guidance on Code compliance and share good practice with the industry."**

Identifying, self-reporting and remedying activity that is not compliant with the Code of Banking Practice is critical for a successful self-regulatory framework. This year we observed a positive culture of reporting by the banks. It was evident in their timely and comprehensive response to our Annual Compliance Statement (ACS) program. This program assists the CCMC in its assessment of how effectively the subscribing banks have complied with their Code obligations.

Banks collectively reported a 23% decrease in the number of Code breaches in 2013-14. This was attributed by the banks to improved processes and procedures. However, the rising number of customer complaints suggests refined root-cause analysis may assist banks to more fully identify and resolve emerging areas of Code non-compliance risk. In 2014-15 we will continue to assist the banks in their efforts to achieve consistent and effective internal compliance monitoring processes and procedures.

Improving our stakeholders' awareness of the CCMC's operations and their ability to raise concerns remains a key aim of our engagement strategy. In 2013-14 we provided several Code training sessions for financial counsellors, including those enrolled in the Victorian Financial Consumer Rights Council's professional development and Diploma programs. Participants reported that they now better understand rights and responsibilities under the Code and are using this knowledge to better advise their clients.

As we mark the CCMC's tenth anniversary, it is important to acknowledge the significant contribution of our Committee members. In October 2013, Brian Given retired from his role as Independent Chairperson.

During his four-year term, Brian skilfully guided the CCMC's transition to its new Mandate and oversaw its revised operating procedures. We offer our sincere thanks to Brian for his dedicated service and his commitment to advancing compliance with the Code of Banking Practice during his term of office.

Consumer and Small Business Representative Gordon Renouf and Banking Industry Representative Sharon Projekt joined the Committee in 2012. Gordon's first term ended during 2013-14 and he has been re-appointed until July 2017. We take this opportunity to thank Gordon and Sharon for their thoughtful and valuable insights and contributions to the CCMC's work throughout the year. We look forward to working with them during 2014-15 and beyond.

The Committee is supported by a dedicated Secretariat. We thank them for their high level of professionalism, skill and hard work throughout the year. We look forward to their continued commitment and support in the years ahead.

In the CCMC's ten years of operation, it has worked closely with banks to resolve problems, provide guidance on code compliance and share good practice with the banking industry. Banks, in turn, have co-operated with the CCMC and improved their systems and controls and demonstrated their commitment to self-regulation for the benefit of both the banking industry and consumers alike. Trust, integrity and accountability are key elements of this self-regulatory framework.

We would like to thank all our stakeholders for their contributions to the CCMC in 2013-14 and look forward to working with them in what is likely to be another busy and successful year in 2014-15



A handwritten signature in black ink, appearing to read 'June Smith', written over a white background.

**Dr June Smith**  
*Chief Executive Officer*  
*Code Compliance Monitoring Committee*



# Ten years of the CCMC

The CCMC came into being on 1 April 2004.

Ten years on its role remains the same: to monitor Code compliance and investigate allegations of Code breaches, including matters referred by the Australian Bankers' Association.

The Committee was established with an independent Chair, a person nominated by the Consumer Directors of the Banking and Financial Services Ombudsman (now FOS) to represent consumers, and a person nominated by the ABA to represent Code subscribers. These arrangements continue. The people holding these positions over the ten year period of operation are listed in Appendix 1.

The CCMC has evolved its processes for compliance monitoring over the last ten years. The key elements now comprise:

- encouraging Code subscribers to self-report breaches of the Code
- administering the Annual Compliance Statement as a key tool for compliance monitoring

- conducting inquiries and investigations into compliance with Code provisions, and
- engaging with stakeholders.

## A culture of self-reporting

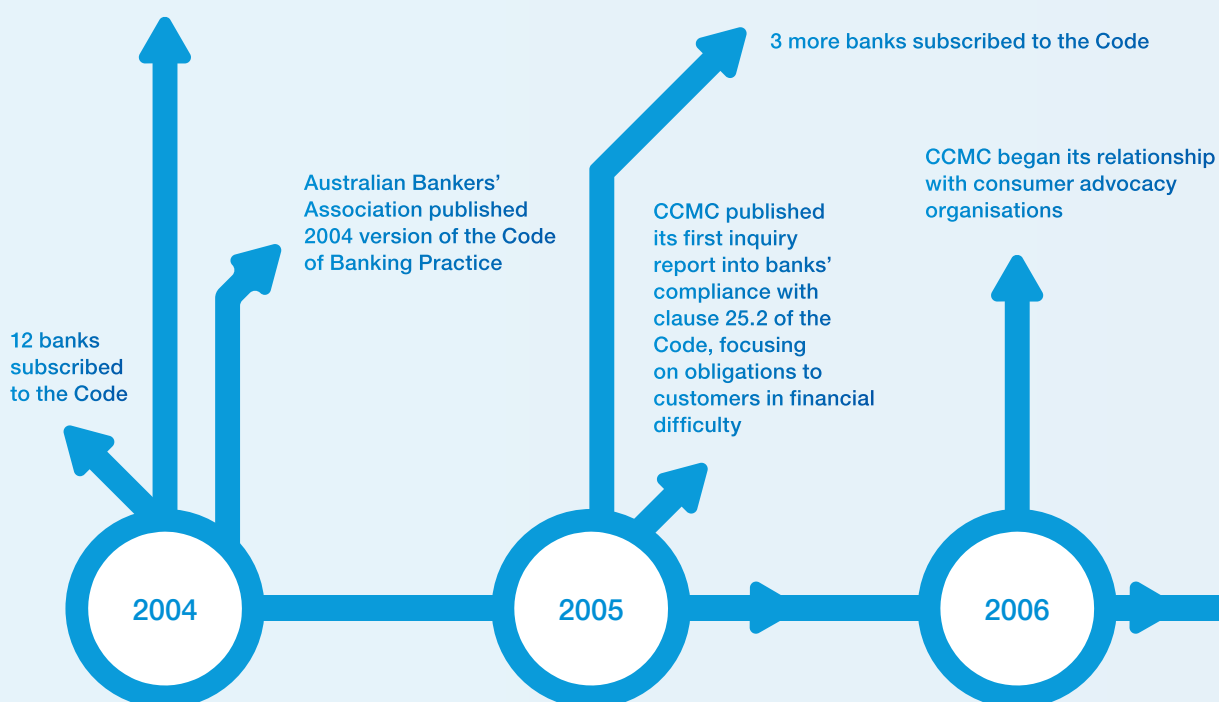
In the CCMC's first year of operation, subscribing banks self-reported 195 breaches of the Code. This has increased rapidly over the years, with banks self-reporting 5,762 breaches in 2013–14 (see chart 1). As banks have developed more sophisticated monitoring programs, they have become better equipped to identify and record issues with their services and practices. By correcting the root causes of these issues, banks improve the service they provide to customers.

Banks first recorded *significant* Code breaches<sup>1</sup> in 2007–08, reporting 33 in that year. Since 2008, the number of significant breaches has steadily decreased, with 12 reported in 2012–13 and 8 in 2013–14.

In the CCMC's ten years of operation, it has worked with banks to rectify issues, provided guidance on Code compliance and shared examples of good practice with the industry. Banks, in turn, have improved their systems and controls and demonstrated their commitment to self-regulation.

<sup>1</sup> The definition of a significant breach can be found on the CCMC's website at <http://www.ccmc.org.au/what-we-do/monitoring/significant-breaches/>. Details of significant breaches in 2013–14 can be found on page 12.

The Code Compliance Monitoring Committee (CCMC) came into effect on 1 April 2004.





## An evolving monitoring program

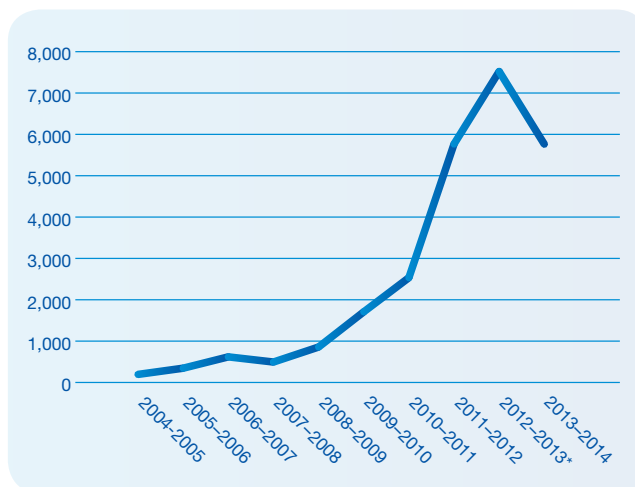
In 2008, the CCMC implemented its first Annual Compliance Statement (ACS) program, replacing the self-certification process. The ACS program comprises a questionnaire to be completed by banks on their Code compliance performance and an onsite visit by the CCMC Secretariat. The CCMC uses a risk-based approach to determine the questionnaire's themes and content for the year, in consultation with key stakeholders.

The onsite visit to each bank allows the CCMC to:

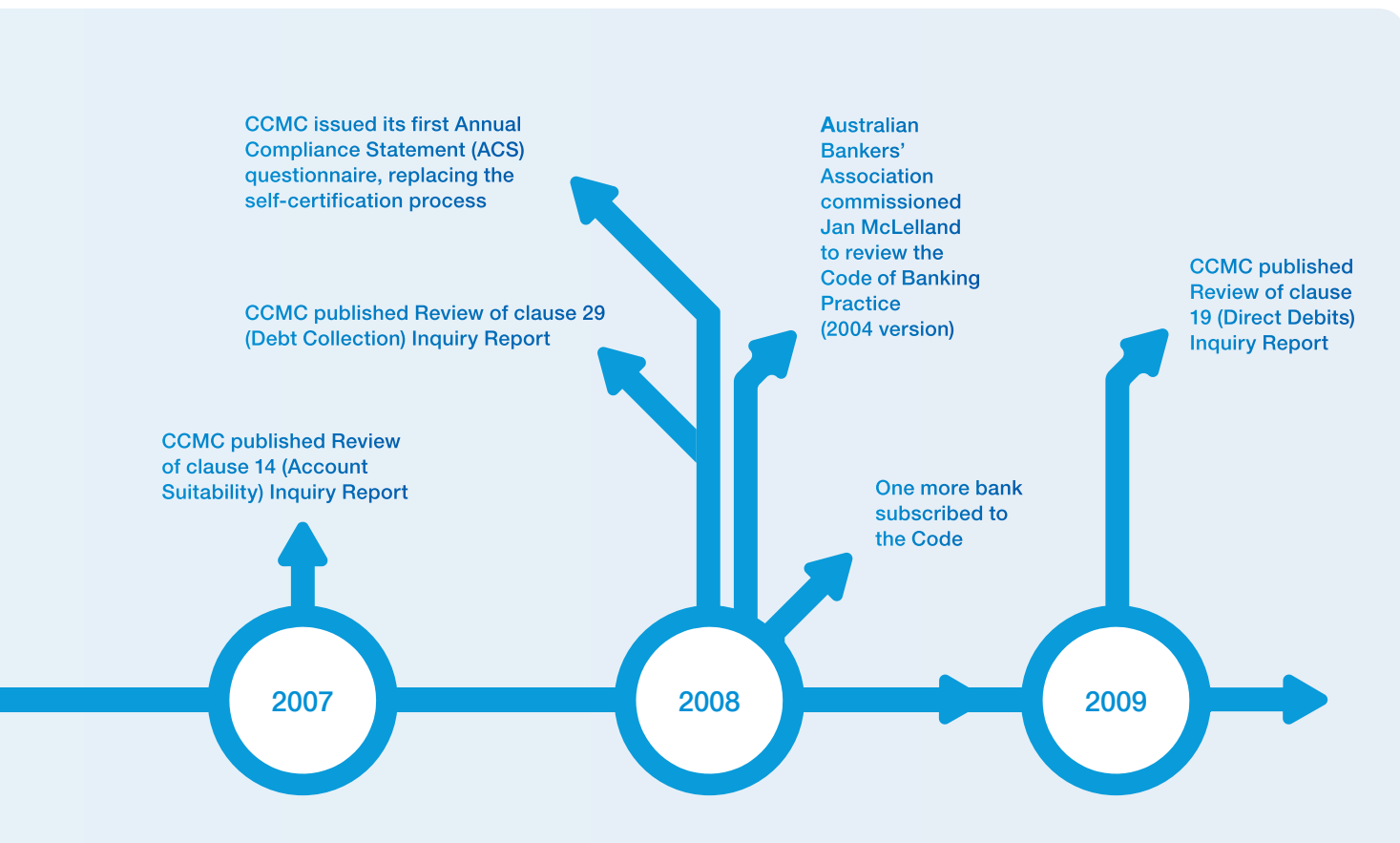
- discuss individual bank's Code compliance results arising from their statement response
- verify information provided within their statement, and
- share the CCMC's findings on overall industry compliance rates.

For banks, the ACS program provides the opportunity to self-report areas of non-compliance with code obligations, share information with the CCMC about key initiatives to improve compliance and highlight areas that they have identified for priority attention or follow up.

Chart 1: Self-reported breaches 2004–2014



\* As 2012–13 was a 15-month reporting period, the figure represents a 12-month equivalent figure of 7,532 breaches self-reported in that year.



# Ten years of the CCMC continued

## Ten years of investigations and inquiries

During its first two years of operation the CCMC investigated 57 allegations that a bank has failed to meet its Code obligations. Over the ten years the CCMC has received a total of 297 allegations that banks have breached their obligations under the Code. A total of 151 breaches of the Code have been identified as a result of the CCMC's Investigations.

In 2006, the CCMC published its first Own Motion Inquiry report into banks' compliance

"In the CCMC's first year of operation, subscribing banks self-reported 195 breaches of the Code. This has increased rapidly over the years, with banks self-reporting 5,762 breaches in 2013-14."

with clause 25.2 of the Code, focusing on obligations to customers in financial difficulty.

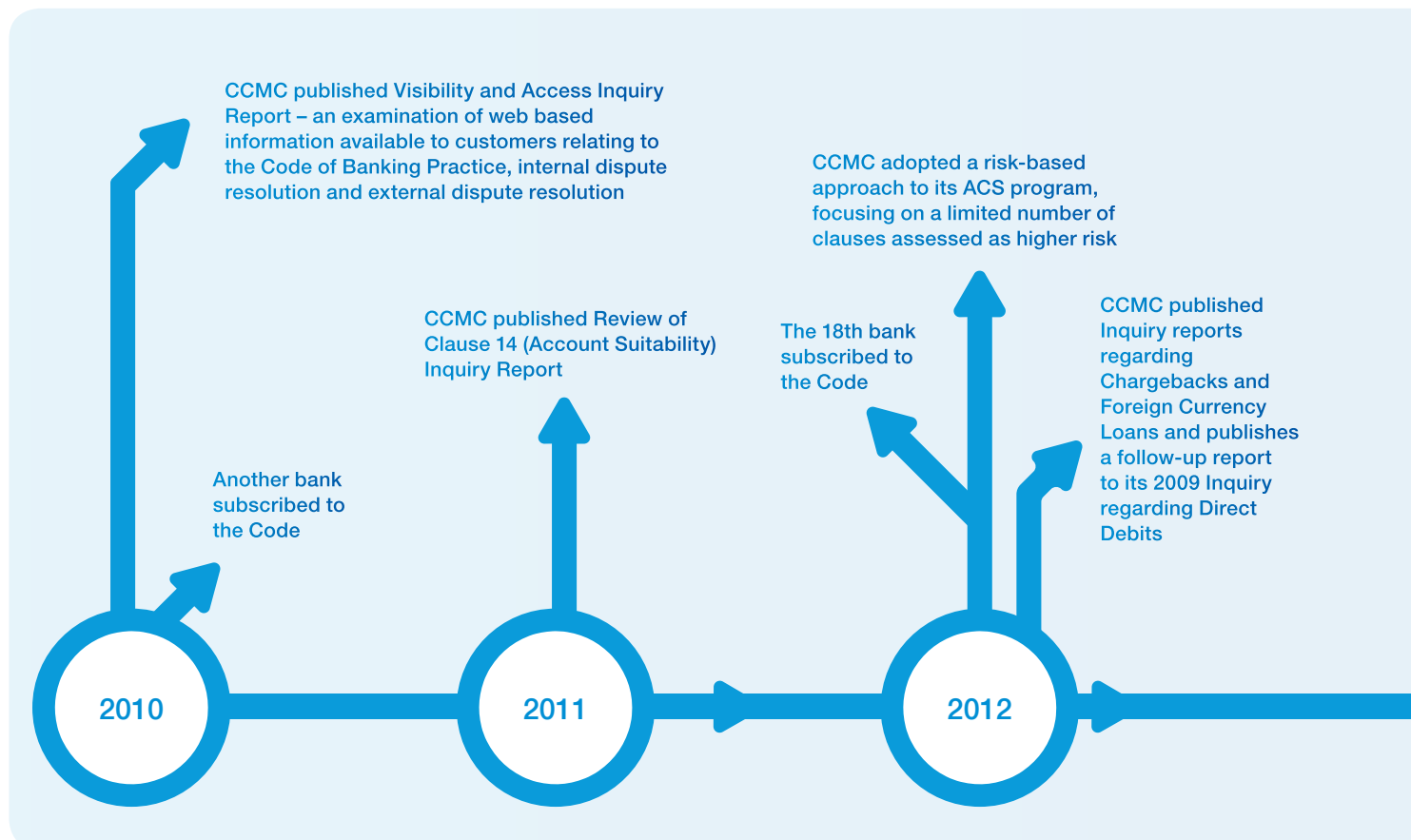
Since its inaugural report, the CCMC has published the outcomes of a further ten inquiries, which have highlighted areas for improvement in Code compliance and examples

of good practice that can be shared with industry. The CCMC has been encouraged by banks' willingness to co-operate with these inquiries and adopt the CCMC's recommendations to improve customer experiences. A list of these inquiries can be found in Appendix 2.

## Engaging with stakeholders

To better engage with subscribing banks the CCMC introduced annual Bank Forums and quarterly liaison teleconferences. These allow banks to share and discuss Code compliance issues and the effective administration of the ACS program.

The accessibility of the CCMC's investigation functions to all Australian consumers is a key priority for the Committee. The CCMC now runs training events for financial counsellors, who are better equipped to recognise and refer Code breaches and more able to use the Code in their discussions with banks on behalf of their clients.



## Reviewing the Code and its governance

In 2008, the ABA commissioned Jan McLelland to conduct an independent review of the Code to determine its effectiveness and recommend improvements. Ms McClelland's report was published on 16 December 2008 and is available at [www.reviewbankcode2.com.au](http://www.reviewbankcode2.com.au). The Code (2013 version) incorporates many of the recommendations made in the report.

At the same time, Dick Viney conducted an independent review of the CCMC's governance and operations.

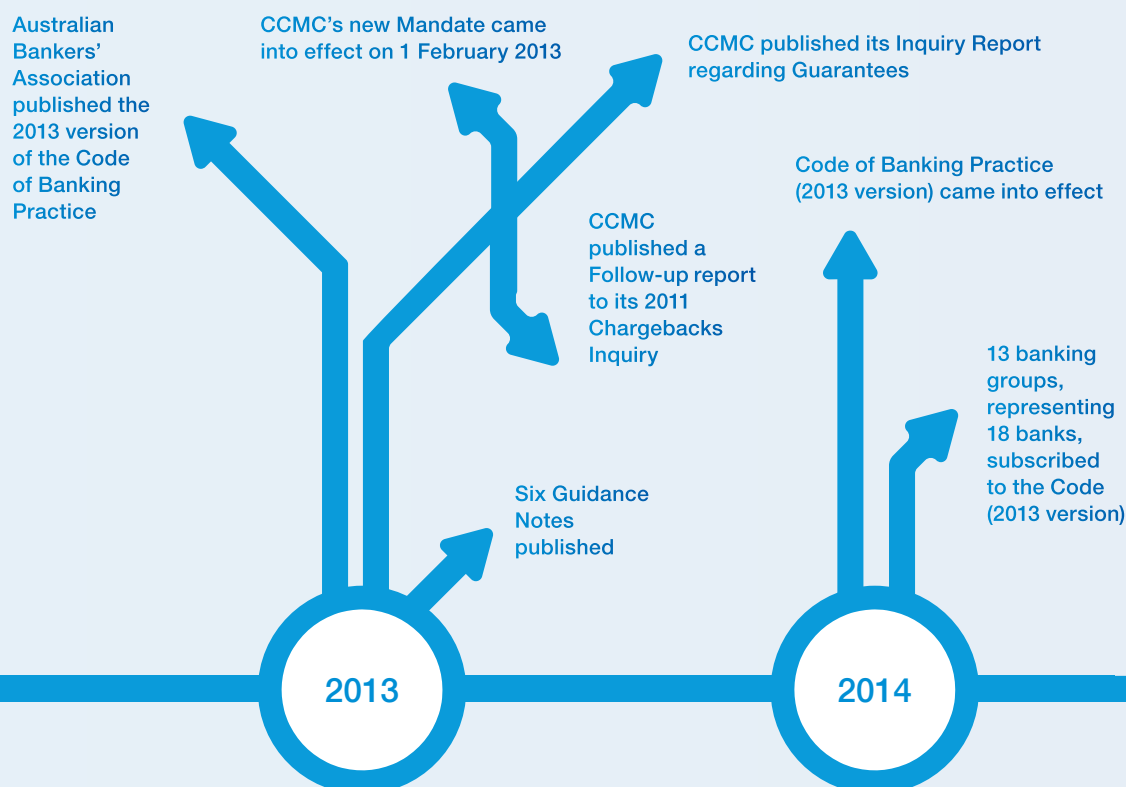
The report was published on 2 December 2008 and concluded that the CCMC had:

- developed effective relationships with stakeholders
- implemented effective compliance monitoring activities and techniques
- put in place fair and transparent procedures for dealing with alleged breaches
- established adequate systems to collect, record and process information relating to the Code, and
- lent credibility to the Code as a self-regulatory scheme.

In 2014, the CCMC conducted a survey of its stakeholders, the results of which echoed the findings of the 2008 review of its operations summarised above.

## Remaining relevant

The law that applies to bank customers continues to evolve, with important changes to consumer credit law coming into effect in 2010. The Code remains an important additional consumer protection. The Code contains several unique obligations related to financial hardship, guarantees and the provision of credit, especially to small businesses.



# The 2013 Code of Banking Practice and CCMC Mandate

## 2013 Code of Banking Practice

The 2013 version of the Code was published on 31 January 2013. Subscribing banks had 12 months to transition to the revised Code obligations.

Significant changes introduced in the Code (2013 version) include:

- strengthened financial hardship assistance clauses
- new clauses covering services provided to customers in remote Indigenous communities
- a commitment that banks will only sell debts to third parties that agree to comply with the Debt Collection Guidelines, published by ASIC and the Australian Competition and Consumer Commission (ACCC), and
- a commitment to provide information about 'no-fee' or 'low-fee' accounts to customers where a bank becomes aware the customer has a Commonwealth concession card.

All 13 banking groups confirmed that they had adopted the Code (2013 version) by 1 February 2014. The CCMC supported banks during the transition by clarifying revised Code provisions and providing further interpretation when required.

The CCMC 2013–14 ACS program sought to determine the steps banks had taken to comply with their new obligations and the monitoring undertaken to ensure that the changes they made were effective. See page 18 for details of our assessment of banks' transition to the Code (2013 version).

While banks are now monitored against their obligations under the Code (2013 version), the CCMC still receives allegations of breaches of the Code (2004 version) as the allegations relate to banks' conduct prior to banks adopting the 2013 version of the Code. The CCMC will continue to investigate these matters subject to the jurisdictional framework set out in the Mandate.

## CCMC Mandate

The CCMC's Mandate outlines the CCMC's operations, powers and functions and together with the Code (2013 version), it reconfirms and reinforces the CCMC's independence in discharging its compliance monitoring role and gives the CCMC's governance arrangements greater transparency and clarity.

The Mandate was published concurrently with the Code (2013 version) and the CCMC has been operating under this governance framework since 1 February 2013. While the Mandate has not expanded the CCMC's powers, it does afford more discretion in deciding what matters to pursue or discontinue.

The Mandate also provides the CCMC with more flexibility to publicly name a bank for serious or continuing breaches of the Code, a power the CCMC has not been required to exercise in 2013–14.

During the reporting period, the CCMC completed its 'Mandate transition' program to ensure the CCMC's operating procedures comply with obligations under the Mandate. The CCMC will continue to review and develop these procedures to ensure that it discharges its responsibilities in accordance with good governance principles.

Clause 1.6 of the Mandate requires the CCMC to develop an annual business plan. In consultation with FOS and the ABA, the CCMC has developed a three-year business plan for the period 1 July 2014 to 30 June 2017, which it has distributed to key stakeholders and published on its website.

## CCMC Guidance Notes

In consultation with the ABA and FOS, the CCMC developed five Guidance Notes (GN7 to GN11) in 2013–14 in accordance with the requirements of clause 1.4 of the Mandate.

Guidance Notes provide information about how the CCMC will interpret its obligations under the Mandate or the approach the CCMC may take when considering

a matter related to banks' obligations under the Code. This ensures that there is transparency in operating procedures and the decision-making process.

These Guidance Notes complement the six issued during 2012–13. Guidance Notes are published on the CCMC website and are reviewed on a regular basis to ensure they accurately reflect the CCMC's interpretation of the Code and Mandate.

While each matter before the CCMC is determined on its individual circumstances, Guidance Notes 8 to 11 in particular set out the information that the CCMC is likely to take into account when considering matters related to specific clauses of the Code.

**GN7:** Deciding when an Own Motion Inquiry or a Compliance Investigation should be conducted under clause 5 or 6 of the Mandate.

**GN8:** Guarantees – the obligations on a bank when accepting a Guarantee under clause 31 of the Code.

**GN9:** Provision of Credit – the obligations on a bank when offering, giving or increasing an existing credit facility.

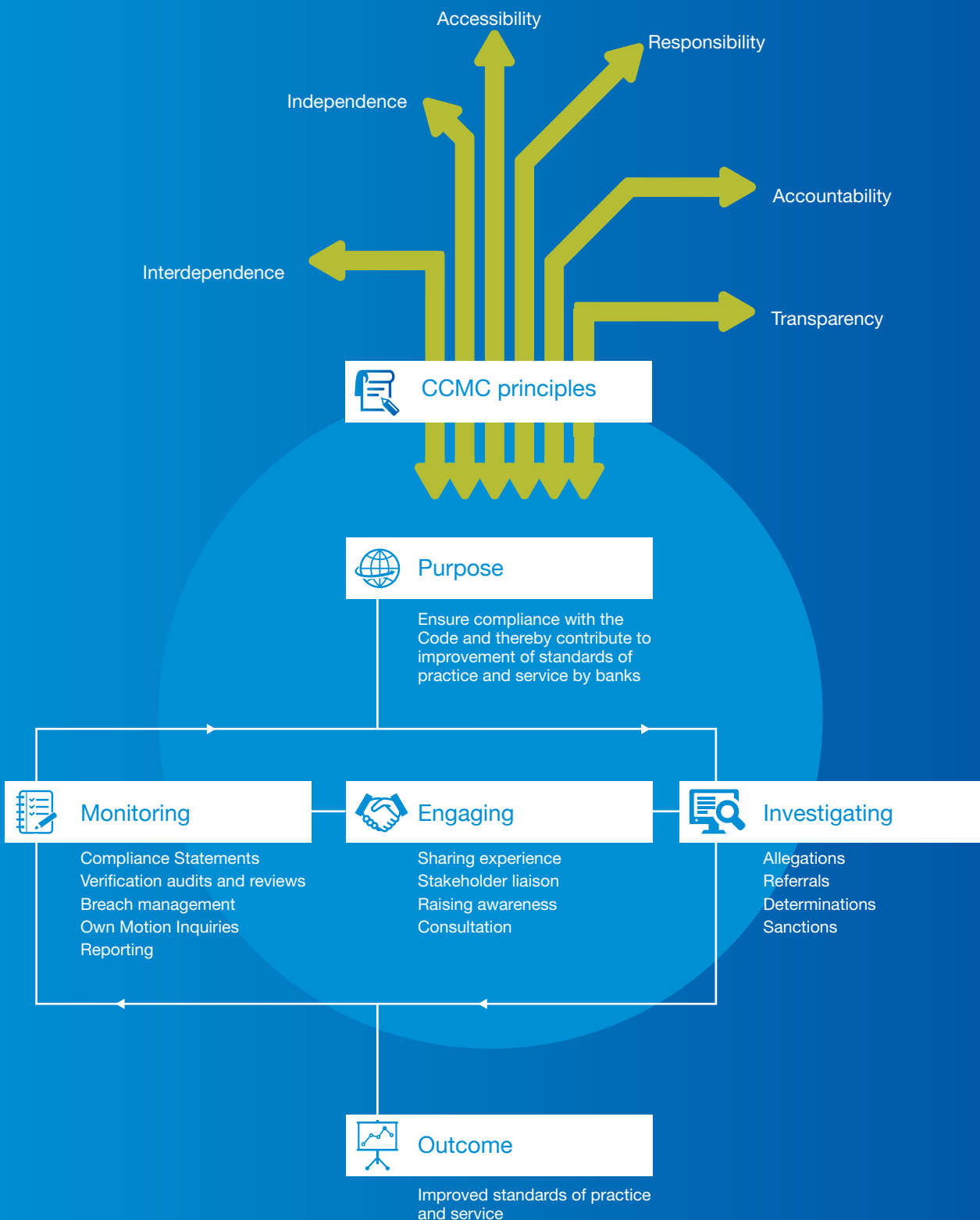
**GN10:** Direct Debits – the Code requirements when a customer requests to cancel a Direct Debit.

**GN11:** Chargebacks – the steps to be taken and information to be provided when a customer disputes a transaction under a credit or debit card.

Diagram 1: Key CCMC Functions

## CCMC Operations

The CCMC's key functions can be grouped into three main categories: Monitoring, Investigating and Engaging (see diagram 1 below). The 2013–14 results and outcomes achieved in undertaking these key functions are outlined on pages 12 to 29.



# Monitoring code compliance

The CCMC's compliance monitoring program reflects the objectives of the Code and includes the Annual Compliance Statement (ACS) program and Own Motion Inquiries.

## Annual Compliance Statement program 2013–14

Each year, the CCMC conducts an ACS program under clause 5 of its Mandate. Subscribing banks are required to complete this ACS under clause 36(f) of the Code (2013 version).

The 2013–14 ACS program provided the CCMC with information from the banks on compliance with Code obligations for the period 1 July 2013 to 30 June 2014.

The key areas of CCMC focus in the 2013–14 ACS program were:

- transition to the Code (2013 version)
- key commitments
- financial difficulty, and
- technology and systems.

Through its ACS program, the CCMC seeks to understand and assess each bank's:

- compliance with the Code
- Code compliance monitoring frameworks, including Code breach identification
- compliance performance compared to the peer group
- processes for remedying significant breaches and systemic issues related to Code compliance, and
- areas of emerging Code compliance risk.

The CCMC conducted onsite visits with each bank in October 2014 to verify data submitted in the ACS questionnaire. The CCMC is pleased to again report that banks continue to work co-operatively with the CCMC in providing the ACS information within agreed timeframes.

## ACS program results

The ability to identify, report and rectify Code breaches is an important part of any code compliance framework. The CCMC refers to the Australian Standard™ AS-3806 – 2006 Compliance Programs (the Standard) when considering how banks should effectively manage their Code compliance obligations, including how they maintain internal breach reporting. The CCMC expects the banks to also demonstrate that they are successfully identifying the root causes of non-compliance with the Code's obligations and are taking the necessary action to prevent recurrences.

In 2013–14, the banks have again demonstrated to the CCMC's satisfaction that their Code compliance frameworks remain generally robust. These frameworks incorporate quality assurance systems and procedures that are embedded in their businesses, with Compliance or Risk departments providing an oversight of this function. An additional line of assurance is provided

by Internal and External Auditors who independently verify the effectiveness of the overall framework.

### Significant Code breaches

A significant breach of the Code is defined as non-compliance that is deemed significant by either the CCMC or a bank due to several factors. Generally speaking, the CCMC expects banks to consider the factors identified in section 912D of the *Corporations Act (2001)* when determining whether a significant breach of the Code has occurred. These include:

- the number or frequency of similar events in the past

- the impact of the breach on the ability to supply the banking service
- whether the event indicates that Code compliance arrangements may be inadequate
- the number of consumers affected by the breach, and
- the actual or potential loss experienced by consumers arising from the breach.

Banks reported eight significant breaches of the Code in 2013–14, four less than in the previous year, which continues the trend of fewer self-reported significant breaches in recent years (see chart 2).

This reduction in significant breaches may reflect an improvement in banks' ability to detect issues at an early stage and prevent them from becoming significant. However, the CCMC shares ASIC's concerns about current levels of breach reporting among financial service providers. The CCMC is concerned that the reduction of self-reported significant breaches over recent years, and the reduction of other self-reported breaches this year, may be the result of some banks failing to adequately identify and report breaches of Code obligations in a timely manner.

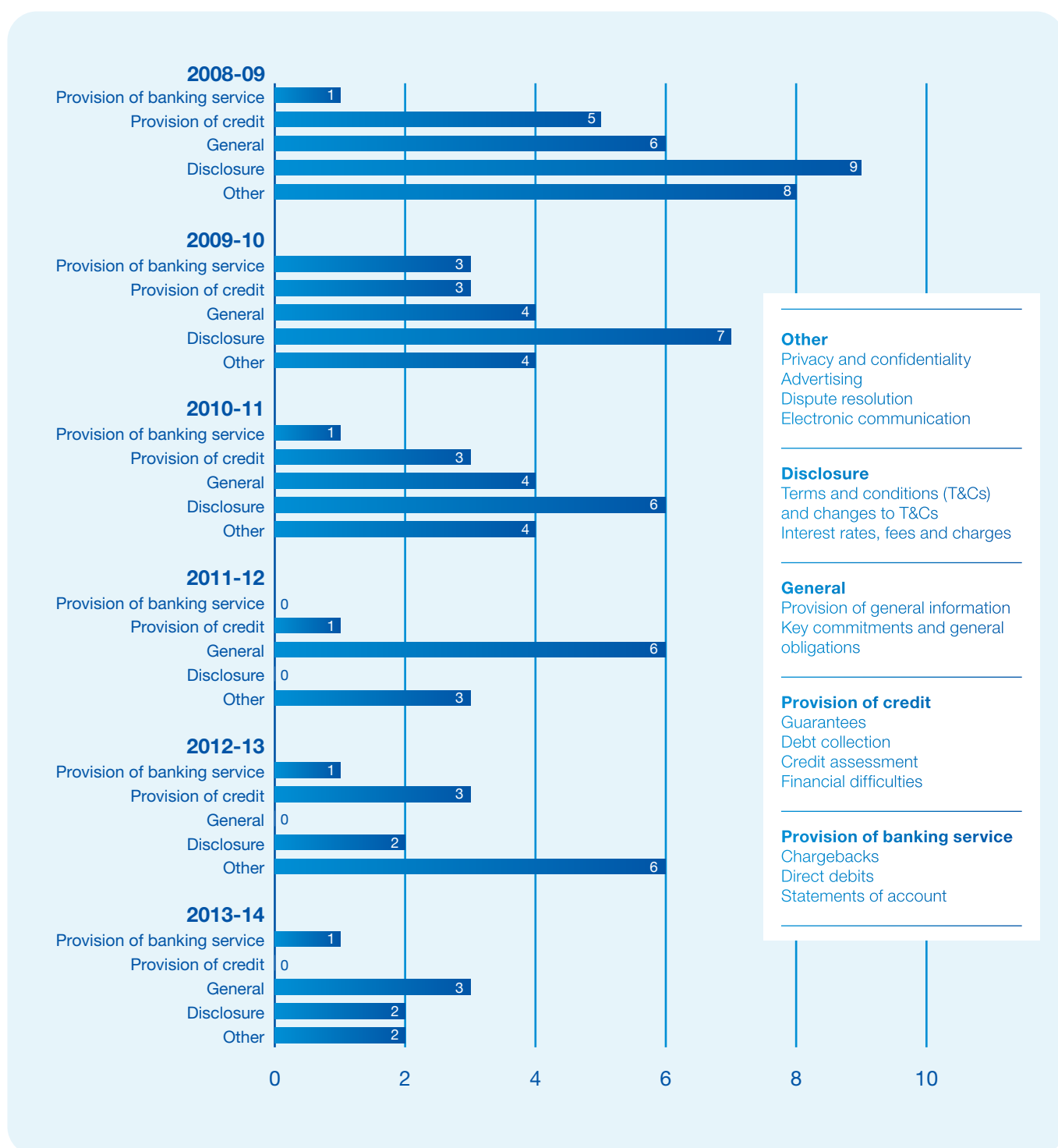
Table 1 details each of the eight significant breaches and their outcomes, as self-reported by the breaching banks to the CCMC in 2013–14.

Two significant breaches were related to the Code (2013 version) and both related to the conduct of Appointed Representatives.

Issues related to information technology (IT) continue to cause significant breaches of the Code. The CCMC reiterates its comments from last year that banks should be diligent in testing, operating and monitoring their IT systems.

"Banks reported eight significant breaches of the Code in 2013–14, four less than the previous year, which continues the trend of fewer self-reported significant breaches in recent years."

Chart 2: Significant breaches 2008–09 to 2013–14



# Monitoring: significant breaches

Table 1: Significant breaches

Code Clause	Issue	No. of Breaches	Background	Outcome
<b>Code (2004 version)</b>				
Privacy and Confidentiality (clause 22) and Key Commitments (clause 3)	<b>Incorrect credit listing</b>	1	Following a letter from FOS, the bank identified that a number of incorrect credit listings were placed on file. On investigating the matter it was discovered that the breach had been caused by an automatic credit listing system error.	The bank ceased using the automatic credit listing system and adopted a manual process while a new system was developed. The bank reviewed all accounts that were credit-listed during the past five years. The bank is currently removing or amending all impacted credit listings.
Key Commitments (clause 3)	<b>Refund of fees in reversed Foreign Exchange transactions</b>	1	After a complaint from a customer, the bank identified that international transaction fees were not being refunded where the original transaction was reversed, due to a system error. The bank reported that 140,815 customers had been affected since 2007.	The bank modified its systems to prevent the breach re-occurring and is refunding the unreversed fees to existing and former customers affected by the system error.
Terms and Conditions (clause 10)	<b>Terms and Conditions (clause 10)</b>	1	Where a customer requested a periodic payment be made from an account with insufficient funds to another account held by them, the bank was charging a fee for processing the payment. The bank identified that charging a fee in these circumstances was not consistent with the Terms and Conditions of the account.	The bank is reviewing the charging of 'non-payment' fees across all periodic payment channels to ensure the charge is consistent with Terms and Conditions. It is separately identifying and compensating all affected customers.
	<b>Incorrectly applied bonus rates</b>	1	If a minimum amount is deposited to a savings account each month without a withdrawal, the account receives additional interest. The period over which the bank calculated additional interest was misaligned by one day with the date by which the minimum deposit to the account was required. Where a deposit was made on the day after the date on which the interest calculation was made, the bonus interest was not always paid.	The bank has amended both its systems and the Terms and Conditions of the account to address this inconsistency and prevent a re-occurrence of the breach. It is identifying affected customers and arranging for unpaid interest to be credited to their accounts.
Chargebacks (clause 20)	<b>Provision of Chargeback information</b>	1	The bank included the required annual disclosure of information related to Chargeback rights with its March 2014 credit card account statements for commercial credit card customers. However, the bank subsequently identified that where a credit card account had no transactions in the previous month, the account statement, and the Chargeback information, was not sent.	The bank was unable to identify just those small business commercial card customers to which the obligations of the Code applied and who had not received the Chargeback information. In July 2014 it therefore sent the Chargeback information to all 18,000 commercial card customers who did not receive it in March.



Code Clause	Issue	No. of Breaches	Background	Outcome
Privacy and Confidentiality (clause 22)	<b>Disclosure of personal information</b>	1	An employee of the bank distributed an email to 689 customers prompting those customers to contact the bank. While the message did not disclose the reason to contact the bank, it related to accounts that were in arrears. The email inadvertently disclosed the email addresses of all customers. This was the only personal information disclosed.	The bank reviewed its processes and procedures for sending bulk emails and as a result implemented a second level check to prevent a re-occurrence.
<b>Code (2013 version)</b>				
Compliance with the Laws (clause 4)	<b>Acting outside of Authority</b>	1	A Representative of the bank advised four customers to surrender investments and invest the proceeds in a company based in Singapore. The Appointed Representative did not disclose to the customers that the bank had not approved the investment and that he was also an employee of the company in which the investments were made. The Representative did not provide the bank with paperwork regarding the investment and the bank only became aware of the matter when a customer contacted the bank.	On becoming aware of the investments, the bank applied to the court to freeze the assets of the company until the company refunded the investments to the customers. This application was granted and the company paid the invested funds to the court for settlement.  The bank paid the customers' legal fees and in one instance provided an interest-free loan to a customer to meet living expenses pending the settlement from the court.  The bank has put in place additional training and supervision of Representatives
	<b>Register of Appointed Representatives</b>	1	As a result of an audit of its Australian Financial Services Licence, the bank identified some weakness in the Appointed Representative appointment and revocation process. This affected 200 Appointed Representatives.	The bank strengthened the control environment regarding Appointed Representatives, including developing a revised appointment process

# Monitoring: key findings



**5,762**  
breaches of the  
Code were self-  
reported by banks

## Self-reported code breaches not considered to be significant

The self-reporting of non-significant Code breaches and information about banks' compliance systems are key tools in the CCMC's monitoring of compliance with the Code and for banks to understand emerging areas of Code compliance risk. The CCMC has worked with banks to encourage a positive culture of reporting.

The adoption of the Code (2013 version) during the reporting period represented a challenge for both the CCMC and banks when reporting and presenting breach data.

Many of the obligations of the Code (2004 version) can be mapped directly to those contained within the revised 2013 version. However, some obligations, such as Advertising, are not carried forward and the 2013 version introduced new obligations in respect of remote Indigenous

communities. Where possible, the CCMC has amalgamated breach statistics related to the 2004 and 2013 versions of the Code to identify trends and issues. A full breakdown of breaches recorded under both versions of the Code is provided in Appendices 3 and 4.

### Key findings

The key findings from this year's ACS were:

- 5,762 breaches of the Code were self-reported by banks, a reduction of 23.7% on 2012-13
- Privacy & Confidentiality breaches increased overall by 3.6% compared to 2012-13
- self-reported breaches related to the Key Commitments and General Obligations provisions of the Code, including fair and reasonable conduct and compliance with laws, increased

by 9% compared to 2012-13

- a significant decrease in breach numbers in the areas of Debt Collection (down 69%), Credit Assessment (down 52%) and Financial Difficulty

(down 38%), and

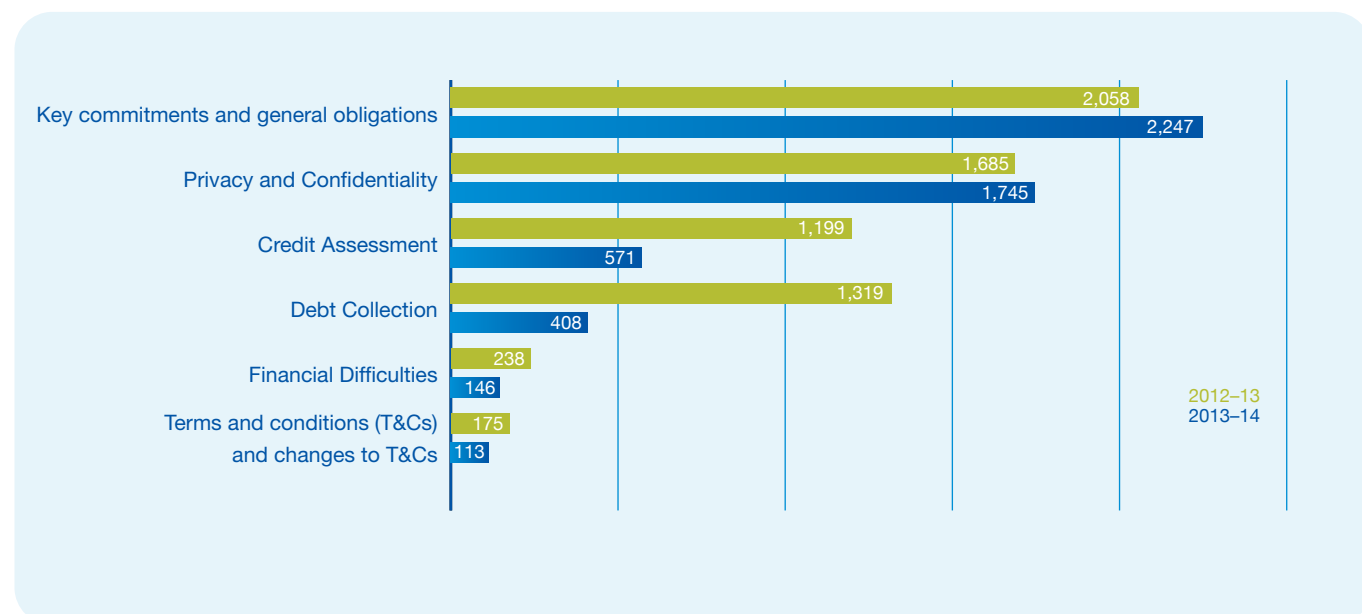
- increases in breach numbers were reported in Provision of General Information, Direct Debits and Dispute Resolution.

Chart 3 below illustrates the number of breaches reported by banks during the ACS program in 2013-14 and the breakdown of those breaches according to the main categories.

Comparisons with other clauses of the Code are provided in Appendix 3.

Clause 36(b)(iii) of the Code (2013 version) prevents the CCMC from monitoring, investigating or reporting breaches of

**Chart 3: Main categories of breaches reported to the CCMC in 2013-14 by category**



clause 3 (Key Commitments) or clause 4 (Compliance with Laws) unless a breach of another obligation of the Code is also identified. The 2013–14 ACS questionnaire took this restriction into account. There were inconsistencies, however, between the banks in how they identified breaches of clauses 3 and 4. The CCMC will work with banks in 2014–15 to address these inconsistencies.

The increase in Privacy and Confidentiality breaches may be attributed to the *Privacy Amendment (enhanced Privacy Protection) Act 2012*, which came into effect on 12 March 2014. Staff training provided by banks may have raised awareness of privacy issues and led to more breaches being identified. The CCMC has noted over time that increases in breaches of a specific clause of the Code can often occur when corresponding legislation is introduced.

The reduction in overall breach numbers in 2013–14 from the previous period is a result of reduced breach numbers self-reported by two banks. While still accounting for 60% of all breaches, these banks have reported 53% and 75% respectively fewer breaches since 2012–13, mostly in Credit Assessment and Debt Collection.

One of the two banks commented that its statistics were the result of considerable system improvements in Debt Collection and Financial Difficulty, which had resulted in fewer breaches of these Code obligations. The other bank cited better processes and procedures for the improvement, particularly within Credit Assessment. Excluding these two banks, breaches increased by 16% compared to 2012–13.

“1,745 breaches of Privacy and Confidentiality, an increase of 3.6% compared to 2012-13.”



#### CASE STUDY

### GUARANTORS AND CO-BORROWERS

Jane’s husband was an entrepreneur. When the business expanded Jane was asked to be co-borrower or guarantor for five business loans. Jane’s only substantial asset was the family home which was in her name alone. At the time of the first loan Jane was employed. However, shortly afterwards Jane developed a serious illness that permanently prevented her from working.

Jane only received legal advice about the first loan. When Jane and her husband separated the business stopped servicing the loans and the bank sought to enforce the loan contracts and guarantees against Jane. Jane alleged the bank had failed to take her financial circumstances into account and ensure she understood the contracts, so had breached its Code obligations to her.

Under the 12 month rule Jane’s allegations fell outside the CCMC’s jurisdiction. However, the circumstances Jane had described were sufficiently serious for the CCMC to conduct further investigation as an Own Motion Inquiry.

The CCMC determined that:

- it was inappropriate for the bank to have used the financial position of Jane’s husband and the business when deciding to enter into contracts with Jane. Instead the bank should have based its decision on Jane’s individual circumstances.
- because of her illness and the amounts of money involved, the bank should not have entered into subsequent contracts with Jane unless she had received independent advice before agreeing to each contract. The CCMC also noted that to be independent, such advice had to be independent of both the bank and the borrower to whom any guarantees related.
- in the circumstances, the bank’s decision to enter into the subsequent loans had breached its obligations to act as a prudent and diligent banker and to act in a fair, reasonable, ethical and consistent manner towards Jane.

Following the Determination, the bank involved worked with the CCMC to review how it had changed its processes in response to new ‘responsible lending’ laws, and to identify where its processes could be improved to reflect the concerns identified in the investigation.



# Monitoring: transition to the revised Code

## ACS program outcomes

The CCMC 2013–14 Annual Compliance Statement program also sought to determine:

- the steps banks had taken to comply with their new Code obligations
- the monitoring undertaken to ensure that the changes they made were effective, and
- that banks continued to comply with their existing obligations.

The information provided by the banks has highlighted a number of themes regarding compliance with Code obligations.

## Transition to the revised Code obligations

To review the steps taken by banks to transition to the revised obligations of the Code (2013 version), the ACS questionnaire looked at several key areas:

- changes to compliance frameworks, systems and procedures
- staff training
- remote Indigenous communities
- Debt Collection, and
- Financial Difficulty.

## Changes to compliance frameworks, systems and procedures

With a 12-month transition period to adopt the Code (2013 version), banks advised that they established project groups to manage changes to compliance frameworks,

systems and procedures. Following a 'gap analysis' against the revised obligations, banks indicated that major changes were not needed. All banks reported that the transition to the Code (2013 version) did not result in significant changes to their compliance frameworks, with only small changes to controls required.

## Training

To ensure that all staff are aware of their obligations under clause 9 of the Code (2013 version), banks updated their online training modules covering risk and compliance awareness. Some banks

reported that they also provided information about the Code (2013 version) to staff via their intranet.

Several banks noted that they offered training in the revised Code obligations. These obligations are generally also included in specific modules such as Debt Collection training.

## Remote Indigenous communities

Clause 8 of the Code (2013 version) imposes new obligations on banks in respect of their dealings with

remote Indigenous communities. These obligations include making information about suitable accounts available, assisting with meeting identification requirements and appropriately training staff who deal with customers in remote locations to be culturally aware.

Banks reported different levels of engagement with remote Indigenous communities, with only some banks having a face to face branch presence in

remote or very remote locations. All banks, however, have an online presence which can be accessed by members of these communities. In this case, banks confirmed that information about suitable accounts is available online or can be posted on request, and that identification processes are in place to address their specific needs. Banks also reported that they provided awareness training for staff regarding remote Indigenous communities.

While Code obligations regarding remote Indigenous communities came into effect on 1 February 2014, banks indicated that they have implemented processes to meet the five specific obligations of clause 8.

Where banks have a presence in remote areas, their responses indicated that information on suitable products is available through their remote branches and that they have processes in place to help members of these communities to meet identification requirements. Some banks have reported that they have established Indigenous advisory groups, partnered with Indigenous community leaders, engaged with Indigenous staff members and, in the case of one bank, have engaged a consultancy firm specialising in Indigenous issues to help develop their cultural awareness activities.

Banks with a presence in remote areas have also reported that they have specific training modules for staff employed in these areas. This training is generally also available to all staff and some banks have advised that they operate a volunteer program for staff members to spend time in remote Indigenous communities, either working in a branch or in the community.

This is an area of ongoing discussion between the banks and the CCMC and the CCMC is considering an Own Motion Inquiry in 2015 to assess compliance with these obligations.

“During the reporting period, banks enhanced their websites to provide further details of how to apply for assistance.”

## Debt Collection

The enhanced Debt Collection obligations in clauses 32.2 and 32.3 of the Code (2013 version) relate to when a debt can be assigned or sold. The Code prevents these actions being taken if a bank is considering a request for assistance from a customer in financial difficulty or where a customer is complying with a repayment arrangement already in place.

In most cases banks advised they do not sell debt to third parties. Where banks do sell the debt, they have reported that, as part of their transition, they have identified cases where a current arrangement was in place. In such cases, the banks advised that they retained the debt. Those banks that sell debts advised that they only do so to a company that complies with the ASIC/ACCC Debt Collection guidelines.

Assignment of debt to a third party is more common. In these circumstances, banks have again reported processes to prevent debts being assigned to a debt collection agency where a request for financial difficulty assistance has been made or a repayment arrangement is being complied with.

One bank has advised that it does not currently comply with all aspects of clause 32.1 of the Code in respect of debt collection activities under the new ASIC/ACCC Debt Collection guidelines. These guidelines introduced changes to the number of times a creditor can attempt to contact a debtor. The bank is currently testing systems changes to ensure that contact frequency does not exceed the relevant limits stipulated in the guidelines.

“All banks reported that the transition to the Code (2013 version) did not result in significant changes to their compliance frameworks, with only small changes to controls required.”

## Financial Difficulty

The introduction of enhanced Code obligations has coincided with changes to the *National Consumer Credit Protection Act* (NCCP Act) and the Australian Bankers' Association's initiatives regarding Financial Difficulty. Banks have reported that they have provided additional

training to staff dealing with customers facing financial difficulties and to staff who may be in a position to recognise customers who may be in financial difficulty.

Two banks advised that to meet their Code obligations to small business customers in financial difficulty, they have decided to treat these customers as if they met the definition of 'individual customer' under the NCCP Act, which does not ordinarily apply to small business.

During the reporting period, all banks enhanced their websites to provide further details of how to apply for financial assistance and in some cases provide the Statement of Financial Position online. This speeds up the process of applying for assistance and allows banks to make quicker decisions.

Banks have reported that procedures for dealing with customer representatives including financial counsellors have been augmented to include the ABA/FCA agreed standard appointment form. Banks confirmed that these have improved the effectiveness and efficiency of their dealings with customer representatives engaged in financial difficulty matters. The CCMC will test compliance with these obligations in 2015.



## CASE STUDY

### THE 12 MONTH RULE

Jenny and Mark contacted the CCMC in early 2014 to raise concerns about the steps their bank had taken to re-possess their home.

Jenny and Mark took out a mortgage in 2007. In 2010, they found themselves in financial difficulty after Mark lost his job. At that time Jenny and Mark entered into a payment plan with their bank.

Despite the couple's attempts to reduce their debt to the bank, they remained in financial difficulty, and in 2012 the bank started legal proceedings to re-possess their property.

As in each case it receives, the CCMC first had to assess whether the matters giving rise to the allegation had been known about (or could reasonably have been known about) for more than 12 months before being raised with the CCMC.

In this case the CCMC found the events giving rise to Jenny and Mark's concerns about the bank's approach had been known for more than 12 months. The bank did not agree to extend the CCMC's jurisdiction to investigate the matter. However, based on a preliminary review of the material Jenny and Mark had provided, the CCMC wrote to the bank recommending it review aspects of its debt recovery processes to ensure its customers were being treated fairly.



# Monitoring: ongoing compliance

## Ongoing compliance with Code obligations

The CCMC also used the ACS program to assess banks' ongoing compliance with the Code. Key outcomes were as follows:

### Key Commitments

Breaches of Key Commitments under the Code are discussed on page 16.

Banks implemented several initiatives to improve standards of practice and service as envisaged by clause 3 of the Code (2013 version), such as:

- streamlining financial difficulty procedures to more promptly respond to requests for assistance
- placing financial difficulty request forms online for easier access
- proactively contacting dormant account holders to ensure funds are not lost
- strengthening compliance awareness programs within their organisations, and
- enhancing internal dispute resolution processes by improving complaint handling systems.

### Internal Dispute Resolution

Banks self-reported 91 breaches of the relevant clauses of the Code, which require that internal dispute resolution processes are effective, free of charge and carried out within relevant timeframes. This represents a 62.5% increase in the number of self-reported breaches compared to 2012–13. These breaches primarily related to not resolving the disputes within relevant timeframes.

The CCMC asked banks to provide the number of consumer disputes recorded and their dispute resolution times to assess whether their processes and procedures effectively met the obligations of the Code. Banks recorded 1,099,272 disputes in total, a year-on-year increase of 53%. A dispute is defined in the Code as 'a complaint in relation to a banking service that has not been resolved when the complaint is brought to the bank's attention'.

One bank accounted for 73.8% of all disputes recorded. This bank has advised that it captures all expressions of dissatisfaction, including those immediately resolved, in all areas of the business. This differs from some other banks, which advised they recorded only those complaints that were not immediately resolved. Both approaches are compliant with the Code obligations.

Without the statistics from this bank, dispute numbers across other Code subscribers rose by 2.5%.

Dispute resolution times in 2013–14 were relatively consistent with those recorded in 2012–13.

Total resolution times for 2013–14 are shown in chart 4.

### Financial Difficulty

Clause 28.2 of the Code (2013 version) requires a bank to try to help customers, with their agreement, to overcome financial difficulties they may have with any credit facility they hold with that bank.

Banks reported 146 breaches of their financial difficulty obligations in 2013–14, a 39% decrease on the 238 breaches reported in 2012–13. Half of all breaches in

this category were reported by one bank, which indicated that it had altered the way it assessed breaches of financial difficulty obligations to include breaches of internal procedures. The bank has advised that it has taken steps to address the breaches and expects to see a reduction in these in the next reporting period.

Overall, banks received 288,139 requests for financial difficulty assistance in 2013–14, a 32.5% increase in the number of requests received in the previous reporting period. Banks provided assistance in response to 181,195 (63%) requests, an overall decrease compared to 2012–13 of 7.7%. The percentage of requests for assistance granted varied between banks, with some reporting an increase and others a considerable decrease.

Several banks reported that they could not assist customers in financial difficulty when the customer failed to provide the necessary written information for their application to be assessed. Typically, this occurred when customers made their initial request by phone then failed to submit the required supporting documentation such as medical certificates and Statement of Financial Position. These requests were subsequently recorded as not granted for the purposes of the CCMC's ACS.

### Technology

A number of banks developed new internet or mobile banking applications in 2013–14. It is pleasing to note that banks' project teams included compliance representatives who ensured that Code obligations were considered as these new applications were developed. The obligations of the Code apply to banking services regardless of the method of engaging with the customer.

Clause 16 of the Code (2013 version) requires that where a prospective customer identifies themselves as a low income earner, disadvantaged person or member of a remote Indigenous community when they open a new account, the bank should subsequently provide them with factual information about accounts that may suit their needs.

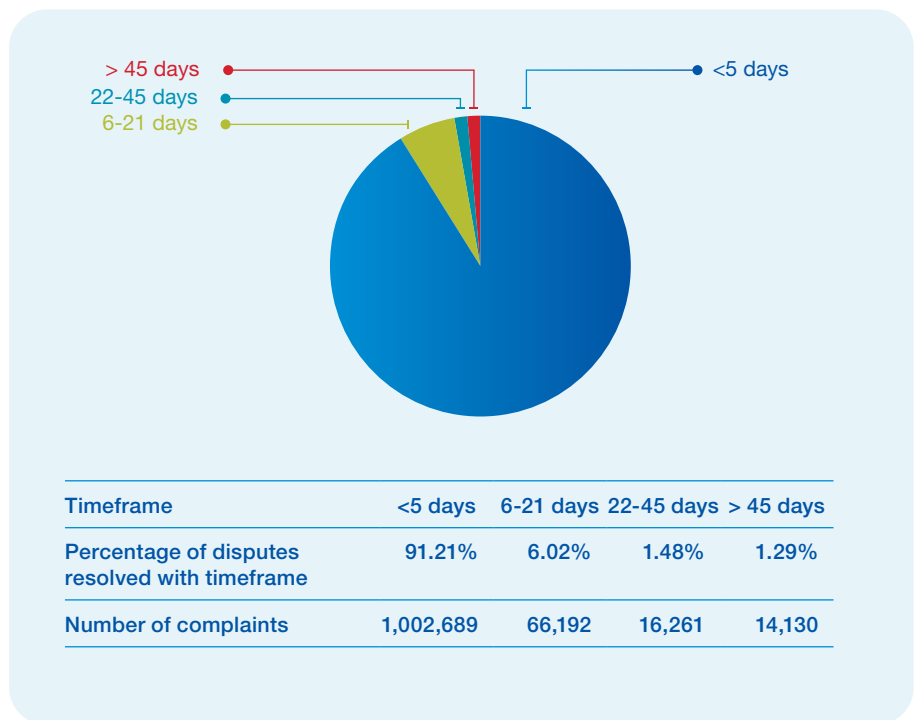
No bank could specifically confirm that it asks for information, for example, that may identify a customer as disadvantaged or a member of a remote Indigenous community from an online application. However, most banks stated that customers applying for new accounts online are required to visit a branch to complete the process, allowing the bank the opportunity to make these enquiries.

### Follow up to CCMC inquiries

In recent years, the CCMC has conducted Own Motion Inquiries into three areas of code compliance where a high number of customers may be affected: Direct Debits, Chargebacks and Guarantees. The ACS program sought details of steps taken by banks to assess and improve their processes and procedures as a result of the CCMC's recommendations made in these inquiries.

The responses from banks indicated that they have actively considered the recommendations and made changes to systems and procedures as a result. These changes are expected to improve banks' compliance with the Code and the banking experience for customers.

Chart 4: Dispute resolution times



# Investigations

The CCMC is empowered to investigate allegations from any person that a bank has failed to meet its Code obligations in the provision of banking services to a customer.

The CCMC's ability to deal with specific allegations allows it to investigate instances where compliance is alleged to be below the required standard, and to identify and monitor potential issues emerging across the industry. When investigating a matter the CCMC considers:

- whether a breach has occurred and its extent
- the broader and potential impacts of a breach
- the effect of non-compliance on the bank and its customers
- the root cause of the breach and whether it may be systemic or significant, and
- any remedial action proposed or taken by the bank.

## Case investigation process

The CCMC case investigation process is outlined in diagram 2.

This process is continuously evolving as the CCMC refines the procedures

for handling allegations and streamlines decision-making to ensure people wishing to make an allegation can do so within a clear and structured investigation process. For example, in 2013–14, the CCMC incorporated its powers under the Mandate to make delegated decisions into its procedures, ensuring that matters are dealt with in a timely and efficient way. The delegated decision process is discussed in this report.

## Delegated Decisions

When the Mandate came into effect on 1 February 2013, the CCMC gained an additional decision-making power in relation to its investigations.

Under clause 6.3 of the Mandate the CCMC can decide whether to start or continue a compliance investigation. This clause provides guidance on what factors might be considered relevant to these decisions, such as the nature of the allegations, the significance of the issues raised or whether

a court or other forum represents a more appropriate venue.

This means that where the CCMC is satisfied that an investigation, or further investigation, is not warranted, it may decide to exercise its discretion and take no further action. For example, a breach allegation may relate to an issue the CCMC has already considered with the same bank in a previous Determination, or the law may have changed and now addresses the concerns raised with the CCMC. Similarly, the CCMC can apply the Delegated Decision process where it is not able to proceed because the allegation is not within its jurisdiction to do so, such as when the 12 month rule applies.

The CCMC used the Delegated Decisions process in 2013–14 to close nine cases.

For more information on how the CCMC conducts investigations please visit [www.ccmc.org.au](http://www.ccmc.org.au)



## CASE STUDY

### PROVISION OF CREDIT

Alan had an average annual income of \$24,000. In 2003, his bank approved an increase in his credit card limit from \$4,000 to \$13,000.

By 2007 (four increases later), his approved limit was \$36,500. During that time Alan was rarely within his limit, his repayments were erratic, and some transactions significantly exceeded his monthly income.

Alan's financial counsellor contacted the CCMC with concerns about the amount of credit Alan had been able to access over time. She alleged the bank had breached its obligations under clause 25.1 of the Code (2004 version), now clause 27 of the Code (2013 version), that states:

*Before we offer, give you or*

*increase an existing credit facility, 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.*

The CCMC's approach to this obligation is that a bank has to be able to demonstrate it exercised the care and skill of a diligent and prudent banker in:

1. selecting the credit assessment method it applied to the credit facility or credit increase
2. applying the selected credit assessment method to the customer (for example independent verification of financial and

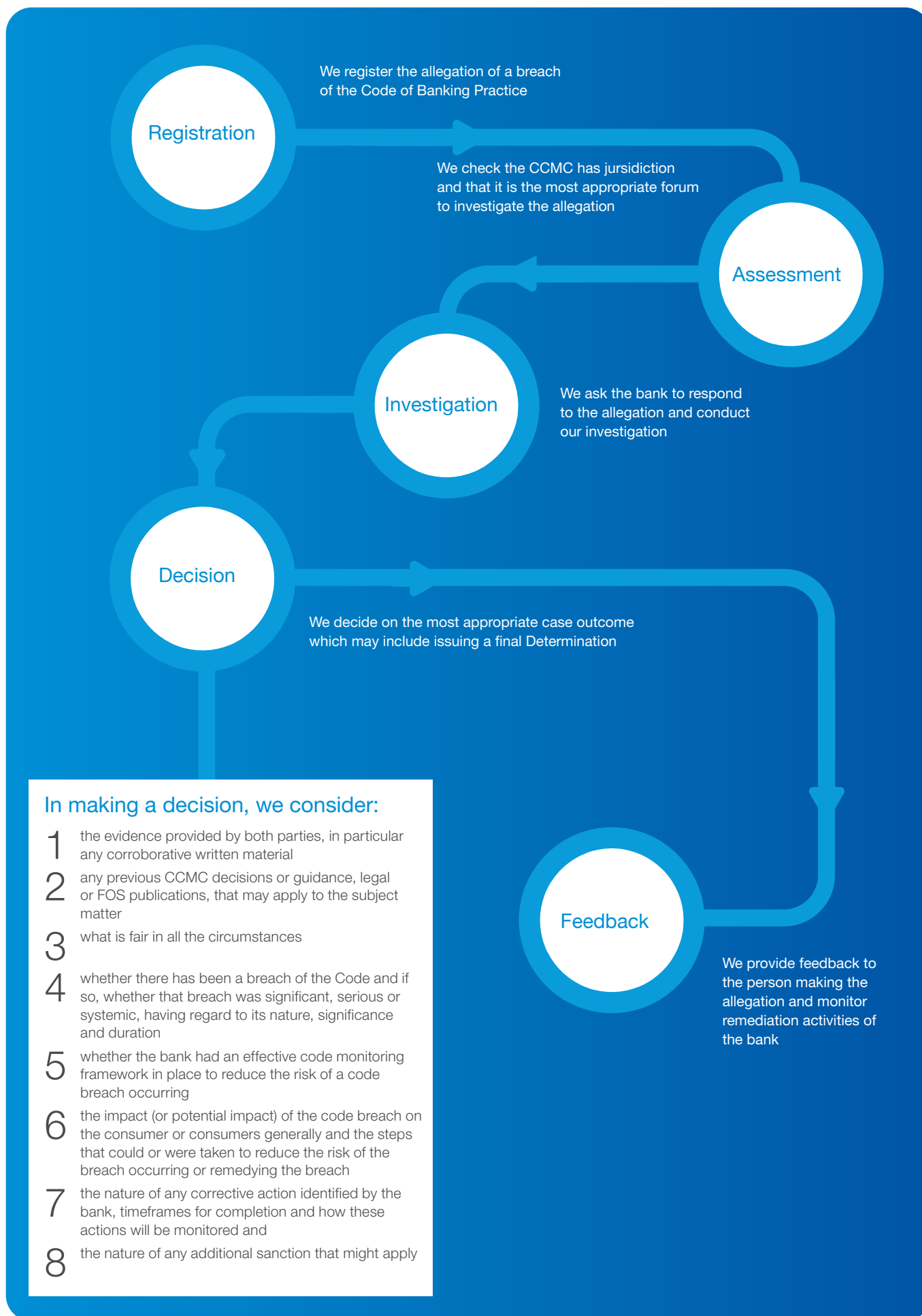
- other information), and
3. forming its opinion on the customer's ability to repay the credit facility.

These steps must take place before each credit limit increase is offered or given and apply to each credit limit increase covered by the Code.

The CCMC's investigation found the bank had only addressed the first step (selecting the credit assessment) and had failed to explain how it complied with the remainder of its obligations. Accordingly the CCMC found the bank had breached Code clause 25.1. It also found the bank had breached its obligations under Code clause 2.2 (2004 version) to act in a fair and reasonable manner when providing credit to Alan.



Diagram 2: CCMC compliance investigations process



# Investigations: case work

## Case work 2013–14

All breach allegations received by the CCMC undergo an initial assessment, but not all matters raised result in an investigation. The CCMC received 42 new matters in 2013–14 but was unable to investigate nine of these because they fell outside the scope of the CCMC’s investigative powers. Thirty-three new cases were investigated in 2013–14.

Table 2 below provides an overview of the matters the CCMC was able to investigate in 2012–13 and 2013–14.

Allegations of Code breaches from individual consumers accounted for 31 of the 33 cases registered in 2013–14, with five allegations received from small businesses. In three cases, consumers elected to have a representative act on their behalf.

## New investigations by customer type

These individual and small business consumers (see chart 5) were located throughout Australia, with most (30.5%) based in New South Wales (see chart 6). 52% of allegations were received via the ‘Report a Concern’ page on the CCMC’s website while the rest were received via email (24%), referral from FOS (7%), by post (5%) or by telephone (12%).

## Allegations outside the CCMC’s investigation powers

The CCMC received nine matters in 2013–14 that it could not investigate because they were outside its investigative powers under clause 6.2 of its Mandate. These matters include where the allegation relates

to a bank’s commercial decision, it is being considered in another forum, the CCMC has considered the allegation before or the matter relates to a bank which does not subscribe to the Code. In addition, the matter must fall within the ‘12 Month’ rule (see the case study on page 19).

In one matter, a consumer alleged that two separate banks had colluded with state authorities to artificially inflate land prices in an area before entering into mortgages with consumers. The CCMC is not an appropriate forum to consider allegations of this nature, which are more appropriately dealt with by regulatory bodies or law enforcement agencies. In another a consumer contacted us about concerns he had regarding how his bank was enforcing court orders against him. The CCMC cannot investigate these types of concerns which should be referred back to the relevant court.

One consumer contacted the CCMC regarding the bank’s commercial decision to issue ‘pay wave’ cards to customers. Other than lending decisions, the CCMC cannot consider banks’ commercial decisions.

The CCMC also received an allegation about mistaken internet payments. Payments of this sort form part of the ePayments Code, which is administered by ASIC. In addition an allegation was made against a credit card provider that doesn’t subscribe to the Code.

**Table 2: Overview of case numbers**

Cases	2012–13***	2013–14
Number of cases open at beginning of year	13	26
Total number of new cases	42	33
Total number of cases closed	29	28
Number of cases open at end of year – 30 June	26 (including 7 pending*)	31 (including 6 pending*)

Breaches	2012–13	2013–14
Total number of alleged breaches	84	48
Total number of Code breaches confirmed	12**	26**

Closed cases	2012–13	2013–14
Number of cases closed by Determination	2	2
Number of cases closed by delegated decision	0	9

\* Where an allegation is being considered by another forum, such as FOS or a court, the investigation is held pending the outcome of that other forum’s review.

\*\* Includes breach findings by FOS adopted by the CCMC under the Mandate.

\*\*\* The reporting period for 2012–13 spans 15 months, from 1 April 2012 to 30 June 2013.

Chart 5: Allegations received by customer type

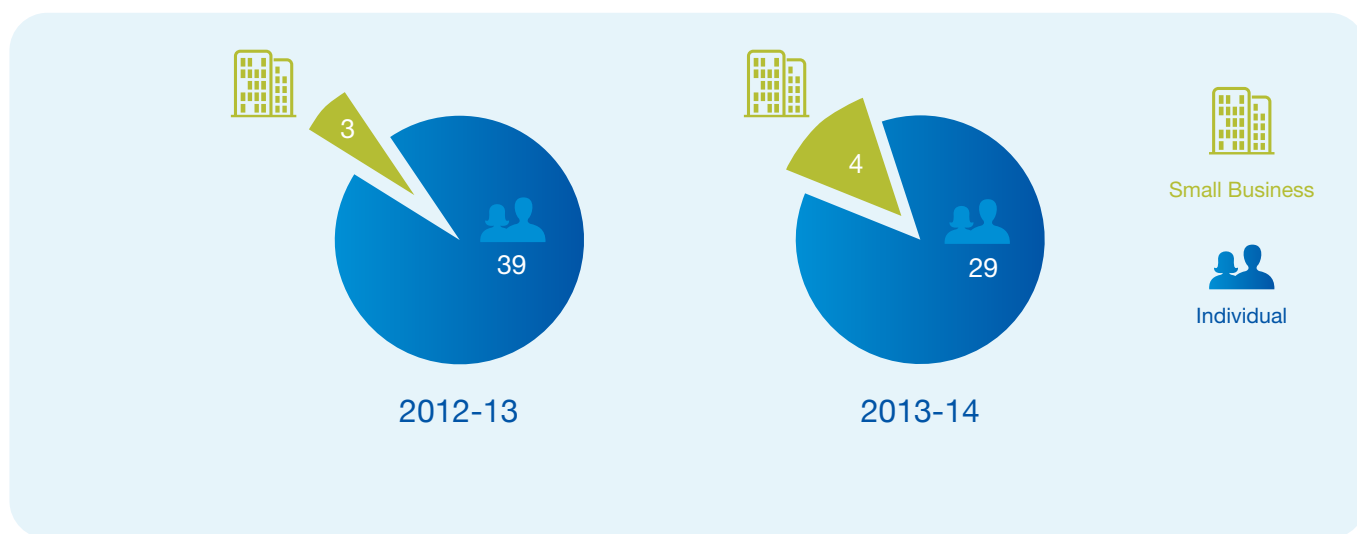
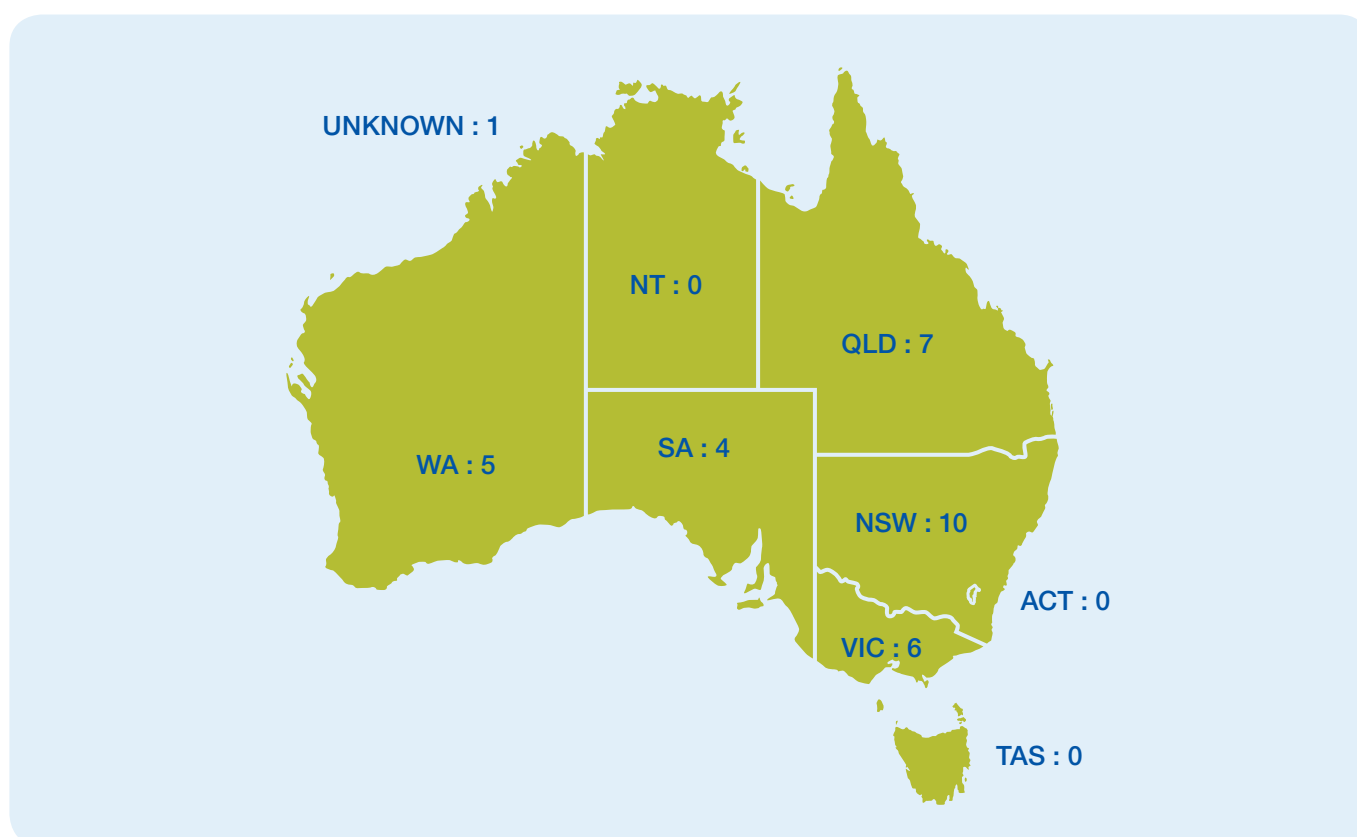


Chart 6: Allegations received by State



# Investigations: outcomes



## CASE STUDY

### OWN MOTION INQUIRY

The CCMC may, for the purposes of monitoring the Code, consider an Own Motion Inquiry where it seeks to monitor one or more Code subscribers' compliance with the Code.

The CCMC concluded one inquiry of this type during 2013–14 as a result of a referral from the FOS Banking Ombudsman regarding a potential breach of the Code. In this matter, a notice of a change to the Terms and Conditions of a product were posted to the bank's customers 32 days before the change took effect. However, one customer complained that he did not receive the notice within the required 28 days before the change. This was caused by a public holiday delaying postal deliveries.

The bank agreed that, while the customer had suffered no loss, the written notice regarding the change of Terms and Conditions had not been provided within 28 days of the change and a breach of clause 18.1 of the Code (2004 version) had occurred. The bank advised that it would self-report the breach in its Annual Compliance Statement and that it had reviewed and amended its procedures to prevent a reoccurrence of the breach.



## Overview of alleged Code breaches

The 33 cases registered for investigation by the CCMC in 2013–14 contained 48 alleged Code breaches, including six allegations relating to obligations under the Code (2013 version). Chart 7 below highlights the top six Code obligations to which these related.

The small number of allegations received from consumers and small businesses for investigation by the CCMC each year remains a concern. The CCMC will continue to raise awareness of its operations through its engagement with all stakeholder groups during 2014–15.

A significant number of allegations raised by parties related to 'Key Commitments'. These include clauses 3 and 4 of the Code (2013 version) – 'Key Commitments to You' and 'Compliance with Laws'. Under clause 36 of the Code (2013 version) the CCMC is unable to investigate, monitor or report on these

matters unless a breach of another clause of the Code (2013 version) is also alleged.

While the CCMC is unable to consider these clauses in isolation, it recommends that banks consider how the outcomes of their processes and procedures satisfy their overarching obligation to treat customers in a fair, reasonable, ethical and consistent manner.

### Referrals from FOS and the ABA

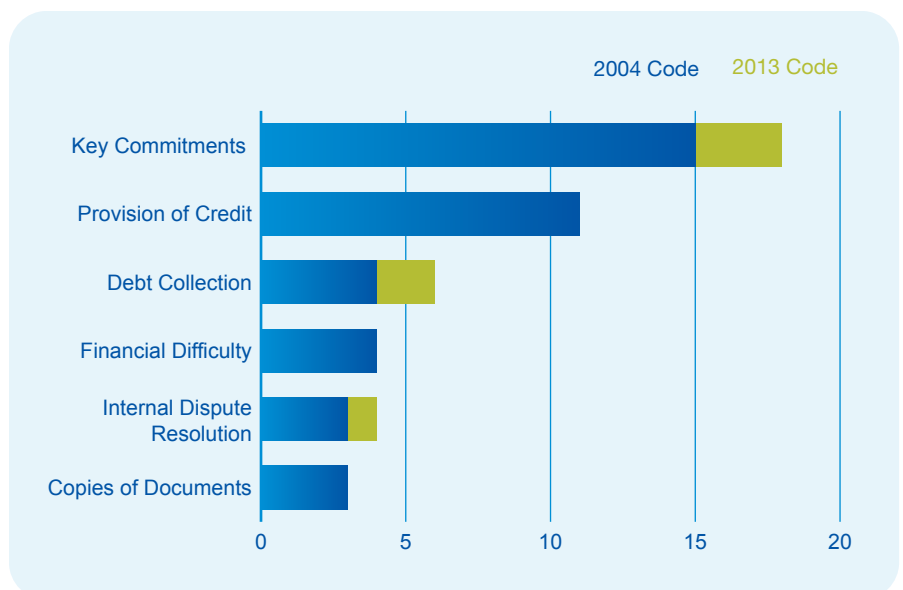
During the reporting period, one matter was referred from FOS. This matter was dealt with under clause 5 of the CCMC Mandate and is discussed in the Own Motion Inquiry case study.

No matters were referred to the CCMC by the ABA during the reporting period.

### Consumer enquiries

The CCMC received 18 enquiries from consumers in 2013–14 about expectations of banking standards and services

Chart 7: Alleged breaches by Code category – new cases received in 2013–14 (Top six categories)



See appendix 3 for a full list of alleged breaches received in 2013–14.

under the Code. While in some cases it was appropriate to refer the consumer to FOS because the consumer sought redress, other enquires resulted in CCMC investigations as the allegations indicated potential breaches of the Code.

### Cases closed

The CCMC closed 28 cases during 2013–14; the outcomes of these cases are illustrated in chart 8.

The CCMC closed 12 cases as ‘Withdrawn or no further contact’ where the person making the allegation did not provide a Privacy authority consenting to the CCMC engaging with the bank about a matter, withdrew the case or didn’t respond to the CCMC’s requests for information to continue investigating the case.

Under clause 6.3 of its Mandate, the CCMC decided to use its discretion in seven matters where it felt that the individual matter was more suitably dealt with in another forum. Five cases were closed because the CCMC exercised its discretion not to investigate. In three of these five matters, the CCMC decided the material before it did not demonstrate that the bank had breached the Code. In the other two cases, the CCMC considered that the actions already taken by the banks to remedy the alleged non-compliance were sufficient.

Two cases were closed as a result of the CCMC’s Determination process – in both matters the CCMC concluded that the Code had been breached by the individual bank concerned.

### Breach outcomes

The CCMC recorded 26 breaches of the Code in 2013–14 from its investigation work. All recorded breaches related to the 2004 version of the Code. These include two cases where FOS determined that the Code had been breached. Under clause 6.2 of its Mandate, the CCMC is unable to investigate such matters but must adopt the FOS decision.

Chart 8: Cases closed 2013–14

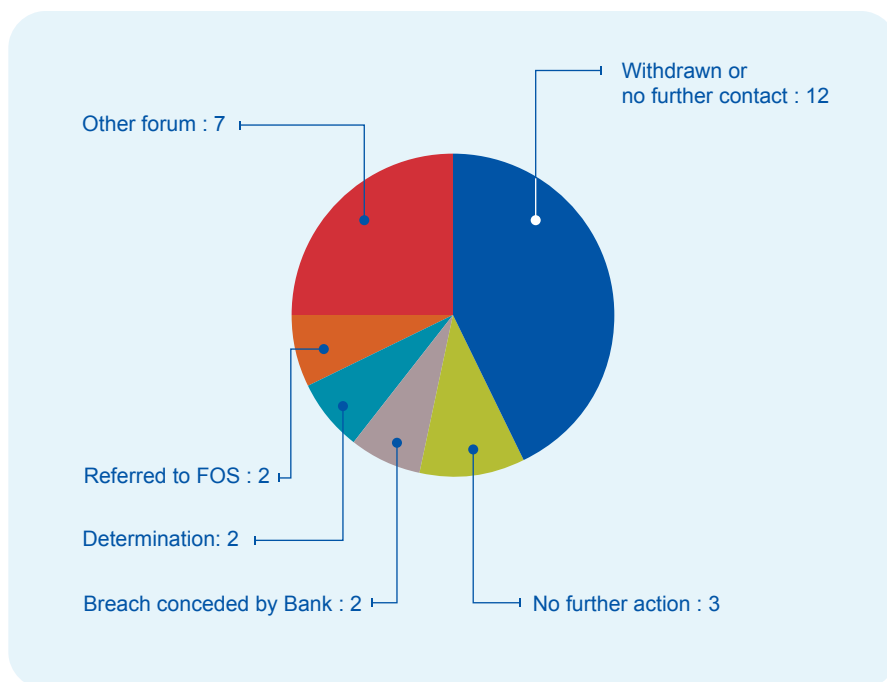
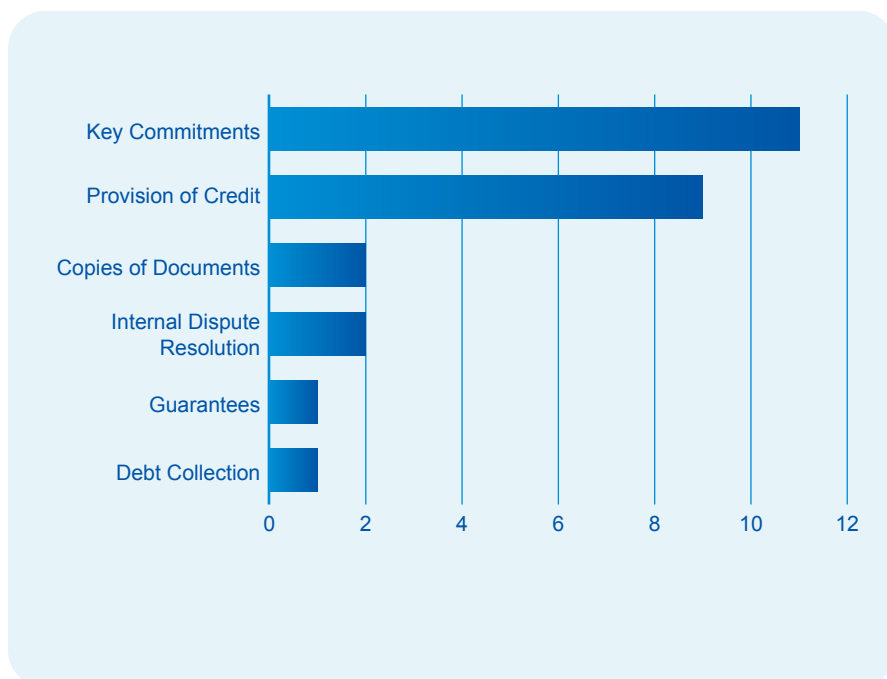


Chart 9: Breach finding by Code category 2013–14\*



\* Includes the two decisions by FOS that a breach had occurred, which the CCMC adopted.

# Engaging with stakeholders

In 2013–14, the CCMC broadened its engagement with stakeholders to share its experience of Code compliance and influence positive changes in industry behaviour.

## Stakeholder engagement survey

In February 2014, the CCMC engaged an external facilitator to survey its stakeholders to more fully understand their expectations about the Committee's operations and identify their priorities.

Bank representatives, consumer advocates, the ABA and ASIC were among those surveyed. Their responses – provided on a de-identified basis – were generally positive, with participants describing the CCMC as a 'valued and trusted partner' achieving positive results in code compliance. The survey results informed the development of the CCMC's work plan for 2014–17.

We thank all stakeholders who contributed to the survey.

## Consumer and small business representatives

### Consumer advocates

In 2013–14, the CCMC met with six financial counselling and consumer advocate organisations to discuss their clients' experiences of dealing with banks. Their perspectives helped the CCMC to identify potential areas of risk in Code

compliance, which were then incorporated into the CCMC's monitoring activities.

Investigations Manager Ralph Haller-Trost also provided a Code training session during the year for the Consumer Action Law Centre.

## Financial and Consumer Rights Council (FCRC)

CCMC CEO June Smith attended and presented at the FCRC annual conference in Ballarat, Victoria.

The CCMC also designed a Code transition guide and 'tool kit' as part of the professional development program it initiated with the FCRC to raise awareness of the CCMC's role, as part of the council's professional development and Diploma programs.

## Financial Counselling Australia (FCA)

In September 2013, the CCMC attended the FCA's Comparative Hardship Forum, where the FCA shared its findings from a qualitative research project comparing approaches to financial hardship across industries.

In May 2014, CCMC members and staff were also pleased to attend the 2014 FCA conference and External Dispute Resolution Forum in Melbourne, presenting

a series of 'buzz' sessions for delegates on the Code (2013 version). The conference was a valuable opportunity to discuss Code compliance issues with financial counsellors and other consumer advocates and to understand trends in recent consumer experience of banking practice.

In 2013–14 the CCMC continued to strengthen its partnership with the Telecommunications Ombudsman, Energy and Water Ombudsmen of Victoria and New South Wales and the Credit Ombudsman Service Ltd. by enhancing its code training program for financial counsellors.

## Small business

The CCMC continues to develop its engagement strategy with small business representatives.

The CCMC Chair, Chris Doogan, had discussions with the Australian Government including the Federal Small Business Minister's office, to raise awareness of the CCMC's operations.

CCMC Compliance Manager Robert McGregor attended the National Small Business Forum, arranged by the Council of Small Businesses of Australia, to understand the experiences of small business with banking and raise awareness of the CCMC's ability to investigate allegations made about small business that banks have failed to meet their Code obligations. He also discussed code compliance with representatives of the State Small Business Commissioners in New South Wales and South Australia.

"The CCMC has the ability to bring the industry together and provide feedback on the code ... [There's a] willingness to share and to promote good practice."

*CCMC Stakeholder Engagement Survey, 2014*

## ABA, FOS and ASIC

Under the Mandate, the Committee is required to consult with the ABA and FOS when setting or amending operating procedures.

In 2013–14, the CCMC met with both organisations on numerous occasions to discuss matters arising from its code compliance activities and the development of its Guidance Notes. The CCMC Secretariat also provided eight training sessions for FOS staff to raise their awareness of Code obligations and the Committee's operations.

The CCMC maintained its good working relationship with ASIC throughout 2013–14, meeting with the regulator seven times to discuss our respective work programs. The CCMC also took part in ASIC's financial difficulty round table discussions in February 2014, which was held jointly with FCA.

## Code subscribers

### Bank Forum

Nineteen participants representing 11 banks and the ABA attended the annual CCMC Bank Forum on 14 February to discuss:

- the CCMC's work program for 2014–15
- case studies based on the CCMC's recent investigations of alleged Code breaches

- the CCMC's 2013–14 ACS program
- the CCMC's proposal to develop Guidance Notes concerning serious and systemic breaches, and privacy and confidentiality, and
- the scope of CCMC Own Motion Inquiries.

## Quarterly Stakeholder Liaison Group

The CCMC's quarterly Stakeholder Liaison Group teleconferences build on the Annual Forum by allowing industry participants to discuss code compliance issues that affect all banks. In 2013–14, the CCMC held three teleconferences to discuss its work program, the development of Guidance Notes, the ACS program, Code provisions concerning remote Indigenous communities and transition to the Code (2013 version).

## Onsite visits

In addition to the ACS program's onsite verification visits, CCMC members and Secretariat met with bank representatives on 20 occasions in 2013–14 to discuss code compliance issues and identify emerging issues.

## Publications

### Quarterly Bulletin

The CCMC published four editions of its e-newsletter *The Bulletin* during the reporting period, which highlights compliance issues, key industry data and case studies arising from the CCMC's monitoring and investigations work.

## Website

The CCMC launched its redeveloped website in December 2013 with a refreshed design, enhanced site navigation, new

search function, and improved e-newsletter subscription service.

The CCMC completed a website content review and will publish new content in 2014–15 to enhance the information about the CCMC's services, to report a concern about a bank and to ensure transparency in the CCMC's operations.

In 2013–14, the CCMC website received 3,367 unique visitors who

viewed 11,900 pages, with the number of website subscribers increasing by more than 100% during the reporting period.



# Committee members and Secretariat staff

The CCMC is an independent three-member committee, established in accordance with the Code. Its work is supported by the CCMC Secretariat, which provides code monitoring and administrative services.



**Chairperson**  
**Christopher Doogan AM**

*Current term: 1 February 2014 to 31 January 2017*

Chris is a company director and lawyer by background, having occupied several senior positions in both the private and public sectors.

His public sector positions included Deputy Comptroller-General and Comptroller-General of Customs prior to his appointment to the High Court of Australia as inaugural Chief Executive and Principal Registrar. In addition to partnership in a leading law firm of which he was the Managing Partner, he has been CEO of the National Capital Authority; Chairman of a company owned by the Commonwealth of Australia and the State of New South Wales – Law Courts Limited; Chairman of a health insurance company – Australian Health Management Group Limited; and Chairman of Community CPS Australia Limited – a mutual bank (trading as Beyond Bank Australia).

He has written an administrative law textbook, is a trained mediator from Harvard Law School and has filled many community positions including Vice President of the Australian Institute of Management and membership of advisory bodies relating to tertiary education, health and finance.

He has been a member of several regulatory agencies including the Commonwealth Tax Practitioners Board and the ACT Legal Practitioners Admission Board, and was a member of the Australian Business Foundation Board. He is the Principal Member of a specialist Commonwealth Appeals Panel and the independent Chairman of the Audit and Risk Committee for the Family Court of Australia and the Federal Circuit Court of Australia. He is also Chairman of the Board of the Centre for Customs and Excise Studies.



**Industry Representative**  
**Sharon Projekt**

*Current term: August 2012 – August 2015*

Sharon has a legal background with broad experience across the Australian retail banking sector in the areas of legal advice, compliance, and internal and external dispute resolution. She has extensive experience in escalated and complex complaint handling and investigations, having worked on a number of high-profile projects.

Sharon has also worked on compliance-related projects including coordinating and implementing a terms and conditions project to ensure banking compliance following the introduction of the Financial Services Reform Act, Code of Banking Practice and anti-money laundering legislation.

Sharon has worked in debt recovery, providing legal advice on insolvency issues related to mortgage and small to medium business banking customers. She completed the Insolvency Practitioners Association of Australia Advanced Insolvency Law and Practice course in 2002.



**Consumer and Small Business Representative**  
**Gordon Renouf**

*Current term: July 2012 – July 2017*

Gordon is a lawyer and consumer advocate. He is a co-founder and CEO of Ethical Consumers Australia, which operates the 'Good on You' ethical shopping service and Otter eNewsletter. He is the Chair of the Board of Good Environmental Choice Australia and serves on the Boards of Justice Connect and the Consumers' Federation of Australia. He recently finished two terms as a member of the Commonwealth Government's Consumer Affairs Advisory Council, and from 2007 to 2009 he was a member of the executive of Consumers International, the global peak body for national consumer organisations. Gordon has worked as Director, Policy and Campaigns, for the consumer group CHOICE, Director of the National Pro Bono Resource Centre, Director of the North Australian Aboriginal Legal Aid Service and Director of the Northern Territory government's 2004 Alcohol Framework Inquiry.



**Previous Chairperson**  
**Brian Given PSM**

*Term: August 2009 – October 2013*

Brian is a lawyer with an extensive career in the NSW Public Service, including more than 20 years in senior executive roles in the Office of Fair Trading where his responsibilities included a strong focus on law enforcement and industry compliance with fair trading principles. Brian ended his term of appointment on 31 October 2013.



## THE SECRETARIAT



### Chief Executive Officer **Dr June Smith**

*July 2011 – current*

June has significant expertise in Corporations law, professional standards, ethics, integrity, compliance and regulatory frameworks. June has a PhD in Law from Victoria University, specialising in professional and business ethics and organisational decision-making within financial services organisations. She also holds a Bachelor of Arts (Hons) and a Bachelor of Laws degree from the University of Melbourne. She is the General Manager of Code Compliance and Monitoring at FOS.

June's external appointments include Member, Racing Victoria Appeals and Disciplinary Board; Chair, Conduct Review Commission, Financial Planning Association of Australia; Chair, Code Compliance and Monitoring Committee, Australian Travel Agents Scheme; Advisory Member, Member Compliance Committee, Financial and Consumer Rights Council of Victoria and Victoria University Alumni Ambassador.

June is assisted by Robert McGregor (Compliance Manager), Ralph Haller-Trost (Investigations Manager), Liam Cronin (Compliance Analyst) and Gina Vasquez (Code Co-ordinator).



### Compliance Manager **Robert McGregor**

*October 2011 – current*

Robert has more than 25 years' experience in financial services, primarily in the United Kingdom. He has held compliance positions with insurers, banks and a professional body. He is responsible for delivering the CCMC's Code monitoring program and the CCMC's stakeholder engagement with small business advocates.



### Investigations Manager **Ralph Haller-Trost**

*July 2011 – current*

Ralph has a background in law, dispute resolution and federal regulatory compliance. His role includes investigating alleged breaches of the Code, CCMC governance issues, conducting CCMC-initiated enquiries and the CCMC's stakeholder engagement with consumer advocates.

## Committee meetings

Committee meetings are scheduled each month to consider the work of the Secretariat; to make formal decisions relating to alleged breaches of the Code; and to plan and direct future activities. In 2013–14 the Committee met on nine occasions (seven meetings in person and two by teleconference).

# CCMC Financial Statements

1 July 2013 to 30 June 2014

	30 June 2014 \$	30 June 2013* \$
<b>SALARIES</b>		
Salaries – Gross including Committee remuneration and Leave provisions	446,294	559,318
Salaries – Super	24,494	49,056
Salaries – Payroll Tax	43,353	32,325
<b>TOTAL SALARIES</b>	<b>514,141</b>	<b>641,658</b>
<b>EXPENSES</b>		
Occupancy and Outgoings	37,468	51,520
Travel	34,127	38,256
Technology Support	9,315	30,230
Annual Report and Publications	12,577	9,380
Recruitment and Consultants	14,716	9,785
Insurances	1,889	2,735
Conferences and Training	4,484	7,575
Other	4,929	13,382
<b>TOTAL EXPENSES</b>	<b>119,505</b>	<b>162,863</b>
<b>TOTAL SALARIES AND EXPENSES</b>	<b>633,646</b>	<b>804,521</b>
<b>TOTAL FUNDING</b>	<b>711,520</b>	<b>863,463</b>
<b>SURPLUS/(DEFICIT)</b>		
Current Year	57,967	58,942
Accumulated Surplus/(Deficit)	135,841**	118,269***

Actual expenditure in 2013–14 was 18% less than the forecast budget, principally due to lower than anticipated Salaries and Occupancy costs.

Consistent with 2012–13, a portion of this surplus will be retained as an operating reserve against any unforeseen expenditure. The remainder of the surplus will be carried forward to the 2014–15 budget, offsetting the contributions required from Code subscribers. The operating reserve for 2014–15 is equivalent to two months operating expenses.

## Notes

\* The 2012–13 financial statement covers the 15-month period 1 April 2012 to 30 June 2013.

\*\* \$70,841 of the accumulated surplus was allocated to the 2014–15 budget. \$65,000 was retained as an operating reserve.

\*\*\* \$57,967 of the accumulated surplus at 30 June 2013 was allocated to the 2013–14 budget. \$60,302 was retained as an operating surplus.

Appendix 1:

# CCMC members 2004–2014

Position	Member	Term
Chair		
	Anthony Blunn AO	2004–2009
	Brian Given PSM	2009–2013
	Christopher Doogan AM	2014 –
Consumer and Small Business Representative		
	Russell Rechner	2004–2008
	Nicola Howell	2009–2012
	Gordon Renouf	2012–
Industry Representative		
	Ian Gilbert	2004
	David Tennant	2004–2008
	Julie Abramson	2008–2011
	Angela Green	2011–2012
	Sharon Projekt	2012 –

Appendix 2:

# CCMC inquiries 2004–2014

Year	Inquiry title	Code clause
2005–06	Financial Difficulty	25
2006–07	Account Suitability	14
2007–08	Debt Collection	29
2008–09	Direct Debits	19
2009–10	Small Business and Financial Difficulty	25
2010–11	Account Suitability	14
2011–12	Chargebacks	20
2011–12	Foreign Currency Loans	21
2012–13	Direct Debits follow up	19
2012–13	Guarantees	30
2013–14	Chargebacks follow up	20

## Appendix 3:

# Compliance Breach Summary 2004 Code

Code category	Number of code breaches by source 2013–14		Code breaches Total	Significant breaches incl.
<i>(Specific Code (2004 version) clauses in brackets)</i>	<i>CCMC Investigations</i>	<i>Bank ACS program</i>	<i>Total 2013–14</i>	<i>Total 2013–14</i>
<b>2004 CODE</b>				
<b>General</b>	13	1605	1618	1
Key Commitments and General obligations(2,3,4,7)	11	1559	1570	1
Provision of general information (11,13,16.1,32)	2	46	48	0
<b>Disclosure</b>	0	107	107	2
Interest rates, fees and charges (12,15)	0	29	29	0
Terms and conditions (T&C) and changes (10,18)	0	78	78	2
<b>Provision of Banking service</b>	0	124	124	1
Account access and suitability (6,14)	0	4	4	0
Account combination (16.2,17)	0	3	3	0
Direct debits (19)	0	59	59	0
Chargebacks (10.5,20)	0	7	7	1
Foreign exchange services (21)	0	13	13	0
Payment instruments (23)	0	18	18	0
Statements of account (24)	0	20	20	0
<b>Provision of credit</b>	11	778	789	0
Credit assessment (25.1)	9	410	419	0
Financial difficulties (25.2)	0	88	88	0
Joint debtors, joint accounts and subsidiary cards (26,27)	0	7	7	0
Guarantees (28)	1	17	18	0
Debt collection (29)	1	256	257	0
<b>Other</b>	2	1329	1331	2
Privacy and confidentiality (22)	0	1217	1217	2
Advertising (30)	0	34	34	0
Closure of accounts (31)	0	12	12	0
Electronic communication (33)	0	7	7	0
Family law proceedings (38)	0	0	0	0
Dispute resolution and promotion of the Code (8,9,35,36,37)	2	53	55	0
Promotion of the Code (8,9)	0	6	6	0
<b>Total breaches</b>	<b>26</b>	<b>3943</b>	<b>3969</b>	<b>6</b>

## Appendix 4:

# Compliance Breach Summary 2013 Code

Code category	Number of code breaches by source 2013–14		Code breaches Total	Significant breaches incl.
<i>(Specific Code (2004 version) clauses in brackets)</i>	<i>CCMC Investigations</i>	<i>Bank ACS program</i>	Total 2013–14	Total 2013–14
<b>2013 CODE</b>				
<b>General</b>	<b>0</b>	<b>731</b>	<b>731</b>	<b>2</b>
Key commitments and general obligations (3,4,5,9)	0	688	688	2
Provision of general information (13,15,18.2,34)	0	43	43	0
<b>Disclosure</b>	0	65	65	0
Interest rates, fees and charges (14,18.1,17)	0	30	30	0
Terms and conditions (T&Cs) and changes to T&Cs (12,20)	0	35	35	0
<b>Provision of banking service</b>	0	62	62	0
Account access and suitability (7,8,16)	0	6	6	0
Account combination (18.3,19)	0	1	1	0
Direct debits (21)	0	30	30	0
Chargebacks (12.5,22)	0	9	9	0
Foreign exchange services (23)	0	2	2	0
Payment instruments (25)	0	3	3	0
Statements of account (26)	0	11	11	0
<b>Provision of credit</b>	0	378	378	0
Credit assessment (27)	0	161	161	0
Financial difficulties (28)	0	58	58	0
Joint debtors, joint accounts and subsidiary cards (29,30)	0	7	7	0
Guarantees (31)	0	0	0	0
Debt collection (32)	0	152	152	0
<b>Other</b>	0	583	583	0
Privacy and confidentiality (24)	0	528	528	0
Closure of accounts (33)	0	9	9	0
Electronic communication (35)	0	2	2	0
Family law proceedings (40)	0	0	0	0
Dispute resolution (37,38,39)	0	38	38	0
<b>Promotion of the Code (10,11)</b>	<b>0</b>	<b>6</b>	<b>6</b>	<b>0</b>
<b>Total breaches</b>	<b>0</b>	<b>1819</b>	<b>1819</b>	<b>2</b>

Appendix 5:

# Alleged breaches by Code category

Code version	Code category	Number of allegations
<b>2004 version</b>		
	Key Commitments	13
	Provision of Credit	9
	Debt Collection	4
	Financial Difficulty	4
	Copies of Documents	3
	Internal Dispute Resolution	3
	Guarantees	1
	Compliance with Laws	1
	Terms and Conditions	1
	Operation of Accounts	1
	Chargebacks	1
	Privacy and Confidentiality	1
	26. Joint Debtors	1
	38. Family Law Proceedings	1
<b>2013 version</b>		
	Key Commitments	3
	Debt Collection	2
	Internal Dispute Resolution	1

## Do you want to know more about the Code or the CCMC?

If you would like to know more about the Code of Banking Practice or the CCMC, you can refer to the CCMC website:  
[www.ccmc.org.au](http://www.ccmc.org.au)

Alternatively you can visit the ABA's webpage about the Code at: [www.bankers.asn.au](http://www.bankers.asn.au)

### Contacting the CCMC

Do you want to:

- report a concern that a bank has breached the Code?
- make a general enquiry?
- provide feedback?
- make a media enquiry?

You can contact the CCMC using the contact details below.



### CODE COMPLIANCE MONITORING COMMITTEE

P.O. BOX 14240

MELBOURNE VIC 8001

PH: 1300 78 08 08

[www.ccmc.org.au](http://www.ccmc.org.au)

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