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**Report of the Second Review of  
Activities of the Code Compliance  
Monitoring Committee (CCMC)**

2 December 2008

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## **Abbreviations used**

ABA	Australian Bankers' Association
ADR	Alternate Dispute Resolution
ASIC	Australian Securities & Investment Commission
BFSO	Banking and Finance Services Ombudsman
CBS	Compliance Breach Summary
CCMC	Code Compliance Monitoring Committee
FOS	Financial Ombudsman Service

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## **Executive Summary**

The Code of Banking Practice is an instrument of banking self-regulation and sets standards of good banking practice for banks to follow when dealing with individual and small business customers and their guarantors and forms part of any subscribing bank's contractual commitments to its retail and small business customers and guarantors.

The Code Compliance Monitoring Committee (CCMC) was established on 1 April 2004 in accordance with Clause 34 of the Code to monitor bank compliance with the Code and make determinations of breach.

Paragraph 34 (g) of the Code requires the CCMC to arrange a regular independent review of its activities and to ensure the report of that review is lodged with ASIC.

On 22 July 2008 I was commissioned to conduct the second review of the CCMC's activities. The terms of reference were determined by the CCMC and are set out in Appendix One.

### **The Course of the Review**

The commencement of the review was notified in writing to a wide range of persons and organisations who were provided with the Terms of Reference and invited to make submissions. A list of persons and organisations notified appears in Appendix Two.

Only two responses by way of formal written submissions were received. However I had many opportunities to obtain views from consumer advocates and other stakeholders during my review, including representatives of ASIC and the ABA, the Chief Financial Ombudsman and the Banking & Finance Ombudsman. Finally I had a number of discussions with the Chairman and other members of the CCMC and many interviews with CCMC's Chief Executive Officer and Case Manager.

Notwithstanding the lack of formal submissions directed at the issues listed in the Terms of Reference, the records and papers within the CCMC contain adequate material to enable opinions to be formed on the effectiveness of the CCMC's handling of many of the issues. I was given ready access to all the CCMC's records and papers relevant to the review by the Chief Executive Officer and received full cooperation from the CCMC's Secretariat.

#### **1. The Committee's performance of its monitoring role**

##### **(a) Is the Committee properly interpreting its role under the Code?**

##### **Conclusion:**

That in focussing principally on three main activities:

- the general annual compliance statement program;
- the conduct of own motion inquiries (or themed reviews) into compliance with specific Code obligations; and

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- the investigation and determination of allegations of Code breaches and, where necessary, publicly naming banks,

the CCMC is properly interpreting its role.

**(b) Has the Committee adopted an appropriate approach to monitoring compliance with the Code?**

I conclude that the approach the CCMC has adopted is appropriate.

**(c) How effective are the Committee's compliance monitoring activities and techniques?**

Conclusions:

- That the CCMC's annual compliance monitoring activities and techniques are effective.
- That own motion inquiries are indispensable tools if the CCMC is to fulfil its compliance monitoring role.
- That the own motion inquiries CCMC has conducted have been effective.
- That the CCMC's use of shadow shopping has been effective.
- That the Committee's compliance monitoring activities are being performed diligently and effectively.

**(d) Are the CCMC's human resources adequate for the CCMC to fulfil its role?**

I conclude that the current staffing establishment is adequate for the CCMC to fulfil its current role and workload.

**(e) Are the CCMC's sanctions appropriate to its role?**

Conclusion:

That while the existing sanction is that mandated by the Code and the Constitution, consideration should be given to providing more flexibility in the imposition of sanctions.

**(f) Has the CCMC's performance of its role lent credibility to the Code as a self regulatory scheme?**

Conclusion: That the CCMC's performance of its role has lent credibility to the Code as a self regulatory scheme

**(g) Should the CCMC have played a more educative and administrative role (e.g. in promoting itself and therefore the Code's role) in relation to the Code?**

Conclusion:

That the CCMC has succeeded in educating banks and other stakeholders about its role and the importance of, and benefits to be derived from, compliance with the Code.

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## **2. The Committee's external relationships**

### **(a) Does the CCMC have an appropriate public profile?**

Conclusion:

Consumer advocates consider that promoting knowledge and awareness of the Code especially to smaller advocacy bodies in regional towns and centres is more important than the public profile of the CCMC.

### **(b) How well has the CCMC developed effective relationships with stakeholders?**

Conclusion:

That the CCMC has developed effective relationships with stakeholders.

### **(c) Has the CCMC established an appropriate and beneficial relationship with the Banking and Financial Services Ombudsman ("BFSO")?**

Conclusions:

- That the CCMC has established a relationship with BFSO that is reasonably effective.
- That there is an opportunity for CCMC to continue to work to enhance its relationships with the Banking & Finance Ombudsman with particular emphasis on information flows and on liaison where both bodies are providing guidance.

### **(d) Does the CCMC have adequate access to necessary information from stakeholders to assess bank compliance with the Code?**

Conclusion:

That subject to improvement in the information flow from BFSO to the CCMC of findings the BFSO has made of Code breaches and the regular referral by BFSO direct to the CCMC of allegations of breaches BFSO has received but not investigated, CCMC will have adequate access to necessary information from stakeholders to assess bank compliance with the Code.

### **(e) Has the CCMC been appropriately accessible to stakeholders?**

Conclusion:

That the CCMC has been appropriately accessible to stakeholders.

## **3. Practical application of the CCMC role**

### **(a) How well has the CCMC prioritised the various compliance monitoring activities it is required to undertake?**

Conclusion:

That, to the extent that the CCMC has the discretion to prioritise its compliance monitoring activities, it had done so effectively.

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**(b) Have fair and transparent procedures for dealing with alleged breaches been put in place? Are these procedures are being adhered to?**

Conclusion:

That the CCMC has put in place fair and transparent procedures for dealing with alleged breaches and that in practice the procedures are adhered to.

**(c) Does the CCMC have adequate systems for the collection, recording and processing of information about Code compliance and alleged breaches?**

Conclusion:

That the CCMC has adequate systems for the collection, recording and processing of information about Code compliance and alleged breaches.

#### **4. Governance Requirements**

**(a) Has the CCMC met its reporting requirements?**

Conclusion:

That the CCMC met its reporting requirements.

**(b) Has the CCMC acted independently and appropriately with respect to its role under the Code and its constitution?**

Conclusion:

That the CCMC has acted independently and appropriately with respect to its role under the Code and the Constitution.

**(c) Has the Committee appropriately responded to the recommendations of the first CCMC review?**

Conclusion:

That the Committee has responded appropriately to the recommendations of the Initial Review.

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## **Chapter 1. Introduction**

The Code of Banking Practice is an instrument of banking self-regulation. The Code first became fully operative from November 1996. A major review of the Code was conducted commencing in 2000 and the final reviewed version of the Code was published in May 2004. The reviewed Code (the Code) sets standards of good banking practice for banks to follow when dealing with individual and small business customers and their guarantors and forms part of any subscribing bank's contractual commitments to its retail and small business customers and guarantors.

The CCMC was established on 1 April 2004 in accordance with Clause 34 of the Code to monitor bank compliance with the Code and make determinations of breach.

Paragraph 34 (g) of the Code requires the CCMC to arrange a regular independent review of its activities and to ensure the report of that review is lodged with ASIC. The initial review was required to be held after the first year in which the CCMC operated and thereafter periodic reviews are required to be held so as to coincide with the periodic reviews of the Code itself.

The first review of the activities of the CCMC (the Initial Review) was conducted in 2005 and the first review thereafter of the Code was announced in late 2007. That review is still in progress.

On 22 July 2008 I was commissioned to conduct the second review of the CCMC's activities. The terms of reference were determined by the CCMC and are set out in Appendix One.

## **Chapter 2. The Course of the Review**

The commencement of the review was notified in writing to a wide range of persons and organisations. All were provided with a copy of the Terms of Reference and were invited to make submissions. A list of persons and organisations notified appears in Appendix Two.

Only two responses by way of formal written submissions were received. However I had many opportunities to obtain views from consumer advocates and other stakeholders during my review. A particularly valuable opportunity was a telephone conference with consumer advocates from a wide range of consumer organisations including the Consumers Federation of Australia, the Australian Consumers' Association, the Australian Financial Counselling & Credit Reform Association and consumer legal services. I also contacted financial counsellors who had referred complaints to the CCMC in the past twelve months. I had discussions with representatives of ASIC, with Mr Ian Gilbert, Director, Australian Bankers' Association and with Mr Neave, the Chief Financial Ombudsman and Mr Field, the Banking & Finance Ombudsman. Finally I had a number of discussions with the Chairman and other members of the CCMC and many interviews with CCMC's Chief Executive Officer and Case Manager.

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I believe there were a number of factors that contributed to the lack of formal submissions:

- The only issue relating to the CCMC which has excited much debate during 2008 is that of the future structure and location of the code compliance monitoring function. This issue has featured prominently in the current Code review. The CCMC made a submission on this topic when submissions were first called for by the Code reviewer and extensive submissions were made by consumer representatives at various stages of that review. ABA also presented options and views on this matter to various stakeholders.
- There is some overlap between the two reviews but in my opinion, the general consensus is that the structure and location issue is not one that will be significantly advanced by this review. The issue is ultimately one for the reviewer of the Code and the ABA. Having said that, it is appropriate to note that there have been informal discussions and meetings involving the principal stakeholders (including the CCMC) and both reviewers.
- As required by clause 34 of the Code, the review of the activities of the CCMC must be conducted contemporaneously with the current review of the Code itself. The nature of the two reviews is very different. The terms of reference for my review direct me to focus essentially on how the CCMC has performed its role in the period since the completion of the Initial Review. By contrast, the review of the Code has a different focus and is concerned more with recommending what changes should be made in order that the Code will be more useful and relevant in today's and tomorrow's circumstances. Consumer advocates showed limited interest in commenting on past events other than upon the information flow from the BFSO (now the Banking & Finance Ombudsman within FOS) to the CCMC.
- Many of the issues listed in the Terms of Reference for this review were the same or similar to issues examined in the Initial Review. As almost all of the recommendations of the Initial Review have been implemented, it is not surprising that stakeholders showed little interest in the issues that were common to both the Initial Review and this review.
- Stakeholders are reasonably satisfied with the CCMC's performance.

Notwithstanding the lack of formal submissions directed at the issues listed in the Terms of Reference, the records and papers within the CCMC contain adequate material to enable opinions to be formed on the effectiveness of the CCMC's handling of many of the issues. I was given ready access to all the CCMC's records and papers relevant to the review by the Chief Executive Officer and received full cooperation from the CCMC's Secretariat.

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## **Chapter 3. Examination and Conclusions on the Individual Issues Listed In the Terms of Reference**

In this chapter, the individual issues are set out according to the Terms of Reference.

### **1. The Committee's performance of its monitoring role**

#### **(a) Is the Committee properly interpreting its role under the Code?**

This issue was considered by the Initial Review which concluded that the CCMC was interpreting its role in accordance with the Code. The only submission received which dealt with this issue was a submission from a subscribing bank which stated that it agreed that the CCMC is properly interpreting its role under the Code. The submission then proceeded to comment on what it perceived was the need to refine the approach and the techniques taken to focus on smaller tasks. This aspect of the submission is considered below. No other submissions or responses relevant to this issue have been received from stakeholders in this Review and I examined the relevant CCMC's records and papers.

#### **Conclusion:**

**That in focussing principally on three main activities:**

- **the general annual compliance statement program;**
- **the conduct of own motion inquiries (or themed reviews) into compliance with specific Code obligations; and**
- **the investigation and determination of allegations of Code breaches and, where necessary, publicly naming banks,**

**the CCMC is properly interpreting its role.**

#### **(b) Has the Committee adopted an appropriate approach to monitoring compliance with the Code?**

This issue was considered by the Initial Review which concluded that overall the CCMC's approach to monitoring was appropriate. The Initial Review made a number of recommendations for enhancing the effectiveness of the CCMC's compliance monitoring activities and techniques which will be dealt with later in this report (Initial Review recommendations R15, R16 and R17).

I note from the CCMC's papers and records that it has implemented all three recommendations and that other improvements have been made by the Committee to its monitoring techniques since the Initial Review.

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Mention is made above to the submission from one bank in so far as it addresses the approach taken by the CCMC. It is useful to cite the relevant part of that submission:

*“... And we believe that the approach and the techniques taken could be refined so that the focus is on smaller tasks, allowing the feedback to be provided to subscribing banks in a timely manner. Our suggestion for the technique is for the CCMC to choose a few salient points to test rather than every angle of the point in Code of Banking Practice. We believe that this approach would see the findings of the monitoring activity being distributed back to the banks in a timely manner, whilst still taking into account the limited resources available to the CCMC. One of the issues that we see is that the results of the monitoring can take many months to compile and analyse and potentially by the time the information is received the original information can be out of date or not relevant. We feel that due to the time taken to distribute the results of the monitoring the impetus is lost and this can lead to a loss of credibility.”*

In subsequent discussions with the signatory of the submission, it was clarified that the points made in the submission are directed at both the Annual Compliance Statements program and the themed or own motion inquiries into compliance with specific Code obligations. I do not consider it would be appropriate to scale down the scope of the annual compliance review. A major objective of the annual compliance review is to provide information about overall compliance with Code obligations by banks. Further, it should also be noted that the CCMC has, after obtaining views from banks and ABA, refined the statement so that it no longer seeks information not considered essential.

**Conclusion:**

**That the approach the CCMC has adopted is appropriate.**

**(c) How effective are the Committee’s compliance monitoring activities and techniques?**

The CCMC undertakes several forms of monitoring activity, one of which is the annual collection and analysis of information in the form of compliance statements completed by banks. This form of monitoring is examined first.

**Annual compliance statements**

Reference has been made to Initial Review recommendations R15, R16 and R17 which relate to annual compliance statements and it is convenient to cite the conclusions/recommendations:

**“6. Compliance monitoring activities**

**6.1 How effective are the CCMC’s compliance monitoring activities and techniques?**

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### **Surveys - the annual compliance statement**

*The first annual survey was undertaken in June 2004. The second is about to be undertaken. This survey was based largely on that used by the UK Banking Code Standards Board. It is a two-part process:*

- *a compliance statement where information is sought about banks' procedures, and*
- *a questionnaire seeking data on how many complaints banks have had and how many involve possible Code breaches.*

*We recommend (R15) that the second part be expanded to seek data on how many of the complaints were referred to the BFSO and, of them, how many involved possible Code breaches and for how many an actual breach was found.*

*We recommend (R16) that feedback on the survey be given within 3 months of the receipt of all of the completed survey forms.*

*Use of the following additional techniques was supported by at least some stakeholders in interviews or in submissions, including bank representatives.*

- Self-reporting
- Inquiries
- Market research
- Compliance monitoring visits

*We recommend (R17) that the Committee consider including all of these techniques in its business plan as resources allow.”*

It is clear that the Committee's compliance monitoring activities and techniques have advanced beyond the recommendations of the Initial Review. The following extract from the 2007-2008 Annual Report (p. 8) explains some of the background and the changes that have been made:

#### **“Compliance Monitoring**

*Each year, in accordance with Clause 34(d) of the Code, banks submit an annual compliance statement to the Committee. In these statements banks are required to answer questions and provide information about the measures they have in place to ensure compliance with all sections of the Code. This information is provided on a confidential basis and treated as such.*

*The annual compliance statement gives the banks the opportunity to notify the Committee of areas in which they may not be fully Code compliant. This information assists the Committee to assess banks' internal compliance frameworks and to identify areas in which it needs to work with banks to improve compliance.*

*Until the 2007-2008 year, banks were required in the statements to provide data on the number of complaints received and the number of*

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*potential breaches arising from those complaints. Analysis of this data was hampered by a lack of consistency which has been a concern for the Committee since reporting began in 2004. The information provided by subscribing banks unduly concentrated on identifying complaints received from customers with less emphasis on the nature and significance of Code breaches identified by banks and the remedial actions undertaken to address those breaches.*

*In consultation with banks and the ABA over the past year, the Committee changed its reporting requirements. The key changes, which were effective for the 2007-08 compliance statement reporting, are as follows:*

- notification of the number of breaches identified according to identification source (the Bank, BFSO or the Committee) and the relevant clause of the code, and*
- notification of additional information on those breaches identified as significant (including details of the breach, its impact and status of remedial actions). Significant breaches are those typically having large customer impacts and include breaches identified as systemic by the bank or other oversight body.*

*There is no longer a requirement for banks to report statistical data on complaints, although the Committee will continue to monitor the complaints handling areas of banks in the course of normal compliance work. In preparing the compliance statements for submission to the Committee, bank compliance personnel are expected to assess the significance of breaches identified through compliance and complaints systems.*

*Effective notification by banks of Code-related breaches is critical to the Committee's compliance monitoring function and is an area that will be subject to more rigorous oversight in 2008. An onsite audit program has been developed for the 2007-08 annual compliance statements. This will identify ongoing compliance issues and any difficulties with the new reporting requirements.”*

In order to improve the reliability and accuracy of the Compliance Statements to be completed by subscribing banks for the year ended 31 March 2008, the CCMC modified or redrafted the questionnaire form and the Compliance Breach Summary Form and provided a new set of guidelines to assist banks in completing the forms. A new initiative was to introduce an on site review program to discuss and review with each bank the content of its Compliance Statement for that year. The scope of an on site review of a bank's Annual Compliance Statement includes:

- an update of any recent developments in the bank's overall compliance framework;
- a review of the processes the bank follows to ensure the integrity of the statistical information provided in the Compliance Breach Summary (CBS) attached to the Compliance Statement;

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- a review of the nature and importance of the breaches identified, including breaches identified in the CBS as significant; and
  - a review and discussion of any issues of interpretation and difficulty encountered by the bank in the preparation of the CBS.

Banks were informed of the proposed new on site review program and of the range of source records that would have to be made available during an on site review, at the very outset of the Annual Compliance Statement process for the year ended 31 March 2008.

The information gained from the compliance statements lodged with CCMC in 2008 and from the on site visits to banks has enabled the CCMC to obtain a far more relevant and accurate picture of the state of compliance by banks with their obligations under the Code. For the first time the CCMC has prepared and disseminated to subscribing banks aggregated data from which an overall picture of code compliance performance within the sector has been obtained and individual banks are able to assess their compliance performance in the broader context. However it is stressed that data obtained from any individual bank is treated as confidential to that bank and is not made available to other banks or publicly. Further refinement of these processes is planned.

**Conclusion:**

**That the CCMC's annual compliance monitoring activities and techniques are effective.**

**Other monitoring activities**

**"Own motion inquiries" (or themed reviews) and "shadow shopping"**

The CCMC conducts "own motion inquiries" into the bank compliance with specific obligations under the Code.

The CCMC's Annual Reports show that that in the first four years of operation, the following own motion inquiries were conducted:

Year Ending	Own Motion Inquiries
31.03.2005	Nil
31.03.2006	Major inquiry into compliance with clause 25.2 (Assistance to customers experiencing financial difficulty). This inquiry also examined aspects of compliance with clauses 2.2 (acting fairly and reasonably), clause 7 (staff training and competency), clause 10 (terms and conditions) and clause 29 (debt collection).
31.03.2007	Major inquiry into compliance with clause 14 (Account suitability for disadvantaged or low income customers). Minor inquiry into compliance with clause 9 (Display of Code in branches, making copies available to customers on request). Also follow up on the clause 25.2 inquiry conducted in y/e 31.3.2006
31.03.2008	Major inquiry into compliance with clause 29 (Debt collection with special focus on difficulties financial counsellors and advocates were experiencing in dealing with banks as representatives for bank customers and on banks continuing to contact customers after representatives have been appointed). Minor inquiry into compliance with clause 19 (Direct debits).

For the year ending 31 March 2009, the CCMC proposes to complete the inquiry into clause 19. In its Bulletin No 12 (August 2008) the CCMC advised that it was deferring until 2009 a proposed major inquiry into compliance with clause 35 (Internal dispute resolution). The decision was made after taking into account the substantial bank and CCMC resources required for the new onsite compliance audits, the Review of the Code and this review.

The CCMC's Annual Reports provide useful summaries of the background, scope, methodology and findings of the various inquiries and any follow up CCMC finds necessary, such as where banks have been uncertain as to the actual extent of certain Code obligations.

Major own motion inquiries are resource intensive both for CCMC and the bank or banks concerned and require careful planning and skilful management. The two submissions to the review received from banks raised some concerns about their experiences with own motion inquiries. Earlier in this report I have cited the comments made by one bank that the scope of inquiries should be refined, arguing that more timely reporting back to banks would occur if the focus of the inquiry was narrowed and did not raise every point possibly relevant to a Code obligation.

The other bank's submission on this point had a different focus. It read:

*“The CCMC’s inquiries into bank compliance with certain sections of the Code require a significant investment in time and resources from banks.*

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*Given the limited number of complaints being handled by the CCMC, we question whether a handful of complaints is sufficient to warrant the need for an enquiry."*

As neither submission provided particulars of the occasions which generated the concerns outlined in the submissions, my response is necessarily limited. From my own experience in investigations and inquiries, it is frequently the case that it is not until an inquiry is in an advanced stage that it can be ascertained that some of the material collected and analysed may not be particularly relevant to the purpose of the inquiry. However both bank submissions are in terms that overall are positive and supportive of the CCMC and the comments are plainly made in good faith. I expect that the CCMC will give due consideration to them.

I am firmly of opinion that own motion inquiries are indispensable tools if the CCMC is to fulfil its compliance monitoring role. I consider that the own motion inquiries CCMC has conducted have been effective.

**Conclusion:**

**That own motion inquiries are indispensable tools if the CCMC is to fulfil its compliance monitoring role.**

**That the own motion inquiries CCMC has conducted have been effective.**

The CCMC also arranges for "shadow shopping" at bank telephone enquiry centres and at branches to monitor compliance with particular code obligations which lend themselves to being checked by that technique. Shadow shopping may be used to complement a major own motion inquiry or to provide the necessary background information to inform the CCMC on whether a major own motion inquiry might be justified. Shadow shopping programs, properly planned and executed, can be very effective and relatively inexpensive. The records that I have seen indicate that the CCMC's use of shadow shopping has been effective.

**Conclusion:**

**That the CCMC's use of shadow shopping has been effective.**

**Complaint Investigations**

The remaining major compliance monitoring activity is to receive, investigate and determine complaints of breaches of the Code by subscribing banks.

The CCMC's Annual Reports describe at length this aspect of the CCMC's role and provide sufficient statistics and explanations of the breach investigations conducted and the outcomes to give the reader a very good understanding of these monitoring responsibilities.

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At the telephone conference referred to in Chapter 2 and at other discussions with consumer advocates, there appeared to be considerable confidence in the integrity of the investigations and the soundness of the findings reached. However some concern was expressed about the length of time taken to complete investigations. Another commentator (who is an experienced financial counsellor and had referred a number of complaints to the CCMC in the past twelve months) stated that he had the utmost confidence in the investigations and findings by the CCMC. He also stated that he thought there was a lack of appropriate sanctions available to the CCMC and that it seemed to him to be very easy for the offending bank to advise that it had taken action to prevent further breaches.

I have examined the CCMC files of five of the most complex investigations carried out over the past two years. I am satisfied that the investigations were thorough, fair and transparent. The files are well maintained. While a number of these investigations took almost a year, and one fourteen months, the files show that in some cases the banks concerned were slow in responding to the CCMC's requests for information. In some of the earlier cases, banks did not seem to have a good understanding of the investigation process and their need to respond in a timely manner. I have had a number of discussions with the Secretariat about the length of time breach investigations have taken and am satisfied that there is a firm commitment within the CCMC to expedite the breach investigation processes. I also note that the CCMC has been at pains to communicate to stakeholders the importance of eliminating these delays.

**Conclusion:**

**That the Committee's compliance monitoring activities are being performed diligently and effectively.**

**(d) Are the CCMC's human resources adequate for the CCMC to fulfil its role?**

The CCMC's Secretariat consists of a full-time chief executive officer, a case manager (three days per week) and a case officer (two days per week). At the time of writing this report the Chief Executive Officer position was vacant but in the process of being filled.

From my observations and discussions, the current staffing establishment is adequate for the CCMC to fulfil its role if the workload remains reasonably constant and arrangements whereby various services and support are provided by sources within FOS continue.

As to potential growth in workload, this could arise from an increase in the number of allegations of breaches of the Code being referred to CCMC by the Banking & Finance Ombudsman. Were this to occur, it is difficult to see how the Secretariat as currently structured would manage the increased workload.

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This is particularly so because, as discussed in item 3(a) of this chapter, the CCMC is obliged to investigate every complaint received alleging a breach of a Code requirement other than one which the CCMC is expressly excluded from investigating.

With respect to continuation of the provision of various services and support currently provided by sources within FOS, I note that the major issue of the location and structure of the code compliance monitoring function is under consideration as part of the current review of the Code.

**Conclusion:**

**That the current staffing establishment is adequate for the CCMC to fulfil its current role and workload.**

**(e) Are the CCMC's sanctions appropriate to its role?**

The only sanction the Committee can impose is one of naming a bank in the circumstances outlined in clause 34(i) of the Code and Clause 11 of the Constitution.

The combined effect of the clauses appears to be that the CCMC may name a bank for non-compliance with the Code in its annual report and in no other way and at no other time. Further, clause 10.7 of the Constitution prohibits the CCMC, and each member of the CCMC, from making any public statement on behalf of the CCMC except in the Annual Report or with the prior approval of the Chair of the BFSO and the Chair of the ABA.

As this limitation on the authority of the CCMC to name a bank flows directly from the Code and the instrument by which the CCMC is created (the Constitution), I find it difficult to envisage, in a legal sense, how it could be *inappropriate*. If the question was whether that sanction as the only sanction was *reasonable*, I would be inclined to the view that a more flexible provision might be preferable, such as one which authorised the Committee to name a bank in an official notice issued by the Committee but not until a period of 60 or 90 days had passed since the CCMC formally advised the bank of its decision to name. Some consumer advocates consider additional sanctions should be available.

In this context, it is worth noting that section 4.6 of CCMC's formal procedures provides that if the CCMC determines that a subscribing bank has breached the Code, it may request the bank to remedy the breach or to take specified steps to prevent the breach recurring within a specified time. While the term "request" is used, Section 4.6 also sets down procedures that ultimately enable the CCMC to name the bank if it fails to comply with the request.

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**Conclusion:**

**That while the existing sanction is that mandated by the Code and the Constitution, consideration should be given to providing more flexibility in the imposition of sanctions.**

**(f) Has the CCMC's performance of its role lent credibility to the Code as a self regulatory scheme?**

In my view the answer to this question lies in whether subscribing banks take the CCMC's activities seriously and cooperate with the CCMC's compliance monitoring programs. The evidence before me is that since its establishment, the CCMC has put in place compliance monitoring programs that are transparent and well targeted and, relevantly for the current question, require active participation and cooperation on the part of banks.

**Conclusion:**

**That the CCMC's performance of its role has lent credibility to the Code as a self regulatory scheme.**

**(g) Should the CCMC have played a more educative and administrative role (e.g. in promoting itself and therefore the Code's role) in relation to the Code?**

In considering this question in the context of measuring or commenting on the CCMC's performance of its monitoring role, an important issue is whether the Committee has been successful in educating banks and other stakeholders about its objectives and the benefits to be gained by banks and consumers from the creation and maintenance of compliance monitoring programs. It appears that has been achieved and the results of the monitoring programs demonstrate that there is an acceptable level of compliance with the Code. I consider it reasonable to conclude that the CCMC has succeeded in that aspect of its role.

**Conclusion:**

**That the CCMC has succeeded in educating banks and other stakeholders about its role and the importance of, and benefits to be derived from, compliance with the Code.**

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The general issue of whether the CCMC could have done more in an administrative role to promote itself and therefore the role of the Code is discussed under the broader heading of the Committee's external relationships.

## **2. The Committee's external relationships**

### **(a) Does the CCMC have an appropriate public profile?**

The question of the CCMC's profile was raised during the telephone conference referred to in Chapter 2. The response indicated that there was no real concern by consumer advocates about the profile; rather the concern was with the extent of knowledge of the Code itself by consumer advocacy bodies, especially those smaller bodies in regional towns and centres.

The Initial Review considered the question whether the CCMC needed to develop more of a public profile and concluded:

*"We recommend (R 11) that the CCMC continue to build its profile amongst stakeholder groups, but we do not consider that it would be cost effective for it to seek to attain a higher profile with the general public."*

I am of the same opinion but would add that if the CCMC were minded to expand its public profile, it may be inhibited to some extent by clause 10.7 of the Constitution which severely limits the authority of the CCMC and members thereof to make public comments on behalf of the CCMC.

#### **Conclusion:**

**Consumer advocates consider that promoting knowledge and awareness of the Code especially to smaller advocacy bodies in regional towns and centres is more important than the public profile of the CCMC.**

### **(b) How well has the CCMC developed effective relationships with stakeholders?**

(The following comments do not extend to the CCMC's relationships with the Banking & Finance Ombudsman which are dealt with in item 2(c).)

This issue was considered at length in the Report of the Initial Review. The Report contained a number of recommendations that CCMC has implemented:

- Recommendation 6 that CCMC circulate quarterly bulletins to banks and conduct forums with the banks on a regular basis.
- Recommendation 7 that the CCMC circulate quarterly bulletins to financial counselling and consumer groups and conduct regular forums.
- Recommendation 8 that the CCMC include small business organisations in circulating email updates and in forums.

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- Recommendation 9 that relevant government bodies be kept up to date on code compliance issues, and that they receive email bulletins, quarterly updates and are included in the forums.

CCMC did not accept a recommendation that the CCMC provide an abridged version of the annual report to Parliamentarians.

The CCMC Annual Report for the year ending 31 March 2008 (p. 22) described the CCMC's communications with stakeholders in the following terms:

***“Communication with Stakeholders***

***Banks***

*An effective working relationship with subscribing banks is essential to the Committee being able to effectively perform its monitoring role. Throughout the year, Committee staff and the then Committee member with senior experience in retail banking, Mr. Rechner, were in contact with banks to discuss relevant banking practice and Code issues. Individual bank contacts were also consulted on specific projects to enable the Committee to get industry feedback on new initiatives. For example, Mr. Rechner and the Chief Executive Officer met with an industry group of internal dispute resolution managers to discuss potential changes to the annual compliance statements.*

*On 24 April 2007, the Australian Bankers' Association (ABA) organised a bank forum in Sydney. The forum enabled the Committee to discuss Code-related issues with subscribing bank compliance and legal staff. The Committee presented case studies of non Code compliance and provided the results of its Inquiry into compliance with Clause 14 of the Code.*

*At the invitation of one bank, the Chairman and Mr. Rechner met with senior officers of the bank to discuss the findings relating to an Inquiry. The meeting resolved a long standing matter satisfactorily. Chief Executive Officer, Kirsten Trott also accepted invitations to attend bank fora on specific issues relevant to the Code.*

*Since taking the position at the end of the reporting year, Ms Abramson, who replaced Mr. Rechner as the Committee member with senior retail banking experience, has organised meetings with all subscribing banks.*

***Consumers***

*Consumer fora were held in Perth, Darwin and Brisbane during the 2007-08 year. The fora continued to provide vital information on Code compliance and bank practice from consumer advocates working at a grass roots level. Mr. Tennant, the Committee's Small Business and Consumer representative and the Chief Executive Officer, Kirsten Trott, also met with representatives from the Small Business Development Corporation in Western Australia and attended a meeting of the ABA's Small Business Forum.*

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*These fora and meetings enable the Committee to raise awareness of the Code and talk about the Committee's approach to compliance. The information obtained from discussions at these events assists the Committee in identifying problem areas and key issues for follow up. Mr. Tennant also takes part in the ABA's Community and Consumer Consultative Forum meetings."*

### **Other stakeholders**

*In addition to actively engaging with banks and consumer representatives, the Committee also worked on broadening its stakeholder engagement. Relationships with the BFSO and ASIC have progressed in the past year and general discussions with the Credit Union and Mutual's peak body, ABACUS, and the Code Manager for the General Insurance Code have proved useful.*

*On the issue of the treatment of customers in financial difficulty, the Chief Executive Officer gave a joint presentation at the BFSO's annual conference and attended a House of Representatives Standing Committee on Economics Finance and Public Administration round table discussion.*

### **Website & bulletins**

*The Committee's website is its main interface with the general public and contains its media policy. The website is kept up to date with the Committee's bulletins, submissions and Inquiry reports. Given the increased number of online complaints, the Committee plans to enhance the online complaint function in 2008.*

*The Committee continues to publish quarterly bulletins which enable it to advise banks and consumers of relevant issues and its forward work plan. Interested parties can subscribe online to receive email notification of the bulletins, which are available online at the Committee's website [www.bankcodecompliance.org](http://www.bankcodecompliance.org).*

*The bulletins are also forwarded to consumer representatives registered with the Consumers' Federation of Australia's mailing list."*

I also note that one bank's submission to the Review contained the following:

*"The CCMC has been very effective at developing relations with the Bank and is accessible. As a result we do not have an issue with providing the CCMC with the required information to conduct their monitoring activities."*

Of its very nature, this issue is one more likely than most to attract comments during discussions with stakeholders and in submissions if the relationships established by the CCMC were not effective but the extract cited above is the only external comment I have received on this topic.

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**Conclusion:**

**That the CCMC has developed effective relationships with stakeholders.**

**(c) Has the CCMC established an appropriate and beneficial relationship with the Banking and Financial Services Ombudsman ("BFSO")?**

The following refers to events most of which occurred before the establishment of FOS. Accordingly for ease of reference, the term "BFSO" is sometimes used to refer to that organisation and/or its successor, the Banking & Finance Ombudsman.

The Initial Review was asked to report on:

- Is there an appropriate relationship between the CCMC and the BFSO?
- Is there, where appropriate and mutually beneficial, a sharing of information and resources with the BFSO?

The Report of the Initial Review stated that there was a close working relationship in terms of administrative support to the CCMC from the BFSO, noting that the BFSO provided management of the CCMC's finances, IT support and reception services. Since the merger of BFSO, the Insurance Ombudsman Service and the Financial Industry Complaints Service into a single entity, FOS has taken over many of the support functions with the balance being provided by the Banking & Finance Ombudsman. Since the Report of the Initial Review was delivered in October 2005, some new back-office and service functions have been provided, including the single telephone number service for enquiries and complaints to the three Alternate Dispute Resolution (ADR) divisions within FOS and the CCMC.

The above arrangements seem to me to be eminently sensible from any perspective; CCMC consists of the three Committee members and its Secretariat consists of the equivalent of two full-time staff whereas the BFSO is a much larger and better resourced organisation. I have not encountered any comment that is critical of any aspect of the arrangement nor did I get any sense that the arrangement in any way impacted on the independence of either organisation.

At a professional level there has been cooperation between CCMC and BFSO in other matters. However it is clear that the provision by the BFSO to the CCMC of certain information concerning breaches or alleged breaches of the Code has not worked as well as originally intended. There are two particular areas of concern.

The first relates to cases where a complaint seeking compensation is made to BFSO which, after investigation, finds that a breach of the Code has occurred. It is common ground that there should be only one investigation and that the CCMC will "accept" the BFSO finding. BFSO provides the CCMC with summaries of its findings at six monthly intervals but the summaries do not

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identify the complainant or the bank concerned and there is a very brief description of the facts. The information contained in the summaries is of limited value to the CCMC.

The second relates to cases where a complaint is made to BFSO but BFSO does not investigate a possible breach of the Code. The complaint may not be investigated at all by BFSO because there is no claim for compensation or BFSO may be able to resolve the complaint without investigating whether or not any breach of the Code had occurred. It is not disputed that few of these cases have been directly referred by BFSO to the CCMC. However I have been advised by the Banking & Finance Ombudsman that it has been a common practice in either of those circumstances for complainants to be advised by the Ombudsman's staff to take their complaints directly to the CCMC, thus obviating the need for BFSO to obtain formal consent to transmit the information to the CCMC.

The Banking & Finance Ombudsman has advised that it conducts no follow up of cases where the complainants have been advised to proceed directly to the CCMC, nor are separate statistics kept of such instances. As a consequence, it is not possible to ascertain the number or percentage of complaints alleging Code breaches that drop out of the system because complainants do not bother to take their complaints directly to the CCMC.

In discussions with the Chief Financial Ombudsman and the Banking & Finance Ombudsman, it was readily accepted that appropriate improvements must be made to improve the information sharing between Banking & Finance and the CCMC. However, the specific details of the changes required may depend on what decision is ultimately made on the structure and location of the CCMC.

Both the submissions received from banks commented on the relationship or communications between BFSO and the CCMC. One submission stated:

*"We do feel that the relationship with FOS (BFSO) could be improved but recognize that this may require changes to the Code and FOS Terms of Reference to accommodate the transfer of information. A better working relationship would be beneficial to the activities of the CCMC and to subscribing banks."*

The other submission stated:

*"We think that it would be helpful if there was a greater liaison between the Financial Services Ombudsman and the CCMC on areas where both parties issue compliance guidance. There have been instances in the past where the guidance issued by one conflicts with the guidance issued by the other. Greater liaison would help remove conflicts and inconsistencies, thereby providing greater certainty for banks and consumers."*

In the extract from the CCMC's Annual Report for the year ended 31 March 2008 cited in item 2(b) of this chapter, the CCMC reported that during that year relationships with the BFSO (and ASIC) have progressed. I recommend that CCMC continue to work to enhance its relationships with the Banking & Finance

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Ombudsman with particular emphasis on information flows and on liaison where both bodies are providing guidance.

**Conclusions:**

**That the CCMC has established a relationship with BFSO that is reasonably effective.**

**That there is an opportunity for the CCMC to continue to work to enhance its relationships with the Banking & Finance Ombudsman with particular emphasis on information flows and on liaison where both bodies are providing guidance.**

**(d) Does the CCMC have adequate access to necessary information from stakeholders to assess bank compliance with the Code?**

The principal source of information required by the CCMC to assess bank compliance is information in the possession of subscribing banks. It is clear from the examination of the effectiveness of the annual monitoring compliance program that the CCMC is not experiencing difficulty in accessing information from banks to assess compliance with the Code to the purposes of that program.

Similarly, I have not seen any evidence of the CCMC being hindered by a lack of information from banks in its own motion enquiries into banks' compliance with specific Code requirements. Indeed one of the bank submissions suggests that on occasion the CCMC may have sought and been provided with more information than was necessary to determine whether a particular aspect of Code requirement was being complied with.

The other principal source is from complainants. In the previous item, it was noted that few complaints alleging breaches of Code are lodged with the BFSO referred by the BFSO directly to the CCMC where the complaints have not been the subject of a finding by the BFSO.

It was also noted that where allegations of Code breaches are investigated by the BFSO and breaches are established, the summaries provided to CCMC are of little value to the CCMC. It was further noted that where complaints made to the BFSO contain allegations of Code breaches are not investigated by the BFSO, few are transferred to the CCMC by the BFSO and it is possible that some of the alleged breaches do not come ultimately get to the CCMC.

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**Conclusion:**

**That subject to improvement in the information flow from BFSO to the CCMC of findings the BFSO has made of Code breaches and the regular referral by BFSO direct to the CCMC of allegations of breaches BFSO has received but not investigated, CCMC will have adequate access to necessary information from stakeholders to assess bank compliance with the Code.**

**(e) Has the CCMC been appropriately accessible to stakeholders?**

In my view, the CCMC has worked diligently to be accessible to stakeholders. Set out earlier in this report are the initiatives taken by the CCMC to connect with consumer advocates, with small business representatives and with banks at a variety of levels. The quarterly bulletins which have been widely distributed are most informative about the CCMC, its role and objectives. The information on the CCMC website is now much easier to access.

**Conclusion:**

**That the CCMC has been appropriately accessible to stakeholders.**

### **3. Practical application of the CCMC role**

**(a) How well has the CCMC prioritised the various compliance monitoring activities it is required to undertake?**

As discussed earlier, the CCMC's activities fall into three categories:

1. The annual compliance statement program.
2. The investigation of alleged breaches of the Code.
3. The own motion inquiries into compliance with specific Code obligations.

The annual compliance statement program is a core activity. As a matter of practicality this program has first call on the CCMC's resources in the sense that the program requires fixed timelines to be met at each stage of a lengthy process involved including:

- revision of the forms to be sent to banks for completion;
- analysis of the completed forms returned by banks;
- on site visits to discuss the data supplied by banks and verify the reliability of that data;

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- aggregation of the data on a sector wide basis; and
  - provision to banks of feedback of the results derived from the program.

With respect to the investigation of alleged breaches of the Code, Clause 8.1 of the Constitution requires the CCMC to consider any such complaint unless the complaint falls within the range of exceptions specified in the sub-clause. Clause 16.1 requires the CCMC to develop operating procedures in accordance with clause 34(h) of the Code and the Constitution. In doing so the CCMC must have regard to the operating procedures of the BFSO and consult with the BFSO and the ABA. The CCMC has developed operating procedures in accordance with those requirements.

Accordingly, the CCMC has no discretion to decline to investigate any complaint unless it falls within the exceptions specified in clause 8.1 of the Constitution and, further, it is required to follow the procedures it has developed. It follows that the CCMC has little if any flexibility or scope for prioritisation in the investigation and determination of complaints alleging breaches of Code obligations.

By contrast clause 9 of the Constitution clearly vests in the CCMC complete discretion as to what inquiries it conducts of its own motion, so long as the sole purpose of any such inquiry is monitoring one or more banks' compliance with the Code.

The nature and importance of own motion inquiries which have been conducted by the CCMC have been examined in item 1(c). I have concluded that the capacity to conduct own motion inquiries is essential to the performance of the CCMC's monitoring role. I have also stated in item 1(c) that the CCMC's own motion inquiries have been effective.

In my opinion the CCMC has prioritised wisely in determining which areas of Code compliance should be the subject of its own motion inquiries. The inquiries which I have described in item 1(c) as "major" concerned compliance with Code obligations which are particularly important to vulnerable and disadvantaged consumers and been the subject of serious complaints.

**Conclusion:**

**That, to the extent that the CCMC has the discretion to prioritise its compliance monitoring activities, it had done so effectively.**

- (b) Have fair and transparent procedures for dealing with alleged breaches been put in place? Are these procedures are being adhered to?**

The CCMC has formally documented procedures that must be followed when dealing with complaints. The procedures are detailed, comprehensive, well drafted and easy to comprehend.

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The CCMC's procedures prescribe the following steps to be taken when a complaint is first received:

- The details to be entered on the CCMC database of each complaint received.
- How the complaint is to be assessed to determine if it falls within the jurisdiction of the CCMC.
- The action to be taken when it is clear that a matter is outside CCMC's jurisdiction.
- The procedures to be followed where a matter is determined to fall within CCMC's jurisdiction or is likely to fall within that jurisdiction.
- Special procedures to be followed where a matter relates to a small business.
- The procedures for dealing with anonymous complaints and complaints where the complainant does not wish to be identified to the subscribing bank.
- Dealing with privacy complaints.
- Once a complaint has been accepted, the process of referring the complaint to the relevant bank and the requirements imposed on the bank to respond.

The CCMC's procedures next prescribe:

- How vexatious or frivolous complaints are dealt with.
- The preparation of the case manager's report to the Committee.
- The consideration of the alleged breach by the CCMC after receipt of the case manager's report.
- Giving notice of the proposed determination.
- The determination itself and what it must contain.
- The procedures to be followed after a determination that there has been a breach of the Code.
- The procedures to be followed where CCMC determines to name the bank concerned.

In my opinion the procedures mandated by the CCMC ensure fair and transparent outcomes. From the breach files which I have examined, the CCMC complies with these procedures.

**Conclusion:**

**That the CCMC has put in place fair and transparent procedures for dealing with alleged breaches and that in practice the procedures are adhered to.**

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**(c) Does the CCMC have adequate systems for the collection, recording and processing of information about Code compliance and alleged breaches?**

The CCMC has put in place procedures by which progress with individual complaints is monitored and regularly reported to the Committee. Some of those procedures are set out in item 3(b).

In addition, a comprehensive Case Management report is prepared for every meeting of the CCMC. Included in each report are:

- a summary of new cases received since the last CCMC meeting
- a detailed table showing the work flow and current status of every case that was current at the start of the current reporting year
- tables containing statistics of case classification and ageing
- bank related statistics of complaints, determinations and breaches on a yearly basis
- statistics of new complaints arranged by source, by bank, by alleged breach in summary form and in detail, on a yearly basis.

A consolidated Case Management report is also prepared at the end of each reporting year.

**Conclusion:**

**That the CCMC has adequate systems for the collection, recording and processing of information about Code compliance and alleged breaches.**

#### **4. Governance Requirements**

**(a) Has the CCMC met its reporting requirements?**

The CCMC is not governed by the Corporations Law or any other law which would require it to prepare an annual report.

It is however required by clause 15 of the Constitution to prepare an Annual Report. The requirements of Clause 15 are extensive. Clause 15.1 prescribes thirteen principal categories of information the CCMC is required to collect and record for inclusion in the Annual Report for each reporting period (emphasis added). Two of the principal categories each have six subcategories.

Clause 15.2 obliges the CCMC to publish an Annual Report:

- (i) within six months after 30 June 2004, covering the period from the day that the CCMC comes into operation to 30 June 2004;

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- (ii) within six months after 31 March 2005, covering the period from 1 July 2004 to 31 March 2005; and
  - (iii) within six months after the end of each subsequent financial year.

Clause 15.2 also provides that:

*“Each Annual Report must be a fair and adequate **summary and analysis** of the information specified in clause 15.1, the financial matters specified in clause 13 and any other matters the CCMC thinks fit that are consistent with the functions of the CCMC under the Code and this Constitution.” (emphasis added)*

In my opinion the CCMC’s Annual Reports for the reporting periods ending 31 March 2005, 2006, 2007 and 2008, respectively, complied with the requirements of clause 15.1 and 15.2, save that I have considerable difficulty comprehending what are the “financial matters specified in clause 13” and how the CCMC could present a fair and adequate summary and analysis of those matters. The CCMC has no direct involvement in any of the matters specified in clause 13; they are all matters primarily involving or concerning the Association (or the Chair of the Association) and/or the Chairman of the BFSO.

However I note that each of the Annual Reports the CCMC does include a table itemising CCMC expenditure for the relevant period.

**Conclusion:**

**That the CCMC met its reporting requirements.**

**(b) Has the CCMC acted independently and appropriately with respect to its role under the Code and its constitution?**

I have had the opportunity in the course of this review to examine a substantial selection of papers and records of the CCMC. These include minutes of CCMC meetings, briefing memoranda from the CEO and other members of the Secretariat, submissions made by the CCMC and important memoranda between the CCMC and other agencies. The determination of the CCMC to conduct itself appropriately and to maintain its independence is evident from those source materials.

It is clear that the CCMC recognises that it must cooperate with other agencies and stakeholders in extracting for stakeholders the maximum benefit from its activities but it is also clear that the CCMC also recognises the need to safeguard its independence.

My discussions with the CCMC members, the Secretariat and a range of stakeholders together with my examination of the papers and records satisfied me that the CCMC has operated effectively, transparently and fairly. Its record of achievements in its formative years and its development of sound, fair and

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transparent procedures reflect a sound understanding of what good governance entails and demonstrate a commitment to it.

**Conclusion:**

**That the CCMC has acted independently and appropriately with respect to its role under the Code and the Constitution.**

**(c) Has the Committee appropriately responded to the recommendations of the first CCMC review?**

The CCMC has implemented all but two of the recommendations arising out of the Initial Review.

There are two instances in which the CCMC has not implemented a recommendation. One has already been commented upon – Recommendation 10 that the CCMC provide an abridged version of its Annual Report to parliamentarians.

After careful consideration, the CCMC ultimately decided in 2008 not to implement a 3 year plan as recommended by Recommendation 21 of the Initial Review. In making that decision, the CCMC took into account a number of considerations. The CCMC noted that there are many matters currently under consideration which could result in important changes that might impact on CCMC and require uncommitted resources to manage. Prominent among these are changes that may flow from the current Review of the Code. In my view the CCMC's decision not to implement Recommendation 21 cannot be regarded as inappropriate.

**Conclusion:**

**That the Committee has responded appropriately to the recommendations of the Initial Review.**

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## **Appendix One: Terms of Reference of the Review**

### **Terms of Reference for the Second Review of the Code Compliance Monitoring Committee**

#### Preamble

The Code of Banking Practice (“the Code”) is an instrument of banking self regulation. It was first published in November 1993. With the agreement of the Federal Treasurer, the Code became fully operative from 1 November 1996. The first review of the Code commenced in 2000. The final reviewed version of the Code was published in May 2004.

The Code sets standards of good banking practice for banks to follow when dealing with individual and small business customers and their guarantors and forms part of the bank’s contractual commitment with customers.

The Code Compliance Monitoring Committee (“CCMC”) was established on 1 April 2004 in accordance with Clause 34 of the Code of Banking Practice 2003 (“Code”), to monitor bank compliance with the Code and make determinations of breach.

Clause 34(g) of the Code states that adopting banks “...require the CCMC to arrange a regular independent review of its activities and to ensure a report of that review is lodged with ASIC which review is to be initially held after first year in which the CCMC operates after which it is to coincide with periodic reviews of this Code...”

The first independent review of the CCMC was conducted by Foundation for Effective Markets and Governance (FEMAG) in 2005. The Code is to be reviewed every three years in accordance with the provisions of Clause 5. The Code was due to be reviewed in 2006. As the process has now commenced, in accordance with Clause 34(g), it is time for the second review of the CCMC.

#### Issues for the Review

##### Committee’s performance of monitoring role

- Is the CCMC properly interpreting its role under the Code?
- Has the CCMC adopted an appropriate approach to monitoring compliance with the Code?
- How effective are the CCMC’s compliance monitoring activities and techniques?
- Are the CCMC’s human resources adequate for the CCMC to fulfil its role?
- Are the CCMC’s sanctions appropriate to its role?

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- Has the CCMC's performance of its role lent credibility to the Code as a self regulatory scheme?
  - Should the CCMC have played a more educative and administrative (e.g. in promoting itself and therefore the Code's role in relation to the Code?)

#### Committee's external relationships

- Does the CCMC have an appropriate public profile?
- How well has the CCMC developed effective relationships with its stakeholders?
- Has the CCMC established an appropriate and beneficial relationship with the Banking and Financial Services Ombudsman ("BFSO")?
- Does the CCMC have adequate access to necessary information from stakeholders to assess bank compliance with the Code?
- Has the CCMC been appropriately accessible to stakeholders?

#### Practical application of CCMC role

- How well has the CCMC prioritised the various compliance monitoring activities it is required to undertake?
- Have fair and transparent procedures for dealing with alleged breaches been put in place? Are these procedures being adhered to?
- Does the CCMC have adequate systems for the collection, recording and processing of information about Code compliance and alleged breaches?

#### Governance requirements

- Has the CCMC met its reporting requirements?
- Has the CCMC acted independently and appropriately with respect to its role under the Code and its constitution?
- Has the Committee appropriately responded to the recommendations made in the first CCMC review?

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## **Appendix Two: Persons and organisations notified about the review**

The following persons and organisations were contacted and invited to make submissions on the review's terms of reference:

Acting Chief Executive, CHOICE  
Director Compliance, Australian Securities and Investments Commission  
Chief Executive Officer, Australian Bankers Association  
Chief Ombudsman, Financial Ombudsman Service Limited  
Federal Minister for Superannuation & Corporate Law  
Federal Shadow Treasurer  
Chief Executive Officer, Council of Small Business Organisations of Australia  
Minister for Consumer Affairs, Victoria  
Minister for Fair Trading, New South Wales  
Attorney-General and Minister for Justice, Queensland  
Minister for Justice, Tasmania  
Chairman, Australian Securities and Investments Commission  
Chairman, Australian Competition and Consumer Commission  
Director Retail & Regulatory Policy, Australian Bankers Association  
Ombudsman – Banking & Finance, Financial Ombudsman Service Limited  
Federal Minister for Competition Policy & Consumer Affairs  
Australian Financial Counselling & Credit Reform Association  
Attorney-General, ACT  
Minister for Justice, Northern Territory  
Minister for Consumer Affairs, South Australia  
Minister for Consumer Protection, Western Australia

In addition, copies of the Terms of Reference for the review were sent to CCMC's contact in each subscribing bank and, by arrangement with the Consumers' Federation of Australia, were distributed to affiliated consumer bodies.