

20 August 2021

Mr Mike Callaghan AM PSM
Banking Code Review

Dear Mr Callaghan

Banking Code Compliance Committee submission: 2021 Independent Review of Banking Code of Practice

The Banking Code Compliance Committee (BCCC) welcomes the opportunity to make a submission to the 2021 Independent Review of the Banking Code of Practice (the Code).

The BCCC is the independent compliance monitoring body established under clause 207 of the Code. Its purpose is to monitor and drive best practice Code compliance. To do this, the BCCC:

- examines Code subscribing banks' (banks) practices
- identifies current and emerging industry wide problems
- recommends improvements to bank practices, and
- consults and keeps stakeholders and the public informed.

The Code and BCCC Charter set out its powers and functions, which include:

- monitoring banks' compliance with the Code
- investigating Code breach allegations, in particular, serious and systemic breaches
- making Code breach findings and recommendations
- providing guidance to the banking industry, and
- applying sanctions.

The BCCC is comprised of an independent chair, a banking industry representative and a consumer representative. This is consistent with the model for self-regulatory governance under the Australian Securities and Investments Commission's (ASIC) Regulatory Guide 183 '*Approval of financial services sector codes of conduct*'.

The Australian Financial Complaints Authority (AFCA) provides secretariat and Code monitoring support to the BCCC.

Our submission to the Code review

The BCCC is making this submission to the Code review having been in operation since July 2019 when the current version of the Code came into effect. The BCCC transitioned from the Code Compliance Monitoring Committee (CCMC) which was responsible for monitoring banks' compliance with the 2004 and 2013 versions of the Code of Banking Practice from 2004 to 2019.

The BCCC's full response to the Code review is provided in **Appendix 1**. It has been set out with reference to the Code Review Consultation Note. We note that the Consultation Note makes numerous references to the BCCC and its work and we would also like to note the various BCCC (and CCMC) publications which refer to banks' compliance with the Code and good industry practice, such as our Annual Reports, Inquiry Reports and Guidance Notes. We also note that the BCCC publishes six-monthly compliance reports based on banks' self-reported breach data. These are all available on the [BCCC's website](#).

As part of its response to the questions about its powers and functions, the BCCC has highlighted the need for a single governance document for the BCCC to remove any duplication or confusion about its role and to further increase the transparency of Code administration. The BCCC currently has two governance documents – the Code and the Charter. The BCCC thinks the Code should be the only document that sets out the BCCC's role and powers.

The submission also contains detailed observations and several recommendations with reference to the issues and questions in the Consultation Note.

In particular, the BCCC recommends the introduction of a Code obligation requiring banks to have appropriate infrastructure in place to support an integrated approach to compliance with the Code. The BCCC's [Building Organisational Capability report](#) highlighted that effective employee communication strategies, learning and development programs, systems, processes and technology and a bank's culture all play a key role in ensuring Code compliance and good customer outcomes.

BCCC review

In accordance with the requirement under clause 14.1 of the BCCC Charter, the BCCC has appointed *cameron. ralph. khoury* to conduct a review of the BCCC that coincides with the review of the Code. Further information about the BCCC review is available on its website and the BCCC reviewer's website - <https://bcccreview.crkhoury.com.au>.

Contact details

If you have any questions or would like to discuss any aspect of this submission or the BCCC's role, please do not hesitate to contact me c/o the BCCC's acting CEO, René van de Rijdt on 03 8623 2079 or by email at rvanderijdt@codecompliance.org.au.

Yours sincerely



Ian Govey AM
Independent Chairperson
Banking Code Compliance Committee

Appendix 1 – The BCCC’s Banking Code review submission

The extent to which the Code meets community expectations

Standards of service and behaviour expected by customers

1. The BCCC recognises the significant changes made to the Code in response to the recommendations made in the last independent review. The community as a whole, and customers more specifically, likely have a clearer understanding of their rights and the standards of behaviour they can expect from their bank as a result of the changes.
2. The BCCC also recognises the benefits of broad obligations which provide banks with the opportunity to innovate in their approaches and to go beyond what might be considered a minimum standard. The advantage of relying on principles rather than detailed prescriptive provisions is that it enables a more flexible approach designed to meet the overall objective of requiring that customers be treated fairly.
3. However, customers’ understanding of Code standards may be enhanced by the inclusion of additional explanation, examples or definitions of terms in some cases. For example, the Code requires banks to exercise the care and skill of a diligent and prudent banker when considering loan applications (clause 49). It goes on to say banks will meet this requirement by complying with the law but does not provide further information about those legal requirements.

Incorporating regulatory changes and other guidance

4. We encourage the Code Reviewer to consider recent legislative and regulatory changes, and the development of industry guidelines by the Australian Banking Association (ABA), to assess their interaction with the Code and whether changes to the Code are needed as a result of these changes.
5. In particular, the BCCC recommends the following be incorporated or referenced in the Code because they may impact upon people experiencing vulnerability:
 - a. The recent [reforms](#) requiring debt management firms to be licensed by ASIC and to be members of AFCA is an important protection for customers. The ABA has also made clear commitments through its *Banking Industry Guiding Principles on Debt Management Firms*.¹ The updates to clause 163 of the Code in March 2021 similarly reflected the need to provide a safeguard for customers experiencing financial difficulty, vulnerability or other circumstances that may lead to significant harm from the conduct of unregulated debt management firms. Accordingly, in this case the Code should include a commitment to comply with these guidelines, in a similar manner to the commitments made in clauses 14, 180 and 181 of the Code.

¹ <https://www.ausbanking.org.au/wp-content/uploads/2021/06/ABA-Guiding-Principles-Debt-Management-Firms-DMFs-July-1-2021.pdf>

- b. The Code should reference the Mandatory Credit Reporting regime (MCR) and /or include commitments about how banks may access and use the data. The BCCC notes concerns raised by consumer advocates about the potential for these changes to discourage people from opening up about their individual situations, and accessing financial difficulty assistance, as well as impacting their ability to obtain credit.
6. In general, the BCCC supports the inclusion of references to industry guidelines in the Code. Guidance or hyperlinks to assist customers to find these documents online would be beneficial. However, because the guidelines may vary in nature – some aspects may be obligations and others simply best practice guidance – the Code should clearly set out expectations about whether banks must comply with certain guidelines or whether they are only good practice guidance.
7. In addition to, or as an alternative to, our comments about the incorporation of regulatory changes and industry guidelines, we suggest that the Code should include content in the introductory sections that highlights that the ABA, AFCA, the BCCC, or other relevant bodies may publish additional guidance which explains the application of or approach to some of the obligations in the Code.

Relationship between banks and customers

8. Overall, the changes to the Code, including the addition of inclusivity, accessibility, vulnerability and small business specific obligations, and the subsequent implementation of policies, processes and initiatives to comply with these obligations, have likely contributed to improved performance by banks and better relationships between banks and their customers.
9. The COVID-19 pandemic provided an opportunity for the banks to demonstrate their commitment to the Code's guiding principles and act in a manner consistent with what the community would expect during an event of such significance. The feedback from BCCC's stakeholders, including the BCCC's Small Business and Agribusiness Advisory Panel, about banks' conduct over the last 18 months has generally been quite positive. This is the case in particular, in relation to dealing with requests for financial difficulty assistance throughout 2020. On the other hand, concerns have been raised about the negative impact of branch closures during the pandemic especially on small businesses, and regional and remote communities.²
10. However, the number of breaches reported to the BCCC has increased significantly since the last Code review. The BCCC has generally viewed these increases as confirmation that Code compliance has become a central part of banks' overall compliance and risk management systems, and that awareness of the Code and its obligations within banks is increasing. However, it is vital that banks act quickly to use the insights from this breach data to prevent breaches from happening in the first place.

²<https://www.abc.net.au/news/2021-04-30/branches-shut-as-online-banking-rises-but-small-towns-worried/100103484>

The Code's audience

Code re-write: Greater access and reliance

11. The BCCC only has limited information available about whether the customer friendly re-write of the Code has resulted in more customers accessing and relying on the Code.
12. The BCCC has seen increased traffic to its website - the number of users visiting the BCCC's website increased by 70% between the 2019-20 and 2020-21 financial years. Media coverage of the BCCC's reports and activities has also increased when compared to the CCMC. This, combined with references to the Code during the Financial Services Royal Commission and the banks' and ABA's promotion of the Code, in particular during 2019, has likely contributed to greater awareness of the Code in the Australian community.
13. In addition, the number of Code breach allegations and general enquiries the BCCC has received since 2019 increased by more than 100% in 2019-20 when compared to the last few years of the CCMC's operations.

Banks commitment to the implementation of all provisions

14. Clause 8 of the Code contains a general commitment to comply with the Code, but it does not contain any specific guidance on how banks will comply with this provision and, by extension, the Code. One of the recommendations from the 2016 Code review that was accepted by the ABA was to have compliance mechanisms in place that would ensure delivery of continuous improvement. These measures can be strengthened further by the banks taking a more holistic view of their frameworks designed to meet the obligations set out in the Code.
15. In addition, clause 9 requires banks to ensure that their staff and representatives are trained to competently do their work and understand how to comply with the Code. However, as highlighted in the BCCC's *Building Organisational Capability* report, systems, processes and technology are at least as important and form an essential part of a bank's compliance framework.³
16. The report provides recommendations about communication strategies, learning and development, and having technology systems and processes that are fit for purpose and designed for compliance. The BCCC considers these aspects all need to be underpinned by an organisation's culture and a mind-set of continuous improvement and delivering good customer outcomes. The report highlighted that banks need a robust compliance framework to support employees achieving the right outcomes which will result in higher compliance rates.
17. On this basis, the BCCC recommends the Code include an obligation that underpins or directly impacts adherence to all provisions of the Code by requiring banks to implement infrastructures designed to assist employees in achieving compliance with the Code commitments. This obligation should also extend to ensuring that banks' strategy and culture, including any staff incentives, promote compliance.

³ <https://bankingcode.org.au/resources/bccc-report-building-organisational-capability-how-banks-can-improve-compliance-with-the-banking-code-of-practice-and-deliver-better-customer-outcomes/>, February 2021

Acting in a fair, reasonable and ethical manner

18. We acknowledge the Code review Consultation Note references the BCCC's [guidance](#) and [Findings](#) regarding clause 10 of the Code.
19. The BCCC remains of the view that clause 10 is one of the most important clauses in the Code because it forms the backbone of subscribing banks' ethical commitments under the Code.
20. Clause 10 acts as a central obligation for subscribing banks' internal culture and how they should comply with all other Code obligations. The BCCC expects subscribing banks to take a holistic view of compliance with clause 10, using the Guiding Principles of the Code as a lens through which banks will make decisions about how they engage with their customers. Clause 10 should be read broadly, not just applying to staff interactions with customers and guarantors, but also to the design of banks' products and services, marketing and sales practices, and the design and application of internal processes and policies, as well as any other activity that is relevant to a bank's engagement with customers and guarantors.
21. One of the reasons provided by banks for the increase in the number of breaches self-reported to the BCCC has been that they have increased their focus on identifying breaches of the 'fair, reasonable and ethical behaviour' obligations.
22. Banks also tend to report a variety of matters under clause 10 that are not otherwise specifically covered in the Code. The most notable example is where a bank breaches a commitment in its terms and conditions regarding fees, interest or charges. Breaches of this nature can often be systemic and, while the Code includes obligations about the information to be included in terms and conditions, there is not a specific obligation stating that banks will meet these commitments. In general breaches of the law or breaches of this nature are reported as non-compliance with clause 10.

Customers experiencing financial difficulties

23. Various stakeholders the BCCC has engaged with, including consumer advocates, financial counsellors, regulators and the BCCC's Small Business and Agribusiness Panel, have noted that banks have generally responded well to assist customers who experienced financial difficulty due to the impacts of the COVID-19 pandemic during 2020. As noted by the ABA on its website, banks continue to offer a wide range of assistance options, available to all small business and home loan customers significantly impacted by lockdowns or recovery from recent lockdowns, irrespective of location or industry. This not only demonstrates the banks' proactiveness in complying with their financial difficulty obligations, but also indicates that banks' systems, policies and procedures in relation to financial difficulty were robust and resilient enough to deal with the unprecedented financial impacts customers and small business faced.
24. The BCCC's recent compliance report found that the banks' monitoring frameworks were well structured and holistic in nature with banks employing a range of methods to identify instances of non-compliance with the five Code obligations (including financial difficulty and debt recovery), primarily through quality assurance reviews, call monitoring and control

testing.⁴ These were largely aligned with the BCCC's expectations in relation to Code monitoring.

25. While Part 9 of the Code covers a wide range of bank obligations in relation to identifying and assisting customers in financial difficulty, the BCCC supports the refinement or expansion of some provisions to promote greater awareness and consistency in application of the banks' obligations. These provisions have been highlighted and further discussed under the specific headings below. Overall, any amendments or additions made to Part 9 of the Code should aim to clarify some of the existing obligations as well as include pertinent information reflecting regulatory developments.

Availability of clear and concise information and need for more guidance on factors that banks will consider when providing financial difficulty assistance

26. The BCCC has reviewed the [ABA's Industry Guideline: Promoting understanding about banks' financial hardship programs](#), the BCCC's submission to the ABA's consultation on an update to this Guideline, recommendations contained in the CCMC's 2018 Financial Difficulty Inquiry Report and other publications to inform its assessment on the areas which the Code reviewer should consider as part of the Code review for Part 9.⁵ In addition, approximately 14% of Code breach allegations received by the BCCC relate to a bank's conduct when meeting obligations under Chapters 39 – 43 of the Code.

Small businesses

27. The types of financial difficulty assistance afforded to small businesses will often differ from those offered to individuals. In the case of some small businesses, such as micro businesses and sole traders, it may be difficult to separate financial arrangements of the business from those of the individual. There is no specific section in the Code which prescribes the types of financial difficulty assistance available to small businesses. The Code should:
- a) Acknowledge and clarify the difference in needs of individual and small business customers experiencing financial difficulty.
 - b) Provide information or examples on how banks can assist small businesses overcome financial difficulty (the Code currently details this only for individual customers).
28. The BCCC's Small Business and Agribusiness Panel has raised concerns that there can be a high turnover of staff members and managers for small business customers in rural and regional areas, which contributes to the lack of specialist trained staff to deal with some small business customers. Business facilities worth less than \$1 million are not generally allocated dedicated case managers and small business customers must deal with call centres where staff do not understand the needs of the businesses. Branch closures have also resulted in small businesses in rural or regional areas not being able to obtain branch assistance when needed.
29. The Code should highlight the need for banks to provide specialised training to staff members who speak with small business customers requiring financial difficulty assistance in call

⁴ [BCCC Report: Banks's compliance with the Banking Code of Practice - January - June 2020](#)

⁵ [CCMC 2018 Financial Difficulty Inquiry Report](#)

centres to ensure they have a greater understanding of the types of issues and circumstances that impact small business customers.

30. Specialised training and the requirements for specific provisions to address small business customers could also extend to other Code obligations, for example complaints handling and account closures.
31. While the ABA's Branch Closure Protocol is discussed in more detail later in this submission, the BCCC recommends that any review of that Protocol should take the needs of small business into account.

Joint borrowers

32. If a customer has a joint account with someone and is experiencing financial difficulty, the bank can assist the customer and upon their request, will do so without involving the other person initially under clause 159 of the Code.
33. AFCA's Approach document to joint facilities and family violence states that there is no requirement for a request to come jointly from all borrowers to a loan. As each borrower is both jointly and severally liable to repay the full amount of the loan, it is AFCA's view that each borrower is also individually entitled to ask for assistance if they are having difficulty meeting their obligations.
34. This could be a case where the customer is experiencing or has in the past has experienced family violence or financial abuse or where a customer is otherwise experiencing vulnerability.
35. Providing this clarification in the Code would encourage customers who have a joint account to have robust and open conversations with the bank about their financial situation without having to fear that they may be liable for the entire loan. It would further provide assurance that the co-debtor does not need to consent for them to seek financial difficulty on their share of the loan.

Guarantors

36. AFCA's Approach document to financial difficulty notes that options available to a guarantor will be different to those of a borrower. While clause 160 notes that guarantors can seek financial difficulty assistance, it does not state the specific options available to guarantors. Similarly, the ABA's financial difficulty industry guideline does not specifically reference guarantors.
37. The BCCC recommends that the Code, or the guideline if it is appropriately referenced in the Code, include further information about the options or assistance that may be available to a guarantor, such as refinancing the debt into their own name or being provided time to sell their assets, or, where the primary place of residence is at risk, providing life interest in the property or negotiating an affordable repayment arrangement that allows the guarantor to stay in their home.

Information considered when assisting customers

38. Banks take into consideration information available to them as well as information provided by the customer when they decide on assistance options.
39. To assist customers to understand banks' expectations, the Code should reference the [ABA guideline on financial hardship programs](#), or include the commitments that banks will minimise the effort and the amount of information required from customers and only request information that is reasonably necessary.
40. The addition of examples from page 8 of the current guideline to the content on page 47 of the Code about the types of information that customers may need to provide, may also assist customers to understand banks' expectations.

Reference to the National Credit Code

41. Under the Code, banks have an obligation to tell customers about the hardship provisions of the National Credit Code (NCC) if it applies to them. However, the Code does not specify the types of loans that the NCC applies to. These loan types should be stipulated under the definition of the NCC in the Code so that customers are aware whether or not they are offered protections under the NCC.

The Sale of Unsecured Debt

42. Clause 182 of the Code states that if the bank sells a debt to another party, it will only sell to a party that has agreed to comply with the Debt Collection Guidelines (DCG) and Code of Operation. The [ABA's Industry Guidelines: Sale of unsecured debt](#) outlines additional safeguards for customers when banks are selling unsecured debt to another party.
43. The BCCC's [Finding CX3998](#) highlighted that identifying triggers which may suggest a customer is in financial difficulty and assisting them appropriately and adequately plays a significant role in debt collection practices. As such it is important that any debt buyer also complies with the obligations prescribed in the Code.
44. Having reviewed this Guideline, the BCCC recommends the following for inclusion in the Code:
 - a) Expand clause 184 to state that the bank will not sell a customer's debt if the debt is statute-barred or if the customer is in the process of disputing that they owe the debt, and the bank has not yet finalised its consideration of the issue.
 - b) A clause to state that banks are obliged to require that the debt buyer comply with the financial difficulty provisions of the Code. (While the DCG states that subscribers to the Code may be required to comply with the hardship provisions of the Code (section 14(e)), there is no other provision obliging banks to sell the debt to a third party that complies with the Code's hardship requirements.)
 - c) Banks only sell to debt buyers who agree to maintain membership of AFCA.

Proactive identification of customers who maybe facing financial difficulty

45. In response to question 4 of this section of the Consultation Note, we highlight that the proactive identification by the banks of customers who may be experiencing financial difficulty has been an area of focus for the BCCC. Generally, most banks rely on staff to proactively identify customers who may be experiencing financial difficulty through customer interactions. Banks have trained staff, including frontline staff, to identify financial difficulty indicators. However, mystery shopping conducted by the BCCC into the cancellation of direct debits also identified that staff often do not pick up subtle indicators of financial difficulty in conversations with customers.
46. There is a need for banks to draw on their available data to identify customers who may be experiencing financial difficulty. Some banks have started to leverage their available data to achieve this.
47. One of the major banks has developed a behavioural machine learning model that can identify customers who are displaying signs of being at risk of financial difficulty. Through this model, over 7,000 customers are identified each month who may be at risk. By analysing historical spending patterns, missed bills or unexpected repayments, the bank targets communication to customers who may be interested in its support services.
48. Another bank utilises data mining to achieve the same outcome. The bank uses transactional data to identify customers who may be under financial pressure due to material reductions in inbound credit transactions and ANZSIC codes to identify adversely impacted industry sectors. This prompts the bank to contact the customer to check in and offer assistance.

Bank's promotion of financial difficulty assistance

49. The BCCC provides the following information in response to question 6 of this section of the Consultation Note.
50. All banks have information on their website regarding financial difficulty assistance. The pandemic has seen banks actively promote specific information regarding financial difficulty assistance to customers who have been impacted by COVID-19. Generally, the information available on the banks' websites is easily identifiable but could be more comprehensive.
51. Banks provide customers with the option to request financial difficulty assistance by submitting their request online via the banks' website or via their internet banking platform. Some banks have comprehensive online forms that request a reasonable amount of information that allows for an assessment to be made and some banks request minimal information that's aimed at initiating a dialogue to discuss the customer's financial circumstances.
52. During the pandemic banks across the industry increased their resources and technology to assist customers who were impacted by COVID-19. Nevertheless, the BCCC's intelligence identified there may be a gap around the accessibility and inclusivity of some banks' financial difficulty assistance to their overseas customer base in general and during COVID-19. Some of the concerns related to the banks' online portals not accepting international phone

numbers, requiring wet signatures to progress financial difficulty applications during lockdown and not contacting customers on their overseas phone number as requested by them.

53. The Consumer Policy Research Centre's Report identified that consumers from culturally and linguistically diverse (CALD) communities have been disproportionately impacted by COVID-19.⁶ It was found that CALD consumers resorted to much higher debt, drawing down on superannuation and accessing emergency relief to meet everyday living costs compared to the rest of the nation. A lack of inclusive approaches to policy design, delivery of customer service and communication about support is creating a gap between the experiences of English and non-English speaking communities.
54. Many banks have information on their websites regarding free translating and interpreting services available to customers. Some banks have made information regarding financial difficulty assistance available in other languages on their websites. These are encouraging practices that should be embraced by the whole industry. Australia is a diverse nation and banks' customer service delivery should reflect this.
55. COVID-19 has raised awareness about how banks can support small businesses experiencing financial difficulty.
56. While banks are actively promoting how they can assist customers who are in financial difficulty, there is still room for improvement – in particular, for small business customers and CALD communities.

BCCC's publication of data on financial difficulty assistance

57. The most recent BCCC compliance report did not provide data on the number of customers who received financial difficulty assistance, or the nature of the assistance provided. The BCCC's [compliance report for 2018-19](#) does provide data on the percentage of requests for financial difficulty assistance granted in 2017-18 and 2018-19 along with data on the types of assistance granted.
58. The data integrity and consistency issue (caused by some banks excluding COVID-19 payment deferral packages provided to customers from the financial difficulty data they reported) impacted the BCCC's ability to provide a detailed breakdown of the data in its recent report.
59. The BCCC intends to include this data in its upcoming compliance reports. Publication of data on the percentage of requests for financial difficulty assistance granted each year, along with the forms of assistance provided, will indicate the ongoing impact of the banks' commitment to helping customers in financial difficulty.

⁶ <https://cprc.org.au/publications/covid-19-and-consumers-key-insights-series-cald-consumers/>

Appropriateness of the deceased estates provisions

60. The BCCC is scoping a targeted inquiry into the obligations under Chapter 45 of the Code. The inquiry will consider intelligence we have gathered from allegations and other monitoring activities, the findings of the Financial Services Royal Commission, as well as documents from domestic and international regulators.
61. The intelligence available suggests that the current Code obligations are appropriate for dealing with deceased estates. The information gathered on banks' non-compliance with the Code with regard to deceased estates has not revealed any significant issues that are not covered by the current provisions but rather systemic failures at the systems' and staff support levels to apply the obligations effectively or in a manner consistent with the Code's principles.
62. For example, one major bank self-reported a systemic breach where approximately 78,000 deceased customers over a 10-year period had not been registered by the bank's bereavement team due to segregation between the bank's retail banking and bereavement management systems and the failure of frontline staff to ensure that notifications of a customer's death were recorded in both systems. This breach is illustrative of the nature of the compliance issues that have been reported to the BCCC being systemic failures to apply the existing obligations and does not suggest that the current obligations are insufficient.

Hardship assistance during COVID-19

Code gaps and the impact of the COVID Special note

63. The main difference between the Code's requirements and the practical implications from the COVID-19 pandemic has been the approach to the commitment under clause 167 to help customers based on individual circumstances and on a case-by-case basis when compared to the introduction of temporary loan deferral program for any customer that requested it – a necessary initiative to address the scale of the impacts in 2020.
64. In 2020, the ABA sought ASIC's approval to amend the Code by including a Special Note which provides some exemptions from strict timing requirements for notices and communications under the Code. The Special Note took effect from 1 July 2020. As the BCCC will report in August 2021, banks were required to provide data to the BCCC about instances that may have been considered breaches of the Code if not for the exemptions in the Special Note. In the period June to December 2020, nine banks recorded a total of 4,651 incidents that may have otherwise been considered a breach of the Code. The majority of these incidents were reported by two banks and related to timeframes for responding to requests for financial difficulty assistance. Through the course of the pandemic, banks have recorded breaches of various other Code provisions that were related to circumstances that came about because of COVID-19 or were caused by resourcing issues due to the pandemic.
65. Nevertheless, banks are generally considered to have performed well in assisting business and individual customers through the difficulties of the pandemic in 2020, as evidenced by a number of polls and media reports, as well as feedback received directly from the BCCC

Small Business and Agribusiness Advisory Panel. We will continue to monitor banks' performance as the varying impacts of the pandemic continue to impact many customers in 2021.

Inclusion of provisions related to major events or disasters

66. The inclusion of specific provisions related to disasters or other significant national and international events may be counter-productive as such provisions would be difficult to define and enforce.
67. For example, a State of Emergency may be used as the definition, but State and Federal governments both hold the power to make such a declaration, and the legal implications of both are different. A disaster may be declared in one region, but its impacts may spread well beyond Local Government Areas and States. The inclusion of a provision within the Code also carries the risk of exclusivity – by prescribing certain events that could be subject to Code provisions, the Code would run the risk of excluding other unforeseen events.
68. One of the Code's Guiding Principles states that banks recognise their role in society and impact on the wider community – a recognition of their importance to the Australian economy and to its businesses and individuals.
69. However, at present the Code does not specifically recognise that disasters, extreme weather or significant events may cause people to experience vulnerability.
70. It would be appropriate for clause 38h to be amended to include any other **event** or personal or financial circumstances causing significant detriment.

Seriousness of breaches during a pandemic or other significant event

71. The BCCC considers the seriousness of a Code breach and its application of sanctions on a case by case basis, with reference to the Code, Charter, its Guidance Notes and Operating Procedures, and any other relevant matters.
72. The prevailing circumstances (such as the pandemic) at the time a breach occurred is only one of the factors considered when assessing the seriousness of a Code breach and whether sanctions are applicable. The fact that an event such as the pandemic was occurring concurrent with the breach may or may not impact on the seriousness and impact of the breach.

Inclusive and accessible banking services and supporting customers experiencing vulnerability

Contribution to banking services being inclusive, affordable and accessible to customers

73. Part 4 of the Code provides important protections for customers that may require extra assistance with their banking services. This is a priority area for the BCCC and we are in the process of completing an Inquiry into Part 4 of the Code.
74. Part 4 of the Code has contributed, at least in part, to making banking services more inclusive, affordable and accessible to all customers. Banks' work in this area commenced prior to their transition to the Code in 2019. For example, in 2017 the CCMC published a report titled, *CCMC Special Report – Access to Banking Services by Indigenous Customers* which showcased examples of good practice in banks' dealings with Indigenous customers and communities.
75. Based on information collected through the Part 4 Inquiry, the BCCC is encouraged to see that there has been a positive shift and greater focus by banks on their commitments to Part 4 of the Code. For example, some banks now feature inclusivity and accessibility in their organisational risk frameworks.
76. Other examples of how banks are demonstrating their commitment to be inclusive and/or accessible of all people, include:
- a) Proactive surveillance and reviews for fraud and scams of customers at heightened risk.
 - b) Increased education to assist older peoples access to digital banking.
 - c) Implementing organisation wide accessibility and inclusivity plans.
 - d) Incorporating accessibility into design principles.
 - e) Partnering with Australia Post to support customers where branches have closed down.
 - f) Entering into fee free ATM arrangements.
 - g) Providing translation and interpreter services.
 - h) Providing customer documentation and messages in languages other than English.
77. The introduction of basic, low or no fee accounts by some banks, which did not have existing products with the equivalent minimum features outlined in clause 44B, has meant increased availability of basic banking products for low income customers also reducing the risk of exclusion. By implementing the requirements under the Code, banks will have contributed to banking products and services being more inclusive. There is still room for further industry improvement and greater consistency, and we provide further details about this below.

Meeting community standards: Customers experiencing vulnerability

78. Some Part 4 Code obligations are prescriptive but most are principles-based. Based on banks' responses to our Part 4 Inquiry, the positive variance indicates that the flexibility of principle-based obligations has empowered banks to innovate and develop bespoke initiatives

to support customers experiencing vulnerability. We believe this focus on and approach to supporting customers experiencing vulnerability does meet consumer and community standards and expectations. We plan to report on good practice examples to encourage further industry improvement in our final inquiry report.

79. The BCCC heard from consumer and small business advocacy groups that banks have improved the way they respond to vulnerability experienced by the customers they represent. We have also been informed about some areas that require further improvement and greater consistency across industry to meet community expectations.
80. Barriers to and industry-wide inconsistency in accepting a customer's authority for a Legal Aid lawyer or financial counsellor to act on their behalf have caused concern. Challenges described to the BCCC that cause significant delays in time and outcomes, include:
- a) Variations in the specific inclusions expected by each bank in the authority form.
 - b) The requirement of account numbers on authority forms, where in many cases, the customer being represented does not know their account numbers.
 - c) Banks not accepting an organisation's authority documents signed by the customer and requiring the customer to sign a separate bank branded authority form.
 - d) Banks not accepting a verbal authority by the customer for a financial counsellor to speak on their behalf during a conference call.
81. These barriers can cause unnecessary strain on customers and on the resources of consumer advocacy services. Community advocacy groups have suggested that a signed authority of a community/Legal Aid lawyer to act should be acceptable and adequate authority for the bank. It was also suggested that banks could sign on to the Financial Counselling Australia portal, to verify if a nominated financial counsellor is a registered financial counsellor. Other issues include:
- a) Time delays when banks provide a customer's documents, for example loan origination documents, to enable a customer's representative to provide their client/the customer advice.
 - b) Inconsistency in the level of staff competence and capability within some banks' hardship teams leading to different level of support, information or assistance/options provided depending on which staff member answers the phone.
82. The BCCC acknowledges the progress made by banks to date, but progress must continue to improve their organisational capability to support customers and provide more consistent outcomes across industry.
83. The design of the following provisions places the onus on the customer to inform the bank about their circumstances for the bank to be required to meet its obligations in the Code. We note banks agree to be bound by Code obligations – customers do not.

For example:

- a) Clause 35:

***If you tell us** you are an Indigenous customer, we will take reasonable steps to make our banking services accessible to you.*

b) Clause 38

*We may become aware of your circumstances **only if you tell us** about them.*

c) Clause 43

*We may become aware if you are a low-income earner **only if you tell us** about it.*

84. The BCCC considers that due to the sometimes complex and overlapping nature of vulnerable circumstances, banks cannot always expect that customers will inform them about their personal situations. Reasons for this may vary, for example, including knowledge or awareness of its relevance, the support that the bank can offer, shame, fear, frustrated resignation, or a lack of trust that the bank will respond appropriately, in particular if a customer's previous experience with their bank or another organisation was not positive.
85. However, the BCCC expects that banks will seek to understand the customer's needs and tailor their approach and support, including information and services that are relevant to the customer, irrespective of whether the customer tells the bank about their circumstances, level of income, or self-identification as person of Aboriginal and/or Torres Strait Islander heritage.
86. Banks train staff to identify signs that a customer may be experiencing vulnerability. Staff are expected to be aware of the indicators or signs of vulnerability and to pro-actively take steps to support customers irrespective of their disclosures of the matters outlined in clauses 35, 38 and 43. The BCCC supports the addition of requirements for banks to have in place measures that seek to identify customers who may be experiencing vulnerability.

Strengthening of the Code to ensure services are inclusive and accessible and vulnerable customers are appropriately supported

87. The BCCC considers that the Code could include some other commitments, or a reference to a supporting guideline, to be inclusive and accessible to all people and better support customers experiencing vulnerability.

Power of Attorney

88. When a customer has a power of attorney (POA), it can be an indicator to the bank that the customer may be experiencing vulnerability. In response, banks should ensure they take appropriate care to comply with clause 38 of the Code. Banks should also be aware of the risks of any misuse of power by some attorneys. To this end, staff should be able to competently distinguish between types of POA and their level of authority.
89. The BCCC and its predecessor were informed of various issues relating to POA and branch staff competency to efficiently deal with and respond to requests from a POA. Issues included instances where elderly customers with an appointed POA are declined requests for documents or information on the basis that the nominated POA was not present. In other instances, the POA was required to produce the original POA documentation at each interaction with the bank causing frustration and delay meeting the customer's basic banking needs. We are also aware of issues where attorneys have been unable to use digital channels to transact or open accounts.

90. In October 2020, the ABA released an [Industry Guideline, Responding to requests from a power of attorney or court-appointed administrator](#). The ABA's Industry Guideline provides a framework that banks can use to consistently manage requests from attorneys and administrators.
91. The ABA's industry guideline represents good industry practice and banks should commit to implementing the same in internal policies and processes in the Code.

People with limited English

92. More than 21% of Australians speak a language other than English at home.⁷ On 1 March 2020, the Code was revised to include banks' commitments to be inclusive of all people, including people with limited English. This is an important obligation and banks must build capability and develop practices that are inclusive of culturally and linguistically diverse (CALD) communities.
93. Based on their responses to the BCCC's Part 4 Inquiry, banks predominately support CALD customers by making available the Translating and Interpreting Service (TIS National) and internal language registers identifying staff members who can assist customers with translations. These are important options that banks should actively raise awareness of.
94. In January 2021, a BCCC survey of consumer advocacy groups found that banks' practices to uphold their commitments to CALD communities need improvement. The following are examples of feedback provided by respondents to the survey:
- a) Key information is sent in English, including information about repayment arrangements and their expiry.
 - b) Banks have never offered their non-English speaking clients an interpreter when explaining financial services.
 - c) Clients struggle to communicate with the bank to explain their hardship situation and need the assistance of an advocate.
 - d) Often bank staff avoid using interpreters and persist with English.
 - e) Widespread use of interpreters is needed.
95. Suggestions for improvement in this area included that banks should tailor correspondence to suit the customer, including letters, emails and SMS. Customer representatives also expect banks to be more proactive in offering interpreters and to have bilingual staff to telephone clients in the first instance. Banks should leave voicemails in the customer's language to encourage more engagement. Language barriers may also be prevalent in some Aboriginal and Torres Strait Islander communities, and banks should work with community workers and financial counsellors to visit local communities together.
96. The BCCC supports the inclusion of additional requirements in the Code to more effectively support non-English speaking customers, such as a commitment to the proactive use of translating and interpreting services and the development of capabilities to translate key documents for customers who require them.
97. In addition or as an alternative, the BCCC also supports the development of a guideline that sets out the types of steps banks should take to support non-English speaking customers. A guideline of this nature may help customers to understand what *reasonable measures* a bank may take to enhance a non-English speaking customer's access to banking services.

⁷ ABS website – 2016 Census - <https://www.abs.gov.au/ausstats/abs@.nsf/lookup/media%20release3>

Being inclusive and accessible to all people

98. Clause 32 of the Code requires banks to commit to providing banking services which are inclusive of all people, including older people, people with a disability, Indigenous Australians and people with limited English. The list provided in this section is not exhaustive and the Code should clarify that the obligations in this section apply to other people in a similar way to clause 38h of the Code.

99. In the last year, the BCCC has identified information about the financial exclusion of certain customers. Below are examples of customers who have been left without basic access to banking services in some cases:

a) *People who are incarcerated, including joint borrowers – barriers to basic banking include:*

- One customer alleged her bank closed the joint account (debit card) she held with her incarcerated son. She believed the bank decided to close the account because her son was incarcerated.
- Another customer of a different bank alleged the bank froze the account she jointly held with her incarcerated husband. The account was used to deposit her wages to pay the mortgage and living expenses for her children. She spent extensive time with the bank seeking a resolution.
- Community legal centres have described instances where incarcerated clients have been unable to open a bank account to deposit compensation monies owed to them. Barriers include that inmates do not have access to the internet for online banking services and inmates receive 10-minute calls which is often used waiting for telephone banking to answer. Inmates do not have access to identification documents required by banks.

b) *Veterans receiving compensation payments*

- A veteran of the Australian Defence Force who sustained permanent injury during their time in service was unable to work and received incapacity payments and compensation payments from the Department of Veteran Affairs. Despite having an acceptable deposit, they explained that all the major banks they approached declined to lend to them. They explained that banks will not lend to people on compensation income as this falls outside their credit policy. They described the banks' credit policies as discriminatory and unfair given the service provided by ADF members of Australia, noting that homelessness is a concern for the veteran community upon return from service.

c) *People with non-binary gender and/or gender dysphoria*

- A mother who could not open a bank account for her 16-year-old son who experiences gender dysphoria and had recently started a job. Her son's birth certificate, which registered his gender as female, could not be updated because his father would not agree to the change. The son did not want to experience public questioning that could result from having a female name on his bank card.

d) *Lawful sex industry and those in their employ*

- A community advocacy group highlighted to the BCCC that sex workers and sex industry businesses face financial exclusion from basic access to banking services. It described banks routine unwillingness to provide financial services to lawfully employed sex workers (self-employed or otherwise) or sex industry businesses. Banks' policies and risk appetite in this regard were also described as discriminatory and should instead be based on the individual customer's merits and not on their industry or occupation generally. They suggested that the Code be amended to explicitly provide for greater access to banking services to the sex industry.
100. While we acknowledge banks' decisions to provide banking services to people is guided by their regulatory requirements and organisational risk appetite, the examples highlighted above indicate that community expectations may be at odds with some banks' current practices. The BCCC seeks to raise awareness of the potential gaps in the current inclusivity and accessibility obligations and supports any enhancements to these obligations to ensure all people have access to basic banking services.

Approach to ensuring products and services are inclusive and accessible and further steps required to implement the undertakings

101. Based on banks' responses to the BCCC's Part 4 Inquiry, banks have increased the options available to support accessibility requirements for all customers. Banks' accessibility capability extends across various modes of customer communication including, branch, digital and telephony channels and ATMs.
102. Many banks have incorporated inclusivity and accessibility requirements into the product and service design frameworks for designers to consider in the course of product development. Some innovative banks' product designs include bank cards in braille, sign only and with tactile indicators to assist people. Banks have also increased their collaboration with community organisations that represent the needs of various groups of people with accessibility requirements.
103. The BCCC was informed of another example of accessibility issues where a customer who is deaf, telephoned the bank using the National Relay Service to discuss their financial difficulty. While banks' do accommodate the use of the National Relay Service - in this case, the bank responded that the customer would need to phone the bank directly first (without the relay service) to complete the identification/security questions. This customer routinely receives calls from the bank but cannot answer them.
104. The BCCC has been made aware of the challenges experienced by small business customers operating in regional areas. The increase in branch closures has impacted small business customers' ability to conduct banking. Many banks have made arrangements with Australia Post to support customers to conduct basic banking in towns where the local branch has been closed by the bank. Small business advocates have informed the BCCC that the arrangements made with Australia Post do not always fully support the banking needs of small business customers. As a result, small business customers need to travel long distances to the closest bank, which also can also impact their trading hours.

Branch closure protocol

105. Under the Code, banks have committed to comply with the [ABA's branch closure protocol](#) (ABA protocol), which outlines the banking industry's commitment to provide personal and small business customers in remote, rural and regional areas ongoing face-to-face banking services in the event of a branch closure.
106. The current ABA protocol available on the ABA website was published in October 2015. The protocol states that the ABA will conduct a review of this protocol together with the regular review of the Banking Code and that process will involve consultation with member banks and other stakeholders.
107. The application of the ABA protocol adopts a high threshold. It only applies to the closure of branches in the Inner regional, Outer regional, Remote, Very remote and Migratory classes and only if there is not another branch of the same brand within 20 kilometres by road. The BCCC is mindful of how this section of the Code interacts with Part 4 of the Code and obligations to promote inclusive and accessible banking.
108. Customers impacted by recent regional branch closures have contacted the BCCC and noted their frustration that the protocol did not apply where another branch was within 20 kilometres and concerns about whether banks have considered the impact of such closures on the regional community, in particular, elderly and more vulnerable customers.
109. Even with prior communication to customers regarding branch closures and alternative banking service options, a closure itself presents a significant challenge to customers reliant on face-to-face services. Acknowledging that branch closures are a bank's commercial decision, the BCCC nevertheless believes banks should consider the wider social implications of such closures in accordance with the Code's guiding principles.
110. The BCCC recommends that the ABA review the application threshold of the ABA protocol when it next reviews the protocol, preferably concurrently with the current Code review, and consider if as a matter of good practice, the guidelines in the ABA protocol should apply whenever a branch closure takes place.

Proactive identification of customers who may be eligible for basic accounts

111. In response to question 5 of section 9 of the Consultation Note, the BCCC highlights that in its inquiry into Part 4 of the Code, banks were required to provide information on the steps they were taking to proactively identify customers eligible for basic or low fee accounts both when onboarding new customers and for customers already with the bank.
112. The responses revealed that there were two broad approaches taken by banks in identifying eligible customers. The first approach was to question customers as to the factors that determine eligibility for a basic account and/or periodically monitor accounts for signs of eligibility such as receipt or government benefit or pension payments or repeatedly overdrawn accounts. This approach was taken by the large majority of banks.
113. The second approach was taken by a small minority of banks which designed their general transaction account products to meet the required features of a basic account as set out by paragraph 44B of the Code. These banks indicated that they did not proactively identify eligible customers since their basic account product was used by all

of their transaction account customers. Four banks indicated that they adopted this approach to complying with the basic account obligations.

114. Among the banks which do perform checks for customer eligibility, asking new customers eligibility questions when they apply for banking services is almost universal. Only one bank indicated that they only inform customers of the bank's basic account option if they first disclose that they are experiencing vulnerable circumstances. However, four banks which conduct eligibility checks on new customers indicated that they take a reactive approach to checking the eligibility of existing customers, only providing basic account information if the customer discloses that they are a low-income earner or provides a government concession card to the bank. Apart from this, banks would question the eligibility of existing customers when they applied for new banking services, when the bank contacts the customer over issues such as overdrawn accounts or dishonoured transactions, or when the customer applies for financial difficulty assistance.
115. Seven banks, including three major banks, indicated that they have either completed or were in the process of implementing campaigns to proactively contact customers identified as eligible for a basic account based on systems monitoring of their account activity. These campaigns were designed to inform these customers of the features of the banks' basic account offerings and to encourage customers to switch their accounts. Three banks, including one major bank, also indicated that they were in the process of upgrading their account management systems to enable this sort of active account monitoring so that they could identify potentially eligible customers.

Small business finance: Adequacy of Part 6 of the Code

116. With reference to question 7 of this section of the Consultation Note, the BCCC's Small Business and Agribusiness Advisory Panel highlighted that the Code at present does not contain any specific obligations relating to agricultural business that would provide guidance and a level of certainty to the industry when dealing with banks.

Incorporation of provisions available in other Codes that deal with vulnerable customers

117. The BCCC recognises the value of principle-based obligations and the broad scope of the vulnerability provisions in Part 4 allows for flexibility to ensure that banks provide the level of care required for each individual case. It also prevents a 'box ticking' approach to compliance that could result from overly prescriptive requirements.
118. However, other industry codes of practice that do include specific obligations may be valuable protections for customers covered by the Banking Code.
119. Clause 95 of the General Insurance Code of Practice requires its subscribers to make publicly available a policy about how it will support customers affected by family violence. The BCCC would support the equivalent provision in the Code. This change would provide greater clarity to customers about available support, promote greater consistency of approach across industry and assist the BCCC to hold banks accountable to this standard.

120. Clauses 101-103 of the General Insurance Code include provisions on 'using interpreters', requiring that subscribers provide access to an interpreter if asked or if the subscriber needs one to communicate effectively with the customer. It also requires that staff be trained to use these services. Equivalent provisions in the Banking Code would help to address the need for improved practice in this area as highlighted previously in this submission.

Promoting the existence and benefits of the Code

Effectiveness of Code provisions requiring banks to promote the Code

121. The Code requires banks to make a general commitment to promoting the Code. The BCCC considers that promotion or awareness of the rights and protections in the Code should be the focus over the promotion of the actual document.

Promotion of the Code: What it means and steps to communicate its benefits

122. The Code is an important part of the consumer protection framework and raising awareness of consumer rights under the Code is vital to empower consumers to inform and protect themselves and seek redress when things go wrong. Raising awareness of consumer rights under the Code is also an important way for banks to demonstrate transparency and accountability for the commitments made to consumers through their Code promises.

123. Bank websites and the availability of copies of the Code in branches raise awareness of the Code generally. However, the BCCC expects banks to go further than this, where appropriate.

124. Banks should pro-actively raise awareness of Code protections that are relevant to specific customer groups. For example:

- a) Pro-active promotion of products and services relevant to customers who receive social security payments - such as a basic bank account, or the obligations under the Code of Operations. For example, one bank trained staff in collections' teams to raise awareness of the option to product switch to a basic account (where eligible) during collection calls. As a result of this increased awareness, 2,086 customer transaction accounts were switched to basic accounts between 1 July 2019 and 31 August 2020.
- b) Pro-active promotion of specialist teams or departments designed to provide dedicated support to customers. For example, in 2019 one bank reviewed its existing data and identified 800 customers who were eligible for its Indigenous customer support phone line and contacted them to inform them and improve their service experience.
- c) Educating customers about matters which are relevant to them. For example, some banks identify customers that are at risk of financial abuse or scams and deploy

information to educate them on preventative measures and options available if they are concerned.

125. There has been a significant increase in scam activity through the COVID-19 pandemic, in particular targeting CALD communities. The Code at present does not contain any provisions aimed at supporting customers that may be affected or are at risk of being targeted by scams or fraudulent activity.
126. While we have no specific recommendations for changes to the Code regarding scams, the BCCC did encourage banks to ensure that systems and processes are as robust as possible, and employee awareness of fraud and scam issues is promoted to help protect customers and the banks themselves from scammers and other criminal enterprises, in its compliance report published in April 2021.
127. The BCCC also recently published its [Guarantees Inquiry Report](#) assessing banks' compliance with the 2013 Code. Guarantees have been the subject of concern and criticism for several years. The Financial Services Royal Commission heard submissions about the significant financial and non-financial harm experienced by guarantors. We encourage the Code reviewer to take the BCCC's findings and recommendations into account during the review.
128. As part of the Inquiry, the BCCC heard from community legal centres about cases where clients had guaranteed loans for their adult children without being told about or fully understanding the risks or seeking legal advice prior to signing the guarantee. In some cases, this was due to the elderly parents not speaking English, having limited education or literacy, or feeling too embarrassed to raise their concerns about the guarantee arrangement.
129. In the inquiry report the BCCC recommends that bank staff make a prospective guarantor aware if the transaction is covered by the Code and whether they can provide further information. For example, this can be achieved by raising awareness during initial guarantor interviews or interactions with the guarantor.
130. Further, clause 96 of the Code requires banks to provide prominent notices of key disclosure information in the terms and conditions of the guarantee. The intent of the protection is important because it raises awareness for the guarantor that they should seek independent legal and financial advice, that they can refuse to enter the guarantee, that they can limit their liability, that there are financial risks involved with the transaction and that they can request further information about the transaction.
131. It is good industry practice for banks to go beyond the minimum standard prescribed under clause 96 because the impact of disclosure may differ from person to person and situation to situation. Tailoring approaches to disclosures in a meaningful and accessible way may better suit the needs of some people. For example, if the prospective guarantor(s) does not speak English as a first language then the lender should engage an interpreter for the customer or provide documentation or communications in their language.
132. Proactively promoting customers' rights under the Code during routine interactions, where the protections would be relevant to the customer, is as important as raising awareness of the existence of the Code document.

Promoting the eligibility and availability of low or no fee accounts

133. The BCCC notes the following in response to question 3 of section 10 of the Consultation Note.
134. As part of our inquiry into Part 4 of the Code, we received information from subscribing banks detailing the methods used to promote basic and low-fee accounts to the general public, including details of each product's eligibility requirements. Apart from four banks which did not provide a response to the relevant question, all banks indicated that they detail their basic account's features and eligibility requirements on their website, either as part of the bank's general product listings or as part of a special homepage or landing page directed at low-income earners and government concession card holders. Five banks, including two major banks, indicated that the information on their websites included details of interest rates, fees, and charges in comparison with other account offerings and that their basic account offerings were included in product comparison tools either on their own website or on third party comparison sites. One bank also indicated that their online transaction account application form included notices directing eligible customers to the bank's basic account offering.
135. Apart from online information, eight banks, including two major banks, noted that they train staff to actively promote basic account options in face-to-face interactions with customers where appropriate and provide information documents on the features and eligibility criteria of their basic account offerings to all customers at branch offices. One major bank detailed the public marketing efforts that had been undertaken for their basic account offering, including billboards, social media, search ads, affiliate websites, and in-app messages. Four banks, including one major bank, also noted that information on their basic account offerings was included in their standard correspondence for customers who had applied for financial difficulty assistance.

Resolving complaints and disputes

Effectiveness of Code provisions

136. Customer allegations made to the BCCC suggest that most customers follow or are prompted to follow the complaint resolutions process i.e. first contacting their bank and then contacting AFCA if the issue is not resolved to their satisfaction. As the BCCC does not provide individual outcomes to customers, any allegations received are assessed in line with the Charter and Operating Procedures which require it to consider whether another forum would be more appropriate. For allegations that have not been referred to the banks' IDR process, the BCCC (in line with the Code requirements) advises the customer to contact the bank in the first instance, or AFCA, to seek an individual outcome.
137. The BCCC through its monitoring work has not identified any trends or concerns that would indicate overall non-compliance with the referral process being followed by banks.

Information on ASIC guidelines in the Code

138. The BCCC would support the inclusion of more information in the Code about the new ASIC Regulatory Guide 271 – Internal dispute resolution (RG 271). The Code should include a hyperlink to the new regulatory guide.

Definition of complaints

139. ASIC's RG 271 expands the definition of complaint to include complaints specifically about the organisation itself and the conduct of its staff.⁸ The BCCC recommends that the definition of complaint in the Code align with the updated definition in the new regulatory guide.

External Dispute Resolution (EDR) process

140. The Code does not include requirements for banks' conduct during the External Dispute Resolution (EDR) process. The Code should include a commitment by banks to comply with the EDR providers' processes and guidelines.

141. The inclusion of such provisions would assist with providing assurance to customers that the commitments made in the Code regarding banks' IDR conduct extend to the EDR process.

Resolution timeframes

142. The BCCC notes the changes to the complaints' handling timeframes in Table 2 of the RG 271 and acknowledges the ABA and banks' commitment to update the Code in October 2021 to reflect these changes.

Customer Advocates: Awareness of the role and customer use

143. Banks have committed to appoint a Customer Advocate within each bank to help them facilitate fair customer outcomes and minimise the likelihood of future problems under clause 193. This commitment is outlined in both the Code and the ABA's Guiding Principles for Customer Advocates (the ABA Guide).

144. Banks agreed to appoint Customer Advocates by July 2017 as part of the program of banking reforms announced by the ABA on 21 April 2016, prior to the current Code coming into effect in 2019.

Awareness of the Customer Advocate role

145. Current BCCC intelligence indicates that the role of banks' Customer Advocates may not be well known within the community. Awareness of the existence of the Customer Advocate within banks, including how and when they can be engaged could also be improved.

⁸ ASIC, [Regulatory Guide 271](#), July 2020, (271.27).

146. In July 2020, Financial Counselling Australia released its Rank the Banks Report⁹ which contained the results of a survey (of 278 financial counsellors) conducted in 2019. It found that:
- a) 28% had never heard of customer advocates
 - b) 43% of people had heard about customer advocates, but had not contacted any of them, and
 - c) 29% have heard about them and have contacted one (or more) of them for assistance.
147. 12 out of 70 qualitative responses indicated that financial counsellors didn't know how to engage the Customer Advocate.
148. Consumer legal centres have confirmed engaging major banks' Customer Advocates have resulted in positive customer outcomes. However, they are uncertain when the Customer Advocate Office should be engaged and therefore avoid doing so unless necessary. They also noted some banks' Customer Advocates are not easily contactable.
149. A similar observation was noted in Deloitte's Customer Advocate Post Implementation Review report.¹⁰ Deloitte identified that banks could improve the external awareness of its Customer Advocate function. While large prominent Consumer Groups were aware of Customer Advocates (mostly from large banks), smaller groups and individuals providing community support (such as financial counsellors) are largely unaware of the roles, their purpose and how and when they can access Customer Advocates.¹¹
150. BCCC intelligence also indicates that there is uncertainty about the existence and accessibility of the Customer Advocates within banks by front-line staff.

For example:

- a) Branch staff of one of the major banks were telephoned by a customer to seek information about their Customer Advocate. The bank staff member responded that they did not have a Customer Advocate. After being asked to Google the bank's Customer Advocate, the staff member conceded that the bank did have one, but that he did not know how to reach them. The website did not contain the Customer Advocate's contact details.
 - b) A customer who explained that staff at one of the major banks informed them that, "the bank's customer advocate office was disbanded 3 months ago", and the only option available to him was AFCA.
151. Lack of awareness of the Customer Advocate among bank staff is unlikely to instill confidence in customers and thus defeats one of the purposes of the Customer Advocate initiative, which is to 'restore trust'.

⁹ Rank the Banks Report, <https://www.financialcounsellingaustralia.org.au/docs/rank-the-banks-and-other-creditors-2019/>, June 2020

¹⁰ Deloitte's *Customer Advocate Post Implementation Review* report, <https://www.ausbanking.org.au/wp-content/uploads/2019/05/Customer-Advocate-Post-Implementation-Review.pdf>, May 2019

¹¹ Deloitte Report, p 2

Different bank, different Customer Advocate model

152. The ABA Guide allows banks to design the Customer Advocate role to fit with their business model, by defining the scope of the role and its operating procedure. Naturally, banks have implemented an array of Customer Advocate models and depending on the size of the bank the Customer Advocate function could range from one Customer Advocate to a whole Customer Advocate Office.
153. There appear to be two prominent models. One encompasses a broad mandate that focuses on complaints escalation, improving the system for resolving complaints. The other encompasses a smaller mandate focused on reviewing escalated complaints.
154. The different models are likely to be confusing to customers because often it is not clear to the general public what the scope of a bank's Customer Advocate model entails. One model for all banks would likely improve consistency in customers' understanding and expectation of the Customer Advocate role in their bank. However, this might not be achievable due to the different business models and resources banks have. The Code should include a requirement for banks to clearly communicate to customers the scope of the Customer Advocate role and what type of direct assistance and contact, if any, that a customer can expect from the bank's Customer Advocate.

Government's proposed changes to regulatory framework for consumer credit

Implications for the Code

155. As previously noted, the Code currently does not define or elaborate on the 'care and skill of a diligent and prudent banker' that the banks are required to exercise when assessing new applications for credit or increases to current limits. The only explanation or guidance available as to the interpretation of this clause is clause 50 which refers to the protections included in legislation. As acknowledged in the Consultation Note, any repeal of the current laws would require a change to the wording of clause 50.
156. The Code contains promises about how the bank will engage with customers on an individual basis. Considering the Australian Prudential Regulation Authority's (APRA) mandate as a prudential regulator, it is unclear at this stage how a move to a credit risk-based lending model would achieve a balance between the interests of the banks and each of their customers or for a framework that would provide individual remedies to customers.
157. Regardless of whether the responsible lending laws are repealed or amended, clause 50 of the Code should set out the principles of the current protections in legislation, in particular requirements for lenders to make reasonable inquiries about a customer's requirements or objectives, and to assess whether they will be able to repay any borrowed amount without experiencing substantial hardship, to ensure that credit contracts entered into are not unsuitable. This could have the effect of counterbalancing the impact of any changes to the *National Credit Act* through greater transparency and a set of actionable commitments about banks' approach to lending.

Enforceable Code provisions

158. The BCCC supports the adoption of an approach to the enforceable code provisions regime whereby all provisions are treated in the same manner.
159. The BCCC is concerned that any move to a partial enforceability regime may lead to a reduction in focus and subsequently compliance with the non-enforceable Code provisions, with no apparent incentive for banks to treat the non-enforceable provisions as being as important as the enforceable obligations. Consequently, the non-enforceable obligations may only be viewed as aspirational in nature.
160. However, in the event that only certain provisions are deemed enforceable, the BCCC recommends protections that do not specially exist under the current law and where existing channels of support or redress are not available to customers be considered for inclusion as enforceable provisions. Examples could be Code obligations regarding small business customers regarding lending and extensions to current loans, ensuring farmers can access AFCA if they do not reach an agreement with the bank through farm debt mediation and guarantee obligations related to disclosure and waiting periods for acceptance.
161. Another provision to consider is the inclusion of a broad commitment (as highlighted previously) for banks to have an infrastructure in place that would ensure compliance with all obligations of the Code. Mandatory compliance with a clause that underpins or directly impacts adherence to all provisions of the Code can positively influence banks approach to compliance with any non-enforceable provisions of the Code.

Implications for the BCCC

162. At this stage it is not clear to the BCCC how enforceable provisions, by which we mean provisions subject to civil penalties and/or other ASIC enforcement action, will be monitored under the new regime, including the delineation of responsibilities for monitoring and enforcement of Code breaches between the BCCC and ASIC.
163. It is vital that the BCCC is able to maintain its ability to request relevant information from banks, follow up on any Code compliance matters and overall conduct its activities without any barriers related to the availability of information or scope of its monitoring and investigations powers.
164. While we understand ASIC will be consulting on any changes to its Regulatory Guide 183 in due course, the BCCC notes that any split or duplicate responsibility in oversight and monitoring of the Code is likely to cause confusion for both banks and customers.

The BCCC

The BCCC's contribution to improving banks' Code compliance

165. The BCCC undertakes a range of monitoring activities aimed at identifying non-compliance with the Code and driving industry best practice Code compliance. The BCCC's regular engagement with the subscribing banks centres on encouraging improved compliance with the Code and proactively highlighting issues of concern.
166. Details of BCCC's activities in recent years can be found in its [2019-2020 Annual Report](#). Since the publication of this Annual Report, the BCCC published the [Building Organisational Capability report](#) in February 2021, its most recent compliance report in April 2021, and its [Guarantees Inquiry report](#) in August 2021. The BCCC's work in progress includes the aforementioned inquiry into compliance with Part 4 of the Code, monitoring of the cancellation of direct debits and scoping a targeted inquiry into the deceased estates obligations. We intend to publicly report on several of these activities in the next few months. In addition, we also undertake bank specific investigation activities.
167. The BCCC receives allegations of breaches of the Code from customers, their representatives and other interested parties. For the year ending 30 June 2021, approximately 60 allegations (from customers or their representatives) were received. While the BCCC does not conduct individual investigations into every allegation it receives, it uses this information to inform its targeted monitoring activities.
168. As part of these more targeted activities the BCCC has required some banks to undertake performance or investigatory audits using powers under clause 4.4(a)(ii) of the Charter.
169. These audits have been very useful for the BCCC's work, highlighting issues that were not evident in banks' self-reported data or their responses to the BCCC's requests for information. In the Guarantees inquiry, the audit findings have been used to illustrate compliance issues. In targeted inquiries, the audit findings are critical in identifying whether the bank's breaches are serious and/or systemic and what remediation actions the bank will have to undertake.
170. The BCCC undertakes a six-monthly breach data collection activity (the Banking Code Compliance Statement) through which banks self-report Code breaches to the BCCC to help ascertain the overall level of compliance with the Code and identify any industry-wide current and emerging trends that may require greater focus on achieving compliance. Banks are also required to provide details of their approach to monitoring key obligations under the Code once every year as part of the six-monthly data collection exercise.
171. The BCCC's latest compliance report acknowledged improvements in banks' monitoring and reporting regimes with encouraging signs of positive action being taken to improve their overall compliance with the Code.
172. Overall, we consider that our work is contributing to improved compliance with the Code. The BCCC's appointment of [cameron, ralph. khoury](#), to [review the BCCC's activities](#) in accordance with the requirements of the BCCC's Charter will provide an opportunity to enhance our role and improve our operations. The BCCC looks forward to the findings

and recommendations of this Review and the BCCC Review, which will help us to ensure we hold banks accountable for their conduct and support better banking experiences for customers.

The Charter as the instrument to record BCCC's duties and powers

173. The BCCC proposes that the Code should be the single source of authority that governs the BCCC's role to avoid duplication or any confusion about its powers, functions or responsibilities. Any relevant matters regarding the BCCC's role, powers, functions and structure, including any limitations to the role, should be included in the Code. In addition to this being an appropriate governance arrangement, it is likely to improve transparency for customers.

174. As an example of the duplication in these documents, clauses 214 and 215 of the Code (BCCC Powers and sanctions) are restated in clause 7 of the Charter. The Charter also contains information about some limitations to the BCCC's role which are not included in the Code, for example clause 6.4 of the Charter confirms the BCCC's role does not include determining what redress should be provided to a customer as a result of a breach of the Code.

175. In addition, the removal of the Charter would also have the effect of all BCCC functions being directly governed through an ASIC approved document. ASIC's Regulatory Guide 183 – Approval of financial sector codes of conduct (RG 183), the relevant criteria for approval of industry codes, includes consideration of the administration¹² of the code and monitoring¹³ of compliance. However, while the Code is currently approved by ASIC, as far as the BCCC is aware, the Charter sits outside of the approval process and is not specifically approved as a governance document.

176. The BCCC has developed an [Operating Procedures](#) document to support its compliance monitoring program including implications of non-compliance. This is a public document designed to provide guidance and clarity on how the monitoring activities are carried out by the BCCC in line with the relevant provisions of the Code.

Breach reporting

177. Self-reporting of breaches by banks demonstrates how banks monitor their own compliance with the Code – a key aspect of a self-regulatory framework. It supports the BCCC's assessment of banks' compliance frameworks and commitment to continuous improvement in Code compliance. It is one of the BCCC's key tools to monitor and assess the industry's compliance with the Code.

178. Monitoring of self-reported breaches enables the BCCC to:

- a) Report publicly on how well banks comply with the Code.

¹² ASIC, [Regulatory Guide 183](#), March 2013, (183.35).

¹³ ASIC, [Regulatory Guide 183](#), March 2013, (183.78).

- b) Benchmark relative levels of compliance between different banks and Code obligations.
- c) Identify emerging compliance issues to inform more targeted inquires and investigations.

179. The BCCC employs a range of monitoring methods as part of its compliance program and also receives referrals from customers, community groups and customer advocates, and AFCA which may lead to further inquiries and subsequent investigations into banks' compliance with the relevant clauses of the Code.

Changes to ASIC's breach reporting requirements

180. In addition to the overall breach reporting requirements, the BCCC has a standing requirement for banks to report any non-compliance with the Code that is reported to ASIC under Guidance Note 1. Under ASIC's proposed [breach reporting reforms](#), we understand there is likely to be a substantial increase in the volumes of matters being reported to ASIC by the banks.

181. The BCCC is currently considering changes to these reporting requirements given the likely impact on current resourcing arrangements as well the duplication in reporting to ASIC. Similar concerns have also been raised by some banks in their engagement with the BCCC.

182. Having regard to the BCCC's and ASIC's oversight of industry and the upcoming changes to enforceable Code provisions regime, the BCCC is noting this for the Code reviewer's consideration in the context of the various roles and requirements and any approach to a formal exchange of information with ASIC.

Sanctions

183. The BCCC cannot provide a firm view as to the effectiveness of naming sanctions in achieving greater compliance at this early stage.

184. However, the BCCC agrees with ASIC's comments in RG183 about the availability of sanctions in the 'compliance toolkit' to deal with wilful or repeated breaches, although we would extend also this to very serious and systemic breaches.¹⁴ ASIC notes that sanctions can serve as a means of providing confidence to consumers in the Code¹⁵ and can act as a deterrent to breaching the code.

185. The BCCC considers that additional sanctions or expanding on the breadth of the current sanctions available to the BCCC would enhance the current enforcement tools available to the BCCC and provide confidence to the community that banks are being held accountable for their compliance with the Code.

186. At present the sanctions available to the BCCC do not include the imposition of any financial penalties, requiring corrective advertising, or suspension or expulsion from the

¹⁴ ASIC, Regulatory Guide 183, March 2013, (183.73).

¹⁵ ASIC, Regulatory Guide 183, March 2013, (183.72b).

ABA or the Code¹⁶ for serious or systemic breaches by the banks. The BCCC notes the enhancement of the available sanctions in the recently [updated General Insurance Code of Practice](#) through the inclusion of a community benefit payment of up to \$100,000 for any significant breaches of the Code by subscribers.

187. To further strengthen the current sanctions regime and provide greater community assurance, the current naming sanction should be broadened to include a requirement for a bank to publish any corrective actions taken to prevent future occurrences of an issue, such as system improvements or staff training, on its website and apps as acknowledgement of the breach and the resulting actions.
188. With a view to increasing the effectiveness of the naming sanction, the sanction imposed should also be considered for inclusion on the ABA's or the relevant bank's website and apps. This may lead to greater confidence in the Code and BCCC's compliance monitoring of the Code, due to the higher degree of visibility of the ABA's and banks' websites in comparison to the BCCC's, as in most cases the affected parties will be current or previous bank customers.

Reporting on de-identified basis

189. The BCCC can only undertake reporting about non-compliance on a de-identified basis due to confidentiality requirements. This may adversely impact its ability to achieve the desired outcome of driving improved Code compliance.
190. While we acknowledge the potential risks of identifiable public reporting, such as potentially more conservative reporting to the BCCC, we consider that it would be an effective tool to achieve greater compliance with the Code due to the level of competition in the industry and would provide greater transparency for the community about how well banks comply with the Code.
191. In addition, the BCCC considers the identification of banks displaying good practice(s) in its reports may encourage banks to readily adopt the practices identified in an effort to be industry leaders or to visibly differentiate themselves from their direct competitors.
192. Further, in order to promote the BCCC's work and increase the community's confidence in the Code, the reviewer should consider recommending all subscribing banks' websites must carry links to the BCCC website or references to it as the independent code monitoring body. Currently, not all banks' websites contain such information regarding the BCCC or direct links to its website.

BCCC resources

193. The BCCC determines its resourcing needs with reference to its Strategic and Business Plans for a given period. The ABA has been supportive of the BCCC with regard to its resourcing needs and has ensured the BCCC has sufficient resources and funding to carry out its functions.

¹⁶ ASIC, Regulatory Guide 183, March 2013, (183.70).

194. However, since there are few similar entities with which the BCCC can benchmark itself to determine the appropriate level of resources for its role, the BCCC will be interested in other parties' views on the sufficiency or otherwise of BCCC's resources as a result of the Code and BCCC reviews.

Contents of the charter

195. The BCCC also wishes to highlight certain aspects or parts of the Charter that require further guidance or consideration.

- a) Clause 5.1(c) – The BCCC should have the discretion to investigate allegations based on the severity/complexity of the matter, regardless of any time limits. The BCCC considers that the two-year time limit on undertaking of specific compliance activities no longer has relevance given the focus of the BCCC's activities is on serious and systemic matters rather than conducting investigations into consumer breach allegations.
- b) Remediation – The BCCC's role in customer remediation activities that banks may need to undertake as a result of its compliance activities to ensure appropriate closure of the matter, as well as a means of providing assurance about redress to affected parties, should be clarified. Clause 6.4 of the Charter precludes the BCCC from determining redress for a customer in the event of non-compliance. (This is AFCA's role when a matter is considered on an individual basis.) The BCCC has set out its approach in its Operating Procedures based on its interpretation of the current wording of the Charter. However, it would be beneficial to clarify the BCCC's role regarding customer remediation in the Code by reflecting the BCCC's position set out in 51-53 of the Operating Procedures. We also note that one of the sanctions available to the BCCC is to require a bank to undertake a compliance review of its remediation activities, but it is not clear when this should be applied given the other references to customer remediation/redress.
- c) Clause 5.3(d) – Matters the BCCC cannot consider - The clause contains the phrases 'heard by' and 'declined to determine whether a breach of the Code has occurred' when a matter has been considered by another forum. The BCCC should not be limited from investigating matters that have been excluded by other bodies or where breaches of the Code have occurred but have not been investigated. In this regard meaning of the terms 'heard by' and 'declined' should be clarified.
- d) Clause 12.5 – At present BCCC members, other than the independent chairperson, may nominate alternate representatives to take part in meetings. The BCCC suggests that in the event of prolonged absence or inability of a member to participate in Committee meetings, the Code provide for the appointing bodies to nominate alternate members.
- e) Clause 5.4 – The intent of the clause is related to the Investigations approach which requires the BCCC to consider relevant provisions of the Code and applicable laws. We do not consider this clause is required when the Charter states that BCCC is empowered to investigate alleged breaches of the Code and all investigations are to be undertaken in line with the BCCC Guiding Principles (5.1).
- f) Clause 4.1 – Clause 4.1 details only some BCCC powers and duplicates what is in the Code and should be dealt with in the Code alone.