

07 February 2022

By email: info@codecompliance.org.au

Banking Code Compliance Committee
PO Box 14240
Melbourne
VIC 8001

Dear Ms Dawson

Banking Code Compliance Priorities 2022-23

Thank you for the opportunity to provide input to the BCCC's compliance priorities for the 2022-23 financial year. The BCCC's administration and enforcement of the Banking Code of Practice (the **Code**) is a key aspect of regulatory oversight in the banking sector. The BCCC's monitoring and enforcement activities have helped improve consumer experiences in recent years. However, we still regularly see consumer harm caused as a result of non-compliance with the Code by Australian Banking Association member banks.

We encourage the BCCC to consider the key issues raised in the joint consumer group submission to the 2021 independent review of the Code (**Code Review Submission**) in selecting its compliance priorities.¹ The issues discussed in that submission are based on the most forms of consumer harm involving banks most commonly seen by consumer representatives across Australia. We have provided some further brief comments below on matters (some raised in the Code Review Submission, some not) we consider to be particularly important, based on the casework of our financial counselling and legal advice services.

More broadly, the BCCC should also continue to push banks to invest in improving the systems they have in place for service delivery and Code compliance. Harmful Code breaches continue to occur in ways that should not be possible. Often, when we raise these complaints with banks we are told it was an administrative error, some of which are simply unavoidable. We disagree – the onus is on banks to ensure their systems are compliant, including if that means investing in more capable technology to meet their obligations with fewer errors.

About Consumer Action Law Centre

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

¹ Available here: <https://consumeraction.org.au/review-of-the-2021-australian-banking-association-code-of-practice/>

Supporting Aboriginal and Torres Strait Islander peoples

Identified as a key area of emphasis in the Code Review Submission,² some aspects of banking services systemically discriminate against or harm First Nations communities and peoples throughout Australia. Many of these issues have been known and ongoing, some in breach of some of the commitments made in Chapter 13 of the current Code.

While we recognise that the BCCC's recent inquiry into inclusivity, accessibility and vulnerability (discussed below) also did touch upon some issues that impact the experiences of First Nations people, these ongoing issues warrant further specific focus. Reasonably foreseeable problems have even arisen where banks have attempted to make improvements in this space, such as where the establishment of seemingly under-resourced dedicated assistance lines made matters worse.³ It is essential that attempts to improve the accessibility and experiences of First Nations people are well thought out and properly resourced by the banks. There is a role for the BCCC to play in guiding progress in this area.

RECOMMENDATION 1. Seek information from banks about projects being undertaken to better support First Nations people and communities. Monitor the experiences of First Nations people across banks and push those banks lagging behind to invest greater resources in this goal.

Implementation of BCCC recommendations on Part 4 of the Code

We welcomed the publication of the BCCC's Inquiry Report: Banks' compliance with Part 4 of the Banking Code: inclusivity, accessibility and vulnerability in December 2021 (**Vulnerability Report**).⁴ Inconsistency in the way banks identify and respond to customers experiencing vulnerability remains a major issue in our casework. While there are some examples of banks doing a good job of assisting people experiencing vulnerability, it is still common for us to hear about examples that obviously breach the Code and fall well short of community expectations of the banks.

For example, we recently received a call on the National Debt Helpline (**NDH**) from a bank customer who had been told they must speak with a financial counsellor (and even produce a statutory declaration confirming they had) before their bank would discuss hardship options with them. We received similar calls last year from customers referred by other banks insisting that they speak to a financial counsellor before the bank would entertain hardship discussions or arrangements. While we agree with the Vulnerability Report's endorsement of a bank having the details for NDH and community legal centres readily available to staff as good practice, this is an inappropriate barrier that may prevent people from accessing important hardship assistance.

As inclusivity and accessibility for people experiencing vulnerability remains an ongoing issue (and banks often describe complaints we raise about these kinds of issues as a 'one-off'), we recommend that the BCCC place particular focus on how the banks respond to and implement the recommendations of the Vulnerability Report, to ensure they are treated as a priority.

RECOMMENDATION 2. Require banks to report to the BCCC on their response to, and the implementation of, the recommendations made in the BCCC review of Part 4 of the Code.

Scams

Another key area of emphasis in the Code Review Submission was on scams.⁵ While the recommendations made in the submission related to amendments to the Code, there are still existing Code commitments that relate to the current trends in the increasing frequency of scams.

² https://consumeraction.org.au/wp-content/uploads/2021/08/210820_CFA-Sub-ABA-Code-Review-Final.pdf, see paragraphs 79-89 in particular.

³ See https://consumeraction.org.au/wp-content/uploads/2021/08/210820_CFA-Sub-ABA-Code-Review-Final.pdf, particularly para 81.

⁴ <https://bankingcode.org.au/app/uploads/2021/12/Banks-compliance-with-Part-4-of-the-Banking-Code-inclusivity-accessibility-and-vulnerability-1.pdf>

⁵ https://consumeraction.org.au/wp-content/uploads/2021/08/210820_CFA-Sub-ABA-Code-Review-Final.pdf, see paragraphs 250-257 in particular.

Most scams rely to some extent on online bank transfers, particularly with the increased movement to online banking – a trend accelerated by the COVID-19 pandemic, but also one that banks have encouraged and moved to save money through (such as by closing branches and ATMs). As banking systems are always involved, we are deeply concerned with the current resistance from banks to accept any responsibility for losses suffered as a result of scams.

It is again people experiencing vulnerability who are often losing the most from scams – both in absolute terms, and in regard to the relative impact these losses have on their financial wellbeing. However, scams can (and do) impact anyone. While banks insist they are taking this seriously, it is hard to believe when major banks are removing senior positions focused on financial crime in an explicit pursuit of more profit.⁶ Banks have also expressed resistance to additional safety checks aimed at preventing scams if they would even slightly increase the level of friction involved in even obviously high risk transfers. It seems that banks also oppose implementation of greater protections as doing so might tip the balance in terms of who could reasonably be expected to foot the bill for losses.

Whether or not specific clauses in the Code speak to it, protecting consumers from scams and dealing with associated losses clearly falls within the guiding principles of the Code. Effective protection against scam losses relates to the trust customers and the community can have in banks, it relates to good outcomes, and is intrinsic to the role of banks in society. In addition, Chapter 30 of the code commits banks to keeping accounts safe and secure, and clause 116 commits banks to providing warnings/information about safeguards for payments. We suspect that a close inspection by the BCCC of what each bank is doing to protect its customers from scams would yield valuable results in terms of identifying how to improve consumer outcomes. We would point the BCCC to the Lending Standards Board in the UK, and its code compliance activities relating the Contingent Reimbursement Code – this board has investigated the way in which banks warn customers about risks in making transactions, and how they consider reimbursement for scam losses.⁷

RECOMMENDATION 3. The BCCC should engage with banks to understand what they are doing to prevent scams, and push banks to do more (particularly those banks comparatively doing less).

Sale of debt

In the Code Review Submission, we also made a range of recommendations about how new commitments in the Code could help reduce the negative outcomes that are caused as a result of debt collection practices by the banks, their agents and debt buyers. This is again an area where avoidable additional harm is being suffered by people in financial hardship that involves the banks.

We appreciated the ABA developing the Sale of unsecured debt industry guideline, but this needs to be implemented by all members – it should not just be best practice. That these guidelines be made binding upon banks was a recommendation made in the Final Report of the independent review of the Code.⁸ The BCCC should monitor uptake of the guideline and should work with banks over the next 12 months to develop the systems to ensure that guideline is being met.

RECOMMENDATION 4. Monitor uptake of the ABA's Sale of unsecured debt industry guideline and work with banks to improve their current systems and practices in order to meet the guideline.

Implementation of the Consumer Data Right and other new technology

If done properly, the implementation of the Consumer Data Right and Open Banking could result in great service improvements for consumers, as well as savings for banks. However, it is vital that consumer interests are prioritised in service implementation. Bare minimum compliance with the legal framework that applies to these

⁶ <https://www.theage.com.au/business/banking-and-finance/westpac-brings-forward-cost-cutting-as-margins-feel-the-squeeze-20220203-p5qtee.html>

⁷ <https://www.lendingstandardsboard.org.uk/crm-code/>

⁸ <https://bankingcodereview.com.au/wp-content/uploads/2021/12/Final-Report-Banking-Code-of-Practice-Review-2021.pdf>

technologies risks having a system that leaves consumers worse off.⁹ The BCCC should monitor the development and implementation of systems for these technologies within banks to ensure that no adverse consumer outcomes occur.

RECOMMENDATION 5. Monitor the implementation of new technology within banks that is associated with the Consumer Data Right and Open Banking, to ensure that they are implemented in a way that prioritises the interests of consumers.

Basic bank accounts

An important commitment made in the 2019 Banking Code related to basic bank accounts. Pursuant to Chapter 16, signatory banks must either not charge interest, or refund any interest charged, on informal overdrafts on basic accounts held by eligible low income customers if the customer has not agreed to an overdraft facility. Banks must also proactively identify customers who may be eligible for basic accounts.

These commitments were subject to an authorisation process of the Australian Competition & Consumer Commission (ACCC).¹⁰ While the authorisation requires the ABA to report back to the ACCC on matters including the number of basic bank accounts held by eligible customers, how often informal overdrafts are occurring, and the steps the banks have taken to contact existing customers who may be eligible for a basic bank accounts, the data¹¹ published thus far is relatively limited and does not draw any conclusions about the effectiveness of the banks compliance with code requirements. In this regard, we consider there would be benefit in the BCCC specifically monitoring compliance with Chapter 16 through an investigation, and identifying and promoting good practices across the banks.

RECOMMENDATION 6. Consider an own-motion investigation into compliance with Chapter 16, and identify whether customers who are eligible for basic bank accounts are being provided them effectively.

Conclusion

We will continue to keep the BCCC informed of any trends that we identify through our casework throughout the year, and would be happy to discuss these points (or any others) further in future meetings. Thank you for considering our feedback.

Please contact Policy Officer **Tom Abourizk** at **Consumer Action Law Centre** on 03 9670 5088 or at tom.a@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE

Gerard Brody | CEO

⁹ https://consumeraction.org.au/wp-content/uploads/2021/08/210820_CFA-Sub-ABA-Code-Review-Final.pdf, see paragraphs 53-61.

¹⁰ <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/the-australian-banking-association>

¹¹ https://www.accc.gov.au/system/files/public-registers/documents/First%20Report%20-%2001.11.21%20-%20PR%20-%20AA1000441%20ABA_1.pdf