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Professor I Ramsay  
Chair, EDR review  
C/O Financial System Division  
The Treasury,  
Langton Crescent,  
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**By email to:** [EDRreview@treasury.gov.au](mailto:EDRreview@treasury.gov.au)

Dear Professor Ramsay

### **Review of the financial system external dispute resolution framework**

Thank you for the opportunity for the Code Compliance Monitoring Committee (the CCMC) to make a submission to the Review of the financial system external dispute resolution framework.

The CCMC is an independent compliance monitoring body established under clause 36 of the 2013 Code of Banking Practice (the Code). It is comprised of an independent chair, a person representing the interests of the banking industry and a person representing the interests of consumers and small business. This is consistent with the model for self-regulatory governance under ASIC's Regulatory Guide 183.

The CCMC works with code-subscribing banks and aims to be a trusted and valued partner, assisting banks to comply with their Code obligations. The CCMC's Mandate (which is an attachment to the Code) sets out its powers and functions, which include:

- monitoring banks' compliance with the Code's obligations
- investigating an allegation from any person that a bank has breached the Code, and
- monitoring any aspects of the Code that are referred to the CCMC by the Australian Bankers' Association (the ABA).

The Code is a voluntary code of conduct which sets standards of good banking practice for subscribing banks to follow when dealing with persons who are, or who may become, an individual or small business customer of a code-subscribing bank, or a guarantor. The Code and Mandate were developed and published by the ABA.

Thirteen banking groups currently subscribe to the Code. These banking groups cover approximately 95% of the Australian retail banking industry. All code-subscribing banks are members of the Financial Ombudsman Service (FOS) Australia.

The Code forms an important part of the broader national consumer protection framework and the banking services regulatory system. It is a means by which the ABA and code-subscribing banks can complement formal law and regulation in areas relating to service issues for consumers, standards of professional conduct, practice standards and ethical behaviour.



To achieve its objectives, the CCMC undertakes three main activities:

- monitoring compliance with the Code in particular through its Annual Compliance Statement (ACS) Program
- conducting own motion inquiries into banks' compliance with specific obligations of the Code, and
- considering complaints from individual customers that the code has been breached

The ACS program each year consists of a questionnaire completed by banks, which includes data about breaches and complaints, followed by an onsite visit to discuss the outcomes with the CCMC staff.

The ACS program allows banks to self-report areas of non-compliance with code obligations, share information about areas of good industry practice and highlight areas they have identified for priority attention. This year, banks self-reported 7,988 breaches of the Code, which is a 21% increase on 2014–15. Banks also reported 21 significant breaches of the Code, an increase of five on last year.

The information regarding breaches is used by the CCMC to identify areas of risk and informs its decisions regarding which areas of the Code should be subject to further monitoring activity. This monitoring activity usually takes the form of regular Own Motion Inquiries (OMI).

OMIs allow the CCMC to examine banks' compliance with specific Code obligations. These inquiries have a narrower but more in-depth focus than the ACS program and help to identify not only areas of concern but also good practice. The CCMC is aware that banks have changed their practices in response to these inquiries.

Administrative and staffing services are provided to the CCMC by the Financial Ombudsman Service (FOS). The CCMC is, however, independent of FOS and unlike FOS, its role does not include:

- mediating and resolving individual disputes, or
- making declarations on the rights and entitlements of parties.

A Determination by the CCMC that a bank has breached the Code may not result in compensation or an improved outcome for the consumer who made the allegation. Banks may, in the course of considering the CCMC's Determination, decide to provide some form of redress or alternative outcome to the consumer. The CCMC will, however, work with the bank to ensure that the circumstances which gave rise to the breach are not repeated. This, ultimately, will improve the standard of banking services.

The CCMC receives a relatively small number of allegations each year (41 new cases in 2015–16). A number of these are from consumers or small businesses where the circumstances of the allegation are outside the scope of FOS.

At present, there is no formal arrangement for FOS to refer matters to the CCMC, although this is a matter which is currently being discussing with FOS. The CCMC would encourage any new EDR arrangement to include a mechanism whereby possible breaches of the Code are referred. The CCMC considers that this would help identify areas of non-compliance and contribute to the ultimate goal of improving standards of service in the banking industry.



Where an allegation received by the CCMC is also being considered by another forum (such as FOS or a court), the CCMC will place its investigation on hold. Any decision of that forum regarding a breach of the Code would, under the Mandate, be adopted by the CCMC.

While this approach prevents duplication of investigations, it can sometimes be problematic as other forums do not always document the consideration of Code obligations in their decisions. If the Code obligations are not considered, the CCMC would then be required to recommence its investigations.

Decisions by other forums can, on occasion, take some considerable time to complete. Any subsequent CCMC investigation may, therefore, lose its relevance. The CCMC would encourage EDR schemes to publish the assessment of compliance with Code obligations in addition to the legal requirements.

On 20 April 2016, the ABA announced a review of the Code would be conducted in 2016. To coincide with this review, the CCMC is also conducting a review of its activities, as required under Clause 14.3 of the Mandate. Both reviews are being conducted by Phil Khoury of Cameronralph Navigator and it is expected these will be completed by 31 December 2016.

### **Internal Dispute Resolution**

The obligations of the Code in respect of internal dispute resolution are set out in clause 37 and require code-subscribing banks to have in place an internal process for handling disputes which is free and accessible and meets the standards set out in ASIC's Regulatory Guide RG165: Internal and External Dispute Resolution.

The Code does not include a standard definition of a 'complaint' but does define a dispute as '*a complaint that has not been immediately resolved*'. Code-subscribing banks are required under RG165 to apply the definition of a complaint contained in AS ISO 10002:

*'An expression of dissatisfaction made to an organisation, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.'*

In its submission to the current review of the Code of Banking Practice, the CCMC noted that 'complaint' is not defined and proposed that this gap is addressed in the next iteration of the Code.

Code-subscribing banks reported in the latest Annual Compliance Statement program that they recorded approximately 1.1 million complaints for the period 1 July 2015 to 30 June 2016.

The CCMC is, however, aware that banks record complaints differently. A number of banks use sophisticated systems to capture all expressions of dissatisfaction, regardless of the point of contact or the time taken to resolve these. Other banks only record those 'disputes' that are not resolved immediately and require follow-up action. The total number of 'complaints' dealt with by banks may, therefore, be higher than the figure above.

While both approaches are acceptable under the Code and RG165, the different processes can make the monitoring of the effectiveness of the Internal Dispute Resolution arrangements in banks difficult.



The code-subscribing banks have indicated that, in total, 92% of the complaints received in 2015–16 were dealt with in under 5 days and only 0.8% took over 45 days to resolve. The resolution times for complaints and disputes vary between banks.

If you have any questions or would like to discuss any aspects of the CCMC's role, please do not hesitate to contact me via the CCMC's CEO, Sally Davis, on 03 9613 7341 or by email at [sdavis@codecompliance.org.au](mailto:sdavis@codecompliance.org.au).

Yours sincerely,



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