

6 September 2019

Ms Jacqueline Rush
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Australian Securities and Investments Commission
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By email to: IDRSubmissions@asic.gov.au

Dear Ms Rush

Consultation Paper 311- Internal dispute resolution: Update to RG 165

Thank you for providing the Banking Code Compliance Committee (BCCC) with an opportunity to comment on ASIC's consultation regarding updates to Regulatory Guide 165.

The BCCC and the Banking Code of Practice

The BCCC is an independent compliance monitoring body established under clause 207 of the 2019 Banking Code of Practice (the 2019 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.

The BCCC's purpose is to monitor and drive best practice Code compliance.

To do this the BCCC will:

- examine banks' practices
- identify current and emerging industry wide problems
- recommend improvements to bank practices, and
- consult with and keep stakeholders and the public informed.

The BCCC's Charter sets out its powers and functions, which include:

- monitoring Code-subscribing banks' (banks) compliance with the Code
- investigating allegations that a bank has breached the Code
- making Code breach findings and recommendations, and
- applying sanctions.

Nineteen banking groups currently subscribe to the Code. These banking groups account for more than 95% of the household Australian banking market.¹

¹ Australian Prudential Regulation Authority - Monthly Banking Statistics for April 2019.

Following reviews of the 2013 Code of Banking Practice (2013 Code) and the Code Compliance Monitoring Committee (CCMC), the Australian Banking Association (ABA) redrafted the Code and ASIC announced it had approved the 2019 Code (2019 Code) on 31 July 2018. A revised iteration of the 2019 Code was approved by ASIC on 24 June 2019 and came into effect on 1 July 2019.

On 1 July 2019, the BCCC replaced the CCMC and its powers and functions are set out in its Charter. Copies of the 2019 Code and the BCCC Charter are available on the BCCC's website.²

This submission is being made by the BCCC and refers in several instances to reports published by the CCMC. For simplicity, the submission will refer to both the CCMC and BCCC as 'the Committee'.

Code obligations

Both the 2013 and 2019 versions of the Code include obligations regarding complaint resolution.

2013 Code

The Internal Dispute Resolution (IDR) obligations under clause 37 of the 2013 Code stipulated that banks must have an internal dispute handling process that is free and accessible. The process must meet the standards set out in ASIC Regulatory Guide (RG) 165.

2019 Code

Part 10 of the 2019 Code sets out obligations for when a bank is resolving customer's complaints. The 2019 Code requires a bank to:

- ensure IDR processes and its external dispute resolution provider (the Australian Financial Complaints Authority (AFCA)) comply with ASIC guidelines (clause 196)
- publish, and make readily available, information about its IDR processes and AFCA through branches, telephone banking services and websites or other digital platforms (clause 197)
- inform customers of their right to make a complaint to AFCA as an alternative to farm debt mediation (clause 198)
- give consent for AFCA to consider the complaint if it does not reach an agreement at a farm debt mediation (clause 199)
- ensure its process for handling complaints is fair and reasonable (clause 200)
- keep customers informed of the progress of their complaint (clause 201)
- give customers the name of a contact person who is handling their complaint and a way to contact them (clause 202)
- provide customers with a written response when the bank has completed its investigation if the customer asks the bank to or if the complaint took longer than five

² <https://bankingcode.org.au/>

business days to resolve. The written response must include the outcome of the bank's investigation of the complaint and AFCA's details (clauses 203 and 204)

- tell a customer that it needs more time to investigate if the bank is unable to resolve the complaint within 21 days (clause 205), and
- tell the customer the reasons for the delay, the date by which they can reasonably expect to hear the outcome of the bank's investigation and provide monthly progress updates and AFCA's details if the bank is unable to resolve the complaint within 45 days (clause 204).

Under chapter 46 of the Code, banks are also required to have a Customer Advocate to help facilitate fair customer outcomes and minimise the likelihood of future problems. The Committee has been informed that, in most instances, a Customer Advocate's role will include the resolution of customer complaints.

The Committee believes that it is important to note that Code obligations should not operate in isolation from one another. As such, banks need to consider and comply with additional obligations when resolving customer's complaints, including Code requirements to:

- engage with customers in a fair, reasonable and ethical manner (clause 10)
- train staff to work competently and comply with the Code (clause 9)
- communicate with customers in a timely manner and give customers information that is useful and clear (clause 17)
- train staff to treat diverse customers and customers experiencing vulnerable circumstances with sensitivity, respect and compassion (clause 33)
- take reasonable measures to enhance access to banking services for Indigenous customers, people with a disability and older customers (clause 34), and
- take extra care with customers who are experiencing vulnerable situations (clause 38).

The Committee's monitoring activities

Compliance Statement reporting

The Committee requires banks to complete a Compliance Statement on their compliance with the Code. This includes providing data about Code breaches, requests for financial difficulty assistance and complaints.

The Committee requires banks to provide complaints data to:

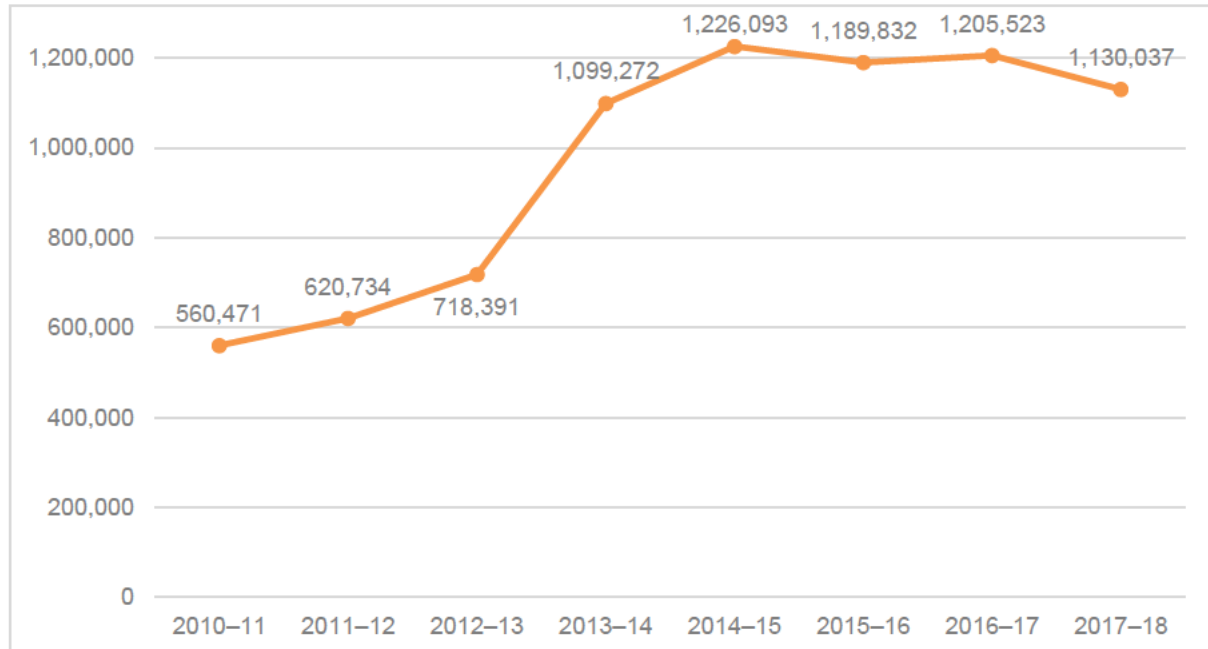
- assess how effectively they are meeting their IDR Code obligations, and
- to identify industry trends which may have a wider impact on banks' compliance with the Code.

The Committee reports on this data on a de-identified basis and some recent figures and statistics are provided below. You can find more information about the outcomes of the Committee's data collection in our reports, including Annual Reports.³

³ See the [CCMC archive](#) on the BCCC's website.

In 2017–18, banks resolved 1,130,037 complaints, a 6.3% decrease from the 1,205,523 complaints resolved in 2016–17 (**Chart 1**). One major bank accounted for 68% of the total in 2017–18. This bank’s 13% decrease in complaints between 2016–17 and 2017–18 largely accounts for the overall complaints decrease over the same period.

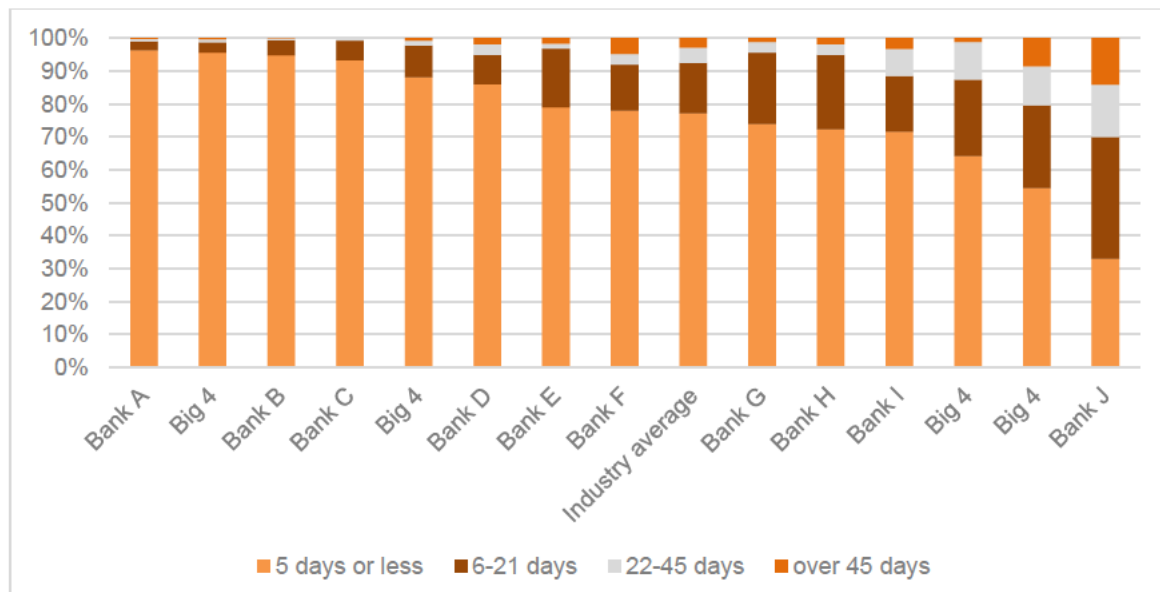
Chart 1. Number of complaints resolved by banks, 2010–11 to 2017–18



Banks resolved 91% of all complaints within 5 business days in 2017–18, a very slight decrease from 92% in 2016–17.

Chart 2 displays complaint resolution timeframes for each bank and includes an ‘industry average’ figure, calculated as the mean average of each individual bank’s percentage for each resolution time period.

Chart 2. Complaint resolution timeframes, by bank, 2017–18



Two of the main reasons for the differences in resolution timeframe for each bank are whether or not the bank records all complaints and how banks interpret 'expression of dissatisfaction'. Although most banks categorise all expressions of dissatisfaction as a complaint, some banks record some such expressions as 'feedback' or 'suggestions', consequently excluding these from the data provided to the Committee.

The Committee notes ASIC's references to these issues in the consultation paper and discusses them further in this submission.

Credit cards (23%), transaction accounts (17%) and complaints not related to a product (20%) were the top product categories for complaints resolved in 2017–18, consistent with the previous two years. Complaints were most commonly about customer service or bank staff (23%) and rates, fees, charges or pricing (22%) in 2017–18.

Code breach data

In 2017–18, banks reported 419 breaches of the Code's IDR obligations, a 75% increase from 240 in 2016–17.

Most IDR breaches (84%) were due to a customer's dissatisfaction not being recognised and logged as a complaint. A major bank reported some 339 breaches of this type. The next most common breach type, accounting for 9% of the total, occurred when banks failed to send a customer a final written response.

Investigations

The Committee's investigations aim to establish whether a breach of the Code has occurred, and if so, to work with the bank to improve future practices. Investigations also inform the Committee's broader work, adding a source of data on banks' compliance, illuminating the real-life impact of Code breaches, and highlighting areas of emerging risk.

The Committee has investigated several allegations that a bank had breached the IDR requirements under the 2013 Code and examples of some of the breaches acknowledged by banks as a result of this work include:

- banks failing to provide written responses to complaints that took longer than five business days to resolve, and
- not addressing every aspect of a complaint or every complaint where a customer made multiple complaints.

Comments on Consultation Paper (CP) 311

Overall, the Committee is supportive of ASIC's proposals to improve complaints handling procedures and requirements on banks regarding complaints data collection because such changes are likely to assist the BCCC to achieve its purpose to monitor and drive best practice Code compliance.

The Committee's comments on some of the specific proposals are provided below.

Proposal B1 - Updating the definition of 'complaint'

The Committee notes ASIC's proposal to include the following definition of 'complaint':

[An expression] of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

The definition of 'complaint' in the 2019 Code is:

An expression of dissatisfaction made to us [the bank] in relation to a banking service, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

The definition for 'dispute' under the Code is given the same meaning as 'complaint'.

ASIC notes in the consultation paper that one effect of the amended definition will be to mean that banks would need to:

- adopt a proactive approach to identifying complaints made on their social media platforms, and
- have processes in place deal with these matters through their IDR process.

The Committee supports any changes that may result in a bank identifying and recording any issues which might have an impact on compliance with the Code. The effect of the proposal would likely be that serious or systemic issues that might not have been otherwise identified and their causes can be established and fixed to improve standards of practice.

Proposal B2 - Introducing additional guidance to clarify whether a matter raised by a consumer is a complaint and the point at which a complaint must be dealt with under a financial firm's IDR process

The Committee notes ASIC's comments that it has identified substantial variation between financial firms and even between divisions within a single firm, on the interpretation of the term 'complaint'.

ASIC has quoted the Committee's report *Compliance with the Code of Banking Practice 2017–18* in paragraph 37 of the consultation paper.⁴ In that report the Committee stated:

ASIC's RG165 permits banks not to record complaints that are resolved to the customer's complete satisfaction within five business days. This has led to divergent reporting approaches. Some banks capture and report all expressions of dissatisfaction received, regardless of how the complaint is received, the time taken to resolve it or 'where a response or resolution is explicitly or implicitly expected'. Other banks only report complaints that are not resolved immediately and require follow-up.

⁴ [Report - Compliance with the Code of Banking Practice 2017–18 - Banks' Annual Compliance Statement results](#), November 2018.

While both approaches meet the standard set out under RG165, the variation does create inconsistencies in complaint resolution data. Eleven banks stated that their policy is to record all expressions of dissatisfaction, however, two of these reported that this is not always occurring, and that they are investigating improvements. Two banks confirmed that staff are not required to record expressions of dissatisfaction that are resolved at the first point of contact. One bank did not explain its reporting approach.

There also appears to be inconsistency in how banks interpret 'expression of dissatisfaction'. Although most banks categorise all expressions of dissatisfaction as a complaint, some banks record some such expressions as 'feedback' or 'suggestions', consequently excluding these from the data provided to the CCMC.

The Committee supports ASIC providing any guidance that may lead to the banking industry taking a more consistent approach to complaints handling and the recording of complaints data.

In recent years, the Committee has spent time focusing on these inconsistencies and if they were removed, it would enable the Committee to focus more on the underlying issues of the complaints and work to improve standards of practice and compliance with the Code.

Proposal B3 - Modifying the definition of 'small business' in the Corporations Act to align it with the small business definition in the AFCA Rules

The Code's definition of small business has additional criteria to the one included in the AFCA Rules. Under the Code a business is a small business customer of a bank if it meets all three of the following criteria:

- a) an annual turnover of less than \$10 million in the previous financial year
- b) fewer than 100 full-time equivalent employees
- c) less than \$3 million total debt to all credit providers including:
 - i. any undrawn amounts under existing loans
 - ii. any loan being applied for, and
 - iii. the debt of all its related entities that are businesses.

The Committee notes that ASIC's proposed definition is likely to ensure that IDR provisions are applicable to a wider number of customers than those under the Code alone.

Proposal B4 - Requiring financial firms to record all complaints, including those that are resolved to a complainant's satisfaction at the first point of contact

The Committee again notes that ASIC has referenced its data report when explaining the rationale for this proposal.⁵

The Committee agrees with ASIC's rationale that this proposal will provide firms (including banks) with a much deeper source of data to:

- understand customers' needs and the key drivers of complaints

⁵ [*Report - Compliance with the Code of Banking Practice 2017–18 - Banks' Annual Compliance Statement results*](#), November 2018.

- identify emerging issues
- strengthen data integrity, and
- promote greater consistency in data collection practices.

The Committee also notes that ASIC proposes to remove references to ‘the complainant’s or disputant’s complete satisfaction’ and replace these references with clear guidance on what factors financial firms must take into account when considering whether a complaint has been resolved to a ‘complainant’s satisfaction’.

The Committee has previously stated that although RG 165 does not define ‘complete satisfaction’, banks generally interpret this in the same way.⁶ Banks have reported that the customer needs to actively confirm, either verbally or in writing, that they are satisfied, and this means the customer:

- is willing to accept the bank’s actions or the complaint outcome
- expresses no further dissatisfaction, and
- is ‘happy’ or ‘not unhappy’ with the outcome.

These criteria broadly align with ASIC’s proposed guidance under RG 165.87 and 165.88.

In addition to the rationale outlined by ASIC and supported by the Committee above, we also support the proposals under B4, as we believe that recording details of all complaints will ensure that banks are able to monitor that they have complied with RG165 and consequently the Code’s IDR requirements – namely that all complaints have been resolved to a customer’s satisfaction.

As the Committee stated in its 2016-17 Annual Report, it is not sufficient for banks to rely on customers to escalate the complaint or complain again, if they are not satisfied with a bank’s response. Instead, banks’ early resolution processes should identify complaints that should not be closed because the customer remains dissatisfied. The Committee is concerned about how this could be achieved where there is no record of a complaint.

Proposal B5 - Recording a unique identifier and prescribed data set for all complaints received

The Committee supports the proposal because, as noted above, it is vital that banks have monitoring processes in place to ensure compliance with the Code. The Committee believes that unique identifiers and prescribed data sets will assist banks to:

- track and if necessary further investigate complaints, and
- identify emerging trends and problems, including serious and systemic Code breaches.

⁶ Page 42, [*Report - Compliance with the Code of Banking Practice 2017–18 - Banks’ Annual Compliance Statement results*](#), November 2018.

Proposals B6 and B7 - IDR data reporting and the publication of IDR data

Under the BCCC's Charter, each bank is required to report Code compliance data to the Committee at six monthly intervals in its the Banking Code Compliance Statement. The Compliance Statement will include a request for complaints data.

The requirement that banks provide data to ASIC is likely to assist the Committee in its data collection activities, because of the consistent data reporting requirements of ASIC's proposed regime.

In addition, any public and identifiable complaints data is likely to assist the Committee to identify emerging industry trends to support our strategic planning and priority setting.

Proposal B8 - IDR responses — Minimum content requirements

Clauses 203 and 204 of the 2019 Code requires banks to provide a written response that details the outcome of its investigation of a complaint.

As noted above, the Committee has identified breaches of the Code where banks did not address all the matters of a complaint and the requirements proposed by ASIC may assist to ensure that banks investigate complaints in full.

Proposal B11 - Reduced maximum IDR timeframes

The Committee notes that Paragraph 88 of the consultation paper references CCMC complaints data, which stated that 98% of complaints were resolved with 21 days. **Table 1** below provides a more detailed breakdown of the cumulative percentage of complaints resolved by all Code subscribing banks for specified timeframes.

Table 1 – Cumulative percentage of complaints resolved with specified timeframes

Reporting period	Within 5 business days	Within 21 days	Within 45 days
2017–18	91.3%	97.4%	99.2%
2016–17	92.0%	97.7%	99.1%
2015–16	92.3%	97.8%	99.2%
2014–15	93.0%	97.5%	98.9%
2013–14	91.2%	97.2%	98.7%

Based on reporting inconsistencies highlighted previously in this submission and the consultation paper, the Committee considers that the percentage of complaints resolved within the 5, 21 and 45 day timeframes would be higher if all banks captured and reported data about all complaints resolved within five business days.

Proposal B13 – Introduction of new requirements on financial firms regarding systemic issue identification, escalation and analysis

The Committee supports ASIC's proposals regarding the identification, escalation and analysis of systemic issues because they are likely to ensure that Code breaches, including

serious and systemic breaches, are identified and rectified, ultimately leading to improved Code compliance.

Contact details

Should ASIC wish to speak with the BCCC to obtain any further information about the banking codes or its monitoring work, we invite you to contact us c/o the BCCC's CEO, Sally Davis, on 03 9613 7341 or by email at [REDACTED].

Yours sincerely,



Christopher M Doogan AM FIML FAICD
Independent Chairperson
Banking Code Compliance Committee (BCCC)