



Summary of feedback to CS 26 and ASIC's response

In Consultation Statement 26 *Proposed update to RG 183* ([CS 26](#)), we sought feedback on an updated draft Regulatory Guide 183 *Codes of conduct for the financial services and credit sectors* (draft RG 183).

We received 10 submissions. We have summarised key feedback on our updated draft RG 183 and our responses, including how we have addressed the feedback in the final Regulatory Guide 183 *Codes of conduct for the financial services and credit sectors* ([RG 183](#)) where relevant. This document is not intended to be a comprehensive summary of all feedback or all changes to the guidance.

Note: All submissions are published on the landing page for [CS 26](#). There were no confidential submissions.

Section A: Overview

Feedback	ASIC's response	Reference in RG 183
One respondent suggested that ASIC should outline a broader role for codes, as the focus on complementing existing legislative requirements is too narrow and does not reflect the broader functions that codes serve.	We have addressed this feedback by removing the reference to codes as 'complementing existing legislative requirements', on the basis that this was overly limiting. RG 183.4 (see below) sets out more broadly our expectations of what an effective industry code should do.	RG 183.3
Some respondents sought clarification that industry codes should do <i>all</i> (rather than at least one) of the following: address legislative gaps, elaborate on legislation to deliver additional consumer benefits, and clarify how legislative requirements apply in practice.	We have clarified that we expect an effective code to do at least one, and preferably more than one, of the listed factors. We do not consider it appropriate to require all three factors to be fulfilled, as this could be unduly limiting and prevent beneficial codes from being put forward to ASIC for approval.	RG 183.4
Some respondents sought greater recognition of the role that codes without ASIC approval (non-approved codes) can play in raising industry standards.	We have amended our guidance to acknowledge the important role that non-approved codes can play in lifting industry practice and improving consumer outcomes, and to encourage non-approved code owners to also consider and implement the standards set out in ASIC's guidance.	RG 183.5, RG 183.8

Feedback	ASIC's response	Reference in RG 183
Some respondents sought clarification that ASIC approval of a code signals not only that consumers can have confidence in the code, but also that they can rely on and enforce their rights under it.	We have addressed this feedback by incorporating wording that ASIC approval signals that consumers can have confidence in <i>and rely on</i> the code. Code enforceability by consumers is addressed in Sections B and C.	RG 183.6, RG 183.24, RG 183.50–RG 183.54

Section B: ASIC's role in relation to codes

Feedback	ASIC's response	Reference in RG 183
Several respondents sought greater clarity on the range of mechanisms through which codes are enforceable, and recommended not over-stating the significance of 'enforceable code provisions' relative to other mechanisms.	We have addressed this feedback by adding contextualising information earlier in our guidance on the various mechanisms through which codes may be enforceable. This makes it clearer that enforceable code provisions are just one sub-category under the broader banner of enforceability.	Section B key points, RG 183.23–RG 183.25
Some respondents suggested clarifying that enforceable code provisions are nominated by industry, to reinforce strong industry ownership and help alleviate concerns about seeking ASIC approval for a code.	We have addressed this feedback by clarifying that it is the role of the code applicant (or code owner) to identify and propose any enforceable code provisions.	RG 183.15
Some respondents sought further guidance on ASIC's role in relation to mandatory codes.	Our guidance presents brief, factual information on mandatory codes. We have not included further detail, as we consider it premature to do so when no mandatory codes have yet been made. The content of any such codes will be determined by the Government, rather than ASIC.	RG 183.7–RG 183.8, RG 183.26–RG 183.28, RG 183.34–RG 183.35
Some respondents suggested providing more detail on ASIC's approach to code monitoring, or emphasising consequences for industries without an approved code (such as increased monitoring or surveillance activities). Some respondents sought clear delineation between ASIC's enforcement jurisdiction and that of the code administrator, to avoid duplicated regulatory activity.	Our monitoring and surveillance work is determined by ASIC's strategic priorities, as outlined in our Corporate Plan . Information Sheet 151 <i>ASIC's approach to enforcement (INFO 151)</i> sets out our approach to taking enforcement action for breaches of the law. We have updated our guidance to clarify that, where appropriate, we will engage with the code administrator on sector-wide code monitoring and surveillance action by ASIC that relates to code compliance.	RG 183.33

Feedback	ASIC's response	Reference in RG 183
One respondent requested more clarity on which breaches of enforceable code provisions ASIC would consider to be significant under the breach reporting regime.	<p>We have not provided more detailed guidance on which breaches of enforceable code provisions we would consider significant. We consider it premature to do so when there are currently no enforceable code provisions in any ASIC-approved code.</p> <p>We have separately issued guidance in Regulatory Guide 78 <i>Breach reporting by AFS licensees and credit licensees</i> (RG 78) on how to determine whether a breach is significant: see RG 78.31–RG 78.32 and RG 78.45–RG 78.47. We have amended our guidance in RG 183 to clarify that:</p> <ul style="list-style-type: none"> • ASIC Corporations and Credit (Breach Reporting—Reportable Situations) Instrument 2024/620 provides relief from the requirement to automatically report breaches to ASIC in some circumstances; and • where breaches of code provisions reflect a breach of the law, the underlying conduct may also be reportable to ASIC. 	RG 183.34– RG 183.36

Section C: Criteria for ASIC approval of codes

Feedback	ASIC's response	Reference in RG 183
Some respondents suggested that approved codes must be contractually enforceable between consumers and code subscribers.	We cannot specify this as a mandatory requirement; however, we have adjusted our language to more strongly encourage code owners to take this approach.	RG 183.46
Some respondents sought a stronger emphasis on the importance of code committees being adequately resourced to fulfil their functions.	We have clarified that code committees should be adequately resourced to fulfil all of their functions effectively. We have also outlined that the supplementary materials provided by the code owner to support a code approval application should include details of the resourcing proposed to be made available to the code administrator.	RG 183.48, RG 183.103, RG 183.108

Feedback	ASIC's response	Reference in RG 183
Some respondents suggested that ASIC list a wider range of sanctions for code breaches. Some also suggested encouraging the naming of non-compliant code subscribers for code breaches.	We have incorporated this feedback by adding more examples of sanctions. We have not adjusted our wording to more strongly encourage the naming of non-compliant code subscribers, as we consider this could suggest that ASIC places lesser value on other potential sanctions.	RG 183.58
On enforceable code provisions, one respondent reiterated concerns previously raised about the risk of 'double penalties' and regulatory overlap. Conversely, another suggested that ASIC mandate the inclusion of enforceable code provisions addressing high-harm areas.	We do not consider it appropriate to incorporate this feedback in guidance. We will consider any enforceable code provisions, and associated penalties, on a case-by-case basis. We cannot specify the inclusion of any enforceable code provisions as a mandatory requirement, as they must be agreed to by both the code applicant and ASIC.	RG 183.63– RG 183.65
Some respondents suggested that ASIC's guidance should require that no updated code results in a reduction of consumer rights or benefits. Others noted there may be some circumstances where this is necessary.	We received mixed stakeholder feedback and we consider that the current guidance strikes the right balance that codes should not go backwards but also provides flexibility where some code obligations may need to change over time.	Table 5, RG 183.74– RG 183.75
Some respondents suggested that ASIC should expressly approve code-related documents as part of the code approval process and/or that key supporting documents must be made publicly available.	We have not incorporated this feedback. We consider that supporting documents should be considered on a case-by-case basis and that our guidance provides the necessary flexibility.	RG 183.76– RG 183.79

Section D: The code approval process

Feedback	ASIC's response	Reference in RG 183
Some respondents sought greater emphasis on the independent review, indicating that this should be the first step, rather than last, in the code approval process.	We have addressed this feedback by including a prominent subsection on the independent review in Stage 1, to strongly signal its importance and for improved logical flow. Accordingly, we have removed 'Stage 5: Independent review' as a standalone section.	RG 183.84– RG 183.92

Feedback	ASIC's response	Reference in RG 183
<p>Some respondents requested clarity around the requirement for a five-year independent review, suggesting that the entire process of reviewing and approving a new amended industry code should be completed in a maximum of five years.</p> <p>Some respondents suggested that we should support a more targeted and agile approach to independent reviews. The respondents considered that not every aspect of the code needs to be reviewed every five years, and that this approach would allow emerging and high-impact issues to be addressed more quickly.</p>	<p>The requirement for an ASIC-approved code to be reviewed every five years is a legislative requirement. There is no legal requirement for the code to be updated or amended and submitted to ASIC for reapproval after a review has been undertaken.</p> <p>Our guidance encourages earlier reviews where appropriate, and we have adjusted our wording to recognise that the emergence of an important issue affecting consumers may prompt an earlier review of a code. We do not consider it appropriate to provide support for the conduct of more targeted independent reviews, as this would be inconsistent with the broader process outlined in the Explanatory Memorandum to the <i>Financial Sector Reform (Hayne Royal Commission Response) Bill 2020</i> (Explanatory Memorandum, paragraph 1.119).</p>	RG 183.88– RG 183.92, RG 183.110
Some respondents indicated that 'Stage 2: Consultation' was confusing and insufficiently distinct from 'Stage 1: Code development (including updates)'.	We have relabelled Stage 2 as 'Stage 2: Consultation on the draft code' to make it clearer that this stage focuses on consultation <i>on the draft code</i> , and is distinct from the consultative processes described in Stage 1 to inform the independent review and code drafting.	RG 183.95– RG 183.100
One respondent sought clarification that the code owner should issue a public response to each recommendation arising from the independent review.	We consider that the code owner should publish its response to the independent review recommendations, in the interests of transparency. We have incorporated this suggestion into our guidance.	RG 183.93
One respondent suggested that ASIC should always conduct public consultation before approving a code.	Our guidance encourages the code owner to consult publicly on the draft code. We do not think it is necessary for ASIC to consult publicly in all cases; the guidance allows ASIC to consult publicly if required, which will be assessed on a case-by-case basis.	RG 183.96– RG 183.98
One respondent suggested specifying triggers to revoke or require re-approval of an approved code.	We have not amended our guidance as code breaches by individual code subscribers do not in themselves mean that a code is ineffective and that approval should be revoked. Our guidance sets out a range of circumstances in which we may revoke code approval, including where we consider that a code no longer meets (or substantially meets) the code approval criteria.	RG 183.115– RG 183.117

General feedback

Feedback	ASIC's response	Reference in RG 183
One respondent suggested that ASIC simplify language in the guidance to improve accessibility and clarity.	We have revised wording throughout the guidance to simplify the language and improve flow and readability.	Not applicable
Some respondents sought a more flexible and proportionate approach to code approvals, noting that the code approval criteria are more suited to larger institutions. The respondents suggested that ASIC consider a tiered or scaled approval process.	<p>We are unable to accommodate any partial or tiered approach to code approvals given the statutory regime which sets out the criteria required for an ASIC-approved code.</p> <p>As noted earlier, we have amended our guidance to recognise that non-approved codes can also play an important role in lifting industry practice and delivering better outcomes.</p>	RG 183.5
Some respondents requested that ASIC give greater consideration to intermediaries and brokers when assessing and approving codes, and ensure that adequate consultation is conducted with these stakeholders.	We have not amended our guidance, as these considerations are more relevant to our case-by-case assessment of individual codes submitted for approval. We encourage public consultation on draft codes, to give all stakeholders the opportunity to raise concerns about the framing of code obligations.	RG 183.21, RG 183.96