



ASIC
Australian Securities &
Investments Commission

Attachment 3 to CP 373: Proposed BCCC Charter

ASIC is seeking feedback on proposed changes to the Australian Banking Association's Banking Code of Practice (Code) in response to an independent review of the Code in 2021: see Consultation Paper 373 *Proposed changes to the Banking Code of Practice* ([CP 373](#)).

As part of our public consultation, the ABA has provided ASIC with a revised Banking Code Compliance Committee (BCCC) Charter (proposed charter).

While the BCCC Charter is related to the Code, it does not form part of the Code and is therefore not part of the document that ASIC considers for approval. However, because the Charter contains information relating to our legislative approval criteria for compliance monitoring, it is relevant to our consideration of the Code approval application and is included in our public consultation.

For more information about our consultation, see [CP 373](#) and the following accompanying documents:

- a comparison of the provisions in the current Code with the equivalent provisions in the proposed Code (see Attachment 1 to CP 373);
- the draft revised Code (see Attachment 2 to CP 373); and
- a new customer-facing document, 'Banking with confidence: your key rights and protections as a customer' (see Attachment 4 to CP 373).

Stakeholder feedback on these documents, including the proposed charter, will help ASIC form our views about whether to approve the revised Code.

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Banking Code Compliance Committee (BCCC) Charter



Australian Banking
Association



BCCC

Banking Code
Compliance Committee

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About the Banking Code Compliance Committee

The purpose and function of the Banking Code Compliance Committee (BCCC) is to monitor and drive best practice Code compliance.

Together with the Code, this Charter sets out the terms that govern the functions and operations of the BCCC contemplated in the Code.

Section A - Introduction, Functions and Powers, Guiding Principles

1 Introduction

1.1 Establishment

The independent BCCC is established by the Australian Banking Association (ABA) and the Code Subscribers in accordance with the terms of this Charter.

1.2 Role

The role of the BCCC is to monitor Code compliance and promote best practice Code implementation.

1.3 Scope of this document

This Charter sets out the terms that govern the functions, powers and operations of the BCCC.

2 Functions and Powers

2.1 Functions and Powers

a) The BCCC has the functions set out in this Charter.

b) In relation to the Code, the BCCC has the following powers:

- monitor and oversee compliance with the Code;
- investigate any allegation of a Code breach noting its priority pursuant to this Charter;
- as appropriate, investigate serious or systemic breaches;
- request information from subscribing banks and other stakeholders;
- make findings and recommendations on Code breaches;
- apply sanctions;
- provide guidance and reports; and
- undertake other functions and responsibilities as reasonably determined from time to time.

2.2 External consultation

In discharging its functions, the BCCC may consult with other stakeholders as the BCCC thinks it is reasonably appropriate and necessary to do so, provided that the BCCC takes reasonable steps to ensure that any such other stakeholders also comply with the requirements of this Charter where applicable. This may include requesting information from other stakeholders.

3. Principles that underpin the BCCC's operation

The BCCC will:

- a) Be transparent and accountable
- b) Prioritise industry wide, serious and systemic issues
- c) Provide community assurance by regularly publishing its work
- d) Act in a fair, reasonable, independent, efficient, and effective manner
- e) Promote its work
- f) Provide guidance to industry to promote best practice Code compliance; and
- g) Act with integrity and impartiality.

Section B - Powers and Functions

4 Monitoring and Information Gathering

4.1 The BCCC will monitor Code Subscribers' compliance with the Code.

When fulfilling its monitoring function, the BCCC may do any of the following:

- a) Make reasonable requests for a Code Subscriber to provide, or provide access to, information, documents or systems, that the BCCC considers necessary to discharge its functions
- b) Engage with and seek information from third parties
- c) Report externally
- d) Provide guidance to industry
- e) Make findings and recommendations.

4.2 Data collection

- a) When monitoring compliance with the Code, the BCCC can request breach data to assess compliance with the Code.
- b) Code Subscribers will provide breach data to the BCCC on a 6-monthly basis.
- c) The breach data will be based on a materiality threshold consisting of two (2) components developed by the ABA and agreed with the BCCC as follows:
 - i) a set of mandatory reportable Code paragraphs; and
 - ii) a materiality threshold metric applying to the remaining non mandatory reportable Code paragraphs.
- d) The breach data will be in a consistent form that is approved by the BCCC every two years, following consultation and agreement with the ABA and Code Subscribers.
- e) The breach data will be used to conduct an Assessment that allows Code Subscribers to assess their Code compliance, relative to other Code Subscribers. An individual Assessment will be provided to each Code Subscriber.
- f) The BCCC, for each period in which it collects data, will be required to prepare a report capturing the BCCC's data gathering activity and results of that activity

4.3 Code Subscriber obligations

- a) Code Subscribers will:
 - i. co-operate with the BCCC
 - ii. comply with all reasonable requests of the BCCC
 - iii. provide an appropriate representative to attend an interview
 - iv. investigate and report back to the BCCC.

The BCCC may make reasonable requests to a Code Subscriber to provide, or provide access to, information, documents, or systems in their possession, that the BCCC considers necessary to discharge its functions.

The BCCC may require the Code Subscriber to comply with the BCCC's request within 21 businessdays, or as mutually agreed, except where the Code Subscriber satisfies the BCCC that:

- i) to comply with the request would be in breach of a law (including, without limitation, any law relating to confidentiality or privacy); and that, where a third party's consent to the CodeSubscriber complying with the request, would avoid a breach of that law, and that the Code Subscriber has taken all reasonable steps to obtain the appropriate consent, and such consent was not provided

- ii) to comply with the request would breach a duty of confidentiality to a third party, and that the Code Subscriber has taken reasonable steps to obtain the appropriate consent to enable the Code Subscriber to comply with the request, and such consent was not provided
- iii) to comply with the request would breach a Court order or prejudice a current investigation by the police or other law enforcement agency
- iv) legal professional privilege attaches to the relevant information, documents or systems
- v) the information, documents or systems do not or no longer exist; or
- vi) in the case where the information, document or system is claimed by the Code Subscriber to be commercially sensitive, the BCCC may agree with the Code Subscriber to receive it, or have access to it on a conditional basis, including on terms that preserve confidentiality.

4.4 Other obligations of Code Subscribers

The BCCC can also require a Code Subscriber to do the following:

- i) provide an appropriate representative to attend an interview; or
- ii) investigate and report back to the BCCC on relevant matters (including, where appropriate, with the assistance of external expertise).

In concluding a compliance investigation or in making a decision, the BCCC will consider any undertaking by the Code Subscriber as to action it will take, or has taken, in relation to the matter.

4.5 Provision of information by other parties

Where a person alleges a breach of the Code that results in a compliance investigation pursuant to clause 5.1, the BCCC may request the person provides whatever information the BCCC reasonably considers may assist the BCCC's investigation of the matter.

5 Investigations

5.1 Commencement of a compliance investigation

- a) The BCCC is empowered to investigate alleged breaches of the Code and may investigate a potential breach of the Code as identified through its monitoring and information gathering activities or in special or appropriate circumstances.
- b) The BCCC Investigations will be carried out in line with the BCCC Guiding Principles, with a primary focus on matters that may be serious or systemic.
- c) The BCCC may investigate allegations heard by another forum, without reopening the finding of fact made by another forum:
 - i) if the other forum has not determined whether a Code breach has occurred, inquire whether a breach of Code has occurred; or
 - ii) if the other forum has determined a breach of Code has occurred, inquire on the severity, seriousness and systemic nature of the allegation and the adequacy of the bank's Rectification Actions and/or Remediation Actions, so as to avoid repeat occurrences.

5.2 Discretion to discontinue compliance investigations

- a) The BCCC may decide, at any stage, that it is not appropriate to continue an investigation started under clause 5.1. In making this decision, the BCCC may consider any factors it thinks relevant, including:
 - i) the nature of the allegations made against the relevant Code Subscriber, including the significance of the alleged breach;
 - ii) the period that has elapsed since the alleged event occurred;
 - iii) whether another forum (such as a court) would be more appropriate to consider the matter;
 - iv) whether the matter is frivolous or vexatious; and
 - v) if work previously undertaken by the BCCC to monitor or review practices and procedures of the Code Subscriber, are relevant to the allegations made.

5.3 Matters the BCCC cannot consider

- a) Allegations relating to a Code Subscriber's commercial judgment in decisions about lending, security or enforcement, unless it is alleged that the bank would have made a different commercial judgement on a matter if the significant breach had not occurred.
- b) Allegations that have been made after 2 years of the complainant becoming aware of events that give rise to that allegation, except by mutual agreement with Code Subscribers and the BCCC or in special or appropriate circumstances.
- c) Allegations based on the same events and facts as a previous allegation to the BCCC by the person or associated entities making the new allegation.
- d) Allegations that are under investigation by another forum (whether as a standalone matter or as part of any process or proceeding).
- e) Matters that are not directly related to compliance with the Code.

5.4 Investigation approach

When conducting a compliance investigation, the BCCC must consider the relevant provisions of the Code and any applicable laws.

5.5 Consequences of non-compliance with a BCCC request

Where a Code Subscriber, or any person alleging a Code Subscriber has breached the Code without reasonable excuse, fails to comply with a BCCC request made within the timeframe reasonably specified by the BCCC, the BCCC may finalise the matter.

5.6 Rules of evidence

The BCCC is not bound by any legal rule of evidence or by its previous findings or recommendations.

6 Findings and recommendations

6.1 Reasonable opportunity to be heard

The BCCC must give the Code Subscriber a reasonable opportunity to respond to an allegation that the Code Subscriber has breached the Code.

6.2 Criteria for finding

When deciding whether to make a finding and recommendation, the BCCC will do what is fair and reasonable in all the circumstances, having regard to:

- a) Legal principles relevant to the decision-making process
- b) Applicable Code provisions; and
- c) Any BCCC guidance as to Code requirements.

6.3 Process for making a finding of non-compliance

The BCCC may only make a finding after adhering to the operating procedure developed in accordance with clause 13.1 (Operating Procedures).

6.4 Consumer redress for findings and recommendation

- a) The role of the BCCC does not include determining what redress, including compensation for financial or non-financial loss, should be provided to a customer as a result of non-compliance with the Code.
- b) If a complainant may be entitled to compensation, the BCCC will refer the complainant to the Code Subscriber's complaints team or, where appropriate, AFCA. AFCA can award compensation to a complainant where the scheme decides in their favour.

7 Sanctions

7.1 Power to apply sanctions

The BCCC has the power to apply sanctions to a Code Subscriber for a breach of this Code

where a finding has been made that:

- a) The breach is serious or systemic
- b) The Code Subscriber has failed to act on the BCCC request to remedy a breach of the Code, or failed to do so within a reasonable time
- c) There has been a breach of an undertaking given to the BCCC
- d) The Code Subscriber has not taken adequate steps to prevent a serious or systemic breach from reoccurring; or
- e) The Code Subscriber has not co-operated and complied with reasonable requests of the

BCCC in the performance of its monitoring and investigative activities.

7.2 Type of sanctions

The BCCC has discretion to determine what sanctions to apply after considering the seriousness of the breach. Sanctions available to the BCCC are:

- a) To require a Code Subscriber to rectify the breach identified
- b) To require a Code Subscriber to undertake a compliance review of any Remediation Actions and Rectification Actions
- c) To formally warn a Code Subscriber
- d) To require a Code Subscriber to conduct a staff training program on the Code
- e) To name the Code Subscriber in the BCCC annual report or website; and
- f) To report serious or systemic instances, where a Code Subscriber has been non-compliant, to ASIC.

8 Driving improvement in compliance

8.1 BCCC Guidance notes

- a) The BCCC will publish guidance notes.
- b) The BCCC will consult with stakeholders when creating new guidance notes and when they are updated from time to time.
- c) BCCC guidance notes will focus on broad themes and industry wide issues.

9. Promoting awareness of the Code

9.1 Internal promotion

The BCCC will work with individual Code Subscribers to assist them to improve compliance.

9.2 External promotion

The BCCC will facilitate direct engagement and dialogue with relevant external organisations with a view to promoting awareness of the Code. This may include conferences, seminars, and

sessions for Code Subscriber staff.

9.3 Annual report

- a) The BCCC will publish an Annual Report that reports on the yearly activities of the BCCC.
- b) The BCCC will present this Annual Report to the ABA Council once a year.

Section C – BCCC Governance

10 BCCC Members

10.1 Composition of the BCCC

- a) The Independent BCCC, established under the Banking Code, is comprised of the following members:
- i) An independent Chair - appointed jointly by the Australian Financial Complaints Authority (AFCA) and the ABA
 - ii) A consumer representative – appointed by consumer representatives on the Board of AFCA; and
 - iii) A banking representative – appointed by the ABA.
- b) The BCCC acting unanimously, will appoint, on terms it thinks appropriate, a person or a panel of persons, with expertise in small business and/or agribusiness to act as a consultant on small business and agribusiness issues. The consultant will provide advice on small business / agribusiness matters where requested by the BCCC.

10.1 Tenure

A BCCC Member (including the Independent Chair) holds office for a 3-year term, unless the appointment, when made, is expressed to be for a lesser period.

10.2 Re-appointment

A person who was, or is currently, a BCCC Member is eligible for re-appointment to the BCCC. However, a person who has served three consecutive terms as a BCCC member is

not eligible for appointment for a further consecutive term.

10.3 Resignation

A BCCC Member may resign from the office during their term by notifying the relevant appointor(s) of that BCCC Member in writing, giving at least 7 days' notice.

10.4 Termination

The appointment of a BCCC Member may be terminated in writing by the relevant appointor(s) of that BCCC Member in writing with at least 7 days' notice to that BCCC member.

10.5 Casual vacancies

- a) An alternate BCCC member may be appointed by the relevant appointor(s) to fill a casual vacancy where a BCCC member is absent or unable to participate in BCCC meetings for a

prolonged period of time, and that person will hold office for the remainder of the term of the person they are replacing (unless an earlier termination time is specified in that appointment).

10.6 Automatic vacancies

The office of a BCCC Member (including the Independent Chair) will be automatically vacated if the person:

- a) Becomes bankrupt or makes any arrangement or composition with creditors
- b) Is prohibited by law from being a director
- c) Becomes of unsound mind
- d) Resigns from office during their term; or
- e) Has their appointment terminated by their relevant appointors

11. Organisational Structure

11.1 Secretariat

- a) The BCCC may create and appoint the position of a Chief Executive Officer (CEO) with relevant skills, experience and knowledge.
- b) The CEO will, if appointed, be under the supervision and direction of the BCCC.
- c) The BCCC will be supported by a secretariat led by the CEO (or if a CEO is not appointed, the Independent Chair), who shall carry out administration and management within the funding and resource constraints of the annual budget.

11.1 Independent Chair

- a) The Independent Chair can undertake appropriate action to manage the BCCC and its secretariat in accordance with resolutions of the BCCC. This includes, but is not limited to:
 - i) engaging and dismissing staff
 - ii) entering, varying, and terminating leases
 - iii) operating bank accounts
 - iv) negotiating and entering into contracts including contracts for staff, equipment and facilities and other contracts as are necessary or desirable for the BCCC to enter, having regard to the nature of its functions and activities
 - v) signing, or otherwise executing, all such documents or instruments as may be required; and
 - vi) any other powers or functions delegated by the BCCC Members from time to time.

11.2 Powers to delegate

- a) The BCCC will exercise the power to make findings of non-compliance and, cannot delegate this power.
- b) The BCCC may delegate any of its other powers to the CEO.

12. Meeting of BCCC Members

12.1 Meetings and proceedings of BCCC

The BCCC will meet, discharge its responsibilities, and convene, adjourn, and otherwise regulate its meetings and proceedings in such a manner as it may from time to time determine. A BCCC meeting may be called or held using any technology as consented to by all BCCC Members. This consent may be a standing one and may only be withdrawn within a reasonable period before the meeting.

12.2 Quorum

A quorum for a meeting of the BCCC will be all three BCCC Members.

12.3 Voting

At a meeting of the BCCC:

- a) Each BCCC Member has one vote; and
- b) Decisions are made on the basis of a simple majority of votes.

12.4 Conflicts of interest

If a BCCC Member has a material personal interest in relation to a matter being considered at a meeting of the BCCC, the BCCC Member must not:

- a) Be present while the matter is being considered nor vote on the matter, unless:
 - i. The BCCC Member has declared their material personal interest in relation to the matter
 - ii. The other BCCC Members are satisfied the material personal interest should not disqualify the BCCC Member from voting on the matter
 - iii. A proper minute is noted including details of the material personal interest and the circumstances in which it was disclosed to the other BCCC members; and
 - iv. any minute, decision or other report on the matter is made available for inspection on request by any Code Subscriber affected.
- b) To eliminate any doubt, a material personal interest for the purposes of this clause does not arise solely by reason of a BCCC Member holding a direct or indirect shareholding in a Code Subscriber, or by reason of the financial institution of which a BCCC Member is a customer.
- c) Where a BCCC Member's current or previous employment with a Code Subscriber creates a material personal interest in a matter being considered by the BCCC, that BCCC Member may only participate in the BCCC's deliberations about that matter if the other BCCC's Members approve. If approval is not received, the relevant appointor(s) are entitled to appoint an alternate member to participate in place of the conflicted BCCC Member.
- d) Subject to the requirements set out in 12.4(a) to (c) above, BCCC Members may participate in, vote on, and be counted in the quorum, for any meeting, regardless of any personal interest the BCCC Member may have in a matter that is being considered at the meeting. A BCCC Member is not liable to account to any person because of such a personal interest.

12.5 Alternative representative

- a) Each of the BCCC Members, other than the Independent Chair, may nominate an alternate to take part in a specified meeting.
- b) A person nominated as an alternate may exercise the same powers as the BCCC Member who nominated them an alternate, other than the power to nominate another alternate; the alternate is subject to the same requirements that apply to their nominator at the meeting they attend and where their nominator is not present.

Section D - Other

13 General

13.1 Operating procedures

- a) The BCCC must set out operating procedures. The operating procedures will deal with the following matters:
 - i) allegations of breaches of the Code
 - ii) privacy requirements
 - iii) civil and criminal implications
 - iv) timeframes for acknowledging notification of an allegation of breach of the Code; progress of an investigation into the allegation, responses from the parties to the allegation and the recording of any decisions or recommendations in the outcome
 - v) use of external expertise
 - vi) process for making findings and recommendations; and
 - vii) fair recommendations, undertakings, and reporting.
- b) Any new operating procedures will be developed by consulting with the Code Subscribers. The BCCC will advise Code Subscribers of any new operating procedures prior to their taking effect.
- c) Any proposed changes to existing operating procedures which, in the opinion of the BCCC, are material will be developed by consulting with Code Subscribers. The BCCC will advise Code Subscribers of such changes prior to their taking effect.

13.2 Annual business plan

- a) The BCCC must develop and submit an annual business plan to the ABA before the start of the relevant Financial Year for which the plan has been developed.
- b) The BCCC will publish an annual business plan on its website in the first quarter of the relevant Financial Year for which the plan has been developed.

13.3 Memorandum of Understanding

The BCCC is free to enter a Memorandum of Understanding with any party to fulfil its function.

13.4 Funding

- a) The ABA will ensure that the BCCC has sufficient resources and funding to carry out its functions.
- b) Each year, no less than eight weeks before the end of the Financial Year, the BCCC will provide the ABA with a business plan and budget for the following Financial Year.
- c) The ABA, after considering the business plan and budget will ensure the BCCC has sufficient resources to carry out its functions.
- d) The business plan and budget for each Financial Year must be acknowledged by the ABA, no less than one month before the end of the previous Financial Year.

13.5 Confidentiality

- a) The BCCC has a general obligation to ensure that the confidentiality of information provided by Code Subscribers is protected.
- b) The BCCC will develop a privacy policy, in consultation with Code Subscribers, that adheres to the Privacy Act and Australian Privacy Principles.

13.6 Immunity from liability

- a) The Code Subscribers agree to release and indemnify (to the extent the assets of the BCCC are inadequate), the BCCC and its officers and employees (BCCC Personnel) and to hold them immune against all losses, damages, costs (including without limitation, legal costs), actions, claims, demands and liabilities incurred or suffered by the BCCC or BCCC Personnel arising from the BCCC performing its functions and activities in accordance with this Charter, other than with respect to any wilful or reckless acts, omissions or gross negligence on the part of the BCCC or BCCC Personnel.
- b) The BCCC must affect and maintain at all relevant times the following insurance, which must in all circumstances fully cover any claim made at any time in respect of an event occurring:
 - i) professional indemnity insurance
 - ii) insurance against any liability which may arise under the general law, including, without limitation, any relevant workers,' or accident compensation legislation, with respect to any of BCCC Personnel; and
 - iii) BCCC Personnel shall be indemnified out of the assets of the BCCC and (to the extent that they are inadequate) by each Code Subscriber against all liabilities arising out of their responsibilities as BCCC Personnel.

14. Review

14.1 Review

- a) The BCCC will arrange a periodic review of its activities, coinciding with the periodic review of the Code by the ABA.
- b) The ABA will advise the BCCC of any upcoming periodic review of the Code, no less than six (6) months before the review of the Code begins, except for in special or appropriate circumstances.

14.2 Amendment of the charter

- a) The ABA, after consultation with the BCCC, the Code Subscribers and other stakeholders may amend the Charter as necessary.
 - b) The Code Subscribers agree to be bound by any such amendment.
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15. Interpretation

15.1 Defined terms

The following words have the following meanings where they appear in this charter:

ABA means the Australian Banking Association

Assessment means any BCCC report, finding, inquiry or other suitable evaluation method selected by the BCCC.

ASIC means the Australian Securities and Investments Commission

BCCC means the Banking Code Compliance Committee

BCCC Member means a member of the BCCC

BCCC Personnel means the officers (including the CEO) and employees of the BCCC

CEO means the person appointed to the role in clause 11.1

Code means the Banking Code of Practice and any previous iterations of the Code¹

Code Subscriber means a bank that has adopted the Code

Financial Year means the 12 months ending 30 June in any calendar year

AFCA means the Australian Financial Complaints Authority.

Rectification Actions means steps the bank has taken to ensure the breach is not still occurring and to prevent future occurrences of the reported breach.

Remediation Actions means steps the bank has taken to ensure that anybody affected by the breach is put back into the same position they were prior to the breach occurring (e.g. paid back monies charged or taken inappropriately).

15.2 General terms

- a) A reference to the singular includes the plural and vice versa.
- b) The words “including,” “such as” or “for example,” when introducing an example, does not limit the meaning of the words to which the example relates, that example or examples of a similar kind.
- c) A reference to an employee of the BCCC shall be construed as including a reference to a person who is contracted as an employee of the AFCA to act solely for the BCCC as if that person were an employee of the BCCC and includes each BCCC Member.
- d) Where a term is used in this document that is not defined above, the term is to be interpreted as having, if applicable, the same meaning as in the Code, and otherwise its everyday meaning and usage, unless the context otherwise requires.
- e) References to clauses are to clauses of this document unless stated otherwise.
- f) A reference to a statute, ordinance, Code, or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments, or replacements of any of them.
- g) Headings are inserted for convenience only and do not affect the interpretation of this document.
- h) A reference to a clause or provision of the Code includes the clause or provision of the Code and any amendment to, restatement of, or substitution for that clause or provision in the Code and in any succeeding version or revision of the Code resulting from any review of the Code as in effect in relation to the relevant Code Subscriber from time to time.
- i) This Charter will apply to all new BCCC compliance monitoring or compliance investigations commenced after the date this Charter comes into effect, which is the published date agreed to between the BCCC and the ABA, on behalf of Code Subscribers.

¹ Previous iterations of the Code are available on the [ABA's website](#).



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