

# ASIC Regulatory Guide 183: Codes of conduct for the financial services and credit sectors

AFCA submission to ASIC consultation

September 2025

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# 1 Introduction

The Australian Financial Complaints Authority (AFCA) is the external dispute resolution (EDR) scheme for the financial services sector.

For over 30 years, AFCA and its predecessor schemes have provided a free, fair and independent forum for the resolution of consumer and small business complaints in the financial sector. In financial year 2024-2025, AFCA received and dealt with more than 100,000 consumer and small business complaints about financial services firms.

AFCA welcomes the opportunity to provide feedback to ASIC's consultation on proposed updates to the Regulatory Guide 183 *Approval of financial services sector codes of conduct* (RG 183).

## 2 Executive summary

Financial sector codes have played, and continue to play, a critical role in the financial services consumer protection framework.

AFCA welcomes ASIC guidance on its code approval power. AFCA notes that this revision of RG 183 is made in the context of amendments to section 1101 of the *Corporations Act 2001* (CA) and ASIC's regulatory simplification priority, as set out in ASIC's Corporate Plan.<sup>1</sup>

Every day in our decision making, AFCA has regard to the standards set out in industry codes. This includes the Code of Banking Practice, the only code that currently has ASIC approval, and the range of other non-ASIC approved codes that still set important retail standards.<sup>2</sup>

Given their centrality to AFCA's core business of resolving consumer and small business complaints, AFCA has a strong interest in *all* codes meeting standards and delivering benefits in line with those that an approved code should meet. We strongly support clear regulatory articulation of the *why* of financial sector codes, what work they can do, what impact they can have and what outcomes they can achieve to:

- improve subscribing firms' compliance with the law
- articulate, embed and enhance industry practice over time, and
- address new and emerging issues and harms.

Evidence supporting the important role that effective codes can play is set out in the:

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<sup>1</sup> See ASIC's Corporate Plan 25-26 [Corporate Plan 2025-26](#).

<sup>2</sup> Only one code, the Banking Code of Practice currently has ASIC approval. We welcome signals from other sectors, such as the Insurance Council of Australia, of their intention to seek ASIC approval for the updated General Insurance Code of Practice. See Insurance Council of Australia, 2024, [Independent Review: Final Report](#), accessed <https://codeofpracticereview.com.au/wp-content/uploads/2024/12/20241218-GICOP-Review-Final-Report.pdf>, p.6.

- recommendations of the Parliamentary Inquiry into insurers' responses to major floods which set out the Parliament's view of the critical role codes can and should play in setting standards for insurers following extreme weather events,<sup>3</sup> and
- Australian Government's Scams Prevention Framework (SPF) which requires certain standards to be set out in sector codes—which, while different to the industry codes that are the subject of RG 183—nevertheless reflect an understanding of industry codes as a more agile and flexible vehicle to set enforceable industry standards, than black letter law.

This submission sets out AFCA's role and experience of financial sector codes and focuses on opportunities for this updated RG to:

- articulate a common view on the importance of codes, as progressive models of conduct, to delivering good outcomes
- acknowledge the different ways in which codes are enforceable.

We also offer some specific comments on relevant parts of the draft RG.

The amended RG 183 seeks to primarily focus on voluntary industry codes that are applying for ASIC approval (and to a limited degree on mandatory codes). While we understand this approach, there is also opportunity for ASIC to encourage all financial sector code owners, who are making public commitments to their customers, to largely meet similar standards, to promote consistency in outcomes and to retain broad public support for codes.

### 3 AFCA's role and experience of financial sector codes

AFCA and predecessor EDR schemes have played a central role in the development and evolution of financial services industry codes for more than 30 years. Australia's first financial sector industry Ombudsman scheme commenced in 1990 with the first banking code issued in 1993, followed by the first General Insurance code in 1994.<sup>4</sup>

#### Codes in dispute resolution

Strong and effective industry codes play a critical role in supporting timely, fair and efficient dispute resolution. The standards in financial sector industry codes are hard-wired into AFCA's decision making. AFCA Rule A 14.2 states that:

When determining any other complaint, the AFCA Decision Maker must do what the AFCA Decision Maker considers is fair in all the circumstances having regard to: a) legal principles, **b) applicable industry codes or guidance**, c)

<sup>3</sup> See Final Report of the House of Representatives Standing Committee on Economics Inquiry into insurers' responses to 2022 major floods claims which included a range of recommendations relating to the General Insurance Code of Practice on issues including expert reports and cash settlements [Flood failure to future fairness – Parliament of Australia](#).

<sup>4</sup> The Australian Banking Industry Ombudsman (ABIO). See [Previous versions of the Code - Australian Banking Association](#) and [Code of Practice \(COP\) - Insurance Council of Australia](#).

good industry practice and d) previous relevant Determinations of AFCA or Predecessor Scheme.<sup>5</sup>

This Rule applies whether or not a code is approved by ASIC. Individual subscribing firms should also be having regard to code provisions in responding to consumer complaints at internal dispute resolution (IDR), although we note that breaches of IDR code provisions are frequently identified by the Code Group through annual monitoring.

AFCA's casework and decisions also shed light on industry practices or consumer issues that codes should respond to. They can show where current code standards may be falling short or where there are gaps that are leading to consumer harm. AFCA actively contributes to independent reviews of industry codes by making submissions, sharing data and engaging with stakeholders and reviewers where our insights can help inform those processes to improve standards, consumer outcomes and reduce the likelihood of complaints. Through the publication of individual decisions and our Approach documents, we are transparent about how AFCA interprets and applies code standards, to support consistent outcomes for consumer complaints at IDR.<sup>6</sup>

### AFCA Code Group

AFCA has a separately operated and funded team, the Code Group, which operates as the administrator for five separate financial sector codes. The Code Group supports each of the independent code compliance committees to monitor compliance with the Code of Practice they are responsible for. This includes:

- Banking Code Compliance Committee (BCCC)
- Customer Owned Banking Code Compliance (COBCCC)
- General Insurance Code Governance Committee (GICGC)
- Insurance Brokers Code Compliance Committee (IBCCC)
- Life Code Compliance Committee (Life CCC).

The Code Compliance Committees:

- proactively monitor firm compliance by conducting audits and examining practices
- investigate allegations of code breaches, and decide if sanctions should be applied
- analyse compliance reports provided by firms and publish the outcomes of their compliance monitoring with areas of focus for future improvement
- engage with stakeholders to understand the external financial services environment and influence positive changes in industry, and
- conduct inquiries and reviews to take an in-depth look into specific issues in a code.

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<sup>5</sup> See AFCA [Rules](#). AFCA will apply the relevant standards that applied at the time the conduct occurred – this includes the relevant code at the time.

<sup>6</sup> See for example [AFCA Approach to Responsible Lending - 2025.pdf](#) and consultation draft [AFCA Approach to general insurance claims handling.pdf](#).

Through its monitoring activities, breach reviews, and stakeholder engagement, the Code Group plays a vital role shining a light on industry-wide problems that may not be visible through individual complaints at IDR or at AFCA. These insights are shared with broader stakeholders, including AFCA, and help drive improvements in the systems, processes, and governance of codes. The Code Committees publish annual reports on their proactive monitoring activities and broader code compliance and enforcement which can also include imposing sanctions on individual firms for serious breaches.

Both AFCA and the Code Group regularly contribute information from complaints data, systemic issues, and reports on breach trends and serious misconduct to regulators and policy makers. This contributes to the strengthening of each the individual codes and to the broader financial sector consumer protection framework.

This submission is made on behalf of AFCA, not the Code Group.

## 4 Codes: A progressive model of conduct

Paragraph RG183.2 of the previous version of RG 183 stated that ‘a code is a set of enforceable rules that set out a **progressive model** of conduct’ for subscribing firms.

Articulating the role of codes in this way acknowledges the dynamic nature of codes, particularly those that have been developed, reviewed, updated and reviewed again, often over a period of decades. It also reflects AFCA’s understanding that effective industry codes (whether approved by ASIC or not) should evolve or progress over time. This drafting:

- responds to the risk that a code owner may seek to walk back key code protections under the banner of ‘simplification’ or reducing ‘duplication’, and
- supports ASIC’s position, articulated in the commentary in Table 5 under Additional Criteria which states that ‘the code should not represent an overall reduction in consumer benefits or enforceability or accountability mechanism, compared with the approved code’.

We therefore suggest retention of the statement in RG 183.2 as setting an important benchmark that strong codes build on, and iterate from, a credible foundation, and that *how* a code develops and *how* it is reviewed, is a factor ASIC will have regard to in any code approval process.

When well developed and drafted, industry codes give practical guidance that does not restate or duplicate the law, but that rather articulates *how* firms should go about meeting their legal obligations and other standards in a code.

Codes can develop in a more agile and responsive way to emerging issues and changing community expectations. Examples include:

- the Life Insurance Code of Practice’s restriction on using genetic test results in underwriting ahead of the Federal Government’s proposed legislative response
- provisions supporting fair outcomes and ethical conduct, in areas like vulnerability, inclusion, accessibility, and hardship.

Strong and effective codes can set standards for how firms provide proactive support for customers in financial difficulty, help firms design systems and processes to identify and respond to red flags of financial abuse, and set standards for timeliness, claims and complaints handling, training processes and effective customer communications.

### Specific feedback

We consider that the early positioning paragraphs of updated RG 183 or perhaps the Additional Criteria and content in Table 5 could be strengthened to note that an effective code seeking ASIC approval is one that directly responds to consumer issues or firm behaviours that result in poor consumer outcomes in the sector within which it operates. This may involve the code:

- giving practical guidance on compliance with specific legislative provisions where there is ambiguity, poor industry practice or evidence of consumer harms or poor outcomes
- building on existing legislative standards to improve consumer experience, outcomes or reduce complaints
- extending into areas where there are consumer harms but where legislative or regulatory guidance is absent or limited.

AFCA’s experience is that a genuinely effective code—one that merits ASIC approval—is one that is likely to respond to **all three limbs of RG 183.5**. We encourage ASIC to adopt a broader framing of the role and scope of an effective code to set clear expectations for code developers seeking ASIC approval.

## 5 Articulating how codes are enforceable

AFCA welcomes the updated guidance about the role of, and process for, developing and seeking regulatory approval for enforceable code provisions (ECP), where a code body or regulator considers these appropriate.

Stepping back however, we note that it is the enforceability of the code *as a whole* that engenders stakeholder confidence, as this reflects the key commitment from code subscribers to their customers. In recommending the introduction of an ECP framework, Commissioner Hayne also noted in commentary that ‘non-enforceable

provisions of industry codes will continue to play an important role in setting standards of behaviour within those industries over time.’<sup>7</sup>

In this context, we consider the draft RG may more clearly articulate the existing mechanisms through which codes are enforceable. For example, the draft RG could step this out from the broadest level to the more specific (ECP) rather than starting at the ECP as currently set out in paragraphs 22 – 29. For example, codes are enforceable in three ways:

- first, by subscribers committing to the code standards, administered and enforced by an independent and appropriately resourced code administrator with an effective code monitoring and compliance regime, and applicable sanctions and remedies.
- second, by subscribers reflecting their commitment to the standards in their codes directly with their customers by, for example, incorporating them into their contractual terms and conditions.
- third, by code developers identifying certain provisions in their code that should be made enforceable under the ECP regime. The ECP is agreed to between the code developer and ASIC, where the code developer articulates why those provisions need to be enforceable by the regulator.

We understand the ECP regime to be a specific sub-category under the broader banner of enforceability, noting that not all financial sector codes seeking ASIC approval may include ECPs. As currently drafted and set out in different sections of the draft RG (at paragraphs 14, then 22-29 and 38-59), there is a risk of ambiguity and confusion about how codes are enforceable and about the respective roles of the code administrator (who is responsible for day-to-day code monitoring and compliance activity) and ASIC’s role as the regulator.

We welcome ASIC’s guidance at RG183.40-183.41 that ‘ASIC strongly encourages code applicants to consider this approach’ (code commitments being written into terms and conditions). Given Parliamentary commentary in the flood inquiry final report, we suggest ASIC consider strengthening the expression of its view that code commitments be written into contracts in the terms and conditions, as an important statement as to what ‘good’ looks like, for both approved and non-approved codes. AFCA considers this approach to be best practice.

### Specific feedback

We make the following more specific suggestions for ASIC’s consideration:

- 183.47 – AFCA does not generally award compensation for loss suffered *because* of code non-compliance, rather we have regard to code obligations in our decision-making test, as set out above.

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<sup>7</sup> Australian Government, *Final Report of the Royal Commission into Misconduct in the Banking, Superannuation, and Financial Services Industry*, Volume 1, p.111.



- 183.48 – which, in endorsing code commitments being reflected in terms and conditions, states ‘enabling court action for contractual non-compliance to access remedies that may not otherwise be available through EDR’. It is unclear if this is a reference to small business remedies, for example, where a code commitment may cover entities who may not have access to AFCA, or where there are no applicable legal standards? AFCA can award compensation for direct financial loss and we suggest it may be clearer to state that incorporation of code commitments into terms and conditions may also allow a court to clarify the application of provisions, for example, and, in limited circumstances, provide remedies to a party who may have the benefit of code provisions but may not have access to AFCA because the complaint is outside AFCA’s jurisdiction due to the nature of the complaint or monetary limit.
- 183.51 – ASIC notes the ability of the code administrator to impose sanctions for breaches to deter non-compliance and support consumer confidence. We recommend that, when evaluating a code, ASIC also consider whether proposed sanctions would be commercially significant for a subscriber.<sup>8</sup> If the penalties for non-compliance are trivial relative to the size of firms or the benefit of breaching a provision, it may undermine deterrence and trust in the self-regulatory regime.
- 183.53 – suggest clarifying the role of the code applicant in identifying ECPs. It may be useful to give guidance on relevant considerations for determining whether an ECP is appropriate, such as compliance monitoring and enforcement outcomes (from code administration bodies or ASIC), court decisions and evidence from AFCA determinations or systemic issues that evidence poor conduct or consumer harms.
- 183.55 – it may be appropriate to broaden this paragraph so as not to prematurely limit ASIC in its engagement with a code developer on its assessment of the content of an ECP, instead noting that an ECP should be clearly expressed and capable of being enforced. The approval criteria require codes to be drafted in plain language and to clearly articulate key obligations which should deter code applicants from drafting provisions in a way that avoids them being identified as ECPs.
- 183.64 – it may be useful to expand on this to clarify how such reporting informs and supports ASIC’s regulatory priorities.
- Table 5, Row 3 – we support the principle that codes should clarify or exceed existing legal requirements, we suggest expanding on this provision to refer to codes addressing practical issues and consumer harms to ensure that enhanced standards are meaningfully responsive to consumer experiences, such as recommendations from the flood inquiry that the general insurance code respond to issues relating to cash settlements and expert reports, for example.
- Note our earlier comment on no reduction of consumer benefit as a key principle that we consider should be elevated into the broader narrative about threshold criteria.
- 183.70 (3) – on issue specific guidelines, it may be worth noting the option of incorporation by reference to ensure that material standards that should be in the

<sup>8</sup> See for example this suggestion by the ACCC in [Guidelines for developing effective voluntary industry codes of conduct | ACCC](#).

body of a code are not left to supplementary guidelines. It may be appropriate to consider guidance on code content relative to supporting guidelines.

The draft RG correctly notes that codes are relevant to AFCA's decision making, but the proposed drafting at RG 183.45 – 183.47 suggests code obligations are *enforceable by AFCA*. AFCA does not determine code breaches or enforce code provisions, and we do not consider all code contraventions in deciding complaints. We suggest ASIC review the drafting of this section.

## 6 Clear and agile standards for code development and review

To ensure financial sector codes—whether ASIC approved, or not—continue to deliver good outcomes and to support the efficient exercise of ASIC's code approval power, we support endorsement of the key role that independent review and consultation processes play to gather insights about:

- current issues in a particular sector that a code may respond to
- areas of the law where subscribing firms are not complying, where standards need to improve or where there is inconsistency or ambiguity among subscribing firms in compliance with their legal obligations and where code provisions may provide clarity and guidance
- issues where a code developer considers that an ECP may be appropriate.

Financial sector codes have evolved and matured in a progressive way over time in large part due to independent reviews and post-implementation reviews of recommendations. Reflecting on this experience, and the significant resources that tend to be involved in these processes, we agree that a 3-year cycle for broad code reviews is too short and support an extension to 5 years.

However, we consider that where there is an urgent issue or need to amend a code, code owners should not wait five years to do so. To maintain the currency of codes, it may also be appropriate for ASIC's guidance to provide for a more agile approach to code reviews that means that not every aspect of the code needs to be reviewed every 5 years. This may enable a more targeted and responsive approach to updating approved and non-approved codes to deal with high-impact current and emerging issues affecting consumers.

We note the drafting at paragraph 83 *encourages* code owners to consult publicly on a draft code and the process map at Figure 1. We consider public consultation to be key to supporting ASIC's efficient assessment of a code submitted for approval by ensuring issues have been publicly ventilated and transparently responded to. We suggest strengthening the emphasis on this in the draft RG as these steps build stakeholder buy-in and support transparency and accountability for code owners and confidence in the ASIC approval process and decision-making.