Regulatory Reform & Implementation
Australian Securities and Investments Commission
by email: rri.consultation@asic.gov.au

Consultation on proposed update to RG 183 on approving codes of conduct

Thank you for the opportunity to comment on the Australian Securities and Investments Commission's (**ASIC's**) consultation on proposed update to RG 183 on approving codes of conduct.

This joint consumer submission is on behalf of Financial Rights Legal Centre (**Financial Rights**), Mob Strong Debt Help (**Mob Strong**), Super Consumer Australia, Consumer Action Law Centre, Financial Counselling Australia, Care ACT, Consumer Credit Legal Service (**CCLSWA**).

If you have any questions or concerns regarding this submission, please do not hesitate to contact Financial Rights on [redacted].

Kind Regards,

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Executive Summary

Industry codes bridge an important gap between governing legislation and the delivery of fair and just outcomes for consumers. In some sectors, this gap is huge, with legislation providing very little in way of detailed obligations or effective consumer protections. Codes in the financial services sector are central to the work that financial counsellors and community lawyers do every day to protect the rights of people experiencing vulnerability and financial hardship.

But Codes need to be effective and rigorous in order to have any hope of meeting that purpose. If not, then codes only serve to confuse and obscure consumer protections and regulation.

As consumer advocates, we are pleased to have recourse to the protections codes provide, to serve on their independent monitoring panels (where they exist) and participate in independent reviews (when they are conducted). Practically speaking, codes are often treated as a single source of consumer protections because they are written for consumers and advocates. Their importance in making legal rights accessible to people cannot be understated.

This all falls down when codes do not offer sufficient consumer protections, do not have transparent and independent monitoring, or cannot hand down impactful sanctions. In those circumstances, all they do is merely give the impression that rights exist when they are in fact unenforceable or ineffective. Allowing industries to self-regulate through codes of practice needs to be acknowledged for what it is: a privilege – one bestowed by the Australian community with the expectation of onerous and self-imposed meaningful consumer protections.

In reviewing RG 183, we ask ASIC to consider how they can best ensure codes continue to be written for consumers, offer protections better than at law and meet the needs of consumers, by addressing where they can, the significant issues and flaws in the self-regulation that we have seen to date.

In the 20 years since 2005, when ASIC first introduced RG 183:

- There has only been one industry Code approved: the Australian Banking Association's (**ABA**) Banking Code of Practice, and
- Only five code owners have agreed to have their codes be independently monitored and enforced. All other sectors of the financial services industry fail this basic test.

Where sectors have in fact agreed to independent monitoring there remain significant issues that impact upon their effectiveness in providing robust rights and protections for consumers. These include:

- Code monitoring is limited by the amount of resourcing provided and controlled by industry
- The ability for consumers to individually enforce code commitments varies
- Lifting consumer protections via self-regulation is far from nimble
- There continue to be instances where reviews are conducted without independence
- Sanctions powers vary and have not had a real deterrent effect
- Industry continues to breach their codes at significant and increasing levels
- The standards set may not be adequate
- There is a lack of any requirement to have compliance systems in place to meet code requirements
- There is an over-reliance on vagaries and weasel words
- Many subscriber commitments sit in "code related" documents that are deemed aspirational and are in effect unable to be relied upon
- There remain significant gaps in code subscription and thus consumer protection
- There are competing industry codes in similar sectors with different consumer protection standards
- Consumer rights seemingly cease once a subscriber enters run-off

Many of the issues cannot be solved by amending this RG 183 alone. However, more robust and effective drafting reflecting these considerations, lifting expectations of industry to be more in line with community expectations, would have the potential to help address many of the issues outlined above and ensure the ongoing relevance of codes of practice and role in how financial products and services and credit activities are regulated in Australia.

This submission provides a series of recommendations to make RG 183 more effective. They include, among others:

- strengthening language in the document around the expectation of codes being enforceable by individuals via inclusion in the contract with consumers
- linking the lack of code approval with ASIC risk-based, monitoring priorities
- empowering independent code compliance monitors with the full suite of sanctions powers including naming all subscriber breaches
- outlining further detail on the nature of independence expected and the nature of adequate resources required
- making clearer the expectations regarding the five-year timeframe for code review to approval and implementation

- ensuring that all reviews of approved codes are independent, and all code approval processes include transparent and public consultation without exception.

If these issues remain unaddressed, it remains open for the community, consumer groups and the Government to consider other approaches to regulating financial products and services and credit activities.

Recommendations

1. ASIC should spell out at draft RG 183.3 what having confidence in a code means. From the consumer movement's perspective this means that:
   - the code sets minimum standards to be met
   - subscribers will meet the promises made in the code
   - subscribers will train and resource its staff and compliance systems to do so
   - the substance of the code addresses all issues of community concern able to be addressed in a code
   - the language of the code is robust, clear, and effective
   - they will be able rely on the promises made in a code that is enforceable by individuals, and
   - the monitoring of code compliance is genuinely independent, appropriately resourced and effective in lifting standards, deterring, rectifying and sanctioning breaches.
2. Draft RG 183.3 should detail some consequence for those code owners who choose not to meet the standards of an approved code. This can be done by linking lack of approval to ASIC risk-based, monitoring priorities since non-approved codes pose a greater risk for consumers.
3. Amend draft RG 183.5 to clarify that effective codes should do *all three* functions listed.
4. Elaborate on the role that ASIC has in introducing mandatory codes of conduct at draft RG 186.6 in line with the expectations outlined at section 1101AE *Corporations Act 2001*, paragraphs 1.120-21 of the Explanatory Memorandum and ASIC's own powers under the sections 11(2)(b) and 11(3)(a) of the *Australian Securities and Investments Commission Act 2001*.
5. Amend draft RG 183.41 (as well as draft RG 183.45, 48, 59, and 90) to set the expectation that approved codes should at a minimum be a term of the contract between the subscriber and the consumer. If ASIC decides not to accept this recommendation, it should at minimum re-draft RG 183.41 to align itself more closely to the way the Explanatory Memorandum expresses this matter, which preferences this approach in a way that the current drafting does not.
6. Amend draft RG 183.52 to ensure that approved codes empower independent code compliance monitors by requiring that are provided a full complement of sanctions including additional sanctions not currently listed:
   - training
   - reporting breaches to ASIC or another regulator
   - auditing of code compliance at the cost of the subscriber, and
   - writing to affected customers

7. Strengthen the drafting at draft RG 183.59 regarding enforceable code provisions in line with draft RG 183.38-48.
8. Add further detail to draft RG 183.61 regarding the nature of independence expected and the nature of adequate or appropriate resources required. Similarly amend draft RG 183.95.
9. Introduce at draft RG 183.61 an expectation that approved code committees report annually to ASIC on their budgets, as well as metrics on whether a committee is being adequately resourced to fulfil its functions.
10. Clarify what a body of rules involves at Table 5 including outlining that codes should not impose inappropriate obligations or requirements on consumers.
11. Clarify what is meant by plain-English at Table 5
12. Remove the concept of core and non-core rules at Table 5
13. Table 5 should be amended to ensure that amended codes do not result in a reduction in extant consumer benefits arising out of the removal of commitments. The word "overall" should be deleted, or the drafting should clarify that the criterion does not mean that one priority or disadvantaged group should be pitted against another.
14. Remove the drafting regarding duplication in Table 5
15. Draft RG187.71 should be amended to require that ASIC approve all code-related documents along with the code or, at minimum, ASIC should indicate that it will more likely undertake surveillance of code related documents that are unenforceable.
16. The Stages of Approval need to be reconsidered and re-ordered in the following more logical sequence:
    - Independent Review
    - Response to the Review
    - Code Drafting
    - Code Submission to ASIC
    - Code consideration, approval and implementation
17. Part D of draft RG 183 needs to be amended to clarify the expected timeframes of the overall code development to approval process so that there will have to be on average, a new amended code every five years, since the five-stage process is a five-year cycle.
18. Amend draft RG 183.80 and 97 to ensure that all reviews of approved codes are independent.
19. Remove draft RG 185.85 to ensure that ASIC conducts transparent and public consultations on *all* codes submitted without exception.
20. Clarify what staff means at draft RG 183. 96
21. Amend draft RG 183.100 to require an expectation of early reviews.

22. Introduce an expectation that reviews be made publicly available for longer than 5 years.

Part 1. General observations regarding self-regulatory codes

Self-regulation via codes of practice is a privilege not a right.

While industry codes of practice do currently "play an important part in how financial products and services and credit activities are regulated in Australia"[1] their continued existence and fitness for purpose should not be assumed. There are always different approaches and models[2] available to the government and the Australian people to address issues of consumer concern if self-regulation does not meet community expectations.

For example, the recently announced government intervention via mandatory member service standards for superannuation funds is another option to hold a sector to account that has lagged well behind reasonable community expectations.

The superannuation industry has tried and repeatedly failed to enact an effective, mandatory industry-wide code of practice. This sector has for many years been rife with serious systemic problems with service, member communications, and insurance and death benefits claims handling. There has also been no serious coordinated attempt to lift standards across the sector.

To ensure the current 'social licence' to self-regulate via self-regulatory codes continues for the rest of the financial services sector, both industry and ASIC need to work on and address the significant issues and flaws in the self-regulation that we have seen to date.

In the 20 years since 2005, when ASIC first introduced RG 183:

- **There has only been one industry Code approved: the ABA's Banking Code of Practice.**

  Seeking approval to demonstrate consumer confidence in a sector has clearly not motivated the vast majority of financial services sectors to 'do the right thing' and achieve a standard that meets the basic requirements for code approval.

[1] ASIC, Attachment 1 to CS 26: Draft updated RG 183, RG 183.1
[2] These approaches could, for example include the introduction of ASIC rule-making powers or a UK FCA style rule book.

- **Only five code owners have agreed to have their codes be independently monitored and enforced**

  Independent monitoring of compliance is a core expectation of RG 183 and only the ABA, the Insurance Council of Australia (**ICA**), the Council of Australian Life Insurers (**CALI**), the Customer Owned Banking Association (**COBA**) and the National Insurance Brokers Association (**NIBA**) have engaged the Australian Financial Complaints Authority (**AFCA**) Code Team to independently administer their codes of practice. All other sectors of the financial services industry including the buy now pay later sector[3], mortgage and finance brokers[4], consumer lease providers[5] and others[6] fail this basic test.[7]

Where sectors have in fact agreed to independent monitoring there remain issues that negatively impact upon their effectiveness in providing robust rights and protections for consumers.

Code monitoring is limited by the amount of resourcing provided and controlled by industry

Budgets for four of the five AFCA administered codes are approved solely by the industry association, with no input from consumer advocates.[8] We hold concerns that many of the code compliance committees are under-resourced to conduct the full range of functions expected of them under their respective charters.

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[3] Australian Financial Services Association (AFIA), Buy Now Pay Later Code

[4] Mortgage & Finance Association of Australia (MFAA) Code of Practice, 11 November 2023 and Finance Brokers Association of Australia (FBAA) Code of Conduct, 2021

[5] Consumer Household Equipment Rental Providers Association (CHERPA) Code of Conduct, August 2017

[6] Others include the recently ceased Australian Collectors and Debt Buyers Association Code of Practice, AFIA's Online Small Business Lenders Code, 2018, AFIA's Car Rental Code, 2024 and yet to be finalised Finance Industry Code, and the Tolling Code of Practice, 2024.

[7] A clear recent example of this is the draft terms of reference for the Code Compliance Committee for the AFIA Finance Industry Code. This committee does not meet basic standards of independence because as drafted the AFIA board would appoint all its members (Clause 3.1 Draft TOR), and the definition of 'independence' is insufficient to ensure the code compliance committee's Chair is genuinely independent. Further the requirement that no member of the code compliance committee be 'an employee of an entity or an organisation advocating or campaigning on behalf of finance-related consumer matters in Australia' (Clause 3.3(e) Draft TOR.) is entirely impractical, making it almost impossible to ensure genuine consumer insight and representation on the committee. Consequently, the proposed administration of the code would not be perceived as independent.

[8] Only the Code Governance Committee for the General Insurance Code has a budget approval process that involves both industry and customer advocates making the decision on the CGC's budget.

The ability for consumers to individually enforce code commitments varies

Individual consumers being able to enforce the rights and protections afforded them under a self-regulated code is key for a code to be effective, to be able to be relied upon and to provide the confidence needed that promises made in a code will be met. The consumer movement considers the only way this can be practically implemented is by making the commitments in the code a term of the contract with individual customers. Anything less is not truly enforceable for individuals. This is because:

- a consumer is not a party to the contract between a subscriber and an administrator and cannot enforce a code breach via that agreement as a third party
- a consumer may be able to enforce some (even a majority of) code breaches at internal dispute resolution (**IDR**) and, if not there, at external dispute resolution (**EDR**) via the AFCA. However, many disputes do not meet AFCA's limited eligibility, threshold requirements or monetary jurisdiction or may be otherwise excluded[9]; and
- consumers cannot seek an individual remedy via a code compliance committee or monitoring body, since their functions and roles in this regard are constrained and only select a percentage of serious or systemic matters to pursue.

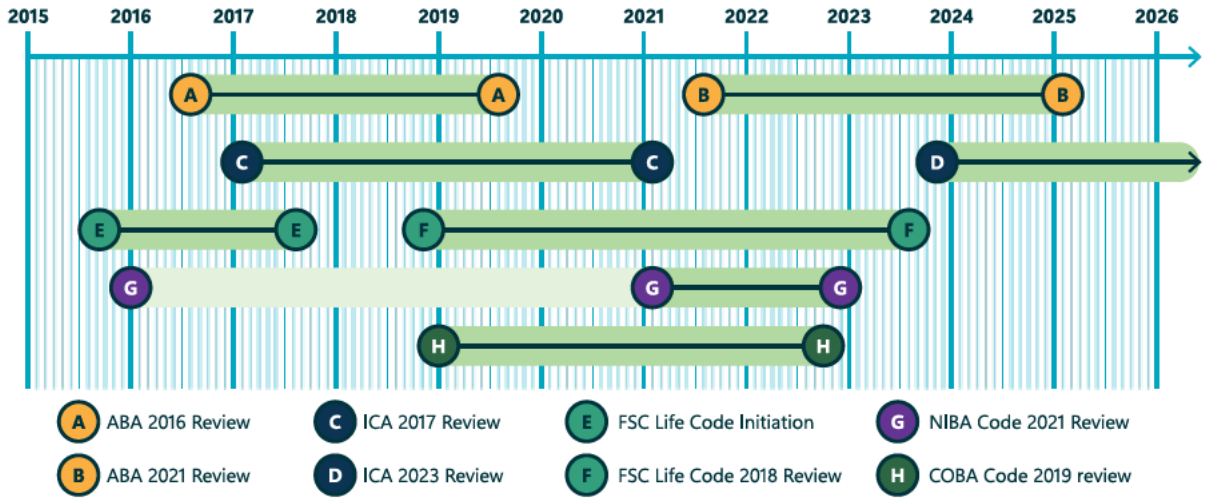
Only the ABA[10] and COBA[11] have agreed to include their codes of practice in the terms and conditions of their contracts with their customers. The Insurance Council has recently announced that it will redraft its code to be contractually enforceable.[12]

Lifting consumer protections via self-regulation is far from nimble

The length of time for industry code owners to initiate, undertake, and respond to a review including re-drafting a code has been far too slow. The 2018 FSC review of the Life Insurance Code, for example, took almost 4 years and 8 months from announcement to operationalisation. The review of NIBA's 2014 code of practice was required to be by 1 January 2017. That review was delayed until 2021 with a new code being delivered 1 November 2022 - almost 6 years late. While we acknowledge that reviews can and should take the requisite time needed, our experience is that there have been significant delays by code owners for reasons that are usually well within their control.[13]

[9] This is acknowledged at draft RG 183.48
[10] ABA Banking Code of Practice 2025 Clause 2
[11] COBA Code of Practice 2022 v.2.0 Part A
[12] ICA, New insurance Code of Practice to deliver for consumers, 30 May 2025
[13] For example, the ABA took a significant amount of time between December 2022 and November 2023 considering and ultimately rejecting the concept of a "principles-based" code. The Insurance

Infographic 1 – Times taken to undertake reviews of codes of practice[14]



Codes may have delivered significant benefits over the years, but we should not overstate their ability to respond quickly to emerging community needs.

There continue to be instances where reviews are conducted without independence

While the norm for most AFCA-administered code reviews is for reviews to be conducted by independent parties, both the 2017 General Insurance Code Review and the 2018 Life

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Council took a similar amount of time between June 2018 and October 2019 undertaking a plain-English draft that was unusable and had to return to simply amending its 2014 code. COBA paused their review response between December 2019 and November 2020 to obtain 'sufficient clarity regarding the enforceable code provisions reforms' – clarity that is, practically speaking, only now being achieved by this current review.

[14] Sources: ABA, Independent Review of the Code of Banking Practice, July 2016; ASIC, Media Release: ASIC approves an updated Banking Code of Practice, 28 June 2019; BCCC, BCCC Review; ICA, General Insurance Code Of Practice – 2017 Review Terms of Reference; ICA, General Insurance Code of Practice; Code of Practice Review, Independent review of General Insurance Code of Practice concludes, 18 December 2024; ICA, New insurance Code of Practice to deliver for consumers, 30 May 2025; FSC: Life Insurance Code of Practice is well underway, Professional Planner, 9 March 2016; Financial Services Council, Media Release: Life Insurance Industry Begins Rebuild With New Consumer Code; FSC, Media Release: More Consumer Protections For Life Insurance Customers, 22 June 2022; "NIBA will arrange for the Code to be reviewed every three years" NIBA Code of Practice 2014; NIBA, NIBA launches new Insurance Brokers Code of Practice, 1 March 2022; COBA, Customer Owned Banking Association appoints Phil Khoury to review Code of Practice, 21 January 2019; COBA, Vulnerable consumers supported by new Code of Practice for customer-owned banks, 31 October 2022

Insurance Code review were conducted in house by the Insurance Council and the Financial Services Council respectively.

Sanctions powers vary and have not had a real deterrent effect

There is significant variability between codes regarding the form of sanctions that a code compliance committee is empowered to deliver.

Table 1 – Current sanctions powers in AFCA monitored codes

Type of sanction	ASIC[15]	ABA[16]	ICA[17]	CALI[18]	NIBA[19]	COBA[20]
Formal warnings	✓	✓	x	x	x	✓
Public naming of the non-complying organisations	✓	✓	✓	✓	✓	✓
Corrective advertising orders	✓	✓	✓	✓	✓	✓
Fines	✓	✓	✓	✓	x	x
Suspension or expulsion from the industry association	✓	x	x	x	✓[21]	~[22]
Suspension or termination of subscription to the code	✓	x	x	x	x	x
Rectification/compensation	✓	✓	✓	✓	✓	✓
Compliance Review of Rectification	x	✓	x	x	x	x
Training	x	✓	x	x	✓	✓
Report to ASIC or another regulator	x	✓	✓	x	✓	✓
Audit of code compliance	x	x	✓	✓	✓	✓
Write to affected customers	x	x	x	✓	x	x

Where breaches are found, the subscriber is rarely named despite the power to do so, providing little deterrence for industry or warning to consumers dealing with companies. This lack of transparency goes directly to a consumer's ability to have confidence in a code. The

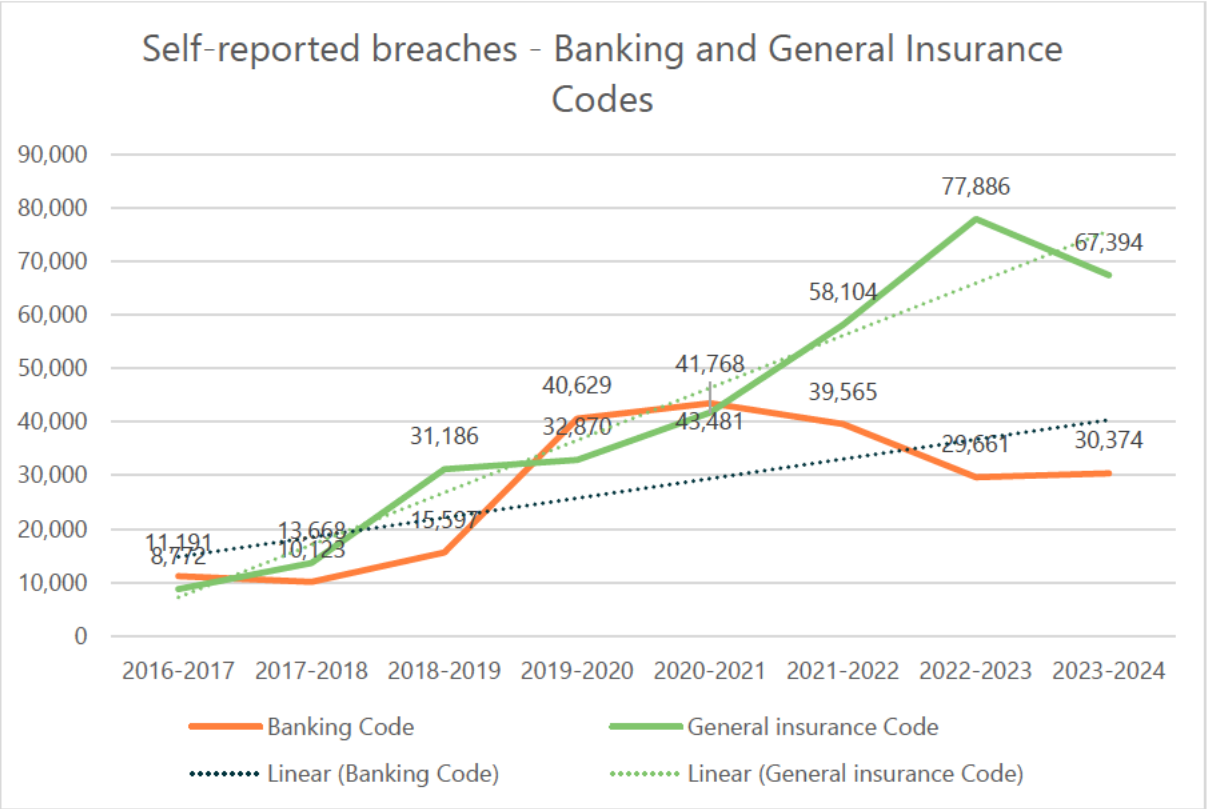
[15] Current RG 183.70
[16] BCCC 2025 Charter Clause 7.2
[17] ICA, General Insurance Code, 2021 Clauses 173, 174 and 176.
[18] CALI, Life Insurance Code of Practice, 2023 v.4 Clause 8.21
[19] NIBA Code of Practice 2022 Clause 11.3
[20] COBA Code of Practice 2022 v.2.0 Clause 178
[21] Requesting the matter be referred to NIBA to be dealt with under applicable NIBA Member rules and regulations, and/or Code Subscriber membership rules that apply
[22] Advise COBA of a Code Subscriber's noncompliant status

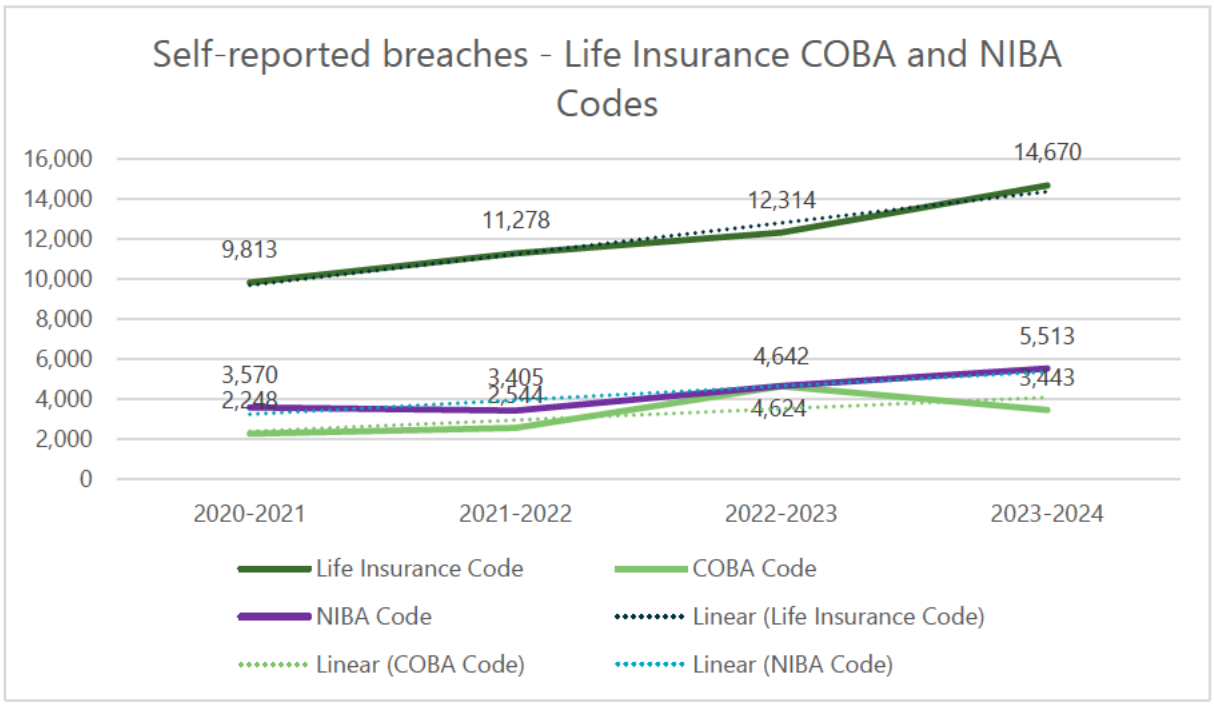
lack of deterrent effect is only reinforced by the general increase in breaches over time seen over the codes as detailed in the next section.

Industry continues to breach their codes at significant and increasing levels

Increased self-reporting of breaches should generally be considered a positive – an indication that at the very least those subscribers are engaging with their commitments and self-regulation. However, breaches continue to be significant and are increasing.[23] This may indicate more subscribers are admitting to breaches, but it is also a sign that there is a lack of universal adherence (or buy in) to self-regulation and the promises made in codes, and a lack of resources being directed by subscribers to ensuring they comply with the promises they have made under their codes.

[23] Self-reported breach data in the following graphs are drawn from the following annual compliance statements of the AFCA code compliance committees: Reported breaches 2019-20-2023-24, BCCC, Compliance with the Banking Code of Practice January to June 2024, December 2024; Reported breaches 2016-17-2018-19, BCCC, Compliance with the Code of Banking Practice 2018–19, November 2019; Reported breaches 2019-20-2023-24,CGC, General Insurance Industry Data and Compliance Reports, 2023-24, April 2025; Reported breaches 2018-19, CGC, Annual Report: General Insurance in Australia 2018–19 and current insights, April 2020; Reported breaches 2020-21-2023-24, LCCC, Annual Industry Data and Compliance Report 2023-24, March 2025; Reported breaches 2016-17-2023-24, COBCCC, Annual Data Report 2023-24, March 2025; Reported breaches 2020-2024, IBCCC, Annual Data Report 2024, August 2025; Reported breaches 2018-2019, IBCCC, Annual Data Report 2022, October 2023.





Note: IBCCC data is on an annual basis as opposed to financial year for all other codes. For ease of comparison insurance broker data has aligned with the latter year.

The standards set may not be adequate

Even when a code is approved, the standards set may not meet community expectations or the expectations of other regulators. For example, when the ABA sought authorisation from the Australian Competition and Consumer Commission (**ACCC**) for their approved Banking Code the ACCC imposed a number of increased commitments regarding access to basic bank accounts and the charging of interest on informal overdrafts, commitments that have increased in nature over time and are currently being considered for further uplift following the Code's approval in 2024.[24] The fact that commitments in an ASIC-approved code were deemed not strong enough by the ACCC places a question mark over whether an ASIC-approved code is necessarily one that consumers can have total confidence in.

Other codes continue to reject recommended changes with little to no explanation as to how these issues will be otherwise addressed.

There is a lack of any requirement to have compliance systems in place to meet code requirements

Aside from the Life Insurance Code,[25] no other code commits subscribers to specifically having appropriate systems and processes in place to enable compliance with their code. The ABA rejected this recommendation in 2021 on the spurious notion that this was duplicative of requirements in other regulations.

There is an over-reliance on vagaries and weasel words

Industry has drafted code commitments in ways that have been vague, subjective and difficult to enforce. Phrases like "timely"[26] "as soon as reasonably possible,"[27] "we may,"[28] and

[24] See ACCC, Interim approval to Banking Code changes following Royal Commission, 11 July 2019 and ACCC, Australian Banking Association - Basic bank accounts - minor variation, 1 February 2024
[25] CALI, Life Insurance Code v4, 2023 Clause 8.11
[26] For example, the ABA Code Clause 10 states "We will communicate with you in a clear and *timely* manner." The NIBA Code Clause 5.3(d) "Where there may be a conflict of interest, we will contact the client in a *timely* manner and clearly inform them that there may be a conflict of interest." What does timely mean? A day, a week, a fortnight? Interpretation and application are in the eye of the beholder.
[27] For example, the ABA Code Clause 34 "…we will tell you about any change to our Terms and Conditions as soon as reasonably possible." When is reasonable and who judges what is reasonable – the bank, the customer, AFCA or the BCCC?
[28] For example, the ABA Code Clause 24 "We may charge you a reasonable fee for providing you with a copy of a document under this Code. However, in certain circumstances, we may waive or refund that fee." It is not clear under what circumstances or conditions banks will charge a consumer. The use of the word "may" also provide the banks with the power to decide when this clause is enlivened. The phase "a reasonable fee" is left undefined and again within the power of the bank to decide what is

"reasonable steps"[29] litter the codes leading to difficulties in interpretation, understanding one's rights and holding subscribers to account.

Many subscriber commitments sit in "code related" documents that are deemed aspirational and are effectively unable to be relied upon

A number of code owners have taken the approach of placing key, substantive commitments outside of codes and in a variety of code-related guidance, protocols and standards.[30] These tend to cover critically important issues for consumers including protections regarding financial abuse, family and domestic violence, mental health, financial hardship, First Nations people and consumer vulnerability. These are generally considered unenforceable, are generally not monitored for compliance and are seen by subscribers as aspirational or best practice as opposed to minimum standards to meet. This common stratagem weakens the effectiveness, enforceability and reliability of codes, and undercuts the value of self-regulation.

There remain significant gaps in code subscription and thus consumer protection

There remain financial service providers who are part of sectors covered by codes that choose not to sign up to a code, making coverage far from universal and creating consumer protection haves and have-nots.[31]

"reasonable". And "In certain circumstances, we may waive…" does not outline what these circumstances are, so it is not entirely clear when a consumer can ever rely on or enforce this clause.

[29] For example, NIBA Code 2021 Clause 9.2 "All reasonable steps will be taken to ensure that the person whose conduct is the subject of the complaint will not handle the complaint." What is an unreasonable step in this situation?

[30] For example, ABA Industry Statement: Supporting Aboriginal and Torres Strait Islander peoples, February 2025, ABA Industry guideline: Banks' financial difficulty programs, 1 July 2025, ABA, Extra care for customers experiencing vulnerability Industry Guidance, 28 February 2025, ABA Branch Closure Protocol, June 2023, ABA Preventing and responding to family and domestic violence, May 2021, ICA, Guide on mental health, July 2021, ICA, Guide to helping customers affected by family violence, July 2021, ICA, Guide on best practice disclosure, July 2021, ICA, Guide for the design and distribution of add-on insurance distributed through motor dealer intermediaries, July 2021, CALI, Best Practice Guidance Family and Domestic Violence Policies, February 2025

[31] For example, Point Insurance, which sells accident and sickness cover, do not subscribe to either the General Insurance Code or the Life Insurance Code, and Sure Insurance – a significant player in the regional Queensland insurance market - are not subscribers to the General Insurance Code.

There are competing industry codes in similar sectors with different consumer protection standards

Banking customers would generally not be considering the level of consumer protection afforded them by a code of practice when choosing a bank but for those who choose a customer owned bank rather than an ABA aligned bank, they are not provided with the same level of consumer rights.[32] There are other examples too with users of buy now, pay later facilities afforded a range of protections under the AFIA Code not extended to users of banks' buy now, pay later facilities. This lack of consistency and split level of protections undermines confidence in codes.

Consumer rights seemingly cease once a subscriber enters run-off

Eric Insurance (a subscriber to the General Insurance Code) made the commercial decision in 2023 to enter run-off and will no longer write new business or renew policies. Catholic Church Insurance also announced in 2023 that it would stop issuing renewals or new policies. Both are no longer subscribers to the Code during their run-off period leaving their customers in doubt as to whether they can rely on the protections afforded by the Code.

This list of observed issues is important context for considering how self-regulation generally can be improved by industry. It is also important context for a re-drafted RG 183 which can and should be strengthened to improve outcomes for both industry and consumers in the self-regulatory environment.

Some of the issues outlined above are driven by industry seeking to limit any form of effective regulation – self-regulation or otherwise. Some have been enabled or compounded by ineffective, ambiguous or imprecise drafting in the extant ASIC RG 183.

Many of the issues cannot be solved by amending this RG 183 alone. However, more robust and effective drafting reflecting these considerations, lifting expectations of industry to be more in line with community expectations, would have the potential to help address many of the issues outlined above and ensure the ongoing relevance of codes of practice and role in how financial products and services and credit activities are regulated in Australia.

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[32] For example, a First Nations customer of a customer owned bank can only rely on the vague "we will take reasonable steps to make our banking services accessible" commitment under Clause 17 of the COBA Code. If on the other hand they were with an ABA aligned bank, they would be able to rely on more specific commitments in Part B1 regarding identification requirements, no or low standard fee accounts and services and can see that the ABA banks have specifically committed to cultural awareness training. There is also an industry statement that outlines how the ABA banking sector will provide inclusive and accessible services: ABA Industry Statement: Supporting Aboriginal and Torres Strait Islander peoples, February 2025.

However, if these issues remain unaddressed, it is open for the community, consumer groups and the Government to consider other approaches to regulating financial products and services and credit activities.

Part 2. Specific comments on the draft RG 183

The role of codes

RG 183.3 "a code that they can have confidence in"

We generally agree that approval of a code should be a signal that consumers can have confidence in that code, but the meaning of this should be spelled out a little more. ASIC approval should be a signal that consumers can have confidence that:

- the code sets minimum standards to be met
- subscribers will meet the promises made in the code
- subscribers will train and resource its staff and compliance systems to do so
- the substance of the code addresses all issues of community concern able to be addressed in a code
- the language of the code is robust, clear, and effective
- they will be able rely on the promises made in a code that is enforceable by individuals
- the monitoring of code compliance is genuinely independent, appropriately resourced and effective in lifting standards, deterring, rectifying and sanctioning breaches.

We recommend the above summary be included in some form at draft RG 183.3. At a minimum though the clause could also be amended as follows:

> "However, where approval by ASIC is sought and obtained, it is a signal to consumers that this is a code they can have confidence in***, rely upon and individually enforce.***"

RG 183.3 "We consider an ASIC-approved code to sit at the apex of industry self-regulatory initiatives"

While we agree with the general tenor of this statement, the implication is that below this sit other unapproved codes of practice that do not meet the standards expected and consumers should not necessarily be able to have confidence in, rely upon or be able to enforce. The draft RG however remains conspicuously silent with respect to these codes and their place within the regulatory ecosystem.

As outlined above, all but one code has not reached this "apex", and there are number of codes that critically do not even meet basic standards of independence, effectiveness and enforceability.

To be clear the consumer movement does not have confidence that a code that is not independently monitored will deliver meaningful benefits to consumers including the AFIA codes, broker, advisor and planning codes, and consumer lease code.

While the consumer movement does have confidence in AFCA's independent monitoring of the five codes it administers, there remain in most AFCA monitored codes (to varying degrees):

- gaps in code content and coverage
- less than robust and effective language
- a lack of individual enforceability
- a lack of commitment to resource their own compliance and
- not enough resources for code compliance committees to meet their monitoring and other functions.[33]

With the draft ASIC RG silent on these codes, there remains no real explicit consequence for a sector not meeting these standards nor any real incentive to seek approval at all. Clearly, obtaining "consumer confidence" has not incentivised most of the financial services sector to act in this regard. In this sense, bad actors are getting away with not appropriately engaging with the privilege of self-regulation.

The RG should indicate or at least imply some consequence for those choosing not to meet these standards.

The RG should address this issue by linking this apex approach with its own risk-based, monitoring priorities to make clear that non-approved codes pose a greater risk for consumers and can justify increased ASIC focus, oversight and surveillance. In the worst cases it should mean that ASIC provides advice to the Minister for consideration of a mandatory code of practice.[34]

[33] This can be seen, for example, in the extensive range of recommendations made in the Independent Review of the General Insurance Code of Practice: Initial Report, September 2024 and the recommendations of the House of Representatives Standing Committee on Economics Inquiry into insurers' responses to 2022 major floods claims to improve coverage, language and enforceability of the General Insurance Code. Even the approved ABA Banking Code didn't fully address the recommendations of the 2021 Review, leaving significant content gaps, and not explicitly committing to supporting resourcing of compliance with the code. The ACCC are also having to lift code standards via its authorisation process.

[34] Cf. Sections 11(2)(b) and 11(3)(a) of the *Australian Securities and Investments Commission Act 2001*.

RG 183.5 "We expect an effective code to do *at least one* of the following …"

While draft RG 183.5 correctly spells out the elements that codes should do – the expectation to only do at least one of the three limits the effectiveness of a potentially approved code. An effective code should do all three of the functions outlined at draft RG 183.5.

The draft (and extant) phrasing at draft RG 183.5 has led to a narrow interpretation by some sectors to meet only the one arm of what an effective code should do to the exclusion of other arms, for the sake of say "duplication".[35]

To clarify that effective codes do all three, draft RG 183.5 should be amended as follows:

> *We expect an effective code to do ~~at least one of~~ the following:*
>
> *(a) address specific industry issues and consumer problems not covered by legislation;*
>
> *(b) elaborate on legislation to deliver additional benefits to consumers; and~~/or~~*
>
> *(c) clarify what needs to be done from the perspective of a particular industry, practice or product to comply with legislation.*

Ideally, an effective code should function as a central source of information on the consumer rights and protections afforded by codes and the statutory and regulatory requirements that inform and provide important context. Limiting the breadth of codes to remove this important information and context will lead to consumers being required to engage with statutes, regulations, ASIC regulatory guides and the like.

Types of codes

RG 183.6 Mandatory codes

We note that the draft RG 183 provides the barest of information regarding an important part of the enforceable code regime - mandatory codes. The guide essentially remains silent on the role that ASIC plays with respect to the introduction of mandatory codes.

[35] For example see the ABA's approach to updating its 2018 Code spelled out in ASIC, CP 373 Proposed changes to the Banking Code of Practice, November 2023

The Explanatory Memorandum[36] and the Corporations Act state that the Government may impose a mandatory code of conduct, prepared by Treasury *in consultation* with ASIC, industry and consumer groups.[37] Notably it also outlines some of the circumstances where the Government may impose a code including:

- where "efforts between ASIC and industry to develop a voluntary code of conduct have not been successful," or
- "industry participants have not put forward a proposed code in a timely manner."

None of this renders ASIC neutral in the process of introducing mandatory codes of conduct. In fact, consistent with ASIC's statutory role and function,[38] it positively requires ASIC to provide government with the necessary intelligence and information regarding these circumstances and more. This expected role should be made clear and transparent in this RG. We therefore recommend that the RG elaborate and spell out this role. It would be useful to send an appropriate signal to industry that there are consequences for not meeting expectations.

Code approval

RG 183.20 consultation with other key stakeholders:

ASIC code approval should always be transparent and publicly consult in a manner that provides all stakeholders – including First Nations people and culturally and linguistically diverse communities – the opportunity to contribute. To do otherwise would not meet community expectations or best practice, transparent decision making. We recommend removing the words "if necessary" in the second sentence of draft RG 183.20. See further discussion of this below at Stage 2.

Evaluative criteria

RG 183.41 Contractually binding

Being bound contractually to the terms of a code of conduct is central to the issue of whether a code is enforceable, can be relied upon, and that consumers can have confidence that the subscriber will meet their commitments.

[36] Explanatory Memorandum, Financial Sector Reform (Hayne Royal Commission Response) Bill 2020
[37] Explanatory Memorandum, 2020, para 1.120-1.121; Section 1101AE *Corporations Act*
[38] See the provisions cited at footnote 34.

In approving a code, ASIC must be satisfied that it can be enforced and monitored. However, as outlined above, a code is not enforceable by a consumer through contractual arrangements between the code subscriber and code owner, nor are they fully enforceable at EDR or via a code compliance committee.

It's not clear how ASIC could approve any code in the circumstances where a code is either not enforceable by contract, or the code owner has identified significant numbers of enforceable code provisions.

However, draft RG 183.41 suggests that in order to meet the "contractually binding" criterion an approved code could merely have subscribers directly contract with a code administrator and not incorporate the agreement into individual contracts with consumers. While it is "strongly encouraged" by ASIC in the draft paragraph, it is ultimately not required.

The consumer movement's strong view is that commitments in approved codes should at a minimum be a term of the contract between the subscriber and the consumer.

However, if ASIC decides not to accept this recommendation, it should at minimum re-draft RG 183.41 to align itself more closely to the way the EM expresses this matter, that is:

> *"contractual arrangements may include subscribers incorporating their agreement in individual contracts with consumers. This would* ***generally be the preferred arrangement****." (our emphasis)*[39]

The EM then subsequently suggests an alternative to this would be contracting with an administrator, but that this would "depend on the details of the arrangement."[40]

ASIC should therefore re-draft RG 183 to:

- first state that contractual arrangements include subscribers incorporating their agreement in individual contracts with consumers
- then state that this is the preferred option and strongly encouraged, and
- only then refer to the alternative of contracting with an administrator, but that this would "depend on the details of the arrangement" and impact on enforceability by consumers individually.

[39] EM 1.56
[40] EM183.56-57

RG 183.45 and 48 "Enforceable by consumers"

In line with the consumer movement's view that commitments in approved codes should at a minimum be a term of the contract between the subscriber and the consumer, we recommend amending:

- RG 183.45 to delete the reference to "potentially also" when referring to consumers having access to court or tribunal mechanisms, and
- RG 183.48 to be redrafted to require that all that codes should be incorporated into individual agreements between code subscribers and consumers.

RG 183.52 Remedies and sanctions

As can be seen in Table 1 above, there are a range of sanctions that currently are a part of AFCA monitored code compliance committee powers that are not currently listed in draft RG 183.52. These include:

- training
- reporting breaches to ASIC or another regulator[41]
- auditing of code compliance at the cost of the subscriber, and
- writing to affected customers.

These should be included at draft RG 183.52.

Draft RG 183.52 should also replace the words "might include" with "should at the very least include" to ensure that code owners cannot incapacitate a code monitor by restricting their sanction toolbox. As can be seen at Table 1 above, there is significant variance in the sanction powers of code compliance committees and some consistency for approved codes should be expected. Any approved code that denies a code monitor a full complement of sanctions weakens the critical deterrent effect sanctions must play with respect to non-compliance.

The consumer movement's view too is that naming a subscriber should be the default expectation for *all* code breaches and not be seen or used as a sanction for a select few "significant" breaches. This has been the limited – and ineffective approach - taken by all AFCA administered code compliance committees who have been either constrained by the charters or powers or by lack of resourcing. This places self-regulation outside of community expectations and industry norms. AFCA itself names virtually every firm in every decision it

[41] outside of the required reporting outlined in draft RG 183.28-31

makes.[42] It also is a key reason that consumers remain cynical of self-regulatory codes and do not hold confidence in them.

Draft RG 183.52 should subsequently be amended to support the expectation that all breaching subscribers (and their specific brands) be publicly named, unless there are compelling reasons to not name the subscriber (with transparency around the frequency of the use of any such exception).

RG 183.59 Enforceable code provisions

Draft RG 183.59 notes that the absence of enforceable code provisions will not typically result in ASIC declining to approve a code, in line with the wholistic approach it must take to approval. It should however note that in the case where there are no enforceable code provisions, enforceability will still need to be considered in line with draft RG 183.38-48 – that is "enforceability of code provisions is a central consideration for ASIC approval." This is undermined by the tenor of draft RG 183.59.

Again, in the absence of any move by ASIC to require incorporation of code into contracts with individuals, it would be more than appropriate to state here that a code addressing enforceability, including specifically consumer enforceability, in the form of incorporation into contracts with individuals, would be more likely to be approved.

RG 183.61 Monitoring of code compliance systems

To more clearly spell out what an "effective administrative system for monitoring compliance" would look like, draft RG 183.61 should provide further detail of the nature of independence expected and the nature of adequate or appropriate resources required.

As outlined above, under-resourcing of code monitoring is a key form of control to limit or constrain the ability of independent code compliance committees to fulfil their charter obligations. This needs to be addressed via laying out clearer expectations here and at draft RG 183.43. For example, draft RG 183.43(b) should be amended as follows:

[42] The percentage of determinations not published each six month period since 1 October 2021 "due to compelling reasons to not name the financial firm" ranges from 0% to 0.18%: AFCA determinations public reporting | Australian Financial Complaints Authority

[The] body or person charged with administering and enforcing the code:

(a) is independent of the industry or industries that subscribe to the code and provide its funding (e.g. by having a balance of industry and consumer representatives ***(the latter not appointed by industry)*** and an independent chair);

(b) has ~~**adequate**~~ ***the requisite*** resources ***that have been independently assessed*** to fulfil ~~**the relevant**~~ ***all*** functions effectively (including code enforcement) and to ensure that code objectives are not compromised.

Further the RG should expect code committees to annually report to ASIC on their budgets, as well as metrics on how they are subsequently allocated, the period of time taken to undertake each function and any other data point that may indicate whether a committee is being adequately resourced to fulfil its functions.

Additional criteria

Table 5: Code comprises a body of rules

"A body of rules" needs to be further clarified. A body of rules should represent a commitment made by a subscriber to either an individual consumer or small business owner, or consumers and small businesses collectively. Codes should not impose inappropriate obligations or requirements on consumers that do not exist at law,[43] nor should rules be merely descriptive.[44]

Table 5: plain language

Further elaboration on what does and does not make code language plain would be useful here. For example, the use of vague or ambiguous words (as detailed above) may be considered by some to be plain English but would be far from robust, clear or effective. It could, for example state that:

[43] For example, "if you tell us" is a common phrase that shifts the sole onus to enliven a commitment on to the consumer rather than the subscriber taking on the onus themselves to proactively engage with a consumer to identify the issue that would enliven the right. See clause 167 of the ABA Banking Code 2025.

[44] For example, Clause 33 of the ABA Banking Code 2025 reads "The Terms and Conditions of a Banking Service may allow us to change those Terms and Conditions in certain situations without your agreement where allowable under law, including unfair contract terms laws." This is neither a rule or a commitment, more a description of power to change terms and conditions the banks may bestow upon themselves in their terms and conditions.

Code language should avoid vague, ambiguous or imprecise language, jargon, overly long sentences or complex structures.

Table 5: core rules

It is not clear what "core rules" are and what distinguishes these from "non-core rules". From our perspective all rules included in a code are core since they address specific issues faced by consumers – that is why they are in there. We recommend removing the term core from the document. There appears to be no basis upon which to use this term.

Table 5: does not result in an overall reduction in consumer benefits or enforceability

An amended code should not involve any reduction in consumer benefits. While consideration of matters as a whole may be appropriate for an initial approval, it is far less so for an amended or replacement code.

This is because consumers – and consumer advocates - would have come to rely on particularly commitments, the reduction or removal of which would be a significant backwards step for consumers.

A decrease in protections in one area – say for example, guarantor rights or rights specifically for First Nations people - should not be weighed or pitted against the gaining of rights and protections elsewhere – say a shorter timeframe that broadly applies to all consumers. ASIC's approval assessment cannot come at the cost of one priority or disadvantaged group over another.

This section of Table 5 should be amended to ensure that amended codes do not result in a reduction in extant consumer benefits arising out of the removal of commitments. The word "overall" should be deleted from the first dot point of the final row of Table 5. Alternatively, it should clarify that the criterion does not mean that one priority or disadvantaged group should be pitted against another.

Table 5: Removal of provisions from the approved code on the basis of duplication

We disagree with the inclusion of the second dot point in the final row of Table 5.

A code which on balance goes well beyond the law, can and in some cases should also contain provisions which essentially restate the law. This is sensible for a number of reasons.

Doing so may commit an industry to self-monitor particularly crucial obligations and promote best practice rather than leave all the heavy lifting to ASIC.

In many cases too including the details of obligations found, say in an ASIC regulatory guidance, should be included in the code to ensure that consumers (and their representatives) are made aware of these rights and protections in an easy, accessible and centralised form. In this way it would also alleviate the burden being placed on consumers of having to read through legislation and regulatory guidance, documents that are not written primarily for them.

We recommend deleting the second point in the final row of Table 5.

Supporting documents

RG187.71 Code related documents:

All code related documents – no matter their name – guidance, supporting document, etc must be considered a part of a code. Draft RG187.71 should be amended to require that ASIC approve these documents along with the code. If ASIC is not minded taking this approach, at a minimum, ASIC should indicate that it will be more likely to undertake surveillance of code related documents that are unenforceable.

Stages of Approval

Figure 1: Process map and subsequent structure

The stages outlined in the approach taken in the RG are confusing, do not reflect the reality of the process from an industry or consumer perspective and obfuscates the timeframes expected of industry.

Much of the confusion arises from the draft RG prioritising the perspective of ASIC and its role therefore beginning in the middle of the well-trodden code review, drafting and redrafting process. While we understand that the purpose of the RG is for ASIC to provide transparency about its process for approving a Code, taking the approach it has fails to promote readability and comprehensibility for the document's intended audience.

We recommend that these stages be re-drafted, and the stages (and this entire section) be re-structured in the following more logical sequence for industry and other stakeholders:

1. **Independent Review**
   An independent review of a current code or a review is the very first step toward the

development of a new or updated code. This should involve public, transparent consultation. The Review should then be submitted to the code owner and ASIC at the same time, triggering the five-year review process as laid out in the Corporations Act. ASIC should also be provided with the opportunity to make a contribution to the review.

2. **Response to the Review**
   The code owner should then consider the independent code review and issue a response to each recommendation as to whether it will be accepted and incorporated in a new code. Where a recommendation is not accepted (or partially accepted) a full explanation should be provided outlining why it has not been accepted (or has been partially accepted) and, where appropriate, where the recommendation can be better or more appropriately addressed. This should be made public and also provided to ASIC.
3. **Code Drafting**
   This is a key element of the review process where the code owner drafts either an initial code or amends an existing code. This should include consultation with ASIC and public consultation on a draft to ensure that the code owner is meeting the commitments they made in Stage 2.
4. **Code Submission to ASIC**
   This should involve providing a full draft of the code and code-related documents to ASIC. ASIC should then undertake a public, fully transparent consultation to allow stakeholders to express their views and any concerns that remain following the drafting.
5. **Code consideration, approval and implementation**
   ASIC should consider the application in line with the criteria spelled out in RG 183, provide feedback to code owners on outstanding matters or issues of concern for consideration and potential re-drafting, and formally approve a code where it believes it meets the criteria. The code owner and subscribers should then operationalise the code as soon as possible, and this be announced publicly.

ASIC's role in this five-stage process should be highlighted accordingly.

Further the RG should reference the role that ACCC authorisation of code amendments can and does play in the process. The ACCC have, for example, required the ABA to strengthen commitments in its code of practice following the ASIC approval process in 2019 and regularly since. Note the COBA Code too was authorised by the ACCC.

Stage 1: Code development (including updates)

RG 183.81 Independent review at least every five years:

The key element missing from this entire section is a statement relating to the expected time frames code owners should meet when undertaking a review and approval process.

Our reading of the statutory requirement for an independent *review* of approved codes to occur every five years is that, in practice, this means that there will have to be on average, a new amended code every five years,[45] such that the five-stage process is more or less a five-year cycle. This is because the period of drafting and approval (be it one year or four years) is within the five-year review span for the next review following the triggering point of review submission to ASIC. It would therefore be helpful for the final RG 183 to:

- confirm and make this understanding explicit in the text to ensure there is no confusion or ambiguity for industry to somehow delay drafting and approval
- make explicit that the five-year period is generally seen as a maximum and not somehow seen by industry as a minimum[46]
- that an updated easy-to-read, visual aid in the form of a five-year timeline be spelled out for industry and other stakeholders at Figure 1.

RG 183.80 developing a new code:

Given the approach that ASIC have taken to the five stages, draft RG 183.80 is confusing. This is because it implies that the beginning of the process is in practice an independent review not code drafting (or development), which is not how ASIC have drafted the stages of approval.

We recommend the stages outlined above.

Further the use of "In most cases" should be removed since it provides a licence to industry to not necessarily conduct an independent review. If there are cases where it is appropriate to conduct a non-independent review these should be spelled out. Our view is there are no appropriate cases, and we are not aware of any that would justify such an approach.

[45] It is theoretically possible that a review could conclude that no changes to a code are required but this has never occurred and highly unlikely to ever occur given the ever-changing nature of the financial services industry.

[46] It is theoretically possible that code cycles could be longer, but this would eventually reduce the time available to the next review such that it is likely that a code owner would miss the five-year deadline to hand a review in to ASIC, whereby likely losing approved status.

Stage 2: Consultation

RG 183.82-87 Consultation

Stage 2 is confusing since the prior stage describes industry drafting a code and consulting on that drafting[47]. It is not clear then why industry now must consult again on something that has already been consulted on. This section needs to be re-considered and merged with the development process – in line with our suggested staged process above.

RG 183.84 ASIC consultation

This paragraph is similarly confusing. ASIC should be included in consultations during the development/drafting process, as currently occurs.

It should also conduct a consultation *once a code has been submitted* for authorisation, including a public consultation for all stakeholder and a consultation with government agencies. It is not clear why this has been separated out and placed before a code has been submitted.

RG 183.85: ASIC will be more likely to consult publicly:

ASIC should conduct transparent and public consultations on *all* codes submitted without exception. This clause should be removed.

Stage 3. Code submission

RG 183.88-91 Code submission

It is at this stage ASIC should conduct a public, fully transparent consultation.

RG 183.90 Supplementary materials

The material conceived here should be made publicly available for transparency's sake and to enable stakeholders to provider further comment during ASIC public consultation process.

RG 183.90(f) details of subscribers to the code

At a minimum, consumers should come before administrators in this paragraph to promote the suggestion that the code should be a part of the contract with consumers. That is:

[47] RG 183.79-80

"… any contractual agreements that code subscribers must enter into with the code ~~**administrator**~~ ***consumers*** and/or with ~~**consumers**~~ ***the code administrators*** directly to affirm they will comply with the code;"

Stage 4: Code approved and takes effect

RG 183.95 "generally be empowered to monitor and enforce code compliance"

To reinforce the need for code owners to provide the requisite amount of resourcing for code compliance committees to effectively fulfill their function, we recommend amending draft RG 183.95 as follows:

"An independent code administrator will ~~**generally**~~ be empowered ***and appropriately resourced*** to monitor and enforce**"**

RG 183.96 "Staff"

The reference to "staff" is ambiguous and should be clarified to mean *subscribers'* staff (rather than the code owner's staff) are appropriately trained in the code.

Stage 5: Independent review

RG 183.97 Independent review

Stage 5 should be moved to be the first stage of the process. This would avoid the need for the awkward "if applicable statement" at draft RG 183.97.

Independent reviews should occur in all cases whether it is the development of a new code or an amended code to be approved.

RG 183.99 five-year independent reviews

As above, this paragraph should clarify the implication that all five stages should be complete, on average, within a five-year cycle.

RG 183.100 "We encourage earlier review where appropriate"

Draft RG 183.100 should be amended to ensure that there is more of an expectation of early reviews where required, rather than mere encouragement.

During any five-year cycle it is common for issues to arise that need to be addressed due to the introduction of new laws or specific problems identified in the community.[48] Code owners should be expected to act on these when the issue arises otherwise consumer harm may take place in the intervening period and/or consumers will need to wait for five years for needed protections. Without this expectation, industry will take advantage of this gap and not act in a fashion nimble-enough to meet community expectations.

RG 183.101 "The review is completed when the report of the review is given to ASIC."

It should be made explicit that this should be at the same time as it is handed to the code owner; and that this is the point at which the five-year period begins under statute.

RG 183.101 "publicly available for at least five years"

We understand that this is the statutory requirement, but it would be good to include a statement to the effect that there is little reason for it to be removed afterwards and that ASIC would expect it to be publicly available for longer periods to inform future reviews.

RG 183.101 "within a reasonable timeframe"

It should again be noted here that the requirement would remain that the next completed independent review must be within five years.

[48] For example, with the passing of the *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024*, it is important that the ABA examine whether any updates to the Baking Code are required, since many ABA subscriber banks offer these facilities, and AFIA have an entire Buy Now Pay Later Code of Practice seeking to address issue not in the legislation.