



CODE COMPLIANCE MONITORING COMMITTEE

(the CCMC)

Guidance Note No. 2

CCMC Compliance investigations – Discretion (Mandate clause 6.3)

The CCMC is an independent compliance monitoring body established under clause 36 of the revised 2013 Code of Banking Practice (the 2013 Code). When endorsing the 2013 Code the subscribing banks agreed that Clause 36 would commence on 1 February 2013. At the same time, a new Mandate for the CCMC (the Mandate) which details its powers and functions became effective.

This Guidance Note is issued in accordance with clause 36(i) of the 2013 Code and clause 1.4 of the Mandate. It describes the CCMC's likely approach when exercising its discretion under clause 6.3 of the Mandate.

All matters that come before the CCMC are considered on the basis of their individual circumstances, so this information operates as a guide only. Further, no Guidance Note can anticipate all issues that may need to be taken into account in a particular case.

Subscribing banks have until 1 February 2014 to adopt the 2013 Code. Until that time the provisions of the 2004 version of the Code will apply. During the period to 1 February 2014, the CCMC will, therefore, monitor and investigate banks' obligations in respect of the 2004 Code.

Compliance investigations - CCMC discretion

1. Under clause 6.3 of the Mandate, the CCMC has a general discretion to decide whether to investigate a matter or to continue a compliance investigation, at any stage prior to making a Determination¹.
2. The CCMC's general approach under clause 6.3 of the Mandate will be to commence a compliance investigation into those matters that fall within its jurisdiction. In most cases the CCMC expects that this will, as a minimum, require the relevant Code subscribing bank to provide the CCMC with a response to the allegation.

¹ The CCMC also has discretion under clause 10.4(a) to make or not make a Determination to conclude a compliance investigation, after it has received final comments from the parties under clause 10.3(b) of the Mandate.

3. Where the CCMC decides that it will exercise its discretion not to conduct or continue to conduct a compliance investigation, the CCMC will do so having regard to:
- a. the individual circumstances of the matter before it;
 - b. all material in its possession it considers relevant to the matter;
 - c. the matters referred to in clause 6.3 of the Mandate which include:
 - i. the nature of the allegations made, including the significance of the issues raised;
 - ii. the period of time that has elapsed since the alleged event occurred;
 - iii. whether a court or other forum would be a more appropriate forum to consider the matter;
 - iv. whether the matter is frivolous or vexatious;
 - v. any previous work undertaken by the CCMC to monitor or review practices and procedures of the Code subscriber that are relevant to the allegations made; and
 - d. its obligations under clause 1.3 of the Mandate, in particular its obligations to act in a manner that is independent, fair and reasonable in all the circumstances.

Further guidance on some of these aspects is provided in the Annexures to this Guidance Note.

4. Where an investigation has been discontinued and the CCMC subsequently receives a request to re-open the investigation, the CCMC will consider that request in accordance with Guidance Note 6.

This Guidance Note reflects the CCMC's views as at the date of publication. Please refer to the CCMC website (www.ccmc.org.au) for the latest version of this document.

Annexure A - Frivolous and vexatious allegations
Clauses 6.3(a)(iv) and 6.3(b) of the Mandate

1. This Annexure describes the CCMC's general practice when assessing whether or not it considers a matter to be frivolous or vexatious under clauses 6.3(a)(iv) and 6.3(b) of the Mandate.
2. In accordance with the principles expressed in Guidance Note 2, the CCMC's general approach is to commence a compliance investigation into those matters that appear to fall within its jurisdiction.
3. A finding by the CCMC that a matter is frivolous or vexatious means that the CCMC must not continue to investigate an allegation (see clause 6.3(b) of the Mandate).
4. Accordingly, the CCMC will not lightly conclude that a matter is frivolous or vexatious. It will only do so after carefully considering the material before it which may include:
 - a. the evidence before the CCMC;
 - b. whether the CCMC considers the allegation is being made in good faith having regard to its nature, subject matter and merits;
 - c. the conduct of the person making the allegation (including any previous or other, direct or indirect interaction with the CCMC); and
 - d. the scope of any disruption to a Code Subscriber's business (clause 7.1(b)(i) of the Mandate).
5. In considering the meaning of the terms "frivolous" and "vexatious" courts have noted - an action is "frivolous" or "vexatious" if it is "so obviously untenable that it cannot succeed", "manifestly groundless", "so manifestly faulty it does not admit of argument", "useless expense" would be involved in allowing the action to proceed.
6. The CCMC may decide not to continue an investigation under clause 6.3(a)(iv) even if the person making the allegation submits that further investigation could elicit further information in support of the allegation.