



CODE COMPLIANCE MONITORING COMMITTEE

(the CCMC)

Guidance Note No. 3

**CCMC Compliance Investigations –
The 12 month rule (Mandate clause 6.2)**

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 making a decision under clauses 6.2(a)(vi) and (vii) of the Mandate (the 12 month rule).

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 - the 12 month rule

1. Clause 6.2(a)(vi) of the Mandate states that the CCMC must not investigate a Code breach allegation if the person making the allegation was aware of the events to which the allegation relates, or would have become aware of them if they had used reasonable diligence, more than 1 year before they first notified the CCMC in writing (unless they had lodged within that 1 year period, a dispute with the Financial Ombudsman service (FOS) about those events, and FOS considered there may have been a breach of the Code).
2. In some cases, the date a person is, or becomes aware of a bank's obligations under the Code of Banking Practice (and therefore, that there may have been a breach of those obligations) will be identical to the date of the bank's alleged actions. In other

cases more than 12 months may have passed before that person becomes aware of the bank's Code obligations and can form a view on whether there may have been a breach of those obligations.

3. Having regard to the consumer protection framework within which the Code operates, and the CCMC's function to investigate Code breach allegations from any person (including FOS), the CCMC will, on a case by case basis, take a broad, flexible and inclusive approach when considering the operation of clause 6.2(a)(vi) of its Mandate. The CCMC considers that this approach is consistent with:
 - a. the function of the CCMC to investigate any allegation by any person that a subscribing bank may have breached the Code (see clause 1.2 of the Mandate, and clause 36 of the 2013 Code);
 - b. the Code as a binding agreement between a consumer and their bank (see clause 10 of the 2004 Code, clause 12 of the 2013 Code and the Australian Banking Association's Frequently Asked Questions no. 1);
 - c. the principles underpinning the CCMC's compliance approach, notably "Accessibility to Code monitoring and investigation services";
 - d. the CCMC's obligation to be fair and transparent (Mandate clause 1.3(b)); and
 - e. Regulatory Guideline 183 of the Australian Securities and Investments Commission ('Approval of financial services sector codes of conduct'), notably RG 183.62 ("From a consumer's perspective, the ability to pursue a complaint about a breach of a code is an important test of how effective that code is"). The CCMC notes that the Code of Banking Practice is not an ASIC approved code but considers that the principle expressed in RG183.62 provides an appropriate framework to consider the effectiveness of the 2013 Code.
4. The CCMC notes that clause 6.2(a) of the Mandate empowers the CCMC to request, in relation to any particular allegation or outcome of the CCMC's monitoring process referred to clauses 6.2(a)(vi) [breach allegations] or (vii) [outcome of the CCMC's monitoring process] of the Code, that a Code subscriber agree to extend the relevant time limit and that the Code subscriber retains the discretion whether to agree to such a request.
5. Having regard to the matters referred to in paragraph 3 of this Guidance Note, the CCMC encourages Code subscribers not to unreasonably withhold their consent to any such requests made by the CCMC.

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.