



## CODE COMPLIANCE MONITORING COMMITTEE

(the CCMC)

Guidance Note No. 4

### CCMC Compliance Investigations – rules of evidence, competing evidence and previous CCMC Determinations

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 to evidence and previous CCMC Determinations during a compliance investigation.

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.

#### Rules of evidence - generally

1. The CCMC is not a court or a tribunal. It cannot make declarations on the rights and entitlements of parties and does not have the power to take evidence on oath, cross examine witnesses or compel third parties to provide information.
2. In some cases the CCMC may decline to investigate a matter under clause 6.3 of the Mandate because the nature and complexity of the material before it is such that another forum, such as a court or tribunal, may be a more appropriate forum to consider that

evidence. When making such a decision, the CCMC will have regard to the matters set out in CCMC Guidance Note 2 (Exercising Discretion).

## Competing evidence

3. The Mandate states that the CCMC:
  - a) is not bound by any legal rule of evidence (clause 8.1 of the Mandate);
  - b) must act reasonably in carrying out its responsibilities (clause 1.3(a) of the Mandate); and
  - c) must (under clause 1.3(b) of the Mandate):
    - i. act with independence and do what in its opinion is appropriate having regard to the nature of its functions and activities;
    - ii. be fair;
    - iii. proceed efficiently and with the minimum necessary formality and technicality; and
    - iv. be as transparent as possible whilst also acting in accordance with its confidentiality and privacy obligations.
4. Accordingly, when making a decision in a compliance investigation, the CCMC will review the documents provided to it, any statements it has received and all the circumstances of the matter in order to form a view, based on the weight of the information, as to what is more likely than not to have occurred.
5. This means that in most circumstances, the CCMC will place more weight on unequivocal documentary material than on unsupported statements of recollection.
6. When deciding the weight to place on competing statements of recollection the CCMC will have regard to the level of consistency with any relevant documentary material.
7. In some circumstances the CCMC may find that an allegation that has been made to the CCMC is not supported by the material before it.

## Previous CCMC Determinations

8. Clause 8.1 of the Mandate states that the CCMC is not bound by its previous Determinations.
9. Clause 1.3(b) of the Mandate (as set out above) however, requires the CCMC to be fair, efficient and transparent.

10. The CCMC believes this requirement is best met where its decision making is consistent, in particular where:
  - a) it has previously expressed an opinion regarding its interpretation of its process or functions under the Code or the Mandate; or
  - b) where it has applied legal or ethical principles that are relevant to the matter before it.
11. Accordingly, when making its decisions, the CCMC will take into account such of its previous decisions as it considers relevant to the allegation before it and will only depart from a previously expressed opinion or principle where it considers that it is appropriate to do so.
12. In adopting this approach, the CCMC notes that each matter must be considered on the basis of the particular circumstances and will be determined on its merits and the evidence before 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](http://www.ccmc.org.au)) for the latest version of this document.