



**CODE COMPLIANCE MONITORING COMMITTEE**

**(the CCMC)**

**Guidance Note No. 6**

**CCMC Compliance investigations –  
Failure to respond, withdrawals and re-opening a  
closed investigation**

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 where the person making an allegation does not respond to the CCMC, withdraws their allegation or requests that the CCMC re-opens a closed 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.

**Compliance investigations - Failure to respond, withdrawals and re-opening a closed investigation (clause 6.2(a)(iv) of the Mandate)**

1. The CCMC may treat any allegation that a Code subscribing bank has breached its obligations under the Code as being withdrawn, if the person making the allegation:
  - a. fails to respond to a CCMC request for information within a reasonable time as specified by the Committee; and/or
  - b. requests the CCMC to discontinue its investigation into their allegation.

2. Where an allegation has been withdrawn, the CCMC will close its investigation into the allegation. In appropriate cases, the CCMC will consider whether to review the concerns raised in the allegation in the context of its compliance monitoring role under clause 5 of the Mandate.
3. Where an allegation has been withdrawn and the person that made the allegation subsequently makes a request that the CCMC re-opens the matter, the CCMC will consider that request having regard to the following:
  - a. the CCMC's obligation to not investigate an allegation based on the same events and facts as a previous allegation to the CCMC by the person making the new allegation, unless there is new information (clause 6.2(a)(iv) of the Mandate);
  - b. where the CCMC considered the allegation to have been withdrawn because the person making the allegation failed to respond to the CCMC, whether the CCMC considers there was a good reason for that failure;
  - c. where the CCMC considered the allegation to have been withdrawn because the person making the allegation failed to respond to the CCMC, whether that person has provided any information and/or carried out any action previously requested by the CCMC;
  - d. where the person making the allegation purports to be submitting new information to the CCMC, whether the CCMC considers that information to be new and if there was a good reason why that information was not provided as part of the initial allegation;
  - e. whether re-opening the investigation would unfairly prejudice the Code subscribing bank;
  - f. whether it is reasonable to re-open the investigation given the time that has passed since the investigation was discontinued, having particular regard to the 12 month rule (see clauses 6.2(a)(vi) and (vii) of the Mandate);
  - g. the principles that underpin its operation as set out in clause 1.3 of the Mandate, namely to:
    - i. act reasonably;
    - ii. act with independence and do what in its opinion is appropriate having regard to the nature of its functions and activities;
    - iii. be fair;
    - iv. proceed efficiently and with the minimum necessary formality and technicality; and
    - v. be as transparent as possible whilst also acting in accordance with its confidentiality and privacy obligations; and
  - h. the matters listed in clause 6.3(a) of the Mandate (discretions) and CCMC Guidance Note 2.

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.