



**Code Compliance  
Monitoring Committee**  
PO Box 14240  
Melbourne  
Vic 8001  
Phone: 1800 367 287  
Email:  
[info@codecompliance.org.au](mailto:info@codecompliance.org.au)

20 May 2019

Ms Fleur Grey  
Senior Specialist  
Credit, Retail Banking and Payments Financial Services  
Australian Securities and Investments Commission

**By email to:** [responsible.lending@asic.gov.au](mailto:responsible.lending@asic.gov.au)

Dear Ms Grey

### **Consultation Paper 309 - Update to RG 209: Credit licensing: Responsible lending conduct**

Thank you for providing the Banking Code Compliance Monitoring Committee (CCMC) with an opportunity to comment on ASIC's consultation regarding updates to Regulatory Guide 209.

#### **The CCMC and the Code of Banking Practice**

The CCMC is an independent compliance monitoring body established under clause 36 of the 2013 Code of Banking Practice (the 2013 Code). It is comprised of an independent chair, a person representing the interests of the banking industry and a person representing the interests of consumers and small business.

The CCMC's purpose is to monitor and drive best practice Code compliance, through a collaborative approach with the banking sector and other key stakeholders.

To do this the CCMC will:

- examine banks' practices
- identify current and emerging industry wide problems
- recommend improvements to bank practices, and
- consult with and keep stakeholders and the public informed.

The CCMC's Mandate (which is an attachment to the 2013 Code) sets out its powers and functions, which include:

- monitoring Code-subscribing banks' (banks) compliance with the Code's obligations
- investigating an allegation from any person that a bank has breached the Code, and
- monitoring any aspects of the Code that are referred to the CCMC by the Australian Banking Association (the ABA).



Fourteen banking groups currently subscribe to the Code. These banking groups cover approximately 93% of the Australian retail banking industry.<sup>1</sup>

## **New Banking Code and the Banking Code Compliance Committee**

Following reviews of the 2013 Code and the CCMC, the ABA redrafted the Code and ASIC announced it had approved the new Banking Code of Practice (2019 Code) on 31 July 2018. The ABA created a new Code monitoring body under the 2019 Code, the Banking Code Compliance Committee (BCCC), and its powers and functions are set out in its Charter.

The 2019 Code and the BCCC Charter will come into effect on 1 July 2019 and are available on the BCCC's website.<sup>2</sup>

## **Code obligations**

Both the 2013 and 2019 versions of the Code include obligations regarding the provision of credit by banks.

### **2013 Code**

Under clause 27 of the 2013 Code, a bank is required to exercise the care and skill of a diligent and prudent banker when it:

- selects the credit assessment method it will apply to a credit facility or credit increase
- applies the selected credit assessment method to the customer, and
- forms its opinion on the customer's ability to repay the credit facility.

We note that this 2013 Code obligation covers both individual customers and small businesses.

The CCMC stated in its provision of credit Guidance Note<sup>3</sup> that when assessing whether a bank has complied with clause 27 it may consider ASIC's *Regulatory Guide (RG) 209 Credit licensing: Responsible lending conduct*.

### **2019 Code**

Under the 2019 Code banks will be required to take a responsible approach to lending. This commitment is reinforced by one of the Code's Guiding Principles.

Clause 49 of the 2019 Code states that if a bank is considering providing a customer with a new loan, or an increase in a loan limit, it will exercise the care and skill of a diligent and prudent banker. Clause 50 states that a bank will do this by complying with the law for individual customers.

The 2019 Code contains further obligations regarding responsible lending including requirements to:

---

<sup>1</sup> APRA Monthly Banking Statistics for January 2019 – Household lending

<sup>2</sup> <https://bankingcode.org.au/>

<sup>3</sup> <http://www.ccmc.org.au/cms/wp-content/uploads/2014/12/GN9-Provision-of-Credit.pdf>



- lend to co-borrowers only if they receive a substantial benefit unless certain criteria apply (clauses 53 to 55)
- tell customers about the bank's suitability assessment for a loan (clause 58)
- assess a customer's ability to repay a credit card within a five year period (clause 60), and
- not provide a customer with a credit card limit that is greater than the amount requested (clause 61).

There are separate 2019 Code obligations which cover lending to small businesses set out in clause 51 and Part 6 of the Code.

## **CCMC monitoring activities**

### ***Provision of Credit Inquiry***

In 2016, the CCMC conducted an inquiry into banks compliance with clause 27 when providing unsecured credit.<sup>4</sup> The CCMC's inquiry report, *Own Motion Inquiry: Provision of Credit* (Provision of Credit Inquiry), was published in January 2017.

During the Inquiry banks demonstrated to the CCMC that they generally have robust, and often complex, processes in place to assess the majority of applications for unsecured credit in compliance with the Code.

However, the CCMC identified a number of potential issues regarding:

- banks not making inquiries about a customer's purpose for credit card applications
- the collection and verification of current customer information when processing applications for credit card limit increases, and
- the assessment of a customer's ability to repay a credit card balance.

### ***Annual Compliance Statement (ACS) reporting***

The CCMC's ACS seeks information from banks about their compliance with the Code (2013 version) and is our major data collection activity.

Clause 27 has been one of the most commonly breached Code obligations for the last five years. Banks reported 2,489 provision of credit breaches in 2017–18 and as in previous years, one outlier bank reported most of these breaches – 1,981 breaches or 80% of the total. Five banks did not report any provision of credit breaches for 2017–18, while three banks each reported only 1 or 2 breaches.

The majority of provision of credit breaches occur where:

- a bank has failed to collect all required information about the customer
- the customer's financial situation was incorrectly calculated or recorded, or

---

<sup>4</sup> <http://www.ccmc.org.au/cms/wp-content/uploads/2017/01/CCMC-Inquiry-Report-Provision-of-credit-January-2017.pdf>



- supporting documents did not match or support some elements of the credit application.

More information about provision of credit breaches is available in the CCMC's 2017–18 breach data report.<sup>5</sup>

### ***Investigations***

The Code gives the CCMC powers to investigate individual allegations that a bank has breached the Code. The aim of an investigation is to establish whether a breach has occurred, and if so, to work with the bank to improve future practices. Investigations also inform the CCMC's broader work, adding a source of data on banks' compliance, illuminating the real-life impact of Code breaches, and highlighting areas of emerging risk.

The CCMC often conducts investigations into alleged breaches of clause 27 of the Code. Of the alleged Code breaches in 2017–18, approximately 11% concerned provision of credit. In 2016–17, the provision of credit accounted for approximately 16% of CCMC investigations.

### **Comments on Consultation Paper (CP) 309**

#### ***Reasonable inquiries and verification steps (B1)***

In response to B1Q1, the CCMC supports ASIC's proposal to identify particular inquiries and verification steps in RG 209 that would generally be reasonable to provide greater certainty to licensees (including Code-subscribing banks) about complying with their obligations.

The CCMC has stated in its provision of credit Guidance Note that it considers banks should make reasonable inquiries about the customer's circumstances, objectives and financial situation. This includes any known vulnerability or disadvantage suffered by that person as well as the circumstances of the matter, its complexity and the level of credit involved.

In response to B1Q2, the CCMC has listed some factors that may prompt a diligent and prudent banker to make additional inquiries, before applying the selected credit assessment method and forming an opinion about a customer or potential customer's ability to repay the credit facility, and these include:

- a history of consistently late or partial repayments and/or overdue notices
- a history of only making minimum (or close to minimum) repayments or revolving credit payments, where the payment amount is quickly withdrawn
- spending that regularly exceeds credit card limits
- spending patterns that increase debt levels to each newly increased credit limit with no material reduction in debt, and
- unusual transaction activity, for example, frequent cash withdrawals, deposits or repayment patterns where these are inconsistent with income levels disclosed to the bank.

---

<sup>5</sup> <http://www.ccmc.org.au/cms/wp-content/uploads/2018/11/CCMC-Report-Compliance-with-the-Code-of-Banking-Practice-2017%E2%80%9318.pdf>



The CCMC noted in its Provision of Credit Inquiry report that it had concerns about some banks' approaches to credit card limit increases. The CCMC considers that having a full and current picture of a customer's financial circumstances is fundamental to complying with the Code obligations and recommended that banks ensure assessment processes for credit card limit increases are robust. The CCMC stated that banks should request and verify the customer's current income, expenses and liability information, unless up-to-date information has been recently provided and verified. This information should be used in addition to any available information a bank holds that can be assessed using behavioural scoring techniques.

The CCMC considered that banks need to demonstrate that they have taken positive steps to ensure that information provided by customers is accurate when making a credit assessment.

The use of behavioural scoring to analyse corporate information held by the bank can help it form a more comprehensive and holistic view of a customer's financial position when used alongside updated or current and verified information from a customer. Behavioural scoring techniques that identify any repayment issues, for example, should prompt a bank to seek further information from a customer before approving an application.

### ***Verification of consumer's financial situation (C1 & C2)***

The CCMC supports ASIC's proposal to amend and expand the current guidance in RG 209 on forms of verification and what are reasonable steps to verify the financial situation of a consumer.

The CCMC considers that it is imperative that banks take steps to ensure that information provided by a customer is accurate. While the CCMC takes a case by case approach when assessing a bank's compliance with the Code, in all cases, banks are required to make reasonable inquiries and to verify the customer's (or potential customer's) financial situation.

In the Provision of Credit Inquiry, the CCMC recommended banks consider developing and using automated tools that can better verify a customer's actual financial circumstances. This may include tools for the analysis of transactional account data (where the customer is already a customer of the bank), and/or documentation to demonstrate income and expenses. The CCMC understands that open banking developments may also make the analysis of transactional account data from other sources more feasible.

The need to adequately verify a customer's financial situation has featured in the CCMC's investigative work. An investigation from 2015–16 found that a bank relied upon information provided by a customer for an application for a \$20,000 credit card limit. The customer detailed in the application monthly repayment amounts for a home and an investment property that were considerably lower than would be expected, given the value of the mortgages. However, the bank did not make further inquiries about the true cost of the mortgages and provided the credit. The CCMC determined that this was a breach of clause 27 of the 2013 Code and it was used as a case study in the CCMC's 2016 Annual Report.<sup>6</sup>

---

<sup>6</sup> [http://www.ccmc.org.au/2016-annual-report/CCMC\\_2015%E2%80%9316%20AnnualReport.pdf](http://www.ccmc.org.au/2016-annual-report/CCMC_2015%E2%80%9316%20AnnualReport.pdf)



The use of current and accurate information regarding a customer's financial circumstances is crucial to meeting the provision of credit obligations under the Code. The more accurate and up-to-date the information a bank can obtain, the more effective and Code compliant its credit assessment processes are likely to be.

### ***Use of benchmarks (C3)***

In response to C3Q1, the CCMC agrees with ASIC's proposal to clarify its guidance in RG 209 on the use of benchmarks. The Provision of Credit Inquiry noted that benchmarks are used by several Code subscribing banks and the CCMC considers greater clarity on their use would be valuable.

### ***Consumer's requirements and objectives (C4)***

In response to C4Q1, the CCMC considers that the proposed clarification of guidance about understanding the consumer's requirements and objectives would be useful.

In the Provision of Credit Inquiry, the CCMC assessed information provided by banks concerning consumer requirements for credit cards. It found that most banks do not generally make inquiries about a customer's purpose when they apply for a credit card, particularly where the application is made online.

The CCMC understands that credit cards differ from other unsecured credit in that they may not have a specific purpose. The CCMC was concerned however that credit cards may be inappropriate for a customer's intended purpose in some circumstances. The CCMC noted that at the time of the inquiry, over two-thirds (68%) of unsecured credit applications were for credit cards.

The CCMC stated that a bank that establishes the purpose for a credit card application may be in a better position to assess the facility's suitability for the customer.

### **Concluding remarks**

Should ASIC wish to speak with the CCMC to obtain any further information about the banking codes or its monitoring work, we invite you to contact us c/o the CCMC's CEO, Sally Davis, at [sdavis@codecompliance.org.au](mailto:sdavis@codecompliance.org.au).

Yours sincerely,



**Christopher M Doogan AM FIML FAICD**  
Independent Chairperson  
Banking Code Compliance Monitoring Committee (CCMC)

