

2021 Independent Review of the Banking Code Compliance Committee (BCCC)

ABA response to recommendations within ABA remit

No.	Recommendation	ABA Response
1	The Code and the Charter should be amended so that both describe the BCCC’s role as “monitoring Code compliance and promoting best practice Code implementation”	<p>The ABA accepts this recommendation.</p> <p>The ABA agrees to amend the Charter to describe the BCCC’s role in compliance monitoring and promoting best practice.</p> <p>The ABA notes clause 211(i) of the Code which already references the best practice role of the BCCC.</p>
5	<p>The BCCC should include a fourth member with expertise in small business/ agribusiness. For efficiency and fairness, the implementation should feature:</p> <p>(a) Selection by AFCA, ABA and the Committee Chair in consultation with relevant organisations from the small business and farming sector</p> <p>(b) The appointment process should make it clear that the aim is to broaden the perspectives and skills of the Committee – and that the role is not to advocate for the sector</p> <p>(c) The Chair should have a casting vote to deal with any deadlock</p>	<p>The ABA supports this recommendation in principle and fully supports appropriate representation of the small business and farming sectors in the BCCC’s work.</p> <p>The BCCC already operates with an expert Small Business and Agribusiness Advisory Panel and has taken steps to reinvigorate the Panel with the recent appointment of three (3) new members. The panel includes:</p> <ul style="list-style-type: none"> • Alexandra Hordern (Director of Advocacy at the Australian Small Business and Family Enterprise Ombudsman); • Denis McMahon (Senior Solicitor for the Farm and Rural Legal Service); • Ross Leggett (Chief Executive Officer of the Rural and Small Business Financial Counselling Service, Southern Queensland); • Helen Davis (General Manager of the Small Business Debt Helpline operated by Financial Counselling Australia); and • Gary Goldberg (Chief Executive Officer of the Rural Financial Counselling Service – NSW Northern Region) <p>This Panel has been in operation for a relatively short period and will benefit from more time to reach its full potential. The ABA will revisit the recommendation for a fourth Committee member once the effectiveness of the Panel can be fully assessed.</p>
6	The BCCC Charter (whether this document remains separate from the Code or whether it is incorporated into the Code) should provide: (a) An alternate member should only be able to be appointed where a BCCC member is absent or unable to participate for a prolonged period – and that in this case the appointing body should appoint the alternate rather than the BCCC member (b) There should be tighter provisions to deal with conflicts of interest in the interests of maintaining the confidence of stakeholders.	<p>The ABA accepts this recommendation.</p>
9	The BCCC should transition to public reporting about bank Compliance Statements on a named basis for the financial year commencing July 2023, providing both banks and the BCCC with a full cycle of reporting before then to iron out problems	<p>The ABA supports this recommendation in principle, while recognising that there is further work required to address issues around consistency in reporting and benchmarking before the regime can be implemented.</p> <p>The ABA notes the work underway with the BCCC to streamline Compliance Statement reporting and improve consistency of data collection to ensure accurate comparisons.</p> <p>The ABA also notes the overlap of reporting requirements under the ASIC Reportable Breach regime and the Banking Code and, potential changes to Australian Financial Complaint Authority (AFCA) reporting following the November 2021 Treasury Review.</p> <p>The ABA looks forward to working with the BCCC and other industry stakeholders to implement this recommendation once these issues are fully considered and resolved.</p>

13	<p>The BCCC Charter provisions for exclusions should be amended to:</p> <p>(a) permit the BCCC, in special or appropriate circumstances, to consider matters that are beyond 2 years of the customer becoming aware of the relevant events</p> <p>(b) clarify Clause 5.3d (Allegations that have already been heard by, or are under investigation by, another forum (whether as a standalone matter or as part of any process or proceeding). If the relevant forum has declined to determine whether a breach of the Code has occurred, the BCCC can consider the matter)</p>	<p>The ABA accepts this recommendation.</p> <p>With respect to part a) of the recommendation, 5.1(c) of the BCCC Charter will be changed to consider Code breach matters beyond the two (2) year timeframe subject to properly defining “special or appropriate circumstances.”</p> <p>The maximum timeframe should also be defined, consistent with other industry limits e.g., AFCA’s six (6) year limit.</p> <p>With respect to part b) of the recommendation and consistent with the BCCC’s Code monitoring role, 5.3(d) of the Charter will be changed to allow the BCCC to take on a matter if there has been no finding in another forum regarding a Code breach.</p>
15	<p>The BCCC should have the power to require a bank to undertake a compliance review of any rectification action (not just remediation action) to address a breach if the BCCC considers the seriousness of the breach warrants this.</p>	<p>The ABA accepts this recommendation where such reviews are limited to findings from targeted BCCC investigations which find serious compliance issues.</p> <p>The BCCC should work with Code subscribers to determine the disclosure and timing of compliance reviews subject to other legal and / or regulatory priorities.</p>
16	<p>The BCCC power to report serious or systemic non-compliance to ASIC should not be limited to situations where the non-compliance is ongoing</p>	<p>The ABA accepts this recommendation, with the following clarifications:</p> <ul style="list-style-type: none"> a) Any reporting of non-compliance meets the criteria set out in the BCCC’s Compliance Monitoring Framework, specifically that the BCCC make the best use of its resources and focus on industry-wide, serious, or systemic issues; and b) Consistent with recommendation 15, that the situations reported relate to findings from targeted BCCC investigations which find serious compliance issues.
17	<p>The BCCC should have the power to compel a signatory bank that has been named by BCCC to publish on its website: (a) the fact of its naming (b) information about the cause and impact of the breach(es) (c) information about its corrective action The messaging must be factual, succinct, reach a sufficient audience (website positioning, format and length of time displayed) and be satisfactory to the BCCC.</p>	<p>The ABA does not accept this recommendation for the following reasons:</p> <ul style="list-style-type: none"> (a) the recommendation does not align with the Code’s status of self-regulation or the BCCC’s role in monitoring (but not enforcement) of Code compliance; and (b) the BCCC has sufficient powers to publicly name banks that have breached the Code.
18	<p>The BCCC should enter into an arrangement with AFCA so that when the BCCC finds noncompliance that warrants customer remediation, it can refer the issue of remediation to AFCA’s Systemic Issues Team to discuss with the bank.</p>	<p>The ABA accepts this recommendation noting that any referrals to AFCA are limited to complainants that may be entitled to compensation, as per clause 6.4 of the BCCC Charter.</p>

ABA response to recommendations within the BCCC's remit

No.	Recommendation	ABA Response
2	The BCCC should do more to build a shared understanding amongst stakeholders of: (a) its role and how this fits with the roles of ASIC and AFCA (b) its proposed priority areas.	The ABA supports this recommendation.
3	The BCCC should continue to evaluate and improve its approach to monitoring and reporting, working with stakeholders to improve outcomes and efficiency over time and reporting back on progress as part of the BCCC Annual Report.	The ABA supports this recommendation.
4	The BCCC should revitalise its Small Business and Agribusiness Advisory Panel, incorporating systematic ways of engaging with it in developing strategy, business planning, in planning Inquiries and wherever its expertise can be applied. Once its processes are strengthened, it should also consider adding other useful perspectives from amongst the diversity of the sector.	The ABA supports this recommendation. In this regard the ABA notes the BCCC's recent appointment of three (3) new members to the Advisory Panel.
7	The BCCC should commit to a strategic priority of significant improvement within 3 years in the speed of its reporting on banks' periodic Compliance Statements. To achieve credibility, the BCCC reporting should be complete within 90 to 100 days of the close of the banks' reporting deadline.	The ABA supports this recommendation.
8	The BCCC should work closely with the ABA and banks, bearing in mind the expectations and needs of other stakeholders, to refine the BCCC's Compliance Statement data collection to optimise the reporting process's effectiveness and efficiency. In doing so, the following principles should apply: a) Credibility - The BCCC's data collection enable the BCCC to provide assurance to the community as to banks' compliance with the Code b) Clarity – There should be clarity for banks as to the reasons for data requests c) Accommodating diversity – Data collection requirements must consider the diversity of banks d) Efficiency – Data requirements should be framed to be as resource efficient as possible for banks and the BCCC e) Comparability – Banks should commit to data provision practices that maximise comparability f) Change management – Changes in data collection should give banks sufficient opportunity to prepare for and respond to g) Continuous improvement – continuous improvement approach should be taken to evolve data collection over time in light of experience and changes in the external environment	The ABA supports this recommendation in principle, while noting its ongoing review of the Code recommendations. The ABA notes that its shared objective to achieve more efficient, streamlined reporting and a consistent position with respect to Code review recommendations 106 and 107 will be considered in this context.
10	Once practices for reportable situation reports by banks to ASIC have achieved a settled rhythm, the BCCC should revisit which of these matters it wants banks to contemporaneously report to the BCCC and how this can occur in a way that is efficient for banks and the BCCC.	The ABA supports this recommendation.
11	The BCCC should prioritise working with AFCA to establish an agreement regarding the exchange of confidential information under AFCA's rules.	The ABA supports this recommendation.

<p>12</p>	<p>The BCCC should plan, scope and implement its Inquiries in a way that permits timely Inquiry reporting (usually within 12 months of first information collection from the banks). This will likely involve:</p> <ul style="list-style-type: none"> (a) scoping its Inquiries more tightly (b) as appropriate, engaging directly (orally) with banks (c) to the extent practicable, leveraging banks' own quality and risk/assurance resources, and (d) working with banks to improve data comparability. 	<p>The ABA supports this recommendation.</p>
<p>14</p>	<p>The BCCC should review its processes for advising organisations of the outcome of referrals of allegations of breaches to ensure that they are given the opportunity to provide any additional relevant information and that they are sufficiently informed of the ultimate outcome.</p>	<p>The ABA supports this recommendation.</p>
<p>19</p>	<p>In consultation with stakeholders and taking expert advice as needed, the BCCC should review its resourcing with a view to ensuring that:</p> <ul style="list-style-type: none"> a) data analytics capability and capacity, at a strategic and intermediate level is adequate b) its internal team structure is effective and enabling time-efficiency c) its ability to engage effectively with stakeholders is keeping up with increased focus and scrutiny d) it has the resources for projects to implement our recommendations. 	<p>The ABA supports this recommendation.</p>