

Code Compliance Monitoring Committee Association Constitution

1 Name

1.1 Code Compliance Monitoring Committee Association

The name of the Association is the Code Compliance Monitoring Committee Association.

2 Definitions

2.1 Definitions

In this Constitution, unless inconsistent with the context or subject matter or otherwise stated:

ABA means the Australian Bankers' Association.

Annual Report means the report specified in clause 15.2.

ASIC means the Australian Securities and Investments Commission.

Association Chair means the chair of the CCMC Association specified in clause 3.13.

Association Member means a member of the CCMC Association.

Association Membership means membership of the CCMC Association.

Bank means:

- (a) any body corporate authorised by the Australian Prudential Regulation Authority to carry on banking business in Australia; or
- (b) any body corporate authorised under any law of the Commonwealth of Australia, or of any State or Territory of Australia to carry on banking business in Australia,

that carries on banking business in Australia.

BFSO means the company formerly incorporated as The Australian Banking Industry Ombudsman Limited and now called Banking and Financial Services Ombudsman Ltd (ABN 48 050 070 034) or its successor entity, the alternative dispute resolution scheme relating to which is referred to in the Code as the "Australian Banking Industry Ombudsman scheme" and the "ABIO".

CCMC means the Code Compliance Monitoring Committee established pursuant to this Constitution.

CCMC Association means the Code Compliance Monitoring Committee Association.

CCMC Chair means the chair of the CCMC specified in clause 5.4.

CCMC Member means a member of the CCMC.

Chairman of the BFSO means the person appointed to that office in accordance with the Constitution of the BFSO.

Chief Executive Officer of the ABA means the person appointed to that office in accordance with the Constitution of the ABA.

Code means the Code of Banking Practice 2003.

Code Subscriber means a Bank that has adopted the Code.

Compliance Report means the report specified in clause 12.1 of this Constitution.

Constitution means this Constitution.

Consumers' Directors of the BFSO means a Consumers' Director appointed pursuant to the Constitution of the BFSO.

Deputy Association Chair means the deputy chair of the CCMC Association specified in clause 3.13.

Financial Year means the 12 months ending 31 March in any calendar year.

Forum means any court, tribunal, arbitrator, mediator, independent conciliation body, dispute resolution body, complaint resolution scheme (including, for the avoidance of doubt, the BFSO scheme) or statutory Ombudsman, in any jurisdiction.

Founding CCMC Members means the CCMC Members specified in clause 5.5.

GST means a goods and services or similar tax imposed in Australia.

Inquiry means an inquiry specified in clause 9.

2.2 References to an Act

A reference to any Act or any provision of an Act includes a reference to that Act or provision as consolidated, amended or re-enacted from time to time.

2.3 Interpretation

Words importing the singular include the plural and vice versa, and words importing 1 gender include each other gender.

3 CCMC Association

3.1 Objectives

The objectives of the CCMC Association are to establish, and to make provision for the operation, of the CCMC. The CCMC Association may determine further objectives for itself from time to time.

3.2 Association Member must be Code Subscriber

Only a Code Subscriber may be an Association Member.

3.3 Membership of CCMC Association

An Association Member is each Code Subscriber which subscribes to this Constitution by giving a written instrument to that effect signed by its chief executive officer (or their duly appointed alternate, being a senior executive officer of the Code Subscriber appointed by instrument in writing signed by the chief executive officer) and given to the Association Chair or, in the absence of the Association Chair, the Deputy Association Chair. If neither an Association Chair nor a Deputy Association Chair has been appointed, the notice must be given to the Chief Executive Officer of the ABA. In any case this notice must be given not less than 7 days before the Association Membership is to take effect.

3.4 Resignations

An Association Member may resign from being a member of the CCMC Association by giving the Association Chair not less than 3 months' prior notice to be effective from the first day of a calendar month. Unless the CCMC Association determines otherwise, there will be no adjustment to or refund of fees for the Financial Year in which the resignation occurs.

3.5 Merger or takeover of an Association Member

If an Association Member merges with or takes over another Association Member:

- (a) the continuing entity shall be a single Association Member; and
- (b) unless the CCMC Association determines otherwise there will be no adjustment to or refund of fees for the Financial Year in which the merger or takeover occurs.

3.6 Meetings and proceedings of CCMC Association

Subject to clauses 3.7 to 3.19 inclusive, the CCMC Association shall meet, discharge its responsibilities and convene, adjourn and otherwise regulate its meetings and proceedings in such manner as it may from time to time determine.

3.7 Function of meetings

The CCMC Association shall meet only for the purposes of:

- (a) considering proposed amendments to this Constitution;
- (b) amending this Constitution; and
- (c) for any other purpose that arises from this Constitution.

3.8 An Association Member may convene meeting

An Association Member may at any time convene a meeting of the CCMC Association by giving to the Association Chair a notice requesting the meeting and stating the business the Association Member wishes to be considered at the meeting, not less than 28 days (or any other period the Association Chair deems appropriate, which decision shall be conclusive) from the day the meeting is to be convened.

3.9 Notice of meeting

The Association Chair shall send to each Association Member, not less than 28 days (or any other period the Association Chair deems appropriate, which decision shall be conclusive) before the date fixed for holding a meeting of the CCMC Association, a notice stating:

- (a) the date and time for the holding of the meeting;
- (b) a place for the holding of the meeting;
- (c) if the meeting is to be held in 2 or more places pursuant to clause 3.18, the places at which the meeting will be held and the technology that will be used to facilitate the holding of the meeting in that manner; and
- (d) the nature of the business to be transacted at the meeting.

3.10 Notice of business at meeting

An Association Member who wishes to bring any business before a meeting of the CCMC Association of which they have received notice may, not less than 14 days (or any other period the Association Chair deems appropriate, which decision shall be conclusive) prior to the date of the meeting, give notice of that business to the Association Chair. The Association Chair must include that business in the agenda of the relevant meeting.

3.11 Representation at meeting

Each Association Member shall be represented at a meeting of the CCMC Association by:

- (a) the chief executive officer of the Association Member; or
- (b) a senior executive officer of the Association Member appointed by instrument in writing signed by the chief executive officer of the Association Member and given to the Association Chair prior to the commencement of the meeting of the CCMC at which the person is to represent the Association Member.

3.12 Quorum

A quorum for a meeting of the CCMC Association shall be three quarters of all Association Members.

3.13 Association Chair

- (a) The Association Members shall elect 1 of their number as Association Chair and another as Deputy Association Chair at a meeting of the CCMC Association. The meeting of the CCMC Association held to elect an Association Chair and a Deputy Association Chair for the first time shall be chaired by an Association Member as agreed upon by those attending at the meeting (or, otherwise, by the Association Member whose name ranks first alphabetically out of the names of all those attending at the meeting).
- (b) Unless otherwise agreed, the Association Members shall elect an Association Chair and a Deputy Association Chair annually.

3.14 Association Chair to preside and other matters

- (a) The Association Chair, or in his absence the Deputy Association Chair, shall preside over each meeting of the CCMC Association. If neither the Association Chair nor Deputy Association Chair is present, the Association Members shall choose another member of the CCMC Association present at the meeting to act as chair.
- (b) A notice that must be provided under this Constitution by an Association Member to the Association Chair must be provided to the Deputy Association Chair if:
 - (i) an Association Chair is not in office at the time that the notice must be provided; or
 - (ii) the Association Member that must provide the notice is the Association Chair at the relevant time.

3.15 Voting on questions

Every question arising at a meeting of the CCMC Association shall be determined, on a show of hands or as determined by the Association Chair, by a three quarter majority vote.

3.16 Minute book as evidence

A declaration by the Association Chair that a resolution has been carried or lost, and an entry in the minute book of the CCMC Association to that effect, is evidence of the fact without proof of the number, proportion or composition of votes recorded in favour of or against that resolution.

3.17 Voting

Each Association Member shall have 1 vote only on all questions arising at a meeting of the CCMC Association.

3.18 Multiple meetings

A meeting of the CCMC Association may be constituted by separate meetings of Association Members held at the same time at different places (whether involving less than 2 Association Members at any 1 place and whether in person or by simultaneous linking together by telephone or other method of

audio or audio visual communication) which will for the purposes of this Constitution be taken to constitute 1 meeting.

3.19 Written resolution

A resolution in writing signed by each Association Member entitled to vote on the resolution has the same effect and validity as a resolution passed at a duly convened meeting of the CCMC Association, and any such resolution may consist of several documents in like form each signed by 1 or more Association Members that together constitute the resolution. The resolution is passed when the last Association Member signs.

3.20 Policies and views of Association Members

Association Membership does not affect the right of an Association Member to adopt or to express policies or views that differ from the policies or views of the CCMC Association, provided that the Association Member does not attribute its policies or views to the CCMC Association, breach clause 4.3 or denigrate the CCMC Association.

3.21 Review of Constitution

- (a) The CCMC Association must conduct a review of this Constitution within 3 months after the first 12 months that the Constitution has been in operation.
- (b) In conducting a review of this Constitution pursuant to this clause the CCMC Association must consult:
 - (i) the Association Members;
 - (ii) the CCMC Members;
 - (iii) the ABA; and
 - (iv) the BFSO,and may consult with any other parties it considers appropriate.
- (c) The CCMC Association must prepare a report of the review carried out pursuant to this clause and must provide a copy of the report to the parties it is obliged to consult, and any other parties it consults, under this clause.

4 Establishment, functions and independence of the CCMC

4.1 Establishment of CCMC

There shall be a Code Compliance Monitoring Committee established pursuant to this clause 4.1 and in accordance with this Constitution, with the powers and obligations set out in this Constitution.

4.2 Functions

The functions of the CCMC are:

- (a) to monitor compliance under the Code by Association Members;
- (b) to investigate, and to make a determination on, any allegation from any person that an Association Member has breached the Code (but the CCMC must not resolve, or make any determination on, any other matter); and
- (c) to monitor any other aspects of the Code that are referred to the CCMC by the ABA.

4.3 Independence of CCMC

The CCMC Association and each Association Member shall not:

- (a) except as expressly provided in this Constitution, intervene in the CCMC's activities; or
- (b) denigrate the CCMC.

4.4 Commencement

The CCMC shall commence its operations on a date determined by the CCMC Association and notified to the CCMC Chair by the Association Chair.

5 CCMC Members

5.1 Number of CCMC Members

The CCMC must be comprised of 3 persons appointed in accordance with clauses 5.2 to 5.4 below.

5.2 CCMC Member appointed by Association Members

Subject to clause 5.5, 1 CCMC Member must be a person:

- (a) with relevant experience at a senior level in retail banking in Australia; and
- (b) appointed by resolution of the CCMC Association, which must be given to the CCMC Chair not less than 7 days before the appointment is to take effect.

5.3 CCMC Member appointed by consumer and small business representatives

Subject to clause 5.5, 1 CCMC Member must be a person:

- (a) with relevant experience and knowledge as a customers' and a small businesses' representative; and

- (b) appointed by written instrument signed by each of the Consumers' Directors of the BFSO, a copy of which must be given to the Association Chair and the CCMC Chair not less than 7 days before the appointment is to take effect.

5.4 CCMC Chair

Subject to clause 5.5, 1 CCMC Member, who shall hold office as CCMC Chair, must be a person:

- (a) with experience in industry, commerce, public administration or government service; and
- (b) appointed jointly by resolution of the Directors of the BFSO and resolution of the CCMC Association, notice of which must be given to the Association Chair not less than 7 days before the appointment is to take effect.

5.5 Founding CCMC Members

As at the date of adoption of this Constitution, the CCMC Members (being the Founding CCMC Members) are:

- (a) **Ian Bruce Gilbert**, who shall be deemed to have been appointed as a CCMC Member in accordance with clause 5.2;
- (b) **David Tennant**, who shall be deemed to have been appointed as a CCMC Member in accordance with clause 5.3; and
- (c) **Anthony Stuart Blunn**, who shall be deemed to have been appointed as the CCMC Member holding the office of CCMC Chair in accordance with clause 5.4.

5.6 Tenure

The Founding CCMC Members shall hold office for a term of 2 years. Each succeeding CCMC Member shall hold office for a term of 3 years.

5.7 Re-appointment

A person who was, or is currently, a CCMC Member shall be eligible for re-appointment as a CCMC Member.

5.8 Resignation

A CCMC Member may resign by giving:

- (a) if they were appointed in accordance with clause 5.2, to the Association Chair and the CCMC Chair; or
- (b) if they were appointed in accordance with clause 5.3, to the Consumers' Directors of the BFSO, the Association Chair and the CCMC Chair; or

- (c) if they were appointed in accordance with clause 5.4, to the Chairman of the BFSO and the Association Chair,

reasonable notice according to the circumstances but in any case not less than 7 days' notice.

5.9 Casual vacancies

A person may be appointed to fill a casual vacancy in the office of a CCMC Member. A person appointed under this clause:

- (a) must be appointed in accordance with the clause, out of clauses 5.2-5.4, that applies to an ordinary appointment to the relevant office; and
- (b) shall hold office for the remainder of the period during which their predecessor would have held office.

5.10 Automatic vacancies

The office of a CCMC Member shall be automatically vacated if the CCMC Member:

- (a) becomes bankrupt or makes any arrangement or composition with their creditors generally;
- (b) becomes prohibited by law from being a director;
- (c) becomes of unsound mind;
- (d) was appointed in accordance with clause 5.2 and their appointment is terminated for any reason by resolution of the CCMC Association, notice of which must be given to the CCMC Chair not less than 7 days before the termination is to take effect;
- (e) was appointed in accordance with clause 5.3 and their appointment is terminated for any reason by written instrument signed by a majority of the Consumers' Directors of the BFSO, which must be given to the CCMC Chair and the Association Chair not less than 7 days before the termination is to take effect; or
- (f) was appointed in accordance with clause 5.4 and their appointment is terminated for any reason by resolution of the Directors of the BFSO or resolution of the CCMC Association, relevant notice of which must be given to the Association Chair or the Chairman of the BFSO (as the case requires) not less than 7 days before the termination is to take effect.

6 Meeting of CCMC Members

6.1 Meetings and proceedings of CCMC

Subject to clauses 6.2 to 6.13 inclusive, the CCMC shall meet, discharge its responsibilities and convene, adjourn and otherwise regulate its meetings and proceedings in such manner as it may from time to time determine.

6.2 A CCMC Member may convene meeting

A CCMC Member may at any time convene a meeting of the CCMC by giving to the CCMC Chair a notice requesting the meeting, and stating the nature of the business the CCMC Member wishes to transact at the meeting, not less than 28 days (or any other period the CCMC Chair deems appropriate, which decision shall be conclusive) from the day the meeting is to be convened.

6.3 Notice of meeting

The CCMC Chair shall send to each other CCMC Member, not less than 28 days (or any other period the CCMC Chair deems appropriate, which decision shall be conclusive) before the date fixed for holding a meeting of the CCMC, a notice stating:

- (a) the date and time for the holding of the meeting;
- (b) a place for the holding of the meeting;
- (c) if the meeting is to be held in 2 or more places pursuant to clause 6.11, the places at which the meeting will be held and the technology that will be used to facilitate the holding of the meeting in that manner; and
- (d) the nature of the business to be transacted at the meeting.

6.4 Notice of business at meeting

A CCMC Member who wishes to bring any business before a meeting of the CCMC of which they have received notice may, not less than 14 days (or any other period the CCMC Chair deems appropriate, which decision shall be conclusive) prior to the date of the meeting, give notice of that business to the CCMC Chair. The CCMC Chair must include that business in the agenda of the relevant meeting.

6.5 Quorum

A quorum for a meeting of the CCMC shall be all 3 CCMC Members.

6.6 CCMC Chair to preside

The CCMC Chair shall preside over each meeting of the CCMC.

6.7 Voting on questions

Every question arising at a meeting shall be determined, on a show of hands or as determined by the CCMC Chair, by a simple majority.

6.8 Minute book as evidence

A declaration by the CCMC Chair that a resolution has been carried or lost, and an entry in the minute book of the CCMC to that effect, is evidence of the fact without proof of the number, proportion or composition of votes recorded in favour of or against that resolution.

6.9 Voting

Each CCMC Member shall have 1 vote only on all questions arising at a meeting.

6.10 Conflicts of interest

If a CCMC Member has a material personal interest in relation to a matter that is being considered at a meeting of the CCMC they must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

unless:

- (c) the CCMC Member notifies the other CCMC Members, the Association Chair and:
 - (i) if they were appointed in accordance with clause 5.3, the Consumers' Directors of the BFSO; or
 - (ii) if they were appointed in accordance with clause 5.4, the Chairman of the BFSO,

of their material personal interest (including the nature and extent of the interest and its potential relation to the business of the CCMC) within a reasonable time before the relevant meeting; and

- (d) if only 1 CCMC Member has a material personal interest in relation to the matter, the other CCMC Members:
 - (i) give that CCMC Member a reasonable opportunity to make submissions to them; and
 - (ii) if the matter is a complaint alleging a breach of the Code by an Association Member being considered under clause 8, give the person who has made the complaint a reasonable opportunity to make submissions to them; and
 - (iii) give a written instrument signed by each of them to the Chairman of the BFSO and the Association Chair as soon as practicable before the meeting of the CCMC at which the matter is considered:
 - (A) identifying the CCMC Member, the nature and extent of the CCMC Member's material personal interest and its potential relation to the business of the CCMC; and

- (B) stating that they are satisfied that the CCMC Member's material personal interest should not disqualify the CCMC Member from being present while the matter is being considered at the meeting or from voting on the matter; and
- (e) if more than 1 CCMC Member suspects that they have a material personal interest in relation to the same matter, the Chairman of the BFSO:
 - (i) gives each such CCMC Member a reasonable opportunity to make submissions to them; and
 - (ii) if the matter is a complaint alleging a breach of the Code by an Association Member being considered under clause 8, gives the person who has made the complaint a reasonable opportunity to make submissions to them; and
 - (iii) gives a written instrument signed by the Chairman of the BFSO to the Association Chair:
 - (A) identifying each relevant CCMC Member and the nature and extent of each CCMC Member's material personal interest and its potential relation to the business of the CCMC; and
 - (B) stating that they are satisfied that each such CCMC Member's material personal interest should not disqualify each CCMC Member from being present while the matter is being considered at the meeting or from voting on the matter.

For the avoidance of doubt, a material personal interest for the purposes of this clause does not arise solely by reason of a CCMC Member's current or previous employment with an Association Member, or by reason of the financial institution of which a CCMC Member is a customer.

6.11 Multiple meetings

A meeting of the CCMC may be constituted by separate meetings of CCMC Members held at the same time at different places (whether involving less than 2 CCMC Members at any 1 place and whether in person or by simultaneous linking together by telephone or other method of audio or audio visual communication) which will for the purposes of this Constitution be taken to constitute 1 meeting.

6.12 Written resolution

A resolution in writing signed by each CCMC Member entitled to vote on the resolution has the same effect and validity as a resolution of the CCMC Members passed at a duly convened meeting and any such resolution may consist of several documents in like form each signed by 1 or more CCMC Members that together constitute the resolution. The resolution is passed when the last CCMC Member signs.

6.13 Alternate representative

A CCMC Member may appoint an alternate to attend a meeting which the CCMC Member is unable to attend due to illness, absence from Australia, the operation of clause 6.10 or other significant circumstances, provided that:

- (a) the CCMC Member has asked the person whom the relevant CCMC Member proposes to appoint as an alternate if that person has any material personal interest in relation to a matter that is being considered at the relevant meeting of the CCMC and the person has said that they do not have such an interest; and
- (b) the CCMC Member's appointment of the alternate is approved by written instrument:
 - (i) in the case of a CCMC Member appointed in accordance with clause 5.2, signed by the Association Chair and given to the CCMC Chair not less than 7 days before the meeting which the alternate is to attend; or
 - (ii) in the case of a CCMC Member appointed in accordance with clause 5.3, signed by a majority of the Consumers' Directors of the BFSO and given to the CCMC Chair not less than 7 days before the meeting which the alternate is to attend; or
 - (iii) in the case of a CCMC Member appointed in accordance with clause 5.4, signed by the Association Chair and the Chairman of the BFSO, and given to the other CCMC members not less than 7 days before the meeting which the alternate is to attend.

A person appointed as an alternate may exercise all the powers of their appointor (other than the power to appoint an alternate), and is subject to all the requirements applying to the office of their appointor, at the meeting which they attend at which their appointor is not present.

7 CCMC Chair

7.1 Duties

- (a) The CCMC Chair shall do such things as are expressed to be within their responsibilities under this Constitution and shall exercise or perform such powers and duties as the CCMC may from time to time assign to or vest in them.
- (b) The CCMC Chair's duties shall include:
 - (i) administering and managing (within budgets approved by the Chairman of the BFSO and the Association Chair (see clause 13.2)) the office and staff of the CCMC; and
 - (ii) doing all such other things as shall be necessary to achieve the mission of the CCMC.

7.2 Powers

The CCMC Chair may take action in accordance with a resolution of the CCMC to:

- (a) engage and dismiss staff;
- (b) enter into, vary and terminate leases;
- (c) operate bank accounts;
- (d) negotiate and enter into contracts with the BFSO including, without limitation, contracts for staff, equipment and facilities;
- (e) negotiate and enter into such other contracts or commitments as are necessary or desirable for the CCMC to make; and
- (f) sign or otherwise execute all such documents or instruments as may be required for any of the foregoing.

7.3 Authority

A copy of the resolution of the CCMC as to the authority of the CCMC Chair in respect of any matter shall be accepted as conclusive proof of such authority.

8 Complaints about Code breaches

8.1 Consideration of complaints about Code breaches

The CCMC must consider any complaint alleging that an Association Member has breached the Code, except that the CCMC must not consider a complaint:

- (a) to the extent that the complaint relates to an Association Member's commercial judgment in decisions about lending or security. However, the CCMC may consider a complaint alleging a breach of the Code arising from maladministration by the Association Member in arriving at a commercial judgment. "Maladministration" refers to an act or omission contrary to or not in accordance with a duty owed at law or pursuant to the terms (express or implied) of the contract between the Association Member and the person making the complaint;
- (b) if the CCMC is, or becomes, aware that the complaint:
 - (i) is being or will be heard (whether as a standalone matter or as part of any process or proceeding) by another Forum, and the Forum may make a final determination as to whether a breach of the Code has occurred. In such a case the CCMC must not consider the relevant complaint until the relevant Forum has determined, or declined to determine (for whatever reason), whether a breach of the Code has occurred. If the Forum determines whether a breach of the Code has occurred, the CCMC must adopt the Forum's finding; or

- (ii) was heard (whether as a standalone matter or as part of any process or proceeding) by another Forum, and the Forum has determined whether a breach of the Code has occurred. In such a case the CCMC must adopt the finding of the relevant Forum as to whether a breach of the Code has occurred;
- (c) if the CCMC thinks there is a more appropriate Forum to deal with the complaint. Without limiting this exception, CCMC may form the view that there is a more appropriate Forum to deal with the complaint where the complaint alleges in whole or in part that an Association Member has breached any legislative provision;
- (d) which the CCMC has referred to the Association Member concerned, unless:
 - (i) the Association Member has responded to the complaint; or
 - (ii) 45 days have elapsed,
 whichever is the earlier;
- (e) if the CCMC considers that the complaint is frivolous or vexatious; or
- (f) if the complaint is based on the same events and facts as a previous complaint by the complainant to the CCMC, unless there is new information;
- (g) if the events to which the complaint relates occurred:
 - (i) before the Association Member to which the complaint relates became a Code Subscriber;
 - (ii) in relation to an entity which was not a Code Subscriber at the time of the events to which the complaint relates and was subsequently acquired by a Code Subscriber; or
- (h) the complainant was aware of the events to which the complaint relates, or would have become aware of them if they had used reasonable diligence, more than 1 year before the complainant first notified the CCMC in writing.

8.2 Consideration of complaints

The CCMC must, within a reasonable time of receiving a complaint, consider that complaint in accordance with this Constitution and any operating procedures determined by the CCMC in accordance with clause 16.

8.3 Notice of proposed determination

Except where an Association Member admits it has breached the Code, the CCMC must give at least 28 days' notice to all parties about the CCMC's intention to make a determination in relation to a complaint. This notice must be in writing and must state:

- (a) what determination the CCMC intends to make in relation to the complaint (including any finding that the Association Member is responsible for serious or systemic non-compliance with the Code. However, when considering a complaint the CCMC need only consider whether an Association Member is responsible for serious or systemic non-compliance with the Code if it reasonably suspects that this is the case);
- (b) briefly, the reasons for any conclusions about the merits of the complaint; and
- (c) that the parties to the complaint have an opportunity to make further submissions to the CCMC within a reasonable time from receipt of the notice before a determination may be made by the CCMC.

8.4 Notice of determination

After the CCMC has given the parties to a complaint a reasonable time within which to make further submissions after the date of a notice under clause 8.3, the CCMC may make a determination in relation to a complaint. A determination made by the CCMC must:

- (a) unless otherwise agreed by the complainant and the Association Member, be in writing;
- (b) include a brief description of the complaint;
- (c) include a statement that in the CCMC's view the complaint was proven in whole or in part or was unfounded;
- (d) if applicable, state any finding by the CCMC that the Association Member is responsible for serious or systemic non-compliance with the Code; and
- (e) include brief reasons for the conclusions and findings of the CCMC.

9 Inquiries

9.1 Grounds for Inquiry

The CCMC may conduct an Inquiry on its own motion solely for the purpose of monitoring 1 or more Association Members' compliance with the Code.

9.2 Reasonable opportunity to make submissions

The CCMC must, before making any determination in accordance with clause 9.4, give each Association Member to which the Inquiry relates, and any other parties which it reasonably believes may have an interest in the Inquiry, a reasonable opportunity to make submissions to the CCMC in relation to the Inquiry.

9.3 Preliminary notice of determination

If the CCMC intends to make a determination resulting from an Inquiry which includes a finding that in the CCMC's view an Association Member has breached the Code, the CCMC must, except where an Association Member admits it has breached the Code, give the Association Member at least 28 days' notice of the CCMC's intention. This notice must be in writing and must state:

- (a) the findings the CCMC intends to make;
- (b) the reasons for the findings the CCMC intends to make; and
- (c) that the Association Member has an opportunity to make further submissions to the CCMC within a reasonable time from receipt of the notice before the CCMC makes a determination in relation to the Association Member.

9.4 Notice of determination

After the CCMC has given an Association Member a reasonable time within which to make further submissions after the date of any notice under clause 9.3, the CCMC may make a determination. This determination must:

- (a) be in writing;
- (b) briefly state the findings of the CCMC; and
- (c) briefly state the reasons for the findings the CCMC has made.

10 General principles and procedures

10.1 General principles

When considering a complaint or conducting an Inquiry, the CCMC must:

- (a) take into account, to the extent relevant to the complaint or Inquiry, and subject to the provisions of the Code, the criteria of:
 - (i) law;
 - (ii) other applicable industry codes or guidelines;
 - (iii) good industry practice; and
 - (iv) fairness in all the circumstances;
- (b) ensure, as far as practicable, that:
 - (i) an Association Member's business is not disrupted unduly; and
 - (ii) an Association Member's customers are not inconvenienced unduly; and

- (c) act reasonably in all circumstances.

10.2 Requests and investigations by the CCMC

The CCMC may, for the purposes of considering a complaint or monitoring Association Members' compliance with the Code by conducting an Inquiry, and subject to clause 10.1:

- (a) make reasonable requests for an Association Member to provide access to information, documents and systems, which the CCMC considers necessary to discharge its functions. An Association Member must comply with any such reasonable request as soon as reasonably practicable, except if the Association Member certifies that:
 - (i) if it complies with the request it would be in breach of a law (including, without limitation, of the Privacy Act 1988 (Cth)) and that, where a third party's consent to the request would avoid a breach of that law, the Association Member has taken reasonable steps to obtain the appropriate consent and such consent was refused;
 - (ii) to provide information that is the subject of the CCMC's request would breach a duty of confidentiality to a third party and the Association Member has taken reasonable steps to obtain consent to the disclosure of the information and such consent was refused; or
 - (iii) legal professional privilege attaches to the information requested by the CCMC;
- (b) conduct market research, such as mystery shopping, undertaken by its employees, consultants, independent contractors or agents, regarding the activities of an Association Member; and
- (c) conduct compliance visits at the premises of an Association Member, undertaken by its employees, consultants, independent contractors or agents.

10.3 Treatment of information

- (a) All information provided by or on behalf of a party (including an Association Member) to the CCMC (including, for the avoidance of doubt, any employee, consultant, independent contractor or agent of the CCMC) and designated as confidential, and all information provided by or on behalf of the CCMC to an Association Member being, in either case, information that is not in the public domain (otherwise than by breach of this clause), shall be deemed confidential.
- (b) The CCMC must return any item containing confidential information as soon as practicable after a complaint is resolved or withdrawn or any Inquiry is completed. If a complaint is sent to another Forum then the CCMC must, unless the CCMC is compelled by law to provide

the information, obtain the consent of the relevant party before forwarding any information to the new Forum.

- (c) The CCMC and the Association Member (as recipients of that information) shall take reasonable steps to ensure that the confidentiality of confidential information is maintained, including taking reasonable steps to ensure that their employees, consultants, independent contractors or agents, abide by the same obligation.

10.4 External expertise

In discharging its functions the CCMC may consult external parties as the CCMC thinks appropriate, provided that the CCMC takes reasonable steps to ensure that any such external parties also comply with the requirements of this Constitution as far as it is reasonably relevant.

10.5 Rules of evidence

The CCMC shall not be bound by any legal rule of evidence unless otherwise stated in this Constitution, but may in its discretion apply a rule of evidence in any particular case where it considers it appropriate.

10.6 Previous determinations

The CCMC will not be bound by any of its previous determinations.

10.7 Authority to give oral or written public statements

The CCMC, and each CCMC Member, shall not make public statements on behalf of the CCMC, except:

- (a) as contained in the Annual Report; or
- (b) with the prior approval of both the Chairman of the BFSO and the Association Chair.

11 Naming of Association Member

11.1 Grounds for naming Association Member

Subject to this Constitution, the CCMC may name an Association Member in the manner specified in clause 11.2 below if the CCMC is satisfied that the Association Member:

- (a) is guilty of serious or systemic non-compliance with the Code;
- (b) has ignored a request from the CCMC to remedy a breach of the Code or has failed to remedy that breach within a reasonable time;
- (c) has breached an undertaking given to the CCMC; or
- (d) has not taken reasonable steps to prevent a breach of the Code from reoccurring after having been warned by the CCMC that it might be named.

11.2 Manner of naming Association Member

Subject to this Constitution, the CCMC may name an Association Member by:

- (a) notifying ASIC that it intends to name the Association Member and the reasons for naming that Association Member; and
- (b) naming the Association Member, and specifying the reasons for which it is naming the Association Member, in its Annual Report.

12 Reports from Association Members

12.1 Association Member to lodge annual Compliance Report

- (a) Each Association Member must lodge a Compliance Report with the CCMC within 3 months after:
 - (i) 30 June 2004, reporting on the Association Member's compliance with the Code up to 30 June 2004;
 - (ii) 31 March 2005, reporting on the Association Member's compliance with the Code from 1 July 2004 to 31 March 2005; and
 - (iii) the end of each subsequent Financial Year, reporting on the Association Member's compliance with the Code during that Financial Year.
- (b) However, if an Association Member is an Association Member for less than the full period for which the Association Member must prepare a Compliance Report, it need not provide a Compliance Report for that period, but must include information about such compliance in its next Compliance Report.
- (c) The Compliance Report must be in a form approved by the CCMC for use by all Association Members.

13 Financial matters

13.1 CCMC Association funding

Unless the CCMC Association otherwise determines, the Chairman of the BFSO and the Association Chair may jointly determine at their sole discretion:

- (a) the amount of the Association Membership fee payable by each Association Member to meet the CCMC Association's anticipated aggregate liabilities and expenses for a Financial Year;
- (b) any other amount payable by an Association Member in relation to the CCMC's activities; and

- (c) the time and manner of payment of the fees and other amounts payable by Association Members;

and each Association Member must pay the fees and other amounts so determined.

13.2 Liabilities and expenses

Unless the CCMC Association otherwise determines, the Chairman of the BFSO and the Association Chair may jointly determine the anticipated aggregate liabilities and expenses of the CCMC Association for a Financial Year from time to time and at their sole discretion.

13.3 Remuneration of CCMC Members

Unless the CCMC Association otherwise determines, the Chairman of the BFSO and the Association Chair may jointly determine at their sole discretion any remuneration payable to a CCMC Member.

13.4 GST

If GST has application to any supply made by the CCMC Association to an Association Member, the CCMC Association may recover from the Association Member an additional amount on account of GST, such amount to be calculated by multiplying the amount payable by the Association Member by the prevailing GST rate.

13.5 Notice of fees and other amounts

Unless the CCMC Association otherwise determines, the Chairman of the BFSO shall give to each Association Member written notice of any fees and other amounts payable by that Association Member.

13.6 Non-payment of fees or other amounts

The CCMC Association may cancel any Association Membership (without prejudice to its rights to recover fees and other amounts due and payable and any interest and penalties thereon) for non-payment of any fees or other amounts payable by that Association Member.

13.7 Income and property of the CCMC Association

The income and property of the CCMC Association shall be applied solely towards the promotion of the objectives of the CCMC Association.

13.8 Distribution of assets

In the event of dissolution of the CCMC Association, any remainder of its net assets after discharge of all its just debts and other legal and moral obligations, shall not be distributed to Association Members but shall be distributed to some other organisation that has similar restrictions upon distribution of assets to its members as may be approved by the Association Members.

14 Indemnity

14.1 CCMC's assets

Each CCMC Member shall be indemnified out of the assets of the CCMC Association and (to the extent that they are inadequate) by each Association Member against all liabilities arising out of the discharge of their responsibilities as a CCMC Member.

14.2 Limitation

The indemnity given by each Association Member under clause 14.1 above is limited to a proportion of the liability described. That proportion must be calculated by taking the amount each Association Member has paid or is obliged to pay as an Association Membership fee under clause 13, and dividing it by the total Association Membership fees payable by Association Members, in each case in the same Financial Year in which the relevant liability of the CCMC member arose.

15 Reporting by CCMC

15.1 Collection of information for Annual Report

The CCMC must, for each period for which it must prepare an Annual Report, collect and record the following information in relation to its operations for inclusion in the Annual Report for the period:

- (a) the number of enquiries it has dealt with;
- (b) the number of complaints it has received and resolved;
- (c) the number of Inquiries it has conducted;
- (d) the demographics of complainants (where practicable);
- (e) the details of complaints which were determined to be outside the CCMC's functions and reasons for these determinations;
- (f) the current caseload of complaints and Inquiries, including their age and status;
- (g) the time taken to determine complaints and conduct Inquiries;
- (h) a profile of current and resolved complaints which identifies the relevant:
 - (i) provisions of the Code;
 - (ii) types of products or services;
 - (iii) underlying cause of the complaints;
 - (iv) impact that any identified lack of compliance with the Code may have or is having on customers (including the relative

- importance of any Code provision that has or may have been breached);
- (v) compliance measures implemented by Association Members; and
- (vi) systemic issues or other trends;
- (i) a profile of current and completed Inquiries which identifies the relevant:
 - (i) provisions of the Code;
 - (ii) types of products or services;
 - (iii) underlying reasons for the Inquiries;
 - (iv) impact that any identified lack of compliance with the Code may have or is having on customers (including the relative importance of any Code provision that has or may have been breached);
 - (v) compliance measures implemented by Association Members; and
 - (vi) systemic issues or other trends;
- (j) the level of compliance with the Code which the CCMC has ascertained as result of its determination of complaints and conduct of Inquiries;
- (k) the impact that any identified lack of compliance with the Code provisions may have or is having on customers (including the relative importance of any Code provision that has or may have been breached);
- (l) compliance initiatives undertaken by Association Members; and
- (m) information about the monitoring of any other aspects of the Code referred to the CCMC by the ABA under the Code.

The CCMC may in its discretion also collect, for inclusion in its Annual Report, information about benefits and disadvantages to customers resulting from Association Members' compliance with the Code.

15.2 Publication of Annual Report

The CCMC must publish an Annual Report:

- (i) within 6 months after 30 June 2004, covering the period from the day that the CCMC comes into operation to 30 June 2004;
- (ii) within 6 months after 31 March 2005, covering the period from 1 July 2004 to 31 March 2005; and

- (iii) within 6 months after the end of each subsequent Financial Year.

Each Annual Report must be a fair and adequate summary and analysis of the information specified in clause 15.1, the financial matters specified in clause 13 and any other matters the CCMC thinks fit that are consistent with the functions of the CCMC under the Code and this Constitution.

15.3 Provision and lodgement of Annual Report

The CCMC must:

- (a) provide a copy of the Annual Report to each Association Member;
- (b) make copies of the Annual Report available to the public; and
- (c) lodge a copy of the Annual Report with ASIC within a reasonable time after it is published.

15.4 Commissioning of independent review

The CCMC must arrange an independent review of its activities to be held:

- (a) for the first time, within a reasonable time after the first 12 months that the CCMC has been in operation; and
- (b) subsequently, on each occasion that the ABA commissions a review of the Code in accordance with clause 5.1 of the Code.

15.5 Report of independent review

On each occasion that an independent review is conducted in accordance with clause 15.4, the CCMC must cause a report of that review to be prepared and must lodge a copy of that report with ASIC within a reasonable time after the report is completed.

16 Operating procedures

16.1 Development of operating procedures

The CCMC must develop operating procedures, in accordance with clause 34(h) of the Code and consistent with this Constitution, first having regard to the operating procedures of the BFSO and then by consulting with the BFSO and the ABA, dealing with the following matters:

- (a) receipt of complaints;
- (b) privacy requirements;
- (c) civil and criminal implications of the act or event the subject of a complaint under the Code or an Inquiry;
- (d) time frames for acknowledging receipt of a complaint, its progress, responses from the parties to the complaint and for recording the outcome;