

Independent Review Banking Code Compliance Committee Interim Report 2021

Submission by Legal Aid Queensland

Independent Review – Banking Code Compliance Committee Interim Report 2021

Legal Aid Queensland (LAQ) welcomes the opportunity to provide a submission in response to the Independent Review of the Banking Code Compliance Committee (BCCC) Interim Report.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way” and is required to give this “legal assistance at a reasonable cost to the community and on an equitable basis throughout the State”. Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ’s services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ’s lawyers in the day to day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ’s Civil Justice Services Unit lawyers provide advice and representation in relation to responsible lending, insurance, mortgage stress, housing repossession, banking and financial issues, financial hardship, debt, contracts, loans, telecommunications and unsolicited consumer agreements. This includes assisting clients with legal issues relating to members of the Australian Bankers Association and makes referrals to the BCCC concerning breaches of the Code.

Specific Questions from 2021 Independent Review BCCC Interim Report

Question 1.

a) Would the BCCC’s role and purpose be clearer if the Code and the Charter were amended to describe this as “monitoring Code compliance and promoting best practice Code implementation”?

LAQ supports a description of the BCCC’s role and purpose encompassing monitoring Code compliance and promoting best practice Code implementation. However, LAQ also notes that for a monitoring body to meet its purpose it must also have effective enforcement or sanction powers available to it.

b) What more should the BCCC do to build a shared understanding of its role and how it fits into the regulatory and quasi-regulatory landscape?

We submit that a clearer role and purpose will assist in building a shared understanding of its role and how it fits in the regulatory landscape. However, LAQ also points out that many consumers and community workers are also not aware of the role and purpose of the BCCC. Any work that the BCCC undertakes to build a shared understanding of its role with industry and regulators should go hand in hand with work in

the community and among community groups to improve the community's understanding of the work done by the BCCC.

c) Would there be benefit in the BCCC consulting more transparently about its proposed priority areas each year?

There would be benefit in the BCCC consulting more transparently about its proposed priority areas each year. This increased consultation should be with industry, consumer advocates and community lawyers and the community.

Our view is that doing so would provide the following benefits:

- (a) Give the BCCC a more complete picture of all the banking issues affecting the community.
- (b) Allow the BCCC to be more informed and responsive.
- (c) Allow the BCCC to be more targeted in its priority areas by focusing on areas of current need.
- (d) Give the BCCC the opportunity to expand its current program of engagement with Industry, Consumer advocates and community lawyers and the community.

Question 2.

a) Does the Small Business Panel provide a sufficient means for small business input into the BCCC's work?

LAQ understands that the purpose and role of the Small Business and Agribusiness Advisory Panel (Panel) is to provide the BCCC with insights and advice on small business and/or agribusiness matters.

The Panel is also asked to provide advice and assistance on the BCCC's work as it relates to Small Business and Agribusiness customers and their banking that may arise from time to time.

As the panel meetings are not conducted more than semi-annually, it may not be in a position, as a group, to provide the urgent up to date information required to assist with urgent or emerging issues effecting small business.

b) Should a person with small business expertise be a member of the BCCC and if so, how should the composition or processes be changed to maintain an appropriate balance between those with banking industry expertise and those with customer expertise?

LAQ believes that the BCCC committee would benefit from the inclusion of a person with relevant small business/agribusiness background working in the industry on a day to day basis to provide immediate input.

We support the view expressed in clause 68 of the interim report which sets out a process for how this issue would be dealt with.

c) Are there ways in which the effectiveness of the Small Business Panel could be enhanced?

LAQ understands that upon appointment to the advisory panel, individual panel members agree to be available to the BCCC for advice. BCCC can contact individual panel members or collectively when advice is required outside of the scheduled meetings. Individual panel members are encouraged to provide the BCCC with insights/concerns he or she may have.

Face to face meetings will enhance the effectiveness of the panel discussions.

BCCC could provide regular updates to panel members with outcomes relating to its work.

Question 3.

Are there ways in which the governance framework established by the Charter can be strengthened?

Views are sought as to whether:

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?

LAQ supports the view that any alternate member that is appointed should be appointed by the appointing body rather than the BCCC member. In LAQ's view, conflicts could equally arise from consumer or industry members and it is important that the appointing body and not the potentially conflicted member have the power to appoint an alternate member where it is appropriate.

b) There should be tighter provisions to deal with conflicts in the interests of maintaining the confidence of stakeholders?

We support the tighter provisions to deal with conflicts of interest set out of Page 13 of the Interim Report.

Question 4.

Views are sought about the cost/ benefits of BCCC Compliance Statements and what changes should be made in light of the enhanced breach and complaints reporting to ASIC that will begin in October 2021. Please comment on:

a) The purposes served by the Compliance Statement process and BCCC reporting as to the data it collates from these

LAQ agrees with the benefits of the Compliance Statement process

b) What data and insights in the BCCC's Compliance Statement reports are most useful? Least useful? Please point to specific examples in recent reports.

In the most recent April 2021 Report, we found the following information to be most useful:

- (a) The number of Code breaches.
- (b) A breakdown of the Code breaches. This breakdown would be more useful if the Banks were identified.
- (c) How the breaches were corrected; and
- (d) The breakdown of the Code breaches by Chapter.

We did not find anything in the report that was not useful. The information in the report could be made more useful by identifying the Banks.

c) Do you support any of the options put forward in paragraphs 110 and 111 of this Interim Report to streamline Compliance Statement reporting? Are there better options?

In our view it is premature to comment on this question until ASIC has provided clarity on its reporting requirements.

d) Should the BCCC have the power to report on Compliance Statement data on an identified-bank basis?

LAQ supports the BCCC having the power to report on Compliance Statement data on an identified-bank basis because it will:

- (a) improve transparency; and
- (b) improve accountability.

Question 5.

What, if any, ASIC reportable situation reports do you think the BCCC should ask banks to provide to it contemporaneously with ASIC lodgment?

LAQ supports the option specified in Paragraph 118 of the Interim Report which would allow the BCCC to specify that it wants to see specified selected breach reports that are provided to ASIC. LAQ agrees that, if as expected, the changes to ASIC breach reporting requirements significantly increase the number of matters being reported to ASIC, then it would not serve the BCCC to require that they receive all these reports.

Question 6.

What issues need to be navigated in a documented information sharing agreement as between AFCA and the BCCC?

We have no submissions in response to this question except to say that any agreement should enable a timely and efficient exchange of information that allows both organisations to perform their obligations effectively and efficiently.

Question 7.

a) How could the BCCC have sharpened the focus of its past Inquiries?

The topics of previous BCCC inquiries have been relevant and appropriate. However, the final reports would have benefit from more specific rather than general recommendations.

b) How could the BCCC make more use of bank resources to gather and report data for a BCCC Inquiry?

We have no submissions to make in response to this question.

c) How could this be made to work for small banks?

We have no submissions to make in response to this question.

d) Are there opportunities for the BCCC to work more in partnership with Customer Advocate Offices in relation to Inquiries?

LAQ supports the BCCC working more closely with customer advocate offices concerning inquiries. In LAQ's view, working with these offices is likely to:

- (a) lead to a more-timely resolution of individual complaints for consumers.
- (b) systemic issues being identified and fixed for consumers more quickly.

e) What would banks need to enable BCCC requests to be incorporated into bank audit and risk monitoring plans?

We have no submissions to make in response to this question.

f) How could the BCCC help to reduce the workload for banks in reporting, without diminishing the intelligence gathered or reducing the confidence of stakeholders?

The most helpful assistance that the BCCC can give Banks to reduce reporting workloads is to highlight good practice and to continue to work with Banks to reduce the number of Code breaches that they make.

Question 8.

a) Does the Charter unduly restrict the BCCC's discretion to investigate an allegation of a Code breach?

No.

b) Should the BCCC be able to investigate an allegation that is made to the BCCC more than 2 years after the person making the allegation became aware of the event (subject to the application of the Guiding Principles in clause 3.1 of the Charter)?

LAQ supports this proposal. In LAQ's experience, many clients are not aware of the BCCC or their rights to complain to it until after 2 years has passed.

c) Would there be problems if clause 5.3d) is reworded to clarify that the BCCC can investigate a Code breach allegation if another forum has considered the allegation but not made a finding as to whether or not the Code has been breached?

We are not aware of any unintended consequence with this proposal.

d) Does clause 5.4 of the Charter narrow in any respect the power of the BCCC to investigate alleged breaches of the Code, noting that the Code is clear that the law takes precedence? Is clause 5.4 unnecessary?

LAQ supports the view that Clause 5.4 is unnecessary.

Question 9. Information is sought from those who have referred a breach allegation to the BCCC as to whether they have felt sufficiently informed of the outcome, including whether they have been given the opportunity to provide any additional relevant information.

In our experience, many complainants do not feel that they receive enough information about an outcome of a claim.

Question 10. Views about the preliminary positions we have set out in paragraphs 195 to 203 are requested.

In response to paragraphs 195-203, we make the following comments:

- a. With respect to paragraph 196, LAQ supports expanding Code Clause 215(b) to allow the BCCC to require a compliance review of breach rectification actions. It is important that improvements are made to systems and processes following Code breaches to ensure that the same breaches do not occur again.
- b. With respect to paragraph 197, LAQ supports the BCCC having the power to report serious or systemic non-compliance with the Code to ASIC. It is a power already held by the General Insurance (GI) Code Compliance Committee and has not seen insurers any less open with the GICCCC.

- c. With respect to paragraph 198, LAQ supports the BCCC having the power to name a bank for very serious non-compliance with the Code.
- d. With respect to paragraphs 201 and 202, in general LAQ supports the BCCC taking a role in commenting on the appropriateness of a breach remediation scheme but agrees that this role would be better performed by the AFCA Systemic Issues team.
- e. With respect to paragraph 203, LAQ strongly supports the BCCC having the ability to sanction a Bank by requiring it to make a community payment.

Question 11.

Views about the adequacy of BCCC resourcing are welcomed. In particular:

a) Whether there is a sound strategic basis for determining BCCC resourcing?

We have no submissions to make in response to this question.

b) Whether resourcing is keeping pace with the expanded scope and expectations of the 2019 Code?

We have no submission to make in response to this question.

c) Whether extended delivery times would be improved by a modest increase in appropriately skilled resourcing?

We have no submissions to make in response to this question.