

Customer Owned Banking Code of Practice

Independent Review 2019

Terms of Reference

1. Introduction

The Customer Owned Banking Code of Practice (the Code) is the code of practice for Australia's mutual banks, credit unions and building societies which has been in force since 1 January 2014 in its current form.

The Code provides for a review of the Code at least every 5 years. The Review is to be commissioned by the Customer Owned Banking Association (COBA) and will be completed in consultation with stakeholders.

In 2018 COBA formed a Code Review Advisory Committee (the Committee) made up of representatives from COBA members and COBCOP subscribers to provide advice to COBA to help guide the review process and shape the strategic direction of the revised Code.

COBA commissions this review on 18 December 2018 and expect the review to be completed by 30 June 2019.

2. COBCOP Code Review Objectives

The Code review is taking place in an ever-changing legal and regulatory environment and at a time where there is heightened scrutiny on the culture and accountability of financial institutions.

Whilst customer owned banking institutions are subject to the same regulatory framework as listed banks and are competing in the same business of retail banking, they exist for an entirely different reason. They exist to meet the needs of their customers rather than to maximise returns for a separate group of shareholders.

The Code is a statement of the commitment that customer owned banking institutions make to their customers – their owners. Because of this difference, the customer owned banking sector wants to retain a different code of practice from the Banking Code of Practice.

It is essential that the Code is effective in enhancing the capacity of customer owned banking institutions to serve consumer interests and to continue the trust and confidence consumers have in customer owned banking institutions now and in the future.

To achieve this, the independent review will:

- consider the effectiveness of the Code and identify the relevance and operation of the Code considering the changes in the legal and regulatory environment, including the role of self-regulation
- consider views about banking practices to ensure the Code continues to set standards for good banking practices, building on customer owned banking institutions' legal obligations and other relevant industry codes, standards and guidelines and reflecting consumer needs and behaviour and community expectations
- make recommendations on how the customer owned banking sector can strengthen the operation of the Code and promote informed and effective relationships between customer owned banking institutions and their customers
- focus on an outcome where customer owned banking institutions and consumers are clear about their rights and responsibilities and where the Code articulates the standards of behaviour expected of customer owned banking institutions, including promotion, training, and education of the Code
- consider the recent review of the Banking Code of Practice and the findings of the gap analysis between the new Banking Code of Practice and the Customer Owned Banking Code of Practice
- consider the Interim Report (and Final Report when published) of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, and
- conduct the review in such a way that meets the requirements under ASIC's RG183.

3. Scope of the Review

The review will cover all provisions of the Code and any additional matters considered relevant to be included in the Code. The Code reviewer will give specific attention to assessing and considering:

- purpose and role of the Code in setting the standards for good banking practices and the benefits that the Code provides to customer owned banking institutions and their customers
- structure of the Code and clarity in communicating the standards for good banking practices to customer owned banking institutions and their customers
- the extent to which the Code demonstrates customer owned banking institutions commitment to putting their customers first
- the effectiveness of the key commitments of customer owned banking institutions and whether these commitments meet consumer and community expectations
- the role and mandate of the Code Compliance Committee and the incentives for compliance by customer owned banking institutions with the code, and
- the effectiveness of the enforcement provisions within the Code.

In addition, the Code reviewer will have regard to the following:

- definitions, including practical definitions of banking services and small business

- laws and regulations covering banking services to individual and small business customers and the extent to which new legal obligations to act in the client's best interest and responsible lending principles are appropriately addressed or require any amendment to the Code
- sales, distribution, advertising and marketing practices of customer owned banking institutions
- the extent the Code covers the practices and qualifications of intermediaries and others customer owned banking institutions use in the course of providing banking services
- commitments to accessibility and financial inclusion, including account suitability and basic bank accounts, financial literacy and the implications of technology developments on banking services, and
- the desirability for the Code to provide for customer owned banking institutions to develop standards for communicating and dealing with vulnerable customers including (but not limited to) older persons, customers with a disability, indigenous customers, customers with mental health issues, customers in financial difficulty, customers experiencing family violence, and customers with language and cultural barriers.

In addition, the Code reviewer is asked to conduct the review in such a way and make recommendations about ways in which the new Code should be structured and what it should contain to comply with ASIC's *Regulatory Guide 183: Approval of financial sector codes of conduct*.

Our preference is for the revised Code to be structured in two parts. Part One should be a short statement of principles setting the ethical and service expectations that customers can expect any customer owned banking institution to live up to. Part Two should be 'Practice Rules' setting out the binding detailed rules and obligations that Code subscribers must meet. We are seeking feedback from stakeholders about this approach.

4. Consultation

COBA will write to stakeholders requesting submissions and the Code reviewer will conduct the review in consultation with:

- Customer Owned Banking Code Compliance Committee
- consumer and small business organisations
- financial services industry representatives
- Finance Sector Union and employees of customer owned banking institutions
- relevant regulatory bodies
- COBA members, and
- other interested stakeholders.

5. Final Report

The Code reviewer will assess submissions received on the Terms of Reference and feedback provided and prepare a report. A draft report will be issued to facilitate further consultations.

A final report will be published with findings and options about changes to improve the operation and performance of the COBCOP. The findings and options presented by the report will take into account the submissions of all interested parties but will be determined and framed according to the independent judgement of the Code reviewer.

The findings and options will be those of the Code reviewer. COBA and its members will need to consider the report and determine their response and any next steps.

6. Timing

The independent review is to be conducted in a timely, transparent and accountable manner. A final report will be published by the end of June 2019.

The implementation of the independent review final report's recommendations will require assessment by COBA and changes to be determined. Commencement and transitional arrangements for the revised Code will reflect the nature of the changes made.

7. Independence

COBA will appoint the COBCOP reviewer but the Code reviewer and secretariat will act independently of COBA.

8. Confidentiality

It will be assumed that submissions are not confidential. Submissions may be published on the Code review website established for this review and be publicly available. If a submitter wants their submission, or any part of it, to be treated as "confidential" please indicate this clearly.

The Code reviewer reserves the right to not publish submissions or other material received by the Code reviewer in the course of this review that is offensive, potentially defamatory, or clearly falling outside the scope of the review.