

13 March 2019

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Dear Mr Khoury

Review of the Customer Owned Banking Code of Practice ([the Code](#))

The Customer Owned Banking Code Compliance Committee ([the Committee](#)) welcomes the opportunity to make a submission to this review.

The Committee is the independent compliance monitoring body established under Section 3 of the Customer Owned Banking Code Compliance Committee Charter ([the Charter](#)) and Part E of the Code, under the authority of the Board of the Customer Owned Banking Association ([COBA](#)).

It is comprised of an independent chair, a person representing the interests of the customer owned banking industry and a person representing the interests of individual customers and communities. This is consistent with the model for self-regulatory governance under ASIC's [Regulatory Guide 183](#) 'Approval of financial services sector codes of conduct'.

The Committee's Charter sets out its powers and functions, which include:

- monitoring Code subscribers' compliance with the Code's obligations
- investigating an allegation from any person that a Code subscriber has breached the Code, and
- imposing sanctions at its discretion for Code breaches.

Pursuant to Section 4.4 of the Charter, the Australian Financial Complaints Authority ([AFCA](#)) provides staffing and administrative support to the Committee.

Our submission to the Code review

The Committee is making this submission to the review of the Code having operated under the Committee's Charter since 1 January 2014 and having monitored the 2014 version of the Code (including its subsequent two amendments in July 2016 and January 2018).

The broad issues identified by the Committee are outlined below for your consideration and are mapped to the objectives listed in the Customer Owned Banking Code of Practice Independent Review 2019 Terms of Reference ([Terms of Reference](#)).

The Committee would also like to refer to its various publications addressing Code subscribers' compliance with the Code, good industry practice and areas for improvement, such as the Committee's [Annual Compliance Reports](#), [Inquiry Reports](#), [fact sheets](#) and [insights](#). These are all available on the Committee's [website](#).

Committee's expectations

The Committee values an ongoing dialogue with the reviewer during the course of the review to ensure the revised Code is as good as it can be and continues to protect the interests of Australian consumers and communities. This includes being given an opportunity to respond

in a timely fashion to any draft recommendations issued by the reviewer and the subsequent implementation phase of the revised Code.

When ascertained, the Committee would appreciate receiving detail regarding the format and timeframes for the various stages of the review, so it can budget and plan for the necessary resources accordingly. We note the Request for Submissions document, including the series of questions regarding the structure, key promises, practice commitments along with Code administration and compliance. We would welcome the opportunity to contribute to the questions specific to Code compliance in more detail as the review progresses.

Issues for comment by the Committee

The following list is mapped to the wording of the Terms of Reference and reflects the order of importance for the Committee:

The role and mandate of the Code Compliance Committee and the incentives for compliance by customer owned banking institutions with the Code.

- The Committee considers that it is important to retain a focus on the Royal Commission outcomes and its implications on the review of this Code. This is not just limited to the various recommendations made by the Commissioner but extends to his four observations about the financial services industry and the norms of conduct that reflect the fundamental precepts on which an industry code should be based.
- The Review should include a review of the Charter ensuring that the reviewed Code be reflected in corresponding changes to the Charter and to reflect good governance in line with ASIC's RG183.
- Review of sanctioning provisions in the Charter, including whether the grounds for imposing sanctions are too restrictive. For example, the ability of the Committee to report systemic and significant or serious Code breaches, and serious misconduct to the most appropriate regulator(s).
- Further develop a broader range of sanctions, including more robust sanctions available to the Committee such as formal warnings, reporting provisions to ASIC and other regulators as applicable, potential suspension or termination of subscription to the Code and the enforceable undertaking of independent audits.

The effectiveness of the key commitments of customer owned banking institutions and whether these commitments meet consumer and community expectations.

- The key commitments of the Code must be enforceable and clearly articulated to reflect binding commitments.
- Particularly following the Royal Commission, consumer advocates are raising questions about whether monitoring resources and sanctions are adequate to deter breaches.

Enforceability needs to be well defined within the Code to ensure that all provisions are equally enforceable.

The 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.

- The Code should reflect a set of enforceable rules and measures put in place to regulate industry conduct, its staff and their relationship with customers and communities.
- The role of the Code is to improve industry standards which go beyond legislative requirements with the aim to encourage consumers' trust and confidence.

The structure of the Code and clarity in communicating the standards for good banking practices to customer owned banking institutions and their customers.

- The Code should be written in plain English, clearly communicating its enforceable commitments to consumers and communities. Consequences for failures to comply should also be clearly articulated.

The Code should be flexible enough to absorb changes to the customer owned banking industry (such as advances in technology or new product offerings) and be capable of being easily modified to respond to changes in consumer and community needs or expectations or industry behaviors (in consultation with stakeholders) as they arise.

The effectiveness of the enforcement provisions within the Code.

- The Committee's view is that the Code should continue to be enforceable by reference into the terms and conditions of the facilities to which it applies.
- Beyond that though consideration should be given during the course of the review to the impact of the Royal Commission commentary regarding the enforceability of code provisions.

Code sanction provisions need to be strengthened as noted previously and clearly articulated within the Code.

Definitions, including practical definitions of banking services and small business.

- Clarification of the word 'complaint' in comparison to a complaint regarding an 'alleged breach of the Code'. The current Code and the Charter use the words 'complaint' and 'alleged Code breach' in a confusing manner which does not differentiate the internal/external dispute resolution process from investigation of an alleged Code breach. They also mirror external dispute resolution principles in the consideration of matters when the Committee's primary concern is the consideration of a breach rather than "fairness in all the circumstances".
- The Committee's view is that, if possible, the small business definition to align with the current AFCA definition.

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.

The current Code is inadequate on the topics of co-borrowers and guarantors (see Committee's [case study](#) published in May 2018).

Sales, distribution, advertising and marketing practices of customer owned banking institutions.

- Amend the Code to include a key commitment that clearly documents an agreed standard for sales and referral activity including the use of third party suppliers.

- Develop guidelines to ensure that employees, Authorised Representatives and other third-party sellers conduct sales appropriately and do not engage in pressure selling and other unacceptable sales practices, or practices that do not meet community standards and expectations.
- Develop a clear definition of third party providers and ensure that the Code covers these sales channels.
- Marketing materials must be clear and concise.
Embed simplicity and clarity as key features in product information for all financial products offered to encourage customers to gain a good level of early understanding of financial products they are considering.

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.

- Extend Code training provisions, currently addressed in Key Promise 5 and part E section 2 of the Code, to ensure that all employees and Authorised Representatives of Code subscribers are adequately trained and qualified, specifically including third party product sellers and distributors.

Commitments to accessibility and financial inclusion, including account suitability and basic bank accounts, financial literacy and the implications of technology developments on banking services.

- Develop a provision to ensure that Code subscribers are obliged to pro-actively seek and adopt solutions in response to changing community expectations and technological developments and address any such gaps in a timely manner. .

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.

- Develop standards that recognise that some customers have special needs such as persons with a disability and/or mental health concerns, older persons, people from non-English speaking backgrounds, people living in regional and remote communities, Indigenous people (in particular the AUSTRAC identification principles), people who suffer abuse, trauma or disadvantage, due to a catastrophe, family violence or socioeconomic disadvantage.
- Develop standards that ensure that such customers are not disadvantaged because of their special needs and are treated with respect and support, including recommending such customers to contact appropriate additional support services where required.
- Include obligations for Code subscribers to assist, train and monitor all staff to identify customers that require particular support and to engage appropriately with such customers.
- Ensure the Code definitions of 'Financial Hardship' and 'Responsible Lending' obligations are consistent with legislation.

Structure of the Code

The Committee supports the current structure of the Code in two parts, as long as both parts are equally binding on Code subscribers and all provisions are meaningful and enforceable.

Other items for noting

- Training is of vital importance to enhance professionalism in the industry. The training of Code Subscriber employees, Authorised Representatives, third-party product provider employees along with the monitoring of this training is critical. This should be addressed under a separate stand-alone obligation in the Code.
- Non-compliance with direct debit obligations continues to be unacceptably high despite the importance of these obligations for the safeguard of consumers. A larger range of sanctions would allow the Committee access to a broader range and more appropriate responses to breaches.

ASIC approval of the Code

The Committee supports that this review should also consider the benefits of the Code becoming more aligned with the requirements of ASIC's RG183 and that COBA should be seeking approval of the Code by ASIC under this regulatory guide. Such approval would:

- make more robust sanctions available to the Committee
- include a referral mechanism for systemic Code breaches and serious misconduct to ASIC, where that breach is likely to be a breach of the Corporations Act, the ASIC Act or other relevant legislation, and
- require the Code to be *independently* reviewed at intervals of no more than three years (eg Section E23 of the Code currently requires COBA to arrange a review of the Code every five years).

Availability for further discussions

The Committee would be pleased to meet with you to discuss these high-level recommendations in further detail. If you have any questions or would like to discuss any aspect of this submission or the Committee's role, please do not hesitate to contact me c/o Sally Davis, General Manager Code Compliance and Monitoring, on 03 9613 7341 or by email at SDavis@codecompliance.org.au.

Yours sincerely



Jocelyn Furlan

Chair

Customer Owned Banking Code Compliance Committee