

18 April 2019

Mr Phil Khoury
Independent Reviewer
Customer Owned Banking Code of Practice Review

Email: cobcop.review@crkhoury.com

Dear Mr Khoury

Customer Owned Banking Code of Practice 2019 Independent Review

The Customer Owned Banking Association (COBA) looks forward to engaging with Review of the Customer Owned Banking Code of Practice (COBCOP) on this submission.

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies). Collectively, our sector has \$118 billion in assets, 10 per cent of the household deposits market and 4 million customers.

Customer owned banking institutions account for around three quarters of the total number of domestic Authorised Deposit-taking Institutions (ADIs) and deliver competition and market leading levels of customer satisfaction in the retail banking market.

The COBCOP is the code of practice for Australia's credit unions, mutual banks and mutual building societies and commenced on 1 January 2014, following the completion of an independent review of the COBCOP's predecessor, the Mutual Banking Code of Practice. While it is a voluntary code, almost all COBA members have chosen to subscribe to the COBCOP and are bound to comply with it.

The COBCOP provides confidence to customers of credit unions, mutual banks and mutual building societies in knowing they are covered by a market leading, plain English commitment by customer owned banking institutions to fair and responsible banking practices. As a customer-facing document, the COBCOP sets that standards of conduct with which subscribers interact with customers.

The COBCOP is the public expression of our sector's commitment to these fundamental operating principles – a legal and moral commitment to delivering on our promises to our customers – and is an excellent example of the value customer owned banking institutions place on improving the financial wellbeing of their customers and their communities in which they operate in and are part of.

The COBCOP specifies that it is to be reviewed by COBA in consultation with stakeholders at least every 5 years. We strongly support the review process and believe that regular reviews of the COBCOP are important to ensure that it continues to clearly express the customer owned banking sector's strong ongoing commitment to fair and responsible banking practices.

COBA agrees with the Review Issues Paper that the Review is taking place at a time of heightened scrutiny of the culture and accountability of financial institutions, particularly from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Royal Commission). In this context, COBA recognises that there is a need for targeted policy and regulatory responses to address the misconduct that has been identified.

COBA notes from the Review Terms of Reference that the Review is to cover all provisions of the COBCOP, and any additional matters considered relevant to be included in the COBCOP.

In particular, COBA notes that the Review is also to have regard to the recent review of the Australian Banking Association's Banking Code of Practice (BCOP) and the Royal Commission.

ASIC Approval & ABA's new BCOP

In relation to the ABA's new BCOP, which will commence operation from 1 July this year, COBA recognises that ASIC approved the new BCOP in July last year, and that the new BCOP is the first broad-based industry code that ASIC has approved under its relevant powers. COBA recognises the significance of ASIC-approval and therefore the need to consider the new BCOP as part of the Review.

It is COBA's intention to seek ASIC approval for the revised COBCOP.

COBA is strongly of the view that there continues to be a clear case for the COBCOP to remain distinct from the ABA's code.

Our sector's ownership model is a fundamental distinguishing feature for our member institutions compared to investor owned banks. Customer owned banking institutions are concerned with outcomes for customers rather than outcomes for a separate group of shareholders.

As noted by the Interim Report of the Royal Commission,

"the interests of shareholders are not the same as the interests of customers. It may be that they are opposed. Shareholders will see what happens at the entity only through the lens of dividend and share price. Some shareholders will take a short term view of both dividends and share price, others may have a longer term view. But customers are concerned only with how the entity's conduct affects them in their dealings with the entity."¹

Customer-owned banking institutions have a different purpose than their listed bank peers and they can express this purpose in their industry code. The COBCOP is part of the glue that binds our sector and a strong customer owned banking sector is important for competition and choice in retail banking. Ultimately it is competition and choice that optimises outcomes for consumers.

The new ABA code was developed as part of the six point plan announced by the ABA to "build trust and confidence in banks"² and "was tailored specifically for the types of banks it represents"³, i.e. largely investor-owned banks including the four major banks. At the time the ABA announced the six point plan it was resisting calls for a Royal Commission into banking that it saw as "unnecessary and a waste of taxpayer funds."⁴

Eight of COBA's larger members were asked by the Royal Commission at an early stage to provide information concerning instances of misconduct or conduct falling below community standards and expectations that the entity had identified in the past 10 years. The responses explained the natural customer focus of our model and indicated that although our sector is not immune from conduct risk, that risk is relatively low. Importantly, the submissions emphasised our sector's culture of response and remediation when problems occur.

The key point is that no customer owned banking institutions were called to appear before the Royal Commission and none were subject to criticism by the Royal Commission.

Having set out this context, COBA emphasises that we nevertheless see BCOP as a critical element for considering the future of the COBCOP and for the work of the COBCOP review.

COBA appreciates the Review Issues Paper emphasising that customer owned banking institutions are "very focused on retail banking" and "have a much lower percentage of business customers and operate without many of the resources of other larger banks". Further to this important point, we would add that

¹ Interim Report of the Financial Services Royal Commission, September 2018, p318

² ABA media statement 7 July 2016 *Review of Code of Banking Practice commences*

³ ABA media statement 7 September 2018 *New Banking Code standards should be adopted by entire industry*

⁴ ABA media statement 8 April 2016 *ABA rejects ALP call for a royal commission*

COBA members do not operate internationally or offer their customers risky or complex financial products. Customer-owned banking institutions serve a number of niche communities in Australia, including regional areas and particular industries or occupations, such as teachers, police and defence personnel, and also the wider Australian community.

Our view is that the COBCOP must continue to be customer facing, easy to understand, brief and succinct, and clearly state our sector's ownership model and purpose.

Among the many strengths of the current COBCOP is its plain English style and the 10 Key Promises that are part of the COBCOP and therefore form part of the contract with customers. The 10 Key Promises in the current COBCOP have stood the test of time – they are a set of succinct and consumer-friendly commitments that we stand behind.

While COBA recognises the need to match the fundamental consumer protections in the new BCOP, we see consumer benefit in positively distinguishing the COBCOP from the BCOP. We propose to enhance the 10 Key Promises by developing a new number 1 Key Promise that is focussed on the customer owned model and purpose.

As noted above, the 10 Key Promises in the COBCOP are part of the contract with customers (i.e. the promises are part of the COBCOP). They are not a non-binding preamble or guidance. This aspect of the COBCOP also distinguishes it from the ABA's BCOP because while the BCOP includes "guiding principles", those principles are not part of the BCOP itself and are therefore not part of the contract.

With respect to the remaining provisions of the COBCOP, our proposed approach is generally to continue to meet the same consumer protection standards as the ABA's BCOP, except where doing so would be:

- unnecessary (e.g. stating the existing law or soon-to-become law)
- irrelevant to the customer owned banking sector, or
- overly burdensome relative to the potential customer benefit.

On this latter point, we urge the Review to keep in mind that competition is harmed by excessive regulatory compliance costs and for the customer owned sector all costs are ultimately borne by customers.

Where we propose in the specific alignment issues identified in the Appendix equivalent provisions to the new BCOP, the proposal is subject to further and final consideration and assessment of the compliance burden of each position.

Our preference is to leave open the prospect of going further than the new BCOP in some areas if there is an appetite to do so and/or doing so does not impose a disproportionate compliance burden on our sector compared with investor-owned banks.

In summary, the proposed approach is designed to allow our sector to use the code to signal clearly to the market (including current and prospective employees) that there is an alternative to the investor-owned model in banking. This approach would allow our sector to demonstrate to stakeholders, such as regulators and consumer groups, that we are committed to the same or better customer protection standards as the investor-owned banks but that the motivation of our sector is entirely different.

Enforceable Code Provisions

The Royal Commission recommended that certain provisions of financial sector codes should be 'enforceable code provisions'. In its response to the Royal Commission, the Government agreed to this recommendation to provide ASIC with additional powers to approve enforceable code provisions.

Treasury's consultation paper on the enforceability of financial services industry codes sets out a series of questions which seek to inform the development of legislation to enact the Government's commitment to implement recommendation. The consultation paper states that "industry codes are expressed as promises made by industry participants to those with whom they interact. However, the status of these

promises is not always clear, which in turn means that those promises are not always enforced, whether by individuals or the regulator.”

COBA understands that the objective of having enforceable provisions in respect of which a contravention will constitute a breach of the law is to “give certainty and enforceability to key code provisions that govern the terms of the contract made or to be made between the financial services entity and the customer or guarantor.”⁵

The nature and scope of “key code provisions” is to be determined.

Our general view, in the absence of a final legislative framework, is that these reforms are likely to have a material impact of the future form and substance of financial sector codes of conduct. We recognise that this may affect our capacity to draft a code that meets our objectives of being customer facing, easy to understand, brief and succinct and that clearly states our sector’s ownership model and purpose.

However, despite the uncertainty, we support moving forward with the COBCOP review.

Set out at the **Appendix** of this submission is further detail about COBA’s proposed new number 1 Key Promise and a high-level comparative analysis of the COBCOP relative to the BCOP which the Review may find useful to identify areas for potential improvement. The **Attachment** (after the **Appendix**) to this submission deals with issues that are not covered, or not covered to the same level of detail, by the COBCOP and which are not addressed in this submission.

Given the dynamic environment for financial services industry codes, COBA appreciates the range of views expressed by key stakeholders on issues that may be relevant to be included in the new COBCOP and respectfully encourages the Review to carefully consider all views raised.

We note, in particular, stakeholder views on important issues such as, but not limited to, inclusivity and accessibility, small business lending, the selling of consumer credit insurance and working with customers experiencing financial difficulty.

This submission broadly examines a number of the key issues raised by stakeholders and outlines, for the Review’s consideration, COBA’s proposed approach to addressing these in the new COBCOP.

COBA looks forward to continuing to work with you and other key stakeholders to progress the Review and would welcome an opportunity to participate in roundtable discussions.

In the interim, if you have any questions or comments in relation to any aspect of our submission, please contact Tommy Kiang, Senior Policy Manager, on 02 8035 8442 or at tkiang@coba.asn.au.

Yours sincerely



MICHAEL LAWRENCE
Chief Executive Officer

⁵ Final Report of the Financial Services Royal Commission, February 2019, p108

A. Improving the COBCOP's 10 Key Promises

The new Number 1 Key Promise

COBA proposes to improve the 10 key promises by drafting a new Number 1 Key Promise that is focussed on the customer owned banking model and purpose. Presently, the only reference to our model in the 10 Key Promises is Promise number 7:

Promise 7: We will recognise our customers' rights as owners

As customer owned banking institutions our customers are our owners. We will ensure that you receive information that is balanced and adequate on the benefits, costs and impacts of any reasonable proposal to change our ownership structure. As far as possible, we will ensure that any information on proposals to change our ownership structure provided to you by other parties is fair and not misleading."

We propose to replace this defensive promise with a more positive promise expressing our model and purpose rather than anticipating potential changes to the ownership structure.

COBA's proposed new number 1 Key Promise is:

Promise 1: We will always recognise that our customers are our owners and the reason we exist

Our customers are our owners and we exist to meet their needs. Our customers, as our owners, can choose to have a say in how we operate. We are a mutual company and that means each member of the company has no more than one vote at a meeting of the company.

To the extent that the COBCOP needs to provide more context and background about the customer owned banking model, our purpose and the COBCOP, COBA proposes that this be done in the COBCOP's non-binding preamble.

Other than deleting current Promise 7, the current promises are unchanged but shuffled down one rung (i.e. current Promise 1 becomes Promise 2).

B. Comparative Analysis of the COBCOP Relative to the ABA's new BCOP

Key alignment issues identified

This section broadly outlines six key alignment issues between the COBCOP and the ABA's new BCOP, which include inclusive and accessible banking, small business lending, loan guarantors, liability of co-borrowers, selling consumer credit insurance and customers experiencing financial difficulty.

The identified key alignment issues below are explored at a more granular level at the section immediately following, titled 'Specific alignment issues identified'.

1. *Customers experiencing financial difficulty*

COBA notes that the ABA's new BCOP commitments regarding the approach to helping customers experiencing financial difficulty are further developed and include a number of additional commitments not found in the present version of the COBCOP.

COBA's view is that the COBCOP can be modified to include similar commitments while avoiding excessive prescriptive detail and without imposing significant additional compliance burdens on COBCOP subscribers.

COBA encourages to the Review to consider how the COBCOP can be modified to ensure that future provisions commit to helping customers experiencing financial difficulty and appropriately align with the ABA's new BCOP.

2. *Inclusive and accessible banking*

COBA notes that Part 4 of the ABA's new BCOP makes a number of detailed commitments to inclusive and accessible banking.

In contrast, the COBCOP makes one general reference in Key Promise 2 to "tailoring" customer service standards to customers with special needs – with some examples provided – where the COBCOP subscriber is aware of those special needs.

In this respect, COBA believes that there is scope to modify the COBCOP to elaborate on the customer owned banking sector's commitment to inclusive and accessible banking.

3. *Liability of co-borrowers*

COBA recognises that some stakeholders would prefer a more restrictive approach than what is included in the current COBCOP, which requires that co-borrowers receive a 'benefit' from a loan to be approved as a co-borrower (and therefore be liable in the event of default, for example). In contrast, the ABA's new BCOP includes a "substantial benefit" test.

COBA recognises that the COBCOP's 'benefit' test has been the subject of commentary by the then Financial Ombudsman Service (FOS), which at that time issued a determination that reduced the liability of a co-borrower who received no 'real' benefit from a loan facility.

In that determination, FOS noted it was not enough for the applicant as co-borrower to have received 'some' benefit under the loan, and, in circumstances where the co-borrower receives a limited benefit from a loan, their liability will be restricted to those funds from which they received a direct benefit.

COBA encourages the Review to consider an appropriate approach further restricting when co-borrower might be approved for a loan by tightening the existing 'benefit' test in the COBCOP.

4. *Loan guarantors*

COBA notes that the ABA's new BCOP includes detailed commitments in relation to protecting loan guarantors. COBA recognises that several of these commitments go beyond the current COBCOP provisions, while other commitments appear to reflect current industry practice.

COBA recognises that the commitments in the ABA's new BCOP may also be applied to non-BCOP subscribers through decisions by AFCA and/or the Courts. Given the complexity associated with issues such as guarantor protection, our view is that there appears to be a clear case to modify the COBCOP so that it is aligned with the ABA's new BCOP.

On this basis, COBA encourages to the Review to consider an approach to have this issue appropriately recognised in the revised COBCOP.

5. *Selling consumer credit insurance*

COBA recognises that key stakeholders have called for the new COBCOP to incorporate equivalent provisions, as in the ABA's new BCOP, on the sale of consumer credit insurance (CCI) given the material issues identified by ASIC with industry practices in selling CCI.

ASIC has written to COBA suggesting that the COBCOP should go further than the ABA's new BCOP in applying rules around the sale of CCI. Specifically, ASIC asks us to consider applying a deferred sales model for CCI to home loans as well as credit cards and personal loans sold through all channels. Applying the BCOP CCI rules to home loans is a significant step. The pros and cons would need to be carefully considered.

ASIC suggests that the deferred sales period should commence from loan approval rather than from the loan application date.

ASIC also suggests the major additional step of "committing to cease unsolicited sales of all insurance products including CCI."

COBA considers that it is a reasonable expectation for COBCOP to replicate the BCOP provisions on selling CCI. COBA would welcome from the Review consideration around how the COBCOP can be modified to incorporate these provisions and potentially some enhanced protections around the deferred sales period.

However, we urge caution in responding to the proposal to cease unsolicited sales of all insurance products.

This proposal raises many questions. What is the objective? What does “unsolicited” actually mean? Would it prohibit a conversation about car insurance for a customer obtaining a car loan? What impact would it have on the requirement for customers obtaining a home loan to have home insurance?

The future of the regulation of sales of CCI is subject to implementation of the bipartisan positive response to relevant Royal Commission recommendations (e.g. Recommendation 4.3) and the implementation of the new laws just passed creating design and distribution obligations for product issuers and giving ASIC a product intervention power.

These statutory changes affecting sales of CCI raise questions about potentially overlapping obligation in industry codes and the law, particularly given that the relevant code provisions may be “enforceable provisions” (Royal Commission recommendations 1.15 and 1.16, refer).

6. *Small business lending*

COBA notes that the protection of small business borrowers is a central element of the ABA's new BCOP, which includes the following:

- A new definition of small business requiring that the business to be covered must have an annual turnover of less than \$10 million, have fewer than 100 full-time equivalent (FTE) employees, and have less than \$3 million total debt to all credit providers.
 - In contrast, the COBCOP definition⁶ of small business limits coverage to a business with fewer than 20 FTE (with exception to manufacturing, where the business can have fewer than 100 FTE), although there is no reference to turnover or total debt.
- A revised formulation of what constitutes lending in a responsible way to small business which, among other things, focusses on the role of third-party securities in small business lending⁷.
 - In contrast, the COBCOP makes no distinction between lending to individuals and lending to small business, thereby effectively extending National Credit Act-like requirements on COBCOP subscribers that lend to small businesses.
- A set of commitments around disclosure, enforcement, non-monetary defaults and other matters. In contrast, the COBCOP does not make any specific commitments in these areas.

The customer owned banking sector's involvement in small business lending is very limited compared to its residential lending exposure. There does not appear to be a clear case to modify the COBCOP to differentiate it from the BCOP by committing to higher standards, for example.

COBA recognises that there needs to be a degree of explicit recognition in the future COBCOP of the sector's involvement in small business lending. At the very least, COBA considers that COBCOP subscribers and their small business lending customers will likely benefit from a future COBCOP that shifts away from its current conflation of responsible lending in the consumer and small business contexts.

On this basis, COBA encourages to the Review to consider an appropriate approach to have small business lending explicitly recognised in the revised COBCOP.

⁶ Small business definition in the Appendix of the COBCOP.

⁷ Paragraph 51 of the ABA's new BCOP refers.

We note the Council of Financial Regulators' support for maintaining the current \$3 million total credit exposure threshold in the BCOP small business definition "for the time being" in light of "a tightening in credit conditions for small businesses".⁸

Specific alignment issues identified

This section identifies specific alignment issues between the COBCOP and the ABA's new BCOP and broadly outlines COBA's proposed modifications to the COBCOP. Identified below are the relevant sections and paragraphs of the ABA's new BCOP, immediately followed by COBA's proposals.

Where the Review supports a proposed modification to the COBCOP, we would welcome from the Review consideration around how the proposed modification could be made.

1. General operation of the code

Provisions relating to publication and review of codes of practice

- The ABA's new BCOP makes the following commitments:
 - i. Par. 6: "The ABA will arrange for the Code to be independently reviewed at least every three years from the date this Code comes into effect."
- **Proposed modification to the COBCOP:**
 - i. On Par. 6: The COBCOP presently commits to undertake a review at least every 5 years (Part E 23 of the COBCOP refers). COBA proposes a modification to the COBCOP to commit to review every 3 years, given the rapidly evolving nature of the customer owned banking sector and financial services sector more generally.

2. Opening an account and service use

Provisions relating to customer communication

- The ABA's new BCOP makes the following commitments [Chapter 9]:
 - i. Par. 17: "We will communicate with you in a timely manner and we will give you information that is useful and clear."
 - ii. Par. 19: "Where this Code requires us to communicate in writing, this includes electronic communications."
 - iii. Par. 20: "All communication under this Code will be consistent with our obligations under the law or other applicable codes".
 - iv. Par. 23: "If you ask us for advice on any of our banking services, then we will:
 - a) give it to you through staff who are authorised and trained to give you that advice; or
 - b) refer you to someone else who can provide you with advice – for example: a lawyer, accountant, financial adviser or financial counsellor."
- **Proposed modifications to the COBCOP:**
 - i. On Par. 17: While this is covered by D2 and D3 of the COBCOP, it is without reference to 'timely manner'. COBA proposes incorporating 'in a timely manner' to D2 and D3 in the COBCOP (as per the ABA's new BCOP).
 - ii. On Par. 19: COBA proposes to make it explicit in the COBCOP that 'writing' includes electronic communications (as per the new BCOP).
 - iii. On Par. 20: COBA proposes to modify the COBCOP to state that all communications will be consistent with 'applicable codes' as well as law.

⁸ RBA Financial Stability Review, April 2019, p62

- iv. On Par. 23: COBA proposes to incorporate an equivalent provision regarding responding to requests for advice, although recognising that this would be consistent with current practice.

3. Inclusivity and Accessibility

Provisions relating to inclusiveness and accessibility

- The ABA's new BCOP makes the following commitments [Chapter 13]:
 - i. Par. 32: "We are committed to providing banking services which are inclusive of all people including:
 - a) older customers;
 - b) people with a disability; and
 - c) Indigenous Australians, including in remote locations."
 - ii. Par. 33: "We will train our staff to treat our diverse and vulnerable customers with sensitivity, respect and compassion."
 - iii. Par. 34: "We are committed to improving the accessibility of our banking services for people with a disability and older customers. We will take reasonable measures to enhance their access to those services."
- **Proposed modifications to the COBCOP:**
 - i. On Par. 32: COBA notes that the COBCOP includes a narrower commitment in Key Promise 2: "Our customer service standards will be appropriately tailored where we are aware that you have special needs (for example because of your age or a disability, because you are an indigenous person, because English is not your first language, or because you are unfamiliar with financial products and services)." COBA proposes to expand the scope of the current provisions under Key Promise 2.
 - ii. On Par. 33: COBA proposes to incorporate a commitment to vulnerable customer training.
 - iii. On Par. 34: COBA proposes to incorporate a commitment to taking reasonable measures to improving accessibility.

Provisions relating to customers on low incomes

- The ABA's new BCOP makes the following commitment [Chapter 15]:
 - i. Par. 42: "If you are an individual and you tell us you are a low income earner, we will give you:
 - a) Information about our accounts that may be appropriate to your needs; and;
 - b) information about our accounts:
 - i. for which standard fees and charges are low; or
 - ii. for which there are no fees and charges (if we offer such a product)."
- **Proposed modification to the COBCOP:**
 - i. On Par. 42: COBA proposes to incorporate a commitment to providing information to customers on low incomes about products that may be appropriate for their needs.

4. Applying for a loan

Provisions relating to responsible lending

- The ABA's new BCOP makes the following commitments [Chapter 17]:
 - i. Par. 51: "If you are a small business, when assessing whether you can repay the loan we will do so by considering the appropriate circumstances reasonably known to us about:
 - a) your financial position; or
 - b) your account conduct.

Where reasonable to do so, we may rely on the resources of third parties available to you, provided that the third party has a connection to you (that is, to the small business). For example where the third party is a related entity of yours (including but not limited to your directors, shareholders, trustees, beneficiaries or related body corporates), or is a partner, joint venturer, or guarantor of yours."
 - ii. Par. 52: "We also owe an obligation to any guarantor of the loan to comply with the above paragraph in assessing the borrower's ability to repay the loan."
 - iii. Par. 53: "If you are an individual applying for a loan, or an increase to a loan limit, paragraphs 54 to 56 apply to you."
 - iv. Par. 54: "If, on the information that you have provided to us in the course of applying for this loan, you will not receive a substantial benefit from the loan, we will not approve you as a co-borrower unless we:
 - a) have taken reasonable steps to ensure that you understand the risks associated with entering into the loan, and understand the difference between being a co-borrower and a guarantor;
 - b) have taken into account the reasons why you want to be a co-borrower; and
 - c) are satisfied that you are not experiencing financial abuse."
 - v. Par. 55: "A substantial benefit includes where:
 - a) you acquire a reasonably proportionate legal or equitable interest in assets purchased with the loan funds; or
 - b) a reasonable portion of the loans funds are used to repay your debts, or other obligations owed by you."
 - vi. Par. 56: "You may end your liability under the loan by giving us a written request to do so in the following circumstances:
 - a) where credit has not been provided or relied upon by any co- borrower; or
 - b) for any future advances under the loan, where we can terminate any obligation we have to extend further credit to any other co-borrower under the same loan."
 - vii. Par. 58: "If we approve your loan, and it is regulated under *the National Consumer Credit Protection Act 2009*, we will let you know that you can obtain our assessment about whether it is not unsuitable for you."
 - viii. Par. 59: "If you are a guarantor, we will let you know that you can also request a copy free of charge."
- **Proposed modifications to the COBCOP:**
 - i. On Par. 51: As canvassed earlier in this Appendix, COBA recognises that there needs to be a degree of explicit recognition in the new COBCOP to the sector's involvement in small business lending. COBA recognises that it would be unacceptable to have an insufficient set of small business lending commitments in the new COBCOP.

At the very least, COBA considers that COBCOP subscribers and their small business lending customers will likely benefit from a future COBCOP that shifts away from its current conflation of responsible lending in the consumer and small business contexts.

- ii. On Par. 52: See above our response to Par. 51.
- iii. On Par. 53: See below our responses to Paras 54 to 56.
- iv. On Par. 54: As canvassed earlier in this Appendix, COBA recognises that the COBCOP's 'benefit' test has been criticised by the then Financial Ombudsman Service (FOS), which at that time issued a determination that reduced the liability of a co-borrower who received no 'real benefit' from a loan facility.
- v. On Par. 55: See our response to Par. 54.
- vi. On Par. 56: Part D 11.3 of the COBCOP includes a similar commitment. COBA proposes to broaden Part D 11.3 so that it is more aligned with the ABA's new BCOP.
- vii. On Par. 58: COBA proposes to incorporate a similar commitment to inform a borrower that they can obtain a loan suitability assessment.
- viii. On Par. 59: COBA proposes to incorporate a similar commitment to inform a guarantor that they can obtain a copy of a loan suitability assessment.

Provisions relating to Lenders' Mortgage Insurance

- The ABA's new BCOP makes the following commitments [Chapter 19]:
 - i. Par. 69: "We may require you to pay for lenders mortgage insurance in connection with a loan you have. If we do this, we will give you a fact sheet about lenders mortgage insurance. The fact sheet will contain information outlining the key policy features."
 - ii. Par. 70: "We will not charge you more for lenders mortgage insurance than the actual cost we incur for that policy. We will not receive a commission on your lenders mortgage insurance policy."
 - iii. Par. 71: "Depending on the terms of the lenders mortgage insurance policy, if your loan is repaid or refinanced before the end of the policy, then you may be entitled to a refund of part of the fee or charge you have paid. We will explain this to you in the fact sheet."
- **Proposed modifications to the COBCOP:**
 - i. On Par. 69: COBA proposes to incorporate a similar commitment regarding the provision of a lenders' mortgage insurance fact sheet.
 - ii. On Par. 70: COBA proposes to incorporate a similar commitment.
 - iii. On Par. 71: COBA proposes to incorporate a similar commitment.

5. Guaranteeing a loan

As canvassed earlier in this Appendix, COBA recognises that the loan guarantor commitments in the ABA's new BCOP may also be applied to non-BCOP subscribers through decisions by AFCA and/or the Courts. Given the complexity associated with issues such as guarantor protection, our view is that there appears to be a clear case to modify the COBCOP so that it is aligned with the ABA's new BCOP.

Provisions relating to information provided to guarantor

- The ABA's new BCOP makes the following commitments [Chapter 26]:
 - i. Par. 96: A commitment that the terms and conditions of the guarantee will contain "a prominent notice" and what this notice will cover.
 - ii. Par. 97: A commitment that a subscriber will tell a guarantor:
 - a) about any notice of demand on borrower within previous two years; and
 - b) if any existing loan we have given the borrower will be cancelled if the guarantee is not provided.
 - iii. Par. 99: A commitment that a subscriber will give a guarantor certain documents, such as "the proposed loan contract" and "a list of any related security concerns", for example.

- iv. Par. 100: “If you are a director guarantor (other than a sole director guarantor) we will tell you that you have the right to receive the documents in paragraphs 96 to 99, and that these documents contain important information that may affect your decision to give a guarantee. You may choose not to receive some or all of the documents, and we will not influence your choice”.
- v. Par. 101: “We will give you the following information, about a borrower’s deteriorating financial position as it relates to the loan you guarantee, within 14 days’ of the relevant event:
 - a) a copy of any formal demand or default notice we send to the borrower after we send it;
 - b) a written notice if the borrower has advised us that they are experiencing financial difficulty which has resulted in a change to their loan; and
 - c) a written notice if the borrower is in continuing default for more than two months after the issuance of the default notice referred to above.”
- vi. Par. 102: “If you ask us to, we will give you additional copies of any information we have given you – we will do so within 30 days”.
- vii. Paras 104-106: A commitment that before agreeing to extend guarantee limit, the subscriber will:
 - a) give you what is required under paragraph 99
 - b) obtain your written acceptance of the extension, and
 - c) provide you with any unsatisfied notice of demand made by us on the borrower re the loan

- **Proposed modifications to the COBCOP:**

- i. On Par. 96: Part D 12.4 of the COBCOP includes a similar commitment. COBA proposes to broaden Part D 12.4 so that it is more aligned with the ABA’s new BCOP.
- ii. On Par. 97: Part D 12.6 of the COBCOP includes a similar commitment but applies to notice of demand on borrower within previous 12 months. COBA proposes to modify Part D 12.6 so that it is more aligned with the ABA’s new BCOP.
- iii. On Par. 99: Part D 12.5 and 12.6 of the COBCOP includes similar commitments. COBA proposes to modify Part D 12.5 and 12.6 so that they are more aligned with the ABA’s new BCOP.
- iv. On Par. 100: COBA proposes to incorporate a similar commitment to support guarantors’ decision making.
- v. On Par. 101: Part D 12.14 of the COBCOP includes similar commitments. COBA proposes to modify Part D 12.14 to incorporate additional disclosures about a borrower’s deteriorating financial position.
- vi. On Par. 102: COBA proposes to incorporate a similar commitment.
- vii. On Paras 104-106: Part D 12.12 of the COBCOP includes a similar commitment. COBA proposes to modify Part D 12.12 so that it is more aligned with the ABA’s new BCOP.

Provisions relating to signing a guarantee

- The ABA’s new BCOP makes the following commitments [Chapter 27]:
 - i. Par. 107: “We will not accept a guarantee from you until the third day after you have been given the information provided at paragraph 96 to 99.”
 - ii. Par. 108: “However, we can accept the guarantee earlier if you:
 - a) have obtained independent legal advice about the guarantee;
 - b) have accepted an extension of the guarantee;

- c) are a commercial asset financing guarantor, sole director guarantor, trustee guarantor or vehicle asset financing guarantor; or
 - d) you are a director guarantor and you choose to sign and deliver the guarantee earlier. We will not influence your choice.”
 - iii. Par. 109: “We will give the guarantee documents directly to you or your representative. We will not give the guarantee documents to the borrower, or to someone acting on behalf of the borrower, to arrange for you to sign the guarantee.”
- **Proposed modifications to the COBCOP:**
 - i. On Par. 107: Part D 12.9 of the COBCOP includes a similar commitment. COBA proposes to modify Part D 12.9 so that it is more aligned with the ABA’s new BCOP.
 - ii. On Par. 108: See above our response to Par. 107.
 - iii. On Par. 109: Part D 12.10 of the COBCOP includes a similar commitment. COBA proposes to modify Part D 12.10 so that it is more aligned with the ABA’s new BCOP.

Provisions relating to withdrawing or ending a guarantee

- The ABA’s new BCOP makes the following commitments [Chapter 28]:
 - i. Par. 111: “You may, by written notice to us, withdraw from the guarantees:
 - a) at any time before we provide credit under the relevant loan; or
 - b) after credit is first provided, if the signed version of the relevant loan differs in a material respect from the proposed loan we gave you before you signed the Guarantee. This does not apply to any change to the loan described in paragraph 104.
 - c) However, you may do so only to the extent of the obligations under the guarantee.”
- **Proposed modification to the COBCOP:**
 - i. On Par. 111: COBA proposes to incorporate a similar commitment.

Provisions relating to enforcing rights under a guarantee

- The ABA’s new BCOP makes the following commitments [Chapter 29]:
 - i. Par. 113: “We will not enforce any mortgage or other security you have given us in connection with the guarantee unless we have first enforced any mortgage or other security that the borrower has provided for the guaranteed liability. This paragraph does not apply where the guaranteed liability arises under a standard margin loan.”
 - ii. Par. 114: “We will not enforce any judgment against you under the guarantee unless:
 - a) we have first enforced any mortgage or other security that the borrower has provided for the guaranteed liability; and
 - b) if one (or more) of the following has occurred:
 - i. we have obtained Court judgment in our favour against the borrower for payment of the guaranteed liability; and the judgment debt remains unpaid for at least 30 days after our written demand for its payment;
 - ii. we have made reasonable attempts to locate the borrower but without success; or
 - iii. the borrower is insolvent.”
- **Proposed modifications to the COBCOP:**
 - i. On Par. 113: Part D 12.16 of the COBCOP includes a similar commitment. COBA proposes to modify Part D 12.16 so that it is more aligned with the ABA’s new BCOP.
 - ii. On Par. 114: See above our response to Par. 113.

6. Managing a customer account

Provisions relating to statement of transactions

- The ABA's new BCOP makes the following commitment [Chapter 31]:
 - i. Par. 121: "If you are a small business or an individual and the rules in the National Credit Code about statements of account do not apply to your loan or credit account, then we will give you a statement of transactions on your account as though those rules did apply."
- **Proposed modification to the COBCOP:**
 - i. On Par. 121: COBA proposes to incorporate a similar commitment.

Provisions relating to transaction fees

- The ABA's new BCOP makes the following commitment [Chapter 32]:
 - i. Par. 123: "If you are an individual, we will tell you about a transaction service fee immediately before you incur the fee, if it is practical and reasonable for us to do so."
- **Proposed modification to the COBCOP:**
 - i. On Par. 123: Part D 3.4 of the COBCOP includes a similar commitment. COBA proposes to broaden Part D 3.4 in the COBCOP to encompass a broader commitment to inform customers about transaction fees in advance.

Provisions relating to managing a credit card

- The ABA's new BCOP makes the following commitment [Chapter 33]:
 - i. Par. 127: "If you have an introductory balance transfer offer on your consumer credit card, we will give you at least 30 days' notice before it is due to end."
- **Proposed modification to the COBCOP:**
 - i. On Par. 127: COBA notes that this new BCOP commitment goes beyond the legislative obligations. COBA proposes to incorporate a similar commitment.

Provisions relating to direct debits and recurring payments

- The ABA's new BCOP makes the following commitments [Chapter 34]:
 - i. Par. 135: "You can ask us to cancel your direct debit request and we will promptly process this."
 - ii. Par. 136: "You can ask us to investigate an unauthorised direct debit and we will act promptly to assist you."
 - iii. Par. 137: "When we handle your cancellation or complaint, we will not inform you that you should first raise the cancellation or complaint directly with the merchant you pay through the direct debit. However, we may suggest that you also contact that merchant."
- **Proposed modifications to the COBCOP:**
 - i. On Par. 135: Part D 20.1 of the COBCOP commits subscribers to "cancel a direct debit facility linked to your transaction account if you ask us to do so, and we will give you an estimate of how long cancellation will take". COBA proposes to modify Part D 20.1 to commit to 'prompt action'.
 - ii. On Par. 136: Part D 20.3 of the COBCOP includes a similar commitment. COBA proposes to modify Part D 20.3 of the COBCOP to commit to 'prompt action'.
 - iii. On Par. 137: Part D 20.3 of the COBCOP includes a similar commitment. COBA proposes to modify Part D 20.3 of the COBCOP so that it is more aligned with the BCOP commitment.

Provisions relating to account closure

- The ABA's new BCOP makes the following commitments [Chapter 36]:
 - i. Par. 141: "We will give you readily accessible information about how to close your account."
 - ii. Par. 142: "If you want to close your account, then we will enable you to do this quickly and easily. Some products may have a minimum notice period."
 - iii. Par. 144: "If we cancel your credit card we will tell you. If appropriate, then we will give you the general reasons for doing so."
- **Proposed modifications to the COBCOP:**
 - i. On Par. 141: COBA proposes to incorporate an equivalent commitment in the new COBCOP.
 - ii. On Par. 142: Part D 22.1 of the COBCOP includes a similar commitment. COBA proposes to modify Part D 22.1 to commit to 'prompt action'.
 - iii. On Par. 144: Part D 22 of the COBCOP, does not specifically refer to credit card account closure and does not commit to providing reasons for cancelling credit accounts. COBA proposes to modify Part D 22 to incorporate a similar commitment.

Provisions relating to a customer's right to request for certain documents

- The ABA's new BCOP makes the following commitments [Chapter 37]:
 - i. Par. 148: "If we are giving you a copy of a document under the above paragraph, then we will do so within 30 days."
 - ii. Par. 149: "We may charge you a reasonable fee for providing you with a copy of a document under this Code. However, in certain circumstances we may waive or refund that fee."
- **Proposed modifications to the COBCOP:**
 - i. On Par. 148: Part D 19.2 of the COBCOP commits to a 14-day period to provide a requested document if the original came into existence 1 year or less before the request, otherwise 30 days. COBA proposes to modify the Part D 19.2 of the COBCOP so that it is more aligned with the ABA's new BCOP.
 - ii. On Par. 149: Part D 19.4 of the COBCOP reserves the right for a subscriber to charge a "reasonable fee, reflecting our costs" but does not commit to waiving or refunding in certain circumstances. COBA proposes to modify Part D 19.4 so that it is more aligned with the ABA's new BCOP.

7. Customers Experiencing Financial Difficulty

Provisions relating to customers contacting their ADI

- The ABA's new BCOP makes the following commitments [Chapter 39]:
 - i. Par. 158: "If you are experiencing financial difficulty, then you or your representative should contact us as soon as possible. We will discuss your situation and the options available to help you. The sooner you contact us, the sooner we can try to help."
 - ii. Par. 159: "If you have a joint account with someone and you are experiencing financial difficulty, then we can assist you. If you ask us to, we can do so without involving the other person initially."
 - iii. Par. 160: "If you are a guarantor and we have made a demand for you to pay under a guarantee and you are experiencing financial difficulty, then contact us as soon as possible and we will discuss your options."
 - iv. Par. 161: "When you contact us, or are thinking about contacting us, it is important for you to be open, and as realistic as you can be, about your financial position. In turn, we

will be compassionate in trying to understand your situation and when discussing any way we can help.”

- v. Par. 162: “If we are working with you to help you respond to financial difficulties, then you can tell us to deal with your financial counsellor or representative — rather than dealing with you. To do this, you will need to give us their contact details in writing.”

- **Proposed modifications to the COBCOP:**

- i. On Par. 158: COBA proposes to incorporate an equivalent commitment in the new COBCOP.
- ii. On Par. 159: COBA proposes to incorporate an equivalent commitment in the new COBCOP.
- iii. On Par. 160: COBA proposes to incorporate an equivalent commitment in the new COBCOP.
- iv. On Par. 161: Part D 24.1 and Part D 24.2 of the COBCOP includes similar commitments. COBA proposes to modify Part D 24.1 and Part D 24.2 to enhance the language of the commitments.
- v. On Par. 162: Part D 25 of the COBCOP includes similar commitments but does not include reference to contact details of representative in writing. COBA proposes to modify Part D 25 to incorporate a reference to requiring permission in writing.

Provisions relating to ADIs contacting customers

- The ABA’s new BCOP makes the following commitment [Chapter 40]:
 - i. Par. 165: “We will employ a range of practices that can identify common indicators of financial difficulty. If we identify that you may be experiencing difficulty paying what you owe under a loan (or are experiencing financial difficulty), then we may contact you to discuss your situation and the options available to help you. We will do this on a case-by-case basis.”
- **Proposed modification to the COBCOP:**
 - i. On Par. 165: Part D 24.2 of the COBCOP includes similar commitments. COBA proposes to modify Part D 24.2 to make an equivalent commitment to pro-actively dealing with customers exhibiting financial difficulty.

Provisions relating to ADIs assisting customers experiencing financial difficulty

- The ABA’s new BCOP makes the following commitment [Chapter 41]:
 - i. Par. 168: “We will make information publicly available about our processes for working with customers in financial difficulty.”
- **Proposed modification to the COBCOP:**
 - i. On Par. 168: COBA proposes to incorporate an equivalent commitment to making information publicly available about subscribers’ processes for working with customers experiencing financial difficulty.

8. Complaint Resolution

Provisions relating to where a customer has a complaint

- The ABA’s new BCOP makes the following commitment [Chapter 47]:
 - i. Par. 197: “We will publish, and make readily available, information about our internal dispute resolution processes and our external dispute resolution provider through:
 - a) our branches;
 - b) our telephone banking services; and
 - c) our websites or other digital platforms.”

- **Proposed modification to the COBCOP:**

- i. On Par.197: COBA proposes to modify Part D 28.2 of the COBCOP to incorporate a similar commitment to reference telephone banking or other digital platforms.

Provisions relating to how an ADI handles a customer complaint

- The ABA's new BCOP makes the following commitments [Chapter 48]:

- i. Par. 200: "We will ensure our process for handling your complaint is fair and reasonable."
- ii. Par. 201: "We will keep you informed of the progress of your complaint."

- **Proposed modifications to the COBCOP:**

- i. On Par. 200: Part D 28 of the COBCOP covers subscribers' commitments regarding complaints handling. COBA proposes to modify Part D 28 to incorporate an equivalent commitment.
- ii. On Par. 201: Please see above our response to Par. 200.

Provisions relating to code monitoring, complaints and sanctions

- The ABA's new BCOP makes the following commitments [Chapter 49]:

- i. Par. 210: "If you have a specific dispute with your bank that involves a breach of this Code, you should contact your bank in the first instance, and then your bank's external dispute resolution provider."
- ii. Par. 211: "In relation to the Code, the BCCC has the following powers:
 - a) monitor and oversee compliance with the Code;
 - b) investigate any allegation of a Code breach noting its priority pursuant to its charter;
 - c) as appropriate, investigate serious or systemic breaches;
 - d) request information from subscribing banks and other stakeholders;
 - e) make findings and recommendations on Code breaches;
 - f) apply sanctions;
 - g) provide guidance and reports; and
 - h) undertake other functions and responsibilities as reasonably determined from time to time.

In addition, the BCCC will endeavour to:

- a) drive improvements in compliance with the Code, to achieve best practice through a collaborative approach with the banking sector and other key stakeholders; and
- b) promote awareness of the Code and the role of the BCCC through engagement with key stakeholders.

When the BCCC is undertaking its investigation function it will prioritise its efforts on monitoring and public assurance. Prioritising investigative effort will have regard to factors such as: number of customers affected, severity of breach and public interest."

- **Proposed modifications to the COBCOP:**

- i. On Par. 210: Part E of the COBCOP covers how the COBCOP is administered, including, for example, matters regarding external dispute resolution. COBA proposes to modify Part E 14 and Part E 15 of the COBCOP to simplify the language and make clear that if a customer is seeking compensation, they should take their complaint to the subscriber and, if unsatisfied, to the Australian Financial Complaints Authority (AFCA).

- ii. On Par. 211: COBA proposes to modify Part E of the COBCOP to incorporate a list of COBCOP Compliance Committee's powers, recognising that this would be consistent with ASIC's expectations under ASIC RG 183 *Approval of financial services sector codes of conduct*.

18 April 2019

A. Other Matters

Proposed approach to other matters

COBA recognises that the ABA's new BCOP covers issues that are not covered, or not covered to the same level of detail, by the COBCOP and which are not addressed in this submission. In particular, this includes provisions in the ABA's new BCOP that cover:

- an ABA branch closure protocol
- appointing a Customer Advocate, and
- farm debt mediation.

Furthermore, we note that there are provisions in the ABA's new BCOP that appear to summarise legal or other regulatory obligations, such as provisions relating to managing a credit card. Where provisions in the ABA's new BCOP summarise existing legal or other regulatory obligations, we consider that incorporating similar commitments in COBA's new COBCOP would unnecessarily add length, volume and complexity to what is fundamentally a customer facing document.

Outlined below is COBA's proposed approach to the matters identified above, although we would like to emphasise that this is not COBA's final position. In this respect, COBA would welcome dialogue with the Review and stakeholders on other possible approaches to the matters.

1. ABA branch closure protocol

COBA notes that Para. 14 of the ABA's new BCOP commits its subscribers to complying with the ABA's branch closure protocol when closing a bank branch.

Our view is that this type of commitment is more appropriate for large nationally-operating banking businesses. This is not a type of commitment that the customer owned banking sector can reasonably be expected to make, given the relative size of customer owned banks and their typically smaller and concentrated geographical footprint.

2. Customer Advocate

COBA notes that Para. 193 of the ABA's new BCOP commits its subscribers to appointing a Customer Advocate.

Our view is that this commitment appears to directly respond to chronic misconduct that was examined during the Royal Commission and to address problems associated with dealing with very large organisations. On this basis, there is no clear case for incorporating a similar commitment in the new COBCOP. In a customer owned banking institution every executive and officer is a customer advocate.

3. Farm debt mediation

COBA notes that Paras 198 and 199 of the ABA's new BCOP commits its subscribers to certain procedures regarding farm debt mediation.

Our view is that the customer owned banking sector's limited level of involvement in farm debt does not appear to warrant the incorporation of specific provisions on farm debt mediation.