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**Customer Owned Banking Code of
Practice
Independent Review 2019
Report Two**

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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 (COBs). It has been in force since 1 January, 2014 with only minor changes since that time. It is a voluntary Code, albeit almost all of the members of the Customer Owned Banking Association (COBA) have chosen to become subscribers to the Code, and are bound to comply with the Code.

The Code specifies that it is to be reviewed by COBA in consultation with stakeholders at least every 5 years. To assist with this review, COBA established a Code Review Advisory Committee that includes representatives of 10 of the 64 subscribers to the Code.

At the recommendation of the Committee, COBA engaged cameron. ralph. khoury (CRK), a Melbourne based consultancy, to undertake this review and the redrafting of the Code. CRK and its principal Phil Khoury have extensive experience in drafting and reviewing codes of practice in a diverse range of sectors including financial services, clean energy, development aid and aged services.

This is the second of three reports we plan to release to stakeholders. Our aim is to obtain stakeholder feedback at intervals as we develop our recommendations, so that feedback from one tranche of work can inform the next tranche of work.

1. First report

Our first report provided a general update as to progress in relation to the Review, proposed principles to guide the Code revision project and our recommendations as to the introductory sections of the Code and the Code key promises. By way of example of the language and style we are recommending, our first report also set out drafting of a new small business lending provision.

Our first report was publicly released on 7 August.

2. Second report

This second report takes into account discussions we have had with stakeholders following our first report.

It sets out our recommended changes to the detailed obligations in the Code (current Part D of the Code but to become Part B of the revised Code). Our report also attaches draft provisions. This should be regarded as an initial draft, aimed at testing ideas with stakeholders. We expect that the content will develop and drafting will mature significantly as discussions occur.

We have referenced in our report some of the key change proposals made by stakeholders. In some cases, we have explained our reasons for not supporting proposals. Where a

stakeholder has made submissions that go to the detail of drafting, we have generally not provided explanatory notes in this report and expect to discuss those drafting suggestions once our focus moves to detailed drafting. Submissions are available from our website cobcop.review@crkhoury.com.

3. Third report

Our third and last report will provide our recommendations as to the Code administration provisions (current Part E of the Code).

As for our first report, this report will be distributed to all those who have made submissions to our Review and will be posted to the website. For the assistance of stakeholders, we will also post on the website a version of current Part D of the Code marked up to reflect the changes as per Attachment 1 to this Report.

Whilst the Report does not pose specific questions for response, and there is no need to repeat points made already, we would welcome input, either by phone or email.

Feedback is requested by 14 October.

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2. Principles to guide the Review

In our first report, we provided a detailed discussion of the principles to guide the content of the revised Code. This report applies those principles:

1. The Code must reflect the ethos and values of the sector.
2. The Code must have a contemporary feel – it must be noticeably updated but its origins still recognizable.
3. The Code must meet Australian Securities and Investments Commission (ASIC) approval requirements.
4. The Code must be fair and balanced.
5. To accommodate the range of COBs, Code provisions must be drafted so as to be outcome rather than process focus

Language and style

In our first report, we set out our aim to achieve a document in plain language that can be readily understood by both COBs and customers. We also stated our view that exceptions and qualifications should be minimised in the Code. The early version drafting attached to this report applies those principles.

Consistent with the aim for a Code that is as succinct as possible, the early version drafting attached to this report omits some current Code provisions that simply restate the law. Again as set out in our first report, we have taken into account the COB context when considering how much detail is required for each provision.

We have also sought to apply Joint Consumer Submission Recommendation 8 which suggests that Code language should be removed that places an onus on the customer to act before a COB will do so.

3. Advertising and promotion

Paragraph 1 of the Code currently goes beyond the legal prohibition on misleading advertising to the extent that it also commits COBs to have regard to ASIC regulatory guidance about advertising financial products and services.

We think that there is scope to strengthen the promise to customers. First, we think that the Code should include a commitment to undertake advertising and promotion in a way in which is appropriate for the targeted audience. Secondly we think that pressure sales techniques should be prohibited, as recommended by the Customer Owned Banking Code Compliance Committee. To provide more certainty, it would be possible to include examples of pressure sales techniques in the Code (as we have seen done in another industry code of practice). This can be explored as the focus moves to detailed drafting.

Recommendation 14b) and e) of the Joint Consumer Submission proposed other specific obligations relating to advertising to reinforce the prohibition on misleading advertising (that advertising is consistent with product features and disclosures and phrases such as 'free' and 'guaranteed' are not used if misleading). We think that customers are already protected by the law in relation to these matters and so the Code should not be lengthened by covering these matters.

We gave careful consideration to the Joint Consumer Submission Recommendation 14c) that advertising images not detract from statements – but were not convinced that this proposition could be phrased in a sufficiently certain manner. We were also not persuaded by Joint Consumer Submission Recommendation 14d) that short term customer incentives such as gift cards or reward points should not be offered to take out a product or service. We are aware that for some customers these incentives are advantageous. We are also conscious that the major banks are not subject to this kind of restriction and we think this is an area where competitive neutrality is important for COBs.

Recommendation 1

The Code should include a commitment to undertake advertising and promotion in a way that is appropriate for the targeted audience. It should also prohibit pressure sales techniques.

4. Accessibility and inclusivity

The Code does not currently include specific accessibility and inclusivity obligations, although there are various Code requirements that recognise that some customers have particular needs.

Accessibility and inclusivity is a difficult issue for COBs given that most COBs, by their history and current membership base, are focused on serving particular communities. This is both who they are and an essential key strength in their offering. Most are not of a size that would permit them to offer every possible banking product and service and via every possible channel. To require each COB to meet all needs of all Australians would be both impractical and counter-productive.

Nevertheless, we think that the Code should require COBs to make a stronger commitment to accessibility and inclusivity. The ABA's Banking Code of Practice now does this. We think that this is now an expected feature of a modern banking code and we would expect that this will be required in order to obtain ASIC approval.

To achieve this, we think the Code should include an obligation to take reasonable steps to improve the accessibility of banking services for individual customers, however we think this should have some practical limits reflecting the character of many COBs as serving specific communities. Our recommended obligation does not mean, for example, that COBs should have to offer all products via all mediums (branches and online). Many COBs do not have Small Business products and we are not suggesting that they should have to cater for Small Businesses by offering business products. Nor do we think that COBs should have to establish branches in places they are not currently located or necessarily develop a basic bank account (as per Joint Consumer Submission Recommendations 69a).

That said, we think that the Code should commit COBs to taking extra care of those groups who are widely recognised as having special needs. Staff should receive training to facilitate this, as recommended by the Customer Owned Banking Code Compliance Committee. The importance of staff training is also a theme in the Financial Sector Union submission.

Where a customer is known to be on a low income, we think an aspect of this care obligation should be to tell a customer, applying for a new banking product, if there is a product that may be better for the customer (eg lower cost). Obligations of this type are now part of the ABA Banking Code of Practice and we believe should also be in the Code.

Recommendation 68 of the Joint Consumer Submission suggests that the Code should include more specific commitments to Aboriginal and Torres Strait Islander consumers and remote customers. We understand that very few COBs have significant parts of their business in remote parts of Australia. Accordingly we think that the general obligations suffice, provided that, as we propose, these make specific mention of indigenous Australians.

Recommendation 70 of the Joint Consumer Submission suggests that the Code reference specific COBA guidance on domestic and family violence and elder abuse. Rather than referencing COBA documents external to the Code, we think that the relevant paragraphs of the Code should specifically address these issues, for example, refer to family violence and elder abuse as a possible cause of financial difficulty (see later in this report).

Recommendation 2

The Code should include obligations:

- a) to take reasonable steps to improve the accessibility of banking services for individual customers, including older customers, people with a disability and indigenous Australians;
- b) to train staff to deal compassionately and respectfully with customers recognised as having special needs including because of age-related or cognitive impairment, elder abuse, family violence, serious illness or other severe detriment; and
- c) at inception of a new banking product, to provide information about other products that may be more favourable for a customer known to be on a Commonwealth pension or have a Commonwealth concession card.

5. Information about products and fees

The Code currently requires product information to be readily available, clear, concise and accurate, sufficient to allow an informed decision and in plain English. Specific information requirements apply so that customers understand interest rates, fees and charges. Terms and conditions must be fair. Fees and charges must be regularly reviewed. Exception fees must be reasonable having regard to costs.

To respond to the Joint Consumer Submission, we think that the Code should include some additional specificity about information as to how products operate. In particular, we recommend inserting provisions in relation to foreign exchange services, term deposits and cheque accounts that are similar to those in the ABA Code of Banking Practice provisions.

Recommendation 3

The Code should set out specific customer information requirements in relation to foreign exchange services, terms deposits and cheque accounts, similar to paragraphs 27, 28 and 29 of the ABA Code of Banking Practice provisions.

We also recommend that the Code incorporate a new protection to discourage 'informal' overdrafts, a practice that was highlighted during the Royal Commission (see Recommendation 1.8 of the Royal Commission Final Report). Consistent with our Principle 2, we think that this is something to which the Code should respond.

In response to the Royal Commission recommendation, the ABA is in the process of seeking regulator approval for an amendment to its Code of Banking Practice to provide that, for a basic, low fee or no fee transaction account provided to a government concession card holder, the bank will not allow the account to be overdrawn without the customer's express permission, except where it is impossible or reasonably impractical to prevent that occurring. The provision will also specify that no dishonour fees or overdrawn fees will apply to the account.

We recognise that it is sometimes in a customer's interests if their COB processes a direct debit payment, for example, even if this results in the account becoming overdrawn. To do otherwise might expose the customer to a penalty by the service provider to whom the direct debit payment is owed. On the other hand, escalating overdraws clearly have the potential to cause financial difficulty for the customer.

To balance these considerations, we recommend a Code provision that prevents the COB from benefiting by way of fees and interest from an overdrawn position on a transaction account that does not have an overdraft facility. This would not stop the COB from processing a transaction where to do so would be a customer service. It would also mean that a COB would not breach the Code if for timing or other reasons its systems could not detect at the relevant time that a

transaction would result in an overdrawn position. It would also have the result that the COB's and customer's interests would be aligned so that they work together to right the situation promptly.

Recommendation 4

A COB should not charge an overdrawn fee or interest on an overdrawn amount on a transaction account that does not have an approved overdraft facility.

In relation to fees, we think that there is scope to broaden the current Code obligation that requires fee disclosure at the point of issuing a bank cheque. As under the ABA Banking Code of Practice, we think that this principle should apply to all transaction service fees where practical and reasonable. It is accepted that there will be situations where fee disclosure will not be practical and reasonable. For example, where a fee has a volume-threshold, it may not be apparent at the time of the transaction that the threshold has been reached and so the fee applies. Where a transaction is effected through an agent and a fee applies, there may be particular difficulties. Again these issues can be explored as the focus moves to detailed drafting.

Recommendation 5

The Code should require disclosure of all transaction service fees immediately before these are incurred, where this is practical and reasonable.

The Joint Consumer Submission Recommendations 20 to 23 propose a range of other fees requirements directed primarily to ensuring that low income customers do not incur disproportionate fees. Whilst we understand the objective, we think that these proposals do not sufficiently take into account that the costs charged by a COB need to largely reflect the costs that the COB incurs. This is necessary in order to achieve reasonable equity between the COBs' customer-owners, a core principle for COBs. We are also concerned that many COBs are too small to make distribution of these costs across other customers feasible.

For the same reasons, we are not supportive of the Australian Financial Complaints Authority recommendation that COBs commit to not charging default interest on loans secured by agricultural land in an area declared to be affected by natural disaster as per Royal Commission Final Report Recommendation 1.13 for shareholder-owned banks. Rather than this, we think that natural disaster should be recognised as a ground for financial difficulty and appropriate assistance determined under that head (see later in this report).

6. Lending including credit cards

We set out in Report 1 our recommendations in relation to small business lending, including how small business should be defined. There has been some early feedback. The Australian Small Business and Family Enterprise Ombudsman has welcomed the breadth and simplicity of our recommended definition of small business loan. One COB has expressed the view that our recommended definition would be easier for COBs from a compliance perspective than the complex, multi-limbed definition in the ABA Banking Code of Practice. We have received some suggestions as to how to improve the drafting of the lending provisions and have incorporated these suggestions in the draft provisions attached to this report.

For lending to individual customers, we propose that the Code incorporates an obligation to exercise the 'care and skill of a diligent and prudent banker'. This language is recommended by the Joint Consumer Submission Recommendation 25a), it is the language used in court cases and it is also used in the ABA Banking Code of Practice. We do not, however, support the Joint Consumer Submission view that the Code should require 'strict compliance' with ASIC Regulatory Guide 209 Responsible Lending. This would be an uncertain formulation. In any event, ASIC Regulatory Guide 209 is currently under review. The Code individual customer lending provision will need to be reconsidered once ASIC's review is completed.

There are some changes we recommend to be equivalent with the ABA Banking Code of Practice and to provide customers with protections that we consider are useful. First, clarity that the prudent lending obligations are owed to a guarantor as much as a borrower. Secondly, a reminder to a mortgage customer to obtain property insurance. Thirdly, the ability of borrowers and guarantors to request the COB's loan suitability assessment.

Recommendation 6

When lending to an individual customer:

- a) the customer owned bank should be obliged to exercise the care and skill of a diligent and prudent banker, both to protect the borrower and any guarantor;
- b) annual reminders should be provided to a mortgage customer to obtain property insurance; and
- c) borrowers and guarantors should be informed that they are able to request the customer owned bank's loan suitability assessment.

We also recommend that the Code include various credit card protections that are now in the ABA Banking Code of Practice. In two respects, we recommend that the Code goes beyond the ABA Banking Code of Practice. First, we think that the credit card protections should be

available to small business customers (the ABA Banking Code of Practice only provides individual customers with these protections). Second, we think that the Code should prohibit the practice of inviting credit card applicants to request a credit limit that is the maximum amount they may be eligible for.

In view of the making of the National Consumer Credit Protection Amendment (Credit Cards) Regulations 2018, there is no longer a need for the credit card limit increase offers provision currently in section 7 of Part D of the Code. Accordingly we recommend that this is omitted from the Code.

Recommendation 7

The Code should include new provisions in relation to credit cards (both consumer and Small Business cards):

- a) the customer must be asked to specify in a credit card application the dollar limit that they would like and this must be the maximum limit that is approved;
- b) where some amounts owing are accruing higher interest than other amounts owing, payments must be applied to the amounts accruing the higher interest rate first;
- c) if an interest-free period is available, interest must not be retrospectively charged if the amount owing is not paid by the due date;
- d) 30 days' notice must be given before the end of a fixed period introductory balance transfer offer; and
- e) if a credit card is cancelled, general reasons must be given if appropriate (recognising, for example, that anti-money laundering legislation may not permit reasons to be given).

Section 7 of Part D of the Code relating to credit card limit increase offers should be omitted.

7. Multiple parties

We think that there is scope to enhance protections in relation to multi-party banking transactions.

1. Joint accounts

The Code currently requires COBs to provide joint account holders with general information about rights and responsibilities and how to change authorisations. We think that this should be phrased in a way that focuses more on helping customers how to use a joint account. Also, for a joint account that is able to be accessed by one account holder only, the terms and conditions should allow any holder to make a change so that all account holders have to authorise a withdrawal. This is particularly important in a situation of family breakdown. These protections are in the new ABA Banking Code of Practice.

Recommendation 8

The Code should enhance protections for joint account holders by:

- a) requiring them to be provided with information about how to use joint accounts; and
- b) for a joint account that is able to be accessed by one account holder only, the terms and conditions should allow any holder to make a change so that all account holders have to authorise future withdrawals.

2. Subsidiary cards

Where a customer instructs a COB to cancel a subsidiary card, we think that it would be consistent with the ePayments Code if future unauthorised use of the cancelled subsidiary card does not give rise to account holder liability, regardless of whether or not the account holder is able to get hold of the subsidiary card and destroy it. This would better recognise the realities of a relationship breakdown situation.

Recommendation 9

Where a subsidiary card is cancelled, the primary cardholder must not be liable for any subsequent unauthorised use of the subsidiary card. This should be the case regardless of whether or not the card is destroyed or returned.

3. Co-borrowers

Where there are co-borrowers to a credit facility, we think that all borrowers should derive a substantial benefit (not just some benefit) from the facility (we note that AFCA has provided guidance as to this term and are inclined to think that Code definition is not required). If the person does not derive a substantial benefit but nevertheless wants to provide support to the borrower, the person should be designated a loan guarantor – which would give them the benefit of the additional protections available to guarantors.

We recommend this approach without the carve-out in the ABA Banking Code of Practice for customers who are provided with information about the difference between being a co-borrower and a guarantor and who nevertheless elect to proceed as co-borrower. This is because we are persuaded by consumer advocate experience that co-borrower situations all too often arise, for example, in an elder abuse context and we consider that information disclosure is not a sufficient panacea to guard against this. We also note the Customer Owned Banking Association submission emphasis on reform of the co-borrower provisions.

Recommendation 10

For a loan to an individual customer, a co-borrower must only be accepted if the person will receive a substantial benefit from the loan.

4. Guarantors

To catch up to the higher standards regarding guarantees that are now set out in the ABA Banking Code of Practice, we recommend changes relating to:

- information at the outset of a guarantee,
- more time for guarantors to consider provided information,
- updating information,
- ending liability under the guarantee, and
- better rights in the event of enforcement.

We also make some recommendations that go beyond the ABA Banking Code of Practice.

First, we recommend that the COB disclosure obligation to guarantors should include an additional matter - that a guarantee may affect a Commonwealth pension entitlement. Joint Consumer Recommendation 43b) proposes this and we think that this would be a useful protection for a potentially vulnerable group.

Secondly, we recommend that the Code should provide that a guarantee is not enforceable against a guarantor if the COB fails to comply with execution requirements. This goes part way to meeting a proposal in the Australian Financial Complaints Authority submission and is, we understand, the way in which that body resolves guarantor complaints. We have given

consideration to whether any breach of the guarantor protections should mean that the guarantee is not enforceable – and accept that there would be circumstances in which this would not necessarily be a fair result.

Thirdly, we recommend that the Code include a new requirement that borrower security must be realised before that of the guarantor, unless the guarantor agrees otherwise (the ABA Banking Code of Practice includes an exception where the borrower’s security will not be sufficient to pay a substantial portion of the guaranteed liability but we think that this exception unduly diminishes the guarantor protection).

As for the current Code, we think that all guarantors should generally have the benefit of the guarantor protections, although a scaled back version of the protections should apply to director guarantors. We are not proposing that the Code replicate the more complicated approach of the ABA Banking Code of Practice that provides even further scaled back protections for single director guarantors and for commercial asset financial guarantors and trustee guarantors.

The Joint Consumer Submission also suggests that a COB should undertake an assessment of the suitability of loan for a guarantor. We do not support this. This is because a suitability assessment is a legislative construct designed for a borrower. This construct would not translate to a guarantor who does not in the ordinary course have to make repayments of the loan, but typically is the provider of security to be accessed in the event of borrower default. Other Joint Consumer Submission suggestions include that guarantors should always be required to obtain pre-execution legal and financial advice. We think that there will be situations where guarantors clearly have the knowledge and resources to make their guarantee decision without advice. So we are satisfied that the current Code strikes the right balance in encouraging advice and leaving it to COBs’ discretion as to when to require the guarantor to obtain advice about the effect of the guarantee. Here the proposed new requirement to take extra care of those suffering some disadvantage would be relevant.

Recommendation 10

Code protections for guarantors should be enhanced by:

- a) more specificity as to the information that must be provided to a guarantor prior to signing;
- b) requiring prominent disclosure that a guarantee may affect a Commonwealth pension entitlement.
- c) providing that the guarantor must be provided with 3 business days to consider the information before signing the guarantee;

- d) specifying that a guarantee is not enforceable against a guarantor if the customer owned bank does not adhere to the provisions as to the guarantee signing process;
- e) better information for the guarantor about borrower performance to during the life of the guarantee;
- f) better rights to limit or extinguish the liability under the guarantee; and
- g) providing that borrower security must be realised before that of the guarantor, unless the guarantor agrees otherwise.

A scaled back version of the guarantor protections should apply to all director guarantors.

8. COBs' third party relationships

The Code currently has a broad obligation on COBs to ensure that introduced third party products are “useful, reliable and of value” to customers and the issuing company is reputable. We think that this is a significant protection and note that the ABA Banking Code of Practice does not include something similar.

Given, however, the well-established deficiencies in consumer credit insurance sales practices, we recommend that the Code mirror the new ABA Banking Code of Practice consumer credit insurance protections. These provisions require:

- clear information including about costs and monetary limits on policy benefits;
- express consent from the customer to purchase the insurance;
- for online applications - separation of the loan application process and the insurance application process; and
- for telephone or in-branch applications for a credit card or personal loan – a four day wait period before the customer is able to apply for customer consumer credit insurance (referred to as a deferred sales period).

Whilst we have not fully tested the issue with stakeholders, our position at this stage is that the deferred sales period should also apply to home loan insurance.

In addition, we think that the Code should go beyond the ABA Banking Code of Practice by requiring that consumer credit insurance sales practices take into account the unfamiliarity of many customers with the product (this was a central concern in ASIC Report 361: Consumer credit insurance policies: Consumers' claims experiences).

Joint Consumer Submission Recommendation 46 is that the consumer credit insurance sales protections should also apply to the sale of other add-on insurance products. From our enquiries so far, we are not persuaded that COBs sell other insurance products that raise the same issues as consumer credit insurance.

Recommendation 11

- a) The Code should include consumer credit insurance sales protections based on those in paragraphs 62 to 68 of the ABA Banking Code of Practice with one extension – a deferred sales period should apply to all consumer credit insurance sales by phone or in branches and not just to those channels' insurance sales relating to credit cards and personal loans.
- b) Consumer credit insurance sales practices must take account of the unfamiliarity of many customers with consumer credit insurance.

There is also a need for additional protections in relation to lenders mortgage insurance. We recommend that the Code achieve equivalence with the protections in the ABA Banking Code of Practice. Above the ABA standard, we recommend that COBs should have obligations to claim a refund from a lenders mortgage insurer, where an entitlement exists, and to pay this amount to the customer – rather than simply provide the customer with information as to the refund entitlement.

Recommendation 12

- a) The Code should include lenders mortgage insurance protections equivalent to those in the ABA Banking Code of Practice.
- b) Where a lender requires a customer to pay for lenders mortgage insurance and a refund entitlement exists, the lender must claim the refund and pay this to the customer.

The Joint Consumer Submission Recommendations 44 to 46 propose additional requirements in relation to third party products including a ban on COBs receiving referral payments from third parties, an obligation to ensure that third party providers are competent and an obligation to regularly review third party providers and to ensure that their service is appropriate for the customer. We think that this would be overly prescriptive and do not support these suggestions.

Lastly, we recommend that the current provision in Part D of the Code relating to use of finance brokers is omitted. It seems to us that the current provision does not go beyond the law and so does not add to the Code.

The Joint Consumer Submission Recommendation 50 suggests that the Code should go beyond the law by restricting broker remuneration models. Whilst we are cognisant of the broker-related issues raised during the Royal Commission, we consider that COBs do not have the market power to be able to 'go it alone' in restricting broker remuneration models. So we do not support these suggestions. Nor do we support the Australian Financial Complaints Authority suggestion that, for intermediated transactions, COBs should be responsible for clearly outlining to the customer the role played by the intermediary. This is information that the customer needs to have up front, at the time of dealing with the broker. It is, therefore, information best provided by the broker – and we do not think it is practical to make COBs responsible if a broker fails to provide this information.

Recommendation 13

Section 14 in Part D of the Code pertaining to the use of finance brokers should be omitted.

9. Account statements and other communications

The Code currently includes quite detailed commitments in relation to customer communications including account statements, notifying account changes, electronic communication and copies of documents previously provided.

There are a few changes that we recommend to align with the ABA Banking Code of Practice. First, providing small businesses with the benefit of the same rules in relation to credit account statements as for individual customers. Secondly, requiring 30 days' notice of account fee changes (rather than 20 days as per current Code). Thirdly, contemplating waiver of fees for paper documents where the customers' circumstances warrant this.

Recommendation 13

The Code should enhance account statements and other notifications provided to customers by requiring:

- a) small businesses to be provided with credit account statements that meet the standards set out in the National Credit Code for individual customer credit account statements; and
- b) 30 days' advance notice of a fee change (where the law does not specify a longer period).

Recommendation 14

The Code should facilitate electronic statements and notices and permit a fee to be charged for paper account statements but specify that this may be waived where the customer's circumstances warrant this.

10. Payment facilities

Part B of the current Code states that COBs subscribe to the ePayments Code, a voluntary code administered by ASIC. To highlight this as an enforceable obligation, we recommend that this should be included in the detailed Code obligations rather than the preamble to the Code.

Recommendation 15

As part of the detailed obligations (new Part B), the Code should require customer owned banks to subscribe to the ePayments Code.

The current Code also includes provisions in relation to the cancellation of direct debit arrangements. We have considered what changes should be made to these, taking into account the Customer Owned Banking Code Compliance Committee March 2019 Report of its own motion inquiry into compliance by COBs with those provisions. The Committee found that compliance with direct debit cancellation obligations was disappointing. A shadow shopping exercise identified that COBs' telephone staff were too often providing incorrect information about how to cancel a direct debit arrangement. Website information about cancellation processes was also criticised.

Consistent with the Committee's views, we recommend that the Code should oblige COBs to have clear and simple website guidance about different types of recurring payment arrangements and how to cancel these. Also the Code should specify that COBs must not charge a fee for cancelling a direct debit arrangement.

Joint Consumer Submission Recommendation 57d) proposes that the Code should omit reference to COBs raising with customers, wishing to cancel a direct debit facility, that they may wish to also deal directly with the merchant or supplier. We do not support the Joint Consumer Submission in this. As the Customer Owned Banking Code Compliance Committee Report stated, this is in fact good practice because it may avoid fees that the merchant may charge for a rejected direct debit facility.

We propose, however, to take into account the evident non-compliance with the current direct debit cancellation obligations, when we consider the Code's administration and enforcement provisions (current Part E of the Code).

Recommendation 16

To better assist customers who have direct debit or recurring card payment arrangements in place, the Code should:

- a) require customer owned banks to have clear and simple website guidance about different types of recurring payment arrangements and how to cancel these; and
- b) specify that a fee must not be charged for cancelling a direct debit arrangement.

11. Information privacy and security

We think that these provisions should be scaled back to reduce replication of obligations in the Privacy Act 1988.

There is, however, scope to go beyond the law (and also the ABA Banking Code of Practice). Joint Consumer Submission Recommendation 63 proposes that the Code entrench the guidance of the Office of the Australian Information Commissioner as to the four elements required for effective consent to use or disclose personal information ie. specific (unbundled) consent, voluntary consent, informed consent and positive consent. We recommend that this should be the case, but only where consent is sought for direct marketing purposes.

Recommendation 17

The Code should scale back the current privacy protection provisions to minimise replication of Privacy Act requirements. A new provision should specify that when requesting customer consent for the use or disclosure of personal information for direct marketing purposes, the customer owned bank must:

- a) make a specific request (rather than bundle the request with other matters);
- b) not make consent to the bank's request a precondition to the customer obtaining a banking service or product;
- c) provide the customer with enough information to enable the customer to decide whether they want to consent to the request; and
- d) ask for positive affirmation (rather than use an opt out mechanism as a way of giving default consent).

12. Financial difficulties and debt collection

We recommend that the Code's financial difficulties provisions are enhanced to align with the ABA Banking Code of Practice requirements. This is something that the Australian Financial Complaints Authority submission highlights as appropriate. Our recommended changes include:

- using a more welcoming and explicitly compassionate tone,
- clarifying that guarantors can apply for financial difficulty assistance (not just borrowing customers),
- introducing a commitment by COBs to proactively identify those who may be encountering financial difficulties,
- clarifying that co-borrowers may separately seek financial difficulty assistance, including an obligation to publicise the availability of financial difficulty assistance (in branches and on account statements); and
- a commitment not to sell the customer's debt while the customer is complying with a financial difficult assistance arrangement.

For this important area of the Code, we are also recommending some additional protections that go beyond the ABA Banking Code of Practice.

- The Code should include explicit recognition that a wide range of circumstances can lead to financial difficulties.
- Where a customer has agreed financial difficulty assistance with their COB, the Code should require the COB to provide the customer with written confirmation of what has been agreed, including the customer's obligations when the assistance comes to an end.

This would not require a COB to provide written confirmation of a discussion with a customer about an inadvertent late payment. But if a customer reveals to a COB that they are in financial difficulty and, for example, a short term repayment holiday is agreed, we think that it would be clearer for the customer if the COB confirms the arrangement in writing, including when repayments must recommence. The effect would be that the Code would require a higher standard of customer service than permitted under ASIC Class Order [CO 14/41].

- The Code should specify that a COB must not charge late payment or default fees so long as a customer is meeting the conditions of financial difficulties assistance (but we think this needs to be restricted to individual customers).
- Other requirements where financial difficulties assistance has been provided should include an obligation to tell a customer if first, the COB is aware that they are likely to be entitled to claim on a consumer credit insurance policy that the COB has sold to the customer or secondly, the COB has banking products that may be more favourable for the customer. Further, if the customer breaches the conditions of their financial difficulties assistance, the that the COB should make reasonable efforts to contact the customer if they and not re-activate enforcement for at least 14 days.

These changes would meet virtually all of the Joint Consumer Submission recommendations for enhancement of the Code's provisions in relation to financial difficulties assistance.

Recommendation 18

The Code should encourage customers and guarantors encountering financial difficulties to seek assistance by:

- a) explicitly stating that guarantors can apply for financial difficulty assistance (not just borrowing customers);
- b) using a more welcoming and explicitly compassionate tone including encouraging customers to tell their customer owned bank at an early stage if they are encountering financial difficulties;
- c) introducing a commitment to train staff to proactively identify those who may be encountering financial difficulties;
- d) clarifying that co-borrowers may separately seek financial difficulty assistance;
- e) including an obligation to publicise the availability of financial difficulty assistance (in branches and on account statements); and
- f) explicitly recognising the wide range of circumstances that can lead to financial difficulties including unemployment, ill-health, family breakdown, family violence, economic abuse, social disadvantage and natural disaster.

Recommendation 19

Where financial difficulties assistance is provided, the Code should:

- a) require the customer owned bank to provide confirmation in writing of what has been agreed by way of assistance and what the customer's obligations will be when the period of assistance ends;
- b) not allow late payment fees or default interest to be charged to an individual customer during the period of financial difficulties assistance, provided that the customer is complying with any agreed conditions of that assistance; and
- c) not allow the customer's debt to be sold while the customer is complying with a financial difficult assistance arrangement;
- d) require the customer to be informed if the customer owned bank is aware that the customer is likely to be able to make a claim on a consumer credit insurance policy;
- e) require the customer owned bank to tell the customer if it has banking products that may be more favourable for the customer; and
- f) if the customer fails to meet assistance conditions, to give the customer at least 14 days' notice before re-activating enforcement action.

We also recommend a couple of changes to the debt collection provisions to achieve equivalence with the ABA Banking Code of Practice. A COB should only be able to sell a debt to a business that has agreed to comply with the ACCC's Debt Collection Guidelines. Where a debt is sold, the COB should write to the customer and tell the customer to whom the debt is now owed.

Recommendation 20

The Code provisions relating to debt collection and legal action should be enhanced by requirements:

- a) customer debts may only be sold to a business that has agreed to comply with the ACCC's Debt Collection Guidelines; and
- b) where a debt is sold, the customer owned bank must write to the customer to tell them to whom the debt is now owed.

13. Customer service and complaints

We recommend that the Code includes a new provision dealing specifically with customer service. This should encompass the commitment, that currently supports Key Promise 2, to tailor customer services standards to accommodate special needs of customer groups. We note that this meets Royal Commission Recommendation 1.8 to the extent that it advocates banks committing to work with customers not adept in using English.

An obligation to train staff to identify and accommodate special needs should also be included, similar to that in the ABA Banking Code of Practice. The Joint Consumer Submission Recommendation 51a) suggests that COBs should be required to provide interpreter services and utilise the National Relay Service for customers who need this assistance – something that we support.

Recommendation 21

A new Code provision should commit to customer service standards that are appropriately tailored for those with special needs, for example, because of age, disability, ethnicity issues, English language difficulties or lack of familiarity with banking products or services. Staff should be trained accordingly. There should also be an obligation to provide interpreters and use the National Relay Service where appropriate.

In relation to the complaints provisions, we recommend a substantial redraft. Our aim here is less to change the content and more to reframe the provisions as obligations to customers (rather than as a description of the legal obligations that pertain to complaints handling). These provisions will, however, need to be revisited in light of the outcomes of ASIC's current review of Regulatory Guide 165.

Recommendation 22

The complaints provisions should be redrafted to focus what is being promised to customers including:

- a) to provide customers with information about how complaints are dealt with;
- b) to handle the customer's complaint fairly;
- c) to try and resolve the complaint on the spot and if not to provide within 3 business days contact details for the person handling the complaint;

- d) to try and resolve the complaint within 21 days and if not to tell the customer more time is needed;
- e) to provide the customer with AFCA details if the complaint is not resolved within 45 days; and
- f) to provide the customer with written reasons and AFCA details, if the customer is not provided with all the customer asked for.

Attachment 1 - Early version drafting of Part B of Code

Part B – Delivering on our Promises

1. Advertising and promotion

- 1.1. We will ensure our advertising and promotional material is not misleading or deceptive and is appropriate for the targeted audience. We will not mislead or deceive you either by what we say or represent, or by omission (what we fail to say or represent). We will have regard to ASIC regulatory guidance about advertising financial products and services including credit when developing and reviewing our advertising and promotional material.
- 1.2. We will not engage in pressure sales techniques when promoting our banking services to you.

2. Accessible banking services

- 2.1. We will take reasonable steps to improve the accessibility of our banking services for individual customers including older customers, people with a disability and indigenous Australians.
- 2.2. We will take extra care, and train our staff to deal with you sensitively, respectfully and compassionately, if we become aware that you are experiencing:
 - age-related impairment;
 - cognitive impairment;
 - elder abuse;
 - family violence;
 - financial abuse;
 - mental illness;
 - serious illness; or
 - other personal or financial circumstance causing significant detriment.

- 2.3. If at the time of establishing a new banking product, you tell us that you are on a low income or we are aware that you receive a Commonwealth pension or hold a Commonwealth concession card, we will give you information about banking accounts that we offer that may be more favourable for you.

3. Information about our products

- 3.1. We will make general information about our products and facilities readily available in a timely manner to anyone who wants it. This information will be:
- clear, concise and accurate
 - written in plain language
 - generally sufficient to allow you to make an informed decision about the product or facility, and
 - consistent with any applicable legal requirements.
- 3.2. We will make a copy of the standard Terms and Conditions applying to a product or facility available to you, if you ask us. We will not require you to apply for the product or facility first. However, depending on our product range and systems, we may need to ascertain the features or characteristics of the product you are considering before we are able to generate a copy of standard Terms and Conditions for that product.
- 3.3. We will answer any questions you have about the features of our products and facilities and how they work.
- 3.4. If you ask us for advice about any of our banking services, we will provide advice through staff who are trained to provide that advice or we will suggest that you obtain advice from a lawyer, accountant, financial adviser or financial counsellor.

4. Information on interest rates, fees and charges

- 4.1. Interest rates and fees and charges applying to our products and facilities will be readily available to anyone who wants this information. The information will be clear, concise and up-to-date.
- 4.2. In the case of products with variable interest rates, we will tell you what the current rate is when you apply for the product. We will also use a range of methods to publicise our rates. We will answer any questions you have about our interest rates and how they are calculated and applied.

- 4.3. Our information about interest rates will include how and when different interest rates apply, the method by which interest is calculated and when interest will be debited to your credit account.
- 4.4. Our information about fees and charges will cover all applicable fees and charges and how often they are debited to your account. This information will include non-standard fees that only apply in particular situations (e.g. fees if you overdraw your account or are late in making your payments). We will also provide general information to our customers on how to avoid or minimise fees and charges.
- 4.5. We will answer any questions you have about the fees applying to a product or facility in a timely manner.
- 4.6. We will regularly review the effectiveness of our disclosure of fees and charges to customers.
- 4.7. We will inform you of a transaction service fee (e.g. a bank cheque fee), immediately before you incur the fee, if it is practical and reasonable for us to do so. This does not apply to a fee incurred by a Small Business.

5. Exchange rates and commissions

- 5.1. If we provide you with a foreign exchange service (other than by credit or debit card or travellers' cheque), the information we give you will include:
 - details of the exchange rates and commission charges that we know will apply – and if we do not know those details how to find out the relevant information at the time of the transaction; and
 - an indication of when money we send overseas for you would normally arrive at the destination.

6. Transaction accounts

- 6.1. Our transaction account terms and conditions will provide that if we process a transaction on your transaction account that causes your account to be overdrawn, we will not charge you an overdrawn fee or any interest on the overdrawn amount. This does not apply to a transaction account where you have applied for and we have approved an overdraft facility.

7. Term deposits

7.1. Our term deposit account terms and conditions will include:

- how we will pay interest and repay the principal to you;
- how funds may be dealt with at maturity; and
- details of any fee, charge, change in an interest rate resulting from a withdrawal in advance of maturity.

8. Cheque accounts

8.1. Our cheque account terms and conditions will include:

- the normal length of time we take to clear a cheque and how you may arrange a faster clearance;
- how and when a cheque may be stopped;
- the meaning of 'not negotiable' and 'account payee only' and the significance of deleting the words 'or bearer' from a cheque;
- how you may write a cheque so as to reduce the risk of it being changed in an unauthorised ways; and
- when we will not pay a cheque, including if it is post-dated or stale.

9. Fair terms and Conditions

9.1. The standard Terms and Conditions applying to our products and facilities will be:

- clear, unambiguous, and not misleading
- distinct from our advertising and promotional material
- written in a plain language style, and legibly presented.

9.2. Our standard Terms and Conditions will be consistent with this Code and will strike a fair balance between:

- your legitimate needs and interests as our customer, and
- our interests and obligations, including our prudential obligations.

9.3. We will not adopt standard Terms and Conditions that you are unlikely to be able to comply with.

- 9.4. This section is not intended to limit our right to determine the pricing of our products and facilities on a commercial basis.

10. Reviewing fees and charges

- 10.1. We will regularly review any fees and charges on our products and services, including their level.
- 10.2. We will make sure any exception fees we charge (including credit card late payment fees, account overdrawn or dishonour fees, direct debit dishonour fees, cheque dishonour fees, and ATM failed transaction fees) are reasonable having regard to our costs. Our costs include charges imposed by our service providers, where applicable.

11. Lending to Small Business customers

- 11.1. We will tell you what information we need to assess your application for a Small Business loan and the likely time we will take to decide whether to approve the loan.
- 11.2. We will exercise the care and skill of a diligent and prudent banker when assessing your ability to repay a Small Business loan for which you have applied. We will take into account information reasonably known to us about your financial position. In assessing your ability to repay, we may take into account the resources of your directors, shareholders and guarantors.
- 11.3. Our obligation in paragraph 11.2 is owed to a guarantor of a Small Business loan as well as the Small Business customer.
- 11.4. Before you accept a Small Business loan, we will provide you with an easy to read summary of the key terms and conditions of the loan. This summary may be a separate document or appear at the front of the loan document.
- 11.5. If we are unwilling to provide you with a Small Business loan, we will explain the reasons to you if we can.
- 11.6. Our processes in relation to external expert valuations and investigative accountants reports will be fair and transparent. This includes ensuring that:
- the selected valuer or accountant is appropriately qualified and experienced; and
 - any conflicts of interest are appropriately managed.

- 11.7. We will provide you with a copy of our instructions to a valuer or accountant and their reports, if we have charged you for these. Before providing these to you, we may require you to acknowledge in writing that you accept our reasonable limitations on your use of these.
- 11.8. We will not include a general material adverse change default clause in our standard Small Business loan contracts.
- 11.9. We will give you at least 30 days' notice if you breach a loan payment obligation and we require you to pay the full amount of a Small Business loan or we take proceedings to enforce the loan. For other breaches, we will give you at least 3 months' notice.
- 11.10. We will give you at least 3 months' notice if we decide that we will not extend the term of your Small Business loan. This does not apply if at the end of the term of your Small Business loan, you are in breach of any of the loan obligations.

12. Lending to individual customers

- 12.1. We will always exercise the care and skill of a diligent and prudent banker when lending to an individual customer. This obligation is also owed to the guarantor of an individual customer.
- 12.2. If we provide you with a loan secured by a mortgage over a property, we will remind you at the start of the loan of your obligation to insure the property. We will repeat our reminder once a year during the term of the loan.
- 12.3. If we are required by legislation to prepare a written loan suitability assessment for you, we will tell you so that you can ask us for this. If the loan is guaranteed, we will also tell your guarantor about the loan suitability assessment and provide this assessment to your guarantor on request.

13. Credit cards

- 13.1. When you apply for a credit card, we will ask you to specify what dollar limit you would like. We will not issue you with a card with a higher limit. You may, however, at a later date ask us to increase the limit if you want.
- 13.2. We will apply any payment you make to your credit card to the amounts that have the highest interest rate as at the last statement date.

- 13.3. If we provide you with an interest-free period on a credit card balance for a period of time, we will not retrospectively charge you interest for that period if you do not pay off that balance by the due date.
- 13.4. If we make you an introductory balance transfer offer on your credit card for a fixed period of time, we will give you at least 30 days' notice before that period is due to end.
- 13.5. If we cancel your credit card, we will tell you and, if appropriate, give you the general reasons for doing so.

14. Reverse mortgage loans

- 14.1. We are committed to responsible lending practices in relation to reverse mortgage loans (if we issue, introduce or arrange these products).
- 14.2. As an issuer, introducer or arranger of reverse mortgage loans, we will:
 - comply with all applicable National Credit Act requirements regardless of the purpose for which the loan proceeds are used
 - strongly encourage you to discuss a reverse mortgage loan with family members and Centrelink (so that you understand any impact on Centrelink entitlements)
 - strongly encourage you to seek financial advice from an independent qualified financial adviser, and to consider seeking independent legal advice (we may require this)
 - ensure the reverse mortgage loan:
 - limits your repayment obligations to the market value of the property (or lesser amount if owed), except in the circumstances permitted by the National Credit Act; and
 - allows you to discharge your obligations under the loan at any time
 - comply, where they apply, with National Credit Act restrictions and requirements in relation to enforcement proceedings.

- 14.3. We will ensure that our staff and agents who introduce, arrange or otherwise deal with reverse mortgage loans are properly trained to undertake the functions or role they perform in relation to these products. This training will be consistent with generally accepted industry standards and will comprehensively address the steps prospective borrowers should take to ensure they make a fully informed decision about a reverse mortgage loan.

15. Joint accounts

- 15.1. If you are opening a joint account, we will make general information about how you can use that account and your rights and responsibilities as a joint account holder.
- 15.2. If your joint account enables either you or the other account holder(s) to make withdrawals without the other person's co-authorisation, our terms and conditions will allow any one of you to ask us:
- to change the account approval so that all joint account holders must approve any future withdrawals; or
 - to suspend the account (or a redraw facility on a loan account) to allow you and the other account holders to have time to reach agreement about the dispersal of the account funds.

(This paragraph does not apply to an account where directors of a company are signatories on behalf of the company.)

16. Subsidiary cards

- 16.1. When issuing a subsidiary credit or debit card at your (the primary cardholder's) request, we will provide you with general information on your liability for debts incurred by the subsidiary cardholder when using their card. This information will also set out our procedures for stopping or cancelling a subsidiary card.
- 16.2. If you instruct us to cancel a subsidiary card, you will not be liable for any losses resulting from unauthorised use of the subsidiary card following cancellation.

17. Safeguards for co-borrowers

- 17.1. We will not accept you as a co-borrower if we are aware, or ought to be aware, that you will not receive a substantial benefit from the loan or other credit facility.

- 17.2. Before we accept you as a co-borrower under a loan or other credit facility, we will provide you with general information on your liability to repay the full amount of the debt.
- 17.3. If you are jointly and severally liable for a loan or other credit facility, you may give us a written notice to terminate your liability if no credit has been provided or relied upon by any co-borrower. If credit has been provided, you may give us a written notice to terminate your liability for future financial accommodation. However, this right only applies when we can terminate any obligation we have to provide further credit to another borrower under the same credit facility.
- 17.4. This section does not apply to a Small Business loan.

18. Safeguards for loan guarantors

- 18.1. This section provides safeguards for an individual or Small Business that gives a guarantee that secures a loan or other credit facility that we provide to our customer. So, in this section, “you” is the guarantor.
- 18.2. If you provide a guarantee in your capacity as a director of a Small Business, only paragraphs 18.3, 18.5, 18.10, 18.13, and 18.19 of this section apply to you. In addition, we will tell you that you may request the documents specified in paragraphs 18.6 and 18.7 and that these documents contain important information.
- 18.3. Subject to paragraph 18.13, we will only accept a guarantee from you if your liability under the guarantee is limited to:
- a specific amount, plus interest and enforcement costs, and/or
 - the value of a specified security at the time of recovery.
- 18.4. The specific amount of your liability under the guarantee may be increased with your written consent, subject to law.
- 18.5. Before we obtain a guarantee from you, we will give you a prominent notice that:
- you can refuse to enter into the guarantee;
 - you have a right to limit your liability in accordance with this Code and as allowed by law;
 - there are financial risks involved;
 - if applicable, that the guarantee may cover future credit facilities and variations of the existing credit facility;

- if you receive a Commonwealth pension, acting as a guarantor may affect your pension entitlement;
- you should consider the information and documents we provide to you, and can request further information or clarification if required; and
- you should seek independent legal and financial advice before entering into the guarantee (in some circumstances, we may require that you obtain such advice as a condition of accepting your guarantee).

18.6. We will give you a copy of:

- the credit contract or proposed credit contract to which the proposed guarantee relates,
- details of any security to be provided by the borrower in support of the loan;
- any relevant credit report from a credit reporting body;
- any relevant credit-related insurance contract that we have in our possession;
- any financial accounts or statement of financial position the borrower has given us in the previous two years for the purposes of the credit to be guaranteed;
- the latest statement of account for the credit to be guaranteed; and
- any other information that you reasonably request, other than our internal notes and assessments;

18.7. In addition, we will provide you with any other information available to us that, in our reasonable view, a careful and prudent prospective guarantor might wish to consider regarding:

- the financial position of the borrower (for example, we will tell you if any existing loan to the borrower will be cancelled if the guarantee is not provided), and
- the borrower's credit history for the previous two years (including details of any notices of demand, defaults, overdrawn accounts or other evidence of borrower distress known to us).

This commitment does not include providing records of our opinions regarding the borrower, the proposed loan or related matters.

- 18.8. We will not accept a guarantee from you unless the borrower agrees to us releasing to you the information and documents referred to in this section.
- 18.9. We will not ask you to sign a guarantee, or accept it:
- unless we have provided you with the information referred to in paragraphs 18.5 to 18.7, and
 - until at least the third business day later so that you have time to consider that information. However, we are not obliged to wait if you have obtained independent legal advice about the guarantee after having received the information referred to in paragraphs 18.5 to 18.7.
- 18.10. We will ensure that a warning notice appears directly above the place you sign the guarantee. The warning notice will be substantially in the format required for a guarantee regulated by the National Credit Code.
- 18.11. We will not give the guarantee to the borrower, or someone acting on behalf of the borrower, to arrange the signing, unless the person acting on behalf of the borrower is also your solicitor. In this case, we may give the guarantee to that person to arrange the signing.
- 18.12. Where we attend the signing of the guarantee, we will ensure that you sign the guarantee in the absence of the borrower.
- 18.13. A guarantee may contain a provision allowing the guarantee to be extended to cover another loan in the future. However, we will not make you liable for any amount under a future loan unless we have:
- given you a copy of the credit contract or proposed credit contract
 - provided you with any updated information available to us on the financial position of the borrower, being information that a careful and prudent guarantor may wish to consider before allowing a guarantee to be extended, and
 - obtained your written acceptance of the extension of the guarantee.
- 18.14. We will not accept an extension of a guarantee from you unless the borrower agrees to the release of information and documents referred to in this paragraph to you.

- 18.15. You may withdraw from your guarantee at any time before we provide credit under the guaranteed loan.
- 18.16. If you give us notice that you would like to limit a guarantee you have provided to us, we must accept your request unless your requested limit does not cover:
- the borrower's existing liability (plus any interest, fees or charges that have accrued in respect of that liability);
 - any further advances we are obliged to make to the borrower; and
 - any amounts we need to spend to preserve the current value of security we hold for the borrower's loan.
- 18.17. After entering into a guarantee agreement with you, we will give you within 14 days of the relevant event:
- notice in writing if the borrower tells us that they are experiencing financial difficulty and we have provided assistance in response;
 - a copy of any formal demand or default notice we send to the borrower;
 - notice in writing if the borrower is in continuing default for more than two months after we issue a formal demand or default notice.
- 18.18. If you ask us, we will give you within 14 days:
- a copy of the latest account statement (if any) provided to the borrower; and
 - a further copy of anything we have previously given to you (other than information provided in the last 3 months).
- 18.19. You may at any time extinguish your liability to us under a guarantee by:
- paying the outstanding liability of the borrower (including any future or contingent liability)
 - paying any lesser amount to which the liability of the guarantor is limited by the terms of the guarantee, or
 - making other arrangements satisfactory to us for the release of the guarantee.
- 18.20. We will not enforce a guarantee against you if we fail to comply with any of paragraphs 18.10, 18.11 and 18.12.

- 18.21. Unless we agree otherwise with you, we will not enforce any mortgage or other security you have given us in connection your guarantee without first enforcing any mortgage or other security provided by the borrower.
- 18.22. We will not enforce a judgement against you under a guarantee unless:
- we have first enforced any mortgage or other security provided by the borrower; and
 - we have obtained judgement against the borrower, and the judgement debt remains unpaid 30 days after we demand payment from the borrower in writing.
- 18.23. Paragraph 18.22 does not apply if:
- the borrower is a Small Business;
 - we have made reasonable attempts to locate the borrower without success; or
 - the borrower is insolvent.

19. Third party products and services

- 19.1. We may introduce third party service providers or introduce, arrange or distribute products and facilities issued by other organisations. We will take steps to ensure that third party service providers we introduce are reputable; and that the third party products and facilities we distribute are useful, reliable and of value to our customers. We will regularly review the third party service providers and third party products and services we introduce and distribute.
- 19.2. We will only distribute financial products and facilities (including credit products) of issuers that belong to the Australian Financial Complaints Authority (an independent complaints resolution authority).
- 19.3. If we offer you consumer credit insurance, we will:
- ensure that our sales practices take into account the unfamiliarity of many customers with this product;

- give you clear information that enables you to make an informed decision. This includes information as to the periodic amount payable for the insurance including any interest you will pay on the premium (where the premium is calculated as a percentage or cost per dollar of the outstanding debt or statement balance we will tell you that cost and how we calculate it), the total cost of the insurance (if known), the circumstances in which benefits would be payable, the key exclusions that apply, the monetary limits on any benefit, the length of time a benefit would be payable, the date your insurance ends if different from when the relevant credit product ends; and
- only put in place consumer credit insurance if we have your express consent.

19.4. If you use a digital process to apply to us for a credit product, we will:

- only alert you to the availability of consumer credit insurance after you have completed the application for the credit product and we will make it clear that whether or not you purchase insurance will not bear on whether or not we approve your credit application; and
- include filtering questions in our consumer credit insurance application to alert you to key policy exclusions such as age, residency and employment status and if you are not eligible to claim for a substantial part of the policy benefits we will not put in place consumer credit insurance for you.

19.5. If you apply for a credit card or loan in a branch or over the phone, we will wait at least four days after you apply for a credit product before we offer you consumer credit insurance for that credit product. Before then, we may only provide you with factual information about consumer credit insurance.

20. Lenders mortgage insurance

- 20.1. We may require you to pay for lenders mortgage insurance in connection with a loan we provide to you. If we do this, we will provide you with a fact sheet that explains lenders mortgage insurance and that this insurance does not relieve you from liability to make repayments.
- 20.2. We will not charge you more than the actual cost we incur for lenders mortgage insurance. We will not receive a commission from the issuer of the lenders mortgage insurance policy.

- 20.3. If we require you to pay for lenders mortgage insurance and the policy provides an entitlement to a refund if you repay your loan before the end of the policy, we will ensure that we claim a refund where available and pay that amount to you.

21. Timely, clear and effective communication

- 21.1. We are committed to timely communication with our customers. We will generally respond to telephone and electronic messages within 3 business days. If you write to or fax us, we will generally respond within 7 business days of receipt of your communication. These general timeframes apply where the law or this Code does not specify a particular timeframe for us to respond to you.
- 21.2. We are committed to clear and effective communication with our customers. We will write our letters, notices, brochures, telephone scripts, website messages and other communications in plain language, avoiding legal and technical jargon as far as possible.

22. Account statements and balances

- 22.1. We will provide you with regular account statements clearly setting out all transactions relating to your deposit and loan accounts with us. We will send these account statements to the last address you have given us, unless we reasonably believe that this is no longer your correct address. (The provision of account statements electronically is considered in section 24).
- 22.2. Account statements will be sent or made available at least every 6 months. We will provide you with more frequent periodic account statements if you request these.
- 22.3. 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, we will nevertheless provide you with statements of account that meet those requirements to the extent that this is practical.
- 22.4. Account statements will include clear information about our fees and charges incurred on your account during the statement period. Fee amounts will not be bundled, but will be broken down by transaction type and channel. The impact of any applicable fee-free limit or rebate scheme will also be indicated.
- 22.5. We will provide a simple method(s) of access for you to find out the balance on your account. We will not impose any fees for using this access method.

- 22.6. This section does not apply to:
- passbook accounts, and
 - accounts that are dormant.

23. Notifying changes to your account

- 23.1. Unless a longer period is required by law, we will give you at least 30 days advance notice before we do any of the following in relation to your account:
- introduce a new fee or charge;
 - increase a fee or charge;
 - reduce the number of fee-free transactions permitted on the account;
 - vary the minimum balance to which an account keeping fee applies;
 - vary the method by which interest on your account is calculated; or
 - vary the circumstances when interest is credited or debited to your account.
- 23.2. We will notify you of an increase in the interest we charge on your loan or credit facility no later than the day on which the change takes effect. We will also advise you of any new minimum repayment amount.
- 23.3. We will notify you of other changes to your account when we next communicate with you (subject to any applicable laws).
- 23.4. We may use various methods to notify you of changes to your account referred to in this section. Subject to applicable laws, these may include one or more of: notification on or with your account statement; notification by letter or other direct communication; announcement via our newsletter or website; or advertisement in the local media or national media. In deciding the method of notification, we will consider the nature and extent of the account change, as well as the cost and effectiveness of different methods of notification.
- 23.5. Any commitment we may make to notify you at your address of changes to your account is subject to your keeping us informed of your current contact address.

24. Provision of statements and notices electronically

- 24.1. To the extent permitted by law, we may provide any notice or other information required by this Code to you in writing, electronically or by telephone or by telling you that the information is available on our website or other electronic forum.
- 24.2. In the case of account statements, if we offer these in paper and electronic form and you elect to receive the paper form, we may charge a reasonable fee, reflecting our costs, for doing this (although we may waive this if we are satisfied that your circumstances warrant this).
- 24.3. If we offer a product on the basis that statements and other account information will only be available electronically, we will:
- clearly disclose this to you, and
 - obtain your specific positive acknowledgement of the arrangement before we issue or distribute the product to you.
- 24.4. When providing disclosure documents, account statements, notices and other prescribed information to you electronically, we will ensure that we adopt practices that take appropriate account of online security risks and are consistent with ASIC regulatory guidance on online disclosure. (Also see section 30.)
- 24.5. We will provide prescribed information to you electronically in a form that allows you to retain the information (for example by printing and saving it). Our electronic communications will be comparable with equivalent paper documents in terms of the clarity and content of the information provided.

25. Copies of documents, statements and other information

- 25.1. At your request, we will send you a copy of any of the following documents relating to a product or facility you have, or have had, with us:
- a loan application;
 - a contract (including standard Terms and Conditions, and details of interest rates and fees and charges);
 - a mortgage or other security document;
 - an account statement; and

- a notice we have previously given you about us exercising our rights (unless the request is for a notice issued more than two years before the discharge or termination of the contract to which the notice is related).

This section does not apply to documents we are no longer legally required to retain.

25.2. If a copy of a document is requested, we will provide it to you:

- within 14 days, if the original came into existence 1 year or less before you make the request; and
- within 30 days, if the original came into existence more than 1 year but less than 7 years before you make the request.

If for some reason we are unable to provide a document within these timeframes, we will advise you in writing, together with the expected timeframe for providing the document.

25.3. Documents may be provided in the form of a computer-generated record.

25.4. We may charge a reasonable fee, reflecting our costs, for providing a document, but may waive this if we are satisfied that your circumstances warrant this.

25.5. Access to your personal information is considered more generally in section 30.

26. ePayments Code

26.1. We will subscribe to the ePayments Code, administered by the Australian Securities and Investments Commission, so that you have the benefit of the protections of that Code.

27. Direct debit arrangements and recurring payments arrangements

27.1. Our website will provide clear, simple customer guidance about the difference between recurring payment arrangements set up with a credit or debit card and direct debits set up using a BSB and account number and how to cancel both of these.

- 27.2. We will take prompt action to cancel a direct debit facility linked to your transaction account if you ask us to do so. We will give you an estimate of how long cancellation will take. We will not tell you to try to cancel the facility with the biller or other direct debit user first (but we may suggest that you also contact the direct debit user). We will not charge you a fee for cancelling a direct debit facility.
- 27.3. If you tell us you wish to cancel only one of multiple payment arrangements associated with a single direct debit, we will advise you to establish a new facility for the payment arrangements you wish to maintain.
- 27.4. We will take prompt action to investigate if you complain that a direct debit was not authorised or is otherwise irregular. We will not tell you to resolve the matter with the biller or other direct debit user first (but we may suggest that you also contact the direct debit user).

28. Seeking a chargeback on your behalf

- 28.1. If you have a scheme credit or debit card (e.g. a MasterCard, AMEX or VISA card) issued by us, we may be able to claim a chargeback on your behalf if a problem (such as unauthorised use, or non-delivery of goods ordered) arises.
- 28.2. If you dispute a transaction with us within the required timeframe and we can seek a chargeback on your behalf, we will do so without delay. We will also:
 - ensure we claim the chargeback for the most appropriate reason, and
 - not accept a refusal to chargeback by the merchant's financial institution unless it is consistent with the relevant card scheme rules.
- 28.3. Where possible, we will assist you to seek a chargeback of any unauthorised payments debited to your scheme credit or debit card account (e.g. MasterCard, AMEX or VISA card) pursuant to a recurring payment arrangement – for instance, where payments continue to be debited to your account even though you have cancelled the recurring payment arrangement.
- 28.4. We will make general information about the chargeback mechanism readily available to our customers, emphasising the need to promptly report problems to ensure a claim can be made within relevant chargeback periods. We will make this general information on the chargeback mechanism available in our product information and on our website..

- 28.5. Whether through our standard Terms and Conditions or otherwise, we will not seek to reduce the period or circumstances in which we can seek a chargeback on your behalf under the card scheme rules applying to your scheme credit or debit card.

29. Closing your account

- 29.1. We will provide readily accessible information about how to close your account.
- 29.2. If you ask us to close your account, we will enable you to do this quickly and easily as long as you have discharged all of your obligations under the applicable Terms and Conditions and any mortgage or other similar arrangements relating to the account.
- 29.3. We will provide you with a payout figure for your loan or credit facility within 7 business days, if you request this.
- 29.4. Unless there are exceptional circumstances¹, we will give you at least 14 days advance notice before closing your account when the standard Terms and Conditions of the account permit us to do so (i.e. in circumstances where you have not sought to close the account yourself). We will notify you at the last valid address you have given us, or by other legally permissible means.

30. Information privacy and security

- 30.1. We will comply with the Privacy Act 1988 and the National Privacy Principles, and any succeeding legislation or Privacy Principles, including with respect to credit reporting and the collection, storage, use, disclosure and securing of your personal and financial information. Our Privacy Policy is on our website and provides further information about this.
- 30.2. We will treat your personal and financial information as private and confidential. We will not disclose that information to any other organisation unless we are required or permitted by law to do so.
- 30.3. Where we seek your consent to use or disclose your personal information for direct marketing purposes, we will:

¹ "Exceptional circumstances" would include circumstances where we reasonably suspect fraud or criminal activity involving the account.

- seek your consent specifically to our request (rather than bundle our request with other matters);
 - not make consent a precondition to obtaining a banking service or product;
 - provide you with enough information to enable you to decide whether you want to give your consent; and
 - ask you to positively affirm your consent (rather than use an opt out mechanism).
- 30.4. We will give you access to the information we hold on you if you ask us to, subject to certain exceptions. These are set out in our Privacy Policy and are consistent with the National Privacy Principles, or other Privacy Principles that may replace these. We will correct any error that you bring to our attention. If your details change, tell us as soon as possible—we will update our records promptly.
- 30.5. We will actively seek to promote awareness of security issues, including Internet security, to our customers, using a range of approaches.
- 30.6. We will provide information on topics including:
- protecting your payment methods (e.g. payment cards and cheque books) and equipment (e.g. your computer if you bank online) from unauthorised use
 - what to do if you believe a security breach of your account or unauthorised transaction has occurred, and
 - the possible consequences of not reporting security breaches on your account promptly.
- 30.7. We will avoid communications practices that are inconsistent with our messages about avoiding fraud. For instance, we will not:
- use unsolicited email or telephone contact to ask you to disclose your personal banking information or secure code or password to us, or
 - send you unsolicited emails that include attachments.
- 30.8. If you receive such communications, delete them immediately or hang up on the caller. If a message includes our brand or name or makes reference to your banking details, contact us to report the incident.
- 30.9. We will provide you with options to report security breaches at any time.

31. If you are in financial difficulties

- 31.1. In this section, “you” includes an individual or Small Business that gives a guarantee that secures a loan or other credit facility that we provide to our customer. So, in this section, “you” may not be our customer.
- 31.2. We encourage you to tell us at an early stage if you are experiencing difficulty in meeting your repayment obligations or obligations under a guarantee to us (financial difficulties).
- 31.3. We will also train our staff to proactively identify indicators of financial difficulty, so that we can contact you to discuss assistance we may be able to provide.
- 31.4. We will work with you in a constructive way if you experience financial difficulties. We encourage you to be open and as realistic as you can be about your financial position. In turn, our staff will be trained to respond compassionately. With your agreement and commitment, we will try to assist you to overcome those difficulties. We will do this whether or not you have a right to seek a hardship variation or change under consumer credit laws.
- 31.5. If you have a joint account with someone and are experiencing financial difficulties, we can try and assist you without involving the other person initially, if you want this.
- 31.6. Publicising availability of financial difficulty assistance
- 31.7. We will make information available in our branches and on account statements about our processes for working with customers in financial difficulty.
- 31.8. Our approach will recognise the wide range of circumstances that can lead to financial difficulties including unemployment, ill-health, family breakdown, family violence, economic abuse, social disadvantage and natural disaster.
- 31.9. If you request financial difficulty assistance, we will:
 - genuinely consider your request, taking account of your situation. However, we will only be able to do this if you provide us with the financial information and documents we may reasonably need to assess your situation for ourselves;
 - encourage you to keep making whatever payments you can while we are considering your request;

- consider longer term as well as short-term financial issues when they are relevant. If you are experiencing longer term difficulties, we will try to develop an appropriate solution with you to allow you to meet your obligations;
- not list your default on your credit reference file while we are considering your request, unless legally required to do so;
- not sell your debt while we are still considering your request. and
- respond promptly to your request.

31.10. If we reach agreement about assistance to help you with your financial difficulties, we will:

- provide confirmation in writing of what we have agreed, including what your obligations we will be when our period of assistance ends;
- not charge you late payment or default fees or default interest while you are meeting any conditions of that assistance (unless you are a Small Business customer);
- not sell your debt while you are meeting any conditions of that assistance;
- tell you if we are aware that you are likely to be able to claim on a consumer credit insurance policy that we sold to you;
- tell you if we offer banking products with terms that may be more favourable for you and provide you with information about your options to transfer to these;
- make reasonable efforts to contact you if you breach any conditions of assistance agreed with you and not re-activate enforcement action until we have given you at least 14 days' notice.

31.11. Where we are not able to assist with your financial difficulty, we will:

- suggest other options or avenues that may be available to you;
- advise you promptly in writing, and
- offer to provide you with contact details for a financial counselling or similar service in appropriate cases.

32. Working with your representative

- 32.1. You may choose to be represented or assisted by another person whom you authorise to act on your behalf in negotiations with us. For instance, you may be represented by a financial counsellor, community worker, solicitor, family member or carer. We respect your right to be represented, and will work with your duly authorised representative if you have one.
- 32.2. Where we identify that you would benefit from advice or assistance from a financial counsellor or community worker, we will offer you contact details and may contact you directly for this purpose even if you have a representative. Where appropriate, we will also warn you against using a debt management firm.

33. Debt collection and legal action

- 33.1. We and our agents will comply with Debt collection guideline: for collectors and creditors (October 2005) of the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission as amended from time to time (the Debt Collection Guidelines).
- 33.2. If you fall behind with your payments, we will contact you and seek to negotiate a mutually acceptable repayment arrangement with you, having regard to your financial circumstances as a whole as well as your obligations to us. If you cooperate with us and commit to dealing with the debt, we will work with you (or your representative if you have one). Where relevant, we will draw your attention to our procedures covering customers in financial difficulties (see section 31).
- 33.3. We will send a written default notice to the last address you have given us (unless we reasonably believe that this is no longer your correct address), and will give you an opportunity to pay any amount outstanding on an account with us, before we commence legal action against you. The default notice will specify the date after which we are lawfully entitled to commence legal proceedings to recover the debt. The notice, or an accompanying letter, will invite you to contact us to discuss your options.

- 33.4. If we exercise our right to combine your accounts, we will inform you promptly after doing so. We will also comply with any applicable requirements of the Code of Operation: Recovery of Debts from Department of Human Services Income Support Payments and Veterans' Affairs Payments and any successor Code (both when enforcing indebtedness owed to us and, to the extent the law permits, when facilitating enforcement by a third party judgment creditor).
- 33.5. We will not seek recovery of, nor will we sell, statute-barred debts.
- 33.6. We will only sell debts to businesses that have agreed to comply with the Debt Collection Guidelines and that belong to the Australian Financial Complaints Authority.
- 33.7. If we sell your debt, we will write to you and let you know that we have done this and who your debt is now owed to.

34. Customer service

- 34.1. We will try to tailor our customer service standards where we are aware that you have special needs. For example, this might be because of your age, disability, ethnicity, because English is not your first language or because you are unfamiliar with banking products and services.
- 34.2. We will train our staff how to identify those who have special needs and how to tailor our customer service standards for them in a sensitive and helpful way. Our training will include awareness of the possibility of elder abuse.
- 34.3. Where appropriate, we will provide interpreters for people who do not speak fluent English and utilise the National Relay Service for people who have hearing difficulties.

35. Prompt, fair resolution of complaints

- 35.1. We provide information on how we deal with complaints in our product information, through our branches, our telephone banking services and on our website and digital platforms (if we have these). We will give you a copy of this information if you ask us. This information includes your right to take your complaint to AFCA. If you are unhappy with how we have dealt with and rectified your complaint. If you consider that we have breached this Code, you may report our breach to the Compliance Manager, Code Compliance Committee www.cobccc.org.au. That Committee cannot provide you with compensation but is responsible for taking disciplinary action in appropriate cases.
- 35.2. We will not charge you a fee for making a complaint.
- 35.3. We will not require you to put your complaints in writing (however, some written information may subsequently be needed to progress your complaint).
- 35.4. We will ensure that we handle your complaint fairly.
- 35.5. We will try to resolve your complaint as soon as possible - "on the spot" if we can. If this is not possible, we will within 3 business days give you the name and contact details of a person in our organisation nominated as responsible for dealing with your complaint. As far as possible, this person will not be someone to whom your complaint relates (however, if we are a small organisation, this may not be possible).
- 35.6. We will do our best to ensure that our investigation is completed, and a decision on your complaint is communicated to you, within 21 days of receiving your complaint. We will inform you if we need more time than that.
- 35.7. If we are not able to resolve your complaint to your satisfaction within 45 days (or shorter period that may apply under legislation), we will inform you in writing that you may take the complaint to AFCA, even if we are still considering it. We will provide you with contact details for AFCA.
- 35.8. If we decide your complaint in a way that does not meet all that you have asked for, we will give you our decision in writing with reasons. Our letter will also tell you that you may take your complaint to AFCA and will provide contact details for AFCA.

- 35.9. We may provide you with an avenue within our organization to obtain a review of our decision about your complaint. If you are still not satisfied after using that review avenue, you may take your complaint to AFCA. As an alternative to using that avenue, you may go directly to the AFCA.

Appendix: Definitions

For the purposes of this Code, the words and phrases set out in this Appendix are understood as follows.

"AFCA" – the Australian Financial Complaints Authority, an independent complaints handling authority overseen by the Australian Securities and Investments Commission, that is able to review our handling of your complaints.

"The Code", "This Code" etc – Refers to the Customer Owned Banking Code of Practice, unless otherwise qualified.

"COBA" – Refers to the Customer Owned Banking Association.

"Code Compliance Committee" – Refers to the Code Compliance Committee established by COBA, pursuant to the Code Compliance Committee Charter.

"Complaint" – Any expression of dissatisfaction made to us related to our products or services, or to our complaints handling process, where a response or resolution is explicitly or implicitly expected.

"Customer" – means a member or a customer of a Code Subscriber.

"Dispute" – A complaint that we have not been able to resolve to your satisfaction.

"Guarantee" – For the purposes of this Code, a guarantee includes an indemnity, except in relation to D12.16.

"Reverse mortgage loan" – A loan secured over your home that does not require that you make repayments while you remain living in the home. Your debt is repaid when you vacate the property. This may occur, for instance, when you move into care, sell your home, or die.

"Small Business" – A business or group having fewer than 100 full-time (or equivalent) employees.

"Small business loan" – A loan to a Small Business where the loan applied for is less than \$5 million.

"Our" – Refers to your customer owned banking institution if it subscribes to the Customer Owned Banking Code of Practice.

"Us" – Refers to your customer owned banking institution if it subscribes to the Customer Owned Banking Code of Practice.

"We" – Refers to your customer owned banking institution if it subscribes to the Customer Owned Banking Code of Practice.

"You", "Your" – Refers to you, the reader, if you are our individual or Small Business customer.

Attachment 2 - Comparison with ABA Banking Code of Practice

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