



31 October 2019

Phil Khoury  
Independent Reviewer  
Cameron. Ralph. Khoury (CRK)  
[Cobcop.review@crkhoury.com](mailto:Cobcop.review@crkhoury.com)

Dear Phil Khoury

### **Customer Owned Banking Code of Practice Independent Review - Report Three**

Thank you for the opportunity to comment on Report Three of your independent review of the Customer Owned Banking Code of Practice (**COBA Code**). The Customer Owned Banking Association (**COBA**) agreed to resource a joint consumer submission to the current review with the Consumer Federation of Australia to consult with consumer representatives to prepare this submission. This submission has been endorsed by:

- Financial Rights Legal Centre
- Consumer Action Law Centre
- Financial Counselling Australia

This submission provides:

- consumer representative response to the substance of Review Report 3 – its six recommendations and the rejected recommendations of the joint consumer submission; and
- comments and suggested edits of the early draft code as provided at **Attachment A**.

### **CRK Recommendation 1**

Consumer representatives support this recommendation. We agree that the role of the Customer Owned Banking Code Compliance Committee (**COBCCC**) should be to investigate broad, systemic Code breaches and engage in whole-of-sector investigations into a particular type of breach. This is how the CCC will be able to engage more fully in supporting continuous improvement across the whole customer owned banking sector. However this shift will require a corresponding increase in resources from the industry.

## Working constructively with AFCA

We note that the draft Code refers to the COBCCC reviewing AFCA determinations about Code Subscribers. While we support and expect this to be occurring, the COBCCC will need greater intelligence from AFCA than merely reading the determinations, given such a small number of complaints reach determination stage. The COBCCC should ensure that AFCA passes on complaints data with the COBCCC where it is relevant to the COBA Code and any analysis of systemic or serious issues that they are observing regarding customer owned banks.

## Driving change and best practice

With respect to wording the phrase “encourage continuous improvement” and reference to “good practice” seems weaker than the current ABA Code which empowers their Code Compliance Committee to “drive improvements in compliance with the Code, to achieve best practice.” (ABA Banking Code Clause 211) We recommend that that the COBA Code empowers the COBCCC to be more aggressive and proactive in achieving improved compliance and outcomes for consumers.

## Sanctions

We note that Review Report 3 states that

*we do not see the Committee as having a role in ‘punishment’ and for example, do not support the Joint Consumer Recommendation 82a) that the Committee should have the power to fine COBs (Page 6, Review Report 3)*

Consumer Representatives still believe that it is necessary to add the application of fines as an available sanction.

COBA Code breaches can cause significant harm, to individual customers, to the community and to public confidence in entire sector. It is appropriate that available sanctions reflect the severity of COBA Code breaches.

We note that the new General Insurance Code of Practice will – in the case of significant breaches of the Code - empower the Code Governance Committee to:

*pay a community benefit payment for a Significant Breach up to a maximum of \$100,000. The size of the community benefit payment must be in proportion to our gross written premium and number of customers.*

In so doing the ICA stated that:

*In response to stakeholder feedback that fines should be included in the range of sanction options available to the CGC, and uncertainty as to whether the CGC has the capacity to impose fines, the revised Code provides the CGC with the power to require an insurer who has committed a significant breach to pay a community benefit payment. The payment is up to a maximum of \$100,000 and will be determined in accordance with the insurer’s gross underwritten premium and number of customers. The governance arrangements are still being considered by the ICA.*

We believe that the reviewers should consider this course of action. COBA needs to expand the COBCCC’s sanction toolbox to improve the effectiveness of the Code and ensure greater

compliance. The addition of a community benefit payment may serve to improve the deterrence function of the sanctions available for COBA Code breaches.

While we support the Review's decision to remove the old section 13's restrictions on when the Committee could impose a Sanction on a Code Subscriber we still think the Committee's sanction powers could be expanded. The Committee should be able to impose sanctions even when there has not been a breach finding but the customer owned bank has instead:

- breached an undertaking given to the Committee, and/or
- not taking reasonable steps to prevent a breach from continuing to occur or reoccurring.

In particular we believe the power to publicly name a Code Subscriber should not be limited to Subscribers who have been found to be in breach of the Code, but should also include those Subscribers who have breached an undertaking given to the Committee or not taken reasonable steps to prevent a breach from continuing to occur or reoccur.

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## Recommendations

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1. The COBCCC should receive increased resources to strengthen its role in conducting own motion inquiries and other investigations to hold the sector accountable for systemic non-compliance and support continuous improvement.
2. The COBCCC should ensure that AFCA is sharing complaints data with the COBCCC where it is relevant to the Customer Owned Banking Code and any analysis of systemic or serious issues that they are observing regarding customer owned banks.
3. The COBCCC should be empowered to be more aggressive and proactive by driving improvements in compliance and achieve best practice.
4. The COBCCC should be able to impose a community benefit payment where appropriate.
5. Draft Part C(7) should be amended for the COBCCC be given the power to impose a sanction for:
  - a) any breach of an undertaking given to the Committee;
  - b) not taking reasonable steps to prevent a breach from continuing to occur or reoccurring.
6. Draft Part C(7) should be amended to include the application of fines as an available sanction.

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## CRK Recommendation 2

Consumer representatives support Recommendation 2. Although we believe committees should not be overly burdened with required activities and should remain flexible in order to be able to deal with emerging issues in industry compliance, the five mandatory obligations set out in Draft Part C(4) are a useful baseline for annual committee activities.

Nevertheless, part of identifying emerging issues and consumer harms is receiving consumer complaints. For this reason we support the Code including something similar to this new clause in GICOP:

*Anyone can report alleged breaches of the Code to the Code Governance Committee at any time.*

The COBCCC should have discretion to investigate any complaints made, including whether the complaint is relevant to any other customers of the relevant customer owned bank.

This is appropriately expansive and encourages all stakeholders – consumers, consumer representatives, legal professionals and others to make complaints where appropriate. To deemphasise this would be counter to the approach being taken elsewhere and counter to community expectations.

We note for example that the draft Code implies the ability for the COBCCC to receive complaints at Clause 6 dot point 2 and 3.

We recommended that such a role should be explicit and that in addition to draft clause 6 of Part C the Code make it clear that anyone can report alleged breaches of the Code to the Customer Owned Banking Code Compliance Committee at any time.

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## Recommendations

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7. The COBCCC should include a clause encouraging anyone at any time to report alleged breaches of the Code to the Code Governance Committee.
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### CRK Recommendation 3

Consumer representatives support recommendation. 3 to provide the COBCCC with a sufficient suite of powers to carry out its monitoring and advise ASIC of a customer owned bank's serious or systemic breaches of the Code.

We would note that CRK makes another good recommendation on Page 6 of Report 3 which is not exactly reflected in Recommendation 3:

*We recommend that the administration and enforcement provisions provide the Committee with broader powers to publicise and escalate breaches.*

We would support incorporating this additional recommendation regarding committee power to publicise and escalate breaches into Recommendation 3 and in the drafting of the Code.

### CRK Recommendation 4

We support the recommendation to explicitly oblige customer owned banks to cooperate with the COBCCC. We would also want to ensure that the Committee's directions powers are not restricted to a situation where the Committee has found a breach. This is suggested in the CRK Report 3 on page 7 but not explicitly articulated in the recommendation. If the Committee chooses to it should be able to proactively request information from customer owned banks about their own behaviour and potential breaches as they arise.

## RK Recommendation 5

Consumer representatives support this recommendation to revisit its resourcing needs in light of the broader reach of the Code and expanded expectations of consumers and regulators in line with the recommendation above

## CRK Recommendation 6

Consumer representatives support a commitment to have an independent review every 3 years. We would however wish to add to this to ensure that Draft Part C sections 11 and 12 include a requirement to consult with consumer representatives before amending the COBA Code.

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## Recommendations

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8. COBA or any independent reviewer of the Code must consult with consumer representatives before any amendments to the COBA Code are approved.
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## Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,



Karen Cox  
Chief Executive Officer  
Financial Rights Legal Centre  
Direct: (02) 8204 1340  
E-mail: [karen.cox@financialrights.org.au](mailto:karen.cox@financialrights.org.au)

## About Financial Rights

Financial Rights is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.

## **Attachment A**

### **Part C – How the Code is administered**

#### **Publicising the Code**

1. In conjunction with the Customer Owned Banking Association (COBA), we will publicise this Code and promote our adoption of it, including in our branches. We will give or post you a copy on request. We will publish the Code (or a link to it) on our website.

#### **Training our staff**

2. We will ensure that our employees, agents and representatives receive training on the Code, and that they apply it in their dealings with you.

#### **Administration of the Code by an independent Committee**

3. The Code is administered by the Code Compliance Committee, an independent committee established and funded by COBA. The Committee consists of an industry representative, a consumer representative, and an independent Chair. The Code Compliance Committee Charter sets out the processes for appointing Committee members. This Charter is published on the Committee's website.

#### **Role of Code Compliance Committee**

4. The Code Compliance Committee must:

- monitor and oversee compliance with the Code;
- encourage continuous improvement by Code subscribers in meeting Code obligations, including by publishing good practice guidance;
- investigate potential serious or systemic breaches of the Code by a Code Subscriber including by requesting the Code Subscriber to provide relevant documents and other information;
- exercise its sanctions and directions powers if the Committee finds repeated breaches or a serious breach of the Code by a Code Subscriber; and
- provide reports to regulators and to the public about compliance with the Code by Code Subscribers and how the Committee has exercised its sanction and other powers, including an Annual Report on Code Subscribers' compliance with the Code and the Committee's compliance activities.

5. For the purposes of monitoring and overseeing Code compliance and encouraging good practice, the Code Compliance Committee must:

- review AFCA determinations about Code Subscribers;
- undertake an annual environmental scan to assess Code Subscriber compliance risk areas and to set the Committee's priorities and work plan;
- require Code Subscribers to provide periodic compliance reports to the Code Compliance Committee;

- undertake at least one own motion investigation each year to assess compliance with one or more areas of Code compliance and identify good practices;
- issue public reports about the extent of compliance with the Code and good practice compliance measures; and
- provide feedback to COBA about industry trends and the adequacy of Code provisions.

6. The Code Compliance Committee must investigate if the Committee has credible information that a serious or systemic breach of the Code by a Code subscriber is likely to have occurred. For this purpose, the Committee may take into account information:

- obtained by the Committee from the Code Subscriber, for example, in compliance reports;
- provided by the public in a complaint made to the Committee; or
- provided by anyone else including another Code Subscriber, a consumer representative or AFCA.

### **Sanctions and directions powers**

7. The Code Compliance Committee has the following sanctions and directions powers:

- formally warn a Code Subscriber found to be in breach of the Code;
- require a Code Subscriber to undertake a compliance review (either an internal review or by an external adviser as is acceptable to the Committee) and to provide the Committee with the findings and recommendations of the reviewer, the Code Subscriber's rectification plan in response to the review and updates about implementation of that plan;
- require a Code Subscriber to undertake a staff training program on the Code;
- require a Code Subscriber to undertake a rectification and/ or remediation program, such as corrective advertising, if found to be in breach of the Code;
- publicly name a Code Subscriber found to be in breach of the Code, [breach of an undertaking it has made to the Committee or has failed to take reasonable steps to prevent a breach from continuing to occur or reoccurring](#);
- advise COBA of a Code Subscriber's non-compliant status and/or failure to comply with the Committee's requests or directions;
- advise ASIC of a Code Subscriber's serious or systemic breaches of the Code.

### **Our compliance responsibilities as Code Subscribers**

8. We will cooperate fully with the Code Compliance Committee in the discharge of its responsibilities, including provide requested compliance reports, documents and other information within the timeframe specified by the Committee. Where the law or our duty of confidentiality prevents us from disclosing information without first obtaining the consent of a third party, we will take reasonable steps to obtain that consent.

9. We will comply in a reasonable timeframe with any directions or sanctions imposed by the Committee.

## Role of COBA

10. COBA must ensure that the Code Compliance Committee is adequately resourced.

11. COBA may amend the Code from time to time. Before doing so, COBA will consult with Code Subscribers and other stakeholders as COBA determines, including consumer representatives.

## Reviewing the Code

12. In consultation with the Code Compliance Committee, COBA will arrange for the Code to be independently reviewed at intervals of no more than 3 years. The independent reviewer must consult with a broad range of stakeholders including consumer representatives.