Joint Consumer Representative Submission to

Customer Owned Banking Association

Independent Review of the Customer Owned Banking Code of Practice January 2019

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About the Financial Rights Legal Centre

The Financial Rights Legal Centre 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. Financial Rights took close to 25,000 calls for advice or assistance during the 2017/2018 financial year.

About the Consumer Action Law Centre

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

About the Financial & Consumer Rights Council Inc.

Financial and Consumer Rights Council Inc (FCRC) is the peak body and professional association for Financial Counsellors in Victoria. FCRC actively supports Victoria's 250 Financial Counsellors by developing and maintaining professional standards for financial counsellors, and advocating for people experiencing or at risk of financial hardship. FCRC works with government, banking, utilities, debt collection and many other sectors and organisations to achieve better outcomes for vulnerable and disadvantaged Victorians.

About Financial Counselling Australia

Financial Counselling Australia is the peak body for financial counsellors. Financial counsellors assist people experiencing financial difficulty by providing information, support and advocacy. Working in notfor-profit community organisations, financial counselling services are free, independent and confidential.

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1. Introduction

Thank you for the opportunity to comment on the 2019 Independent Review of the Customer Owned Banking Association Code of Practice (**the 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
- Financial & Consumer Rights Council Inc.

The 2019 Independent Review of the Customer Owned Banking Code of Practice comes five years after the introduction of the 2014 Customer Owned Banking Code of Practice. The review is also being conducted in the immediate aftermath of the Royal Commission into Financial Services, which has illustrated widespread misconduct in the financial services industry and further lowered trust and confidence in the sector.

The banking, finance and insurance industries continue to be perceived to be the least ethical sectors of Australia's economy according to the ethics index survey conducted by the Governance Institute of Australia.[1] While customer-owned banks have avoided much of the public criticism, we believe that their 'customer owned' status doesn't always translate into the fair treatment of customers. In fact, this sector is at risk of complacency, and failing to recognise the need for adequate regulation including a strong code.

Consumer Representatives reject calls for "Proportionate Regulation"

Consumer Representatives have been disappointed that the customer-owned banking sector has advocated loudly that they should be considered separate to the 'big banks' and that different, lower standards for regulation should apply. We profoundly disagree.

In August 2018 COBA launched the #MoreThan4 campaign calling for the customer owned banking sector to be less strictly regulated than the big four banks. Consumer Representatives find the intent and in particular the timing of such a campaign misguided.

The campaign has included calls for "proportionate regulation" to ensure that:

[1] Chris Pash, Business Insider Australia, The reputation of Australia's financial industry has collapsed, and now ranks last in a major survey, https://www.businessinsider.com.au/ethics-trust-governance-institute-australia-2018-8

> *future regulatory policy proposals that punish smaller banking institutions for the misconduct of the major banks*[2]

COBA has been more focussed on the "cost of compliance"[3] than the consumer interest, the substantive issues raised in the Royal Commission or increased community expectations. In fact, COBA members expressed concerns with basic legal responsibilities:

> *Responsible lending" requirements were ranked as the most burdensome area of compliance. Participants indicated concern with the increasing depth of information required before they can lend to customers.*

Consumer Representatives are disappointed that COBA and its members' primary concern is for the wellbeing of their own institutions–rather than of their members, the customers.

Taking this approach is fundamentally antagonistic to consumer wellbeing and runs counter to community expectations. It also fails to recognise serious problems with how customer owned banks treat their customers now, and how higher regulatory standards should work to benefit a sector that lays a claim to work for customer benefit more than other financial services do. Important and appropriate regulations such as responsible lending requirements have been put in place to protect the rights and interests of customers. The cost – financially and personally – to customers due to under-regulation or non-compliance with regulation on the part of financial institutions can be devastating. Responsible lending requirements should not be perceived as "burdensome". Adherence to responsible lending obligations is core to ensuring that customers are treated fairly and not harmed by financial institutions.

Consumer Representatives reject the notion that the bad behaviour of the big four banks revealed by the Royal Commission is confined solely to the big four banks. The Royal Commission was limited to one year and as such focus was placed on the major banks and largest financial institutions. This does not mean that there were no examples of poor behaviour provided to the Royal Commission from customer owned banks. Even if it could be demonstrated that that there were fewer examples of poor behaviour from customer owned banks then this should mean that customer owned banks should be able to easily meet the higher standards expected of them by the community.

Best interests of customers

Consumer Representatives reject the notion repeatedly put forward by the customer-owned banking sector that they will always act in the best interests of their customers purely by virtue of being customer-owned and thus require fewer codified commitments to treat customers fairly. In fact, there are a number of areas in which the sector's short-term desire to

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[2] Charbel Kadib, Banks launch campaign in plea for 'proportionate regulation',Mortgage Business, 23 August 2018 https://www.mortgagebusiness.com.au/breaking-news/12579-banks-launch-campaign-in-plea-for-proportionate-regulation

[3] COBA Media Release, Grant Thornton report: rising fear over disproportionate cost of banking regulation for smaller lenders and the ultimate cost to competition and consumers, 16 November 2018, http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1332-grant-thornton-report-rising-fear-over-disproportionate-cost-of-banking-regulation-for-smaller-lenders-and-the-ultimate-cost-to-competition-and-consumers

"keep their customer happy" may conflict with the customer's long term best interests (for example, responsible lending) or where the obligation to one customer may be at complete odds with the interests of another customer (for example, a co-borrower) or vulnerable person (for example, a guarantor).

Rather than assuming customer owned banks will manage these conflicts well, a robust Code can assist employees of customer owned banks to prioritise and promote the needs and interest of the customer, while also protecting other vulnerable people affected by their practices. This includes enforceable commitments to protecting people experiencing financial hardship, family violence, elder abuse or any other form of vulnerability, raising standards and putting people first. This should mean that customer owned banks will have a Code of Practice that includes the highest consumer protections in the industry and sets the standard for all other financial services Codes.

Rather than a conflict between shareholders and customers, there is inherent conflict between some customer owned bank customers and others. This can lead to poor outcomes for customers, just as a focus on shareholder interests can, and requires a strong Code.

As it currently stands, the COBA Code lags significantly behind other Codes of Practice in many respects. While the COBA Code does include some commitments that exceed those in the Australian Banker's Association (**ABA**) Banking Code (**the Banking Code**), such as reverse mortgages and commitments on information privacy and security, the Banking Code far exceeds the COBA Code in almost every other respect.

Consumer Representatives expect that in developing a new COBA Code that COBA members will not only match meet the Banking Code standards, but exceed those standards. Only by doing so will COBA members be able to differentiate themselves from ABA Banks and meet the promise implicit in the use of the word customer in 'Customer Owned Banks'.

Key Areas for Reform

This submission takes the new Banking Code as a reference and in numerous instances recommends that the COBA Code at least match the commitments made by the ABA. This submission further identifies a number of areas where customer owned banks can work harder to improve their practices. These include:

- developing expansive commitments for engaging inclusively and appropriately with customers who may experience financial exclusion, or who may be in financial hardship or other vulnerable circumstances;
- committing to stronger and more comprehensive responsible lending obligations;
- addressing issues with third party products, particularly add-on insurance, and the use of finance brokers;
- significantly improving compliance with obligations to cancel direct debit arrangements;

- offering increased protections for guarantors and co-borrowers; and
- increasing compliance with the Code, including boosting sanction powers for COBA Code breaches, and increasing obligations which allow compliance to be measured (such as increased obligations to report).

Consumer Representatives look forward to the customer owned banking sector implementing comprehensive and effective reforms to the sector's code.

2. Recommendations

General issues relating to the COBA Code

ASIC Approval and Enforceability of the Code

1. **COBA must seek ASIC approval for the COBA Code in accordance with RG183.**

Ongoing Consumer Consultation

2. **Consumer Representatives recommend the establishment of a reinvigorated consumer representative consultation forum.**

Plain Language

3. **COBA should undertake or commission a plain English re-write of the COBA Code in line with current best practice and reflecting the commitment under current clause 2.1.**
4. **COBA members should commit to providing terms and conditions in plain English as well as including executive summaries.**

Structure

5. **Consumer Representatives have no preference either way regarding the proposed structuring of the COBA Code into two parts, as long as the entire COBA Code is enforceable.**
6. **All commitments currently under Parts A and B must be included in the new COBA Code.**
7. **Every statement and sub-clause must be numbered and/or lettered for ease of reference.**

Language that places the onus on the customer

8. **Consumer Representatives recommend removing language that places an onus on the consumer to act before a subscriber will act.**
9. **Consumer Representatives recommend that all language throughout the COBA Code that constitutes instructions for consumers should be amended so as to become commitments on the part of subscribers.**

Ambiguous time frames

10. **Consumer Representatives recommend all vague language throughout the Code with regard to timeframes be amended so as to provide specific timeframes.**

Part A: Introduction and and Part B:Coverage, Commitment to comply, Relation to other laws and regulation

11. **Parts A and B of the Code should be rewritten so as to:**
    - **combine these sections;**
    - **number and/or letter each clause; and**
    - **ensure every clause is clearly enforceable.**

Part C: 10 key promises

12. **The COBA Code should include further key promises including committing to:**
    a) **earning and retaining the trust of our customers and the community.**

b) making promises and keeping them to deliver good customer and community outcomes.

c) communicating with customers in a clear and timely manner.

d) being accountable in your dealings with customers.

e) being transparent in all communications with customers.

Part D: Delivering on Promises

Section 1. Advertising

13. Clause 1.1 should state: *"We will comply with ASIC regulatory guidance about advertising…"* not *"We will have regard to ASIC regulatory guidance about advertising…".*

14. Section 1 should include the following further commitments:

    a) We will consider the target audience for the advertisement or marketing communication and provide adequate information for that audience, in line with the intent of the soon to be introduced Design and Distribution Obligations.

    b) Statements in our advertisements or marketing communications will be consistent with the features of the relevant product or service and disclosures in any corresponding terms and condition or product disclosure statement.

    c) Any images used will not contradict, detract from or reduce the prominence of any statements used.

    d) Short-term customer incentives offered (such as gift cards or reward points) will not encourage customers to take out the product solely for the incentive, rather than primarily for the product or service.

    e) Phrases such as "free" or "guaranteed" will not be used if they may mislead.

15. Clause 1.1 should be retained but consideration be given to where this commitment sits.

Section 2. Information about our products

16. Commitments equivalent to Clauses 16, 22 and 23 of the Banking Code regarding advice should should be included.

17. If a customer who may be in vulnerable circumstances asks for advice on a subscriber's banking services, then the subscriber should refer to a free and independent financial counsellor or lawyer.

Section 3. Information on interest rates, fees and charges

18. Section 3 should specifically commit to providing information regarding:

    a) the amount of fees and charges and how often they are credited or debited to your account

    b) how and when different interest rates may apply, the method by which interest is calculated and when interested will be debited to your account, and

    c) how we may change fees, charges, interest or other terms and conditions, and how we will notify you of these changes;

    d) for a loan, whether the loan is repayable on demand; and

    e) a statement that information on current standard fees, charges and any interest rates is available on request

19. **Section 3 should include more specific commitments regarding terms and conditions, and provision of information, relating to term deposits, cheque accounts, exchange rates and commissions, and insuring your property as per Clauses 27, 28, 29 and 30 of the Banking Code.**

Section 5. Reviewing fees and charges

20. **Clause 5.1 should be amended to commit subscribers to review and examine their fee structures specifically to address the extent to which any of their fees are regressive, and to shift to a fee structure in which costs are borne more appropriately across customers.**
21. **Clause 5.2 should be amended to limit the charging of fees for breaches of terms and conditions or for default, to a maximum of the direct costs incurred as a result of the breach**
22. **Section 5 should commit subscribers to not charge fees in any instance for providing hard copy documents to customers.**
23. **Section 5 should also include commitments that subscribers will:**
    a) **ensure that fees and charges will not trigger further fees;**
    b) **provide consumers with a warning that a fee will be imposed if a particular transaction goes ahead, and if a particular service will incur a fee, both when the customer opts into the service, and at the point when the fee is incurred;**
    c) **not charge fees for face-to-face interaction with branch staff or penalise customers for going into a branch.**

Section 6. Responsible lending practices

24. **When the COBA Code refers to sections of the responsible lending laws, the relevant sections should be written in plain English into the COBA Code.**
25. **The responsible lending section of the COBA Code should be substantially expanded to ensure that:**
    a) **the customer owned bank will act as a prudent and diligent banker; and**
    b) **for all credit under the NCCP, the customer owned bank will strictly comply with ASIC Regulatory Guide 209 to ensure that all loans provided will be not unsuitable with a clear process to:**
        i. **request detailed information about the financial situation of the borrower;**
        ii. **verify the financial situation of the borrower; and**
        iii. **ensure the loan meets the needs and objectives of the borrower.**
26. **Section 6 should include a commitment to assess all credit card applications on the basis that the customer has the capacity to pay the account out in full within three years if it has been fully drawn to its designated credit limit.**
27. **Section 6 should include a commitment to ask all consumers the credit limit they are seeking and not approve a limit above that requested.**
28. **Section 6 should include a commitment to not approve a credit limit that exceeds the price of goods if the credit card is being obtained to purchase goods in a linked credit transaction.**
29. **Section 6 should include commitment to:**
    a) **mandate increased minimum repayment amounts on all new credit card accounts;**

b) **streamline online card cancellation and preventing the advertising for further credit products or suggestions to reconsider lowering one's credit limit;**

c) **prohibit the *mandatory* packaging of credit cards with home loans.**

d) **prohibit mandatory receipt of promotional offers for credit and other products and ensure that all such arrangements are provided on a strictly opt-in basis;**

e) **provide consumers with notification of how much credit they have used at no cost;**

f) **prohibit "honeymoon" interest rates, or alternatively if the recommendation to prohibit honeymoon interest rates is not taken up, the COBA Code should stipulate that those credit providers offering honeymoon offers must:**

i. **provide consumers with timely electronic notification of balance transfer expiry periods; and**

ii. **not offer honeymoon periods of less than 12 months.**

30. **Section 6 should commit subscribers to:**

a) **take proactive steps—such as tailored communications and/or structured payment arrangements—to help consumers with potentially problematic credit card debt or who are failing to repay balance transfers;**

b) **restrict the amount by which consumers can exceed their credit limit to 10%;**

c) **take a fairer approach to balance transfers, such as allowing interest-free periods on new purchases; and**

d) **enhance disclosure about cancelling old credit cards.**

Section 8. Reverse mortgage loans

31. **Reverse mortgage break fees should be limited to levels that reflect the lender's reasonable loss as a result of the contract being terminated early.**

32. **A set of best practice standards in the training of staff should be developed to introduce, arrange or otherwise deal with reverse mortgage loans, to be attached to the COBA Code; with a commitment to meeting and exceeding these best practice standards under the COBA Code.**

Section 9. Joint accounts

33. **Section 9 should state that subscribers will tell consumers how to use any joint account they open with that subscriber.**

34. **Section 9 should be amended so as to make clear that either party to a joint account can:**

a) **change the account authority such that every account holder has to approve any future withdrawals; and**

b) **notify the bank of a breakdown, at which point the bank should suspend the account until the parties can agree on how to deal with the funds.**

35. **The COBA Code should offer greater protection to victims of family/domestic violence who have joint accounts with their abuser, including the following:**

a) **a re-draw facility should be suspended immediately upon the request of any borrower for a joint account;**

b) financial hardship policies include family violence and economic abuse as a potential cause of financial hardship;

c) a range of flexible options available to assist customers experiencing family violence that includes:

i. moratoriums on repayments where the customer has little or no income;

ii. severing joint debts to enable the customer experiencing family violence to repay a smaller debt in an affordable repayment arrangement;

iii. a release from a debt when the customer is in long term financial hardship;

iv. not listing on the customer's credit report to ensure they can obtain rental property;

d) banks should never ask a co-account holder to seek information, documents or consent from their ex-partner; the bank should communicate with each customer independently.

e) inclusion of good referral pathways for legal advice, counselling and other support services.

Section 10. Subsidiary cards

36. Section 10 should be amended to:

a) better reflect the realities of family and domestic violence victims in their engagement with subsidiary cards.

b) include a section addressing the obligation of subscribers to act fairly towards victims of family/domestic violence.

Section 11. Safeguards for co-borrowers

37. Section 11 should be amended to require that a co-borrower will not be accepted unless they will obtain *substantial* benefit from the loan.

38. Section 11 should make clear that residing with, or having a familial relationship with, someone does not itself constitute a substantial benefit.

39. Clause 11.1 should be amended to place the onus on the subscriber to assess the situation as fully as possible to ensure inappropriate co-borrowing situations are not entered.

40. Under Section 11 a credit facility should be unenforceable against a person who is accepted by the bank as a co-borrower but who the bank should have known would not receive a substantial benefit.

41. There should be an additional clause in Section 11 to address situations where a co-debtor has received minimal benefit from a loan: in these cases it is appropriate to sever the loan so that each party has to repay their own benefit, plus interest.

42. The financial hardship clauses of the COBA Code should be clarified so that either of the co-borrowers can seek hardship assistance in relation to the account and the bank can make a variation with one debtor.

Section 12. Safeguards for loan guarantors

43. Section 12 needs to include commitments to:

a) meet a suitability obligation in their provision of guarantees by conducting a suitability assessment of the loan for the guarantor and the borrower, and providing these assessments to the guarantor;

b) provide a mandatory disclosure notice to customers informing them that acting as a guarantor (and also mortgaging a property) can affect the guarantor's Centrelink income;

c) provide a mandatory disclosure notice to customers informing them that acting as a guarantor (and also mortgaging a property) can affect the guarantor's aged and health care choices

d) have a discussion with the guarantor about the content of these disclosure notice;

e) require guarantors to provide evidence to the bank that they have received legal and financial advice including about

i. the potential impact of the guarantee on their Centrelink income

ii. the affect on the guarantor's aged and health care choices

f) provide specific protection for guarantors (as a particularly vulnerable group) that requires disclosure person to person (or in the lesser alternative, in hard copy by post).

g) only pursuing a guarantor after recovery action has been taken against the debtor's asset.

h) specify that a guarantee is unenforceable if the customer owned bank fails to comply with the pre-execution requirements. Similarly non-compliance with a post execution requirement means that the guarantee is unenforceable in relation to debt or costs that accrue after that time;

i) only pursuing a guarantor after recovery action against the debtor's asset.

Section 13. Third party products

44. Any third party introduced by a customer owned bank must also be subject to the obligations set out in the COBA Code;

45. Section 13 of the COBA should be strengthened to ensure that:

a) customer owned banks are not allowed to receive benefits from the third parties they refer to;

b) third party service providers are appropriately educated and trained to provide their services competently and to deal with you professionally;

c) third party service providers are appropriately monitored in an ongoing manner and regularly reviewed by the customer owned banks;

d) third party service providers will notify the customer owned bank if there is any complaint against them following being introduced by the customer owned bank;

e) the customer owned bank will consider referral to a financial counsellor as more appropriate than to a financial planner and provide such a referral;

f) the service is appropriate for the customer and their stated needs.

46. The COBA Code should include a series of commitments with respect to the sale of add-on insurance products based on and exceeding the equivalent Clauses 62-68 of Chapter 18 of the Banking Code (Clauses 62-68) including a deferred sales model. Customer owned banks can exceed the commitments made by Banking Code subscribers by:

a) onlying refer to the availability of CCI after the approval of the loan;

b) extending the deferred sales model to all add-on products – not simply CCI;

c) informing customers that the add-on products they are offering, or products offering similar cover, could be available at competitive prices from other providers including directly from the same insurer/warranty company; and

d) providing adequate education to all customer owned banking representatives about their responsibilities when engaging in the sale of add-on insurance.

47. Lenders Mortgage Insurance should be renamed and referred to as Risk payments.

48. A new section is required focussed on Risk payments:

a) explaining that these payments do not cover the customer at all;

b) that only the actual cost of the Lenders Mortgage Insurance to the customer owned bank should be paid by the consumer;

c) that in the event of a refinance, banks must pass on any rebate they are entitled to receive on Lenders Mortgage Insurance to the customer who has paid the premium;

d) to provide clear information to customers about how and when a rebate may be claimed as part of the documents provided to a customer when they get the loan;

e) to supply a clear fact-sheet to explain to consumers what Lenders Mortgage Insurance is.

49. When providing white labelled products credit card subscribers must provide clear communications with the customer about the arrangement, their account, and other relevant information.

Section 14. Use of finance brokers

50. The COBA Code should:

a) prohibit no trail commissions to finance brokers;

b) only use flat fee that are not fixed to the size of the loan;

c) limit commissions claw back to two years; and

d) prohibit campaign and volume-based commissions and payments and other incentives being offered to brokers.

Section 15. Timely, clear and effective communication

51. Section 15 should include commitments to:

a) provide interpreters for people who do not speak fluent English and TTY services for people who are deaf or have hearing difficulties.

b) provide a direct link on our website to information on interpreting services and any other relevant information for non-English speakers;

c) record a customer's interpreting needs and plan ahead to meet these needs. Where an interpreter is offered but declined, this will also be recorded;

d) appropriately train or hire staff or contractors to communicate appropriately with customers with an intellectual disability.

Section 16. Account statements and balances

52. Customers should be given a choice as to their preferred means of contact with respect to every communication commitment under the COBA Code including with respect to the provision of account statements and balances.

Section 17. Notifying changes to your account

53. **Clause 17.1 should be amended to require that a subscriber provide at least 30 days' advance notice before making the changes listed under that clause.**

54. **Clause 17.3 should be amended to require that a subscriber – at a minimum - be notified as soon as reasonably possible" to notify a customer of other changes to an account.**

55. **Clause 17.4 should be replaced with a clause that commits customer owned banks to notifying customers of changes to their accounts referred through the communication method of the customer's own choosing.**

Section 18. Electronic communications

56. **Section 18 should be amended so that:**

    a) **customers will not be excluded from products and services simply because they do not have an email address or access to electronic communications;**

    b) **the subscriber will gain the informed consent of the consumer to deliver its disclosure documents electronically;**

    c) **a genuine consent and notification process will be introduced to cover simple withdrawal of consent, change of email address and the need to check the email address regularly; and**

    d) **documents will be provided in a paper format simply and easily if the electronic communication has failed.**

Section 20. Direct debit arrangements

57. **Section 20 should be amended to:**

    a) **commit subscribers to providing straightforward ways for a customer to cancel a direct debit via both phone banking and online banking,**

    b) **provide staff training on direct debit cancellation and monitor the results.**

    c) **prohibit subscribers from charging a fee to stop a direct debit**

    d) **change the word 'promptly' to 'immediately' at Clause 20,1, and remove the words "(but we may suggest that you also contact the direct debit user)."**

    e) **include an additional clause requiring payment of a fine in addition to reimbursement of any actual loss incurred as a result of a debit overdrawing a consumer's account, if a bank has not implemented a request to cancel a direct debit when instructed to do so.**

    f) **apply the same direct debit commitments to recurring payments on credit cards.**

Section 21. Seeking a chargeback on your behalf

58. **Explain to a customer seeking a chargeback following an unauthorised transaction that they may have the right to dispute the transaction under the ePayments Code or as contained in their terms and conditions.**

59. **Make general information about disputed transactions available to all customers, and notify customers of the availability of that information at least once every 12 months**

Section 22. Closing your account

60. **Clause 22.1 should be amended to remove the possible requirement that the customer put a request to close their account in writing in order for their request to be complied with.**

61. **Clause 22.3 should be boosted to ensure that customer owned banks attempt contact via at least two means of communication that has been provided by the customer.**

62. **Footnote 9 regarding exceptional circumstances should be limited to a defined and non-exhaustive list.**

Section 23. Information privacy and security

63. **Section 23 commitments should include:**

    a) **only handling and using personal and financial information of customers with voluntary, express, informed, consent that is specific as to purpose, time limited and easily withdrawn;**

    b) **not making consent a precondition to obtaining another unrelated product or service;**

    c) **not bundle consent with other directions, permissions, consents or agreements;**

    d) **present each consumer with an active choice to give consent - consent must not be the result of default settings, pre-selected options, inactivity or silence.**

64. **Clause 23.6 should be removed or at the very least be amended to commit COBA members to only sharing information with other companies in a group of companies with the express and informed consent of their customers in line with the recommendations above.**

Section 24. If you are in financial difficulties

Expanding commitments under Section 24

65. **Section 24 should be expanded to commit subscribers to:**

    a) **commitments equivalent to Clauses 157 to 179 of the Banking Code;**

    b) **provide information on financial difficulty in branches through the hanging of posters and provision of brochures on financial hardship;**

    c) **include a clause on statements of accounts and bills, with information about financial hardship relief and a financial hardship contact;**

    d) **stipulate that all information provided by subscribers to consumers about financial hardship must be drafted with a plain English approach in mind, encouraging customers to seek help with their financial difficulties, and include a warning against the risks of using debt management firms;**

    e) **have protocols in place to identify when a customer may be in financial hardship and proactively reach out to them and offer assistance;**

    f) **work with customers identified as experiencing financial difficulty to develop a plan with them;**

    g) **prohibit subscribers from imposing any default fees, including late fees and overlimit fees, or default interest once a hardship notice has been given, until an arrangement has been made or the customer has been notified of the refusal to make an arrangement;**

    h) **prohibit subscribers from commencing any enforcement action in relation to a debt that is the subject of an application for hardship assistance, and if enforcement action has been made before the hardship application has been made, not proceed to judgement whilst considering the application;**

i) **prohibit subscribers from reporting any adverse information on a customer's credit report, including negative repayment history information, while they are considering a hardship and while the customer is substantially complying with a hardship arrangement;**

j) **work with customers and allowing arrangements to work by not recommencing enforcement action, accelerating a debt, or referring to debt collectors, when a promised payment is only a few days late, or one payment missed after a period of compliance;**

k) **implement consistent written and verbal communication with their customers and that where statements conflict with alternative arrangements agreed with the customer there must be a clear cross reference to the appropriate arrangement;**

l) **contact consumers by a number of means before re-activating enforcement action when a hardship arrangement has been breached;**

m) **mandate that the written confirmation of a hardship arrangement must include:**

   i. **what will happen at the conclusion of the arrangement in terms of repayments, arrears and the term of the loan;**

   ii. **whether the account will be listed as in default or as overdue on the customer's credit report;**

   iii. **the interest rate that will apply during the arrangement (if any);**

   iv. **any change to fees and charges remain applicable during the arrangement;**

   v. **whether there will be any other immediate consequences of accepting the arrangement, if any (for example cancellation of the consumer's credit card);**

   vi. **the customer's right to complain to EDR if they are dissatisfied with the arrangement offered. This obligation could be confined to the details of the repayments required and what will happen at the end of the arrangement provided there are no adverse consequences for the consumer in accepting the arrangement.**

66. **The COBCC and/or COBA be obliged to regularly publish data about the financial difficulty assistance provided under section 24 of the COBA Code.**

Establish a new Inclusive and Accessible Banking section

67. **A new Inclusive and Accessible Banking section should be added to the COBA Code to support vulnerable consumers by:**

   a) **including clauses equivalent to Banking Code Clauses 38, 39, 40 and 41;**

   b) **improving upon these clauses by removing the sole onus on the consumer to self-identify;**

   c) **develop methods to identify and take proactive steps to assist vulnerable customers;**

   d) **analysing processes and practices for their impact on the customer-owned bank's ability to engage with various cohorts of people who may be financially excluded, and amending practices accordingly;**

68. **A new Inclusive and Accessible Banking section should include commitments to support Aboriginal and Torres Strait Islander consumers by:**

   a) **including clauses equivalent to Banking Code Clauses 32, 35 36 and 37**

   b) **improving upon these Clauses by:**

      a. **removing the sole onus on the consumer to self-identify;**

b. ensuring that all staff be provided with regular cultural awareness training;

c) committing to increasing the availability of ATMs and branches in rural and regional Australia;

d) following AUSTRAC's guidance about the identification and verification of those identifying as of Aboriginal or Torres Strait Islander heritage;

e) ensuring that customer owned banks will work with customers in remote areas or who have limited English to identify ways for them to undertake their banking.

69. A new Inclusive and Accessible Banking section should include commitments to provide banking services for people with a low income and basic bank accounts by:

a) including clauses equivalent to Banking Code Clauses 42-48

b) improving upon these Clauses by removing the sole onus on the consumer to self-identify;

c) banning informal overdrafts on basic bank accounts;

d) abolishing dishonour fees on basic bank accounts.

e) making specific enquiries as to a person's suitability for a banking service or product when they open an account;

f) setting in place systems to pro-actively identify customers who may be using an unsuitable account and offer them account options more suited to their circumstances; and

g) refunding fees and charges incurred by customers who have been clearly identified as being in the wrong account where this should have been apparent to the bank;

h) alerting low income customers to the availability of other lower interest products where they offer them; and

i) facilitating the transfer of their balance to a more suitable product where the customer agrees.

70. A new Inclusive and Accessible Banking section should address domestic and family violence in the COBA Code by:

a) developing a comprehensive domestic and family violence guidance and reference that guidance in the COBA Code;

b) developing a comprehensive elder abuse guidance and reference that guidance in the COBA Code;

c) identifying family violence and elder abuse as reasons customers may experience vulnerability or difficulty;

d) committing to keeping contact details of a joint account holder secure from the other account holder on request;

e) committing to assisting a joint account holder, as far as possible without involving the other joint account holder on request;

f) training staff to identify and respond to customers experiencing family violence.

71. A new Inclusive and Accessible Banking section should address issues of mental health and addiction in the COBA Code by committing to:

a) developing tools to assist people to control their spending by blocking payments with certain types of retailers, such as gambling related purchasers or transfers,, or alcohol purchasers;

b) providing clear information and services for customers with dementia (in both early and later stages) so that they can simplify their finances, set up an enduring power of attorney, nominate beneficiaries and protect their money and safety, and function with dignity.

72. A new Inclusive and Accessible Banking section should address language barriers by

a) providing interpreters for people who do not speak fluent English and TTY services for people who are deaf or have hearing difficulties;

b) ensuring there are protocols in place such that deaf customers and those from a non-English speaking background will be able to access a relevant interpreter in branch;

c) provide a direct link on the website to information on interpreting services and any other relevant information for non-English speakers;

d) record a customer's interpreting needs and plan ahead to meet these needs. Where an interpreter is offered but declined, this will also be recorded;

e) appropriately train or hire staff or contractors to communicate appropriately with customers with an intellectual disability

Section 26. Debt collection and legal action

73. Section 26 should be amended as follows:

a) only selling a debt to another party that has agreed to comply with the ACCC, ASIC. DHS and DVA guidelines;

b) detailing what the bank will tell the customer if they sell the debt to another party;

c) not selling a debt when the bank is considering the customer's financial situation;

d) limiting when the bank can combine accounts;

e) prohibiting debt collectors from bankrupting consumers, or at a minimum, setting out that bankruptcy must be a last resort after all other enforcement is exhausted and the debt is over $20,000;

f) developing processes to *monitor* compliance by their debt assignees with legislation, ASIC's Debt Collection Guidelines and the Code Principles; and

g) not recovering debts from social security payment.

Section 27. Prompt, fair resolution of complaints and Section 28. Our complaints handling process

74. : Sections 27 and 28 should be combined and amended to

a) comply with ASIC IDR guidelines;

b) publish, and make readily available through branches; telephone banking services; and websites or other digital platforms information on the complaints process;

c) include a section on farm mediation;

d) cease charging default interest in areas declared to be affected by drought or other natural disasters;

e) include the concept of acting "fair and reasonable" into the complaints handling process

f) keep the customer informed of the progress of a complaint is required.

g) ensure that all complainants are provided with a written response detailing the outcome of the complaint

h) tell complainants reasons for delays longer than 45 days;

i) tell the complainant the date by which they can reasonably expect to hear the outcome of the investigation;

j) give monthly updates on the progress.

Section 29. External Dispute Resolution (EDR) schemes

75. Section 29 requires reconsideration and updating following the establishment of the AFCA.

76. Section 29 should COBA Code subscribers to providing information about complaints and disputes in every branch in addition to being prominently displayed on the front page of subscribers' websites.

Section 30. Complaints about breaches of this Code

77. Part D, Clause 30.1 and Part E Clause 8 need to be amended for readibility purposes.

7. Part E How the Code is administered

Making a complaint

78. The COBCCC must be resourced appropriately to improve its visibility for consumers and consumer representatives.

79. The COBCCC should publish case studies on consumer complaints and their outcomes on the COBCCC website.

Role of the Code Compliance Committee

80. 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.

Sanctions

81. Clause 13, Part E should be amended for the COBCCC be given the power to impose a sanction for:

    a) any breach of the Code, serious, systemic or otherwise

    b) failure to address a breach,

    c) any breach of an undertaking given to the Committee;

    d) not taking reasonable steps to prevent a breach from continuing to occur or reoccurring.

82. Clause 12, Part E should include the following additional sanctions:

    a) fines

    b) requiring subscribers to provide information to customers who may have been affected by the breach, for example by direct correspondence or on the subscriber's website."

Relation to External Dispute Resolution

83. **AFCA's systems should put in place detailed categorising systems for complaints against customer owned banks and provide all information about these complaints the COBCCC to assist in its investigative work.**

84. **There should be a Memorandum of Understanding between AFCA and the COBCCC, establishing an explicit responsibility for ASIC's systemic issues team to identify and refer to the COBCCC potential COBA Code breaches.**

Compliance responsibilities of Code Subscribers

85. **The Compliance section of the COBA Code should commit subscribers to proactively provide information to the COBA CCC about their own behaviour and potential breaches as they arise, as well as providing a quarterly report to the COBCCC regarding breach information.**

Amending the Code

86. **Clause 22, Part E should be amended to require consumer representative consultation before any amendments to the COBA Code are approved.**

Reviewing the Code

87. **Clause 23, Part e should be amended so as to comply with RG 183, to stipulate that the Code must be independently reviewed at least every three years.**

New commitments for a COBA Code

Helping with deceased estates

88. **The COBA Code should include a new section committing COBA members to:**

    a) **provide clear and accessible information to deceased representatives**

    b) **act on instructions concerning a deceased's account from a person named in a grant of probate or letters of administration within 14 days of receiving the necessary information**

    c) **act on a request from a person authorised by a will or a person who has applied for letters of administration within 14 days; and**

    d) **enable joint account holders to continue to operate the account subject to the terms and conditions of the account.**

Customer Advocates

89. **COBA member should consider committing to establishing customer advocates within their organisations.**

Small business

90. **A new section be drafted into the Code setting out subscribers' obligations to small business customers.**

91. **A specific clause regarding responsible lending obligations to small business customers, similar to clause 51 of the ABA Code, should be included.**

Savings buffers

92. **The COBA Code should include a new section that:**

    a) **stipulates that budgets for collection purposes must include 'savings' as a line item, at 10% of the customer's income, or $20 per month where the customer's income can sustain this.**

b) **requires subscribers proactively assist customers savings such as by setting up separate savings accounts for savings to accrue, and**

c) **commits subscribers to only engage external debt collection agencies that similarly commit to having 'savings' as a line item in budgets for debt collection purposes.**

3. General issues relating to the COBA Code

ASIC Approval and Enforceability of the Code

The COBA Code is incorporated in the written Terms and Conditions for COBA products and facilities. Consumer Representatives support this positive approach to enforceability of the Code and the sector's willingness to commit to keeping its promises made to its customers. We support this continuing. As the Banking Royal Commission Final Report states:

> *Industry codes are expressed as promises made by industry participants. If industry codes are to be more than public relations puffs, the promises made must be made seriously. If they are made seriously (and those bound by the codes say that they are), the promises that are set out in the code, and are intended to govern the particular relations between the provider and the acquirer of a financial product or financial service, must be kept. This must entail that the promises can be enforced by those to whom the promises are made: the customer who acquires the product or service, and the guarantors of loans to individuals and small businesses.*[4]

However the COBA Code has yet to be approved by the Australian Securities and Investments Commission (**ASIC**). Consumer Representatives understand that it is the intention of COBA to seek approval of the incoming COBA Code from ASIC in accordance with RG183. This is a necessary step, and includes ensuring that:

- the COBA Code is binding on, and enforceable against, subscribers as a part of the contract with consumers and via the mechanism recommended in the Royal Commission Final Report ie including 'enforceable code provisions', which are provisions in respect of which a contravention will constitute a breach of the law;
- an independent review of the COBA Code take place every three years, rather than every five years as per Part E Clause 23;
- ASIC can monitor the COBA Code based on issues raised by consumers, External Dispute Resolution (**EDR**) schemes or industry consultations;
- consumers can have confidence that there is specific government/ASIC oversight of the COBA Code and its ongoing development;
- the customer owned banking sector is making a public statement that it is strong and confident enough to subject its self-regulatory instrument for scrutiny against regulator standards;
- members will not walk away from the COBA Code;

[4] Page 12, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Final Report Volume 1, February 2019 https://www.royalcommission.gov.au/sites/default/files/2019-02/fsrc-volume-1-final-report.pdf

- the number of sanctions available to the COBA CCC be boosted to include fines and suspension or expulsion from the industry association; and
- all stakeholder issues raised in this review are addressed, as per the Key Criteria of ASIC RG 183.55–RG 183.62.

Approval of the COBA Code by ASIC will increase public confidence in the financial services sector, ensure that the COBA Code meets best practice standards and send a strong signal to consumers that the COBA Code is one in which they can have confidence. Approval would also demonstrate that the customer owned banking sector proactively responds to identified and emerging consumer issues and that the COBA Code works to deliver substantial benefits to consumers.

Recommendations

1. **COBA must seek ASIC approval for the COBA Code in accordance with RG183.**

Ongoing Consumer Consultation

Consumer Representatives acknowledge that there is currently a COBA Consumer forum but note that it is not effective in moving forward issues of consumer concern.

We believe it is time to reinvigorate consultation process with consumer representatives. We recommend establishing a new consumer representative forum modelled on the forum currently in place with the Insurance Council of Australia (**ICA**).

The forum should facilitate open discussions between the customer owned banks and consumer representatives with the aim of improving outcomes for customers of customer owned bank – be it within or outside of the Code of Practice.

The forum should be held every quarter, made up of an independent chair, attended by the Chief Executive of COBA and other key staff members, and a number of consumer representatives. The mandate of the forum should be to identify specific issues of concern – either specifically for consumers of the customer owned banking sector or concerns about financial services as a whole which are likely to also concern customer owned banks COBs , and prioritise and present these issues to the COBA Board. In turn COBA would establish a working group for each priority area, leading to the development of recommendations from these working groups to be taken back to the Board. We note that the ICA model for such working groups is that they do not themselves include consumer representatives but that they consult consumer groups on work that they undertake.

We believe a reinvigorated consumer representative forum will ensure that the customer owned banking sector is able to better identify and address issues of consumer concern in an ongoing manner. In addition to this, to aid in addressing issues of consumer concern relating to the customer owned banking sector, the Australian Financial Complaints Authority (**AFCA**)

should collect separate specific data relating to customer-owned banks. We discuss this further in Part E of this submission.

Recommendations

2. **Consumer Representatives recommend the establishment of a reinvigorated consumer representative consultation forum.**

Plain Language

The purpose of the COBA Code is to be a binding agreement between a customer and their lender. For that reason, the COBA Code must be clear and easily accessible to all current and prospective customers.

Consumer Representatives acknowledge that the COBA Code is relatively clear compared to many other financial services sector codes of practice. However, there is still room for significant improvement, with some confusing sections and clauses, some lack of clarity around structure, and some technical language.

A plain English rewrite of the COBA Code should be undertaken in line with current best practice and reflecting the commitment under current clause 2.1.

Further, banking services terms and conditions are long and extremely difficult to read and comprehend. Consumer Representatives recommend that banks commit to providing terms and conditions in plain English.

Where law is referenced in the COBA Code, it should ideally be summarised in plain English within the Code such that a consumer does not need to cross-reference legislation in order to understand their rights and the obligations of Code subscribers.

In undertaking a plain language, it is important to make sure that the language is clear as to the obligation imposed on the subscriber to ensure that the COBA Code can be monitored effectively by the monitoring committee. As far as possible, commitments should be measurable and actionable.

Recommendations

3. **COBA should undertake or commission a plain English re-write of the COBA Code in line with current best practice and reflecting the commitment under current clause 2.1.**
4. **COBA members should commit to providing terms and conditions in plain English as well as including executive summaries.**

Structure

Consumer Representatives do not have strong views either way regarding COBA's proposal that the revised Code be structured in two parts: 1. a short statement of principles setting the ethical and service expectations that customers can expect any customer owned banking institution to live up to and 2. 'Practice Rules' setting out the binding detailed rules and obligations that Code subscribers must meet.

Regardless of whether or not the structure outlined above is adopted, consumer representatives recommend that:

- the substance of the COBA Code addresses the issues raised in this submission;
- the commitments under current Parts A and B are included in the revised COBA Code and the entire COBA Code is enforceable by a customer; and
- each and every statement and sub-clause is numbered/lettered for ease of reference.

Recommendations

5. **Consumer Representatives have no preference either way regarding the proposed structuring of the COBA Code into two parts, as long as the entire COBA Code is enforceable.**
6. **All commitments currently under Parts A and B must be included in the new COBA Code.**
7. **Every statement and sub-clause must be numbered and/or lettered for ease of reference.**

Language that places the onus on the customer

We note that through the Code there is language that places the onus on the consumer to disclose certain circumstances, or to make a request before information is provided or reasonable action taken. Some examples of this type of language include: "if your details change, tell us as soon as possible"[5], and "we will explain this information if you ask us".[6]

In particular, this type of language is harmful in the context of subscribers' commitments to consumers that are vulnerable. Self-identification with vulnerability is rare and difficult; any language that commits subscribers to act a particular way only in response to a customer self-identifying as vulnerable is deeply inadequate.

Codes of practice should not be a set of instructions for consumers. Industry codes are a set of enforceable rules that set the standard for expected conduct by signatories to that code. An industry code is therefore first and foremost about self-regulating an industry's

[5] Clause 23.4

[6] Clause 9.1

own conduct. We are therefore concerned that there is language in the current COBA Code that includes industry's expectations of consumers, see for example Clause 27.4.

Recommendations

8. **Consumer Representatives recommend removing language that places an onus on the consumer to act before a subscriber will act.**
9. **Consumer Representatives recommend that all language throughout the COBA Code that constitutes instructions for consumers should be amended so as to become commitments on the part of subscribers.**

Ambiguous time frames

There is vague language with respect to timeframes, for example "promptly," in various places throughout the Code. These vague words should be amended in all instances to provide specific timeframes.

Recommendations

10. **Consumer Representatives recommend all vague language throughout the Code with regard to timeframes be amended so as to provide specific timeframes.**

4. Part A: Introduction and and Part B:Coverage, Commitment to comply, Relation to other laws and regulation

It is unclear whether Parts A and B are intended to be binding or not, and the lack of numbering and lettering within this section furthers confusion. The information and commitments within these sections could be laid out in numbered and/or lettered format, with each clause binding on subscribers. For instance:

> *The customer owned banking sector already complies with a range of regulatory requirements including:*
>
> - *responsible financial management requirements (under the* Banking Act 1959 *and our regulation by the Australian Prudential Regulation Authority)*
> - *corporate and financial services' licensing, advice and training, and disclosure regulation (under the* Corporations Act 2001 *and our regulation by the Australian Securities and Investments Commission)*
> - *consumer credit laws and credit licensing obligations*
> - *privacy, fair trading and other Commonwealth, State and Territory legislation."*

It is unclear whether the above statement constitutes a binding codified agreement on the part of subscribers to comply with the listed regulatory requirements such that a breach of those requirements would also constitute a Code breach, or if this section is intended to provide some background information only.

Other sections of Part A are simply superfluous. For instance, there is no need to reiterate the structure of the Code immediately after the contents page.

Much of what is written in Part B would be better written in lettered/numbered format such that each clause is a clearly enforceable commitment.

Consumer Representatives believe that everything within the COBA Code must be enforceable, and that it must be clear within the COBA Code that this is the case. Every clause and sub-clause must also be lettered and numbered for ease of reference and enforceability.

Recommendations

11. Parts A and B of the Code should be rewritten so as to:

- **combine these sections;**
- **number and/or letter each clause; and**
- **ensure every clause is clearly enforceable.**

5. Part C: 10 key promises

We anticipate that if COBA's recommendation regarding a restructuring of the COBA Code is adopted, this section will form the basis of Part One.

There are several additional key promises made in the similar section of the ABA Code, which are not stated here. Consumer Representatives recommend the addition of the equivalent promises:

- We are committed to earning and retaining the trust of our customers and the community.
- We are committed to making promises and keeping them to deliver good customer and community outcomes.
- We will communicate with you in a clear and timely manner.
- We will be accountable in our dealings with you.
- We will be transparent in our communications with you.

Each statement should be clearly numbered/lettered and should be enforceable by the consumer.

Recommendations

12. **The COBA Code should include further key promises including committing to:**
    a) **earning and retaining the trust of our customers and the community.**
    b) **making promises and keeping them to deliver good customer and community outcomes.**
    c) **communicating with customers in a clear and timely manner.**
    d) **being accountable in your dealings with customers.**
    e) **being transparent in all communications with customers.**

6. Part D: Delivering on Promises

Section 1. Advertising

Clause 1.1 states:

> *We will ensure our advertising and promotional material is not misleading or deceptive. 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*

Consumer Representatives support the retention of the Clause 1.1 as it conveys the idea that customer owned banks are specifically committed to not misleading or deceiving customers through advertising.

We however would make the following comments.

The statement "*We will have **regard** to ASIC regulatory guidance about advertising…"* is non-committal in tone, suggesting the possibility of not actually meeting ASIC regulatory guidance. We recommend that COBA make a stronger statement in line with other Codes by stating: "*We will **comply with** ASIC regulatory guidance about advertising…".*

Consumer Representatives also recommend the following commitments be made to more fully detail the commitment not to deceive or mislead:

- We will consider the target audience for the advertisement or marketing communication and provide adequate information for that audience, in line with the intent of the soon to be introduced Design and Distribution Obligations.
- Statements in our advertisements or marketing communications will be consistent with the features of the relevant product or service and disclosures in any corresponding terms and condition or product disclosure statement.
- Any images used will not contradict, detract from or reduce the prominence of any statements used.
- Short-term customer incentives offered (such as gift cards or reward points) will not encourage customers to take out the product solely for the incentive, rather than primarily for the product or service.
- Phrases such as "free" or "guaranteed" will not be used if they may mislead.

Finally we would note that should the code structure be reconsidered in a plain English re-write – as we have recommended – then consideration needs to be specifically given to where this commitment sits in the structure.

Recommendations

13. Clause 1.1 should state: *"We will comply with ASIC regulatory guidance about advertising…"* not *"We will have regard to ASIC regulatory guidance about advertising…"*.
14. Section 1 should include the following further commitments:
    a) We will consider the target audience for the advertisement or marketing communication and provide adequate information for that audience, in line with the intent of the soon to be introduced Design and Distribution Obligations.
    b) Statements in our advertisements or marketing communications will be consistent with the features of the relevant product or service and disclosures in any corresponding terms and condition or product disclosure statement.
    c) Any images used will not contradict, detract from or reduce the prominence of any statements used.
    d) Short-term customer incentives offered (such as gift cards or reward points) will not encourage customers to take out the product solely for the incentive, rather than primarily for the product or service.
    e) Phrases such as "free" or "guaranteed" will not be used if they may mislead.
15. Clause 1.1 should be retained but consideration be given to where this commitment sits.

Section 2. Information about our products

In addition to setting out that subscribers must provide a certain standard of information to those who enquire about products and facilities, this section should also set out how subscribers should respond to requests for advice on their products and services.

The ABA Code includes the following commitments in the equivalent section:

> *16. We may give you advice, or recommend that you seek advice.*

It also later provides more specifics about how subscribers will respond to requests for advice:

> *22. We will answer your questions about our banking services.*
>
> *23. If you ask us for advice on any of our banking services, then we will:*
>
> *a) give it to you through staff who are authorised and trained to give you that advice; or*
>
> b) *refer you to someone else who can provide you with advice – for example: a lawyer, accountant, financial adviser or financial counsellor*

Customers seeking advice should be referred to the most appropriate individual or organisation that can provide that advice. If a customer who may be in vulnerable circumstances asks for advice on a subscriber's banking services, then the subscriber should refer to a free and independent financial counsellor or lawyer.

Recommendations

16. **Commitments equivalent to Clauses 16, 22 and 23 of the Banking Code regarding advice should should be included.**
17. **If a customer who may be in vulnerable circumstances asks for advice on a subscriber's banking services, then the subscriber should refer to a free and independent financial counsellor or lawyer.**

Section 3. Information on interest rates, fees and charges

Consumer Representatives support retaining existing clauses within this section, and adding several additional clauses.

Clause 25 of the Banking Code addresses information on interest rates, fees and charges. It includes the following additional specific commitments that subscribers will provide customers entering into a contract for a banking service with them:

> *a. the amount of fees and charges and how often they are credited or debited to your account*
>
> *b. … how and when different interest rates may apply, the method by which interest is calculated and when interested will be debited to your account,*
>
> *c. how often we give you statements of account;*
>
> *d. how we may change fees, charges, interest or other terms and conditions, and how we will notify you of these changes;*
>
> *e. for a loan, whether the loan is repayable on demand; and*
>
> *f. a statement that information on current standard fees, charges and any interest rates is available on request*

The Banking Code also makes commitments regarding terms and conditions, and provision of information, specifically relating to term deposits, cheque accounts, exchange rates and commissions, and insuring your property. These are:

> ***Term deposits***
>
> *27 Our terms and conditions for a term deposit account will contain the following specific information:*
>
> *a) how we will pay interest and repay the principal to you;*
>
> *b) how funds may be dealt with at maturity; and*
>
> *c) details of any fee, charge, or change in an interest rate resulting from a withdrawal in advance of maturity.*
>
> ***Cheque accounts***

28 Our terms and conditions for an account with cheque access will contain the following specific information:

a) *the normal length of time we take to clear a cheque;*

b) *how you may arrange or us to clear a cheque faster than normal – known as arranging special clearance;*

c) *how and when a cheque may be stopped;*

d) *the effect of crossing a cheque;*

e) *the meaning of 'not negotiable' and 'account payee only';*

f) *the significance of deleting the words 'or bearer' from a cheque;*

g) *how you may write a cheque so as to reduce the risk of it being changed in an unauthorized way; and*

h) *when we will not pay (known as, 'dishonour') a cheque – including if the cheque is post-dated or stale.*

Exchange rates and commissions

29 If we give you a foreign exchange service (other than by credit card, debit card, or travellers' cheque, then we will give you the following information:

a) *details of the exchange rates and commission charges that we know will apply – if we do not know those details, then we will give you the details we know about how to find out relevant information at the time of the transaction; and*

b) *an indication of when any money you send overseas would normally arrive at the destination to which you are sending it.*

Insuring your property

30 If you have a loan and we have a security (for example, a mortgage) over your primary place of residence or a residential investment property you own, then we will remind you of your obligations to insure the property. We will remind you of that at least once a year. Our reminder will include:

a) *a statement that you should check with your insurer about your cover; and*

b) *a reference to the Australian Securities and Investments Commission's MoneySmart website moneysmart.gov.au for information on property insurance."*

Consumer Representatives believe that there is value in providing greater specificity in the information to be provided to a customer as outlined above.

Recommendations

18. Section 3 should specifically commit to providing information regarding:

a) **the amount of fees and charges and how often they are credited or debited to your account**

b) **how and when different interest rates may apply, the method by which interest is calculated and when interested will be debited to your account, and**

c) **how we may change fees, charges, interest or other terms and conditions, and how we will notify you of these changes;**

d) **for a loan, whether the loan is repayable on demand; and**

e) **a statement that information on current standard fees, charges and any interest rates is available on request**

19. **Section 3 should include more specific commitments regarding terms and conditions, and provision of information, relating to term deposits, cheque accounts, exchange rates and commissions, and insuring your property as per Clauses 27, 28, 29 and 30 of the Banking Code.**

Section 5. Reviewing fees and charges

Fees can have harsh and disproportionate impacts upon lower income consumers. Consumer Representatives are aware of extant late payment fees ranging from $9 to $40. A $40 default fee for a consumer on Newstart earning $13,717.60 a year pays equates to approximately 7.6 per cent of their fortnightly income. The same fee for someone earning an average fortnightly income of $80,000 pays 1.3 per cent of their fortnightly income on a default fee.

A $40 fee can mean the difference between eating and not eating for a family who are struggling. These fees not only deplete low earning consumers' incomes but also affect whether debits made from their account for things like rent or electricity can proceed or be rejected, as there is less money in the account to pay them. The fees have little deterrence value where the consumer's problem is not organisation but insufficient funds and simply drive consumers faster down the path of financial hardship and pain.

Many of the fees charged by customer owned banks penalising their customers for breaches of terms and conditions (late fees on credit cards, overdrawn fees, inward dishonour and honour fees) are essentially regressive. They are both incurred more often by consumers who are struggling with their financial circumstances, or have lower financial literacy levels, or both, and impact many of those same consumers more than others by virtue of the size of the fee in relation to their income and overall wealth.

Credit card fees

Credit card late fees as high as $35 are disproportionate, bear no resemblance to what a late payment actually costs a customer owned bank, and penalise those who can least afford it. Fees purporting to cover the actual loss suffered by the customer owned bank are a form of double dipping given that credit card interest rates are set at very high levels in order to reflect the risks and costs involved in unsecured credit.

Consumers carrying debt from month to month pay high interest and effectively cross-subsidise all other card holders who pay off their accounts regularly and incur almost no

interest. Within the 63% of card holders who incur interest there is a sub-group that carry significant balances, far higher than the average balance. Consumer Representatives submit that the overwhelming majority of people carrying significant credit card debt do so because they do not have the means to pay it down quickly or at all. Even those on higher incomes usually carry credit card debt because they have overextended themselves and cannot afford to pay it off except over time. For people who are overstretched, late fees only make the task of repayment more difficult. Customer owned banks already charge high interest, make considerable profits, and have other enforcement options apart from late fees.

To the extent that late fees are intended to alter consumer behaviour by acting as an incentive to pay on time, a significant number of consumers do not pay on time because they have insufficient funds and/or cash flow problems. They therefore do not respond to such incentives because they cannot.

Dishonour fees

Inward dishonour fees and honour fees, and overdrawn fees, where consumers have insufficient funds in their accounts to meet certain scheduled expenses, are equally regressive in effect. Increasingly, consumers are being driven into using direct debits, for example, by virtue of cost incentives or limited payment options offered. For low income consumers paying for goods and services over time is essential, but a direct debit, which triggers late fees by both banks and merchants spells financial disaster for consumers who are living paycheck-to-paycheck.

New technologies

New and emerging technologies also have the potential to generate more fees for customers. Innovative new services are to be encouraged. However, we note that often these new services come at a cost to consumers, which are sometimes not clearly disclosed. With the introduction of new, innovative types of services such as alerts, COBA members must ensure that fees attached and made clear.

No fees for the provision of paper documents

Customer owned banks should not charge fees for the provision of paper documents. Many customers, in particularly those in vulnerable circumstances, may not have access to electronic forms of communications or documents. They should not be penalised for being on the wrong side of the digital divide, and should have access, for free, to all of the documents and communications that those customers with access to electronic communications have. The provision of free paper documents by the customer owned bank where requested should be universal, regardless of the document. This includes where a customer requests an additional copy of a document, whether or not the customer owned bank is legally obliged to provide that document.

Fees should be fair and not regressive

COBA should amend Clause 5.1 to commit subscribers to review and examine their fee structures specifically to address the extent to which any of their fees are regressive, and to shift to a fee structure in which costs are borne more appropriately across customers. Subscribers should be obliged to collect data on fees paid by customers, across each quintile of customers by income. If fees are disproportionately borne by lower income customers, including being only disproportionate relative to their income, subscribers should commit to address this.

Clause 5.2 should be amended to limit the charging of fees for breaches of terms and conditions or for default, to a maximum of the direct costs incurred as a result of the breach – not as it currently states as "having regard to our costs."

The final sentence stating:

> *Our costs include charges imposed by our service providers, where applicable.*

should be removed as it is not a commitment – it is a statement that bares no import for a customer other than providing a justification for charging fees.

The COBA Code should also include commitments that subscribers will:

- ensure that fees and charges will not trigger further fees;
- provide consumers with a warning that a fee will be imposed if a particular transaction goes ahead, and if a particular service will incur a fee, both when the customer opts into the service, and at the point when the fee is incurred; and
- not charge fees for face-to-face interaction with branch staff or penalise customers for going into a branch.

Recommendations

20. **Clause 5.1 should be amended to commit subscribers to review and examine their fee structures specifically to address the extent to which any of their fees are regressive, and to shift to a fee structure in which costs are borne more appropriately across customers.**
21. **Clause 5.2 should be amended to limit the charging of fees for breaches of terms and conditions or for default, to a maximum of the direct costs incurred as a result of the breach**
22. **Section 5 should commit subscribers to not charge fees in any instance for providing hard copy documents to customers.**
23. **Section 5 should also include commitments that subscribers will:**
    a) **ensure that fees and charges will not trigger further fees;**
    b) **provide consumers with a warning that a fee will be imposed if a particular transaction goes ahead, and if a particular service will incur a fee, both when the customer opts into the service, and at the point when the fee is incurred;**

c) **not charge fees for face-to-face interaction with branch staff or penalise customers for going into a branch.**

Section 6. Responsible lending practices

Clause 6.1 of the COBA Code commits subscribers to:

> *always act as a responsible lender and…comply with responsible lending laws*

COBA members have an obligation to ensure that any credit granted to consumers must be suitable and the customer can afford to repay the credit without substantial hardship. This can in many ways include going above and beyond compliance with the law. The role of the COBA Code is to strengthen and raise standards beyond existing law.

The impact on a consumer of being given an unsuitable loan cannot be underestimated. Unsuitable loans cause enormous stress and harm to bank customers. They can cause family breakdown and even self-harm. Customer owned banks have an obligation to do everything in their power to avoid approving unsuitable loans. Customers rely on their lenders to make sure they are given suitable credit: it is the customer owned bank that is the party with knowledge and power and customers trust them to do what is right. It is not acceptable for any bank to fall back on the excuse of borrower responsibility and to cut corners on this issue.

In order to appropriately raise the standards required of COBA members so as to meet and rise above existing law, the Code should commit subscribers to proactively request detailed information from prospective borrowers regarding their financial situation and ensure any loan provided meets the needs and objectives of the borrower.

Clause 6.4 states

> *We expect you to provide honest and accurate information to us when applying for a loan or the extension of a credit facility. We will also take reasonable steps to verify your financial situation.*

The first sentence should be removed since it is a directive to the customer not a commitment by the customer owned bank. The second sentence does not meet the expectations of the community nor the spirit of the law or regulatory guidance. At a minimum customer owned banks should carry out their responsible lending duties in line with the law, regulatory guidance and as a prudent and diligent banker. In order to appropriately raise the standards required of COBA members above existing law, the COBA Code should commit subscribers to proactively request detailed information from prospective borrowers regarding their financial situation and ensure any loan provided meets the needs and objectives of the borrower.

Clause 6.5 states:

> *We will promote the responsible use of credit to our customers using a range of approaches.*

We believe that this commitment can be strengthened in a number of ways.

Consumer Representatives note that the *National Consumer Credit Protection Amendment (Credit Cards) Regulations 2018* enshrined additional consumer protections in the *National*

Consumer Credit Protection Act 2009 (**the Credit Act**) as of 1 January. As set out in the Explanatory Memorandum, the reforms are as follows:

> *Reform 1: tighten responsible lending obligations to require that the suitability of a credit card contract for a consumer is assessed on the consumer's ability to repay the credit limit of the contract within a certain period;*
>
> *Reform 2: prohibit credit card providers from making any unsolicited credit limit offers in relation to credit card contracts by broadening the existing prohibition to all forms of communication with a consumer and removing the informed consent exemption;*
>
> *Reform 3: simplify the calculation of interest charges in relation to credit cards by prohibiting credit card providers from retrospectively charging interest on credit card balances; and*
>
> *Reform 4: require new credit card contracts to allow consumers to reduce credit card limits and terminate credit card contracts and require credit card providers to establish and maintain a website that allows consumers to request to exercise these entitlements online.*

Minimum repayment period

We note that with respect to Reform 1, ASIC has subsequently prescribed a three year period for credit card responsible lending assessments. Subscribers should assess all credit card applications on the basis that the customer has the capacity to pay the account out in full within three years if it has been fully drawn to its designated credit limit. We have seen many cases in which a consumer is able to meet their minimum repayments initially, but cannot make any serious inroad into their outstanding balance.

We therefore believe that the COBA Code should introduce and improve upon the commitment at Clause 60 of the Banking Code. The Banking Code states:

> *When you apply for a new consumer credit card or credit limit increase, we will assess your ability to repay the amount of the credit card limit within a five year period.*

This is merely a restatement of the law, which we believe to be a bare minimum commitment. The COBA Code should introduce a clause that reads:

> *When you apply for a new consumer credit card or credit limit increase, we will assess your ability to repay the amount of the credit card limit within a three year period.*

Setting credit limits

We also believe that COBA can enable customers to set their own credit card limits as banks do under the Banking Code at Clause 61:

> *You can let us know what your preferred credit card limit is and we will not give you a limit that is more than what you requested. Transactions may be processed which nevertheless cause you to exceed your limit.*

The COBA Code should stipulate that subscribers must ask all consumers the credit limit they are seeking and not approve a limit above that requested. When a customer is granted a credit limit that is greater than the limit they had requested, they are likely to use it because it is

available. This can be particularly damaging for consumers who have been granted a credit limit larger than they had requested, who then encounter financial hardship, and run up their cards on essential living expenses rather than seeking timely advice about other options they may have taken up had they not had access to easily available credit. They are then trapped in a significantly greater amount of debt than they had anticipated. In a similar vein, the Code should explicitly stipulate that subscribers must commit that if a credit card is being obtained to purchase goods in a linked credit transaction, they will not approve a limit on the credit card that exceeds the price of the goods.

Credit limit increase offers

The commitments regarding credit limit increase offers under Section 7 of the COBA Code are largely redundant following the passing of the *Treasury Laws Amendment (Banking Measures No. 1) Act 2017*. We however believe that the sector can make commitment regarding credit cards that go further than the law and that these should be included in the Section 6 - Responsible lending practices section above as it relates directly to the customer owned banks' obligation to lend responsibly. These are detailed below.

Increasing minimum repayment amounts

Consumer Representatives strongly support mandating higher minimum repayment amounts for credit cards as recommended by the Senate Economics Committee.[7] We acknowledge that some customer owned banks already go beyond what is mandated in the COBA Code and require 5% minimum repayments. A phased increase in minimum repayment percentages, or at the very least an increase on minimum repayment amounts for all new accounts going forward should be implemented immediately via the COBA Code. An increase to minimum repayment amounts on all new accounts will ensure that consumers are encouraged to pay off their balances faster than is currently the case and consequently pay less interest.

Online card cancellation and credit limit reduction

The COBA Code is silent with respect to providing straightforward card cancellation or credit limit reduction. Consumer Representatives are aware of some credit providers that already provide online tools allowing consumers to reduce their credit limit. It is now required by law that all credit card providers have a designated website where customers have the ability to reduce their credit limit or to close off their credit card account, online. The COBA Code subscribers should make commitments regarding online card cancellation, including that the website must be accessible and free to use, and not include any advertising for further credit products or suggestions to reconsider lowering one's credit limit.

[7] Recommendation 7 of the Senate Economics References Committee, Interest rates and informed choice in the Australian credit card market, December 2015
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Credit_Card_Interest/Report

Linked mortgage credit cards

A phenomenon that Consumer Representatives have increasingly seen is the packaging of mortgages with a mandatory credit card. While this is not strictly speaking an unsolicited credit limit offer as conceived under the recent credit card reforms[8] – it is worse – it is the mandatory provision of a credit card to have access to a particular home loan. This practice is inconsistent with the requirements and objectives of the responsible lending provisions. Consumer Representatives recommend that COBA Code subscribers commit to a prohibition on the *mandatory* packaging of credit cards with home loans.

Unsolicited promotional material in relation to credit products

Consumer Representatives note that the recent credit card reforms have prohibited the unsolicited credit limit offers in relation to credit card contracts.

We however note that the amendments have not stopped credit providers from sending further promotional material about products and services (including other credit cards and other credit products) from the credit provider or their subsidiaries and corporate partners. Consumer Representatives have seen examples of credit card applications that provide no choice as to whether a customer will be sent promotional material about products and services from the lender, their subsidiaries or corporate partners, essentially rendering the receipt of promotional materials as mandatory in order to access the credit card. We believe COBA subscribers can make a stand and commit to prohibit mandatory receipt of promotional offers and ensure that all such marketing arrangements are provided on a strictly opt-in basis.

Notification of credit usage

The COBA Code should commit subscribers to provide customers with notification of how much credit they have used, for free. If used strategically, such a commitment will help consumers remain mindful of their credit card use, and may help consumers become proactive money managers.

Honeymoon offers

Consumer Representatives recommend a prohibition on "honeymoon" interest rates where promotional interest rates often induce customers to enter into credit card contracts and be unable to repay the debt once the promotional period is over, incurring large interest rates.

Those credit card issuers that offer honeymoon periods take advantage of consumers with low levels of financial literacy, who do not understand or consider the actual impact of interest rates until it is too late. While customer owned banks are able to use honeymoon offers to lure in vulnerable customers, there is no incentive to reduce credit card interest rates in order to become more competitive.

[8] Treasury Laws Amendment (2017 Measures No 8) Act 2017: Credit Cards and the National Consumer Credit Protection Amendment (Credit Cards) Regulations 2017

Consumer Representatives believe credit cards with honeymoon interest periods place disproportionate costs on disadvantaged consumers and are part of the problem relating to the current gap between cash rates and credit card interest rates. As such, the practice of offering honeymoon interest rates should be explicitly prohibited in the COBA Code.

If COBA decides against the recommendation to prohibit honeymoon interest rates, the harmful impact of honeymoon offers should be minimised by stipulating in the COBA Code that subscribers offering honeymoon periods must:

1. provide consumers with timely electronic notification of balance transfer expiry periods; and
2. not offer honeymoon periods of less than 12 months.

Both of these would allow consumers to see some benefit from the honeymoon period.

Additional proactive measures

There are also a number of additional steps that customer owned banks could take to improve upon this. On this we refer COBA to *ASIC Report 604 Credit card lending in Australia – An update*[9] in December 2018 that has highlighted the following measures:

- taking proactive steps—such as tailored communications and/or structured payment arrangements—to help consumers with potentially problematic credit card debt or who are failing to repay balance transfers;
- restricting the amount by which consumers can exceed their credit limit to 10%;
- taking a fairer approach to balance transfers, such as allowing interest-free periods on new purchases; and
- enhancing disclosure about cancelling old credit cards.

We believe that these can be included as commitment under the COBA Code moving customer owned banks beyond the law.

Recommendations

24. When the COBA Code refers to sections of the responsible lending laws, the relevant sections should be written in plain English into the COBA Code.

25. The responsible lending section of the COBA Code should be substantially expanded to ensure that:

a) the customer owned bank will act as a prudent and diligent banker; and

[9] https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-381mr-lenders-commit-to-improve-credit-card-practices-following-asic-review/

b) for all credit under the NCCP, the customer owned bank will strictly comply with ASIC Regulatory Guide 209 to ensure that all loans provided will be not unsuitable with a clear process to:

iv. request detailed information about the financial situation of the borrower;

v. verify the financial situation of the borrower; and

vi. ensure the loan meets the needs and objectives of the borrower.

26. Section 6 should include a commitment to assess all credit card applications on the basis that the customer has the capacity to pay the account out in full within three years if it has been fully drawn to its designated credit limit.

27. Section 6 should include a commitment to ask all consumers the credit limit they are seeking and not approve a limit above that requested.

28. Section 6 should include a commitment to not approve a credit limit that exceeds the price of goods if the credit card is being obtained to purchase goods in a linked credit transaction.

29. Section 6 should include commitment to:

a) mandate increased minimum repayment amounts on all new credit card accounts;

b) streamline online card cancellation and preventing the advertising for further credit products or suggestions to reconsider lowering one's credit limit;

c) prohibit the *mandatory* packaging of credit cards with home loans.

d) prohibit mandatory receipt of promotional offers for credit and other products and ensure that all such arrangements are provided on a strictly opt-in basis;

e) provide consumers with notification of how much credit they have used at no cost;

f) prohibit "honeymoon" interest rates, or alternatively if the recommendation to prohibit honeymoon interest rates is not taken up, the COBA Code should stipulate that those credit providers offering honeymoon offers must:

iii. provide consumers with timely electronic notification of balance transfer expiry periods; and

iv. not offer honeymoon periods of less than 12 months.

30. Section 6 should commit subscribers to:

a) take proactive steps—such as tailored communications and/or structured payment arrangements—to help consumers with potentially problematic credit card debt or who are failing to repay balance transfers;

b) restrict the amount by which consumers can exceed their credit limit to 10%;

c) take a fairer approach to balance transfers, such as allowing interest-free periods on new purchases; and

d) enhance disclosure about cancelling old credit cards.

Section 7. Credit limit increase offers

As explained above, this section of the COBA Code should be included in the Section 6 - Responsible lending practices section above as it relates directly to customer owned banks' obligation to lend responsibly. Recommendations in this regard are detailed above.

Section 8. Reverse mortgage loans

Consumer Representatives acknowledge that the COBA Code includes commitments with respect to the provision of Reverse Mortgages where the Banking Code does not and supports the COBA Code continuing to do so.

We wish however to provide the following comments.

For many older consumers a well explained and designed reverse mortgage is an appropriate product that allows them to leverage the equity in their homes without having to sell. However, it is not the right product for everyone, and we have seen a number of older Australians put into this product improperly.

These products are very complex, and no older person should sign up for one without independent advice (that is, advice without another family member present, and advice independent from the lender) from a solicitor. Interest rates are generally higher in reverse mortgages than average home loans and the debt can rise quickly as the interest compounds over the term of the loan. In addition, the loan may affect an older person's pension eligibility and it might mean that they do not have enough money left for aged care or other future needs. Finally, if an older person is the sole owner of the property but someone lives with them, that person may not be able to stay in the home when the owner dies

The introduction of reforms in reverse mortgage has to some extent reduced the financial harm that consumer representatives have witnessed over the years.

The biggest problem, in respect of these products has been the previous sale of a fixed rate reverse mortgage that attracts a large exit fee in certain circumstances. While early exit fees are now prohibited under the credit law, break fees in relation to fixed rate contracts remain legal provided they are clearly disclosed to the borrower. The break fee should reflect the lender's loss as a result of the contract being terminated early – usually the difference between the amount the lender would charge under the contract being terminated for the remainder of the fixed term and the current rate at which the lender is offering the same product (provided the current rate is lower than the rate on the fixed term). People enter reverse mortgages with the view that they will not exit the contract until they die or enter aged care but circumstances change and people can find themselves facing very large fees.

Consequently we believe that the COBA Code should commit customer owned banks to ensuring that reverse mortgage break fees should be limited to levels that reflect the lender's reasonable loss as a result of the contract being terminated early.

Consumer Representatives also note that under Clause 8.3 that "training will be consistent with generally accepted industry standards". We do not think that "generally accepted industry standards" is an acceptable benchmark to meet community expectations of a properly

trained staff member. We therefore recommend that the COBA Code commit customer owned banks to:

- develop a set of best practice standards in the training of staff to introduce, arrange or otherwise deal with reverse mortgage loans, to be attached to the Code;
- to meet and exceed these best practice standards.

Recommendations

31. **Reverse mortgage break fees should be limited to levels that reflect the lender's reasonable loss as a result of the contract being terminated early.**
32. **A set of best practice standards in the training of staff should be developed to introduce, arrange or otherwise deal with reverse mortgage loans, to be attached to the COBA Code; with a commitment to meeting and exceeding these best practice standards under the COBA Code.**

Section 9. Joint accounts

Personal relationships can be a fraught area, whether domestic partnerships or familial. Personal relationship issues clearly impact significantly on section 9. Joint accounts, as well as on section 10. Subsidiary cards, section 11. Safeguards for co-borrowers, and section 12. Safeguards for loan guarantors.

Consumer Representatives hold particular concerns about the implications of abusive dynamics for joint account, joint debtor and guarantor situations. One of the more challenging issues that women subject to abuse face is dealing with banks and their jointly held loans. These difficulties have a significant impact upon economic and emotional lives.

Consumer Representatives direct the Review to the Women's Legal Service Victoria's (WLSV's) 2015 report titled *Stepping Stones: Legal Barriers to Economic Equality after Family Violence.*[10] This comprehensive report provides extensive details on the key issues women in an abusive relationship face with respect to dealing with banks. They include:

- 25 per cent of the women provided counselling by WLSV's Stepping Stone project have a debt in their name accrued by an abusive partner against their wishes, without their knowledge, without understanding the loan contract or as a result of coercion.
- Joint finances become a tool of control when the perpetrator can no longer reach their victim in the form of physical or psychological abuse. Even though it may not be in the abuser's best interests to stop payment or default on the debt, they do so knowing that it will cause further pain for their victim.

[10] Emma Smallwood, Stepping Stones: Legal Barriers to Economic Equality after Family Violence, Women's Legal Service Victoria September 2015 http://www.womenslegal.org.au/files/file/Stepping%20Stones%20Report(1).pdf

- Women subject to abuse are unable to deal with a joint debt because the abuser or the bank withholds consent to removing her name, entering a hardship agreement or dividing the debt. They often have to assume the responsibility for the entire joint debt. This can lead to increased debt worsening the financial situation for the abused.

- When a debt is in a perpetrator's name only, women find themselves unable to obtain details about the mortgage for a family home, unable to prevent their partner from removing all the money from their account or to simply access funds to survive. Women in this situation are also unable to access financial hardship agreements to help meet mortgage repayments.

- Women are commonly subject to duress and threats of violence to induce them to enter into joint loan contracts or loan contracts in their sole name which give them no benefit, and are often not fully understood by them. In these cases, the loans process may be controlled by the perpetrator either with completion of online paperwork or by taking control of interviews with bank staff, not allowing the party who has the ultimate responsibility of the debt to query any part of the process. It is especially prevalent with culturally and linguistically diverse clients who have little or no English.

We have submitted more detailed feedback on the ways in which the COBA Code should be amended so as to better protect people in vulnerable circumstances, including victims of family/domestic violence and elder abuse, in section 24.

The only commitment currently made in the COBA Code regarding joint accounts is:

> *If you are opening a joint account, we will make general information about your rights and responsibilities as a joint account holder available to you. This will include information on h ow to change the authorisations to operate a joint account. We will explain this information if you ask us.*

This section is minimal and inadequate.

The equivalent section of the Banking Code is more explicit in its section regarding joint accounts, stating at Clause 138 that "we will tell you how you can use that account" rather than requiring that a customer first request information in order to have the account explained to them. It also more explicitly states at Clause 139 that

> *If you have a joint account, from which either you or another account holder can make withdrawals, you can ask us to change the account authority so that you all have to approve any future withdrawals.*

This is helpful as it explains, briefly, in the Banking Code, and in plain language, what it means to change authorisations.

The COBA Code should be amended so as to make clear that either party to a joint account can:

- change the account authority such that every account holder has to approve any future withdrawals; and

- notify the customer owned bank of a breakdown, at which point the bank should suspend the account until the parties can agree on how to deal with the funds.

Recommendations

33. Section 9 should state that subscribers will tell consumers how to use any joint account they open with that subscriber.

34. Section 9 should be amended so as to make clear that either party to a joint account can:

a) change the account authority such that every account holder has to approve any future withdrawals; and

b) notify the bank of a breakdown, at which point the bank should suspend the account until the parties can agree on how to deal with the funds.

35. The COBA Code should offer greater protection to victims of family/domestic violence who have joint accounts with their abuser, including the following:

a) a re-draw facility should be suspended immediately upon the request of any borrower for a joint account;

b) financial hardship policies include family violence and economic abuse as a potential cause of financial hardship;

c) a range of flexible options available to assist customers experiencing family violence that includes:

v. moratoriums on repayments where the customer has little or no income;

vi. severing joint debts to enable the customer experiencing family violence to repay a smaller debt in an affordable repayment arrangement;

vii. a release from a debt when the customer is in long term financial hardship;

viii. not listing on the customer's credit report to ensure they can obtain rental property;

d) banks should never ask a co-account holder to seek information, documents or consent from their ex-partner; the bank should communicate with each customer independently.

e) inclusion of good referral pathways for legal advice, counselling and other support services.

Section 10. Subsidiary cards

Section 10.2 of the COBA Code states:

> *If you instruct us to cancel a subsidiary card, you will not be liable for any losses resulting from continuing (unauthorised) use of the subsidiary card following cancellation, provided you:*
>
> - *take all reasonable steps to ensure the card is destroyed or returned to us; and*
> - *do not act fraudulently or otherwise cause the loss*

As this section stands, a customer not being made liable for losses resulting from unauthorised use of a subsidiary card is contingent on fulfilling the requirements listed, which are not specific and are open to interpretation.

Consumer Representatives submit that in situations of domestic/family violence, where the abusive partner has a subsidiary card to the victim's account, it is entirely unreasonable to expect the victim take any steps whatsoever to ensure the card is destroyed or returned to the bank. However under the current ambiguous wording, a subscriber may well dispute this and penalise a victim for failing to act to destroy or return a card in the possession of an abuser.

Consumer Representatives recommend amending this section to better reflect the realities of family and domestic violence victims in their engagement with subsidiary cards.

This Section should also include a reference to the impact of family/domestic violence, and make a commitment to act fairly towards victims of such violence.

Recommendations

36. Section 10 should be amended to:

a) better reflect the realities of family and domestic violence victims in their engagement with subsidiary cards.

b) include a section addressing the obligation of subscribers to act fairly towards victims of family/domestic violence.

Section 11. Safeguards for co-borrowers

Consumer Representatives believe that at present, protections in the COBA Code for co-borrowers are limited. The letter of the law goes further than either the COBA or ABA Codes at present, and this must be rectified. The COBA Code states at Clause 11.1 that:

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

A FOS determination from 2016 found in favour of an applicant who claimed she should not have been accepted as a co-borrower on a loan with her husband as she did not receive a substantial benefit from the loan. The finding was that given she did not stand to substantially gain from the loan she should have been treated as a guarantor and the lender should have complied with the NCC provisions relating to disclosure to guarantors.[11] It should be clarified in the COBA Code that in order for a person to be accepted a co-borrower they must receive a *substantial* benefit from the loan or other credit facility. There should be further clarification that residing with, or having a familial relationship with, another person with whom an individual applies to become a co-borrower, does not in and of itself constitute a benefit.

[11] FOS Determination, Case number 412040, 17 June 2016.

The wording of clause 11.1 also takes the onus off subscribers to properly assess a prospective co-borrower's genuine likelihood of gaining any or substantial benefit from a prospective loan or credit facility. This clause should be further amended to set out an obligation on the part of the customer owned bank to take steps to properly assess the situation and to ascertain whether or not a prospective co-borrower will receive a substantial benefit from the loan or credit facility. This should explicitly include the bank being obliged to consider other information available to the bank relating to that customer, including information from previous banking relationships.

Further, as recommended in the Khoury Review of the Code of Banking Practice, a credit facility should be unenforceable against a person who is accepted by the bank as a co-borrower but who the bank should have known would not receive a substantial benefit.[12]

Consumer Representatives also recommend the addition of a clause to address situations in which a co-debtor has received minimal benefit from a loan or credit facility. In such cases, an appropriate remedy is for the customer owned bank to sever the loan so that each has to repay their own benefit plus applicable interest. This will aid in dispute resolution, and is also what was determined in the 2016 FOS case referenced above.

The financial hardship clauses of the COBA Code should also be clarified such that either of the co-borrowers can seek hardship assistance in relation to the account and the bank can make an arrangement or variation with one debtor.

Recommendations

37. **Section 11 should be amended to require that a co-borrower will not be accepted unless they will obtain *substantial* benefit from the loan.**
38. **Section 11 should make clear that residing with, or having a familial relationship with, someone does not itself constitute a substantial benefit.**
39. **Clause 11.1 should be amended to place the onus on the subscriber to assess the situation as fully as possible to ensure inappropriate co-borrowing situations are not entered.**
40. **Under Section 11 a credit facility should be unenforceable against a person who is accepted by the bank as a co-borrower but who the bank should have known would not receive a substantial benefit.**
41. **There should be an additional clause in Section 11 to address situations where a co-debtor has received minimal benefit from a loan: in these cases it is appropriate to sever the loan so that each party has to repay their own benefit, plus interest.**
42. **The financial hardship clauses of the COBA Code should be clarified so that either of the co-borrowers can seek hardship assistance in relation to the account and the bank can make a variation with one debtor.**

[12] Recommendation 35 Independent Review, Code of Banking Practice, Phil Khoury, January 31, 2017

Section 12. Safeguards for loan guarantors

Consumer Representatives are disappointed that the protections for guarantors in the COBA Code are weaker than the law. The role of industry codes is to build upon what is set out in the law, and as such the COBA Code should be significantly strengthened with regard to protections for guarantors.

Guarantors are an inherently vulnerable group and at high risk of exploitation. In our experience, the guarantors that contact consumer representatives, are generally older consumers, agreeing to accept personal liability and often putting their own assets and home at risk for family members, usually their own children.

Whether or not they are older or vulnerable, guarantors gain no benefit from the transaction, and no checks are performed to ensure they can afford the loan if the debtor cannot. Furthermore, guarantors are often not in a position to make a fully informed decision free of pressure or persuasion.

Guarantors and responsible lending

Consumer Representatives submit that a guarantee should not be provided where recalling it will leave the guarantor in substantial hardship. This will offer far greater protection to people vulnerable to elder abuse, by making it harder to seek a guarantee from an elderly relative whose home is their only asset.

Significant individual detriment can occur when guarantees are called upon, even when those guarantees were provided by people who were fully informed of the risks as the duty someone can often feel to their child or other close relative can trump rational thinking. The potential for significant detriment to the guarantor is particularly present where a guarantee is secured against a family home.

Subsequently we recommend that COBA subscribers commit to meeting a suitability obligation in their provision of guarantees. This might operate, for example, where a guarantor had insufficient income to pay the loan, and their only asset was their home, and they could not easily purchase another home suitable to their needs with the proceeds after repayment of the loan. In this case, no amount of legal or financial advice should be sufficient to fix the problem.

The lender should conduct a suitability assessment of the loan for the guarantor and the borrower, and provide both of these assessments to the guarantor.

Further we recommend that customer owned banks should commit to:

- providing a mandatory disclosure notice to customers informing them that acting as a guarantor (and also mortgaging a property) can affect the guarantor's Centrelink income;

- provide a mandatory disclosure notice to customers informing them that acting as a guarantor (and also mortgaging a property) can affect the guarantor's aged and health care choices
- having a discussion with the guarantor about the content of these disclosure notice;
- require guarantors to receive legal and financial advice. This advice should include information about:
    a) the potential impact of the guarantee on their Centrelink income, and
    b) the affect on the guarantor's aged and health care choices.

When a customer owned bank can accept a guarantee

At present, the COBA Code sets out that the subscriber may accept a guarantee the very next business day after providing information regarding guaranteeing a loan. This is inadequate.

We note that Clause 107 of the Banking Code states that they will:

> *…not accept a guarantee from you until the third day after you have been given the information…*

Potential guarantors are often considering becoming a guarantor for a family member and often make these decisions based on emotional, rather than financial, considerations. With this in mind, Consumer Representatives consider that even three days is inadequate for a guarantor to properly consider their options, especially as these reflections help the guarantor to make a significant financial decision which may affect their home.

We believe that it is more appropriate to provide a 7-day period for guarantors to consider the information before a bank will accept their guarantee.

Ongoing information

Clause 12.14 of the COBA Code states:

> *After entering into a guarantee agreement with you, we will send you a copy of:*
>
> - *any formal demand or default notice we send to the borrower, and*
> - *if you ask us, a copy of the latest account statement (if any) provided to the borrower.*

The equivalent clause of the Banking Code Clause 101 is both more extensive and more specific (as relates to time-frames), and we recommend COBA adopt similar if not improved versions of these commitments:

> *We will give you the following information, about a borrower's deteriorating financial position as it relates to the loan you guarantee, within 14 days of the relevant event:*
>
> *a) a copy of any formal demand or default notice we send to the borrower after we send it;*
>
> *b) a written notice if the borrower has advised us that they are experiencing financial difficulty which has resulted in a change to their loan; and*

c) *a written notice if the borrower is in continuing default for more than two months after the issuance of the default notice referred to above.*

Guarantors and Electronic disclosure

Problems with guarantees often involve the guarantor having little to no understanding of their role in the process. This can be the result of many factors, including:

a. debtors misleading or concealing the true nature of the transaction or extent of the liability;

b. elder abuse, particularly if the guarantor is dependent on the debtor or has medical problems;

c. in many cases, the debtor does all the organisation before the guarantor is involved to sign the documents, meaning the guarantor may have little to no opportunity to ask any questions or understand what is involved; and

d. the guarantor may sign the guarantee in the presence of the debtor, raising the risk of undue influence or pressure.

Electronic disclosure of essential documents including the guarantee contract and the underlying credit contract (and any extensions to these) heightens the risk for guarantors. While the COBA Code is silent on how information will be provided to a guarantor it leaves open the option for guarantors to be provided with information via email alone.

Electronic disclosure, particularly by email, may not properly convey the seriousness or risk of the transaction the guarantor is entering. Contracts relating to credit, guarantees and mortgages are already lengthy and difficult for many consumers to understand, even when handed to them personally on paper. There is usually a bundle of documents involved, meaning vital information may be lost in attachments and skipped over, without the guarantor being aware of this. The fact a guarantor will later sign one of the attached documents does not mean there was effective disclosure of all the requisite information pertaining to their liability and risk.

Posting physical documents to the guarantor's home address is a better method to ensure receipt by the guarantor directly. The security and ownership of email accounts is less certain than a locked letterbox at a residential address. Debtors could set up email addresses for a guarantor and ask their guarantor to consent to electronic correspondence – and in a family context where a guarantor trusts the debtor, it would not at all be unusual for the guarantor to agree. This opens up the risk of whether all relevant documents are fully provided to the guarantor, and also other issues such as access and security of the account and tampering with documents and email.

The COBA Code should be amended so that subscribers will commit to providing specific protections for guarantors (as a particularly vulnerable group) that requires person to person disclosure (or in the lesser alternative, in hard copy by post).

Guarantors and enforcement

Consumer Representatives believe that when a default occurs on an asset held by a debtor under a guarantee then any recovery action that takes place should be conducted against the debtor and their asset in the primary instance. Only after a debtor's asset has been sold should the bank pursue a guarantor and their secured asset to cover the difference involved. The current wording of 12.16 is so loose as to ensure that a customer owned bank will be able to take action at any time.

Failure to comply with pre-execution requirements

The Khoury Review of the Code of Banking Practice recommended that:

> *The Code should specify that a guarantee is unenforceable if the signatory bank fails to comply with the pre-execution requirements. Similarly non-compliance with a post execution requirement means that the guarantee is unenforceable in relation to debt or costs that accrue after that time.*[13]

While this recommendation was not taken up by the ABA, Consumer Representatives strongly support the adoption of this clause in the COBA Code. The COBA Code should promote current best practice by ensuring that non-compliance with guarantor requirements renders the guarantee unenforceable.

Recommendations

43. Section 12 needs to include commitments to:

- **a) meet a suitability obligation in their provision of guarantees by conducting a suitability assessment of the loan for the guarantor and the borrower, and providing these assessments to the guarantor;**
- **b) provide a mandatory disclosure notice to customers informing them that acting as a guarantor (and also mortgaging a property) can affect the guarantor's Centrelink income;**
- **c) provide a mandatory disclosure notice to customers informing them that acting as a guarantor (and also mortgaging a property) can affect the guarantor's aged and health care choices**
- **d) have a discussion with the guarantor about the content of these disclosure notice;**
- **e) require guarantors to provide evidence to the bank that they have received legal and financial advice including about**
  - **iii. the potential impact of the guarantee on their Centrelink income**
  - **iv. the affect on the guarantor's aged and health care choices**

[13] Recommendation 44

f) **provide specific protection for guarantors (as a particularly vulnerable group) that requires disclosure person to person (or in the lesser alternative, in hard copy by post).**

g) **only pursuing a guarantor after recovery action has been taken against the debtor's asset.**

h) **specify that a guarantee is unenforceable if the customer owned bank fails to comply with the pre-execution requirements. Similarly non-compliance with a post execution requirement means that the guarantee is unenforceable in relation to debt or costs that accrue after that time;**

i) **only pursuing a guarantor after recovery action against the debtor's asset.**

Section 13. Third party products

The COBA Code at Clause 13.1 commits subscribers to

> *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,*

and at Clause 13.2 they

> *will only distribute financial products and facilities (including credit products) of issuers that belong to an External Dispute Resolution scheme, approved by the Australian Securities and Investments Commission (ASIC), that covers the product in question.*

Consumer Representatives submit that any third party introduced by a subscriber should also be subject to the obligations of the COBA Code.

Financial Planners

It is unclear whether an independent financial planner to which the customer-owned bank refers every customer to constitutes a third party product. We are aware of a case in which a Credit Union was giving customers discounts for multiple products, for using a financial planner that they referred to, who was presumably offering the Credit Union some form of benefit or commission for doing so. We are also aware of many financial planning firms set up specifically to take referrals from credit unions.

Customer-Owned banks have fewer services in-house as they are generally smaller than other banks, and as such are more likely to refer out. We are concerned with situations where a customer owned bank refers customers to a financial planner or financial planning firm, and receives commissions and kick-backs from the referrals. It is unclear what responsibility, if any, a customer owned bank has to ensure the quality of the service provided.

Recommendations

44. **Any third party introduced by a customer owned bank must also be subject to the obligations set out in the COBA Code;**
45. **Section 13 of the COBA should be strengthened to ensure that:**
    a) **customer owned banks are not allowed to receive benefits from the third parties they refer to;**
    b) **third party service providers are appropriately educated and trained to provide their services competently and to deal with you professionally;**
    c) **third party service providers are appropriately monitored in an ongoing manner and regularly reviewed by the customer owned banks;**
    d) **third party service providers will notify the customer owned bank if there is any complaint against them following being introduced by the customer owned bank;**
    e) **the customer owned bank will consider referral to a financial counsellor as more appropriate than to a financial planner and provide such a referral;**
    f) **the service is appropriate for the customer and their stated needs.**

Third party insurance

Problems involving the sale of add-on insurance, and particularly consumer credit insurance (**CCI**), have been raised by Consumer Representatives for decades. Reports by ASIC from 2011 and 2013 demonstrated serious problems with CCI sales practices by Australian banks and other financial service providers. Westpac, for example, has been required to repay consumers who have been mis-sold CCI associated with its home lending, and Esanda has agreed to compensate consumers for sales conduct of a broker which included selling add-on products without the knowledge or consent of the consumer.[14]

It is noted in this section we define add-on insurance to include CCI, GAP, tyre and rim, and extended warranties. We do not include comprehensive car insurance.

In its 2011 report on CCI, ASIC identified a series of systemic issues:

- *consumers being sold CCI products without their knowledge or consent;*
- *pressure tactics and harassment being used to induce consumers to purchase CCI products;*
- *misleading representations being made during the sale of CCI products; and*

[14] For further information see Consumer Action's *Junk Merchants: How Australians are being sold rubbish insurance and what we can do about it*, December 2015, http://consumeraction.org.au/Junk%20Merchants%20-%20Consumer%20Action%20Law%20Centre%20December%202015.pdf

- *serious deficiencies in the scripts used for the sale of CCI products.*[15]

The issues identified by ASIC then continue to occur. Consumer Action's December 2015 report *Junk Merchants: How Australians are being sold rubbish insurance and what we can do about it*, details the serious problems of add-on products including their poor value, low claim rates, high decline rates and the fact that they are regularly mis-sold. The Report also provides 12 case studies on the issue.

Consumer Action launched DemandaRefund.com in 2016, a self-advocacy tool that empowers people who have been mis-sold junk insurance to claim a refund from the insurer or financier. Since its launch in 2016 until 28 February 2019, Consumer Action estimates that 747 letters of demand have been generated from DemandARefund.com, totalling approximately $1.88 million in claimsConsumer Representatives have had enough of predatory sales tactics. Customer owned banks need to address this issue in an effective way immediately.

An effective, economy-wide deferred sales model would take into account understandings of consumer behaviour and would have the following features:

a. **Customer opt-in**: The customer would need to proactively contact the insurer after the deferral period to purchase the insurance. This is a critical element. Without this requirement, pressure-selling will continue to take place at some point in the sale.

b. **A genuine 'break' in the sale**: The model would clearly separate the sale of a car, finance or credit from the sale of add-on insurance, ideally by 30 days. However, the length of the deferral period should not be the primary mechanism for separating the primary sale from the sale of add-on insurance. An effective model would only allow the add-on insurance sale after the primary transaction is complete.

c. **No 'bridging insurance'**: 'Bridging insurance' would not address any issue particular to a deferred sales model. Existing add-on insurance products typically have waiting periods. The introduction of 'bridging insurance' would simply create a new opportunity for high-pressure selling and make consumers feel invested in replacing the 'bridging' cover with an add-on insurance product after the deferral period.[16] 'Bridging insurance' would be a bridge to unsuitable add-on insurance for consumers.

Monitoring and evaluation: Insurers and distributors would maintain robust data on who they are selling add-on insurance to, and how these sales take place. This process would involve record-keeping, shadow shopping and other check, and regular reporting to ASIC.

[15] Paragraph 8, ASIC Report 256: *Consumer Credit Insurance: A review of sales practices by authorised deposit-taking institutions*, , October 2011 http://download.asic.gov.au/media/1343720/rep256-issued-19-October-2011.pdf

[16] See Consumer Action Law Centre et al, Joint submission: Options to reform the sale of add-on insurance and warranties in car yards, 23 October 2017, 11–12.

We note that the ABA has taken steps in the right direction and introduced specific commitments under Chapter 18 of the Banking Code (Clauses 62-68) that includes a deferred sales model. We recommend that these clauses act as the basis for equivalent commitments under the COBA Code.

Customer owned banks are at considerable reputational risk if this problem is not addressed. In our view, COBA members need to stop selling junk insurance to consumers in a culture with a commission structure that encourages sale by stealth.

We also believe that there is an opportunity for customer owned banks to exceed the commitments by ABA member banks.

We note that under the Banking Code the availability of CCI will be mentioned "after [the consumer has] completed the digital application for a credit card or loan."[17] We do not believe that this is strong enough. Consumers will continue to be under the impression that the CCI will assist with the loan application. Customer owned banks should go further and only refer to the availability of CCI after the *approval* of the loan.

Second we strongly recommend that COBA should go further and fully align with recommendation 4.3 of the Banking Royal Commission and ensure that an effective deferred sales model covers all add on products – not just CCI.

Customer owned banks should also commit to informing customers that the add-on products they are offering, or products offering similar cover, could be available at competitive prices from other providers including directly from the same insurer/warranty company.

Finally adequate education should be provided to all customer owned banking representatives about their responsibilities when engaging in the sale of add-on insurance.

Case study – Danielle's story

Danielle applied for a car loan through a customer owned bank. The customer owned bank told Danielle that as part of her repayments, she would get insurance if she became sick or unable to pay the loan. However, the customer owned bank failed to disclose to Danielle that this was additional insurance: they made it sound like it was free and included as part of the car loan costs. When Danielle enquired as to the cost, the customer owned bank told her the cost of the loan repayment bundled with the insurance cost, again presenting it as inclusive.

Danielle had to explicitly decline the insurance in order to obtain the loan without the additional insurance.

Source: Financial Counselling Australia

[17] Clause 64, Banking Code

Recommendations

46. **The COBA Code should include a series of commitments with respect to the sale of add-on insurance products based on and exceeding the equivalent Clauses 62-68 of Chapter 18 of the Banking Code (Clauses 62-68) including a deferred sales model. Customer owned banks can exceed the commitments made by Banking Code subscribers by:**
    a) **onlying refer to the availability of CCI after the approval of the loan;**
    b) **extending the deferred sales model to all add-on products – not simply CCI;**
    c) **informing customers that the add-on products they are offering, or products offering similar cover, could be available at competitive prices from other providers including directly from the same insurer/warranty company; and**
    d) **providing adequate education to all customer owned banking representatives about their responsibilities when engaging in the sale of add-on insurance.**

Lenders Mortgage Insurance - Risk payments

Lenders Mortgage Insurance (**LMI**) is insurance designed to protect a lender in the event borrowers are unable to repay a home loan, and if the property is sold resulting in a shortfall. LMI is usually required when a borrower's home loan deposit is less than 20% of the value of their home. Consumers with a low deposit generally understand that they must pay for LMI otherwise they will not be approved for a home loan, however, in our experience; they do not understand the real purpose of LMI.

LMI comprises a one-off lump sum fee that is usually added to the consumer's home loan. So, even though it is obtained at the borrowers' cost, it only protects the lenders. We believe that this is where some of the confusion arises.

Borrowers are often under the misconception that as they have paid thousands of dollars for LMI, that they must benefit from it. This is not the case. Consumers are often confused and fail to distinguish between LMI and Mortgage Protection Insurance. Many of our clients think that LMI protects them in the event that they cannot make their repayments due to illness or unemployment.

Borrowers are often unaware of who the LMI provider is; and, as the borrowers are not parties to the insurance contract, they are unable to obtain a copy of the insurance contract in order to clarify its terms and their position.

Lenders do not hesitate to claim on LMI, and the LMI providers often ultimately assign the shortfall debt to debt collectors. It is often only at this point that consumers contact a community legal centre of financial counsellor unclear of why they are being pursued and seeking advice on aggressive debt collection behaviour.

In our experience, "Lenders Mortgage Insurance" is a name that can mislead consumers. When consumers think of paying for insurance, they tend to think of paying for coverage for

themselves, rather than for another entity. In reality, what Lenders Mortgage Insurance covers is the risk to the lender.

At a minimum these payments should therefore be renamed 'Risk payments'.

We suggest an additional section in the COBA Code setting out subscribers' obligations with regard to these payments, including:

- to explain that these payments do not cover the customer at all;
- that only the actual cost of the Lenders Mortgage Insurance to the customer owned bank should be paid by the consumer: cf Clause 70 of the Banking Code;
- that in the event of a refinance, banks must pass on any rebate they are entitled to receive on Lenders Mortgage Insurance to the customer who has paid the premium: cf Clause 71 of the Banking Code;
- to provide clear information to customers about how and when a rebate may be claimed as part of the documents provided to a customer when they get the loan: cf Clause 71 of the Banking Code;
- to create and supply a clear fact-sheet to explain to consumers what Lenders Mortgage Insurance is: cf Clause 70 of the Banking Code.

Recommendations

47. **Lenders Mortgage Insurance should be renamed and referred to as Risk payments.**
48. **A new section is required focussed on Risk payments:**
    a) **explaining that these payments do not cover the customer at all;**
    b) **that only the actual cost of the Lenders Mortgage Insurance to the customer owned bank should be paid by the consumer;**
    c) **that in the event of a refinance, banks must pass on any rebate they are entitled to receive on Lenders Mortgage Insurance to the customer who has paid the premium;**
    d) **to provide clear information to customers about how and when a rebate may be claimed as part of the documents provided to a customer when they get the loan;**
    e) **to supply a clear fact-sheet to explain to consumers what Lenders Mortgage Insurance is.**

White-labelled products

Many credit unions white label their credit cards, which are issued by a different bank but have credit union branding. The credit union then does the customer management work. This is concerning from a consumer perspective as in effect the customer's credit is provided by another entity that the customer may not even be aware of. This can be problematic and

confusing, for example, if issues of credit card use arise. In cases of fraudulent use, a credit union may then deflect the customer by informing them they must instead approach the credit card provider. As the main interface with the customer, the credit union in these cases should facilitate clear communication with the customer about their account, and give them all relevant information.

Many customer owned banks also sell white labelled general insurance. In addition to the commitments set out above with regard to add-on and junk insurance, there should be appropriately documented systems for the sale of white labelled general insurance by customer owned banks. This includes full disclosure as to the nature of the arrangement, and responsibility on the part of the customer owned bank to assist the customer should issues arise.

Recommendations

49. When providing white labelled products credit card subscribers must provide clear communications with the customer about the arrangement, their account, and other relevant information.

Section 14. Use of finance brokers

Given the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, we believe that there is an opportunity for the customer owned banking sector to stand apart from the rest of the lending sector to ensure that their customer's interests are placed ahead of the interests of the finance broking sector. We recommend that the COBA Code commit subscribers to only working with finance/mortgage brokers in the circumstance where:

- there are no trail commissions;
- the fee is flat and not fixed to the size of the loan;
- commissions claw back is limited to two years

We also recommend that the COBA Code prohibit campaign and volume-based commissions and payments and other incentives being offered to brokers.

Recommendations

50. The COBA Code should:

a) prohibit no trail commissions to finance brokers;

b) **only use flat fee that are not fixed to the size of the loan;**

c) **limit commissions claw back to two years; and**

d) **prohibit campaign and volume-based commissions and payments and other incentives being offered to brokers.**

Section 15. Timely, clear and effective communication

Consumer Representatives recommend an additional clause in this section committing subscribers to provide interpreters for people who do not speak fluent English and for people who are deaf.

We note that the Insurance in Superannuation Code of Practice includes to support people from non-English speaking backgrounds under 6.7, 6.8 and 6.9. These state:

> *6.7 We will provide access to an interpreter at your request, or where we need an interpreter to communicate effectively with you. We may use an interpreter who is a member of our staff, or an external interpreter.*
>
> *6.8 We will record your interpreting needs and plan ahead to meet these needs. Where an interpreter is offered but declined, this will also be recorded.*
>
> *6.9 We will provide a direct link on our website to information on interpreting services and any other relevant information for non-English speakers, including any insurance information that we have translated into other languages.*

We believe similar commitments can be made under the COBA Code.

TTY services should also be available for all those who are deaf or have hearing difficulties.

This section should also contain a commitment on the part of subscribers to appropriately train or hire staff or contractors to communicate appropriately with customers with an intellectual disability.

Recommendations

51. **Section 15 should include commitments to:**

    a) **provide interpreters for people who do not speak fluent English and TTY services for people who are deaf or have hearing difficulties.**

    b) **provide a direct link on our website to information on interpreting services and any other relevant information for non-English speakers;**

    c) **record a customer's interpreting needs and plan ahead to meet these needs. Where an interpreter is offered but declined, this will also be recorded;**

    d) **appropriately train or hire staff or contractors to communicate appropriately with customers with an intellectual disability.**

Section 16. Account statements and balances

Section 16should include an explicit commitment that subscribers will provide paper statements as a regular form of account statement, upon request from a customer. Subscribers should set up a system whereby a customer can easily designate paper as their preferred form of statement and receive paper statements on an ongoing basis. As per Section 5, there should be no charge for the provision of paper statements.

Recommendations

52. **Customers should be given a choice as to their preferred means of contact with respect to every communication commitment under the COBA Code including with respect to the provision of account statements and balances.**

Section 17. Notifying changes to your account

Clause 17.1 commits customer owned banks to give "at least 20 days advance notice before" making changes to an account. This is not best practice.

We recommend that this clause be amended to require that a subscriber provide at least *30* days' advance notice before making the changes listed under that clause in relation to a customer's account. We note that Clause 154 of the Banking Code commits banks to this timeframe and we believe that this can be similarly met by customer owned banks.

Clause 17.3 commits customer owned banks to notify a customer of other changes to an account "when we next communicate with you." This is unreasonable. Clause 152 of the Banking Code sets out that subscribers must notify a customer of other changes to an account "as soon as reasonably possible". This is still unclear and inadequate. In our view, at a minimum the COBA Code should set out that such changes should be notified at the time of the next communication, or within two months: whichever is earlier. We believe that consumers should be informed as soon as the decision to change the terms and conditions has been made, be they favourable or unfavourable to a customer. To do so otherwise is in no way being fair or ethical in dealing with a customer (as per key promise 1).

Clause 17.4 currently states that:

> *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, including electronic 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.

Customer owned banks should not retain the power to decide in which way they will communicate with their customers. Retaining such a power no longer meets community standards or expectations. Communication via an update to a subscriber's website, or through an advertisement in the media is in no way insufficient.

Customers should be notified of changes to accounts referred to in section 17 through the communication method of the customer's own choosing. This can include in writing, electronically, an SMS alert – as long as it is the consumer's choosing.

Recommendations

53. **Clause 17.1 should be amended to require that a subscriber provide at least 30 days' advance notice before making the changes listed under that clause.**
54. **Clause 17.3 should be amended to require that a subscriber – at a minimum - be notified as soon as reasonably possible" to notify a customer of other changes to an account.**
55. **Clause 17.4 should be replaced with a clause that commits customer owned banks to notifying customers of changes to their accounts referred through the communication method of the customer's own choosing.**

Section 18. Electronic communications

Section 18 is out of step with community expectations with respect to choosing the form of communications that best suits their needs.

In so doing we note that one of the 10 key promises to the customer under the COBA Code is that:

> *Our customer service standards will be appropriately tailored where we are aware that you have special needs (for example, because of your age or a disability, because you are an indigenous person, because English is not your first language, or because you are unfamiliar with financial products and services).*

Electronic disclosure is not necessarily the most appropriate means of communication. People on lower incomes, those with disabilities, older clients, culturally and linguistically diverse customers and others should be able to request all communications in a format they can access without the penalty of a fee. There are many reasons why a consumer may not have access to the internet, may not have an email address, or may not be computer-literate. With the increasing shift towards technology-based communication, such consumers will be excluded unless specific protections are provided for them.

While Consumer Representatives support the use of electronic disclosure in most circumstances on the basis that it is better for the environment, can be easier and more convenient for many people and can lead to cost savings, we do so subject to the following:

1. Customer owned banks should provide notification to consumers that the consumer must remember to regularly check for electronic communications, and that consumers can withdraw their consent for electronic disclosure at any time. This notification should be given at the time the consent is obtained.

2. Customer owned banks should be required to make electronic communications available for a reasonable period, and in a format that allows the electronic communication to be saved to an electronic file and printed.

3. Customer owned banks should have a reasonable expectation that the intended recipient would be able to access, save and print the electronic communication. It is particularly important that the Customer owned bank checks that the email address is in use or can be accessed easily. When electronic communication fails there should be a procedure for members to follow to contact a customer and update details and provide appropriate disclosure.

4. That electronic disclosure cannot be used as a method to exclude consumers from products and services. For example, a refusal to provide a banking service or product on the basis that the consumer does not have an email address.

Further, customer owned banks need to acknowledge that there are many people who need to opt for paper communications and should not be penalised for doing so through the levying of a fee. There are many reasons why people may opt for paper communications. For instance, they may not be able to afford access to the internet at home or via their phone. These people tend to be lower income Australians whose sources of income are, for example, Centrelink payments, disability payments or the aged pension.

Charging a fee on those on the wrong side of the digital divide is disproportionate and only exacerbates financial hardship. They are in a sense being penalised for being poor.

As such, we recommend the following clauses regarding electronic communications:

- the customer owned banks will not exclude customers from products and services simply because they do not have an email address or access to electronic communications
- the subscriber will gain the informed consent of the consumer to deliver its disclosure documents electronically;
- customer owned banks will introduce a procedure for consent and notification that covers simple withdrawal of consent, change of email address and the need to check the email address regularly;
- customer owned banks will introduce procedures to get documents in a paper format simply and easily if the electronic communication has failed; and,

- as we have discussed in section 5, fees will not be charged for paper communications

Finally we note that Clause 18.1 is purely descriptive and not an actual commitment to consumers. This should be removed from the Code.

Recommendations

56. Section 18 should be amended so that:

a) customers will not be excluded from products and services simply because they do not have an email address or access to electronic communications;

b) the subscriber will gain the informed consent of the consumer to deliver its disclosure documents electronically;

c) a genuine consent and notification process will be introduced to cover simple withdrawal of consent, change of email address and the need to check the email address regularly; and

d) documents will be provided in a paper format simply and easily if the electronic communication has failed.

Section 19. Copies of documents, statements and other information

Clause 19.4 states:

> *We may charge a reasonable fee, reflecting our costs, for providing a document.*

Consumer Representatives recommend, as set out in Section 5, that fees should not be charged for the provision of a document.

Section 20. Direct debit arrangements

Consumer Representatives have significant concerns with the way all banks, including customer-owned banks, deal with requests to cancel direct debits. In consumer representatives' experience, subscribers routinely fail to comply with requests to cancel direct debits, instead regularly sending customers to the debit user.

We note that the Customer Owned Banking Code Compliance Committee (COBCCC) recently undertook further research into whether COBA members are complying with Section 20.[18] They found that:

> *although there has been some further improvement, non-compliance is still unacceptably high. Customer service representatives gave a compliant response to an enquiry in only 57%*

[18] Compliance with direct debit cancellation obligations disappointing A follow-up own motion inquiry by the Customer Owned Banking Code Compliance Committee March 2019 http://www.cobccc.org.au/uploads/2019/03/COB-OMI-Direct-Debit-21March2019.pdf

of calls. At the same time, institutions' online information needs improvement and was found to be readily accessible on just 38% of websites.

It is particularly disappointing that this is the fourth report since 2010 and yet the problem remains.

The COBCCC Report makes four recommendations:

Recommendation 1

Add clear, simple customer guidance on direct debit cancellation to institutions' websites. This guidance should be easy to find via search functions and explain the difference between recurring payments set up with a credit or debit card versus direct debits set up using a BSB and account number.

Recommendation 2

Explore and implement ways to allow customers to cancel direct debits through their existing online banking services at no cost.

Recommendation 3

Ensure that all frontline staff are aware of the direct debit Code obligations by:

- *providing Code-related and operational training programs to both new and existing staff*
- *providing easily accessible quick reference guides and cancellation processes*
- *sharing the Committee's reports and findings*
- *updating and reminding staff through newsletters, emails, intranet news items or team meetings*
- *increasing staff awareness of the impact of providing incorrect information, especially for customers in financial difficulty.*

All staff should be required to undertake refresher training on the bank's obligations at least once a year.

Recommendation 4

Ensure that monitoring, quality assurance and audit staff are aware of the Code obligations so that they can identify non-compliance. Any non-compliance identified should be raised with the staff concerned and reported to the Committee as part of the Annual Compliance Statement.[19]

We support these recommendations. The COBA Code should commit subscribers to providing straightforward ways for a customer to cancel a direct debit via both phone banking and online banking, and should prohibit subscribers from charging a fee to stop a direct debit.

[19] Pages 3-4, Compliance with direct debit cancellation obligations disappointing A follow-up own motion inquiry by the Customer Owned Banking Code Compliance Committee March 2019

In addition to these the COBA Code must be strengthened to change the word 'promptly' to 'immediately', and to remove the section in parentheses.

Non-compliance with existing Code provisions regarding direct debits can be addressed in part through amendments to the sanctions abilities of the Code monitoring committee. We discuss our suggested amendments regarding the code monitoring committee and sanctions available for noncompliance with the COBA Code in part 7.

We recommend an additional clause requiring payment of a fine in addition to reimbursement of any actual loss incurred as a result of a debit overdrawing a consumer's account, if a bank has not implemented a request to cancel a direct debit when instructed to do so.

We have heard from some subscribers that a reason why they are failing to comply with this section of the COBA Code is that the rules for cancellation of direct debits are confusing. In order to assuage this concern, we recommend that the COBA Code be absolutely prescriptive on this matter. The COBA Code should include a specific and detailed form of wording, which should be advertised clearly on all subscribers' websites, explaining how subscribers deal with direct debits and direct debit cancellations requests.

We note that most clauses in the COBA Code are also legal obligations. It is therefore both worrying and telling that there is such a high rate of breaches in relation to direct debits: one of the few sections of the COBA Code that is not reflected in legislation. This raises questions as to the extent to which subscribers genuinely respect the COBA Code as a form of regulation in and of itself, as compared to the respect granted to the law, where there is a significantly higher risk of genuine repercussion for noncompliance.

Recurring payments

Many people are setting up payment arrangements using MasterCard or Visa numbers on the card. Banks argue that they cannot cancel these recurrent payments and that customers should instead request a chargeback from the credit card company. The COBA Code is silent on the obligations of subscribers to address customer requests to cancel such recurring payments. Clause 21.3 of the Code touches on payment arrangements using MasterCard or Visa numbers, and commits subscribers to assisting customers to seek a chargeback in the event that payments continue to be debited to a customer's account even though that customer has cancelled the recurring payment arrangement.

Consumer Representatives suggest that the same rules should apply whether a customer has a direct debit using a BSB and account number, or a recurring payment using MasterCard or Visa numbers – the customer owned bank should have an obligation to respond to requests to cancel recurring payments. We understand that this may involve subscribers making arrangements with MasterCard and Visa so as to enable recurring payments to be cancelled in a timely manner. Customer owned banks should have an obligation to go as far as they can to ensure that customers are not harmed. COBA members must join with ABA members to negotiate with Visa and Mastercard internationally to make appropriate arrangements to allow this to occur.

The difference between cancelling a direct debit and cancelling a card payment is, understandably, very confusing to consumers.

The COBA Code could be clearer about when a chargeback applies (as opposed to a direct debit).

Where a customer owned bank is unable to adequately assist a customer to cancel a recurring payment, it should have an obligation under the Code to offer to cancel the customer's card and replace it with a new card, and to then offer the customer information as to how to avoid this in future.

Recommendations

57. Section 20 should be amended to:

- **a) commit subscribers to providing straightforward ways for a customer to cancel a direct debit via both phone banking and online banking,**
- **b) provide staff training on direct debit cancellation and monitor the results.**
- **c) prohibit subscribers from charging a fee to stop a direct debit**
- **d) change the word 'promptly' to 'immediately' at Clause 20,1, and remove the words "(but we may suggest that you also contact the direct debit user)."**
- **e) include an additional clause requiring payment of a fine in addition to reimbursement of any actual loss incurred as a result of a debit overdrawing a consumer's account, if a bank has not implemented a request to cancel a direct debit when instructed to do so.**
- **f) apply the same direct debit commitments to recurring payments on credit cards.**

Section 21. Seeking a chargeback on your behalf

In addition to the provisions at section 21, the COBA Code should explain to a customer seeking a chargeback following an unauthorised transaction that they may have the right to dispute the transaction under the ePayments Code or as contained in their terms and conditions: Banking Code Clause 132.

The COBA Code should also commit subscribers to make general information about disputed transactions available to all customers, and notify customers of the availability of that information at least once every 12 months: Banking Code Clause 133.

Recommendations

58. **Explain to a customer seeking a chargeback following an unauthorised transaction that they may have the right to dispute the transaction under the ePayments Code or as contained in their terms and conditions.**
59. **Make general information about disputed transactions available to all customers, and notify customers of the availability of that information at least once every 12 months**

Section 22. Closing your account

Consumer Representatives believe it is unreasonable to require a customer put a request to close their account in writing in order for their request to be complied with. This is not in line with community expectations and technological developments. It is also a fundamental barrier to competition.

The notification commitments under Clause 22.3 should be boosted from:

> *We will notify you at the last postal or electronic address you have given us, or by other legally permissible means.*

to a commitment to attempt contact via at least two means of communication that has been provided by the customer.

We also note that the exceptional circumstances listed at footnote 9 is a non exhaustive list providing significant leeway to the customer owned bank to subjectively develop exceptional circumstances that suit their purposes. The clause states:

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

This should be limited to a list of appropriate exceptional circumstances.

Recommendations

60. **Clause 22.1 should be amended to remove the possible requirement that the customer put a request to close their account in writing in order for their request to be complied with.**
61. **Clause 22.3 should be boosted to ensure that customer owned banks attempt contact via at least two means of communication that has been provided by the customer.**
62. **Footnote 9 regarding exceptional circumstances should be limited to a defined and non-exhaustive list.**

Section 23. Information privacy and security

Improving standards for consent

Consumer Representatives support the inclusion of section 23 but believe that COBA members can go further and differentiate themselves from the rest of the sector by implementing higher consent standards for the handling and use of customer's personal and financial information. We direct COBA to the Australian Competition and Consumer Commission's (**ACCC's**) Rules for the Consumer Data Right.[20] These provide for a consent regime that seeks to genuinely protect consumers and their data. We believe that COBA members should commit to these standards including:

- only handling and using personal and financial information of customers with voluntary, express, informed, consent that is specific as to purpose, time limited and easily withdrawn;
- not making consent a precondition to obtaining another unrelated product or service;
- not bundle consent with other directions, permissions, consents or agreements;
- present each consumer with an active choice to give consent - consent must not be the result of default settings, pre-selected options, inactivity or silence.

Data sharing within a group of companies

Clause 23.6 allows a subscriber to share customers' personal and financial information with other companies in a group of companies that the subscriber belongs to. Consumer Representatives consider that this is deeply inappropriate and a violation of consumers' privacy. This clause should be removed as it no longer meets community expectations in the handling of their data. In the alternative, COBA members should at the very least committing to only doing so with the express and informed consent of their customers in line with the recommendations above.

Raising Awareness of security issues

Consumer Representatives support clauses 23.8 to 23.12. We however would wish to include an additional common security threat to the information being made available under clause 23.9.

Screen-scraping involves a consumer providing their log-in credentials to a third party who use them to access the data held by another party via a customer-facing website. Consumer data is then collected from the website. These unsafe data access technologies have been banned in other countries including the UK but have yet to be banned in Australia. Providing access to one's data using 'screen scraping' technology can amount to a breach of the terms and conditions of a customer's bank account, and can put customers at risk of losing their

[20] Clause 7.10-7.12 ACCC CDR Rules, https://www.accc.gov.au/system/files/CDR-Rules-Outline-corrected-version-Jan-2019.pdf

protections under the E-Payments Code.[21] We believe COBA should provide information to their customers on the threats posed by handing over account details and screen-scraping technologies.

Recommendations

63. **Section 23 commitments should include:**
    a) **only handling and using personal and financial information of customers with voluntary, express, informed, consent that is specific as to purpose, time limited and easily withdrawn;**
    b) **not making consent a precondition to obtaining another unrelated product or service;**
    c) **not bundle consent with other directions, permissions, consents or agreements;**
    d) **present each consumer with an active choice to give consent - consent must not be the result of default settings, pre-selected options, inactivity or silence.**
64. **Clause 23.6 should be removed or at the very least be amended to commit COBA members to only sharing information with other companies in a group of companies with the express and informed consent of their customers in line with the recommendations above.**

Section 24. If you are in financial difficulties

Customers Experiencing Vulnerability

Over recent years, many financial services businesses have recognised that an appropriate response to customers who are experiencing vulnerability goes much further than financial hardship processes. More businesses are recognising that:

- many customers could be at risk of experiencing vulnerability, due to illness, loss of job, death of a partner, family violence or other personal circumstances;
- risks to vulnerable customers can arise due to product design and business processes, so should be considered when developing new products and communications channels;
- many customers will not disclose to their bank if they are experiencing things like family violence, elder abuse, mental ill-health, gambling or other circumstances, however there can be indicators of these issues that staff could recognise with some training; and that
- tailored responses are often required for these customers; for example, some institutions have introduced a flag on their IT system indicating that family violence may be occurring, so that additional protection is applied to private information.

[21] See discussion in the Final Report of the Small Amount Credit Contract Review, March 2016, at p. 76-77, available at https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf.

Responding appropriately to these members requires more than a commitment to act in the best interests of members. The COBA Code should recognise the need to understand and address a range of issues facing vulnerable members[22].

Financial Difficulties

Consumer Representatives are of the opinion that financial difficulties arise under numerous circumstances. The perspective from which this section of the COBA Code is currently written is of financial difficulty as a temporary setback, which any member of the community could feasibly face, and which is dealt with through a hardship arrangement or variation. COBA Code provisions relating to assisting customers in need of a hardship arrangements or variations are critical, and this section of our submission will address a number of improvements upon the current provisions of the COBA Code.

The COBA Code must go much further with respect to addressing financial difficulties, inclusion and accessibility more broadly. There are many within the Australian community who, by virtue of demographic factors or experiences or vulnerabilities such as family violence, gambling addiction or elder abuse, are systemically excluded from and disadvantaged by the financial system. The COBA Code must recognise this and integrate commitments for subscribers to provide banking services that are inclusive and accessible, and to implement protocols to assist vulnerable customers.

Consequently Consumer Representatives recommend both:

- expanding upon section 24 and it's application to those in immediate financial difficulty in order to assist customers to enter into and adhere to hardship arrangements and variations; and
- including a new section on Inclusive and Accessible Banking

This new section should broadly include commitments to deal fairly with customers experiencing vulnerability or in vulnerable circumstances in any form. This includes:

- ensuring banking services are inclusive and accessible;
- taking proactive steps to identify customers in vulnerable circumstances;
- adequately training or hiring staff to appropriately assist and communicate with people who are in various types of vulnerable circumstances; and
- providing basic low- or no-fee bank accounts.

Expanding commitments under Section 24

The National Credit Code (**NCC**) requires all lenders offering regulated credit to consider varying a debtor's contract on grounds of hardship when they have received a hardship notice. A hardship notice is broadly defined to include oral and written communication. However, in practice there are ways in which lenders avoid fully complying with the hardship provisions of

[22] For example, see Thriving Communities Partnership, https://thriving.org.au

the NCC. We recommend that COBA focus on amending the COBA Code to ensure that these loopholes are closed.

Working proactively with customers

We note that the new Banking Code takes a proactive and constructive approach to working with customers experiencing financial difficulty: Clauses 157 to 178. Much of the language used is empathetic and clear. These include a number of commitments that are not currently in the COBA Code. These include commitments to

- discuss a customers situation and the options available to help: Clause 158;
- assisting joint account holder experiencing financial difficulty, with or without involving the other person initially: Clause 159;
- discussing options with guarantors experiencing financial difficulty: Clause 160;
- being compassionate in trying to understand a customer's situation: Clause 161;
- employ a range of practices to identify common indicators of financial difficulty and contacting the customer to discuss the situation and providing options available to help : Clause 165;
- offering basic bank accounts: Clause 166;
- working with customers to help find a sustainable solution to financial difficulties: Clause 167;
- make information publicly available about our processes for working with customers in financial difficulty: Clause 168;
- take into account all about a customer's particular financial situation: Clause 169;
- look outside normal processes to find a way to assist customer's experiencing long term hardship: Clause 171;
- considering debt waivers: Clause 172;
- proactively inform customers of hardship variations: Clause 173;
- inform customers of external dispute resolution: Clause 174;
- not require customers to access their superannuation to pay any amount they owe: Clause 175;
- refer customers to financial counselling organisations that may be able to help you: Clause 176;
- inform in writing whether the bank will provide the customer with help in relation to financial difficulty and the reasons for their decision: Clause 177;
- tell customers in writing about the main details of any arrangement: Clause 178; and
- tell customers if they report any payment default to a credit reporting body: 179.

Equivalents to these clauses should be included in the COBA Code.

Raise awareness of the availability of hardship variations

Many customers who are eligible for a hardship arrangement or variation are simply unaware that this is an option available to them. This can be immensely detrimental to consumers' financial wellbeing and in our experience can further entrench hardship.

People in financial difficulty can be very reluctant to identify themselves to their credit provider. Instead they often employ a range of other coping strategies, some of which are very detrimental. This problem will likely worsen if planned changes to credit reporting so as to introduce 'hardship flags' are taken up.

Recently released research in the 2018 Journal of Consumer Policy[23] has outlined the findings of Australia's first large-scale study on the experiences of people in financial hardship. Of the over 1,100 respondents, at least 45% had problems with consumer loans[24], but just 14.3% received assistance from a bank or other credit provider. Many of those who did contact their creditor for hardship arrangements had already experienced serious legal consequences of financial hardship including utility disconnection, harassment by a debt collector, enforcement action or bankruptcy. Rather than contacting creditors, many respondents took steps including:

- cutting down on food (57.8%);
- cutting down on electricity, gas or water usage in their home (55.5%);
- forgoing medical care (32.5%); and
- borrowing more money, predominantly from friends or family (33.6%).

Many also took steps which could exacerbate their financial difficulties such as:

- seeking a limit increase on their credit card (13.2%)
- pawning their personal belongings (15.4%)
- consolidating their debts (10.2%)
- entering a debt agreement (9%)
- refinancing their home (6.5%)
- borrowing from a pay day lender (6.3%)
- using for profit credit repair or budgeting services (2.5%).

Some also moved into temporary accommodation (such as staying with family or friends) or postponed separation from their partner in order to make ends meet. These findings are consistent with our experience providing debt advice and assistance.

[23] Evgenia Bourova, Ian Ramsay and Paul Ali, "The Experience of Financial Hardship in Australia: Causes, Impacts and Coping Strategies", Journal of Consumer Policy (2018).

[24] 45.1% had credit card debts, 15.4% had a mortgage, 9.3% had a personal loan, 6.4% had a car loan, 2% had a pay day loan, 1.5% had consumer leases or hire purchase agreements. It was unclear to what extent these percentages overlapped or accumulated.

It is vital to consumer wellbeing that customer owned banks are not only compliant with laws governing hardship arrangements but also take proactive steps to encourage and assist customers to enter into such arrangements wherever possible.

Customer owned banks should commit to provide information on financial difficulty in branches through the hanging of posters and provision of brochures on financial hardship. Customer owned banks should also be obliged to ensure that statements of accounts and bills contain a clause with information about financial hardship relief and a financial hardship contact. Such information must be drafted with a plain English approach in mind, and encourage customers to seek help with their financial difficulties. All information provided regarding financial difficulty must include a warning against the risks of using debt management firms.

Establish genuine hardship arrangements that do not penalise customers

The COBA Code should oblige signatories to inform customers of the hardship provisions of the NCC if they may apply to the customer's circumstances. The distinction between hardship under the law and other repayment arrangements has potential ramifications for customers. When arrangements are made that are not entirely in line with hardship arrangements as defined by law, fees and charges, including late fees, may continue to accrue, further entrenching hardship; debts may be outsourced to debt collectors; default listings may be made, and repayment history information may show consumers behind in their payments. We are supportive of flexible arrangements that customer owned banks may make with their customers, including interest rate reductions or stopping interest altogether, discounts on the amount outstanding, reduction or complete removal of fees and charges, or debt waivers – however it is important that where these arrangements come with consequences for the customer's ongoing credit worthiness, the customer should be made aware of this and given the option of accepting a less generous hardship variation without these consequences if they meet the relevant criteria.

The COBA Code should clearly stipulate that subscribers must not:

- impose any default fees, including late fees and overlimit fees, or default interest once a hardship notice has been given, until an arrangement has been made or the customer has been notified of the refusal to make an arrangement;
- commence any enforcement action in relation to a debt that is the subject of an application for hardship assistance, and if enforcement action has been made before the hardship application has been made, not proceed to judgement whilst considering the application;
- report adverse information on a customer's credit report, including negative repayment history information, while they are considering a hardship and while the customer is substantially complying with a hardship arrangement;

Formalise hardship variations

Another issue that consumer representatives find concerning is the over-reliance on phone contact and verbal arrangements with regard to hardship arrangements – often to the detriment of the customer – and customer owned banks' failure to explain what will happen to the customer at the end of the arrangement. Consumer Representatives are very supportive of customer owned banks conducting hardship conversations over the phone, and particularly support many arrangements being made without over-reliance on lengthy paperwork and documentary evidence. However, some problems arise from the sole reliance on verbal contact via the phone.

Customers may not receive written confirmation of arrangements, or only partial written confirmation. In addition, documentation they do receive may be at odds with the verbal arrangement made. It is important that customer owned banks are consistent in their written and verbal communication with their customers. Where statements conflict with alternative arrangements agreed with the customer, there must be a clear cross-reference to the appropriate arrangement.

Customers in hardship may also be overwhelmed with collections activity and stop answering their phones altogether. When customer owned banks make verbal arrangements which are not reflected in statements, customers get confused about what is expected of them. An element of verbal hardship arrangements that is often unclear to consumers is what exactly will happen at the end of an arrangement:

- Does the consumer continue their normal repayments or do the payments increase?
- Has the bank talked to their customer about whether increased repayments are affordable?
- What happens to any arrears: are these capitalized and the term of the loan extended? Is the customer required to pay the arrears in a lump sum? Are the arrears being repaid with higher repayments to the term does not need to be extended?
- How will these arrangements be reflected on the consumer's credit report?

Some of these issues, in particular the reporting in RHI of hardship arrangements, will be addressed through legislation currently being drafted by the Attorney General's Department and Treasury, thus giving lenders less flexibility in terms of the answers to these questions. However, it is important nonetheless that the answers to all of these questions and more are made clear to consumers at the point in time at which a hardship arrangement is made. The COBA Code should specify that the written confirmation of a hardship arrangement must include:

- what will happen at the conclusion of the arrangement in terms of repayments, arrears and the term of the loan;
- whether the account will be listed as in default or as overdue on the customer's credit report;
- the interest rate that will apply during the arrangement (if any);
- any change to fees and charges remain applicable during the arrangement;

- whether there will be any other immediate consequences of accepting the arrangement, if any (for example cancellation of the consumer's credit card);
- the customer's right to complain to EDR if they are dissatisfied with the arrangement offered. This obligation could be confined to the details of the repayments required and what will happen at the end of the arrangement provided there are no adverse consequences for the consumer in accepting the arrangement.

Enforcement action parameters

A significant proportion of customers who are in hardship will be struggling with many accounts – water, electricity or gas, phone, internet, rates and often multiple credit accounts. This amounts to a lot of calls from various collections departments. The sheer number of calls alone can be stressful. This can be combined with potential embarrassment of receiving such calls within earshot of work colleagues or on crowded public transport. For some customers, the underlying cause of hardship may be an additional stressor such as physical or mental illness or relationship breakdown. Depression and anxiety can also result from job loss alone – which is a common stressor in and of itself. It is not unreasonable that many people in financial stress start screening their calls or stop answering their phones altogether. For this reason, we consider that customer owned banks should try a number of means of contacting their customers before taking enforcement action, when a customer has, for example, missed a payment under a repayment arrangement, or paid less than the amount expected.

Another result of the reality that customers may have committed to multiple arrangements with various creditors is that it is possible their ability to meet these commitments consistently may have been over-stated. In some cases, customers have been influenced to over-promise in response to pressure from creditors, or they may simply be overly optimistic about how much they can survive on after meeting the promised commitments. Often, it is simply that something unanticipated has come up. Whatever the cause, customers who are able to comply to the letter with repayment arrangements, every pay cycle, without fail, are more likely to be the exception than the rule. It is important that customer-owned banks recognise that hardship is often a complex web, involving a number of competing creditors, and recognise genuine efforts to comply, rather than taking an approach that penalises customers the very moment they fail to comply tightly with the demands of the repayment arrangement.

Monitor and report on hardship

Beyond the addition of these more specific, stronger commitments relating to subscribers' treatment of customers, the COBA Code should also more broadly commit the CCC and/or COBA to publish data particularly about the work being done by members to respond to vulnerable customers, including the financial difficulty assistance provided under section 24 of the COBA Code. This will allow COBA to show the work and the improvement of its members in this area, and incentivise constant improvement.

Recommendations

65. Section 24 should be expanded to commit subscribers to:

a) commitments equivalent to Clauses 157 to 179 of the Banking Code;

b) provide information on financial difficulty in branches through the hanging of posters and provision of brochures on financial hardship;

c) include a clause on statements of accounts and bills, with information about financial hardship relief and a financial hardship contact;

d) stipulate that all information provided by subscribers to consumers about financial hardship must be drafted with a plain English approach in mind, encouraging customers to seek help with their financial difficulties, and include a warning against the risks of using debt management firms;

e) have protocols in place to identify when a customer may be in financial hardship and proactively reach out to them and offer assistance;

f) work with customers identified as experiencing financial difficulty to develop a plan with them;

g) prohibit subscribers from imposing any default fees, including late fees and overlimit fees, or default interest once a hardship notice has been given, until an arrangement has been made or the customer has been notified of the refusal to make an arrangement;

h) prohibit subscribers from commencing any enforcement action in relation to a debt that is the subject of an application for hardship assistance, and if enforcement action has been made before the hardship application has been made, not proceed to judgement whilst considering the application;

i) prohibit subscribers from reporting any adverse information on a customer's credit report, including negative repayment history information, while they are considering a hardship and while the customer is substantially complying with a hardship arrangement;

j) work with customers and allowing arrangements to work by not recommencing enforcement action, accelerating a debt, or referring to debt collectors, when a promised payment is only a few days late, or one payment missed after a period of compliance;

k) implement consistent written and verbal communication with their customers and that where statements conflict with alternative arrangements agreed with the customer there must be a clear cross reference to the appropriate arrangement;

l) contact consumers by a number of means before re-activating enforcement action when a hardship arrangement has been breached;

m) mandate that the written confirmation of a hardship arrangement must include:

vii. what will happen at the conclusion of the arrangement in terms of repayments, arrears and the term of the loan;

viii. whether the account will be listed as in default or as overdue on the customer's credit report;

ix. the interest rate that will apply during the arrangement (if any);

x. **any change to fees and charges remain applicable during the arrangement;**

xi. **whether there will be any other immediate consequences of accepting the arrangement, if any (for example cancellation of the consumer's credit card);**

xii. **the customer's right to complain to EDR if they are dissatisfied with the arrangement offered. This obligation could be confined to the details of the repayments required and what will happen at the end of the arrangement provided there are no adverse consequences for the consumer in accepting the arrangement.**

66. **The COBCC and/or COBA be obliged to regularly publish data about the financial difficulty assistance provided under section 24 of the COBA Code.**

Establish a new Inclusive and Accessible Banking section

The new Banking Code includes a chapter entitled *"Being inclusive and accessible"*. It sets out a series of commitments to ensure that customers who are older, who are of Aboriginal or Torres Strait Islander background, who are in remote areas and/or who have a disability are treated with sensitivity, respect and compassion, and are provided with products and services that meet their needs.

Consumer Representatives believe it is necessary that the COBA Code recognise a variety of factors that can drive financial exclusion, and make commitments to provide appropriate customer service to those groups of people. Financial inclusion in reality means inclusive practices that encompass people in all financial circumstances. However, there is still value in identifying particular groups of people who experience financial exclusion, and directing COBA Code subscribers to specifically work to assist groups who are typically harder to engage. It is also worth noting that consumers' vulnerability and level of financial inclusion can fluctuate. Factors and circumstances that can influence financial inclusion include:

- *Work status*: People who are looking for work, working part-time, unemployed students or undertaking home duties make up a substantial proportion of those who are financially excluded. However, nearly a quarter of those who are financially excluded are employed full-time and can be classified as the 'working poor'. This highlights a need for more appropriate products for full-time employed people who may not be eligible for current mainstream financial products due to low income or other factors.
- *Age*: The Code should make reference to both older people and younger people. Younger people aged 18-24 make up 36% of the financially excluded population in Australia, and yet there is not a broad, consistent approach to providing financial products and services specifically targeted at that demographic.
- *Gender*: Due to the gender pay gap, women are on lower incomes than men, particularly those women whose only or primary work is unpaid domestic labour. A 2016 study into women and payday lending indicated that women are increasingly seeking payday loans, with a 110 per cent rise since 2005. This rise is greatest for women in family groups. Further, women are more likely to experience financial abuse.

- *Geographic distance*: Remote, regional and rural areas can all lack access to appropriate financial services due to distance.
- *Language*: Language barriers to financial inclusion in Australia remain significant. Recent research into the use of pay day loans shows a significant growth in first or second generation migrants to Australia with English as a second language.
- *Aboriginal and/or Torres Strait Islander status*: Aboriginal and Torres Strait Islander peoples are marginalised as a result of structural racism with respect to health, housing, education, employment and contact with the criminal justice system. Aboriginal and Torres Strait Islander peoples face significant disadvantages that other demographics within the Australian community do not experience. Financial exclusion can be significant for Aboriginal and Torres Strait Islander people and communities, not just in remote communities but also in regional and rural areas, in towns and in major cities.
- *Disability*: People with various types of disability have a wide range of specific needs, and may experience financial exclusion in various forms. In our experience, there are many customer-owned banks that have nothing formal in place to assist deaf people or people with cognitive impairments to communicate. In our experience, appropriate assistance for such customers is often ad hoc, and may simply be a case of whether or not the bank happens to have an employee who speaks Australian Sign Language or is appropriately trained to communicate in a clear and respectful manner with customers with a cognitive disability.

At a minimum the COBA Code should include commitments equivalent to those in the Banking Code at Clauses 32 to 48. We would however urge COBA to both improve on and add to the commitments made here. We list these below.

Working with vulnerable consumers generally

The new ABA Code includes a general statement to take extra care with vulnerable customers

> ***Taking extra care with customers who may be vulnerable***
>
> *38. We are committed to taking extra care with vulnerable customers including those who are experiencing:*
>
> *a) age-related impairment;*
>
> *b) cognitive impairment;*
>
> *c) elder abuse;*
>
> *d) family or domestic violence;*
>
> *e) financial abuse;*
>
> *f) mental illness;*
>
> *g) serious illness; or*
>
> *h) any other personal, or financial, circumstance causing significant detriment.*

We may become aware of your vulnerability only if you tell us about it.

39. We will train our staff to act with sensitivity, respect and compassion if you appear to be in a vulnerable situation.

40. If you tell us about your personal or financial circumstance, we will work with you to identify a suitable way for you to access and undertake your banking.

41. When we are providing a banking service to vulnerable customers we will:

a) be respectful of your need for confidentiality;

b) try and make it easier for you to communicate with us;

c) provide appropriate guidance and referrals to help you to maintain, or regain, control of your finances; and

d) refer you to external support, if appropriate.

Consumer Representatives recommend that the COBA Code adopt equivalent commitments similar to, and stronger than, those in the ABA Code.

Again, **we do not support the inclusion of any qualifying sentence such as "we may become aware of your vulnerability only if you tell us about it",** and instead posit that customer owned banks should have a codified responsibility to put into place technology and processes to proactively identify people who are potentially facing some identified form of vulnerability.

Consumer Representatives believe that COBA members should work to develop systems and processes to proactively identify and assist people who are in vulnerable circumstances.

Technological advances have brought about significant shifts in banking relationships between clients and subscribers. Technology has made banking more impersonal: people often deal with their bank online or on the phone. This means that it is inappropriate to rely on self-disclosure of sensitive subjects such as financial hardship or vulnerability before a subscriber will assist a customer. It is not enough for subscribers to commit that they will offer some assistance to customers who let them know that they are vulnerable: banks have an obligation to proactively identify those people likely to need assistance, and reach out to offer appropriate assistance.

Technological advances also mean that the tools available to banks to proactively identify and assist vulnerable customers are many and growing. Open banking firms are regularly developing new models, and there is already sophisticated third party technology for responsible lending for the banking industry. It is reasonable to expect that every bank, even small, customer-owned banks, can work with technology and data in a positive way to help identify signs of vulnerability.

Consumer Representatives believe it is vital that all banks put in place technology that uses algorithms and data modelling to flag customers who show indicators of experiencing family violence, elder abuse, scams, certain types of mental illness, addictions, dementia, as well as those experiencing financial hardship. They can then take proactive steps to assist those customers, as well as where appropriate design products specifically to help people in these vulnerable circumstances.

Finally Consumer Representatives believe that COBA members should monitor, report on and continuously improve upon their own practices with respect to those experiencing some form of vulnerability.

Recommendations

67. **A new Inclusive and Accessible Banking section should be added to the COBA Code to support vulnerable consumers by:**
    a) **including clauses equivalent to Banking Code Clauses 38, 39, 40 and 41;**
    b) **improving upon these clauses by removing the sole onus on the consumer to self-identify;**
    c) **develop methods to identify and take proactive steps to assist vulnerable customers;**
    d) **analysing processes and practices for their impact on the customer-owned bank's ability to engage with various cohorts of people who may be financially excluded, and amending practices accordingly;**

Aboriginal and Torres Strait Islander consumers

The Banking Code states:

> ***When providing banking services to Indigenous customers***
>
> *35. If you tell us you are an Indigenous customer, we will take reasonable steps to make information about our banking services accessible to you. We will also:*
>
> *e) tell you about any accounts and services that are relevant to you;*
>
> *f) tell you about any accounts or services that have no, or low standard fees, if our enquiries indicate you may be eligible for these and help you transfer to another account you want; and*
>
> *g) help you meet any identification requirements.*
>
> ***When providing banking services to remote customers***
>
> *36. We will take reasonable steps to make information about our banking services accessible to customers in remote communities, including remote Indigenous communities.*
>
> *37. We will provide cultural awareness training to staff who regularly assist customers in remote Indigenous communities*

COBA should include equivalents to these sections in the COBA Code. However we would recommend improving upon these commitments in a number of ways.

We recommend removing the "If you tell us" disclaimer – here and in all sections involving vulnerability. This is problematic since rarely if ever will people self identify. This language should generally be amended to turn the onus back on the customer owned bank to put in

place appropriate systems to ascertain the customer's status, and to provide all relevant information and take reasonable action.

We recommend that *all* staff should be provided with regular cultural awareness training.

We also recommend commitments to increasing the availability of ATMs and branches in rural and regional Australia, and cancellation as a last resort of vulnerable consumers' accounts.

We note that the ABA have agreed to meet the recommendations of the Royal Commission and expand their commitments to Aboriginal and Torres Strait Islander communities and other communities subject to systemic financial vulnerabilities under the Banking Code. These commitments are:

- Banks will follow AUSTRAC's guidance about the identification and verification of those identifying as of Aboriginal or Torres Strait Islander heritage.
- Provide that banks will work with customers in remote areas or who have limited English to identify ways for them to undertake their banking.

These should also be commitments under the COBA Code.

Recommendations

68. **A new Inclusive and Accessible Banking section should include commitments to support Aboriginal and Torres Strait Islander consumers by:**
    a) **including clauses equivalent to Banking Code Clauses 32, 35 36 and 37**
    b) **improving upon these Clauses by:**
        a. **removing the sole onus on the consumer to self-identify;**
        b. **ensuring that all staff be provided with regular cultural awareness training;**
    c) **committing to increasing the availability of ATMs and branches in rural and regional Australia;**
    d) **following AUSTRAC's guidance about the identification and verification of those identifying as of Aboriginal or Torres Strait Islander heritage;**
    e) **ensuring that customer owned banks will work with customers in remote areas or who have limited English to identify ways for them to undertake their banking.**

Banking services for people with a low income and basic bank accounts

Consumer Representatives believe that it is very important that customer owned banks both provide and promote basic bank accounts. In our experience, credit unions can have some of the largest default fees, and it can be difficult to obtain a basic bank account through a customer owned bank.

The Banking Code makes significant commitments to providing basic bank accounts in chapters 15 and 16:

> ***Banking services for people with a low income***
>
> *42. If you are an individual and you tell us that you are a low income earner, we will give you:*
>
> *a) information about our accounts that may be appropriate to your needs; and*
>
> *b) information about our accounts:*
>
> *i. for which standard fees and charges are low; or*
>
> *ii. for which there are no fees and charges (if we offer such a product).*
>
> *43. Our obligation in the previous paragraph applies to you regardless of whether or not you are our customer.*
>
> *We may become aware if you are a low income earner only if you tell us about it.*
>
> *44. If you apply for a new transaction account, we will ask you if you have any of the following government cards. If you tell us that you have one of these cards, then we will give you information about any banking services we offer that have low or no standard fees and charges (see Chapter 16):*
>
> *a) a Commonwealth Seniors Health Card;*
>
> *b) a Health Care Card; or*
>
> *c) a Pensioner Concession Card.*
>
> ***Basic accounts or low or no fee accounts***
>
> *45. We will raise awareness of our affordable banking products and services such as basic, low, or no fee accounts, including that you may be eligible if you have a government concession card.*
>
> *46. We will give you information that is easily accessible about accounts that have low, or no, standard fees and charges.*
>
> *47. We will offer you a basic, low, or no fee account if you ask for one and we determine that you are eligible for one.*
>
> *48. We will train our staff to help them to recognise a customer, or potential customer that may qualify for a basic, low, or no fee account.*

Consumer Representatives believe that there is no reason why the COBA Code cannot adopt equivalent sections.

We note again, however, that we do not support the inclusion of the statement "we may become aware if you are a low income earner only if you tell us about it" for reasons discussed above.

We note too that the ABA will be updating the Banking Code in line with Recommendation 1.8 to:

- Ban informal overdrafts on basic bank accounts;
- Abolish dishonour fees on basic bank accounts.

Both of these recommendation should be similarly committed to by COBA members.

We are aware of many customer-owned banks that say they offer basic bank accounts, but upon enquiries as to such accounts, the bank will require a letter from Centrelink from the customer or prospective customer. Many customers will then leave to get the letter but not return. Centrelink can be very convoluted to deal with. Acquiring a supposedly straightforward letter from Centrelink can be anything but straightforward, particularly for a consumer in vulnerable circumstances. In our view, the request for a specific letter from Centrelink before a customer owned bank will approve a basic bank account constitutes an excessive barrier.

It should not be required that a customer initiate the conversation about their low income or disadvantaged status before a bank provides them with information and offers relating to appropriate accounts to suit their needs. Consumers that many of our organisations work with are unlikely to identify that they are on a low income to a bank staff member, unless the issue is raised by the bank. Customer-owned banks should be responsible for making enquiries as to a person's suitability for a banking service or product when they open an account. For customers that already have an account with a given customer-owned bank, in our view, it should be very straightforward for that customer owned bank to identify people who would likely most benefit from basic bank accounts through data collected about the amount deposited each month or regular issues with direct debits.

Specific indicators warranting pro-active contact could include:

- receipt of a government pension or benefit into the account;
- exceeding a threshold for inward payment dishonours, failed scheduled payments or account overdrafts which are incurring fees;
- the bank is aware of relevant circumstances as a result of hardship being requested or offered on a credit facility.

When such indicators are detected, the customer-owned bank should be obliged to contact the customer to offer information about appropriate banking products and services for that customer. Additionally, customer-owned banks should be obliged to refund all fees and charges incurred by customers who have been clearly identified as being in the wrong account where this should have been apparent to the bank.

While the majority of the conversation around account suitability has centred on transaction accounts, a similar problem exists in relation to credit card accounts, where consumers may be in high interest bearing accounts with annual fees and associated reward programs but are carrying significant debt from month to month. While customers are entitled to remain in the account of their choice, customer owned banks should alert such customers to the availability of other lower interest products where they offer them. They should also facilitate the transfer of their balance to a more suitable product where the customer agrees.

Recommendations

69. A new Inclusive and Accessible Banking section should include commitments to provide banking services for people with a low income and basic bank accounts by:
    a) including clauses equivalent to Banking Code Clauses 42-48
    b) improving upon these Clauses by removing the sole onus on the consumer to self-identify;
    c) banning informal overdrafts on basic bank accounts;
    d) abolishing dishonour fees on basic bank accounts.
    e) making specific enquiries as to a person's suitability for a banking service or product when they open an account;
    f) setting in place systems to pro-actively identify customers who may be using an unsuitable account and offer them account options more suited to their circumstances; and
    g) refunding fees and charges incurred by customers who have been clearly identified as being in the wrong account where this should have been apparent to the bank;
    h) alerting low income customers to the availability of other lower interest products where they offer them; and
    i) facilitating the transfer of their balance to a more suitable product where the customer agrees.

Domestic or family violence

Responding to customers experiencing domestic or family violence requires more than a general commitment to tailoring services and supporting customers in vulnerable circumstances.

Both the ICA and the ABA have developed family violence guidance, and refer to family violence in their codes.

Customer owned banks need to similarly take a proactive approach to preventing, and addressing, problems arising for customers experiencing family violence and/or economic abuse that relate to the customer owned bank's products and processes.

The COBA Code should make commitments to addresses issues of domestic family violence and refer to a family violence guideline which should be developed with input from relevant community services and the Economic Abuse Reference Group.

Some key issues that should be addressed in the COBA Code are:

- customer safety (including having systems to separate/protect contact details on joint accounts);

- staff training – to understand the nature of family violence, identify potential indicators of family violence, respond appropriately, and manage/support front-line staff to respond;
- processes (and training) to identify when a potential borrower, or co-borrower, may be experiencing financial abuse (See ABA Code Clause 54); and
- assisting a joint account holder experiencing financial difficulty as far as possible (including settling a claim), without involving the other account holder if necessary: cf Banking Code Clause 159).

Elder abuse too should be addressed by the COBCOP with an obligation on staff to identify certain indicators and to respond appropriately. The ABA has provided guidance on this topic, which can be found on their website.[25]

Recommendations

70. A new Inclusive and Accessible Banking section should address domestic and family violence in the COBA Code by:

a) developing a comprehensive domestic and family violence guidance and reference that guidance in the COBA Code;

b) developing a comprehensive elder abuse guidance and reference that guidance in the COBA Code;

c) identifying family violence and elder abuse as reasons customers may experience vulnerability or difficulty;

d) committing to keeping contact details of a joint account holder secure from the other account holder on request;

e) committing to assisting a joint account holder, as far as possible without involving the other joint account holder on request;

f) training staff to identify and respond to customers experiencing family violence.

Mental health and addiction

Based on Consumer Representative's experience on the National Debt Helpline, some forms of mental illness, such as bipolar, can make customers prone to irrational or erratic over-spending. Irrational or erratic over-spending can cause significant detriment to the customer,

[25] Australian Bankers' Association Inc., "Protecting culnerable customers from potential financial abuse" Industry Guideline, 2014, available online: https://www.ausbanking.org.au/images/uploads/ArticleDocuments/207/Industry_Guideline_Protecting_vulnerable_customers_from_potential_financial_abuse2.pdf

who may burn through all of their savings through one manic episode, or spend an entire pay cheque in one day and be left with no money for food or rent for the fortnight.

Customers with addictions to gambling and alcohol are also vulnerable to significant financial hardship. The accounts of such customers will generally have clear markers indicating such addictions, meaning that customer owned banks can be well-placed to identify customers experiencing these problems and take steps to assist them where appropriate.

In 2018, Barclays in the United Kingdom became the first high street bank to allow customers to block payments with certain types of retailers, such as betting shops or gambling websites, or alcohol retailers, in order to give people suffering from addictions more control over their spending. The Barclays model is a simple button within the mobile banking app that enables customers to control which types of retailers they are able to spend with. Attempted payments to retailers that customers have designated "turned off" will be automatically declined.[26] This type of tool has significant potential to assist customers working to overcome dependencies retain control over their finances and health. This should include safeguards so that it cannot be simply switched back on.

Customer-owned banks should engage technology to identify customers exhibiting patterns consistent with certain mental illnesses including dependencies and addictions, and develop flexible, research-backed and sensitive processes for reaching out to, and as appropriate working with, customers exhibiting such patterns to develop customer protections.

In our experience, banks can often be some of the first to notice people who may be as yet undiagnosed with dementia making errors or having poor judgement. Westpac has taken steps to become more dementia-friendly through providing clear information as to ways in which customers with dementia they should simplify their finances, set up an enduring power of attorney, nominate beneficiaries and protect their money and safety.[27] COBA should stipulate in the Code that all members should at a minimum provide such information, but should also engage technology to help flag when a customer shows signs that they may be experiencing the early symptoms of dementia and reach out to assist as appropriate. Further, the Code and any corollary guide that is developed relating to assisting customers experiencing dementia should acknowledge the crossovers that exist in many cases between elder abuse and dementia.

Recommendations

71. A new Inclusive and Accessible Banking section should address issues of mental health and addiction in the COBA Code by committing to:

[26] "Barclays lets mobile banking users block gambling and drinking", *The Guardian*, 11 December 2018, https://www.theguardian.com/business/2018/dec/11/barclays-mobile-banking-gambling-drinking-app

[27] Westpac, "Living with dementia", https://www.westpac.com.au/about-westpac/sustainability/our-positions-and-perspectives/difficult-circumstances/living-with-dementia/

a) developing tools to assist people to control their spending by blocking payments with certain types of retailers, such as gambling related purchasers or transfers,, or alcohol purchasers;

b) providing clear information and services for customers with dementia (in both early and later stages) so that they can simplify their finances, set up an enduring power of attorney, nominate beneficiaries and protect their money and safety, and function with dignity.

Language barriers

COBA Members can take important steps to assist those people from culturally and linguistically diverse backgrounds and people with hearing or reading difficulties in simple and effective ways by committing to:

- provide interpreters for people who do not speak fluent English and TTY services for people who are deaf or have hearing difficulties;
- ensuring there are protocols in place such that deaf customers and those from a non-English speaking background will be able to access a relevant interpreter in branch;
- provide a direct link on the website to information on interpreting services and any other relevant information for non-English speakers;
- record a customer's interpreting needs and plan ahead to meet these needs. Where an interpreter is offered but declined, this will also be recorded;
- appropriately train or hire staff or contractors to communicate appropriately with customers with an intellectual disability.

Recommendations

72. A new Inclusive and Accessible Banking section should address language barriers by

a) providing interpreters for people who do not speak fluent English and TTY services for people who are deaf or have hearing difficulties;

b) ensuring there are protocols in place such that deaf customers and those from a non-English speaking background will be able to access a relevant interpreter in branch;

c) provide a direct link on the website to information on interpreting services and any other relevant information for non-English speakers;

d) record a customer's interpreting needs and plan ahead to meet these needs. Where an interpreter is offered but declined, this will also be recorded;

e) appropriately train or hire staff or contractors to communicate appropriately with customers with an intellectual disability

Section 26. Debt collection and legal action

We note that the Banking Code include a number of commitments that we believe should also be included in the COBA Code. These are:

- only selling a debt to another party that has agreed to comply with the ACCC, ASIC. DHS and DVA guidelines: Clause 182
- detailing what the bank will tell the customer if they sell the debt to another party: Clause 183
- not selling a debt when the bank is considering the customer's financial situation: Clause 184
- limiting when the bank can combine accounts: Clause 187

Furthermore we recommend that the Code commits COBA members to develop processes to *monitor* compliance by their debt assignees with legislation, ASIC's Debt Collection Guidelines and the Code Principles. We do not accept that just because debts are assigned as part of an arm's length commercial transaction that banks wash their hands of responsibilities for compliance. As we have recommended in section 13 with regard to third party products introduced by subscribers, any debt buyer engaged by a subscriber must be compliant with the COBA Code. Debt buyers behave differently and many are quick to institute legal action, including bankruptcy. This leads to different outcomes for different consumers and reputational damage to the assigning banks for the behaviour of the debt assignees. Banks have a responsibility to ensure that their customers are not unnecessarily harmed by the decisions the bank makes in assigning a debt. The COBA Code should prohibit the sale of debt from subscribers to debt collectors that will bankrupt consumers, or at a minimum it should set out that bankruptcy must be a last resort after all other enforcement is exhausted and the debt is over $20,000.

Finally COBA members should commit to not recovering debts from social security payments.

Recommendations

73. Section 26 should be amended as follows:

a) **only selling a debt to another party that has agreed to comply with the ACCC, ASIC. DHS and DVA guidelines;**

b) **detailing what the bank will tell the customer if they sell the debt to another party;**

c) **not selling a debt when the bank is considering the customer's financial situation;**

d) **limiting when the bank can combine accounts;**

e) **prohibiting debt collectors from bankrupting consumers, or at a minimum, setting out that bankruptcy must be a last resort after all other enforcement is exhausted and the debt is over $20,000;**

f) **developing processes to *monitor* compliance by their debt assignees with legislation, ASIC's Debt Collection Guidelines and the Code Principles; and**

g) **not recovering debts from social security payment.**

Section 27. Prompt, fair resolution of complaints and Section 28. Our complaints handling process

Sections 27 and 28 should be combined since they deal with ostensibly the same thing.

Section 28.1 commits to ensuring that complaints processes are consistent with Australian Standards. COBA members also need to commit to having an IDR scheme that is compliant with ASIC guidelines: Clause 196 of the Banking Code.

Providing information on the complaints process should not be only on request as suggested by Clause 28.2. This should be published, and made readily available through branches; telephone banking services; and websites or other digital platforms: Clause 197 of the Banking Code.

COBA should include a section on farm mediation as per the Banking Code Clause 198 and 199. Further the COBA Code should match the ABA in meeting Recommendation 1.13 of the Royal commission and cease charging default interest in areas declared to be affected by drought or other natural disasters.

COBA Clause 27.3 should include the concept of acting "fair and reasonable" rather than simply being "fair to everyone involved."

We note and support Clause 28.2's standards for the complaints handling process we believe that an additional commitment to keeping the customer informed of the progress of a complaint is required.

Clause 28.2 should be updated to ensure that all complainants are provided with a written response detailing the outcome of the complaint: Clause 203 of the Banking Code.

The timeframes in Clause 28.3 are not best practice. In the circumstances of being unable to resolve a complaint within 45 days, the Banking Code has committed Banks to

- tell the complainant the reasons for the delay;
- tell the complainant the date by which they can reasonably expect to hear the outcome of the investigation;
- give monthly updates on the progress.

These elements are not in the COBA Code and should be included.

Recommendations

74. Sections 27 and 28 should be combined and amended to
    a) comply with ASIC IDR guidelines;
    b) publish, and make readily available through branches; telephone banking services; and websites or other digital platforms information on the complaints process;
    c) include a section on farm mediation;
    d) cease charging default interest in areas declared to be affected by drought or other natural disasters;
    e) include the concept of acting "fair and reasonable" into the complaints handling process
    f) keep the customer informed of the progress of a complaint is required.
    g) ensure that all complainants are provided with a written response detailing the outcome of the complaint
    h) tell complainants reasons for delays longer than 45 days;
    i) tell the complainant the date by which they can reasonably expect to hear the outcome of the investigation;
    j) give monthly updates on the progress.

Section 29. External Dispute Resolution (EDR) schemes

Section 29 requires reconsideration and updating following the establishment of the AFCA.

We recommend also committing to provide information about complaints and disputes in every branch in addition to being prominently displayed on the front page of subscribers' websites.

Recommendations

75. Section 29 requires reconsideration and updating following the establishment of the AFCA.
76. Section 29 should COBA Code subscribers to providing information about complaints and disputes in every branch in addition to being prominently displayed on the front page of subscribers' websites.

Section 30. Complaints about breaches of this Code

The interaction of Part D, Clause 30.1 and Part E Clause 8 is confusing and unclear.

Part D, Clause 30.1 states:

> *If you believe we have breached the Code, you can make a complaint to us. If we are not able to resolve the complaint to your satisfaction and the complaint involves a claim that you have suffered loss or detriment, you may then refer the matter to the External Dispute Resolution scheme to which we belong (see sections 27 - 29).* ***If the complaint does not involve a claim that you have suffered loss or detriment, you can report it to the Compliance Manager (details below).***

Part E Clause 8 states:

> *Any person may make a complaint about an alleged breach of the Code to the Compliance Manager*

Reading the latter suggests anybody can complain about any breach directly while the former makes it clear that this can only be done in limited circumstances regarding a "loss or detriment" which will be unclear to a consumer.

This needs to be simplified and plain English principles be applied. We recommend considering the equivalent clause in the Banking Code:

> *209. If you want to report an alleged breach of this Code you can contact the BCCC.*
>
> *210. If you have a specific dispute with your bank that involves a breach of this Code, you should contact your bank in the first instance, and then your bank's external dispute resolution provider*

These clauses are clearer.

Recommendations

77. Part D, Clause 30.1 and Part E Clause 8 need to be amended for readibility purposes.

7. Part E How the Code is administered

Making a complaint

Any person can make a complaint about an alleged Code breach to the Code Compliance Committee (**COBCCC**) or to the Compliance Manager as per Part E, Clause 8.

However in practice, very few complaints are made despite the fact that breaches regularly occur. There is very little incentive for individuals to make complaints once somebody's complaint is dealt with in IDR or EDR. Many consumers would have no knowledge of the Code at all. Even those individuals who are aware of the Code and of the COBCCC would not see a clear reason for making a complaint.

However, there are other organisations such as small businesses and consumer organisations, which are likely to put more effort into identifying where there are possible COBA Code breaches, if they are made aware of the opportunity to do so, see that it is easy to report a breach, and believe that they can achieve a desired outcome from reporting a breach. Many consumer groups in particular are already stretched to their limits in terms of resources, and as such would require straightforward processes and the clear potential for a desirable outcome in order to be incentivised to identify COBA Code breaches to the COBCCC.

The COBCCC should develop new and efficient ways to get input from financial counsellors, community legal centres, legal aid agencies and others who advise or represent consumers about potential COBA Code breaches, whether these take the form of formal complaints or simply intelligence in that they are seeing what appear to be breaches of particular clauses. As such, the COBA Code should commit to:

- better promotion of the COBA Code to advocates;
- reporting on outcomes of COBA Code inquiries; and
- have the power to accept super complaints (see below).

Recommendations

78. **The COBCCC must be resourced appropriately to improve its visibility for consumers and consumer representatives.**
79. **The COBCCC should publish case studies on consumer complaints and their outcomes on the COBCCC website.**

Role of the Code Compliance Committee

The COBCCC should be empowered and resourced to engage in more proactive monitoring and compliance. While individual COBA Code breaches should still be reported to the

COBCCC and investigated, there should be a shift such that greater emphasis should be placed on resourcing the COBCCC to undertake own motion inquiries and conduct deep dive investigations.

Consumers very rarely submit complaints to the COBCCC, despite the fact that Consumer Representatives are fully aware of regular COBA Code breaches, particularly in areas where the Code sets out obligations of subscribers that go beyond, or are not addressed in, the law.

The 2016 Final Report of the Independent Review of the Code of Banking Practice addresses this matter:

> *it is clear that many individual investigations add very little value and often disappoint consumers…members of the public should be encouraged to 'report' to the CCMC – with the clear understanding that the CCMC will take on board that information and use it as part of its monitoring activity and risk-based targeting. An investigation may proceed – but in most cases, it will not.*[28]

Consumer Representatives believe the role of COBCCC investigating broad, systemic Code breaches and engaging in whole-of-sector investigations into a particular type of breach. In this way, the CCC can engage more fully in supporting continuous improvement across the whole customer owned banking sector.

This shift will require a corresponding increased resourcing of the COBCCC.

Recommendations

80. 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.

Sanctions

Consumer Representatives believe that the sanctions currently available to the COBCCC, and the circumstances in which sanctions may be applied, are far too limited.

As mentioned in section 20 regarding issues with noncompliance with requests to cancel direct debit arrangements, we are concerned with the very high rates of noncompliance with clauses in the COBA Code that are not mere reflections of the law. This indicates that there is little subscriber respect for the COBA Code, and that sanctions for COBA Code breaches are either too mild or not applied anywhere near often enough.

COBA needs to expand the COBCCC's sanction toolbox to improve the effectiveness of the Code and ensure greater compliance.

[28] Section 20.8, page 191.

Part E Clauses 12 and 13 currently read:

"12. The Code Compliance Committee may (but is not required to) impose one or more of the following Sanctions on a Code Subscriber:

- *Formally warn the subscriber*
- *Require the subscriber to undertake a compliance review*
- *Require the subscriber to undertake a staff training program on the Code*
- *Require the subscriber to undertake corrective advertising*
- *Publicly name the subscriber as non-compliant with the Code*
- *Advise COBA of the subscriber's non-compliant status and/or failure to undertake a required course of action.*

13. Consistent with the Code Compliance Committee Charter, the Code Compliance Committee may only impose a Sanction on a Code Subscriber if it is satisfied that the Code Subscriber:

- *Is guilty of serious or systemic non-compliance with the Code, or*
- *Has ignored a request from the Committee to remedy a breach of the Code or has failed to remedy that breach within a reasonable time, or*
- *Has breached an undertaking given to the Committee, or*
- *Has not taken reasonable steps to prevent a breach of the Code from continuing to occur or reoccurring after having been warned by the Committee that a Sanction might be imposed."*

We believe that Clause 13 needs to be amended to enable a sanction to be imposed for any breach of the COBA Code at the discretion of the COBCCC, without the COBCCC needing to satisfy itself of pre-conditions. While there are differences between the General and Life Insurance Codes and this one, we believe these comments by Commissioner Hayne are apropos:

> *The evidence indicated that the power to impose sanctions had not been exercised because the Committees could only impose sanctions where an insurer had failed to correct a Code breach. Sanctions could not be imposed in response to a breach of the Code, in and of itself.*
>
> *In my view, the sanctions power in the General and Life Insurance Codes of Practice should not be limited in this way. Rather, the FSC and the ICA should amend section 13.10 of the Life Insurance Code of Practice and section 13.11 of the General Insurance Code of Practice to empower (as the case requires) the Life Code Compliance Committee or the Code Governance Committee to impose sanctions on a subscriber that has breached the applicable Code.*[29]

The Final Report then recommends that:

[29] Page 315 Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

The Financial Services Council and the Insurance Council of Australia should amend section 13.10 of the Life Insurance Code of Practice and section 13.11 of the General Insurance Code of Practice to empower (as the case requires) the Life Code Compliance Committee or the Code Governance Committee to impose sanctions on a subscriber that has breached the applicable Code.[30]

The same change must be implemented in the COBA Code. We recommend amending Clause 13 so that the COBCCC be given the power to impose a sanction for:

- any breach of the Code
- failure to address a breach,
- any breach of an undertaking given to the Committee, and/or
- not taking reasonable steps to prevent a breach from continuing to occur or reoccurring.

Consumer Representatives 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 also believe that the addition of a structure of fines as potential sanctions may serve to improve the deterrence function of the sanctions available for COBA Code breaches.

Consumer Representatives recommend a further additional sanction requiring the subscriber to provide information to customers who may have been affected by the breach, for example by direct correspondence or on the subscriber's website.

This is an additional sanction of moderate severity, which admits fault but does not go as far as public naming of the subscriber as non-compliant with the COBA Code. This sanction can also be a very direct remedy to a specific problem: where a particular customer or group of customers has been misled or mistreated by a customer-owned bank, this sanction directly addresses that group of customers.

Recommendations

81. Clause 13, Part E should be amended for the COBCCC be given the power to impose a sanction for:

a) any breach of the Code, serious, systemic or otherwise

b) failure to address a breach,

c) any breach of an undertaking given to the Committee;

d) not taking reasonable steps to prevent a breach from continuing to occur or reoccurring.

[30] Recommendation 4.10 page 316.

82. **Clause 12, Part E should include the following additional sanctions:**

    a) **fines**

    b) **requiring subscribers to provide information to customers who may have been affected by the breach, for example by direct correspondence or on the subscriber's website."**

Relation to External Dispute Resolution

Most consumers will raise their problem with the external dispute body, AFCA. It is therefore important, if the COBCCC is to do its job, that it receives as much information from AFCA as possible.

We understand that AFCA combines data about customer owned banks with banks that subscribe to the ABA Code. This limits the data that is available to Committee to help identify where problems may lie.

Technological advances now allow for more detailed categorising of complaints. AFCA's systems should put in place more detailed categorising systems for the recording of complaints against customer owned banks, such that AFCA's systems can easily pick up and provide data relating to specific categories, for instance, co-borrower complaints, or direct debit complaints.

One complaint made by an individual or organisation should be able to have multiple ends. It may be the case that a complaint is taken to AFCA, which makes a determination, and then the complaint is sent to the COBCCC, which then makes a decision about a breach of the COBA Code. However, there are also cases where AFCA has not made a determination, but there has been a COBA Code breach. These cases, too, should be provided in full to the COBCCC. As such, looking for potential COBA Code breaches and referring these to the COBCCC should be part of AFCA's systemic issue work.

It is explicitly set out in the Banking Code that the Code Compliance Monitoring Committee (**CCMC**) will "investigate, and to make a determination on, any allegation from any person, including the FOS, that we have breached this Code". The CCMC Mandate states:

> *"The CCMC may enter into a Memorandum of Understanding with the FOS for the purpose of facilitating:*
>
> *a) Referrals to the CCMC of an allegation that a Code Subscriber has breached the Code; and*
>
> *b) Information exchanges between the FOS and the CCMC relevant to the CCMC's functions"*

While a similar provision exists in the COBCCC Charter, the CCMC wording is much clearer. We would support similar wording, but also consider that a memorandum of understanding (**MOU**) should be mandatory so that there is transparency about the information that is provided to the COBCCC. This MOU should enable the COBCCC to get as much information as possible from AFCA, and set out a clear process for this information sharing.

Recommendations

83. **AFCA's systems should put in place detailed categorising systems for complaints against customer owned banks and provide all information about these complaints the COBCCC to assist in its investigative work.**

84. **There should be a Memorandum of Understanding between AFCA and the COBCCC, establishing an explicit responsibility for ASIC's systemic issues team to identify and refer to the COBCCC potential COBA Code breaches.**

Compliance responsibilities of Code Subscribers

This section of the Code commits subscribers to cooperate fully with the COBCCC and Compliance Manager, and to comply with reasonable requests to provide access to information, documents and systems, which the COBCCC considers necessary to discharge its functions.

The final report of the 2016 Independent Review of the Code of Banking Practice included a recommendation that the Banking Code "should oblige signatory banks to be proactive in providing information to the CCMC including arranging regular engagement with their internal disputes resolution area …".[31] Consumer Representatives believe that the COBA Code should adopt an obligation along these same lines.

This section of the COBA Code also commits subscribers to complete an annual compliance report and submit within three months of the end of the annual reporting period, or other period determined by the COBCCC. In our view, COBA Code subscribers should be obliged to report quarterly to the COBCCC regarding breach information.

Recommendations

85. **The Compliance section of the COBA Code should commit subscribers to proactively provide information to the COBA CCC about their own behaviour and potential breaches as they arise, as well as providing a quarterly report to the COBCCC regarding breach information.**

Amending the Code

Clause 22, Part E of the COBA Code currently states:

[31] Recommendation 83.

As Code owner, COBA may amend the Code from time to time. Before doing so, COBA will consult with Code subscribers, ASIC, the Code Compliance Committee, and other industry and external stakeholders as COBA determines.

It is vital that consumer representatives are consulted regarding any amendments to the COBA Code, and in our view this section of the COBA Code must explicitly list consumer representatives as a stakeholder that must be consulted before any amendment is approved.

Recommendations

86. Clause 22, Part E should be amended to require consumer representative consultation before any amendments to the COBA Code are approved.

Reviewing the Code

At present, Clause 23, Part E of the COBA Code states:

> *In consultation with the Code Compliance Committee, COBA will arrange for reviews of the Code to be undertaken at least every 5 years."*

Regular reviews of the COBA Code are important to ensuring that developments in the finance sector and in the practices of customer-owned banks can be accounted for through effective, up-to-date regulation. They are also required in order for a code to be approved by ASIC.

The expectation for industry code approval by ASIC is that the code will be reviewed at least every three years. Reviews must also be independent.

> *RG 183.82 As a condition of approval, a code must be independently reviewed at intervals of no more than three years. Independent code reviews are essential to ensuring that a code remains current and continues to deliver real benefits to consumers and subscribers. Reviews provide an opportunity for stakeholders to give feedback on how a code has operated in the past and how it might operate in the future.*
>
> *RG 183.83 The role of the independent reviewer is to consider, without bias, the broad range of stakeholder views. The independent reviewer should base its review on the processes described in*
>
> *RG 183.50, as the principles applying to code development also apply to ongoing code review.*
>
> *RG 183.84 The review and implementation of any recommendations must be completed within a reasonable timeframe to maintain confidence in the process and for the code to retain ASIC's approval. We will discuss this timeline with each applicant at the start of the review process, which commences three years after the code was approved. RG 183.85 We will retain the three-year review cycle until both ASIC and industry have sufficient experience*

with the effective operation of approved codes. Subject to this experience, we may revisit the timetable for independent code reviews.

As per our recommendation that COBA seeks ASIC approval for this next iteration of the COBA Code, the commitment in the COBA Code for regular reviews must be compliant with RG 183. As such, we suggest amending this section of the Code such that reviews must happen at least every three years, and that reviews must be independent.

Recommendations

87. **Clause 23, Part e should be amended so as to comply with RG 183, to stipulate that the Code must be independently reviewed at least every three years.**

8. New commitments for a COBA Code

Helping with deceased estates

Consumer Representatives note that the Banking Code includes a specific chapter on helping with deceased estates. These commit banks to:

- provide clear and accessible information to deceased representatives: Clause 189
- act on instructions concerning a deceased's account from a person named in a grant of probate or letters of administration within 14 days of receiving the necessary information: Clause 190
- act on a request from a person authorised by a will or a person who has applied for letters of administration within 14 days: Clause 191;
- enable joint account holders to continue to operate the account subject to the terms and conditions of the account: Clause 192

These should be included in the COBA Code.

Recommendations

88. **The COBA Code should include a new section committing COBA members to:**
    a) **provide clear and accessible information to deceased representatives**
    b) **act on instructions concerning a deceased's account from a person named in a grant of probate or letters of administration within 14 days of receiving the necessary information**
    c) **act on a request from a person authorised by a will or a person who has applied for letters of administration within 14 days; and**
    d) **enable joint account holders to continue to operate the account subject to the terms and conditions of the account.**

Customer Advocates

ABA member banks have all committed to having a Customer Advocate in their bank: Clause 193.

We believe that consideration needs to be given to making a similar commitment for COBA members.

Recommendations

89. **COBA member should consider committing to establishing customer advocates within their organisations.**

Small business

Chapters 20 to 25 in the Banking Code set out responsibilities of subscribers regarding their dealings with small business. The COBA Code at present has no similar section setting out the obligations of subscribers in their dealings with small business.

Part B of the Code clearly states that the Code is supposed to address subscribers' dealings with individual and small business customers, however there is no section specifically addressing subscribers' obligations with regard to small business customers.

Consumer Representatives recommend adopting similar provisions to those in chapters 20 to 25 of the ABA Code.

Further, as with the Banking Code, the COBA Code should include a specific clause relating to responsible lending to small business customers. We recommend an amended version of clause 51 of the Banking Code, as follows:

> *If you are a small business, when assessing whether you can repay the loan we will do so by making appropriate enquiries and considering the circumstances about:*
>
> *a) your financial position; and*
>
> b) *your account conduct."*

Recommendations

90. **A new section be drafted into the Code setting out subscribers' obligations to small business customers.**

91. **A specific clause regarding responsible lending obligations to small business customers, similar to clause 51 of the ABA Code, should be included.**

Savings buffers

Many of our clients are living paycheck-to-paycheck and vulnerable to significant hardship in the event of illness, unemployment or other setback. It is the right of every person to be able to retain some savings to self-insure against unforeseen events.

Financial Counselling Australia's 2016 paper *Everybody needs a savings buffer: Why income and expenditure statements need a default savings category*[32] suggests several protections for consumers, which Consumer Representatives believe should be integrated into the COBA Code. The paper states at page 2:

> *Creditors expect that people in debt pay all of their surplus income towards their debts. This means that people in debt repayment arrangements have no savings buffer. An unexpected expense, e.g. a car breaks down, a high electricity bill, can be devastating. They may end up in default, access further high cost credit or experience poverty.*
>
> *Solution: a savings buffer. Allow people in debt repayment arrangements to build a savings buffer. This would build financial resilience, encourage a savings habit and allow people to take control of their finances. A savings buffer is consistent with all of the messages we give about financial literacy.*
>
> *Creditors can implement a savings buffer by making this the default setting in income and expenditure statements. We know from behavioural insights that people are more likely to accept a pre-set option, requiring opt out. Including a savings option as the default in standard creditor income and expenditure statements does this. A reasonable savings buffer would be 10% of a person's income, or $20 per month (where the consumer's income can sustain this). Financial institutions could help by setting up separate bank accounts for savings to accrue.*
>
> *A savings buffer could also be incorporated into initial lending decisions and has implications for responsible lending.*

It is just as important for the COBA Code to establish positive requirements for customer-owned banks, such as specific obligations to promote customer savings and wellbeing, as it is for the COBA Code to curtail harm. The introduction of mandatory savings buffers as part of budgets for collection purposes is one such positive intervention. This can help to show to the public that customer-owned banks have the interests of their members at heart and will take initiatives to go beyond existing law to provide protections to customers.

It is detrimental for customers and banks alike when people face unexpected emergency and do not have a savings to fall back on. Consumer Representatives believe that a 'savings buffer' should be built into budgets for collection purposes, for both banks and the debt collectors acting on their behalf. This should be built in as a line item in budgets.

Recommendations

92. The COBA Code should include a new section that:

a) stipulates that budgets for collection purposes must include 'savings' as a line item, at 10% of the customer's income, or $20 per month where the customer's income can sustain this.

[32] https://www.financialcounsellingaustralia.org.au/getattachment/Corporate/Publications/Reports/Everybody-Needs-a-Savings-Buffer.pdf

b) **requires subscribers proactively assist customers savings such as by setting up separate savings accounts for savings to accrue, and**

c) **commits subscribers to only engage external debt collection agencies that similarly commit to having 'savings' as a line item in budgets for debt collection purposes.**