



**CUSTOMER  
OWNED  
BANKING  
ASSOCIATION**

# **Customer Owned Banking Code Compliance Committee Charter 2021**

Version 1.0

2 July 2021

## About the Charter

This is the current Charter for the Customer Owned Banking Code Compliance Committee. This version of the Charter was approved for use by the COBA Board on 20 April 2021.

The Charter governs the Code Compliance Committee's administration of the Customer Owned Banking Code of Practice (Code), an industry code of practice developed by the Customer Owned Banking Association (COBA).

The Code Compliance Committee is independent. The Code specifies that the Committee is chaired by an independent person. It also has one industry representative and one consumer representative.

The Code specifies the roles and powers of the Code Compliance Committee including its sanctions and directions powers. The Code obliges COBA members who have agreed to adopt this Code to cooperate fully with the Code Compliance Committee.

This Charter specifies in more detail how the Code Compliance Committee operates. It constitutes an agreement between the Code Compliance Committee and COBA.

## Guiding Principles for the Code Compliance Committee

1. The Code Compliance Committee will carry out the role conferred on it by the Code and this Charter in a way that:
  - a. Promotes good practice compliance with the Code.
  - b. Prioritises issues taking into account the likely depth and breadth of customer harm.
  - c. Is impartial, fair, reasonable and effective.
  - d. Takes account of relevant law and guidelines to good industry practice.
  - e. Is transparent and accountable; and
  - f. Provides community assurance by regularly publishing its work.

## Members of the Code Compliance Committee

2. The Code Compliance Committee industry representative must:
  - a. have experience of the customer owned banking sector, for example, as a current or former employee of a customer owned bank, and
  - b. be appointed by the COBA Board.
3. The Code Compliance Committee consumer representative must:
  - a. have relevant experience as a consumer or community representative, and
  - b. be appointed by the Consumers' Federation of Australia, or its successor equivalent organisation.
4. The Code Compliance Committee Chair must:
  - a. have relevant experience in industry, commerce, law, public administration or government service, and
  - b. be appointed jointly by the COBA Board and AFCA, following consultation with ASIC.
5. The Chair is responsible for:
  - a. leading the Code Compliance Committee
  - b. providing direction to the head of the secretariat that supports the Committee
  - c. approving the agenda for meetings of the Committee
  - d. chairing meetings of the Committee and signing the minutes to confirm them as a true record
  - e. ensuring there is a principal point of contact for stakeholders including COBA, AFCA and ASIC, and
  - f. carrying out any other responsibilities vested in the Chair by the Committee.

## Term

6. A Code Compliance Committee member holds office for a term of 3 years unless the person resigns, or their position is automatically vacated.

7. A Code Compliance Committee member's position is automatically vacated if the person:
  - a. becomes bankrupt, is prohibited by law from being a director, dies, or becomes mentally incapacitated, or
  - b. fails to attend without reasonable excuse 2 consecutive duly convened Committee meetings.
8. A Code Compliance Committee member's position is also automatically vacated if the person's appointment is terminated by resolution of the COBA Board and:
  - a. in the case of the Committee consumer representative – the appointing body (see paragraph 3) agrees in writing, or
  - b. in the case of the Committee Chair – AFCA agrees in writing.

The termination is effective on the later of the date specified in the resolution, the date of that agreement in writing, or 7 days after all Committee members are notified of the termination.
9. A Code Compliance Committee member may be re-appointed for one further term only. Accordingly, a Committee member may not serve more than two successive terms.
10. The Code Compliance Committee members at the time of adoption of this Charter continue in their roles for the duration of their terms of appointment.

## Meetings of the Code Compliance Committee

11. The Code Compliance Committee must meet at least 3 times in each financial year. A meeting may be held in any manner the Committee members see fit including in person, by telephone conference, or by other electronic methods of communication.
12. The Chair may at any time convene a meeting of the Code Compliance Committee. At least 21 days' notice must be given of a meeting, unless the other Committee members agree to a meeting date and time that is earlier.
13. A Code Compliance Committee member may appoint an alternate representative to attend a meeting that the Committee member is unable to attend because of serious illness or injury. This is, however, only possible if the other Committee members and COBA agree to this before the relevant meeting.
14. Each Code Compliance Committee member (or, if paragraph 13 applies, their alternate representative), must be present at the meeting for a quorum. If a quorum does not exist, the meeting must be adjourned.
15. If a Code Compliance Committee member has a material personal interest in a matter that is being considered at a meeting:
  - a. the conflicted member must not be present at the part of the meeting that discusses that matter (although the member may be counted for the purposes of the quorum), and

- b. a person without a material personal interest, who has been selected by the conflicted member's appointing organisation, may attend that part of the Committee meeting in the conflicted member's place, and may participate in any decision made by the Committee about that matter.
16. A decision of the Code Compliance Committee requires support from a majority of the Committee members.
17. A resolution in writing, signed on one or more documents by each Code Compliance Committee member entitled to vote on the resolution has the same effect and validity as a resolution of the Committee passed at a duly convened meeting.
18. Subject to the Code and this Charter, the Code Compliance Committee will discharge its responsibilities and regulate its meetings and proceedings in the manner it decides from time to time.

## Operations

19. Each year, at least three months before the end of the financial year, the Code Compliance Committee will provide COBA with a work plan and budget for the next financial year. The budget must be approved by the COBA Board at least one month before the end of the financial year.
20. Through COBA, the Code Compliance Committee will put in place arrangements for a secretariat to support the Committee to carry out its roles and responsibilities under the Code and this Charter. The secretariat may be provided by another organisation on a contract for services basis, provided that the head of the secretariat is accountable to the Committee. The Committee may delegate its powers to the head of the secretariat (with ability to sub-delegate), including the power to undertake a compliance investigation, and to request information from Code Subscribers. The Committee may not, however, delegate the sanctions and directions powers conferred on it by the Code.
21. The Code Compliance Committee may develop:
  - a. policies and guidelines on the administration of the Code
  - b. the format for compliance reporting by Code Subscribers, and
  - c. operating procedures relating to the activities of the Code Compliance Committee, and the personnel who support the Committee,that are consistent with this Charter and the Code.
22. When developing the format for compliance reporting by Code Subscribers, the Code Compliance Committee must consult with COBA and Code Subscribers as the Committee considers appropriate.
23. The Code Compliance Committee must maintain adequate insurance including professional indemnity insurance, and officer's liability insurance.

## Performance of its functions

24. The Code Compliance Committee may require Code Subscribers to include Code breach reporting data in their periodic compliance reports. To enable data to be in a consistent form that allows comparison, the Committee may specify requirements (for example, definitions or standards) for Code Subscribers' Code breach reporting that are aligned to ASIC reporting requirements. Before specifying requirements, the Committee must consult with Code Subscribers, and provide them with reasonable time to make arrangements so that they can meet these requirements.
25. The Code Compliance Committee may only investigate a matter:
  - a. that is directly related to compliance with the Code, and
  - b. if the Code Subscriber was a subscriber to the Code at the time of the relevant events.
26. The Code Compliance Committee will not investigate an allegation that a Code Subscriber breached the Code if the allegation is more than two years after the person became aware of the events giving rise to the allegation.
27. Subject to this Charter, the Code Compliance Committee has a discretion whether to begin an investigation into whether a Code Subscriber has breached the Code. The Committee also has a discretion to discontinue an investigation at any stage. In exercising its discretion, the Committee is required by the Code to consider the likely depth and breadth of customer harm. This may include consideration of:
  - a. the likelihood of serious or systemic breach of the Code
  - b. the currency of the matters under investigation
  - c. any relevant information the Committee holds or has obtained
  - d. whether the relevant events and issues are currently under consideration by AFCA, ASIC, or another regulator
  - e. whether the Committee has previously inquired into similar issues
  - f. whether another forum would be more appropriate to consider the matter
  - g. any other matter it considers appropriate.
28. The Code Compliance Committee is not bound by legal rules of evidence, but must act fairly when undertaking an investigation (whether an own motion investigation, or an investigation in response to a breach allegation made to the Code Compliance Committee) – and when resolving what action to take.
  - a. requests for information must, in the Committee's view, be reasonably necessary to discharge its functions
  - b. before exercising the sanctions and directions powers conferred on the Committee by the Code, the Committee must provide the relevant Code Subscriber with a reasonable opportunity to respond to the issues under investigation. If, however, the Code Subscriber fails to respond within a reasonable timeframe, the Committee may proceed to exercise its powers
  - c. the Committee may only exercise its sanctions and directions powers to require a Code Subscriber to take action (for example, to undertake a rectification or remedial program), or

publicly name a Code Subscriber found to be in breach of the Code – where the Committee consider that this is reasonable in all the circumstances.

29. In discharging its functions, the Code Compliance Committee may consult external parties as the Committee thinks appropriate.
30. The Code Compliance Committee must take reasonable steps to maintain the confidentiality of information provided to it by Code Subscribers. This includes taking reasonable steps to ensure that the Committee's secretariat, and any consulted external parties maintain the confidentiality of any information provided to them by the Committee. This paragraph does not, however, restrict the Committee from disclosing information if, in the Committee's view, this is necessary for the Committee to carry out the role and functions conferred on it by the Code and this Charter.
31. The Code Compliance Committee must publish an annual report within 6 months of the end of each financial year. This must include a summary of the Committee's activities during the previous financial year including:
  - a. the number of breach allegations it has received, and the general nature and relevant Code provisions, age, status, and outcomes of these
  - b. the outcomes of compliance reporting to the Committee by Code Subscribers
  - c. other activities by the Committee to encourage continuous improvement by Code Subscribers in meeting Code obligations
  - d. investigations by the Committee, and any findings of serious or systemic breaches of the Code
  - e. any exercise of the Committee's sanctions and directions powers, and
  - f. the impact (or possible impact) on Code Subscribers' customers of any identified non-compliance with the Code.
32. The Code Compliance Committee must provide a copy of its annual reports, either in hard copy or electronically, to:
  - a. the COBA Board
  - b. each Code Subscriber
  - c. the AFCA Board
  - d. the Consumers' Federation of Australia, and
  - e. ASIC.
33. The Code Compliance Committee must also make its annual reports available to the public by publishing them on the Committee's website.

## **Alterations to Charter**

34. This Charter may be altered by agreement between COBA and the Code Compliance Committee. If any material alteration is proposed, stakeholders will be consulted.

## Appendix – Definitions

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

**"AFCA"** – the Australian Financial Complaints Authority, an independent complaints handling authority overseen by ASIC.

**"ASIC"** – the Australian Securities and Investments Commission.

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

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

**"Code Compliance Committee" or "Committee"** – Refers to the Code Compliance Committee established by COBA, pursuant to the Code and this Charter.

**"Code Subscribers"** – COBA members who have agreed to adopt the Code.

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