



**CUSTOMER
OWNED
BANKING
ASSOCIATION**

Customer Owned Banking Code Compliance Committee Charter 2023

Version 1.0

December 2023

About the Charter

This is the current Charter for the Customer Owned Banking Code Compliance Committee (Committee). This version of the Charter was approved for use by the COBA Board on 19 December 2023.

The Charter governs the 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 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 Committee including its sanctions and directions powers. The Code obliges COBA members who have agreed to adopt this Code to cooperate fully with the Committee.

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

Guiding Principles for the Code Compliance Committee

1. The 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 Committee consists of three members: an industry representative, a consumer representative, and an Independent Chair.
3. The 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,
 - b. be capable of considering issues in a strategic and holistic way, beyond the interests of an individual customer owned bank or their current or previous employer(s), and
 - c. be appointed by the COBA Board.
4. The Committee consumer representative must:
 - a. have relevant experience as a consumer or community advocate,
 - b. be capable of considering issues and the consumer interest in a strategic way, beyond the interests of any individual consumer, and
 - c. be appointed by the Consumers' Federation of Australia, or its successor equivalent organisation.
5. The Committee Chair must:
 - a. be independent,
 - b. have relevant experience in industry, commerce, law, public administration or government service, and
 - c. be appointed jointly by the COBA Board and pursuant to a resolution of the AFCA Board.
6. The Chair is responsible for:
 - a. leading the Committee,
 - b. providing direction to the manager of the Secretariat,
 - 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.

7. The relevant appointing body may also appoint an alternate representative for that member for the purposes set out in clauses 17 and 19. The alternate must satisfy and is bound by the same requirements applicable to the relevant member under this Charter.
8. The appointment and re-appointment of Committee members and any alternate representatives will be arranged by the Secretariat and effected under a Committee Member Contract.

Term

9. Subject clauses 10 to 14 of this Charter, each Committee member will hold office for a term of three years. If a Committee member leaves office and an alternate member is appointed in their place, the alternate member will serve out the remainder of the term.
10. A Committee member may be re-appointed for one further term only. Accordingly, a Committee member may not serve more than two successive terms.
11. Without limiting the rights under the relevant Committee Member Contract a Committee member may resign from their position during their term by providing the relevant appointing body with at least one month's notice in writing of the intended resignation or such shorter period as may be agreed in writing.
12. Without limiting the rights under the relevant Committee Member Contract, if:
 - a. a Committee member becomes bankrupt, is prohibited by law from being a director, or becomes incapable of carrying out the inherent requirements of the position such as by reason that the member becomes of unsound mind, or
 - b. a Committee member fails to attend, without reasonable excuse, two consecutive duly convened Committee meetings;(each a 'disqualifying event')

then:

 - c. the relevant member will become automatically disqualified from holding the appointment with effect from the relevant date.
13. The automatic disqualification of a Committee member under clause 12 of this Charter will not of itself invalidate an act of the relevant Committee member performed between the date of the disqualifying event and the date of termination of their appointment and the relevant Committee Member Contract.
14. A Committee member's appointment may be terminated for any reason, including by reason that the member does any act which may cause the Committee to breach its obligation to remain independent as required under the Code, by resolution of the COBA Board and:
 - a. in the case of the Committee consumer representative – the relevant appointing body for that member in writing, or

- b. in the case of the Committee Chair – resolution of the AFCA Board. The termination is effective on the later of the date specified in the resolution, the date of that agreement in writing, or seven days after all Committee members are notified of the termination.

In the event of such termination, AFCA may terminate the relevant Committee Member Contract
This paragraph does not limit the rights under the Committee Member Contract.

Meetings of the Code Compliance Committee

15. The Committee must meet at least three times in each financial year. A meeting may be held in any manner the Committee members see fit including in person, by telephone or video conference, or by other electronic methods of communication.
16. The Chair may at any time convene a meeting of the 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.
17. A Committee member's alternate representative may attend a Committee meeting on behalf of that member if the member is unable to attend because of serious illness, injury or incapacity. However, such attendance is subject to the prior approval in writing of the other Committee members and the relevant appointing body for the member.
18. Each Committee member (or, if clause 17 applies, their alternate representative), must be present at the meeting to form a quorum. If a quorum does not exist, the meeting must be adjourned.
19. In addition to, and not in derogation of any general law about conflicts of interest or conflicts of duties, if a Committee member has a material personal interest in relation to a matter that is being considered at a Committee meeting:
 - a. the conflicted member may attend the meeting but must not be present while the matter is being discussed (although such attendance will still be taken into account for the purposes of forming a quorum), and
 - b. the conflicted member's alternate representative (if any), or another attendee selected by the conflicted member's relevant appointing body, may attend the meeting while the matter is being discussed and participate in any decision taken or resolution passed by the Committee regarding the matter, provided that the alternative representative or attendee does not have a material personal interest in relation to the matter.
20. A decision of or resolution passed by the Committee requires the support of a majority of Committee members.
21. A resolution in writing, signed by each 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. Resolutions may be signed by hand or electronically and may be comprised in one document or in counterparts.
22. Subject to the Code and this Charter, the Committee will discharge its responsibilities and regulate its meetings and proceedings in the manner it decides from time to time.

Operations

23. In accordance with paragraph 186 of the Code, the activities of the Committee and the Secretariat are funded by COBA.
24. Each year, at least eight weeks before the end of the financial year, the Committee in consultation with the Secretariat, will provide COBA with a work plan and budget for the next financial year. The COBA Board will use its best endeavours to approve the budget before the start of the financial year to which the budget relates. If the COBA Board does not make a decision before the start of the financial year as to approving the work plan and budget provided then the previous financial year's work plan and budget will continue until such time as the COBA Board makes a decision on the proposed work plan and budget.
25. Through COBA, the Committee will put in place arrangements for the Secretariat to support the Committee to carry out its roles and responsibilities under the Code and this Charter. The Secretariat may be appointed 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 manager of the Secretariat (with ability to sub-delegate), including:
 - a. monitoring and reporting on compliance with the Code,
 - b. undertaking compliance investigations,
 - c. requesting information from Code Subscribers and
 - d. assessing breach issues that have been referred to the Committee.

The Committee may not, however, delegate the determination of breach issues and imposition of a Sanction Power or a Direction Power conferred on it by the Code.

26. The Committee may develop, consistent with this Charter and the Code:
 - 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 Committee and the Secretariat.
27. When developing the format for compliance reporting by Code Subscribers, the Committee may consult with COBA and Code Subscribers as the Committee considers appropriate.
28. The Committee must procure and maintain adequate insurance coverage for the activities of the Committee including professional indemnity insurance, and officer's liability insurance.

Performance of its functions

29. The Committee may require Code Subscribers to include Code breach reporting data (among other things) in the Code Subscribers' periodic compliance reports. To enable data to be consistent and of high quality, the Committee will consult with Code subscribers regarding any changes to breach reporting requirements, if subscribers are impacted by the proposed change.
30. The Committee may investigate a matter or allegation if the Committee considers that:

- a. the matter or allegation is directly related to a Code Subscriber's compliance with the Code, and
 - b. the Code Subscriber was a subscriber to the Code at the time of any of the relevant events alleged.
31. The Committee will not investigate an allegation that a Code Subscriber breached the Code if that allegation has been made to the Committee more than two years after the person making the allegation became aware of the events giving rise to the allegation.
32. Subject to this Charter, the Committee has a discretion whether to begin an investigation into whether a Code Subscriber has breached the Code, and whether to maintain or 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 under consideration by AFCA, ASIC, or another regulator at that time,
 - e. whether the Committee has previously inquired into similar issues,
 - f. whether another forum would be more appropriate to consider the matter, and
 - g. any other matter it considers appropriate.
33. The Committee is not bound by rules of evidence. The Committee must act fairly when undertaking an investigation (whether an own motion investigation, or an investigation in response to a breach allegation made to the Committee). When deciding the appropriate course of action:
 - a. The Committee may only make requests for information where such a request is, in the Committee's view, reasonably necessary for the discharge its functions.
 - b. Before exercising a Sanction Power or Direction Power, 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 such a power.
 - c. The Committee may only exercise a Sanction Power or Direction Power where the Committee consider such a course of action to be reasonable in all the circumstances.
34. In discharging its functions, the Committee may consult and obtain advice from external parties as the Committee thinks appropriate.
35. The Committee must publish an annual report within six 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 allegations,
 - b. the outcomes of compliance reporting to the Committee by Code Subscribers,
 - c. other activities of 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 a Sanction Power or Direction Power, and
 - f. the impact (or possible impact) on Customers of any identified non-compliance with the Code.
36. The Committee must provide a copy of its annual report, 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.
37. The Committee must also make its annual reports available to the public by publishing them on the Committee's website.

Confidentiality

38. For the purposes of clauses 39 and 40, "confidential information" means all technical, commercial, and other confidential information and materials of a Code Subscriber or Customer and includes any information or material that discloses or relates to:
- a. a Code Subscriber's compliance or non-compliance with the Code,
 - b. an actual or alleged breach of the Code,
 - c. the commercial, financial, or legal affairs of a Code Subscriber or Customer,
 - d. legal advice and other privileged materials,
 - e. a matter to which an obligation of confidence applies under law or in equity,
 - f. personal information within the meaning of privacy legislation, and
 - g. any other information or material which is of a confidential or sensitive nature, is marked or denoted as being confidential or which a reasonable person to whom that information or material is disclosed, or to whose knowledge that information or material otherwise comes, would consider confidential.
39. Subject to clause 40, the Committee members and Secretariat must take reasonable steps to maintain the confidentiality of confidential information supplied to it in connection with the business of the Committee, and not disclose or use for a purpose other than as permitted under this Charter or the Code any such confidential information.
40. Committee members and the Secretariat may disclose confidential information:
- a. between each other,

- b. to any person to whom disclosure is reasonably required for the purpose of the Committee exercising its functions under the Code or the Charter,
- c. to any person to whom disclosure of confidential information is required by law,
- d. to a relevant regulator, including in response to a request for that confidential information from the relevant regulator,
- e. under corresponding obligations of confidence as imposed under this section, to:
 - i. a person retained to provide advice in accordance with clause 34, or
 - ii. an External Dispute Resolution scheme but only to the extent that it is relevant to a matter being dealt with by the scheme and only to the extent such disclosure is required or permitted under the scheme's rules,
- f. for the purpose of exercising a Sanction Power or Direction Power,
- g. to another Australian financial services industry code compliance or governance committee to facilitate collaboration on common issues,
- h. as otherwise permitted under the Code or Charter, including in connection with compliance reporting and the release of aggregated Code breach data, or
- i. with the prior written consent of the Code Subscriber or Customer (as the case may require), subject to law.

Alterations to Charter

41. This Charter may be altered by agreement between COBA and the 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" – means the Australian Financial Complaints Authority, an independent complaint handling authority overseen by ASIC and External Dispute Resolution scheme to which Code Subscribers belong.

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

"Code" – means the Customer Owned Banking Code of Practice, unless otherwise qualified.

"COBA" – means the Customer Owned Banking Association.

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

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

"Committee Member Contract" – means the contract for services between AFCA on behalf of COBA, and the Committee member or the Committee member's company, under which a Committee member's appointment is effected and the Committee member's services are procured.

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

"Direction" – means a direction to remedy a breach or take reasonable steps to prevent a reoccurrence of the breach under paragraph 178 of the Code, and Direction Power means the Committee's power to make such a direction.

"Independent" – the Chair is independent for the purposes of clauses 2, and 5(a). of this Charter if they are not a member of the board of COBA or AFCA and are not employed by or any officer of a Code Subscriber.

"Relevant appointing body" – means the body that appoints a Committee Member as set out in clauses 3 to 5.

"Sanction" – means a sanction under paragraph 178 of the Code, and "Sanctions and directions powers" means the Committee's power to make a Sanction.

"Secretariat" – means the body appointed by COBA as secretariat to support the Committee and as Compliance Manager from time to time. The current Secretariat is the Code Compliance business unit of AFCA. The manager of the Secretariat is AFCA's Code Compliance Manager.