

Partner Elizabeth Avery  
Contact Cherrie Fung  
T [REDACTED]  
Our ref 1047859

**20 April 2022**

Mr Tom Leuner / Ms Sharon Deano  
Executive General Manager / General Manager (Competition Exemption)  
Mergers, Exemptions and Digital  
Australian Competition and Consumer Commission  
By email: [exemptions@accc.gov.au](mailto:exemptions@accc.gov.au).

Dear Mr Leuner and Ms Deano,

**Application for authorisation by Customer Owned Banking Association on behalf of its member institutions**

We act for the Customer Owned Banking Association (**COBA**).

COBA (as the **Applicant**) seeks authorisation, on behalf of itself and its current (and future) member institutions and their related bodies corporate, from the Australian Competition and Consumer Commission (**ACCC**) to implement certain provisions of the Customer Owned Banking Code of Practice (**Code**). The revised Code containing these provisions (**2022 Code**) is proposed to commence from 31 October 2022.

COBA also seeks interim authorisation to enable it to make appropriate practical arrangements for finalisation and promotion of the 2022 Code and for its member institutions to implement the 2022 Code, ahead of the proposed 31 October 2022 commencement date.

The provisions in the 2022 Code for which this authorisation is sought (and other updates to the Code) reflect the customer owned banking sector's commitment to ensure that the Code is effective in serving customer interests and maintaining the trust and confidence of customers in the sector, including that the key commitments in the Code meet consumer and community expectations in light of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

**Provisions in the 2022 Code subject of the authorisation application (Application)**

The provisions in the 2022 Code that are the subject of the Application include commitments to:

- not charge or only to charge at cost a fee, cost or interest (or rebate such fee or interest charged) in connection with the relevant products or services provided by COBA member institutions;
- dishonour credit card transactions that would result in a customer exceeding their credit limit by more than 10%;

- not require customers experiencing financial difficulty to access their superannuation to meet their loan obligations;
- restrict the circumstances under which the customer's debt will be sold, particularly when the customer is experiencing financial difficulty or if the debt arose from violence or abuse;
- not take enforcement actions against the customer (including small businesses) or guarantor in connection with the customer's loan in certain circumstances; and
- not include a general material adverse change default clause in small business loan contracts.

### **Confidentiality claims**

As part of the Application, we enclose:

- a confidential and public version of the Application Form;
- submissions in support of the Application;
- Annexure 2 to submissions – 2022 Code (as at July 2021);
- confidential Board Paper for COBA Board dated 6 April 2021;
- confidential Minutes of a Meeting of Directors of COBA on 20 April 2021; and
- a copy of the receipt for payment of lodgement fees.

COBA requests that the highlighted confidential material in the Application Form, and the attached Board Paper and Minutes of Meeting be kept from the public register on the basis that they disclose personal information and/or confidential information concerning COBA and its Member Institutions and their commercial affairs. Any disclosure of this information would unreasonably and adversely affect COBA and its Member Institutions. A public version of the Application Form has been attached.

Please do not hesitate to contact us should the ACCC have any queries or require any further information.

Yours faithfully  
**Gilbert + Tobin**



**Elizabeth Avery**  
Partner



**Cherrie Fung**  
Lawyer



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## Application for authorisation by Customer Owned Banking Association on behalf of its member institutions

### Parties to the proposed conduct

1 Provide details of the applicants for authorisation, including:

1.1 name, address (registered office), telephone number and ACN

**Customer Owned Banking Association (ACN 137 780 897)**

Suite 403, Level 4, 151 Castlereagh Street

Sydney NSW 2000

Ph: (02) 8035 8400

GPO Box 4686, Sydney, NSW 2001

(COBA)

COBA (as the Applicant) is seeking authorisation for itself and on behalf of its current members (**Member Institutions**) and their related bodies corporate as well as any institution that may become a COBA member in the future (and their related bodies corporate).

1.2 contact person's name, position, telephone number and email address

Elizabeth Avery

Partner

Gilbert + Tobin



Cherrie Fung

Lawyer

Gilbert + Tobin



1.3 a description of business activities

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies). COBA provides representation and advocacy for its member institutions and also provides them with expert advisory and support services such as in the area of fraud and financial crimes.

For further information, please see section 2.1 of the confidential submission in support of application for authorisation by COBA on behalf of its member institutions (**Submission**).

1.4 email address for service of documents in Australia.



2 If applicable, provide details of the other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought. Where relevant provide:

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Contact details of COBA's current Member Institutions are set out below.

	<b>Name, address (registered office), telephone number and ACN</b>	<b>Contact person's name, telephone number and email address</b>	<b>Description of business activities</b>
<b>1</b>	<b>Australian Central Credit Union Limited</b> Level 14, 50 Flinders Street, Adelaide SA 5000 Ph: 13 11 82 ACN 087 651 125	[redacted]	Credit Union – provision of banking services
<b>2</b>	<b>Australian Military Bank Limited</b> Level 18, 45 Clarence St, Sydney NSW 2000 Ph: (02) 1300 132 328 ACN 087 649 741	[redacted]	Bank – provision of banking services
<b>3</b>	<b>Australian Mutual Bank Limited</b> 59 Buckingham Street, Surry Hills NSW 2010 Ph: 13 61 91 ACN: 087 650 726	[redacted]	Bank – provision of banking services
<b>4</b>	<b>Australian Unity Bank Limited</b> 271 Spring Street, Melbourne Vic 3000 Ph: 1300 790 740 ACN: 087 652 079	[redacted]	Bank – provision of banking services
<b>5</b>	<b>B&amp;E Limited</b> 87 Brisbane Street, Launceston Tas 7250 Ph: 1300 306 716 ACN: 087 652 088	[redacted]	Bank – provision of banking services
<b>6</b>	<b>Bank Australia Limited</b> 222 High Street, Kew Vic 3101 Ph: 132 888 ACN: 087 651 607	[redacted]	Bank – provision of banking services
<b>7</b>	<b>Beyond Bank Australia Limited</b> 100 Waymouth Street, Adelaide SA 5000 Ph: 13 25 85 ACN: 087 651 143	[redacted]	Bank – provision of banking services
<b>8</b>	<b>Central Murray Credit Union Limited</b> 58 Belmore Street, Yarrawonga Vic 3730 Ph: 03 5744 3713 ACN: 087 651 812	[redacted]	Credit Union – provision of banking services



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	<b>Name, address (registered office), telephone number and ACN</b>	<b>Contact person's name, telephone number and email address</b>	<b>Description of business activities</b>
<b>9</b>	<b>Central West Credit Union Limited</b> 269 Clarinda Street, Parkes NSW 2870 Ph: 02 6862 2788 ACN: 087 649 885	[redacted]	Credit Union – provision of banking services
<b>10</b>	<b>Coastline Credit Union Limited</b> 64 Elbow Street, West Kempsey NSW 2440 Ph: 1300 361 066 ACN: 087 649 910	[redacted]	Credit Union – provision of banking services
<b>11</b>	<b>Community First Credit Union Limited</b> 67-73 St Hilliers Road, Auburn NSW 2144 Ph: 1300 13 22 77 ACN: 087 649 938	[redacted]	Credit Union – provision of banking services
<b>12</b>	<b>Credit Union Australia Limited</b> Level 23, 145 Ann Street, Brisbane QLD 4000 Ph: 133 282 ACN: 087 650 959	[redacted]	Credit Union – provision of banking services
<b>13</b>	<b>Credit Union SA Limited</b> Level 3, 400 King William Street, Adelaide SA 5000 Ph: 08 8202 7777 ACN: 087 651 232	[redacted]	Credit Union – provision of banking services
<b>14</b>	<b>Defence Bank Limited</b> Level 10, 31 Queen Street, Melbourne Vic 3000 Ph: 1800 033 139 ACN: 087 651 385	[redacted]	Bank – provision of banking services
<b>15</b>	<b>Dnister Ukrainian Credit Co-Operative Limited</b> 912 Mt Alexander Road, Essendon Vic 3040 Ph: 1800 353 041 ACN: 087 651 394	[redacted]	Credit Co-operative – provision of banking services
<b>16</b>	<b>Family First Credit Union Limited</b> 1 Ordnance Avenue, Lithgow NSW 2790 Ph: 1300 369 900	[redacted]	Credit Union – provision of banking services

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	<b>Name, address (registered office), telephone number and ACN</b>	<b>Contact person's name, telephone number and email address</b>	<b>Description of business activities</b>
	ACN: 087 650 057		
<b>17</b>	<b>Fire Service Credit Union Limited</b> 22 Chancery Lane, Adelaide SA 5000 Ph: 08 8227 2222 ACN: 087 651 152	[redacted]	Credit Union – provision of banking services
<b>18</b>	<b>First Choice Credit Union Limited</b> 2/18 Sale Street, Orange NSW 2800 Ph: 02 6362 2944 ACN: 087 649 867	[redacted]	Credit Union – provision of banking services
<b>19</b>	<b>First Option Bank Limited</b> Level 6, 437 St Kilda Road, Melbourne Vic 3004 Ph: 1300 855 675 ACN: 087 650 735	[redacted]	Bank – provision of banking services
<b>20</b>	<b>Ford Co-Operative Credit Society Limited</b> 107 Gheringhap Street, Geelong Vic 3220 Ph: 1300 361 555 ACN: 087 651 456	[redacted]	Bank – provision of banking services
<b>21</b>	<b>G&amp;C Mutual Bank Limited</b> Level 25, 201 Elizabeth Street, Sydney NSW 2000 Ph: 1300 364 400 ACN: 087 650 637	[redacted]	Bank – provision of banking services
<b>22</b>	<b>Gateway Bank Limited</b> Level 10, 68 York Street, Sydney NSW 2000 Ph: 1300 302 474 ACN: 087 650 093	[redacted]	Bank – provision of banking services
<b>23</b>	<b>Goulburn Murray Credit Union Co-Operative Limited</b> 91-95 Fryers Street, Shepparton Vic 3630 Ph: 03 5821 9033 ACN: 087 651 509	[redacted]	Credit Union – provision of banking services

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	<b>Name, address (registered office), telephone number and ACN</b>	<b>Contact person's name, telephone number and email address</b>	<b>Description of business activities</b>
<b>24</b>	<b>Greater Bank Limited</b> 103 Tudor Street, Hamilton NSW 2303 Ph: 13 13 86 ACN: 087 651 956	[redacted]	Bank – provision of banking services
<b>25</b>	<b>Heritage Bank Limited</b> 6th Floor, 400 Ruthven Street, Toowoomba QLD 4350 Ph: 13 14 22 ACN: 087 652 024	[redacted]	Bank – provision of banking services
<b>26</b>	<b>Horizon Credit Union Limited</b> 27 Stewart Street, Wollongong NSW 2500 Ph: 1300 366 565 ACN: 087 650 173	[redacted]	Credit Union – provision of banking services
<b>27</b>	<b>Hume Bank Limited</b> 492 Olive Street, Albury NSW 2640 Ph: 1300 004 863 ACN: 051 868 556	[redacted]	Bank – provision of banking services
<b>28</b>	<b>Illawarra Credit Union Limited</b> 38-40 Young Street, Wollongong NSW 2500 Ph: 13 22 49 ACN: 087 650 771	[redacted]	Credit Union – provision of banking services
<b>29</b>	<b>IMB Limited</b> 253-259 Crown Street, Wollongong NSW 2500 Ph: 133 462 ACN: 087 651 974	[redacted]	Bank – provision of banking services
<b>30</b>	<b>Laboratories Credit Union Limited</b> 1 The Village, 3 Julius Avenue, North Ryde NSW 2113 Ph: 02 9859 0585 ACN: 087 650 217	[redacted]	Credit Union – provision of banking services
<b>31</b>	<b>Macarthur Credit Union Limited</b> 52 Argyle Street, Camden NSW 2570 Ph: 1300 622 278 ACN: 087 650 244	[redacted]	Credit Union – provision of banking services

	Name, address (registered office), telephone number and ACN	Contact person's name, telephone number and email address	Description of business activities
32	<b>Macquarie Credit Union Limited</b> 23 Hawthorn Street, Dubbo NSW 2830 Ph: 1300 885 480 ACN: 087 650 253	[redacted]	Credit Union – provision of banking services
33	<b>Maitland Mutual Limited</b> 6 Mitchell Drive, East Maitland NSW 2323 Ph: 1300 688 825 ACN: 087 651 983	[redacted]	Bank – provision of banking services
34	<b>Members Banking Group Limited</b> Level 10, 60 Edwards Street, Brisbane QLD 4000 Ph: 07 3877 1908 ACN: 087 651 054	[redacted]	Bank – provision of banking services
35	<b>Newcastle Permanent Building Society Limited</b> 307 King Street, Newcastle NSW 2300 Ph: 13 19 87 ACN: 087 651 992	[redacted]	Building society – provision of banking services
36	<b>Northern Inland Credit Union Limited</b> 481 Peel Street, Tamworth NSW 2340 Ph: 02 6763 5111 ACN: 087 650 422	[redacted]	Credit Union – provision of banking services
37	<b>Orange Credit Union Limited</b> 288 Summer Street, Orange NSW 2800 Ph: 02 6362 4466 ACN: 087 650 477	[redacted]	Credit Union – provision of banking services
38	<b>Police &amp; Nurses Limited</b> Level 7, 130 Stirling Street, Perth WA 6000 Ph: 13 25 77 ACN: 087 651 876	[redacted]	Bank – provision of banking services
39	<b>Police Bank Limited</b> 25 Pelican Street, Surry Hills NSW 2010 Ph: 131 728 ACN: 087 650 799	[redacted]	Bank – provision of banking services



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	<b>Name, address (registered office), telephone number and ACN</b>	<b>Contact person's name, telephone number and email address</b>	<b>Description of business activities</b>
40	<b>Police Credit Union Limited</b> 17-23 Carrington Street, Adelaide SA 5000 Ph: 1300 131 844 ACN: 087 651 205	[redacted]	Credit Union – provision of banking services
41	<b>QPCU Limited</b> 231 North Quay, Brisbane QLD 4000 Ph: 13 77 28 ACN: 087 651 036	[redacted]	Bank – provision of banking services
42	<b>Qudos Mutual Limited</b> Connect Corporate Centre, Level 8, 191 O'Riordan Street, Mascot NSW 2020 Ph: 1300 747 747 ACN: 087 650 557	[redacted]	Bank – provision of banking services
43	<b>Queensland Country Bank Limited</b> 333 Ross River Road, Aitkenvale QLD 4814 Ph: 1800 075 078 ACN: 087 651 027	[redacted]	Bank – provision of banking services
44	<b>Railways Credit Union Limited</b> Level 1, Law Society House, 179 Ann Street Brisbane QLD 4000 Ph: 1300 362 216 ACN: 087 651 090	[redacted]	Credit Union – provision of banking services
45	<b>Regional Australia Bank Limited</b> New England Technology Park, Madgwick Drive Armidale NSW 2351 Ph: 132 067 ACN: 087 650 360	[redacted]	Bank – provision of banking services
46	<b>South West Slopes Credit Union Limited</b> 89 Boorowa Street, Young NSW 2594 Ph: 02 6384 1111 ACN: 087 650 673	[redacted]	Credit Union – provision of banking services

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	<b>Name, address (registered office), telephone number and ACN</b>	<b>Contact person's name, telephone number and email address</b>	<b>Description of business activities</b>
<b>47</b>	<b>South-West Credit Union Co-Operative Limited</b> 117 Lava Street, Warrnambool Vic 3280 Ph: 03 5560 3900 ACN: 087 651 705	[redacted]	Credit Union – provision of banking services
<b>48</b>	<b>Summerland Financial Services Limited</b> 101 Molesworth Street, Lismore NSW 2480 Ph: 1300 802 222 ACN: 087 650 806	[redacted]	Credit Union – provision of banking services
<b>49</b>	<b>Teachers Mutual Bank Limited</b> 28-38 Powell Street, Homebush NSW 2140 Ph: 13 12 21 ACN: 087 650 459	[redacted]	Bank – provision of banking services
<b>50</b>	<b>The Broken Hill Community Credit Union Limited</b> 2 Chloride Street, Broken Hill NSW 2880 Ph: 08 8088 2199 ACN: 087 650 762	[redacted]	Credit Union – provision of banking services
<b>51</b>	<b>The Capricornian Limited</b> 157 East Street, Rockhampton QLD 4700 Ph: 1300 314 900 ACN: 087 650 940	[redacted]	Credit Union – provision of banking services
<b>52</b>	<b>Traditional Credit Union Limited</b> 9 Rowling Street, Casuarina NT 810 Ph: 08 8999 0777 ACN: 087 650 922	[redacted]	Credit Union – provision of banking services
<b>53</b>	<b>Transport Mutual Credit Union Limited</b> Ground Floor, 410 Elizabeth Street, Surry Hills NSW 2010 Ph: 02 8202 8555 ACN: 087 650 600	[redacted]	Credit Union – provision of banking services
<b>54</b>	<b>Unity Bank Limited</b> Level 7, 215-217 Clarence Street, Sydney NSW 2000 Ph: 1300 36 2000	[redacted]	Bank – provision of banking services

	Name, address (registered office), telephone number and ACN	Contact person's name, telephone number and email address	Description of business activities
	ACN: 087 650 315		
55	<b>Victoria Teachers Limited</b> 117 Camberwell Road, Hawthorn East Vic 3123 Ph: 1300 654 822 ACN: 087 651 769	[redacted]	Bank – provision of banking services
56	<b>Warwick Credit Union Limited</b> 101 Palmerin Street, Warwick QLD 4370 Ph: 1300 72 44 33 ACN: 087 651 116	[redacted]	Credit Union – provision of banking services
57	<b>WAW Credit Union Co-Operative Limited</b> 11 Stanley Street, Wodonga Vic 3690 Ph: 1300 368 555 ACN: 087 651 787	[redacted]	Credit Union – provision of banking services
58	<b>Woolworths Team Bank Limited</b> 522-550 Wellington Road, Mulgrave Vic 3170 Ph: 1300 665 553 ACN: 087 651 803	[redacted]	Bank – provision of banking services

## The proposed conduct

### 3 Provide details of the proposed conduct, including:

- 3.1 a description of the proposed conduct and any documents that detail the terms of the proposed conduct

COBA seeks authorisation for certain provisions in the revised Customer Owned Banking Code of Practice, proposed to commence on 31 October 2022 (**2022 Code**).

Please see section 4 and Annexures 2 and 3 of the Submission.

- 3.2 the relevant provisions of the *Competition and Consumer Act 2010* (Cth) (the Act) which might apply to the proposed conduct:

- cartel conduct (Division 1 of Part IV)
- contracts, arrangements or understandings that restrict dealings or affect competition (s. 45)
- concerted practices (s. 45).



- 3.3 the rationale for the proposed conduct

Please see sections 3.2, 3.3, 6.1, 6.2 and 6.3 of the Submission.

- 3.4 the term of authorisation sought and reasons for seeking this period. By default, the ACCC will assume you are seeking authorisation for five years. If a different period is being sought, please specify and explain why.

The 2022 Code provides for the review of the Code and its operations in no more than 5 years' time. To align with this review period and to ensure certainty for Member Institution implementation and customers' awareness, COBA seeks a term of authorisation for 5 years.

- 4 Provide documents submitted to the applicant's board or prepared by or for the applicant's senior management for purposes of assessing or making a decision in relation to the proposed conduct and any minutes or record of the decision made.<sup>1</sup>

Please see the following confidential attachments:

- the Board Paper for COBA Board on the subject 'COBCOP' dated 6 April 2021; and
- the Minutes of a Meeting of Directors of COBA on 20 April 2021.

- 5 Provide the names of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant products or services) and detail how or why they might be impacted.

Please see sections 6 and 7 of the Submission.

## **Market information and concentration**

- 6 Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).

Please see section 2.1 of the Submission.

- 7 Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.

The 2022 Code applies to COBA member institutions that adopt the Code. These member institutions are customer owned banking institutions (mutual banks, credit unions and building societies) that provide a range of retail banking products including savings accounts, home loans, car loans, personal loans, credit cards and term deposits, to people living in communities across Australia in competition with other participants in the banking sector, including national and regional banks. Some customer owned banking institutions also provide business banking services (primarily loans to small businesses).

The relevant industry is therefore Australia's banking sector in Australia. Specifically, the provisions subject to this authorisation relate to the supply of retail transaction banking services in Australia,

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<sup>1</sup> Applicants are encouraged to consult with the ACCC prior to lodgement to discuss the scope and range of documents needed in the context of the proposed conduct for which authorisation is sought.



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supply of credit cards in Australia, supply of loans to retail customers and small businesses in Australia, and acquisition of debt in Australia.

- 8 In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

COBA submits that this is not a relevant consideration for purposes of assessing this application.

- 9 In assessing an application for authorisation, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:

- 9.1 existing competitors
- 9.2 likely entry by new competitors
- 9.3 any countervailing power of customers and/or suppliers
- 9.4 any other relevant factors.

Please see section 7 of the Submission.

## Public benefit

- 10 Describe the benefits to the public that are likely to result from the proposed conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

Please see section 6 of the Submission.

## Public detriment (including likely competitive effects)

- 11 Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.

Please see section 7 of the Submission.

## Contact details of relevant market participants

- 12 Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties such as actual or potential competitors, key customers and suppliers, trade or industry associations and regulators.

- [redacted]
- [redacted]
- [redacted]

## Additional information

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- 13 Provide any other information or documents you consider relevant to the ACCC's assessment of the application.

[Please see the Submission.](#)



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## **Customer Owned Banking Association (COBA) on behalf of COBA member institutions**

Confidential submission in support of application for authorisation by COBA on behalf of its member institutions

20 April 2022

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Annexure 1 COBA Member Institutions



Annexure 2 2022 Customer Owned Banking Code of Practice

Annexure 3 Specific provisions of the 2022 Customer Owned  
Banking Code of Practice that are the subject of this  
authorisation application

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## 1 Executive summary

### Authorisation sought

The Customer Owned Banking Association (**COBA**) is updating the current Customer Owned Banking Code of Practice dated January 2018 (**2018 Code**). This is the industry code of practice for Australia's credit unions, mutual banks and individual building societies. The Code's purpose is to lift the product and service standards of COBA's members (**Member Institutions**) for their individual and small business customers. It is proposed that the revised Code (**2022 Code**) commence on 31 October 2022.

COBA (as the **Applicant**) seeks authorisation on behalf of itself, current (and future) members and their related bodies corporate to implement certain provisions of the 2022 Code, detailed in section 4.1 below (**Relevant Provisions**). In summary, these include commitments to:

- not charge or only to charge at cost a fee, cost or interest (or rebate such fee or interest charged) in connection with the relevant products or services provided by COBA members (**Fee Provisions**);
- dishonour credit card transactions that would result in a customer exceeding their credit limit by more than 10%;
- not require customers experiencing financial difficulty to access their superannuation to meet their loan obligations;
- restrict the circumstances under which the customer's debt will be sold, particularly when the customer is experiencing financial difficulty or if the debt arose from violence or abuse;
- not take enforcement actions against the customer (including small businesses) or guarantor in connection with the customer's loan in certain circumstances; and
- not include a general material adverse change default clause in small business loan contracts.

### Significant public benefits

There are significant customer benefits arising from the implementation of the commitments set out in the Relevant Provisions.

Many of the new commitments (particularly the Fee Provisions) improve the accessibility and affordability of the relevant products, in line with the spirit of the recommendations from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Royal Commission**). The improved accessibility and affordability of the relevant products make it easier and more affordable for customers, especially for lower-income customers, to use the products and services, thereby leading to increased participation in the financial system. These features will also enhance the competitiveness of Member Institutions' products and therefore increase competition in the relevant markets.

The commitment to dishonour credit card transactions which exceed 10% of the customer's credit card limit has the benefit of preventing customers from incurring excessive credit card debt (which may lead to customer default), and enables customers to continue to access banking products and participate in the financial system.

The 2022 Code provisions relating to financial difficulty assistance recognise that customers and guarantors may from time-to-time experience circumstances that place them under financial pressure and that providing assistance in such situations is a key part of banking institutions' social contract. These commitments help customers in financial difficulty, including by providing them with time to improve their financial situation.

The protections for guarantors and small businesses provide the benefit of ensuring that guarantors are well informed and provide safeguards for guarantors and small businesses prior to the commencement of enforcement proceedings. As enhanced protections for guarantors are also becoming commonplace among traditional banks and form part of community expectations, these commitments will promote the competitiveness of product and service offerings of Member institutions that adopt the Code (**Code Subscribers**).

The collective implementation of these commitments by Code Subscribers will set a higher level of minimum standards and features and thereby enhance the overall quality of the relevant products and services at the industry level. It will also promote customer awareness which enables customers to more easily compare relevant banking products and therefore enhance competition in the relevant markets.

**The Proposal  
will not result  
in public  
detriment**

*No detriment to customers*

COBA does not consider that any of the commitments outlined in section 4.1 will give rise to any customer detriment in any market. The commitments are designed to improve the accessibility and affordability of products for customers, as well as to provide enhanced protections for customers and guarantors, particularly reducing the risk of financial default. Where commitments only apply to a subset of customers, that distinction is made to alleviate the burdens of the more vulnerable customers in society (such as those on low-incomes or with concessional cards and those in financial difficulty or subject to abuse, and small businesses with less bargaining power).

*No competitive detriment in the relevant markets*

The commitments do not raise any competitive detriment in the markets in which the Member Institutions operate.

Neither the fees which are the subject of the Fee Provisions nor allowing credit card transactions that exceed a customer's credit card limit are key competitive metrics in customer choice or competition between Member Institutions themselves and the broader banking market. These provisions are therefore highly unlikely to have a dampening effect on competition in any relevant market.

COBA acknowledges that the collective commitments relating to sale of debt provisions could potentially impact debt purchasers (ie debt collectors). However, COBA considers that any such impact to debt purchasers would be minimal as the circumstances in which the commitments related to selling debt apply are very limited and are unlikely to cause any competitive impact in the market for the acquisition of debt.

*Overall*

Given the relatively small market share held by the Member Institutions, COBA considers that the possibility of any lessening of competition in the supply of these



products and services arising from Code Subscribers collectively taking action in respect of their products or services, including making changes to reflect the commitments outlined in section 4.1, is very low.

**The public benefits outweigh any competitive detriments**

For reasons set out above, COBA submits that any public detriment that may arise from implementing the 2022 Code commitments outlined in section 4.1 below is manifestly outweighed by the significant public benefits that arise.

**Interim authorisation requested**

COBA also seeks interim authorisation to enable it to make appropriate practical arrangements for finalisation and promotion of the 2022 Code and for Code Subscribers to implement the 2022 Code, ahead of the proposed 31 October 2022 commencement date. This would accelerate the implementation of the commitments that respond to Royal Commission recommendations (ahead of the commencement date), bring about the immediate benefits and enhanced protections to customers of Code Subscribers, and enhance competition in the relevant markets. Without interim authorisation, COBA and the Code Subscribers will be impeded in their ability to take proactive steps during the interim authorisation period and expect that there will be further considerable delays in Code Subscribers fully implementing the 2022 Code.

**Term of final authorisation**

COBA requests that the ACCC authorise the implementation of the 2022 Code provisions for a period of 5 years.

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## **2 Applicant**

### **2.1 COBA and its members**

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies). COBA represents a diverse range of institutions with significant variance in size and complexity. Some members focus on specific geographic communities or particular industries, while others have a broader national focus and wider customer base. COBA members are an important part of Australia's banking system, providing a wide range of deposit, loan and payment products and services to their 4.5 million customers.

The customer owned banking sector has \$147 billion in assets and supplies approximately 10 per cent of all Australian household deposits. Customer owned banking institutions account for around three quarters of the total number of domestic authorised deposit-taking institutions and offer Australians a competitive alternative to the traditional banking institutions. They provide a full range of retail banking products including savings accounts, home loans, car loans, personal loans, credit cards and term deposits, to people living in communities across Australia. Whilst some COBA members only provide retail banking services, some COBA members also provide business banking services (primarily loans to small businesses).

Customer owned banking institutions are fully owned by their customers. This means that profits are not paid to shareholders, but put back into better products and services for customers and their local communities. While the Member Institutions have their origins in providing banking services to customers belonging to a particular group (e.g. a profession or community), the products and services of most of the Member Institutions are available to the general public.



COBA represents the interest of Member Institutions and engages with:

- federal and state governments;
- regulators, such as APRA and ASIC;
- the media;
- industry and consumer groups, and
- the general public and other stakeholders.

COBA also provides Member Institutions with expert advisory and support services, such as in the areas of fraud and financial crimes.

## **2.2 Member Institutions seeking authorisation**

COBA seeks authorisation for itself and on behalf of its current 58 Member Institutions and their related bodies corporate. Each Member Institution is listed in Annexure 1. COBA also seeks authorisation on behalf of any institution that may become a COBA member in the future (and their related bodies corporate).

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# **3 Background to the application**

## **3.1 Customer Owned Banking Code of Practice (Code)**

The Code is a voluntary industry code of practice for Australia's credit unions, mutual banks and individual building societies. The Code commenced on 1 January 2014, following an independent review of its predecessor code, the Mutual Banking Code of Practice. The existing version of the Code commenced in January 2018.

The Code is a customer-facing document and sets out best practice standards of conduct by which Code Subscribers interact with customers. While it is a voluntary code, 55 of the 58 Member Institutions are currently Code Subscribers and so have agreed to comply with the Code (and its operating principles) in the delivery of their banking services.<sup>1</sup>

The Code is administered by the Code Compliance Committee, which is a three-member independent committee established and funded by COBA. The Code Compliance Committee:

- monitors and oversees compliance with the Code and encourages good practice;
- investigates possible breaches of the Code by Code Subscribers, including by requesting the Code Subscribers to provide relevant documents and other information;

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<sup>1</sup> The Code contains an express commitment (in Part B of the 2018 Code and Part A of the 2022 Code) that the Code Subscribers will comply with the Code and to incorporate the Code into the terms and conditions of their products and facilities to which the Code applies.

- exercises its sanctions<sup>2</sup> and directions power where it determines that this is fair and appropriate in the circumstances; and
- provides reports to regulators and to the public about compliance with the Code by the Code Subscribers and how the Committee has exercised its sanctions and other powers.

### 3.2 Background to the latest amendments to the Code

It is proposed that the 2022 Code will replace the existing 2018 Code.

The latest review of the Code followed the requirement to have the Code reviewed at least every 5 years. The timing also coincided with the Royal Commission and so the review had close regard to the Royal Commission recommendations and the Australian Banking Association's (**ABA**) Banking Code of Practice 2021 (**Banking Code**).

To assist with the review, COBA established the Code Review Advisory Committee that included representatives of Code Subscribers (**Review Committee**). At the recommendation of the Review Committee, COBA also engaged an external consulting firm, Cameron Ralph Khoury (**CRK**), to undertake an independent review of the Code.

The overall purpose of CRK's review was to ensure that the Code is effective in serving customer interests and maintaining the trust and confidence of customers in the sector. Following extensive consultation with various stakeholder groups, including consumer and small business organisations, employee groups, financial services industry representatives and relevant regulatory bodies:

- CRK issued three successive interim reports, along with recommendations and proposed revised drafting for sections of the Code, seeking further submissions from the stakeholder groups on each reports; and
- after considering all submissions received as part of this process, CRK issued its final report with an indicative version of the revised Code in December 2019.<sup>3</sup>

The review process above also included a number of member (or 'CEO') forums designed to gain further input and feedback from a broader group of members as the Code evolved.

COVID-19 delayed COBA and the Review Committee's task of responding to the CRK report and CRK version of the revised Code, with little progress being made in 2020. In 2021, a detailed process was undertaken to test, refine and polish CRK's drafting, including to make the Code more reader-friendly. A version of the 2022 Code was approved by the COBA Board in April 2021 and subsequently shared with stakeholders, including consumer groups and the Code Compliance Committee.

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<sup>2</sup> Sanctions include rectification and remediation orders, compliance reviews and advising regulators and the public of the Code Subscriber's breach.

<sup>3</sup> CRK's December 2019 report stated: "Our drafting of a revised Code should be regarded as indicative rather than as a polished piece of work. Our focus has been on Code content and our aim in our drafting has been to clearly 'display the concept' described in our recommendations. Even where COBA accepts the concept that underpins the drafting of a provision, there will need to be a process of testing, refining, clarifying and (where possible) simplifying and making the drafting as consistent in style as possible."

The 2022 Code is proposed to come into effect on 31 October 2022, subject to ACCC authorisation.

Please refer to Annexure 2 for the proposed 2022 Code. Please note that while the provisions have been settled, the paragraph references are provisional only and may change in the final draft of the 2022 Code.

### 3.3 Commitments in the 2022 Code and rationale for the changes

The 2022 Code sets out commitments to the overarching principles of providing services in the interests of customers, complying with law, acting honestly and fairly, offering products and services that are fit for general purpose and delivering services with reasonable care and skill.<sup>4</sup> In particular, there are specific provisions relating to application of these principles to: advertising and promotion;<sup>5</sup> providing inclusive banking services;<sup>6</sup> setting interest rates, fees and charges;<sup>7</sup> setting minimum benchmark features for low or no fee transaction accounts for eligible customers;<sup>8</sup> loans;<sup>9</sup> small business customers;<sup>10</sup> credit card limits;<sup>11</sup> guarantors;<sup>12</sup> customers experiencing financial difficulties;<sup>13</sup> selling debt;<sup>14</sup> and resolution of complaints.<sup>15</sup> The Code also includes a general commitment to publicise, make available, and promote the adoption of the Code.<sup>16</sup>

In developing the 2022 Code, CRK was asked to give specific attention to particular aspects of the Code, including:

- the purpose and role of the Code in setting the standards for good banking practices;
- the extent to which the Code demonstrates Member Institutions' commitment to putting their customers first and whether the key commitments meet consumer and community expectations;
- commitments to accessibility and financial inclusion, including account suitability and basic bank accounts, financial literacy and the implications of technology developments on banking services, and
- the desirability for the Code to provide for customer owned banking institutions to develop standards for communicating and dealing with vulnerable customers including (but not limited to) older persons, customers with a disability, indigenous customers, customers with mental health issues, customers in financial difficulty, customers experiencing family violence, and customers with language and cultural barriers.

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<sup>4</sup> 2022 Code, [1]-[7].

<sup>5</sup> 2022 Code, [8]-[12].

<sup>6</sup> 2022 Code, [13]-[19].

<sup>7</sup> 2022 Code, [24]-[31].

<sup>8</sup> 2022 Code, [33]-[36].

<sup>9</sup> 2022 Code, [42]-[43], [100]-[103].

<sup>10</sup> 2022 Code, [44]-[54].

<sup>11</sup> 2022 Code, [55]-[60].

<sup>12</sup> 2022 Code, [70]-[89].

<sup>13</sup> 2022 Code, [147]-[155].

<sup>14</sup> 2022 Code, [158]-[168].

<sup>15</sup> 2022 Code, [169]-[175].

<sup>16</sup> 2022 Code, [178].



These principles underpin the changes reflected in the 2022 Code. The review process involved substantive consideration of fees, credit card limits, small business lending and enhancing protections for customers in financial difficulty and guarantors. In particular, CRK considered that:

- the removal of overdraft fees and interest for eligible customers in low or no fee transaction accounts achieves the right balance of allowing Code Subscribers to honour a customer payment that may result in their account being overdrawn (to protect them from being penalised), while preventing escalating overdraft fees which clearly have the potential to cause financial difficulty for the customer;
- protections for customers in financial difficulty and guarantors need to be enhanced as this was becoming a key focus of community expectations. This also meant the processes around selling debt as well as ancillary fees charged (such for cancelling direct debits, late payments or making complaints) had to be reviewed to better protect and assist customers; and
- the revised Code should include separate protections for small business customers (noting the Royal Commission discussions in relation to small business lending), rather than importing *National Consumer Credit Protection Act 2009 (NCCP Act)* responsible lending type obligations (that do not currently apply to small business lending), as that approach would have the potential effect of unduly restricting small business access to credit.

The rationale for, and the public benefits associated with, these changes are discussed in further detail in section 6 of this application.

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## 4 Authorisation sought

### 4.1 Description of conduct to be authorised

COBA seeks authorisation for the following provisions of the 2022 Code. We have included the provisional paragraphs as they appear in the proposed 2022 Code in Annexure 2. However, as noted above, the paragraph references may change in the final draft of the Code.

#### (a) Provisions relating to reduction or removal of fees (**Fee Provisions**)

The 2022 Code includes the following commitments:

- to rebate any overdrawn fee or interest charged for low or no fee transaction accounts that are only available to customers who hold a Commonwealth concession card and meet other eligibility requirements (paragraph 35);
- to not charge customers for lenders mortgage insurance (**LMI**) above cost (paragraph 102);
- to not charge a fee for cancellation of direct debit facilities (paragraph 130);
- to not charge late payment or default fees or default interest in certain circumstances involving financial difficulty (paragraph 154(d)); and
- to not charge customers for making a complaint (paragraph 170).



(b) Provisions relating to dealings with credit card limits

- The 2022 Code includes a commitment to dishonour credit card transactions that would result in a customer exceeding their credit limit by more than 10% (paragraph 57).

(c) Provisions relating to customers in financial difficulty and selling debt

In relation to customers who have requested financial difficulty assistance, the 2022 Code includes the following commitments:

- to not request customers to access their superannuation to meet their loan obligations (unless they are borrowing for a self-managed superannuation fund) (paragraph 153(c));
- to not sell their debt while their request is being considered (paragraph 153(f));
- if an agreement has been reached about financial difficulty assistance, to not charge the customer late payment or default fees, or default interest while the customer is meeting any conditions of that assistance (unless they are a Small Business customer) (paragraph 154(d)); and
- if an agreement has been reached about financial difficulty assistance, to not sell their debt while they are meeting any conditions of that assistance (paragraph 154(e)).

In addition to customers with financial difficulty assistance, the 2022 Code also includes commitments:

- to not sell a customer's debt where the Code Subscriber is aware that the debt arose from domestic violence or elder abuse (paragraph 166) and where Code Subscribers do sell debt, to only sell to members of Australian Financial Complaints Authority (**AFCA**) that have agreed to comply with particular guidelines and codes (paragraph 165).

(d) Guarantor protections

To protect guarantors, the 2022 Code includes commitments to not enforce:

- a guarantee against the guarantor if a Code Subscriber fails to comply with certain procedural protections set out in paragraphs 78, 79 and 80 of the 2022 Code (paragraph 87);
- any mortgage or other security the guarantor has given in connection with the guarantee without first enforcing any mortgage or other security provided by the borrower, unless borrower securities will not be sufficient to repay a substantial portion of the guaranteed liability or the guarantor has agreed to the enforcement action (paragraph 88); or
- a judgement against the guarantor under a guarantee unless: (i) any mortgage or other security provided by the borrower has first been enforced, and (ii) a judgement has been obtained against the borrower, and the judgement debt remains unpaid 30 days after payment has been demanded from the borrower in writing (paragraph 89).

(e) Protections for small businesses

The 2022 Code includes commitments to:

- not include a general material adverse change default clauses in small business loan contracts (paragraph 49); and
- where notice of breach has been given in respect of a small business loan, to not require small business customers to repay the full amount of the loan or take proceedings to enforce the loan, unless the customer fails to remedy the breach during the notice period (paragraph 53).

The above commitments are referred to collectively in this application as the '**Relevant Provisions**'.

Annexure 3 sets out a full extract of the provisions of the 2022 Code that are the subject of this application.

## 4.2 Term of authorisation

The 2022 Code provides for the review of the Code and its operations in no more than 5 years' time.<sup>17</sup> To align with this review period and to ensure certainty for Member Institution implementation and customers' awareness, COBA seeks a term of authorisation for 5 years.

## 4.3 Interim authorisation sought

COBA also seeks interim authorisation to enable it to make appropriate practical arrangements<sup>18</sup> for finalisation and promotion of the 2022 Code and for Code Subscribers to commence preparations, update product features and terms, marketing materials, internal policies and procedures, training modules and reporting, and undertake any associated system changes that may be necessary (and which require considerable lead time) to implement the commitments in the 2022 Code ahead of the proposed 31 October 2022 commencement date. The implementation work is likely to be more onerous and time-consuming for smaller Code Subscribers that may not be able to dedicate project team resources for the work required.

Interim authorisation presents no material competition risk given, as discussed in more detail below:

- there are limited (if any) public, including competitive, detriments associated with this conduct; and
- in any event, any limited detriment is outweighed by significant public benefits.

On the contrary, COBA considers that the 2022 Code should be implemented at the earliest opportunity (subject to ACCC authorisation) given that:

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<sup>17</sup> 2022 Code, [194].

<sup>18</sup> Such practical arrangement for COBA include: (i) finalising the marketing and communications approach for the 2022 Code; (ii) issuing bulletins and presenting webinars exploring aspects of the 2022 Code; (iii) engaging with Member Institution CEOs and directors and media to present the 2022 Code; (iv) finalising and rolling out training and FAQs; (v) preparing and launching marketing assets, including social media assets and updating COBA's website; (vi) presenting the 2022 Code at conferences, including the Financial Counselling Australia Conference schedule for May 2022 and Community Legal Centres Australia Conference scheduled for August 2022; and (vii) preparing for the formal launch in October 2022.

- many of the new or revised commitments in the 2022 Code (including the Relevant Provisions) respond to the Royal Commission recommendations which were aimed at ensuring that the standards by which the financial services providers operate reflect community expectations; and
- implementation of the commitments in the 2022 Code will:
  - (i) provide immediate benefits and enhanced protections to customers of Code Subscribers as discussed in this application and COBA does not see any reason to delay this; and
  - (ii) enhance the competitiveness of relevant products or services provided by the Code Subscribers, including as against the traditional banking institutions, in the relevant markets.

Without interim authorisation, COBA and the Code Subscribers will be impeded in their ability to take proactive steps during the interim authorisation period and expect that there will be considerable delays in Code Subscribers fully implementing the 2022 Code despite its proposed commencement date.

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## 5 Framework for analysis of authorisation request

### 5.1 Relevant markets impacted by the proposed conduct

The following markets are relevant for the purposes of the ACCC's assessment of the application:

- market for the supply of retail transaction banking services in Australia;
- market for the supply of credit cards in Australia;
- market for the supply of loans to retail customers and small businesses in Australia; and
- market for the acquisition of debt.

### 5.2 Counterfactual

The counterfactual would involve the Member Institutions not making the commitments in the Relevant Provisions (and by extension, not reflecting the commitments as product features in the corresponding banking products).

While some of the Member Institutions may already offer some of the features outlined in the Relevant Provisions, customers will not benefit from the certainty of minimum or benchmark standards that would be adopted by Code Subscribers.

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## 6 Significant public benefits

The Relevant Provisions give rise to significant public benefits.

### 6.1 Improving accessibility and affordability of banking services

The Fee Provisions in the 2022 Code improve the accessibility and affordability of the relevant products. This is consistent with the spirit of the Royal Commission Final Report recommendations in relation to enhancing the accessibility of the banking services.



Although the recommendations did not directly apply to Member Institutions, the 2022 Code adopts the principles in the recommendations in a form considered to be appropriate for the Member Institutions and their customers. The improved accessibility and affordability for the relevant products make it easier and more affordable for customers, especially for lower-income customers, to use financial products and services that have become an essential part of living and working in today's world.

These features will also enhance the competitiveness of Code Subscribers' products vis a vis the traditional banks and therefore increase competition in the relevant markets.

The table below outlines the public benefit specific to the Fee Provisions.

**Table 1: Public benefits for the Fee Provisions**

Code para	Commitments	Public benefit
35	To rebate overdraft fee or interest for low or no fee transaction accounts for eligible customers	<p>This provision only applies to a Code Subscriber that offers low or no fee transaction accounts to eligible customers (those who hold a Commonwealth concession card and who meet any other eligibility requirements set by the Code Subscriber). If the eligible customer makes a payment that overdraws their transaction account and the Code Subscriber honours the payment, the provision requires the Code Subscriber to rebate any fee or interest charged on the overdue amount.</p> <p>This provision recognises that these customers may not have the financial resources to maintain a secure buffer in their transaction account and that interest and fees on overdrafts can create some hardship. Accordingly, the provision improves the affordability (and hence the accessibility) of transaction accounts for customers with these low or no fee transaction accounts.</p>
102	LMI to be charged at cost	<p>This improves the accessibility and affordability of mortgages for customers who are required to pay for LMI by ensuring that the LMI cost borne by the customer is not inflated by LMI-related fees, commission or other amounts retained by the Code Subscriber. This in turn improves loan affordability for the customer and increases participation in the property market.</p> <p>LMI helps customers obtain a mortgage by providing insurance protection to the lender when a customer is unable to provide a sufficient deposit amount. The LMI issuer's charges are incurred by the lender but are passed onto the customer, as the lender is effectively required by the customer's financial situation to take out the insurance. Paragraph 102 places a cap on the LMI-related amount passed on to the customer by limiting the Code Subscriber to passing on the at-cost amount (as well as preventing the Code Subscriber from receiving any commissions from the insurer). This reduces the customer's LMI-related upfront transaction fee or LMI-related amount added to the mortgage (depending on how the customer chooses to bear these costs).</p>



Code para	Commitments	Public benefit
130	No fee for cancelling a direct debit facility	This improves the affordability and flexibility in relation to the use of, and changes to, direct debit payment arrangements by reducing customer deterrence to cancelling (and putting in place new) direct debit and related service arrangements.
154(d)	No late payment or default fees or interest for customers in financial difficulty while meeting any conditions of financial assistance	This alleviates the financial position of customers in financial difficulty and prevents the loan from increasing while they are meeting their payment arrangement. This provides them with opportunity to resolve their period of financial difficulty.
170	No fee for making a complaint	This is consistent with ASIC's requirement for financial services licensees and credit licensees (among others) that complainants must be able to make or pursue their complaint via the internal dispute resolution process free of charge. <sup>19</sup> In addition, this improves accessibility to processes to resolve complaints by eliminating any financial deterrence to customers considering making complaints in respect of their product with a Code Subscriber. It also provides more opportunity for Code Subscribers to improve on their product offerings in response to such complaints and thereby increase the competitiveness of their products.

## 6.2 Enhanced protection for customers and guarantors

The remaining 2022 Code provisions that are the subject of this Application relate to enhanced protections offered to customers and guarantors.

Specifically, a number of provisions are designed to prevent customers from becoming financially over-extended (such as commitments to dishonour certain credit card transactions) or require Code Subscribers to act fairly and reasonably in the event of customer defaults (such as the provisions relating to customers in financial difficulty and selling debt).

There are also provisions that offer other enhanced protections to guarantors and small businesses.

### (a) Credit cards

Paragraph 57 of the 2022 Code provides that Code Subscribers will dishonour credit card transactions that result in the customer exceeding their credit limit by 10%. This has the benefit of preventing customers from incurring excessive credit card debt, which may lead to customer financial hardship and even default. Practices designed to reduce the likelihood of customer default enable customers to continue to access banking products and participate in the financial system.

This commitment is also in line with ASIC recommendations. In July 2018, ASIC released Report 580 Credit card lending in Australia which highlighted that more than one in six

<sup>19</sup> ASIC Regulatory Guide 271 Internal dispute resolution, September 2021, [RG 271.141]

customers struggle with credit card debt.<sup>20</sup> One of ASIC's key concerns related to the extent to which some credit providers allow consumers to exceed their credit limit and in this respect, ASIC's view was that credit providers should not ordinarily allow consumers to exceed their credit limits by more than 10%.<sup>21</sup> The new commitment in paragraph 57 in the 2022 Code reflects this view.

In addition, and consistent with mitigating these concerns, the 2022 Code also removed provisions that allow unsolicited offers to increase credit limits in limited circumstances and introduced new commitments in relation to application of credit card repayments, dishonouring transactions and balance transfers.<sup>22</sup>

(b) Financial difficulties and selling debt

The 2022 Code provisions relating to financial difficulty assistance recognise that customers and guarantors from time-to-time experience circumstances that place them under financial pressure and that providing assistance in such situations is a key part of banking institutions' social contract. The provisions therefore require Code Subscribers to act fairly and reasonably in such circumstances, including taking preventative action designed to reduce the likelihood of customer default, committing to not take an enforcement action in connection with the customer's loan in certain circumstances, and restricting the circumstances under which the customer's debt will be sold.

These commitments help customers in financial difficulty, including by providing them with time to improve their financial situation before losing access to new credit and particularly before their credit cards are cancelled. Where customers are aware of, and expect to receive, assistance in the event of need, their confidence is likely to be increased.

The table below outlines the public benefit specific to the relevant paragraphs.

**Table 2: Public benefits for provisions relating to financial difficulty assistance and selling debt**

Code para	Commitments	Public benefit
153(c)	No requirement to access superannuation to meet loan obligations for customers in financial difficulty	This recognises the importance of, and protects, the long-term financial security of customers by preserving the customer's superannuation balance for later use (e.g. post retirement).
154(d)	No late payment or default fees or interest for customers in financial difficulty while meeting any conditions of financial assistance	As above in Table 1. This alleviates the financial position of customers in financial difficulty and increases their ability to service the loan.
153(f), 154(e)	No selling of debt while financial difficulty assistance request being considered or customer meeting conditions of financial assistance	This alleviates pressure for customers in financial difficulty by preventing these customers from needing to deal with a new creditor (e.g. a debt collection agency) during these periods. This is particularly the case with a new creditor that may be unaware of the customer's circumstances and potentially take bankruptcy proceedings, and is not

<sup>20</sup> ASIC, Report 580 Credit card lending in Australia, July 2018

<sup>21</sup> ASIC, Report 580 Credit card lending in Australia, July 2018, [60]

<sup>22</sup> 2022 Code, [55]-[59].

Code para	Commitments	Public benefit
		subject to the same commitments as Code Subscribers to protect customers' interests.
165	Debt to be sold only to businesses that comply with Debt Collection Guidelines and the Code of Operation and are AFCA members	<p>This ensures that debts are only sold to businesses that will comply with best practice so that customers (including customers receiving Centrelink payments) are protected and treated in accordance with the law during the debt collection process.</p> <p>In relation to the requirement to be an AFCA member, this codifies the requirement under the NCCP Act that consumer debt purchasers hold an Australian Credit Licence and be members of AFCA because they perform obligations or exercise the rights of credit providers in relation to credit contracts.<sup>23</sup> The 2022 Code therefore only adds the requirement that such debt purchasers also comply with certain guidelines and codes, which would ordinarily be an expectation by regulators.</p>
166	No selling of debt if it arose from domestic violence or elder abuse	<p>This alleviates pressure on vulnerable customers by preventing them from needing to deal with a new creditor (e.g. a debt collection agency) that may be unaware of the customer's circumstances and potentially take bankruptcy proceedings, and is not subject to the same commitments as Code Subscribers to protect customers' interests.</p>

(c) Guarantors

It has been recognised that guarantors, while providing great assistance to borrowing customers by assuming responsibility in respect of the loans, can also find themselves in a position of particular vulnerability. In particular, it has been recognised that pressuring a vulnerable customer into being a guarantor when they lack sufficient knowledge about the transaction or capacity to make informed decisions, can be a form of financial abuse.<sup>24</sup>

The Royal Commission raised various questions about enhancing protection for guarantors, including whether there should be circumstances in which the law should hold that guarantees may not be enforced outside of established principles and the lender should give potential guarantors more information about the borrower or the proposed loan.<sup>25</sup>

While these considerations did not ultimately result in any recommendations being made, the 2022 Code proposes to strengthen the protection for individual guarantors by, among other things:

<sup>23</sup> NCCP Act, section 6, item 1.

<sup>24</sup> ABA, Industry Guidelines – Protecting vulnerable customers from potential financial abuse, December 2014, pg 2.

<sup>25</sup> Commonwealth of Australia, Royal Commission Interim Report Vol 1, 28 September 2018, pgs178-179 and 182-184; Commonwealth of Australia, Royal Commission Final Report Vol 1, 1 February 2019, pg 98.



- committing to not enforce a guarantee if the Code Subscriber has failed to provide the guarantor with appropriate procedural protections prior to signing the guarantee;<sup>26</sup> and
- requiring that, unless the guarantor has agreed, security given in connection with a guarantee will not be enforced without first enforcing the security given by the borrower (unless the Code Subscriber reasonably believes that the borrower's security will not be sufficient to repay a substantial portion of the guaranteed liability). Furthermore, a judgment against the guarantor will not be enforced unless the security given by the borrower has been enforced, a judgment against the borrower has been obtained and the judgment debt remains outstanding for 30 days after payment has been demanded, subject to limited exceptions.<sup>27</sup>

These provisions (and others)<sup>28</sup> provide the benefit of ensuring that the guarantor is well informed and provide safeguards and protections prior to enforcement processes being commenced. As enhanced protections for guarantors are also becoming commonplace among traditional banks and form part of community expectations, these commitments promote the competitiveness of Code Subscribers' product and service offerings.

#### (d) Small business customers

Small businesses play an important role in Australian society, representing approximately 97.5% of all businesses operating in Australia and employing over 40% of people in the private, non-financial sector.<sup>29</sup> In 2016, the Australian Small Business and Family Enterprise Ombudsman conducted an inquiry into small business loans which resulted in 15 recommendations to reform the practices in relation to small business lending.<sup>30</sup> More recently, the Royal Commission also recognised that small business customers lack the bargaining power and resources of larger entities.<sup>31</sup>

The review process for the 2022 Code considered protections that may be available specifically for small businesses, including removal of 'general material adverse change' (MAC) clauses and providing them more time to remedy breaches before enforcement action is undertaken. The review concluded that the 2022 Code should include separate protections for small business customers, rather than codifying the legislative responsible lending obligations which do not apply to small business lending, as that approach would have the potential to unduly restrict small business access to credit.

'General material adverse change' clauses in loan contracts provide the lending institution with certain rights (for example, to terminate the loan contract) if a materially adverse change occurs to the borrower, even if the borrower is meeting their financial obligations in full and on time under the contract. The 2022 Code includes a commitment to not include any general material adverse change default clause in the loans provided by Code

<sup>26</sup> These procedural protections prior to signing the guarantee are: (i) paragraph 78 which is a commitment to ensure that a warning notice substantially in a format required for a guarantee regulated by the National Credit Code appears directly above the place that the guarantor signs the guarantee; (ii) paragraph 79 which is a commitment not to give the guarantee to the borrower (or someone acting on their behalf) to arrange the signing, unless person acting on behalf of the borrower is also the guarantor's solicitor; and (iii) paragraph 80 which is a commitment to ensure that where a Code Subscriber attends the signing of the guarantee, it will ensure that the guarantor signs the guarantee in the absence of the borrower.

<sup>27</sup> 2022 Code, [88]-[89].

<sup>28</sup> 2022 Code also includes commitments about only accepting a guarantee if the guarantor's liability is limited to a specific amount (plus interest and enforcement costs) and/or value of security and providing additional information to guarantors in relation to their rights, risks, details of the loan and borrower prior to obtaining the guarantee: 2022 Code, [72], [74]-[77] and [84]-[85].

<sup>29</sup> FSRC, FSRC Background Paper No. 12: Financial Services and Small and Medium-Sized Enterprises, 14 May 2018, 7; Parliament of Australia, Statistical Snapshot - Small business sector contribution to the Australia economy, 7 January 2020.

<sup>30</sup> See Australian Government, Inquiry into small business loans, 21 December 2016, pgs 23-24.

<sup>31</sup> Commonwealth of Australia, Royal Commission Interim Report Vol 1, 28 September 2018, pg 162



Subscribers.<sup>32</sup> This removes an area of potential uncertainty for the small business customer's management of their loan.

This is also in line with ASIC's view that MAC clauses can be very broad and are likely to be unfair.<sup>33</sup> The removal of MAC clauses from Code Subscribers' standard form loan agreements will also improve Code Subscribers' ability to compete with traditional banks and enhance the competitiveness of the banking sector.

The 2022 Code also proposes to introduce additional commitments that provide small business customers more time to remedy breach of their payment and other obligations under the loan contracts, during which no enforcement action will be taken by the Code Subscriber to recover the loan.<sup>34</sup> This includes clarifying that, if a notice of breach has been given in respect of a small business loan, the Code Subscriber will not require the customer to repay the loan in full or take enforcement proceedings during the notice period.<sup>35</sup> These new commitments protect small businesses by requiring Code Subscribers to act fairly and reasonably in times of financial difficulty.

### **6.3 Benefits arising from collective implementation**

- (a) Enhancement of quality of the products and services leading to stronger competition and better products

Code Subscribers implementing the commitments in the Relevant Provisions collectively will set a higher level of minimum standards and features and thereby enhance the overall quality of the relevant products and services at the industry level.

Member Institutions already face intense competition in relation to retail banking products from traditional banks. Enhancing the minimum level of standards and features of these products will promote the ability of Code Subscribers to compete with traditional banks who may already be offering these features to customers and increase the level of competitiveness in the market.

The commitments will likely also increase the incentive for Code Subscribers (and other participants in the relevant markets) to offer additional features over and above the commitments in the 2022 Code to further increase the competitiveness of their products.

- (b) Codification of the commitments will lead improved customer awareness and certainty

Collective implementation and codification of the commitments in the 2022 Code will promote customer awareness and certainty and facilitate better customer understanding of those features and terms.

Customer awareness and certainty will be further enhanced by the commitments in the 2022 Code to publicise and promote the commitments, including:

- to make general information, terms and conditions, interest rates, fees and charges applying their products and facilities readily available;<sup>36</sup>

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<sup>32</sup> 2022 Code, [49].

<sup>33</sup> ASIC, Report 565 Unfair contract terms and small business loans, March 2018, [48]-[50].

<sup>34</sup> 2022 Code, [50]-[52].

<sup>35</sup> 2022 Code, [53].

<sup>36</sup> 2022 Code, [20]-[21] and [27].

- to publicly disclose annually how many eligible customers hold low or no fee transaction accounts specially designed and available for these customers;<sup>37</sup>
- in relation to the financial difficulty assistance, to publicise the availability of such assistance and to train its staff to use data analysis techniques to proactively identify indicators of customer financial difficulty so that they may be contacted to discuss the assistance that may be available to them;<sup>38</sup> and
- to publicise the 2022 Code and promote the Code Subscriber's adoption of it.<sup>39</sup>

The improved customer awareness will enable customers to more easily compare banking products and therefore enhance competition in the relevant markets. It will also help bring about the public benefits described above more quickly and enhance participation in the financial system.

#### (c) Adoption of the 2022 Code

The substantive and significant public benefits noted above will be enhanced by a significant number of Member Institutions adopting the 2022 Code. 55 of 58 Member Institutions adopted the 2018 Code. COBA expects a similar number of Member Institutions will adopt the 2022 Code.

### 6.4 Consumer representative feedback

COBA and CRK consulted with several consumer representative organisations (including Consumer Action Law Centre (**CALC**), Financial Counselling Australia and Financial Rights Legal Centre (**FRLC**)) in relation to the 2022 Code during the review process.

The consumer representative organisations had few concerns in relation to the commitments in the Relevant Provisions.

In relation to the commitment to dishonour credit card transactions that exceed the credit limit by 10%, CALC and the FRLC recommended that the credit card transactions exceeding any limit should be dishonoured. However, the Review Committee ultimately decided to retain the 10% threshold for the following reasons:

- the threshold achieves the balance between preventing excessive debt being accumulated by customers and recognising that there may be situations where customers benefit from access to additional funds (typically for a very short timeframe, e.g. to honour a particular payment); and
- the threshold aligns with ASIC's view in its Report 580 where it recommended a 10% threshold to address its concerns in relation to over-extension of credit.<sup>40</sup>

CALC and FRLC also raised concerns about:

- the voluntary nature of the Code, which does not make it mandatory for Member Institutions to adopt the Code. It was ultimately decided that the 2022 Code would remain voluntary, given that it is expected that most (if not all) Member Institutions would adopt it in any event and the publication of which Member Institutions were Code Subscribers would be an incentive to adopt the Code. It was also considered that the diverse nature of the sector, with some Member Institutions very small and

<sup>37</sup> 2022 Code, [33].

<sup>38</sup> 2022 Code, [148]–[149].

<sup>39</sup> 2022 Code, [178].

<sup>40</sup> ASIC, Report 604 Credit card lending in Australia – An update, March 2018, pg 6.



others quite large, could mean that some Member Institutions may find it difficult to comply fully with the Code – or need more time to prepare for compliance with the Code. There was a reluctance to exclude these Member Institutions from the benefits of COBA participation in the meantime, which would have been the ramification if the Code becomes mandatory. This would result in lower, rather than higher, standards across the industry sector; and

- lack of explicit commitment to seek ASIC approval for the 2022 Code. COBA's position is to observe whether ASIC will identify any enforceable provisions in relation to the ABA's Banking Code before revisiting its approach for the 2022 Code.

Other feedback on the 2022 Code related to specific provisions that are not the subject of this application.

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## **7 No public (including competitive) detriment**

Implementation of the Relevant Provisions will not result in any public detriment, including in all of the relevant markets. In any event, any detriment that may arise will be manifestly outweighed by the significant public benefits discussed in section 6 above.

### **7.1 No detriment to customers**

The Relevant Provisions are designed to improve accessibility and affordability of products for customers, as well as provide enhanced protections for customers and guarantors, particularly in the event of financial difficulty or customer default. Where commitments only apply to a subset of customers, that distinction is made to alleviate the financial burden on more vulnerable customers in society (such as those with concessional cards, those in financial difficulty or subject to abuse and small businesses with less bargaining power), which is part of the banking institutions' social contract and a significant benefit to society. COBA does not consider that the Relevant Provisions will lead to any customer detriment in any market.

### **7.2 No competitive detriment in the relevant markets**

#### **(a) Fee Provisions**

The fees which are the subject of the Fee Provisions are not a key competitive metric in customer choice or competition between Member Institutions themselves and the broader banking market. The removal of these fees is therefore unlikely to have a dampening effect on competition in any relevant market.

Removal or reduction of fees or costs will not result in Member Institutions increasing other fees relating to the relevant products to offset the financial impact of the removal or reduction, particularly since the customer-owned structure of the Member Institutions means that their operation is not focused on retaining (or increasing) profit margins for the benefit of external shareholders, but rather to benefit their customers.

In any event, as noted above, Member Institutions only account for around 10 per cent of all Australian household deposits and each relevant market is intensely competitive, including due to competition from the traditional banks. Removal or reduction of these fees is unlikely to have any material impact on competition for these products.

#### **(b) Provisions relating to credit card limits**

Code Subscribers will commit to dishonour credit card transactions that exceed the customer's credit card limit by 10%. This commitment does not fundamentally restrict

customers' ability to use, or Code Subscribers' ability to offer, credit cards on varying terms. As with the Fee Provisions above, allowing credit card transactions that exceed a customer's credit card limit is not a competitive metric which is likely to sway customer choice or on which Member Institutions or other suppliers of credit are likely to base their competitive strategy. This commitment is unlikely to impact competition in any relevant market.

In any event, the credit card market is highly competitive and this commitment in the 2022 Code is unlikely to have any impact on competition.

(c) Provisions relating to financial difficulty assistance and selling debt

Member Institutions do not typically compete with each other in relation to selling debt. Provisions relating to selling debt therefore raise limited (if any) competitive detriment in the markets in which the Member Institutions compete in.

However, COBA acknowledges that collective commitments relating to sale of debt in paragraphs 153(f), 154(e), 165 and 166 could impact debt purchasers (ie debt collectors) in that:

- Code Subscribers will no longer sell debt of customers that are requesting or meeting conditions of financial difficulty assistance;
- Code Subscribers will no longer sell debt of customers where debt arose from domestic violence or elder abuse; and
- Debt purchasers will need to be AFCA members and agree to comply with certain codes in order to acquire debts from Code Subscribers.

Nevertheless, COBA considers that any potential impact to debt purchasers would be minimal. The circumstances in which the commitments related to selling debt apply are very limited and are unlikely to cause anti-competitive impact in the market for the acquisition of debt. In relation to the debt purchaser characteristics, as noted above, the requirement that debt purchasers be AFCA members is a legal requirement under the NCCP Act, and compliance with the codes is part of regulatory expectations.

(d) Other provisions

It is difficult to see how the other Relevant Provisions, including protections for guarantors and small businesses would give rise to any level of public or competitive detriment. Again, none of these are key metrics which drive customer choice or competitive strategy between Member Institutions and other competitors.

(e) Overall

Given the relatively small market share held by the Member Institutions individually and collectively in the provision of relevant products or services, COBA considers that the possibility of public detriment or any lessening of competition in the supply of these products and services arising from Code Subscribers collectively taking action in respect of their products or services, including making changes to reflect the commitments in the Relevant Provisions, is very low.



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## **8 The public benefits outweigh any public detriments**

For the reasons set out above, COBA submits that any public (including competitive) detriments that may potentially arise from implementing the 2022 Code (which COBA maintains that there are none), are manifestly outweighed by the public benefits that arise.

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## **9 Conclusion**

For the reasons set out above, COBA applies for authorisation including interim authorisation in relation to the Relevant Provisions of the 2022 Code.

These commitments, which take into account the learnings from the Royal Commission and industry best practice, will result in significant public benefits.

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## **Annexure 1      COBA Member Institutions**

1. Australian Central Credit Union Limited (trading as People's Choice Credit Union Limited)
2. Australian Military Bank Limited
3. Australian Mutual Bank Limited
4. Australian Unity Bank Limited
5. B & E Limited (trading as Bank of us)
6. Bank Australia Limited
7. Beyond Bank Australia Limited (trading as Beyond Bank Australia and Nexus Mutual)
8. Central Murray Credit Union Limited
9. Central West Credit Union Limited
10. Coastline Credit Union Limited
11. Community First Credit Union Limited (trading as Community First Credit Union and Easy Street)
12. Credit Union Australia Limited (trading as Great Southern Bank)
13. Credit Union SA Limited
14. Defence Bank Limited
15. Dnister Ukrainian Credit Co-operative Limited
16. Family First Credit Union Limited (trading as Family First Bank)
17. Fire Service Credit Union Limited
18. First Choice Credit Union Limited
19. First Option Bank Limited
20. Ford Co-Operative Credit Society Limited (trading as Geelong Bank)
21. G&C Mutual Bank Limited
22. Gateway Bank Limited
23. Goulburn Murray Credit Union Co-Operative Limited
24. Greater Bank Limited
25. Heritage Bank Limited
26. Horizon Credit Union Limited (trading as Horizon Bank)
27. Hume Bank Limited

28. Illawarra Credit Union Limited
29. IMB Limited (trading as IMB Bank and Hunter United)
30. Laboratories Credit Union Limited
31. Macarthur Credit Union Limited (trading as The Mac)
32. Macquarie Credit Union Limited
33. Maitland Mutual Limited (trading as The Mutual Bank)
34. Members Banking Group Limited (trading as RACQ Bank)
35. Newcastle Permanent Building Society Limited
36. Northern Inland Credit Union Limited
37. Orange Credit Union Limited
38. Police Bank Limited (trading as Police Bank, Border Bank and Bank of Heritage Isle)
39. Police & Nurses Limited (trading as P&N Bank and BCU)
40. Police Credit Union Limited
41. QPCU Limited (trading as QBANK)
42. Qudos Mutual Limited (trading as Qudos Bank)
43. Queensland Country Bank Limited
44. Railways Credit Union Limited (trading as MOVE)
45. Regional Australia Bank Limited
46. South West Slopes Credit Union Limited
47. South-West Credit Union Co-Operative Limited
48. Summerland Financial Services Limited (trading as Summerland Credit Union)
49. Teachers Mutual Bank Limited (trading as Teachers Mutual Bank, UniBank, Firefighters Mutual Bank, Health Professionals Bank, Hiver Bank).
50. The Broken Hill Community Credit Union Limited
51. The Capricornian Limited
52. Traditional Credit Union Limited
53. Transport Mutual Credit Union Limited
54. Unity Bank Limited (trading as Unity Bank, Reliance Bank, Bankstown City Unity Bank and Central Coast Unity Bank)
55. Victoria Teachers Limited (trading as Bank First)



56. Warwick Credit Union Limited (trading Warwick Credit Union, Gympie Credit Union and Dalby Credit Union)
57. WAW Credit Union Co-Operative Limited
58. Woolworths Team Bank Limited



## Annexure 3

### Specific provisions of the 2022 Customer Owned Banking Code of Practice that are the subject of this authorisation application

Commitments
Low and no fee transaction accounts for eligible customers
<p>If:</p> <ul style="list-style-type: none"><li>a. we establish an account of this type for you, and</li><li>b. we process a transaction that causes your account to be overdrawn, and charge you an overdrawn fee or any interest on the overdrawn amount,</li></ul> <p>we will rebate this fee or interest to you within 30 days. We will state this rebate commitment clearly in the account Terms and Conditions.</p>
Additional commitments for Small Business customers
<p>We will not include a general material adverse change default clause in our Small Business loan contracts.</p> <p>If we give you notice of a breach of your Small Business loan, we will not require you to repay the full amount of the loan, or take proceedings to enforce the loan, unless you fail to remedy the breach during the notice period.</p>
Credit cards
<p>We will dishonour a credit card transaction that would result in you exceeding your credit limit by more than 10%. (This commitment does not restrict us from dishonouring a credit card transaction that would result in any exceeding of your credit limit. We may consider that to do so would be consistent with our prudential obligations).</p>
Safeguards for loan guarantors
<p>We will not enforce a guarantee against you if we fail to comply with any of paragraphs 78, 79 and 80.</p> <p>(Paragraphs 78, 79 and 80 state:</p> <ul style="list-style-type: none"><li>78. We will ensure that a warning notice appears directly above the place you sign the guarantee. The warning notice will be substantially in the format required for a guarantee regulated by the National Credit Code.</li><li>79. We will not give the guarantee to the borrower, or someone acting on behalf of the borrower to arrange the signing, unless the person acting on behalf of the borrower is also your solicitor. In that case, we may give the guarantee to that person to arrange the signing.</li><li>80. Where we attend the signing of the guarantee, we will ensure that you sign the guarantee in the absence of the borrower.)</li></ul> <p>Unless we agree otherwise with you, we will not enforce any mortgage or other security you have given us in connection with your guarantee without first enforcing any mortgage or other security provided by the borrower. This does not apply if we reasonably believe that</p>



Commitments
the borrower's mortgage or other security will not be sufficient to repay a substantial portion of the guaranteed liability.
<p>We will not enforce a judgement against you under a guarantee unless:</p> <ol style="list-style-type: none"> <li>we have first enforced any mortgage or other security provided by the borrower, and</li> <li>we have obtained judgement against the borrower, and the judgement debt remains unpaid 30 days after we demand payment from the borrower in writing.</li> </ol>
Lenders mortgage insurance
<p>We will not charge you more than the actual cost we incur for lenders mortgage insurance. We will not receive a commission from the issuer of the lenders mortgage insurance policy.</p>
Direct debit arrangements and recurring payments arrangements
We will not charge you a fee for cancelling a direct debit facility.
If you are in financial difficulty
If you request financial difficulty assistance, we will: not require you to access your superannuation to meet your loan obligations (unless you are borrowing for a self-managed superannuation fund)
If you request financial difficulty assistance, we will: not sell your debt while we are still considering your request
If we reach agreement about assistance to help you with your financial difficulty, we will: not charge you late payment or default fees, or default interest while you are meeting any conditions of that assistance (unless you are a Small Business customer)
If we reach agreement about assistance to help you with your financial difficulty, we will: not sell your debt while you are meeting any conditions of that assistance
Debt collection and legal action
<p>We will only sell debt to businesses that:</p> <ol style="list-style-type: none"> <li>have agreed to comply with both the Debt Collection Guidelines and the Code of Operation: Recovery of Debts from Department of Human Services Income Support Payments and Veterans' Affairs Payments, or any successor Code, and</li> <li>are a member of AFCA.</li> </ol>
We will not sell your debt if we are aware that your debt arose from domestic violence or elder abuse.
Prompt, fair resolution of complaints
We will not charge you a fee for making a complaint.
Definitions
<ul style="list-style-type: none"> <li><b>"AFCA"</b> – the Australian Financial Complaints Authority, an independent complaints handling authority overseen by ASIC (i.e. that is able to review our handling of your complaints, subject to its Rules).</li> </ul>

## Commitments

- **“ASIC”** – the Australian Securities and Investments Commission.
- **“Complaint”** – Any expression of dissatisfaction made to us relating to our products, services, staff or handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.
- **“Customer”** – means a member or a customer of a Code Subscriber.
- **“Sell”** – **A reference to us selling debts does not include a securitisation arrangement where we remain the lender of record for those debts.**
- **“Small Business”** – A business or group having fewer than 100 full-time (or equivalent) employees.
- **“Small Business loan”** – A loan to a Small Business with total debt to all credit providers (including any undrawn credit under an existing loan plus the loan applied for) of less than \$5 million.
- **“We”, “us” and “our”** – Refers to your customer owned banking institution being a subscriber to the Customer Owned Banking Code of Practice. Where the Code refers to information that you tell “us” or information that “we” are aware of, “us” or “we” refers to the particular staff of your customer owned banking institution who are assisting you at the relevant time.
- **“You”, “Your”** – Refers to an individual or Small Business who is our customer and, where relevant, a prospective customer or guarantor, or prospective guarantor of a customer who is an individual or Small Business.

## **Customer Owned Banking 2021 Code of Practice**

Version 1.0

2 July 2021



## About the Code

The Customer Owned Banking Code of Practice is the industry code of practice for Australia's customer-owned banking institutions (i.e. mutual banks, credit unions and building societies).

The Code has been developed by the Customer Owned Banking Association (COBA) working with COBA members, consumer groups and other stakeholders. This version of the Code was approved for use by the COBA Board on 20 April 2021.

Around four and a half million Australians bank with a customer-owned banking institution. Accordingly, customer-owned banking institutions add greatly to the competitive landscape in Australia. We meet the same regulatory standards as other banks, and are prudent and strong financial service providers.

We are different in that we offer customers the opportunity to bank with an institution in which they have an equal ownership stake along with all other customers. Typically, customer-owned banking institutions have their origins in a particular community, and we retain today our emphasis on contributing to the community in which we operate.

Our Code is an important public expression of the value we place on improving the financial wellbeing of our individual members and their communities. This is the reason that we exist.

The Code operates in addition to legislative requirements, establishes higher standards than the law requires, and addresses issues not addressed by the law. It comprises seven key promises and detailed supporting obligations. It includes a requirement that we incorporate these obligations into our contracts with customers.

All COBA members are strongly encouraged to adopt this Code, and to agree to abide by these higher standards and additional requirements. These obligations then become part of their contract with customers, so that customers are able to enforce both the key promises and the detailed obligations.

Customers can have confidence in knowing they are covered by a market leading, plain English commitment to fair and customer-centric banking.

Mike Lawrence

Chief Executive Officer

Customer Owned Banking Association

## Part A – Our promises to you

We will comply with this Code in our dealings with you. We will incorporate this Code by reference in our written Terms and Conditions for products and facilities to which the Code applies. We will do this within twelve months of agreeing to adopt this Code (or, if later, within twelve months of the commencement date of this Code).

Our Code obligations include the following key promises that we make to you as our customers and owners.

1. We will deliver banking services in the interests of our customers.
2. We will obey the law.
3. We will not mislead or deceive.
4. We will act honestly and fairly.
5. We will offer products and services that are fit for general purpose.
6. We will deliver services with reasonable care and skill.
7. We will contribute to our community.

## Part B – Delivering on our Promises

### Advertising and promotion

8. We will ensure our advertising and promotional material is not misleading or deceptive and is appropriate for the target market.
9. We will not mislead or deceive you either by what we say or represent, or by omission (what we fail to say or represent).
10. We will ensure that any images used do not contradict, detract from or reduce the prominence of any statements made.
11. We will have regard to ASIC regulatory guidance about advertising of financial products and services including credit when developing and reviewing our advertising and promotional material.
12. We will not use unfair pressure sales techniques when promoting our products and services to you.

### Inclusive banking services

13. We will take reasonable steps to make our banking services accessible for individual customers in the areas in which we operate, including customers who speak English as a second language, older customers, people with a disability, and First Nations Peoples.
14. If you tell us about your personal or financial circumstance, we will work with you to identify a way for you to access and undertake your banking.
15. When you apply for a new banking product, if you tell us that you are on a low income or we are aware that you hold a Commonwealth concession card, we will give you information about banking products we offer that may be more favourable.
16. We will adapt our customer service standards where reasonably practicable, and take extra care where we are aware that you are experiencing vulnerable circumstances. This might be because of:
  - a. age-related impairment
  - b. cognitive impairment
  - c. disability
  - d. elder abuse
  - e. domestic violence
  - f. financial abuse
  - g. mental illness
  - h. a serious health issue



- i. factors relating to your cultural background or because English is not your first language
  - j. your unfamiliarity with banking products and services, or
  - k. other personal or financial circumstance causing significant detriment.
17. We will train our staff how to identify customers experiencing vulnerability, and how to adapt our customer service standards for them in a sensitive and helpful way. Our training will include awareness of vulnerable circumstances as a result of domestic violence and elder abuse.
18. We will offer to communicate with you through an interpreter service where reasonably practical if you do not speak fluent English, and we think that you would clearly benefit from this assistance.
19. We will offer to communicate with you through the National Relay Service if you have hearing difficulties, and we think that you would clearly benefit from this assistance.

## **Information about our products**

20. We will make general information about our products and facilities readily available in a timely manner to customers and the public. This information will be:
- a. clear, concise and accurate
  - b. written in plain language
  - c. generally sufficient to allow you to make an informed decision about the product or facility, and
  - d. consistent with any applicable legal requirements.
21. We will make a copy of the Terms and Conditions applying to a product or facility available to you. We will not require you to apply for the product or facility first.
22. We will answer any questions you have about the features of our products and facilities and how they work.
23. If you ask us for advice about any of our banking services, we will provide advice through staff who are trained to provide that advice, or we will suggest that you obtain advice from a lawyer, accountant, financial adviser or financial counsellor.

## **Interest rates, fees and charges**

24. We will regularly review any fees and charges on our products and services.
25. We will make sure any exception fees we charge (including credit card late payment fees, account overdrawn or dishonour fees, direct debit dishonour fees, cheque dishonour fees, and ATM failed transaction fees) are reasonable having regard to our costs. Our costs include charges imposed by our service providers, where applicable.
26. We will make sure any fixed rate loan break fees we charge you are reasonable, having regard to our loss arising from your early termination of your loan.

27. Interest rates and fees and charges applying to our products and facilities will be readily available to customers and the public. The information will be clear, concise and up-to-date. We will regularly review the effectiveness of our disclosure to customers of this information.
28. For products with variable interest rates, we will tell you what the current rate is when you apply for the product.
29. When issuing you with a new product or facility, we will provide you with information about:
  - a. how and when different interest rates apply, the method by which interest is calculated, and when interest will be debited or credited to your account
  - b. all applicable fees and charges, and how often they are debited to your account. This will include information about non-standard fees that only apply in particular situations (such as fixed rate loan break fees, fees if you overdraw your account, or you are late in making your payments), and
  - c. general information for customers on how to avoid or minimise non-standard fees and charges.
30. We will answer any questions you have about the fees applying to a product or facility in a timely manner. On request, we will also explain to you how our interest rates are calculated and applied.
31. We will inform you of a transaction service fee (e.g. a bank cheque fee) immediately before you incur the fee if it is practical and reasonable for us to do so. It may not be practical to do this if we impose a transaction account charge based on your number of transactions.

## **Exchange rates and commissions**

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

## **Low or no fee transaction accounts for eligible customers**

33. We may offer a low or no fee transaction account that does not have an overdraft facility and is only available to customers who hold a Commonwealth concession card, and who meet other eligibility requirements. If so, we will publicly disclose annually, for example in our annual report, and how many of our customers have accounts of this type.



34. If we offer an account of this type, we will train our staff to help them recognise customers or potential customers who may qualify for this account.
35. If:
- a. we establish an account of this type for you, and
  - b. we process a transaction that causes your account to be overdrawn, and charge you an overdrawn fee or any interest on the overdrawn amount,
- we will rebate this fee or interest to you within 30 days. We will state this rebate commitment clearly in the account Terms and Conditions.
36. The rebate commitment in paragraph 35 does not apply to an account that was opened for you prior to this Code coming into effect.

## **Term deposits**

37. Our term deposit account Terms and Conditions will include:
- 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**

38. If you have a cheque account, our account information will include:
- a. the normal length of time we take to clear a cheque
  - b. how and when a cheque may be stopped
  - c. the meaning of 'not negotiable' and 'account payee only', and the significance of deleting the words 'or bearer' from a cheque
  - d. how you may write a cheque to reduce the risk of it being changed in unauthorised ways, and
  - e. when we will not pay a cheque, including if it is post-dated or stale.

## **Fair Terms and Conditions**

39. The Terms and Conditions applying to our products and facilities will be:
- a. clear, unambiguous, and not misleading
  - b. distinct from our advertising and promotional material
  - c. written in a plain language style, and legibly presented.
40. Our Terms and Conditions will be consistent with this Code. They will strike a fair balance between:
- a. the legitimate needs and interests of our customers, and



b. our interests and obligations, including our prudential and regulatory obligations.

41. This section does not limit our right to determine the pricing of our products and facilities on a commercial basis.

## **Lending**

42. We will exercise the care and skill of a diligent and prudent banker when lending to an individual customer or Small Business. This obligation is also for the benefit of your guarantor.
43. If we provide you with a loan secured by a mortgage over a property, we will remind you at the start of the loan of your obligation to insure the property. We will repeat our reminder once a year during the term of the loan. Our reminder will include a reference to the Australian Securities and Investments Commission's MoneySmart website ([moneysmart.gov.au](http://moneysmart.gov.au)) for information on property insurance.

## **Additional commitments for Small Business customers**

44. We will tell you what information we need to assess your application for a Small Business loan, and the likely time we will take to decide whether to approve the loan. In assessing your ability to repay a loan, we may take into account the resources of your directors, shareholders and guarantors.
45. Before you accept a Small Business loan, we will provide you with an easy to read summary of the key general terms and conditions of the loan. This summary may be a separate document, or appear at the front of the loan document.
46. If we are unwilling to provide you with a Small Business loan, we will explain the general reasons to you, if this is appropriate.
47. Our processes in relation to external expert valuations and investigative accountants' reports will be fair and transparent. This includes ensuring:
- a. that the selected valuer or accountant is appropriately qualified and experienced, and
  - b. appropriate management of any conflict of interest when appointing as a receiver someone who has provided an investigating accountant report about your business.
48. If we have charged you, or you have reimbursed us for:
- a. a valuation of a commercial or agricultural property, or
  - b. an accountant's report,

except where we have commenced enforcement proceedings, we will provide you with the report and our instructions to the valuer or accountant. Before providing these to you, we may require you to acknowledge in writing that you accept our reasonable limitations on your use of these.

49. We will not include a general material adverse change default clause in our Small Business loan contracts.
50. If you breach a Small Business loan payment obligation, we will give you at least 30 days' notice to remedy your breach unless paragraph 52 applies.
51. For other breaches that are capable of remedy, we will give you a reasonable timeframe – at least 3 months – to remedy the breach unless paragraph 52 applies.
52. The notice periods specified in paragraphs 50 and 51 do not apply if:
- a. you or a guarantor goes into bankruptcy or voluntary administration
  - b. we have required you to make early repayment, or taken enforcement proceedings under a separate financing arrangement you have with us
  - c. it becomes unlawful for you or us to continue with the loan
  - d. enforcement proceedings are taken against you or a guarantor by another creditor, and we reasonably consider that this is likely to have a material impact on your ability to meet your financial obligations to us
  - e. you deal with your assets in breach of your loan or security documents without our consent, and we reasonably consider that this is likely to have a material impact on your ability to meet your financial obligations to us, or
  - f. you have breached the law, and we reasonably consider that this is likely to have a material impact on your ability to meet your financial obligations.
53. If we give you notice of a breach of your Small Business loan, we will not require you to repay the full amount of the loan, or take proceedings to enforce the loan, unless you fail to remedy the breach during the notice period.
54. We will give you at least 3 months' notice if we decide that we will not extend the term of your continuing credit Small Business loan. This does not apply if (at the end of the term of your Small Business loan), you are in breach of any of the loan obligations.

## **Credit cards**

55. When you apply for a credit card, we will ask you to specify what dollar limit you would like. When we issue you with a card, we will provide you with a credit limit that does not exceed your requested dollar limit.
56. We will apply any payment you make to your credit card to the amounts that have the highest interest rate as at the last statement date.
57. We will dishonour a credit card transaction that would result in you exceeding your credit limit by more than 10%. (This commitment does not restrict us from dishonouring a credit card transaction that would result in any exceeding of your credit limit. We may consider that to do so would be consistent with our prudential obligations).
58. If you transfer an existing credit card balance to a new credit card that we issue, our application process will include a prompt that you should cancel the other credit card.



- 59. If we make you an introductory balance transfer offer on your credit card for a fixed period of time, we will give you at least 30 days' notice before that period is due to end.
- 60. If we cancel your credit card, we will tell you and, if appropriate, give you the general reasons for doing so.

## **Joint accounts**

- 61. If you are opening a joint account, we will make available general information about how you can use that account, and your rights and responsibilities as a joint account holder.
- 62. If your joint account enables either you or another account holder(s) to make withdrawals without the other person's co-authorisation, our Terms and Conditions will oblige us to comply with a request by any one of you:
  - a. to change the account approval so that all joint account holders must approve any future withdrawals, or
  - b. to suspend the account (or a redraw facility on a loan account) to allow you and the other account holders time to reach agreement about dispersal of the account funds.

(This paragraph does not, for example, apply to an account in a single name but with multiple signatories – e.g. a company account where directors are co-signatories on behalf of the company).

## **Subsidiary cards**

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

## **Safeguards for co-borrowers**

- 65. We will not accept you as a co-borrower if, on the information you have provided to us in the course of applying for this loan, you will not receive a substantial benefit from the loan unless:
  - a. we have taken reasonable steps to ensure that you understand the risks associated with entering into the loan and the difference between being a co-borrower and guarantor, and we have taken into account why you want to be a co-borrower, and
  - b. we are satisfied that you are not experiencing financial abuse.
- 66. Before we accept you as a co-borrower under a loan or other credit facility, we will provide you with general information on your liability to repay the full amount of the debt.

67. If you are jointly and severally liable for a loan or other credit facility, you may give us a written notice to terminate your liability if no credit has been provided or relied upon by any co-borrower.
68. If credit has been provided, you may give us a written notice to terminate your liability for future financial accommodation. However, this right only applies where:
  - a. we have the right in these circumstances to terminate any obligation to provide further credit to another borrower under the same credit facility, and
  - b. in the case of a loan for a building project, the project is complete.
69. Paragraphs 65 to 68 do not apply to a Small Business loan.

## **Safeguards for loan guarantors**

70. This section (paragraphs 71 to 90) provides safeguards for an individual or Small Business that gives a guarantee that secures a loan or other credit facility that we provide to the customer. Paragraph 91 specifies the paragraphs within this section that apply if you are guaranteeing a loan to a Small Business as a director of that company.
71. We will not accept a guarantee, or an extension of a guarantee, from you unless the borrower agrees to us releasing to you the information and documents referred to in this section.
72. Subject to paragraph 81, we will only accept a guarantee from you if your liability under the guarantee is limited to:
  - a. a specific amount, plus interest and enforcement costs, and / or
  - b. the value of a specified security at the time of recovery.
73. The specific amount of your liability under the guarantee may be increased with your written consent, subject to law.
74. Before we obtain a guarantee from you, we will give you a prominent notice that:
  - a. you can refuse to enter into the guarantee
  - b. you have a right to limit your liability in accordance with this Code, and as allowed by law
  - c. there are financial risks involved
  - d. if applicable, that the guarantee may cover future credit facilities and variations of the existing credit facility with your written consent
  - e. if you receive a Commonwealth pension, acting as a guarantor may affect your pension entitlement
  - f. you should consider the information and documents we provide to you, and you can request further information or clarification if required, and
  - g. you should seek independent legal and financial advice before entering into the guarantee (in some circumstances, we may require that you obtain such advice as a condition of accepting your guarantee).
75. We will give you a copy of:
  - a. the credit contract or proposed credit contract that you propose to guarantee



- b. details of any security to be provided by the borrower in support of the loan
- c. any relevant credit report from a credit reporting body
- d. any relevant credit-related insurance contract that we have in our possession
- e. if the borrower is a business – any financial accounts the borrower has given us in the previous two years for the purposes of the credit to be guaranteed
- f. if the borrower is an individual – any summary statement of financial position the borrower has given us in the previous two years for the purposes of the credit to be guaranteed
- g. the latest statement of account for the credit to be guaranteed (this will not apply to a new credit contract), and
- h. any other information that you reasonably request, other than our internal notes and assessments.

76. In addition, we will provide you with any other information that we have and, in our reasonable view, a careful and prudent prospective guarantor might wish to consider regarding:
- a. the financial position of the borrower (for example, we will tell you if any existing loan to the borrower will be cancelled if the guarantee is not provided), and
  - b. any notice of demand we have made on the borrower within the previous two years).

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

77. We will not ask you to sign a guarantee, or accept a signed guarantee:
- a. unless we have provided you with the information referred to in paragraphs 74 to 76, and
  - b. we have given you until at least the third business day later to consider that information. However, we are not obliged to wait if you have already obtained independent legal advice about the guarantee, and you did so after having received the information referred to in paragraphs 74 to 76.
78. We will ensure that a warning notice appears directly above the place you sign the guarantee. The warning notice will be substantially in the format required for a guarantee regulated by the National Credit Code.
79. We will not give the guarantee to the borrower, or someone acting on behalf of the borrower to arrange the signing, unless the person acting on behalf of the borrower is also your solicitor. In that case, we may give the guarantee to that person to arrange the signing.
80. Where we attend the signing of the guarantee, we will ensure that you sign the guarantee in the absence of the borrower.
81. A guarantee may contain a provision allowing the guarantee to be extended to cover another loan in the future. However, we will not make you liable for any amount under a future loan unless we have:
- a. given you a copy of the credit contract or proposed credit contract
  - b. provided you with any updated information that we have on the financial position of the borrower, being information that a careful and prudent guarantor may wish to consider before allowing a guarantee to be extended, and
  - c. obtained your written acceptance of the extension of the guarantee.

82. You may withdraw from your guarantee if you give reasonable notice before we provide credit under the guaranteed loan.
83. If you give us notice that you would like to limit a guarantee you have provided to us, we must accept your request provided your requested limit covers:
- the borrower's existing liability (plus any interest, fees or charges that have accrued in respect of that liability)
  - any further advances we are obliged to make to the borrower, and
  - any amounts we need to spend to preserve the current value of security we hold for the borrower's loan.
84. Once we have a guarantee agreement with you, we will give you:
- notice in writing within 14 days if the borrower tells us that they are experiencing financial difficulty, and we provide assistance in response
  - a copy of any formal demand or default notice within 14 days after we send this to the borrower
  - notice in writing within 14 days after we issue a formal demand or default notice to the borrower for continuing default for a period of more than two months.
85. If you ask us, we will give you within 14 days:
- a copy of the latest account statement (if any) provided to the borrower, and
  - a further copy of anything we have previously given to you (other than information provided in the last 3 months).
86. You may at any time extinguish your liability to us under a guarantee by:
- paying the outstanding liability of the borrower (including any future or contingent liability)
  - paying any lesser amount that your liability is limited to by the terms of the guarantee, or
  - making other arrangements satisfactory to us for the release of the guarantee.
87. We will not enforce a guarantee against you if we fail to comply with any of paragraphs 78, 79 and 80.
88. Unless we agree otherwise with you, we will not enforce any mortgage or other security you have given us in connection with your guarantee without first enforcing any mortgage or other security provided by the borrower. This does not apply if we reasonably believe that the borrower's mortgage or other security will not be sufficient to repay a substantial portion of the guaranteed liability.
89. We will not enforce a judgement against you under a guarantee unless:
- we have first enforced any mortgage or other security provided by the borrower, and
  - we have obtained judgement against the borrower, and the judgement debt remains unpaid 30 days after we demand payment from the borrower in writing.
90. Paragraph 89 does not apply if:
- the borrower is a Small Business
  - we have made reasonable attempts to locate the borrower without success, or



- c. the borrower is insolvent.

## **Guarantors who are directors of the borrower**

- 91. If you guarantee a loan to a Small Business as a director of that company:
  - a. paragraphs 71, 72, 73, 74, 78, 81, 83, 84 and 86 apply to you, and
  - b. we will tell you that you may request the documents specified in paragraphs 75 and 76, and that these documents contain important information.

## **Third party products and services**

- 92. We may introduce third party service providers or introduce, arrange or distribute products and facilities issued by other organisations. We will take steps to ensure that providers we introduce are reputable; and that the third party products and facilities we distribute are useful, reliable and of value to our customers. We will regularly review the third party service providers and products and facilities we introduce, arrange or distribute.
- 93. We will not distribute discretionary risk products (these give the provider or distributor an absolute discretion as to whether a claim will be met, and so are not regulated as insurance contracts).
- 94. If you use a digital process to apply to us for consumer credit insurance, we will:
  - a. include in the digital process a link to the ASIC MoneySmart webpage relating to consumer credit insurance (if available), and
  - b. include filtering questions in our consumer credit insurance application to alert you to key policy exclusions such as age, residency and employment status – and if you are not eligible to claim for a substantial part of the policy benefits, we will not put in place consumer credit insurance for you.
- 95. If we offer you consumer credit insurance in a branch or when you telephone us, we will meet the requirements set out in paragraphs 96 to 99.
- 96. We will ensure that our sales practices do not assume customer knowledge of how consumer credit insurance operates.
- 97. We will give you clear information that enables you to make an informed decision. This includes information about:
  - a. the periodic amount payable for the insurance including any interest you will pay on the premium (where the premium is calculated as a percentage or cost per dollar of the outstanding debt or statement balance, we will tell you that cost and how we calculate it)
  - b. the total cost of the insurance (if known)
  - c. the circumstances in which benefits would be payable
  - d. the key exclusions that apply
  - e. the monetary limits on any benefit
  - f. the length of time a benefit would be payable

- g. the date your insurance ends (if different from when the relevant credit product ends), and
  - h. the previous financial year claims ratio for the product.
98. We will not put in place consumer credit insurance for you if you are not eligible to claim for a substantial part of the insurance benefits.
99. We will only put in place consumer credit insurance if we have your express consent.

## **Lenders mortgage insurance**

100. We may require you to pay for lenders mortgage insurance in connection with a loan we provide to you. If we do this, we will provide you with a fact sheet that explains lenders mortgage insurance, including that this insures us against any shortfall if we sell your property, and the sale price is less than what you owe us, and that our insurer can recover from you the amount of the shortfall.
101. If the cost of lenders mortgage insurance is added to your loan, we will:
- a. disclose to you the cost of the insurance, and
  - b. tell you that interest on this amount will accrue over the life of the loan.
102. We will not charge you more than the actual cost we incur for lenders mortgage insurance. We will not receive a commission from the issuer of the lenders mortgage insurance policy.
103. If we require you to pay for lenders mortgage insurance, and the policy provides an entitlement to a refund if you repay your loan before the end of the policy, we will ensure that we claim a refund where available and pay that amount to you.

## **Timely, clear and effective communication**

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

## **Account statements and balances**

106. We will provide you with regular account statements, at least every 6 months, clearly setting out all transactions relating to your deposit and loan accounts with us. We will send these account statements to the last address you have given us, unless we reasonably believe that this is no



longer your correct address. (The provision of account statements electronically is addressed in paragraphs 118 to 121).

107. If at your request, we provide more frequent account statements, we may charge a reasonable fee, reflecting our costs (although we may waive this if we are satisfied that your circumstances warrant this).
108. If we offer account statements in paper and electronic form and, at your request, we provide the paper form – we may charge a reasonable fee, reflecting our costs (although we may waive this if we are satisfied that your circumstances warrant this).
109. If the rules about statements of account in the National Credit Code do not apply to your loan or credit account, we will nevertheless provide you with statements of account that meet those requirements to the extent that this is practical.
110. Account statements will include clear information about our fees and charges incurred on your account during the statement period. Fee amounts will not be bundled, but will be broken down by transaction type and channel. The impact of any applicable fee-free limit or rebate scheme will also be indicated.
111. We will provide a simple method(s) of access for you to find out the balance on your account, for example, an online facility to do this. We will not impose any fees for using this access method.
112. This section does not apply to:
  - a. passbook accounts, and
  - b. accounts that are dormant.

## **Notifying changes to your account**

113. Except where paragraph 114 applies, we will give you at least 20 days advance notice before we do any of the following in relation to your account:
  - a. introduce a new fee or charge
  - b. increase a fee or charge
  - c. reduce the number of fee-free transactions permitted on the account
  - d. vary the minimum balance to which an account keeping fee applies
  - e. vary the method by which interest on your account is calculated, or
  - f. vary the circumstances when interest is credited or debited to your account.
114. If there is a change to, or introduction of a government charge that you directly or indirectly pay as part of your banking service, we will tell you about this reasonably promptly after the government notifies us, unless the government itself publicises the introduction or change.
115. We will notify you of an increase in the interest we charge on your loan or credit facility no later than the day on which the change takes effect. We will also advise you of any new minimum repayment amount.

116. We may use various methods to notify you of changes to your account. Subject to applicable laws, these may include one or more of: notification on or with your account statement; notification by direct communication; announcement via our newsletter or website; or advertisement in the local media or national media. When deciding how to notify a change, we will consider the nature and extent of the account change, as well as the cost and effectiveness of different methods of notification.
117. If we commit to notify you at either your email or postal address of changes to your account, this is subject to you keeping us informed of your current address for contact purposes.

## **Use of electronic means of communication**

118. To the extent permitted by law, we may provide any notice or other information required by this Code to you in writing, electronically or by telephone, or by telling you that the information is available on our website or other electronic forum.
119. If we offer a product on the basis that statements and other account information will only be available electronically, we will:
- clearly disclose this to you, and
  - obtain your specific positive acknowledgement of the arrangement before we issue or distribute the product to you.
120. When providing disclosure documents, account statements, notices and other prescribed information to you electronically, we will ensure that we adopt practices that take appropriate account of online security risks and ASIC regulatory guidance about online disclosure. (Also see paragraphs 142 to 146).
121. We will provide prescribed information to you electronically in a form that allows you to retain the information (for example by printing and saving it). Our electronic communications will be comparable with equivalent paper documents in terms of the clarity and content of the information provided.

## **Replacement copies of documents, statements, and other information**

122. At your request, we will send you a replacement copy of any of the following documents relating to a product or facility you have, or have had, with us:
- a loan application
  - a contract (including Terms and Conditions, and details of interest rates and fees and charges)
  - a mortgage or other security document
  - an account statement, and
  - a notice we have previously given you about us exercising our rights (unless the notice was issued more than two years before the discharge or termination of the contract to which the notice is related).

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



123. If a replacement copy of a document is requested, we will provide it to you:
- a. within 14 days if the original came into existence 1 year or less before you make the request, and
  - b. within 30 days if the original came into existence more than 1 year but less than 7 years before you make the request.
- If for some reason we are unable to provide a document within these timeframes, we will advise you in writing, together with the expected timeframe for providing the document.
124. Documents may be provided in the form of a computer-generated record.
125. We may charge a reasonable fee, reflecting our costs, for providing a replacement document, but may waive this if we are satisfied that your circumstances warrant this.
126. Access to your personal information is addressed more generally in paragraphs 142 to 146.

## **ePayments Code**

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

## **Direct debit arrangements and recurring payments arrangements**

128. Our website will provide clear, simple customer guidance about the difference between recurring payment arrangements set up with a credit or debit card and direct debits set up using a BSB and account number, and how to cancel both of these.
129. We will take action to cancel a direct debit facility linked to your transaction account within 1 business day if you ask us to do so. We will not tell you to try to cancel the facility with the biller or other direct debit user first (but we may suggest that you also contact the direct debit user and explain the benefits of doing this).
130. We will not charge you a fee for cancelling a direct debit facility.
131. If you tell us you wish to cancel only one of multiple payment arrangements associated with a single direct debit, we will advise you to establish a new facility for the payment arrangements you wish to maintain.
132. We will promptly investigate if you complain that a direct debit was not authorised or is otherwise irregular. We will not tell you to resolve the matter with the biller or other direct debit user first (but we may suggest that you also contact the direct debit user).

## **Seeking a chargeback on your behalf**

133. If you make a purchase using a credit or debit card (e.g. a MasterCard, AMEX or VISA card issued by us), we may be able to claim a chargeback on your behalf (i.e. a credit equal to the

amount of the purchase), if a problem with a purchase arises (such as an unauthorised purchase, or non-delivery of goods ordered).

134. If you dispute a transaction with us within the required timeframe and we can seek a chargeback on your behalf, we will do so without delay. We will also:
  - a. ensure we claim the chargeback for the most appropriate reason, and
  - b. not accept a refusal to chargeback by the merchant's financial institution unless it is consistent with the relevant card scheme rules.
135. Where possible, we will assist you to seek a chargeback of any unauthorised payments debited to your credit or debit card account under a recurring payment arrangement – for instance, where payments continue to be debited to your account, even though you have cancelled the recurring payment arrangement. To do so, we may need written confirmation or other evidence from you that you cancelled the payment arrangement.
136. We will make general information about the chargeback mechanism readily available to our customers in our product information and on our website. We will emphasise the need to promptly report problems to ensure a claim can be made within relevant chargeback periods.
137. Whether through our Terms and Conditions or otherwise, we will not seek to reduce the period or circumstances in which we can seek a chargeback on your behalf under the card scheme rules applying to your scheme credit or debit card.

## **Closing your account**

138. We will provide readily accessible information about how to close your account.
139. If you ask us to close your account, we will enable you to do this quickly and easily as long as you have discharged all of your obligations under the applicable Terms and Conditions, and any mortgage or other similar arrangements relating to the account.
140. If you request a payout figure for your loan or credit facility, we will provide it to you within 7 business days.
141. If appropriate, we will give you at least 14 days' advance notice before closing your account when the Terms and Conditions of the account permit us to do so (i.e. where you have not sought to close the account yourself). We will notify you at the last valid address you have given us (e.g. street address or email address), or by other legally permissible means.

## **Information privacy and security**

142. We will treat your personal and financial information as private and confidential. We will not disclose that information to any other organisation unless we are required or permitted by law to do so.
143. We will actively seek to promote awareness of security issues, including Internet security, to our customers, using a range of approaches.



144. We will provide information on topics including:
- a. protecting your payment methods (e.g. payment cards and cheque books) and equipment (e.g. your computer if you bank online) from unauthorised use
  - b. what to do if you believe a security breach of your account or unauthorised transaction has occurred, and
  - c. the possible consequences of not reporting security breaches on your account promptly.
145. We will avoid communications practices that are inconsistent with our messages about avoiding fraud.
146. We will provide you with options to report security breaches at any time.

### **If you are in financial difficulty**

147. This section (paragraphs 148 to 155) applies to an individual or Small Business who is either a customer or a guarantor of a customer.
148. We will publicise the availability of assistance for customers experiencing difficulty meeting repayment obligations, or obligations under a guarantee to us (financial difficulty). We will do this on our website, in our branches, and periodically on account statements.
149. We will train our staff, and may use data analysis techniques to proactively identify indicators of customer financial difficulty so that we may contact you to discuss assistance we may be able to provide. This may include information about banking products that we offer that may be more favourable for you.
150. We encourage you to tell us at an early stage if you are experiencing financial difficulty. We recognise the wide range of circumstances that can lead to this including unemployment, ill-health, family breakdown, domestic violence, economic abuse, and natural disaster.
151. If you have a joint account with someone and are experiencing financial difficulty, we can try and assist you. This can initially be done without involving the other person (if you want this).
152. We will work with you in a constructive way if you experience financial difficulty. We encourage you to be open and as realistic as you can be about your financial position. In turn, our staff will be trained to respond compassionately. We will do this whether or not you have a right to seek a hardship variation or change under consumer credit laws.
153. If you request financial difficulty assistance, we will:
- a. genuinely consider your request, taking account of your situation. However, we will only be able to do this if you provide us with the financial information and documents we may reasonably need to assess your situation for ourselves
  - b. encourage you to keep making whatever payments you can while we are considering your request
  - c. not require you to access your superannuation to meet your loan obligations (unless you are borrowing for a self-managed superannuation fund)

- d. consider longer term (as well as short-term) financial issues when they are relevant. If you are experiencing longer term difficulties, we will try to develop an appropriate solution with you to allow you to meet your obligations. If you are an individual suffering exceptional circumstances outside your control, we may on compassionate grounds reduce or waive unsecured debt subject to our commercial considerations.
  - e. not list your default on your credit reference file while we are considering your request, unless legally required to do so
  - f. not sell your debt while we are still considering your request, and
  - g. respond promptly to your request.
154. If we reach agreement about assistance to help you with your financial difficulty, we will:
- a. provide confirmation in writing of what we have agreed, including what your obligations will be when our period of assistance ends
  - b. explain the consequences for our reporting to a credit reporting body, and what this means for your credit history
  - c. explain to you any other adverse impacts on your banking services (such as cancellation of your credit card)
  - d. not charge you late payment or default fees, or default interest while you are meeting any conditions of that assistance (unless you are a Small Business customer)
  - e. not sell your debt while you are meeting any conditions of that assistance
  - f. tell you if we are aware that you are likely to be able to claim on a consumer credit insurance policy that we sold to you
  - g. tell you if we offer banking products with terms that may be more favourable for you, and provide you with information about your options to transfer to these
  - h. make reasonable efforts to contact you if you breach any conditions of assistance agreed with you, and not re-activate enforcement action until we have given you at least 14 days' notice.
155. Where we are not able to assist with your financial difficulty, we will:
- a. suggest other options or avenues that may be available to you
  - b. advise you promptly in writing giving reasons
  - c. tell you that you may make a complaint to AFCA if you are unhappy with our decision, and
  - d. offer to provide you with contact details for a free and independent financial counselling or similar service, if appropriate.

## **Working with your representative**

156. You may choose to be represented or assisted by another person whom you authorise to act on your behalf in negotiations with us. For instance, you may be represented by a financial counsellor, community worker, solicitor, family member, or carer. We respect your right to be represented, and will work with your duly authorised representative if you have one. However, we may contact you directly if we reasonably believe that your representative is not acting in your best interests, or for some other reason direct contact with you is needed. If so, we will suggest other free representation alternatives that may be available to you.



157. Where our staff identify that you would benefit from advice or assistance from a financial counsellor or community worker, they will offer you contact details and may contact you directly for this purpose (even if you have a representative). Where appropriate, they will also warn you against using a debt management firm.

## **Debt collection and legal action**

158. We and our agents will comply with Debt collection guideline: for collectors and creditors (October 2005) of the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission as amended from time to time (the Debt Collection Guidelines).
159. If you fall behind with your payments, we will contact you and seek to negotiate a mutually acceptable repayment arrangement with you, having regard to your financial circumstances as a whole, as well as your obligations to us. If you cooperate with us and commit to dealing with the debt, we will work with you (or your representative if you have one). Where relevant, we will draw your attention to our procedures covering customers in financial difficulty (see paragraphs 147 to 155).
160. We will send a written default notice to the last address you have given us (unless we reasonably believe that this is no longer your correct address), and will give you an opportunity to pay any amount outstanding on an account with us before we commence legal action against you.
161. A default notice will specify the date after which we are lawfully entitled to commence legal proceedings to recover the debt. The notice (or an accompanying letter), will invite you to contact us to discuss your options.
162. If we exercise our right to combine your accounts, we will inform you promptly after doing so.
163. We will comply with any applicable requirements of the Code of Operation: Recovery of Debts from Department of Human Services Income Support Payments and Veterans' Affairs Payments, and any successor Code (both when enforcing indebtedness owed to us and, to the extent the law permits – when facilitating enforcement by a third party judgment creditor).
164. We will not seek recovery of, nor will we sell, statute-barred debts.
165. We will only sell debts to businesses that:
- a. have agreed to comply with both the Debt Collection Guidelines and the Code of Operation: Recovery of Debts from Department of Human Services Income Support Payments and Veterans' Affairs Payments, or any successor Code, and
  - b. are a member of AFCA.
166. We will not sell your debt if we are aware that your debt arose from domestic violence or elder abuse.



- 167. If we sell your debt, we will write to you and let you know that we have done this, and who your debt is now owed to.
- 168. We will ask a purchaser of your debt to consult with us before instituting bankruptcy proceedings in relation to you.

## **Prompt, fair resolution of complaints**

- 169. We provide information on how we deal with complaints in our product information, through our branches, our telephone banking services, and on our website and digital platforms (if we have these). We will give you a copy of this information if you ask us. This information includes your right to take your complaint to AFCA if you are unhappy with how we have dealt with and rectified your complaint.
- 170. We will not charge you a fee for making a complaint.
- 171. We will not require you to put your complaints in writing (however, some written information may subsequently be needed to progress your complaint).
- 172. We will ensure that we handle your complaint fairly.
- 173. We will try to resolve your complaint as soon as possible - "on the spot" if we can. If this is not possible, within 3 business days we will give you the name and contact details of a person to whom you can escalate your complaint. As far as possible, this person will be someone other than the person to whom your complaint relates (however, if we are a small organisation, this may not be possible). We will also give you information about our internal complaints handling process.
- 174. We will do our best to ensure that our investigation is completed, and a decision on your complaint is communicated to you within 21 days of receiving your complaint. We will inform you if we need more time than that, and provide regular progress updates.
- 175. Before we enter into a farm debt mediation with you, we will inform you that you may instead have a right to make a complaint to AFCA.

## **Training our staff**

- 176. We will make sure our staff and agents or representatives are well trained so that they can competently do their work.
- 177. Our staff training will include Code requirements, so that our employees comply with these in their dealings with you.

## Publicising the Code

178. We will publicise this Code and promote our adoption of it – including in our branches. We will give or post you a copy on request. We will publish the Code (or a link to it) on our website.

## Part C – How the Code is administered

### Administration of the Code by an independent Committee

179. The Code is administered by the Code Compliance Committee, an independent committee established and funded by COBA. The Committee is comprised of three members – an industry representative, a consumer representative and an independent Chair. The Code Compliance Committee Charter sets out the processes for appointing Committee members, and how the Committee operates and performs its functions. This Charter is published on the Committee's website.

### Role of Code Compliance Committee

180. The role of the Code Compliance Committee is to:
- monitor and oversee compliance with the Code
  - encourage continuous improvement by Code Subscribers in meeting Code obligations, including by publishing good practice guidance
  - investigate possible breaches of the Code by a Code Subscriber – including by requesting the Code Subscriber to provide relevant documents and other information (this is subject to paragraph 182)
  - exercise its sanctions and directions powers where the Committee determines that this is fair and appropriate in the circumstances, and
  - provide reports to regulators and to the public about compliance with the Code by Code Subscribers, and how the Committee has exercised its sanctions and other powers – including an Annual Report on Code Subscribers' compliance with the Code, and the Committee's compliance activities.

Note: A person seeking redress (for example, compensation), for a breach of the Code should apply to AFCA. The Code Compliance Committee cannot assist with redress.

181. For the purposes of monitoring and overseeing Code compliance and encouraging good practice, the Code Compliance Committee will:
- take into account information about Code Subscribers' compliance with the Code available through AFCA
  - undertake an annual environmental scan to assess Code Subscriber compliance risk areas, and to set the Committee's priorities and work plan
  - require Code Subscribers to provide periodic compliance reports to the Code Compliance Committee
  - undertake own motion investigation(s) to assess compliance with one or more areas of Code compliance, and identify good practices
  - issue public reports about the extent of compliance with the Code and good practice compliance measures, and
  - provide feedback to COBA about industry trends and the adequacy of Code provisions.



182. When deciding whether to investigate an allegation of breach of the Code, the Code Compliance Committee will consider the likely depth and breadth of customer harm. The following information may be relevant for the Committee when deciding this:
- a. information obtained by the Committee from the Code Subscriber, for example, in compliance reports
  - b. information obtained by the Committee, for example, from own motion enquiries, mystery shopping exercises, or website or other document reviews
  - c. a breach allegation made by a member of the public to the Committee (anyone can report alleged breaches to the Committee at any time), or
  - d. information provided by anyone else including another Code Subscriber, a consumer representative, AFCA, or a regulator.

## **Sanctions and Directions Powers**

183. If the Code Compliance Committee finds that a Code Subscriber has breached the Code, the Committee has the following sanctions and directions powers:
- a. issue the Code Subscriber with a formal warning
  - b. require a Code Subscriber to undertake a rectification and / or remediation program, such as corrective advertising
  - c. require the Code Subscriber to undertake a compliance review (either an internal review or, if the Code Subscriber so chooses, a review by an external adviser acceptable to the Committee), and provide the Committee with the findings and recommendations of the reviewer, the Code Subscriber's rectification plan in response to the review, and updates about implementation of that plan
  - d. require the Code Subscriber to undertake a staff training program, for example, to improve good practice compliance with particular Code obligations
  - e. publicly name a Code Subscriber, and provide details of its breach of the Code
  - f. advise COBA of a Code Subscriber's non-compliant status
  - g. advise ASIC or other applicable regulator of a Code Subscriber's serious or systemic breaches of the Code.
184. In addition or instead, the Code Compliance Committee may make recommendations to a Code Subscriber, or to Code Subscribers generally, for improvements to Code compliance arrangements.

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

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

187. We will consider and take reasonable action where the Code Compliance Committee makes recommendations to us in accordance with paragraph 184.
188. We acknowledge that a failure to meet our obligations under paragraphs 185 and 186 constitutes a serious breach of the Code, reportable by the Code Compliance Committee to ASIC.
189. We release and indemnify the Code Compliance Committee (to the extent that its assets are inadequate), against all losses, damages, costs, actions, claims, demands and liabilities incurred or suffered by the Committee arising out of the Committee's performance of its functions and activities in accordance with this Code. This does not apply to any wilful or reckless acts, omissions, or gross negligence of the Committee.

## **Role of COBA**

190. COBA must maintain the register of Code Subscribers.
191. COBA must ensure that the Code Compliance Committee is adequately resourced to carry out its functions.
192. COBA may amend the Code from time to time. Before doing so, COBA will consult with Code Subscribers and other stakeholders.
193. COBA will publicise the Code and list of Code Subscribers through its website.

## **Reviewing the Code**

194. In consultation with the Code Compliance Committee, COBA will arrange for the Code and the Code Compliance Committee's Charter and operations to be independently reviewed at intervals of no more than 5 years. The independent reviewer must consult with a broad range of stakeholders.



## Appendix – Definitions

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

**"AFCA"** – the Australian Financial Complaints Authority, an independent complaints handling authority overseen by ASIC (i.e. that is able to review our handling of your complaints, subject to its Rules).

**"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 Compliance Committee Charter.

**"Code Subscriber"** – Refers to a COBA member who has agreed to adopt this Code.

**"Commonwealth concession card"** – Refers to an Australian Government issued card that entitles the holder to cheaper health services and medicines such as a Commonwealth Seniors Health Card, Health Care Card, Low Income Health Care Card, or Pensioner Concession Card.

**"Complaint"** – Any expression of dissatisfaction made to us relating to our products, services, staff or handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

**"Continuing credit Small Business loan"** – means a Small Business loan where the principal owing is not due to be fully repaid at the end of the scheduled term by regular periodic repayments.

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

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

**"Sell"** – A reference to us selling debts does not include a securitisation arrangement where we remain the lender of record for those debts.

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

**"Small Business loan"** – A loan to a Small Business with total debt to all credit providers (including any undrawn credit under an existing loan plus the loan applied for) of less than \$5 million.

**"We", "us" and "our"** – Refers to your customer owned banking institution being a subscriber to the Customer Owned Banking Code of Practice. Where the Code refers to information that you tell "us" or information that "we" are aware of, "us" or "we" refers to the particular staff of your customer owned banking institution who are assisting you at the relevant time.

**"You", "Your"** – Refers to an individual or Small Business who is our customer and, where relevant, a prospective customer or guarantor, or prospective guarantor of a customer who is an individual or Small Business.