

AFCA Submission to the Interim Report of the Independent Review of the Customer Owned Banking Code of Practice

The Australian Financial Complaints Authority (AFCA) welcomes the opportunity to provide feedback to the Interim Report for the Independent Review (Report) of the Customer Owned Banking Association (COBA) Code of Practice (Code).

We appreciate the Independent Reviewer's thorough and considered review of AFCA's submission. AFCA is pleased to see meaningful recommendations that support the customers and communities of Customer-Owned Banks (COBs).

We are encouraged by the commitments in the Interim Report to materially improve outcomes for COB customers and welcome a majority of the Report's recommendations as supporting the goal to future-proof the Code.

Thematic commitments and proposed layered structure

While we understand the rationale for the proposed structural changes to the Code, we consider they risk introducing uncertainty and unnecessary complexity for subscribing firms and consumers, which may result in inconsistent outcomes. We suggest the Reviewer reconsider the proposed structural changes to the Code. We recommend:

- retaining the current Code structure, with a balance of principles-based and outcomes-based commitments, alongside relevant prescriptive obligations. We do not consider this balance prevents subscribers meeting their Code commitments in a tailored and proportionate way
- replacing the ten thematic commitments with a principles-based approach.

Further enhancements

We also suggest enhancements to the Code to:

- strengthen approaches to family violence to ensure responses are safe, trauma-informed and minimise the risk of harm
- ensure robust and consistent standards for First Nations customers that apply across all firms and support culturally appropriate outcomes.

This feedback supplements our initial submission to the April 2026 consultation of the Independent Review of the Code. Where an issue has already been addressed in our

initial submission, or relates to a technical matter outside AFCA’s remit, we have not provided further comment.

Effectiveness of the Code

Draft commitments

We acknowledge that the proposed commitments aim to deliver meaningful outcomes for the diverse range of customers and communities who bank with COBs.

The proposed ten themes call attention to important and, often unseen, customer lived experiences. However, framing these commitments through the proposed ten themes may limit the universality of the Code’s upfront commitments. Core commitments should apply to all customers, at any time in their lives, regardless of their circumstances.

We also consider that the substance of these commitments is, or should be, captured in the body of the Code. As currently drafted, the thematic commitments risk duplication.

We instead recommend adopting a guiding principles-based approach. This approach allows flexibility to respond to evolving community expectations while reflecting good industry practice. Guiding principles should always be applicable to customers lived experiences. What changes is how a Code subscriber gives effect to those principles in different contexts.

For example, the principle of “Engage with Care” from AFCA’s [Approach to family violence](#) supports safe, flexible and fair responses to customers who notify their bank that they are experiencing family violence. However, this principle equally applies to customers experiencing other forms of vulnerability, financial hardship, and bereavement.

We note the Banking Code of Practice opens with the following guiding principles:

- trust and confidence
- integrity
- service
- transparency and accountability.

We encourage consulting with COBs to determine meaningful and suitable principles that align with COBs, their customers and communities, and the service they aspire to provide.

Code structure

AFCA is concerned that the proposed layered structure of the Code will introduce unnecessary complexity into the Code. While we understand the rationale for

introducing a layered approach to address the issue of scalability across COBs, we think this can be achieved within the existing Code structure.

A Code should place a higher standard of conduct on subscribers and deliver better outcomes for consumers than the law. It should articulate how firms can practically demonstrate their commitment to good industry practice. This can be achieved through a combination of principles-based and outcomes-based commitments, as well as more specific and prescriptive obligations.

We note that principles-based and outcomes-based commitments do not generally require a minimum standard which is then supplemented by an expectation and guidance. Imposing these categories complicates the Code for those using and applying it.

Using the Code

We are concerned that the distinction between minimum standards, expectations, and guidance may reduce clarity and create uncertainty and inconsistency for those using or relying on the Code. In particular, it may:

- create uncertainty for COBA member firms, who may:
 - > struggle to interpret and meet the various Code-based obligations depending on their size, resources, and customer base
 - > lack clarity and fail to determine how minimum standards, expectations, and guidance will be applied across firms, and whether this will be sufficiently transparent to customers and stakeholders
 - > be incentivised to adopt a ‘tick-box’ approach to compliance or perceive the new structure as a licence for lower standards in some circumstances
- introduce broader risks to consistency and legal clarity, including:
 - > ambiguities or compliance gaps if Code provisions:
 - describe a legal obligation as a minimum standard, but use different wording to the law, creating uncertainty about the nature of the legal obligation, or
 - are interpreted or replicated inconsistently across firms or in legal and regulatory settings
- create confusion for consumers and their representatives, who may:
 - > find it difficult to understand which parts of the Code apply to them
 - > experience different standards and outcomes depending on which firm they bank with.

Applying the Code

We are concerned about how the layered structure will operate in practice for bodies responsible for applying and overseeing the Code. We question how COBA will determine which minimum standards, expectations, and guidance apply to which firms, and whether this can be clearly communicated to customers, AFCA, and the Customer Owned Banking Code Compliance Committee (COBCCC).

We consider that the COBCCC may face challenges in applying the layered structure in the performance of their monitoring and compliance role, including investigating breaches and reporting on sector compliance.

Similarly, AFCA decision-makers may not have the necessary clarity on the different layers of obligations and their applicability to financial firms in assessing complaints and systemic issues. Absent clarity in the Code itself or clear documentation provided by COBA members about the specific scaled application of the Code to their business, AFCA decision-makers will continue to rely, as is currently the case, on all aspects of the Code (aspirational or otherwise) to describe good industry practice for all COBA members and assess their conduct on that basis. We consider this to be the simplest and most economical approach for subscribing firms.

We understand the objectives behind the proposed layered model and note other Codes and principles-based standards have similarly wrestled with this challenge.

However, on balance, we consider the proposed layered approach likely to introduce cost and complexity for member firms, and uncertainty for code monitoring bodies, AFCA and consumers. We do not consider those costs to outweigh the benefit of a simple body of clear commitments outlining good industry practice.

We consider that applying an outcomes-focused lens to Code commitments—focusing on the desired outcomes for firms and customers, rather than process steps or technical compliance with a complex inter-locking set of obligations—is more likely to allow firms the flexibility to innovate and find cost effective solutions to meeting those standards and improve customer outcomes.

Further considerations

We note that the proposed use of mandatory language in Recommendation 4 may unintentionally limit the flexibility financial firms need to respond to the diverse and evolving needs of their customers and communities.

In response to Recommendation 7, we note that AFCA does not issue regulatory guidance, as it is not a regulator. Rather, AFCA provides information through our

Approach documents and fact sheets for financial firms and consumers to support the efficient, fair and timely resolution of complaints.

Experiences of financial hardship

Natural disasters

AFCA supports recognising natural disasters as a distinct category.

While AFCA may determine that a payment pause is an appropriate financial hardship arrangement, we are not in a position to comment on the operational and accounting impacts for financial firms.

Debt waivers

AFCA welcomes greater clarity on debt waivers in the Code.

However, we are concerned about attempts to prescribe the circumstances in which a debt should be waived. We instead suggest that the Code include examples of exceptional circumstances where a waiver may be appropriate.

Examples of where AFCA has seen financial firms agree to waive part or all of a debt include:

- where the debt is unsecured, the customer has no assets, and their situation is unlikely to improve
- where a customer has specific needs, for example, due to their mental health or disability
- where a customer is experiencing or has experienced family violence and the debt is a result of financial abuse.

Examples of assistance

AFCA provides further information on our expectations of financial firms in relation to financial difficulty in our fact sheets and Approach documents.

We consider the Banking Code of Practice provides a clear model for examples of assistance as outlined in clause 178 and accompanying table, with sections on “Restoring your financial position is possible” and “Restoring your financial position is unlikely.”

Experiences of vulnerability and safety

AFCA is concerned that Recommendation 20 may result in victim-survivors being denied necessary assistance and exacerbate harm, given the potential misidentification of victim-survivors as the predominant aggressor and the use of

Deny, Attack, and Reverse Victim and Offender (DARVO) tactics.¹ Perpetrators of family violence employ DARVO tactics to undermine the credibility of victim-survivors, shifting blame and portraying the victim as responsible for the abuse. Misidentification affects a significant number of victim-survivors and has enormously harmful consequences.²

AFCA recognises that perpetrators may attempt to misuse the financial difficulty or complaints processes as a form of delay or control over victim-survivors. In these circumstances, it is important that COBs undertake due diligence and carefully assess the situation. We consider that COBs should have sufficient hardship arrangements and responses to manage these situations without expressly providing for this in the Code.

The Code should clearly commit to considering the potential impacts and harm to the victim-survivor when responding to these cases.

First Nations perspectives on banking

AFCA welcomes a standalone First Nations section in the Code that is developed through consultation and co-design with First Nations peoples. Given COBs' direct customer relationship and close community connections, they are uniquely placed to lead and drive improvements for First Nations customers, including access to culturally appropriate and safe products and services. We encourage COBA to take this review as an opportunity to centre the full economic participation, empowerment, and independence of First Nations peoples.

It is critical that robust, clear, and consistent commitments to First Nations customers are established and apply to all COBA members, and do not vary based on a firm's size, resources, geographical reach, customer base and level of direct customer interaction.

For example, we suggest that cultural awareness and safety training should be mandatory for *all* staff, not just staff who regularly engage with First Nations customers. An understanding of First Nations customers, the barriers they face, and their needs should be central to the design, sale, and administration of all banking products and services. This understanding is as essential for front-line customer service staff speaking to First Nations customers, as it is for the product design teams developing the products and services.

¹ Harsey S and Freyd J 2020, '[Deny, Attack, and Reverse Victim and Offender \(DARVO\): What Is the Influence on Perceived Perpetrator and Victim Credibility?](#)' *Journal of Aggression, Maltreatment & Trauma*, 27:2.

² Department of Premier and Cabinet 2021, '[Misidentification is a significant issue that has enormous consequences for the victim survivor](#)', Victorian Government.

Low-fee accounts

We support Recommendation 26 and the proactive identification and transfer of eligible customers to low or no-fee accounts.

We note that requiring banks that do not offer low-fee or no-fee accounts to assess their products against the *Design and Distribution Obligations* in the Code may duplicate existing obligations. If not carefully drafted, this approach could create compliance gaps or misinterpret the law.

Instead of duplicating the DDOs, we suggest the Code clearly sets out:

- what a low-fee or no-fee account is
- the minimum features it must offer
- the cohorts these products are designed for.

Small business banking experiences

AFCA supports stronger protections for small businesses across Recommendations 28 - 33, including the duty of care to act with the care and skill of a diligent and prudent banker.

We consider that a comprehensive approach to financial hardship-style protections for small businesses, outlined in Recommendation 31, is necessary. This will help avoid the same gaps and inconsistencies seen in individual financial difficulty processes that have led to consumer harm.

As outlined in our consultation submission, we support clear and direct expectations in the Code about early, timely and empathetic engagement. This includes reducing barriers to assistance, early identification of financial difficulty, and timely and tailored engagement. In turn, these measures help prevent complaints and reduce delays in resolution.

Digital banking, technology and service continuity

Branch closure protocol

AFCA supports the development of a clear, supportive, and publicly available branch closure protocol as outlined in Recommendation 35.

We consider that such a protocol should include early and transparent communication with customers and communities. It should also ensure customers are appropriately prepared for the closure, particularly those who may need additional assistance.

AFCA notes that the Australian Banking Association (ABA) has developed a [Branch Closure Support Protocol](#), which may provide a useful model for COBA. The ABA protocol importantly includes commitments to support customers through branch

closures with practical assistance to transition to alternative banking options. We specifically note the need for education, training and tailored support, particularly for customers who may require extra assistance, such as some older customers or those from culturally and linguistically diverse backgrounds.

Bank@Post

AFCA considers that risk assessments should not be limited to Bank@Post.

The Code should require subscribers to apply consistent risk assessment and oversight across all third-party service providers and intermediaries. This is particularly important where risks to privacy, confidentiality or cultural safety may arise.

Flexibility, proportionality and consistency

In response to Recommendation 41, we note that AFCA's role does not extend to the development or drafting of Code provisions or supporting guidelines. While AFCA is open to engaging in consultation processes and providing feedback to COBA within its remit, this is limited to our complaints experience and expectations of financial firms in resolving disputes.

It would not be appropriate for AFCA to advise COBA or its subscribers on how they should meet their regulatory, legal or Code obligations.

Governance, monitoring, and assurance

We note that Recommendation 48 does not recommend COBA seeking ASIC approval of the Code.

Given the maturity of the COBA Code, we consider that it should seek to meet the standards required for ASIC approval. ASIC approval sends a powerful signal to stakeholders that the Code is robust, credible and one they can have confidence in.

We strongly encourage COBA to seek ASIC approval for the updated Code as part of this review.