

Accomplish

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Code Compliance Committee:

- Dr Sue-Anne Wallace, Chairperson
- Anita Schut, Industry Representative
- Professor Gail Pearson, Consumer Representative

New investigation process and procedures manuals.

Raising awareness of the new Charter.

A new logo.

News from the Committee

On 23 July 2014, the Code Compliance Committee met in Sydney to finalise governance documents for the revised Customer Owned Banking Code of Practice and the new Charter.

We are developing an Investigation Process Manual, which will feature a high-level overview of Committee operations and an easy to follow flow chart of the process, including relevant sections of the Charter and guidance notes. We will publish this manual on our website once it is approved.

We are also developing an Investigation Procedures Manual, which will be used to inform the day-to-day monitoring work of Code compliance and investigations of alleged breaches of the Code.

Over the coming financial year, we will focus on helping stakeholders to understand the Committee's operations as set out in the new Charter, including through an awareness-raising program designed for consumer advocates and Code subscribers.

We will also be showcasing our refreshed visual identity with the launch of our new logo, which features at the top of this newsletter.

We acknowledge the recent resignation of the Customer Owned Banking Association's CEO Louise Petschler and would like to thank Louise for her work with the Committee over the past five years. We wish her well for her future.

Engaging with consumers

We are committed to creating a better banking experience for consumers by ensuring they are aware of their rights under the Code. As part of our

New consumer engagement strategy.

2014–2015 consumer engagement strategy we will:

- Publish two articles with the Consumers Federation of Australia – the first focusing on strengthened consumer protection through the new Code and Committee Charter.
- Engage with regional and remote communities by presenting at the National Conference of the [Money Workers Association of Northern Territory](#) in August.
- Participate in a series of code training days for financial counsellors and community legal advisers, in conjunction with the Code Compliance Monitoring Committee, the Telecommunications Industry Ombudsman, Energy and Water Ombudsman NSW and Victoria and the Credit Ombudsman Service.
- Raise awareness of Code obligations associated with significant areas of consumer risk, such as consumer credit insurance, debt aggregators and financial difficulty.
- Develop guidance notes for consumers about financial difficulty obligations, to be published on our website following the release of our Own Motion Inquiry Report on this issue.
- Develop guidelines for the operation of our Charter and investigations powers to be published on our website.
- Host a lunch on 3 December in Sydney for consumer advocates including representatives of *Choice*, NSW Legal Aid and the NSW Consumer Credit Legal Centre, to facilitate discussion and exchange information.

ASIC revised Debt Collection Guidelines

Regulatory Guide 96: Debt collection guideline: for collectors and creditors.

The Australian Securities and Investments Commission (ASIC) recently published revised [Debt Collection Guidelines](#), which have important implications for Code subscribers as a breach of the guidelines by a Code subscriber or its agent is likely to be a breach of the Code.

In particular we note that the revised guidelines:

- State that a creditor may remain liable for conduct regarding a debt despite having sold or assigned the debt.
- Cross-reference the National Consumer Credit Protection (NCCP) Act and National Credit Code.
- Emphasise privacy obligations during debt collection (although they still refer to the Office of the Australian Information Commissioner).
- Emphasise the obligations when dealing with represented consumers.

In relation to **customer contact**, the guidelines:

- Acknowledge the use of social media as a contact tool for debt collection purposes.

- Are clear about what happens when liability is disputed – this is especially relevant to General Insurance matters involving third parties.
- Give excellent examples of what constitutes contact, which includes leaving a voice message, sending a text or an email (vs. attempted contact e.g. where no message is left). They also specifically talk about the use of automatic diallers.
- Restate that the number of contacts is per account not per debtor but collectors should seek to discuss multiple accounts where debts relate to more than one account.
- Clearly state face-to-face contact is a last resort.
- State that any form of Authority consistent with the requirements of the Privacy Act should be regarded as acceptable for represented customers.

In relation to **record keeping** and **complaints handling**, the guidelines:

- Emphasise the importance of accurate record keeping (including when the debt is assigned).
- Supplement the Code's obligations to provide copies of documents.
- Emphasise the role of Internal Dispute Resolution (IDR) and External Dispute Resolution (EDR) and that complaints must not be ignored.

In relation to **repayment arrangements**, the guidelines:

- Encourage collectors to work towards flexible and realistic payment arrangements and state it is unacceptable to demand a large upfront amount as a precondition to considering payment arrangements, or to suggest that a debtor seek an early superannuation release or borrow from friends or family.
- Recommend that a written copy of the agreed repayment arrangement should be provided to a debtor on request (which links to ASIC's discussions regarding written contract variations in response to financial difficulty applications under the NCCP Act).

We also note the guidelines:

- Make a strong statement on the importance of internal compliance programs and compliance cultures including a quote from the ACCC prosecution of Visy: "The Visy Trade Practices Manual

A breach of the guidelines by an institution or its agent is likely to be a breach of the Code and should be recorded as such.

might have been written in Sanskrit for all the notice anybody took of it.” (Justice Heerey).

- Provide useful summary of key legislation including the Australian Consumer Law as well as suggestions on how to engage with non-English speakers.

Under clause 26.1 of the Customer Owned Banking Code of Practice, customer owned banking institutions and their agents agree to comply with the Debt Collection Guidelines (as amended from time to time).

Clause 26.2 and 26.5 reflect the institutions’ obligations in respect of consumer loans under the National Credit Act and extend these to non-regulated loans.

COBA’s training manual states that an institution “must ensure that any agents it uses to conduct debt collection activities comply with the requirements of the guidelines”. In such cases, a breach of the guidelines by an agent is likely to be a breach of the Code and should be recorded as such by the institution. Institutions should therefore have in place appropriate monitoring arrangements for these agents.

Financial Systems Inquiry Interim Report

On 15 July 2014, the Financial System Inquiry (FSI) released its [Interim Report](#).

The Inquiry’s initial assessment is that the Australian financial system has performed reasonably well in meeting the financial needs of Australians and facilitating productivity and economic growth. The report also states that many areas of the financial system are operating effectively and do not require substantial change.

The report discusses the financial system, focusing on nine priority issues and making 28 observations on how the system is working. For each of these observations, it sets out a range of options for change, including the option of no change.

Following the release of the report, [David Murray AO, Chairman of the FSI, made a speech to the National Press Club](#).

We have written to the FSI Panel to congratulate it on its publication and will follow the Inquiry’s progress closely. We also noted the references in the report to industry self-regulation in the financial service sector. We have highlighted our role to the FSI Panel, in particular the important role of the Code in enhancing the relationship of trust between consumers and customer owned banking institutions.

Highlighting the Code’s role in industry self-regulation.

**2014 ACS due
30 September 2014.**

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2014 Annual Compliance Statement

The 2014 Annual Compliance Statement has been forwarded to all Code subscribers on 4 June 2014 via email. Please contact Daniela Kirchlindé (dkirchlindé@codecompliance.org.au) immediately if you have not received your copy of the statement.

Please complete the ACS questionnaire and return it **on or before 30 September 2014** by clicking on the 'submit' button or email to info@codecompliance.org.au.

Contact us

If you have a general enquiry or want to provide feedback –
You can write to, call or email us using the details to the left.

If you have a media enquiry –
All media enquiries should be referred to Dr June Smith, Executive Manager, at jsmith@codecompliance.org.au.

Copies of the Code and information about the Code are available on [our website](#) and the Customer Owned Banking Association ([COBA](#)) website.



**CUSTOMER OWNED BANKING
CODE COMPLIANCE COMMITTEE**