

13 November 2018

Ms Ruth Moore
Consumer and Corporations Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: ProductRegulation@treasury.gov.au

Dear Ms Moore

Corporations Amendment (Design and Distribution Obligations and Product Intervention Powers) Regulations 2018

The Customer Owned Banking Association (COBA) appreciates the opportunity to make a submission to the Treasury's consultation on the Corporations Amendment (Design and Distribution Obligations and Product Intervention Powers) Regulations 2018 (the Regulations).

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies). Collectively, our sector has \$113 billion in assets, 10 per cent of the household deposits market and 4 million customers. Customer owned banking institutions account for around three quarters of the total number of domestic Authorised Deposit-taking Institutions (ADIs).

COBA has made multiple submissions¹ to the Treasury, spanning over almost 2 years, explaining that it is not appropriate to extend the Design and Distribution Obligations (DDO) to basic banking products.

We continue to strongly hold this view.

The key distinguishing features of basic banking products are:

- they are very low risk
- they are simple, and
- a consumer can exit the product at any time or with a notice-of-withdrawal period of no more than 31 days.

Basic banking products are outside, and should remain outside, the scope of the DDO regime, rather than be forced into the regime through these proposed regulations.

Extending the DDO to basic banking products, via these regulations, would be a significant policy departure from the current treatment of these products compared to other financial products.

The simple, safe and well-understood nature of basic banking products is already well recognised in the regulatory framework and policymakers have taken considerable care to reduce as far as possible the regulatory burden on issuers of these products. This reflects the critical 'everyday' importance of these products for all consumers and as the chief source of funding for the banking system. As noted in the

¹ COBA submissions to the Treasury of [17 March 2017](#), [9 February 2018](#) and [14 August 2018](#), refer.

Interim Report of the Financial Services Royal Commission's Interim Report: "To participate in the economy, to participate in everyday life, Australians need a bank account."

Policymakers should be careful not to impose unnecessary costs on providers of such a basic requirement for all consumers. Increasing regulatory complexity and cost will detrimentally impact all consumers. As Treasury is aware, regulatory costs "are borne by financial firms and, in turn, by consumers either directly through higher costs for financial products and services, or indirectly through the impact of such costs on competition or innovation in the choice and quality of products and services that consumers can access."²

The Royal Commission's Interim Report suggests "a need to simplify the existing law rather than add some new layer of regulation." The Interim Report observes that "given the existing breadth and complexity of the regulation of the financial services industry, adding any new layer of law or regulation will add a new layer of compliance cost and complexity. That should not be done unless there is a clearly identified advantage."

In our strong view, no such advantage has been clearly identified in relation to applying to the DDO to basic banking products.

The case for applying the DDO to basic banking products, made largely by ASIC³, has relied on the assumption that the DDO would lead to improved outcomes for two groups of consumers:

1. "vulnerable consumers" for whom "fully featured transaction accounts" are unsuitable, and
2. term deposit holders who do not check the return on a term deposit product at the point of rollover into a new term deposit product.

In relation to "vulnerable consumers", the DDO will not require ADIs to offer products that suit "vulnerable consumers". Rather, it will motivate ADIs not to sell products to vulnerable consumers that do not perfectly suit them. Consequently, the DDO is likely to have the effect of *reducing* the range of transaction account products that ADIs offer as ADIs seek to avoid penalties imposed for breaches of the DDO.

In relation to term deposit holders who do not check on the return of a new term deposit when the old term deposit expires, the DDO imposes no new obligations that will assist these investors. ASIC is assuming that the DDO will somehow increase returns on term deposits for investors who do not wish to engage in "active management of the product". There is no basis for this assumption and it certainly should not be used to make a policy case to apply the DDO to all basic banking products.

The market for basic banking products is functioning well, if not perfectly for all consumers. The DDO will not deliver a perfectly functioning basic banking products market but it will deliver a new layer of compliance cost and complexity. This point is well illustrated by the following exchange at a recent Senate Committee Inquiry Hearing⁴ on the DDO Bill:

Senator KETTER: "In that process of determining the target market isn't it almost axiomatic that they would have to identify who is not suitable?"

Ms O'Rourke: "Like I said, it's a little bit tricky because there are the people for whom it is suitable and then there are shades of degree of people for whom it is not suitable. I don't know if it's entirely binary. There will be some people for whom it won't really work, but would it really be damaging? There will be other people for whom it is genuinely not suitable."

This underlines the point that the DDO will discourage innovation in tailoring and targeting of basic banking products because ADIs will be motivated to minimise regulatory risk by targeting products at

² Treasury submission to Financial Services Royal Commission, July 2018.

³ <https://download.asic.gov.au/media/4849144/design-and-distribution-obligations-and-product-intervention-power-revised-exposure-draft-legislation-submission-by-asic.pdf>

⁴ Senate Economics and Legislation Committee [Public Hearing](#), *Inquiry into the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018*, Proof Committee Hansard, Thursday 1 November 2018, the Treasury's witness appearance. Page 32 refers.

the *broadest possible market*. That is, the regulatory regime will make ADIs focus on the regulatory risk of selling a basic banking product to a consumer that the product does not perfectly suit.

The logic of ASIC's position is that this will be, overall, a good outcome for consumers. ASIC appears to have ignored compliance costs and complexity in reaching this position.

The current market for basic banking products includes transaction accounts, savings accounts and term deposits with various features and access options. Some products have very broad target markets, e.g. "everyday accounts". Other target markets include children under 13, youth, students, first home savers and retirees. Other examples are bonus saver accounts, Christmas Club accounts for managing end-of-year funding needs and Community Partnership accounts which allow the holder to support a community group of their choice. Term deposits have variable features such as monthly interest payments or interest paid at maturity.

Access channels and applications attached to accounts include ATM and branch access, EFTPOS, Bank@Post, internet, mobile, card schemes (e.g. Visa, Mastercard), Apple Pay, Android Pay and features utilising the New Payments Platform (e.g. Osko).

Target markets for many of these products are self-evident and were determined without the need for a complex new layer of regulation that is backed by significant civil and criminal penalties.

Tailoring of basic banking products for particular market segments and constant improvement of products to meet consumer needs should be encouraged, not encumbered by red tape.

There is a clear alternative to imposing DDO as a means to encourage ADIs to work harder to ensure that vulnerable consumers are better informed to choose products that best suit their needs. This alternative approach is the use of industry codes of practice:

- the Australian Banking Association's (ABA) new Banking Code of Practice will require ABA members to investigate whether a customer receives a Commonwealth pension or concession and, if so, to provide information about low or no fee transaction accounts that are available, and
- an independent review Customer Owned Banking Code of Practice (COBCOP) is due to commence soon and the new ABA Code will be an important factor in the review of the COBCOP.

According to the DDO Bill's Explanatory Memorandum, the regulation making power is intended to provide the flexibility necessary to future-proof the new regime to ensure its ongoing relevance and effectiveness.

There is no need at this point, prior to commencement of the regime, to be using the regulation making power to expand the scope of the regime.

Withdrawing basic banking products from the scope of the Regulations will have the following benefits:

- the DDO regime will be better targeted at sources of genuine risk of consumer detriment and loss
- it will remove a potential threat to basic banking product development and innovation
- it will reduce the risk of inconveniencing consumers as ADIs negotiate the "tricky" question of product suitability
- it will avoid imposing an unnecessary compliance cost burden on issuers
- smaller banking institutions will not have their competitive capacity damaged by diverting scarce resources away from other priorities that will benefit their customers, and
- ASIC will not have to devote time and resources to administering (e.g. providing guidance & conducting surveillance) the DDO regime for products that are extremely low risk.

COBA strongly advocates an evidence-based approach to public policy reform that is underpinned by established facts and views about a policy issue, alternative policy options, a considered assessment of the costs and benefits of each policy option and consultation of that assessment with stakeholders and obtaining stakeholder views. It is unfortunate and unhelpful that the policy proposal to extend the DDO to basic banking products has not taken this approach.

COBA urges the Treasury to:

- remove basic banking products from the Regulations, or
- delay introduction of the Regulations into Parliament until after the release of the Royal Commission's final report, recognising that the final report is due to be submitted to the Governor-General by 1 February 2019.

The additional time would appropriately enable the Treasury take on board any recommendations from the Royal Commission (e.g. concerning regulation of transaction accounts) and also provide the Treasury with an opportunity to conduct a more comprehensive cost-benefit analysis of the impact of including basic banking products in the DDO regime.

If you have any questions about this submission, please contact Luke Lawler on 02 8035 8448 or Tommy Kiang 02 8035 8442.

Yours sincerely



MICHAEL LAWRENCE
Chief Executive Officer