

14 August 2018

Ms Ruth Moore
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The Treasury
Langton Crescent
PARKES ACT 2600

Email: ProductRegulation@treasury.gov.au

Dear Ms Moore

Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Power) Bill 2018

The Customer Owned Banking Association (COBA) appreciates the opportunity to comment on the second Exposure Draft of the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Power) Bill 2018 (the Bill). COBA is also grateful for the meeting to discuss the Bill with the Treasury on 7 August 2018.

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies). Collectively, our sector has \$111 billion in assets, 10 per cent of the household deposits market and 4 million customers.

Customer owned banking institutions account for around 70 per cent of the total number of Authorised Deposit-taking Institutions operating in the Australian market.

This submission focuses on the proposed Design and Distribution Obligations (DDO) and the intention to extend these obligations to basic deposit products, as set out in paragraph 1.35 of the Exposure Draft Explanatory Memorandum (the Explanatory Memorandum).

COBA is pleased that the Government is consulting further on this matter, given that applying the proposed changes to basic deposit products will impose unnecessary costs and hence unintended consequences on conducting business in Australia and, ultimately, consumer welfare.

No policy case has been established

Consistent with our previous submissions to the Treasury of 17 March 2017¹ and 8 February 2018², COBA continues to submit that absolutely no policy case has been made to extend the proposed DDO to basic deposit products.

COBA recognises that the proposed DDO aims to reduce the number of consumers buying products that do not match their needs. However, the fundamental problem that the proposed DDO seek to address reflects adverse outcomes from large scale

¹ COBA [submission](#) to the Treasury of 17 March 2017: *Design and Distribution Obligations and Product Intervention Power: Proposals Paper, December 2016*.

² COBA submission to the Treasury of 9 February 2018: *Design and Distribution Obligations – exposure draft bill*.

financial investment failures, and poor advice, associated with complex financial products – the adverse outcomes are *not associated* with basic deposit products. As Treasury is aware, the Financial System Inquiry Final Report³, in supporting a design and distribution obligation proposal, focussed on consumer detriment from financial investment scheme failures. There have been no such failures in relation to basic deposit products – consumers have not suffered loss from basic deposit products.

Basic deposit products are fundamental in supporting consumer participation in and contribution to the economy, in terms of enabling consumers to pay in and withdraw funds and execute payment transactions.

Basic deposit products are low-risk and are the simplest and best understood of all financial products. There is no evidence that these products are not being targeted at the right people.

- Indeed, the simple, safe and well-understood nature of basic deposit products is appropriately recognised in the existing regulatory architecture and policymakers have taken considerable care to reduce, as far as possible, the regulatory burden on issuers of these products.

COBA's understanding is that the intention to extend the proposed DDO to basic deposit products, via regulations, largely stems from the disclosure-related issues that ASIC had previously raised in relation to the automatic rollover of term deposit products.

ASIC's view, as set out in its 2013 report, '*Report 353: Further review of term deposits*', is that "the key risk for investors is that at the end of the term, their term deposit can roll over automatically from a high interest rate to a much lower interest rate"⁴.

COBA notes that ASIC's 2013 report follows an earlier review by ASIC in 2009-10, '*Report 185: Review of term deposits*'⁵ refers, which found aspects of term deposit product disclosure that were of concern to ASIC.

Critically however, ASIC's 2013 report emphasised that industry has largely adopted ASIC's recommendations from its 2009-10 review and that "consumer outcomes on rollovers of term deposits have improved by billions of dollars"⁶.

As part of the release of ASIC's 2013 report, ASIC's Deputy Chair, Mr Peter Kell, clearly emphasised that "while term deposits are generally a safe, low-risk investment, they should not be a set-and-forget investment, and investors should still shop around..."⁷.

- As the Treasury would be aware, for a term deposit to qualify as a 'basic deposit product', the funds must be available either at-call or at relatively short notice and no more than 31 days' notice. This means that any anyone who is unhappy with the interest rate on their term deposit can withdraw the funds and put them in a different term deposit with a higher interest rate.

On this basis, COBA submits that the intention to extend the proposed DDO to basic deposit products is an entirely inappropriate and excessive response to ASIC's 2013 further review of term deposits, which found that significant improvements had already been made by industry to improve product disclosure.

In addition to being extended to address similar identified problems, the proposal to extend the DDO to basic deposit products should identify whether the intended public benefits – such as enhanced consumer welfare – exceed the potential costs of change.

³ Financial System Inquiry [Final Report](#), November 2014, page 199 refers.

⁴ ASIC Report, [REP 353](#) *Further review of term deposits*, released 4 July 2013.

⁵ ASIC Report, [REP 185](#) *Review of term deposits*, released 1 March 2010.

⁶ ASIC Media Release, [13-161MR](#) ASIC releases follow-up term deposit report, 4 July 2013.

⁷ ASIC Media Release, [13-161MR](#) ASIC releases follow-up term deposit report, 4 July 2013.

COBA submits that, in relation to basic deposit products, there is no evidence that the proposed DDO would improve consumer outcomes. There is a significant risk that this will detrimentally impact business and ultimately consumer welfare, chiefly in terms of:

- dampening product and service innovation
- reducing agility and speed in product and service development
- inconveniencing consumers, and
- increasing costs for product and service providers.

Despite the clear risks, an appropriate cost benefit analysis appears to remain absent.

Contradiction with Government messaging about competition

Unnecessarily applying the proposed DDO to basic deposit products, and hence increasing regulatory costs on all authorised deposit-taking institutions (ADIs), would ignore the findings of the Government's expert advisers on regulation and competition, i.e. the Australian Competition and Consumer Commission (ACCC), Productivity Commission and Treasury.

- The Chair of the ACCC, Mr Rod Sims, recently stressed that "many people instinctively think that more regulation is the answer, but in our experience more regulation can be harmful to consumers, especially in sectors of the economy that are already heavily regulated"⁸.
- The Productivity Commission, in its Report on its Inquiry into Competition in the Australian Financial System⁹ emphasised the following findings in relation to the possible negative impact of regulation on competition in the financial system:
 - "Regulatory settings and the (actual or perceived) interventions of the Australian Government are having a significant impact on competition in the financial system."
 - "Regulation is dense, and it may act against customers' interests."
 - "Regulatory arrangements can further entrench the market power of those incumbents that have the expertise and resources to cope with regulatory requirements."
 - "The balance between competition and stability has failed where ... regulators are insufficiently interested in analysing the costs that their actions impose."
- The Treasury's 13 July 2018 submission¹⁰ on key policy issues to the Financial Services Royal Commission also raised concerns about the potential impact of regulatory costs on competition:
 - 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."
 - "Regulatory costs impact all firms but can have a disproportionate impact on smaller firms and new entrants."
 - "...a financial system that is overburdened by regulation will fail to deliver on its objectives of meeting the financial needs of the community...", and

⁸ [Speech](#) by ACCC Chair, Mr Rod Sims, 'Companies behaving badly?', 13 July 2018.

⁹ Competition in the Australian Financial System Productivity Commission [Inquiry Report](#), No. 89, 29 June 2018, pages 171, 3, 6 and 75, respectively.

¹⁰ Treasury's Financial Services Royal Commission [Submission](#) on key policy issues, 13 July 2018, pages 30 and 13.

- “Poorly targeted interventions can impose high compliance costs that adversely impacts efficiency in the system and may have disproportionate effects on smaller entities and therefore competition.”.

Indeed, applying the proposed DDO to basic deposit products runs counter to the Government’s recent messages about promoting competition rather than adding new regulatory costs.

- The Treasurer, the Hon Scott Morrison MP, in his recent address to the Address to Australian British Chamber of Commerce¹¹, raised his concern that “banking and financial regulation has had a dulling effect on customers”, and how regulation can sometimes be “...designed to protect the regulator rather than the customer...”.
- The Treasurer has also reaffirmed¹² the Productivity Commission’s Inquiry findings (as above) by emphasising that “...if we want a more competitive banking system then we need customers not being put to sleep with bewildering regulation...”.
- Additionally, the Minister for Revenue and Financial Services, the Hon Kelly O’Dwyer MP, recently emphasised that “ultimately it is competition – not regulation – that is the best means of ensuring that consumers and investors get value for money in financial products and services.”¹³.

Consumers already benefit from a strong level of protection

The present regulatory framework already provides consumers with a strong level of protection in relation to the use of basic deposit products.

It is important to recognise the critical role that Australia’s robust prudential regulatory framework and the Financial Claims Scheme (FCS) deposit guarantee play in protecting depositors of ADIs from potential loss.

Parallel to this, it is also important to recognise the critical role of other legislative protections, being the general obligations for AFS licensees under the *Corporations Act 2001* (Corporations Act), including external dispute resolution, and the requirements of industry codes such as the Customer Owned Banking Code of Practice and the Code of Banking Practice.

COBA submits that the existing consumer protection framework is well understood and operates effectively to protect consumers from potential loss.

To help put this into context, there are tens of millions of basic deposit products held by Australian consumers. However, consumer disputes taken to FOS for external dispute resolution are relatively low for deposit taking and payments systems.

- According to the Financial Ombudsman Service (FOS) 2016-17 Annual Review¹⁴, there were 1,861 disputes about deposit taking (accounting for 7 per cent of all accepted disputes by FOS) and 1,331 disputes about payments systems (accounting for 5 per cent of all accepted disputes by FOS).

On this basis, any decision to extend the proposed DDO to basic deposit products should be based on clear and specific evidence of loss that cannot be addressed under the present legislative framework. However, it does not appear that this important analysis has been undertaken.

¹¹ Treasurer’s [address](#) to the Australian British Chamber of Commerce, 3 August 2018.

¹² Treasurer’s Doorstep [interview](#), Australian British Chamber of Commerce, 3 August 2018

¹³ Minister for Revenue and Financial Services, [Media Release](#), *Government takes action to enhance ASIC’s capabilities*, 28 March 2018.

¹⁴ FOS’ 2016-17 [Annual Review](#), pages 80 and 84 refer.

Inconsistency with FSI Recommendation

As Treasury is also aware, the FSI Final Report, in recommending a “targeted” design and distribution obligation, stated that “simple low-risk products such as basic deposit products would not require extensive consideration, and may be treated as a class with a standard approach to their design and distribution.”¹⁵

- However, COBA notes that there is no capacity within the Bill to treat basic deposit products as a class with a standard approach.

With that said, because there is no evidence that the proposed DDO would improve consumer outcomes in relation to basic deposit products, the Government should go further than the FSI’s proposed “class” treatment by not extending the DDO proposal to cover basic deposit products.

Indeed, not extending the DDO proposal to basic deposit products would also ensure that continuity is appropriately maintained with the established ‘light-touch’ treatment of basic deposit products in the regulatory framework.

COBA again requests the government to confirm that basic deposit products are excluded from the regime and that that it has no intention of using the regulation-making power to include basic deposit products.

If you have any questions or comments in relation to our submission, please contact Tommy Kiang, Senior Policy Manager, on [REDACTED] or at [REDACTED].

Yours sincerely



MICHAEL LAWRENCE
Chief Executive Officer

¹⁵ Financial System Inquiry [Final Report](#), November 2014, page 199 refers.