

9 October 2019

Ruth Moore
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The Treasury
Langton Crescent
PARKES ACT 2600

Email: ProductRegulation@Treasury.gov.au

Dear Ms Moore

Corporations Amendment (Design and Distribution Obligations) Regulations 2019

The Customer Owned Banking Association (COBA) appreciates the opportunity to comment on the revised version of the Exposure Draft of the Corporations Amendment (Design and Distribution Obligations) Regulations 2019 (the Regulations).

COBA made a submission¹ to the Treasury in November last year in response to its consultation on the initial version of the Regulations. The comprehensive arguments that we expressed in that submission remain valid for the purposes of this consultation and will not be repeated in full in this submission.

COBA understands that the purpose of the Regulations is to shape the Design and Distribution Obligations (DDO) regime by extending the DDO regime to additional persons and/or products and excluding certain products from the DDO regime. We note the twelve products listed at Schedule 1 of the Regulations that would be excluded from the DDO regime.

COBA is acutely aware that the revised version of the Regulations reflects last minute parliamentary amendments incorporated into the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019*.

The amendments, made in April this year, extended both the DDO regime and Product Intervention Powers to cover additional financial products regulated under the *Australian Securities and Investments Commission Act 2001*, which also captures credit products and basic banking products.

Disappointingly, the amendments were rushed through under a guillotine – debate in the Lower House on the amendments lasted about nine minutes, while debate in the Senate lasted for about one minute.

Despite the significant expansion in the scope of the DDO regime effected by the amendments, no public consultation or cost-benefit analysis was undertaken.

COBA's reading of the transcript of debate² in Parliament on the then draft DDO legislation is that there was a view that the amendments would operate to implement recommendations made by Commissioner Hayne in the Final Report of the Financial Services Royal Commission.

¹ COBA's 13 November 2018 [submission](#) to the Treasury on the Corporations Amendment (Design and Distribution Obligations and Product Intervention Powers) Regulations 2018, refers.

² [Second Reading Speeches](#), Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2019.

It is important to clarify that Commissioner Hayne *did not recommend* that the DDO and PIP be extended to financial products defined under the ASIC Act.

The Royal Commission Final Report noted: “The design and distribution powers do not now extend to credit products. More significantly for present purposes, those powers do not extend to financial products that are not regulated by the Corporations Act, but are regulated by Division 2 of Part 2 of the ASIC Act. The product intervention powers have a broader reach, but nonetheless do not extend to all ASIC Act products. It is not apparent why the powers should not extend, as ASIC has requested, to all financial products and credit products within ASIC’s regulatory responsibility.”

Commissioner Hayne asked a question about whether there was a case to extend the DDO but did not recommend that extension. The Commissioner’s question is answered, in our view, by considering the genesis of the DDO and PIP proposals, being the 2014 Financial System Inquiry (FSI).

The FSI Final Report, in supporting a DDO proposal, focussed on addressing detrimental consumer outcomes from large scale financial investment failures, and poor advice associated with complex financial products³. There was absolutely no focus on credit products or basic banking products.

Given the absence of any consultation on the April amendments and clear intent of the FSI, COBA urges the Treasury to **exempt credit products and basic banking products** from the DDO Regime **or delay introduction of the revised Regulations**, until after there has been a comprehensive consultation and cost-benefit analysis that provides clear evidence to justify the inclusion of those products.

COBA strongly advocates an evidence-based approach to public policy reform that is underpinned by appropriate consultation, established facts and views and a considered cost-benefit assessment of each policy option. It is unfortunate and unhelpful that the policy to extend the DDO to credit products and basic banking products has bypassed this established approach to policy reform.

If you have any questions or comments in relation to any aspect of our submission, please contact Tommy Kiang, Senior Policy Manager, on 02 8035 8442 or at tkiang@coba.asn.au.

Yours sincerely



MICHAEL LAWRENCE
Chief Executive Officer

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