

9 April 2021

Ms Ly Reeve
Regulatory Powers and Accountability Unit
Financial System Division
Treasury
Langton Cres
Parkes ACT 2600

By email: breach.reporting@treasury.gov.au

Dear Ly

COBA appreciates the opportunity to provide feedback on the *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Regulations 2021: breach reporting* (breach reporting regulations).

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies). Collectively, our sector has \$146 billion in assets, around 10 per cent of the household deposits market and more than 4 million customers. Customer owned banking institutions account for around two thirds of the total number of domestic Authorised Deposit-taking Institutions (ADIs) and deliver competition, choice and market leading levels of customer satisfaction in the retail banking market.

Under the breach reporting regime, a breach of a core obligation is taken to be significant if the breach is constituted by a contravention of a civil penalty provision under any law, other than a civil penalty provision that is prescribed by the regulations.

However, as noted in the Explanatory Memorandum to legislation¹, even if a civil penalty provision is prescribed by the regulations, the breach may still be significant and reportable if one of the other circumstances in the deemed significance test apply, or if the breach is significant under the second significance test.

This underlines the broad scope of the regime.

There will be a very broad obligation on licensees, and potentially a very significant compliance burden, so we support the capacity to prescribe certain civil penalty provisions to reduce the number of provisions where any breach is automatically significant.

We support the list of prescribed civil penalty provisions proposed in the draft regulations but we are concerned that the initial list may prove inadequate.

The extent of further civil penalty provisions that should be prescribed will only become clear after the breach reporting regime is implemented and operationalised by licensees.

The regulation-making power is intended to be used to reduce the regulatory compliance burden on licensees and to target ASIC's surveillance to problematic areas.

¹ Financial Sector Reform (Hayne Royal Commission Response) Bill 2020 Explanatory Memorandum

As foreshadowed in the Explanatory Memorandum, we expect the Government to use the regulation-making power to quickly reduce the burden on licensees should ASIC start receiving a large number of largely unproblematic breach reports for minor, technical or inadvertent breaches of civil penalty provisions.

We urge the Government to publicly commit to:

- review the breach reporting regime after six months and at regular intervals, and
- to move quickly to add civil penalty provisions to the prescribed list as needed.

Thank you for the opportunity to provide these comments. If you wish to discuss any aspect of this submission please contact Maryanna Vasilareas (mvasilareas@coba.asn.au).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Michael Lawrence', is positioned above the printed name.

MICHAEL LAWRENCE

Chief Executive Officer