

30 November 2022

Secretariat
Financial Services Legislation
Australian Law Reform Commission

Via email: financial.services@alrc.gov.au

Dear Secretariat

Interim Report B: Financial Services Legislation

COBA appreciates the opportunity to provide feedback to the ALRC on its *Interim Report B: Financial Services Legislation*.

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies). Collectively, our sector has over \$160 billion in assets, around 10 per cent of the household deposit market and around five million customers. Customer owned banking institutions account for around two-thirds of the total number of domestic Authorised Deposit-taking Institutions (ADIs).

Our submission addresses the following topics:

- Scope of the review.
- Proposal B1 – legislative hierarchy.
- Proposal B8 – shared rule-making power.

Scope of the Review

COBA broadly supports the recommendations and proposals made in Interim Report B and the tidy ups of the law suggested in Interim Report A, which are now in the process of being legislated. We think the proposals in Interim Report B are more substantive and are more likely to achieve the goal of simplifying and rationalising the law. We are supportive of the ALRC's approach noting the significant limitations placed on the scope of its review, especially its inability to examine the underlying policy intent of much of the financial services laws.

We believe that a wider review of the corporations and financial services laws is needed to rationalise, simplify, and modernise the framework. We believe this can be achieved in a way that will make it easier for our members to comply while also retaining robust consumer protections.

Proposal B1 – legislative hierarchy

The proposed legislative hierarchy in Proposal B1 is a sensible suggestion and we believe it will be successful in helping our members to navigate and have confidence that they have found all the key provisions they need on a given issue. We believe this is a strong first step that will hopefully be eventually adopted more broadly throughout the *Corporations Act 2001* and its myriad mix of subordinate legislation.

Proposal B8 – shared rule-making power

The main area of concern for COBA is Proposal B8 which suggests that the rule-making power be jointly vested in the Minister and the Australian Securities and Investments Commission (ASIC). We do not support the power being shared between the Minister and an executive agency and our preference is for the usual practice of subordinate legislation making power being vested with the Minister.

COBA is uncomfortable with the slow trend over the last couple of decades where subordinate legislation making power is creeping from the appropriate authority of the Minister into executive agencies such as ASIC. We believe that this trend is inappropriate.

Traditionally, subordinate legislation making power vests some limited law-making power from the Parliament to the executive branch in the form of the Minister. This power is intended to be used for relatively minor matters, such as the extra detail that provides specificity to a principle in the primary Act. Parliament considered this delegation to be appropriate to save its time from dealing with very minor matters but in creating this delegation there remained a conduit for accountability in that the Minister is an elected Member of Parliament and could be held directly accountable by Members. Additionally, either House of Parliament has the ability to disallow any regulations it considers to be inappropriate.

It is our view that vesting delegated legislation making power for the Corporations Act in an executive agency can undermine accountability and transparency. ASIC is not directly accountable to Parliament in the same way that the Minister is and are at best only partially accountable through Parliament's committee system. The committee system's limited ability to allow Parliamentarians to directly hold bureaucrats accountable in the same way as they can with the Minister on the floor of Parliament is of concern especially as more power is granted to these executive agencies over time.

Thank you for the opportunity to respond to Interim Report B. If you wish to discuss any aspect of this submission, please contact Robert Thomas (RThomas@coba.asn.au).

Yours sincerely



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Chief Executive Officer