7 February 2020

Mr Andrew Fawcett
Senior Executive Leader, Strategic Policy
Australian Securities and Investments Commission

Email: andrew.fawcett@asic.gov.au

Dear Mr Fawcett

ASIC's Performance against the Regulator Performance Framework

The Customer Owned Banking Association (COBA) welcomes the opportunity to comment on ASIC's draft self-assessment of its performance against the Australian Government's Regulator Performance Framework (RPF) over the 2018-19 reporting period.

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies). Collectively, our sector has over $128 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) and deliver competition and market leading levels of customer satisfaction in the retail banking market.

COBA highly values its relationship and positive interactions with ASIC, including our regular liaison meetings.

We broadly agree that ASIC's performance against the RPF key performance indicators (KPIs) demonstrates a strong commitment to achieving the objectives of the RPF. We also agree with ASIC's comment that there are "some areas for improvement" and we outline below some of these areas identified by COBA and COBA members.

As noted in ASIC's self-assessment, the RPF is designed to assess one aspect of a regulator's performance – "the extent to which it minimises regulatory burden while fulfilling its other activities."

Costs of regulation are a major issue for COBA members. COBA members' sensitivity about regulatory costs has become more acute in recent years due to the relentless increase in the volume and complexity of new regulatory requirements from financial regulators and legislative reform. COBA members see this wave of regulatory change continuing for the next few years, notably in response to the Financial Services Royal Commission.

COBA urges ASIC and Treasury to more systematically assess the cumulative cost burden of continuous regulatory change in banking, particularly on smaller banking institutions. Each individual measure may have merit when seen in isolation, but resources are limited and each new regulatory compliance deadline or reporting obligation diverts resources from strategic priorities such as responding to technological change.

KPI 6: Regulators actively contribute to continuous improvement of regulatory frameworks.

ASIC is an influential voice in regulatory policy debates and took a leading role in the debate about the scope of the design and distribution obligations (DDO) regime. The draft self-assessment mentions the DDO as one of several key law reform initiatives where ASIC provided input.

The draft self-assessment notes that: "Where appropriate, ASIC identifies and proposes opportunities to improve the regulatory framework, including as a result of post-implementation reviews."

The draft self-assessment also notes that: "We follow the Australian Government guide to regulation when developing policy proposals for consultation. This includes being clear about the problem to be addressed, such as market failure, regulatory failure, or an unacceptable hazard or risk."

In COBA's view, ASIC did not live up to this commitment in its advocacy to expand the DDO to cover basic deposit products and consumer credit.

COBA is a strong supporter of evidence-based 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. Our view is that ASIC did not take this approach in supporting the extension of the DDO to basic banking and credit products.

In advocating for this extension, ASIC should have transparently assessed the likely compliance costs and the impact of these compliance costs on product issuers and consumers. Continuous improvement of regulatory frameworks must involve consideration of compliance costs. This important dimension of regulator performance was absent in ASIC's advocacy in relation to DDO.

The DDO regime, which commences in April 2021, is a significant regulatory intervention and the regime's scope was significantly expanded with ASIC's support. There has been no adequate regulatory impact examination process to test whether this extension of the regime will amount to an improvement to the regulatory framework.

KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities

We note that ASIC assesses its performance against KPIs 1 & 6 based on how the regulator demonstrates an understanding of the markets in which its regulated population operate and best practice regulatory approaches to those markets. ASIC also considers how it makes it easier for regulated entities to do business, including by implementing measures to reduce red tape.

The following examples indicates some room for improvement against KPI 1.

Use of 'bank'

ASIC's Registry advised a COBA member ADI in April 2019 that the member was unable to register the term 'bank' in its name despite a change in the law that took effect almost 12 months earlier allowing any ADI to rebrand as a bank without restriction.

ASIC was apparently unaware of the change in the law implemented as part of a Government reform agenda to reduce barriers to new entrants to the banking sector and provide a more level playing field amongst ADIs.

ASIC's mistake "created a great deal of extra work" for the COBA member.

COBA notes that ASIC responded promptly to fix the problem after COBA alerted the regulator's Credit, Retail Banking and Payments team to the matter.

Service levels

A COBA member's experience of poor service delivery by ASIC: "We were attempting to renew a business name recently but also wanted to change the email contact - 3 email requests (which each stated a 48 hour response time that was not met), a web chat and several 1300 phone calls (with long wait times) and we eventually got the invoice issued manually as the system had locked us out. It took almost 2 weeks to resolve.

> "We also had issues with lodging our ACL Compliance Certificate – the system had not accepted our updates and after follow up calls over a week we finally submitted the return on the final due date only to then receive a fine that we complained about and was subsequently waived. Similarly, we had issues lodging our annual accounts at the end of 2019.
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> "At times ASIC does send follow up emails to request feedback on service – recently I had one that asked me how satisfied I was – I responded with 'not at all' as the problem was still unresolved. This was not followed up on but I did receive a second feedback request that I tried to reply to only to be told I had already responded so could not submit!"

Thank you for the opportunity to provide this feedback.

If you have any questions or comments in relation to any aspect of our submission, please do not hesitate to contact Luke Lawler, Director – Policy, on [redacted].

Yours sincerely

MICHAEL LAWRENCE
Chief Executive Officer