

18 August 2021

Mr Stephen Garofano  
Strategic Policy Adviser  
Strategy Group  
Australian Securities and Investments Commission

By email: [hawking.submissions@asic.gov.au](mailto:hawking.submissions@asic.gov.au)

Dear Mr Garofano

### **ASIC consultation on CP 346 Hawking Prohibitions**

COBA appreciates the opportunity to provide a submission to ASIC's consultation CP 346 the hawking prohibitions.

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies).

Collectively, our sector has \$147 billion in assets and more than 4.5 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 and market leading levels of customer satisfaction in the retail banking market.

#### **Key points**

- **COBA requests that RG 38 be updated to include specific references to the application of the hawking prohibitions for products exempt under the regulations, particularly basic banking products.**
- **COBA requests ASIC to provide clarity in RG 38 about the distribution of home building insurance by lenders to borrowers under the hawking prohibitions.**

#### **Basic banking products**

ASIC's guidance intends to give "additional clarity on how the changes may affect commercial practices, systems and processes". It is designed to "help industry prepare for compliance with the new regime once it commences".<sup>1</sup>

ASIC's Consultation Paper CP 346 notes that the Government has power to exempt certain products of situations from the hawking provisions, and that ASIC will update its guidance once any regulations have been made. The draft RG 38 makes references to products and entities exempt from the hawking prohibition at Parts 38.20 and 38.21.

Since the publication of the CP 346, Regulations<sup>2</sup> for the hawking regime have been finalised.

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<sup>1</sup> [ASIC Media Release - 21-181MR ASIC consults on draft guidance for the hawking reforms – 21 July 2021](#)

<sup>2</sup> [Financial Sector Reform \(Hayne Royal Commission Response\) \(Hawking of Financial Products\) Regulations 2021](#)

To help industry better prepare for compliance with the new regime, COBA requests that ASIC update its guidance to reflect the full extent of the hawking prohibitions, including its treatment of products that are exempt under the Regulations.

Basic banking products are an exempt class of products under the Regulations and this exemption captures a wide range of products issued by ADIs. These products are “*well understood by consumers and therefore not appropriate to be included in the anti-hawking regime*”.<sup>3</sup>

The Regulations exempt basic banking products from the hawking prohibitions as “*due to the simple and relatively low-risk nature of these products it is expected that consumers will be able to assess their suitability quickly and easily and there is a low risk of consumer harm associated with these products.*”<sup>4</sup>

COBA suggests that ASIC consider including specific examples and scenarios in RG 38 that will reflect ASIC’s expectations around basic banking products under the hawking prohibitions. This will assist ADIs in meeting their regulatory obligations in providing everyday products for all Australians.

For example, COBA recommends that ASIC update RG 38 to capture the following scenario mentioned in the Regulation’s Explanatory Statement with respect to basic banking products:

*“Contact is consumer initiated if the consumer takes positive steps to contact the offeror and the contact is not made in response to previous contact initiated the offeror (e.g. returning a missed phone call).”*<sup>5</sup>

Updating RG 38 to capture the treatment of basic banking products from the hawking prohibitions will support industry to better understand the scope of the hawking prohibitions. It will also create consistency between the Regulations and the ASIC guidance.

### **Clarity on the treatment of home building insurance**

Parts RG 38.65 to RG 38.66 provide detail on how ASIC will generally determine what is “*reasonably within the scope of consumer’s consent*” for the purposes of the hawking prohibitions.

*“(c) a reasonable person would consider the financial product to be within the scope of the consumer’s consent—for example when the product:*

*(i) covers the risks that the consumer consented to being contacted about;*

*(ii) has the same purpose or function as the product that the consumer consented to being contacted about (see Example 9); or*

*(iii) is so closely related to the product that the consumer consented to being contacted about that the consumer would reasonably expect to be offered that product.”*<sup>6</sup>

However, part RG 38.19 notes that “*where an add-on insurance product is exempt from the deferral sales model regime (such as by s12DX or 12DY of the ASIC Act), the hawking regime will apply to it*”.

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<sup>3</sup> [Treasurer Josh Frydenberg Media Statement: Outcome of consultation on deferred sales model for add on insurance products – 8 July 2021](#)

<sup>4</sup> [Financial Sector Reform \(Hayne Royal Commission Response\) \(Hawking of Financial Products\) Regulations 2021 – Explanatory Statement](#)

<sup>5</sup> [Financial Sector Reform \(Hayne Royal Commission Response\) \(Hawking of Financial Products\) Regulations 2021 – Explanatory Statement](#)

<sup>6</sup> [Attachment to CP 346 Draft Regulatory Guide RG 38 The Hawking Prohibition](#)

COBA members are concerned by the lack of clarity on home building insurance with respect to the hawking prohibitions. Specifically, it is unclear whether ASIC considers that offering home building insurance to a home loan borrower would fit “*reasonably within the scope of consumer’s consent*”.

The importance of home building insurance for consumers is demonstrated by its status as an exempt class of insurance products under the deferred sales model for add-on insurance. The Government’s draft Explanatory Statement for the deferred sales model Regulations highlighted that:

*“home building insurance provides convenience for consumers, value for money and has a low risk of underinsurance. It generally just covers loss in the event of destruction or damage to a building principally used as a place of residence”.*<sup>7</sup>

Home building insurance provides coverage against damage or destruction and covers the cost of repairing or replacing a home. The timing of securing home building insurance is an important consideration for borrowers to ensure adequate protection.

As ADIs, COBA members also face a range of obligations and expectations from APRA to ensure that homes that are security for a home loan are covered by insurance.<sup>8</sup> Given that it is a requirement for ADI lenders to ensure that borrowers insure their house and that it is in the interests of the borrower to insure their house, it is important that there is clarity about the regulatory treatment of lenders offering home building insurance to home loan borrowers.

COBA urges ASIC to provide clearer guidance with respect to the treatment of home building insurance under the hawking prohibitions.

Providing clarity and certainty about the legal position for ADIs offering home building insurance to home loan borrowers would have the following benefits:

- convenience for customers due to a reduced consumer time and effort needed to secure an important and highly-valued financial product
- reduced risk to borrowers due to the greater likelihood of borrowers obtaining home building insurance coverage in a timely way
- reduced costs on ADI lenders in meeting their prudential obligations, and
- reduced costs that ADI lenders would otherwise bear in terms of legal advice, changes to systems and processes and staff training.

While we note that the draft RG includes *Example 10: reasonable expectation of being offered a product*, which discusses travel insurance, our members would benefit from specific examples relating to ADIs and the treatment of mortgages and insurance.

Thank you for the opportunity to provide these comments. If you wish to discuss any aspect of this submission please contact Maryanna Vasilareas ( [REDACTED] ).

Yours sincerely,



**MICHAEL LAWRENCE**  
Chief Executive Officer

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<sup>7</sup> [Draft Explanatory Statement - Australian Securities and Investments Commission Amendment \(Deferred Sales Model Exemptions\) Regulations 2021](#)

<sup>8</sup> See [Prudential Standard APS 220 Credit Risk Management](#) (commences 1 January 2022) and [APG 223 Residential Mortgage Lending](#)