

12 March 2025

Ms Kate Metz
Senior Executive Leader
Regulatory Reform and Implementation
Regulation and Supervision
Australian Securities and Investments Commission

Via email: rri.consultation@asic.gov.au

Dear Ms Metz

ASIC consultation on reportable situations regulatory relief

COBA thanks ASIC for the opportunity to provide feedback on its consultation on CS 16 Reportable situations – additional relief.

COBA is the industry association for Australia's customer owned banks (mutual banks and credit unions). Collectively, our sector has over \$182 billion in assets and is the fifth largest holder of household deposits. Our members range in size from less than \$200 million in assets to around \$25 billion in assets – all significantly smaller than their ASX-listed peers. Customer-owned banks 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.

COBA supports ASIC's efforts to provide additional relief to reporting entities and any steps taken are welcome. Our members spend significant resources drafting and submitting deemed reportable situations relating to very incidental breaches, which could be better directed towards supporting continuous improvement activities.

However, our members' assessment of the proposed measures is that it is overly restrictive and is unlikely to provide meaningful relief. Our members assess that the costs of implementing these changes to their processes are unlikely to outweigh the benefits that may be gained in time and costs savings. Some members, in re-examining previous reporting on misleading and deceptive conduct breaches to ASIC, have not been able to identify any reported breaches that would have met the proposed criteria.

COBA believes that with changes these measures could become more effective in providing relief.

Suggested changes to proposed measures

Linkage of the conditions of relief

To help expand the applicability of these measures, ASIC should expand them to apply across other obligations and not be limited to misleading and deceptive conduct. Additionally, the link requiring each of these conditions be met for the relief to apply should be broken. The four measures should remove the 'and' and replace with 'or'. If this link is not broken, then very few breaches will qualify. Shifting from requiring all conditions be met will provide more flexibility to reporting entities and make it

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more likely to capture more incidental breaches. If the link is not broken the following examples would still need to be reported despite having the 'flavour' of what is attempted to be excluded:

- A breach was remediated within five days, impacted 10 customers, and the total financial loss was \$450.
- A breach was remediated within 40 days, impacted two customers, and the total financial loss was \$150.
- A breach was remediated within 20 days, impacted four customers, and the total financial loss was \$1,500.

If the link is to be maintained, ASIC should consider providing additional flexibility to the measures. One option would be to expand the criteria to allow for impacts to be assessed on a proportional basis. For example, instead of limiting to circumstances of five customers or less the test could be whether 5% or more of the product's holders were impacted. Further, instead of imposing a \$500 damage or loss cap the test could be whether the financial impact was 5% or more of the product's previous financial year's revenue. In instances where these thresholds could not be identified (e.g., through lack of available data) then the tests proposed by ASIC could be adopted.

Another option would be for ASIC to still allow the relief if the majority of the applicable conditions were met. This would mean that each of the three above examples would be eligible for relief as they each meet the majority of the conditions proposed.

Appropriateness of the 30-day rectification period

We believe that the 30-day rectification period proposed is overly restrictive. Many members undertake their quality assurance and monitoring processes monthly. This means that the 30 days may not be sufficient for our members to identify and rectify issues. We propose that a 90-day timeframe would be more valuable in both providing meaningful compliance relief while still ensuring timely identification and resolution of breaches.

Alternatively, additionally flexibility could be provided by allowing the exemption to apply to instances where the breach was more than 30 days ago, but the institution has taken all rectification steps but still needs to finalise the a remediation payment. This is particularly important as our members prioritise triaging the breach meaning that remediation is often delayed until the event has been contained and impacted customers identified. This means that the remediation payment can often not be paid within the 30-day period even if all other rectification steps have been completed.

Damage or loss cap

We consider the \$500 damage or loss cap across five customers to be too low to provide meaningful relief. Where a reportable breach has or will result in financial loss and applies to five or less customers, it will generally exceed this cap. If the link between the total damage or loss cap and the five-customer limit is maintained, then we suggest raising the cap. However, if the link between the total loss cap and the five customers is disconnected then the cap of \$500 loss per customer may be appropriate.

Other issues

If ASIC chooses to maintain the link between the cap and number of customers, then it should adopt a similar approach to 'material loss or damage' at the individual customer level. ASIC's proposed approach does not appear to consider financial loss or damage under \$100 to be significant for an individual customer if we average out the \$500 loss over five customers. If ASIC made this additional change, it would help provide further clarity to our members on materiality at the individual customer level as well.

Finally, we ask that ASIC update RG 78 as soon as possible after the change is made. This is important to our members considering the complexity of this regime and the interaction this Regulatory Guide has with the proposed relief.

Additional opportunities for relief

COBA has identified several opportunities where ASIC could provide additional relief. These measures would help provide meaningful regulatory relief and ensure that the regime continues to align with the legislative intent. That is, discouraging conduct by reporting entities that has caused or is likely to cause financial loss or other harm to consumers.

The first option would be to provide small ADIs with more flexibility in how they investigate and report identified reportable situations. For example, 60 days could be provided for investigations and 90 days for the submission of all reportable situations. This is instead of the current situation that only allows for 90 days where there are breaches of similar previous reportable situations. If ASIC believes the proposed 90 days reporting period to be too long to apply to all reportable situations, then alternatively we propose that this 90-day period could be limited to those matters that fall below a materiality threshold, for example, it impacts 10,000 customers or less, or it has a financial impact of \$100,000 or less.

Another option would be amending the *Corporations Act 2001* and the *National Consumer Credit Protection Act 2009* to remove the deeming of all breaches of the misleading and deceptive conduct provisions. Instead reporting entities would only be required to report significant breaches.

ASIC could also improve the regime's administration by further streamlining the form for lodging or updating the report. Given the tight reporting timeframes, and the need to make amendments as more information becomes available, the form must be as easy to use as possible. We acknowledge that ASIC has already made efforts in this space, but we believe that more could be done. This is especially important for our members which have more limited resources compared to the major banks while being subject to the same reporting obligations and timeframes.

We thank ASIC for taking our views into account. [REDACTED]

Yours sincerely

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