

15 October 2025

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Australian Securities and Investments Commission

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REP 813 Regulatory simplification

COBA welcomes the opportunity to respond to the Australian Securities and Investments Commission (ASIC) consultation on REP 813 Regulatory Simplification.

COBA is the industry association for Australia's customer-owned banks (mutual banks and credit unions). Collectively, our sector has over \$185 billion in assets and is the fifth largest holder of household deposits. 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.

As smaller banks, customer-owned banks can be subject to 'one size fits all' regulation aimed at much larger entities with more resources and who serve a much more diverse customer base. To this end, COBA welcomes measures by ASIC that reduce regulatory complexity while promoting flexibility, innovation and positive consumer outcomes.

For ease of reference, we have set out our submission in order of topics raised in REP 813.

Key Points

COBA encourages ASIC to simplify access, presentation and content of regulatory information. This includes the various ASIC portals, registries and website.

COBA member banks support regulatory guidance that sets clear expectations and provides certainty.

ASIC should consider proportionality from the outset when developing its expectations in regulatory documents, including regulatory guides, reports and legislative instruments. A one-size-fits-all approach to regulation fails to recognise the inherently different risk profile of our sector. A pivotal shift is necessary – one that aligns regulation with the actual risks posed by different banking institutions and that has simplification at its core.

Regulatory guides are often outdated. We suggest considering dynamic ways such as the use of webpages or supplementary guides to ensure information remains current without needing to go through formal revision cycles.

Regulatory documents, including regulatory guides, reports and legislative instruments are overly complex, difficult to navigate and use. We encourage use of plain English and avoidance of legalese.

Sunsetting process of instruments should be simpler, provide certainty and where possible, brought into legislation.

We encourage ASIC to have a dedicated contact person within ASIC for each customer-owned bank that is responsible for the relationship with that bank.

ASIC should consider improving the user experience in their call centre and where possible, provide stakeholders with specific answers instead of referral to website materials.

Lastly, there are parts of the regulatory framework that could benefit from law reform and are unlikely to have a meaningful negative impact on consumers.

Website

COBA member banks highlight that navigation on the ASIC website remains extremely complex, and key information and resources are difficult to find. Member banks, however, acknowledge that the search function and the subject-specific hubs are a slight improvement on earlier website versions.

Specific challenges member banks identified include:

- **Professional registers:** It is difficult to search for licensees on the ASIC Professionals Register and confusing to need to search multiple registers instead of one centralised search area.
- **Search functionality:** The search function on the ASIC website is not optimised. For example, a search for “RG 1” returns “RG 1xx” before RG 1.
- **Login details:** Access to all portals should be available with one login and one password to improve user experience.
- **Document downloads:** The sites should allow users to download a full copy of the completed ASIC form prior to and after lodgement.
- **Website availability:** COBA has received feedback that the ASIC site is often unavailable.

Improving certainty and setting clearer expectations

Our member banks have indicated a preference for a more prescriptive approach to guidance materials. One member bank notes that this is the case even if the guidance is in the form of enforceable paragraphs as this will assist distinguishing between regulatory expectation and ASIC's interpretation of the law. Our member banks also highlight that ASIC should make it clear where guidance sets expectations, which are above those requirements set by law.

Where guidance is principle-based, our member banks welcome inclusion of more details and extensive relevant examples.

Proportionality

Our member banks highlight the importance of ASIC considering proportionality early when developing its expectations in regulatory documents, including regulatory guides, reports and legislative instruments. We encourage ASIC to recognise the features of customer-owned banks (including their risk profile, size, the diverse range of our member banks and the communities they serve) and avoid a 'one-size-fits-all' approach to regulation.

Customer-owned banks have a fundamentally different risk profile to investor-owned banks. First, member banks offer basic banking products in established markets, and do not engage in high-risk lending. Most participate exclusively in retail banking, with some larger members lending to small and medium businesses. Second, the mutual governance model requires an exclusive focus on the interests of customers, eliminating the inherent conflict between serving customer needs and maximising profits for shareholders.

A 'one-size-fits-all' approach to regulation fails to recognise the inherently different risk profile of the customer-owned banking sector. Previous attempts at proportionality, though well-intentioned, have at times been ineffective, often offering smaller banks an extended deadline to meet identical rules. The application of unnecessary and burdensome regulation carries a substantial opportunity cost as valuable resources for growth and innovation are channelled towards meeting regulatory requirements.

A pivotal shift is necessary – one that aligns regulation with the actual risks posed by different banking institutions and has simplification at its core. When applied appropriately, this will benefit consumers through creating a more diverse and competitive banking sector, without compromising our shared interest in a strong and stable banking system.

Responsible lending expectations

COBA has received feedback that scalable approaches to responsible lending are difficult to interpret and provide low level of certainty with respect to ASIC's expectations. For example, in relation to when lenders should use bank statements to verify living expenses.

COBA has received feedback that the *ASIC v Money3 Loans Pty Ltd (No 3)* [2025] FCA 1086 case ('Money3 Case') demonstrates there is still a lot of variation in approaching verification of living expenses. It would be valuable to have clearer guidance on when to inquire about and verify actual living expenses versus using the Household Expenditure Measure (HEM). While the Money3 Case reflects the general practice of lenders using bank statements to verify declared living expenses, the

court made it clear that lenders are not always required to obtain declared living expenses from a consumer or inquire about and verify actual or likely future living expenses (for example, through bank statements). Further clarity from ASIC following the case would be welcomed by our member banks.

Currency of regulatory guides

Our member banks note that regulatory guides should be kept up to date to reflect current technology, case law, and legislative framework. For example, member banks note that there have been recent responsible lending cases and misleading or deceptive conduct cases with limited updates to guidance following these cases. Our members have also observed that it appears to be a relatively high threshold of change for ASIC to revise regulatory guides.

To address the constantly changing regulatory framework, ASIC could consider presenting its regulatory guidance in a more dynamic way. This would enable more up to date information and relevant examples to be issued in real-time, without waiting for regulatory guides to go through a formal review cycle. A dynamic presentation of regulatory guides could take the form as being presented on webpage, or issuance of supplementary regulatory guides.

We take this opportunity to highlight that several regulatory guides are outdated and require revision. These include:

- *RG 234 Advertising financial products and services (including credit): Good practice guidance*, does not address more modern forms of communication and advertising, such as use of QR codes.
- *RG 146 Licensing: Training of financial product advisers* has been under review since September 2012, as large components of it are no longer relevant.
- *RG 185 Non-cash payment facilities*.

Reducing complexity in regulatory documents

Our member banks are of the view that ASIC regulatory documents, including regulatory guides, reports and legislative instruments can be overly complex, difficult to navigate and use. We encourage use of plain English and avoidance of legalese. Links to relevant instruments, sections of regulatory guides or legislation would improve ease of use. A side bar could include comments or refer to other relevant regulatory documents.

ASIC could group guidance by topic and by the legislative regime to which the guidance belongs to. For example, the [APRA Prudential Handbook](#) groups regulatory guidance effectively by topic.

Our member banks also welcome further information from ASIC setting out reasoning why ASIC introduces certain relief instruments or accompanying guidance to assist applicants when seeking relief. For example, we have received feedback that the [ASIC Corporations \(31-day Notice Term Deposits\) Instrument 2025/172](#) remains complex and there is no accompanying regulatory guidance. We also highlight that the [link to the original explanatory statement](#) on ASIC's website is broken. These examples illustrate how difficult it can be to navigate regulatory instruments.

Bringing instruments into legislation

We encourage ASIC and Treasury to work together to consider bringing instruments that have been in force for many years into the underlying legislation, for example, [ASIC Corporations \(31-day Notice Term Deposits\) Instrument 2025/172](#).

Further, our member banks highlight that the current sunseting process creates regulatory uncertainty while our member banks await confirmation as to whether instruments will be renewed. We encourage ASIC to undertake the renewal of instruments in advance to give industry certainty and ability to prepare for any regulatory change. Uncertainty in sunseting instruments can be costly for customer-owned banks anticipating possible regulatory changes and allocating resources accordingly.

Making it easier to interact with ASIC

A contact point for each customer owned bank

Our member banks strongly encourage ASIC to have a dedicated contact person within ASIC for each customer-owned bank that is responsible for the relationship with that ADI. This would allow our member banks to have a single point of contact within ASIC for queries and engagement. Our member banks provide positive examples of instances where they have interacted in the past with ASIC's stakeholder teams over specific data requests and were able to resolve queries promptly and have a productive engagement. This illustrates the mutual benefits for both ASIC and our member banks in establishing these relationships. Our member banks report that if they have ASIC queries of any type, they are currently referred to the contact centre or a generic email.

Contact centre challenges

We encourage ASIC to adopt a stakeholder-focused approach in the call centre environment and consider how to improve the customer experience for stakeholders needing to interact with ASIC. COBA member banks have expressed difficulties when contacting the ASIC contact centre. For example, when attempting to engage with ASIC through the call centre, member banks report that they are referred to sections of the website or user guides. Member banks note that when asking general questions, for example 'how to lodge an update' or 'how to make changes on the system' they are told by contact centre team members 'we are unable to offer individual or specific advice/ provide legal advice/ instruction.' We suggest ASIC uplifts training to these team members to allow them to assist stakeholders who are asking basic queries.

Data requests

We strongly support engagement with our member banks as early as possible on all data requests. This includes seeking feedback on data dictionaries, setting out timeframes for response and allowing an opportunity for a two-way engagement with our member banks. Data requests can be very resource intensive for our member banks. Early engagement allows our member banks to plan resources and coordinate input from different teams within their organisation.

Portal improvement

Our member banks highlight that the existing AFSL portal is dated, difficult to navigate and not intuitive. We support the development of a single consolidated portal that can be used for all ASIC reporting, including AFSL and ACL reporting and believe this should be a priority for ASIC.

Information security

We strongly recommend that ASIC makes changes to its document request protocols to enhance security. ASIC should only request documents be uploaded to a portal and should not request documentation be uploaded to a 'drop box' through an email link. This is particularly insecure where passwords are also issued by email. We also recommend the adoption of multi-factor authentication to improve security on the ASIC portals.

Consistency in document submissions

We encourage ASIC to adopt a more uniform approach in relation to form and document submissions. When submitting forms or documents, our members have highlighted that there are inconsistent or unclear in relation to signing document (wet sign or digitally sign) or submitting forms through online portals, by email, or post.

Simplification through law reform

Our member banks highlight aspects of the regulatory framework that could benefit from law reform that is unlikely to have a meaningful negative impact on consumers:

- **Design and Distribution Obligations (DDOs):** Our member banks expressed various suggestions for changes to the DDO obligations. There remains support for consideration of the DDO obligations not being applied to basic deposit products, given to the simplicity of those products and low risk of consumer harm. Similarly, member banks suggest that DDO may be duplicative for lending products, given that responsible lending obligations already apply to ensure products are not unsuitable.
- **Anti-hawking:** We have received feedback in support of considering an expansion of the current exception from anti-hawking provisions for basic deposit products to cover all interactions, not just customer-initiated interactions.
- **Reportable situations:** COBA supports further reporting relief beyond the [changes ASIC announced earlier this year](#) to ensure material matters are being reported and reduce compliance burden on our member banks. For example, removing or extending the 60-day timeframe requirement for investigations that are reportable to ASIC and the 60-day timeframe for identifying and resolving in order to leverage the reporting relief for misleading or civil penalty breaches. COBA also recommends urgent uplifts to the current reportable situations form. Specifically, our member banks highlight that the number of data points are overly burdensome to collect and report on.
- **Consumer remediation – RG277 Consumer remediation** sets a low value compensation threshold of \$5. It states that *'Licensees should return remediation money owed to current customers regardless of value. However, for former customers who are owed \$5 or less (after interest), licensees may instead make a residual remediation payment without applying reasonable endeavors.'* Our member banks submit that this is a very low threshold and can be extremely onerous, resulting in significant cost. We recommend ASIC considers a higher threshold in such circumstances.
- **Written consent:** We recommend review of section 12DL of the *Australian Securities and Investments Commission Act 2001* requiring written consents. COBA has received feedback that the requirements do not properly cater for customers wishing to interact with their customer-owned bank by phone. We have provided ASIC with further details on our member banks' concerns earlier this year and welcome further engagement on the issues raised, for example, in relation to replacement cards.

- **Regulated roles:** Our member banks consider these are overly complex, with varying requirements for different regulated roles, such as 'Fit & Proper People,' 'Responsible Persons,' 'Responsible Managers'.

Thank you for taking the time to consider our submission. If you have any queries, please contact

[REDACTED]

Yours sincerely

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Chief Executive Officer