

10 October 2023

Consultation Secretariat
Land Use Victoria
Department of Transport and Planning

Via email: luv.consultation@delwp.vic.gov.au

Dear Secretariat

Draft Registrar's Requirements for paper conveyancing transactions

COBA appreciates the opportunity to contribute to Land Use Victoria's (LUV) consultation on the draft version 9 of the Registrar's Requirements for paper conveyancing transactions.

COBA is the industry association for Australia's customer owned banks (mutual banks, credit unions and building societies). Collectively, our sector has over \$160 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.

Key points

COBA supports the need to update the Registrar Requirements to ensure they remain appropriate and up to date.

COBA is concerned about the lack of detail and explanation provided by Land Use Victoria as part of its consultation to justify its proposed changes.

The proposed change 13 will have adverse impacts on COBA members and will likely place undue burden on our members that operate in multiple jurisdictions.

If the changes proceed, insufficient time has been provided to allow our members to comply.

Recent changes in Land Use Victoria's approach to terms may conflict with the need of subscribers to the Customer Owned Banking Code of Practice to communicate in plain language.

General comments on Land Use Victoria's consultation

COBA supports the need to update the Registrar Requirements to ensure that they remain appropriate and up to date. We generally support changes that streamline process, improve efficiency, and improve customer outcomes. We understand the need for and support changes that seek to ensure that the processes also reflect changes in technology. We also recognise that agencies must comply with the laws of the jurisdiction. However, we prefer that any changes made to state and territory laws,

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and requirements under these laws, are made in a way that seek to achieve greater harmony across the various jurisdictions.

The focus of our submission is on the proposed change 13 that concerns mortgages and mortgage common provisions (MCPs). It is unclear to COBA what problem the LUV is seeking to address with its proposed change and what the purported benefit will be to consumers. We are concerned that LUV may be deviating from the practices that have become accepted in the other states and territories and it remains unclear why it has done so.

We are concerned by the lack of information and transparency by LUV in this consultation as it has failed to provide sufficient accompanying explanatory material with its proposed changes. We fear this lack of explanatory material displays a lack of transparency and accountability by LUV and deviates from what is the expected minimum norm of government agencies undertaking public consultations.

We appreciate LUV agreeing to meet with COBA, the Mortgage and Finance Association of Australia (MFAA) and Australian Financial Industry Association at the meeting of 20 September 2023. At this meeting we were pleased by LUV's comments that is keen to hear from stakeholders and to consider feedback, in particular that it had heard the concerns our associations had collectively raised on the costs to our members due to the changes to unfair contract terms at the Commonwealth level, and the difficulties our members will have in meeting the February 2024 commencement date. Additionally, we note the comments by LUV that the actions it is taking are intended to maintain the integrity of the Register, which we support. However, we remain uncertain what policy grounds have changed that underlie the Registrar of Title's decision to exercise discretion in this way.

We ask that LUV review its approach in how it has conducted this consultation and that in future it be more proactive and transparent in how it communicates by providing a fuller public explanation and justification for proposed changes especially where the policy is changing.

Impacts of proposed changes to mortgages and MCPs on COBA members

COBA believes that the proposed changes will have negative impacts on our members. These impacts can be divided into technical impacts and practical impacts.

Technical impacts

COBA has seen the submission prepared by the MFAA on this consultation and which covers the technical impacts of the proposed changes. COBA generally endorses the MFAA's submission and its letter to LUV on 13 July 2023 as being a reasonable and appropriate distilling of these issues and as representative of the challenges that will be experienced by our members. For brevity, we will focus on the practical impacts of the LUV changes on our members.

Practical impacts

For our members that operate in multiple jurisdictions, including Victoria, they will likely be required to maintain two separate sets of MCPs with one applying to their mortgages in all other jurisdictions except Victoria and another that only applies to their Victorian mortgages. The need to develop and maintain a separate set of unique Victorian MCPs will increase costs for these members and their customers.

Our members are currently updating their MCPs and mortgages to ensure that they are compliant with the changes being made to unfair contract terms that were passed in the *Treasury Laws Amendment (More Competition, Better Prices) Act 2022* (Cth) which takes effect on 9 November 2023. If LUV seeks to proceed with these changes, it will require our members that operate in Victoria to develop a separate set of MCPs that will only apply in Victoria instead of the single uniform MCPs that will apply in other jurisdictions.

The additional costs for these banks will arise from the additional steps that will need to be taken to ensure the Victorian MCPs are compliant to a further degree than the other MCPs. This will mean more legal fees, likely extra registration costs, and further compliance controls will be required.

Additionally, member call centre staff will have to manage the technical differences that will be created in the treatment of Victorian mortgages and mortgages from other jurisdictions. This will likely see increased training costs for staff to be fully across the technical detail or the need to retain specialist staff to manage Victorian matters. The technical differences will also likely create uncertainty and confusion in ensuring that customers have been provided the correct and appropriate information on their mortgage.

A major impact on customers will likely be through seeing slower issuance times for Victorian customers of these banks. Additionally, for the small, but important, number of customers who may have mortgages in multiple jurisdictions, including Victoria, they will be required to have differing sets of MCPs. This will likely cause confusion and misunderstandings as there may be significant differences between the two sets of MCPs which may have adverse impacts on the willingness of these customers to do business across different jurisdictions.

These cumulative costs will be burdensome to these members. While some of our larger members may operate in multiple jurisdictions and have a national presence, they remain relatively small financial institutions that lack the resources of the major banks. Each extra additional cost imposed by regulatory burden diverts our members limited resources away from focusing on our customers and providing them with new facilities and products.

Timing for commencement of proposed changes

COBA is concerned the February 2024 commencement of these proposed changes is too soon and will be difficult for our members to comply with. If LUV proceeds with the changes, we ask that a later commencement date be provided due to the burden that would be placed on our members to prepare MCPs that are compliant with both the Victorian regime and the changes to unfair contract terms. We suggest that a 1 July 2024 would be suitable, or 1 April 2024 as an alternative if the changes cannot wait until the next financial year.

The current proposed commencement date for these changes is on 1 February 2024. However, this will be following shortly after the need to be compliant with the new unfair contract terms changes commencing on 9 November 2023. This means that there will be a relatively short period of time for our members to review and revise their MCPs and to work with LUV to ensure that the MCPs are registered on time and are to a standard that is satisfactory to LUV. This relatively short time period includes the Christmas and New Years shutdown periods where most businesses close or move into reduced operation. This shutdown period includes much of the Victorian public service which assumedly includes LUV. This means that there will be a highly truncated time period both before and after the shutdown period in which the updated MCPs can be developed and registered.

We believe it will be very difficult for our members to prepare these MCPs in the timeframe provided or will require significant expense to do so. As our members are relatively small and have more limited resources compared to the major banks this will impose a significant impost. We wish to flag that in addition to having to comply with the unfair contract terms that our members are also likely to be implementing other significant changes arising from the Commonwealth, including new measures regarding scams, prudential regulation, and the Financial Accountability Regime, that will impose limits on their capacity to comply with the Victorian obligations easily or readily.

Customer Owned Banking Code of Practice plain language requirements

COBA is concerned by the Registrar's actions regarding its approach to different terms and the interaction with the obligations imposed on code subscribers of the Customer Owned Banking Code of Practice (COBCOP). We believe that the prohibition on the inclusion of certain terms and conditions at the Registrar of Title's discretion could conflict with COBCOP obligations on plain language. We note that these issues are not strictly within the scope of this current consultation and goes more towards the issues raised by the MFAA in its 13 July 2023 letter. We raise these in support of the MFAA letter and to assist the Registrar in exercising discretion and as LUV considers its future approach on these issues.

COBCOP, like other industry codes of practice, commits code subscribers to using plain language in their documentation¹ and communications² with customers, including in the presentation of the terms and conditions of their products and facilities.³

Our concern arises from feedback that we have received that LUV has been requiring MCPs to utilise more technical or legally focused language. For example, LUV has been requiring members to use the legal terms "mortgagor" and "mortgagee" rather than more commonly understood terms like "you" and "us". While the legal terms are of course correct, we are concerned that the impact of removing more common language from MCPs will cause confusion and lower customer understanding of what they are agreeing to and what their obligations are. This is especially concerning when considering the need for transparency under the unfair contract terms obligations. The purpose of the plain language provisions in COBCOP strongly aligns with the intent of the unfair contract terms in seeking to make documents and consumer information more user-friendly, more accessible, and more easily understood by the average customer.

We look forward to engaging with LUV on this issue and thank you for taking our views into account. Please do not hesitate to contact Robert Thomas, Senior Policy Adviser (rthomas@coba.asn.au) if you have any questions about our submission.

Yours sincerely



MICHAEL LAWRENCE
Chief Executive Officer

¹ *Customer Owned Banking Code of Practice 2022*, cl 6.

² *Customer Owned Banking Code of Practice 2022*, cl 16.

³ *Customer Owned Banking Code of Practice 2022*, cl 9.