

6 August 2025

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

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

Dear Ms Metz

CS 23 Proposals to continue to facilitate digital disclosure

COBA welcomes the opportunity to respond to the Australian Securities and Investments Commission (ASIC) consultation CS 23 Proposals to continue to facilitate digital disclosure. The consultation includes proposals to update Regulatory Guide 221 *Facilitating digital financial services disclosures* ([RG 221](#)) and remake the following two legislative instruments on digital disclosure due to sunset:

- [ASIC Corporations \(Facilitating Electronic Delivery of Financial Services Disclosure\) Instrument 2015/647](#)
- [ASIC Corporations \(Removing Barriers to Electronic Disclosure\) Instrument 2015/649](#)

We thank ASIC for their early engagement with COBA in relation to this consultation. This includes COBA's feedback to ASIC in February this year to help inform possible revisions to RG 221 and the legislative instruments.

COBA is the industry association for Australia's customer owned banks (mutual banks, credit unions and building societies). Collectively, our sector has over \$185 billion in assets and is the fifth largest holder of household deposits. Customer-owned banks (i.e. mutual 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 much broader demographics. To this end, COBA welcomes measures by ASIC that reduce regulatory complexity while promoting flexibility, innovation and positive consumer outcomes.

Review of RG 221

We welcome ASIC's changes to the revised RG 221 and note that the draft RG is more concise and easier to read than the earlier version. We acknowledge that ASIC has incorporated some of COBA's earlier feedback in the revised RG 221. For example, the revised RG 221 includes reference to the *Spam Act 2003* and notes scams and other security risks.

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We recommend that ASIC considers the following proposed changes when finalising revision to RG 221:

- **Expand the scope of RG 221 to cover lending-related disclosures:** Since the release of RG 221, the *National Consumer Credit Protection Act 2009* (NCCP Act) and electronic transactions legislation have been relaxed to allow for greater flexibility in providing certain lending notices electronically. It would be helpful to expand RG 221 to include the NCCP Act and provide guidance on how lenders can send credit notices to members electronically. This would allow COBA members to send important information to customers quickly and efficiently and would be particularly valuable in the case of repayment changes or other account change notifications. We highlight that customers increasingly rely on digital channels to interact with their bank and expanding the scope of RG 221 would be in line with this changing consumer behaviour.
- **Recent case law:** As noted in our initial feedback, we encourage ASIC to reflect in the revised RG 221 recent case law and additional examples. Since the release of RG 221 there has been developments in case law which are directly relevant to how the courts view the matter of consent in the context of electronic communications. These cases include *Steer v AMP Life Limited & AMP Superannuation Ltd [2021] SADC 109* (which related to emails sent to the holder of a life insurance policy) and *Hossam v Minister for Immigration and Board Protection [2016] FCA 1161* (an immigration case that dealt with the issue of consent to receiving electronic communications more broadly).
- **Vulnerability:** As previously shared with ASIC, we also suggest ASIC considers disclosure in the context of customers experiencing vulnerability, including customers who may be experiencing family and domestic violence. This may include ensuring individual email addresses for each account holder and reminders to customers to not share email passwords with other people.
- **Typographical error:** we note a minor typographical error on page 17 - 'identify theft' should be replaced with 'identity theft'.

Instrument 2015/647

As previously raised with ASIC, COBA supports reviewing and simplifying this instrument to assist stakeholders to interpret it and apply it in practice. Our members have noted that the document is very technical and difficult to navigate, and further clarification or guidance would be helpful in relation to the following:

- How it interacts with the various sections of the *Corporations Act 2001* and *Corporations Regulations 2001*.
- Which products and services the instrument applies to (or excludes) and the application of the instrument to lending products and related communications.
- Interaction and possible misalignment with the NCCP Act.
- Interaction with other legislation around electronic disclosure and relevant process around implied and expressed consent.

COBA members expressed varying views in relation to the 7-day timeframe stipulated in the instrument. One COBA member expressed strong support to continue the current position of a 7-day timeframe as any changes may result in manual handling, process or system changes. Another

member highlighted that the 7-day timeframe is tight and may not give customers sufficient time to take steps to opt-out, particularly if their preferred method of communication is by post.

Operation of instrument 2015/649

As previously raised with ASIC, our members are of the view that this instrument could be simplified further.

Regulatory Guide 168 Disclosure: Product Disclosure Statements (and other disclosure obligations)

We take this opportunity to confirm that COBA has no further feedback on [CS 22 Proposed update to ASIC's guidance on Product Disclosure Statements](#).

Thank you for taking the time to consider our submission. If you have any queries, please contact Ilana Madjar, Policy Manager at imadjar@coba.asn.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'MN' with a horizontal line underneath.

MARK NGUYEN
Chief of Policy