

27 February 2017

The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001
Via email: elder_abuse@alrc.gov.au

Dear Executive Director

COBA submission to Elder Abuse Discussion Paper

COBA welcomes the opportunity to provide a submission to the Australian Law Reform Commission's (ALRC) elder abuse discussion paper.

Customer owned banking institutions are different

Australia's credit unions, mutual banks and building societies provide a truly consumer focused way of banking. The customer owned model, with its 4 million customers, is the proven alternative to the listed model in retail banking. We bring a fundamentally different model to the market, a model where customer interests' are not in conflict with shareholder interests.

Customer-owned banking is distinguished by:

- prioritising customer benefit over profit maximisation;
- conservative business models and prudent risk management; and
- a deep community engagement and strong customer loyalty.

The sector's singular focus on its customers is demonstrated by its market leading customer satisfaction ratings.

Customers are our owners and number one focus and unlike our listed competitors we don't have the tension of trying to maximise returns to a separate group of shareholders.

Steps we have taken to protect vulnerable customers

COBA's members are supportive of measures that protect their elder customers and share the ALRC's concern about the growing problem of elder abuse. Comments we have received from our member institutions include:

"Many of our staff feel so helpless at times when we are so certain there is some level of abuse occurring."

"We have watched members who once had complete and full capacity, slowly lose their health and capacity over time."

"We have seen various cases where money has been drained out of the account over time."

Recognising the growing problem of elder abuse, COBA developed an on-line training resource "Protecting Vulnerable Customers from Potential Financial Abuse", which is directed at customer-facing staff. The training covers:

- the definition of financial abuse
- the vulnerable person and the abuser
- how to recognise financial abuse
- the banker-customer relationship
- duress, undue influence, & unconscionable conduct
- customers' mental capacity
- issues of privacy and confidentiality
- powers of attorney and guardianship

COBA also publishes regular information about new resources on financial abuse of elderly and vulnerable people for our members.

The ALRC has made two proposals recommending changes to the Code of Banking Practice. COBA intends to review our Customer Owned Banking Code of Practice by early 2018. We will take into account the ALRC's final report and recommendations as part of that review.

Response to the ALRC's specific proposals on banking

Proposal 7.1 – Banks responding to elder abuse

COBA agrees with the ALRC's observation that banks are often in a good position to detect financial elder abuse and protect their older customers. One COBA member has said:

"Banks are well skilled at identifying suspected instances of elder abuse."

However, some COBA members have reported that they feel frustrated at the options available to them when they suspect elder abuse. For example:

"There are so many restrictions imposed upon us to ensure we are acting in the best interest of our members when it comes to elder abuse."

"Once an Authority to Operate is executed by the member, giving access to a family member or friend to operate the account, the bank has little to no power to mitigate the risk of financial elder abuse."

As the ALRC report identifies, legal obligations such as privacy laws and anti-discrimination laws limit actions that banking institutions can take if they suspect elder abuse.

COBA members would like to see a clear and consistent approach and guidelines for the banking institutions to identify and report suspected elder abuse.

For example, if a staff member knows a family member of a person they suspect is a victim of elder abuse, the bank should have the ability to consult with that member (without disclosing too much information about the account). Banking institutions should also be able to consult with the suspected victim's doctor or refer the matter to the police. The law currently limits bank staff to merely verifying a transaction that they suspect is taking place in the form of financial abuse.

We would also welcome the ALRC clarifying who the 'relevant authorities' are in proposal 7.1 and would suggest that the ALRC amend its proposal to "using software to identify suspicious transactions (where reasonably practicable)."

Proposal 7.2 – Authorising third parties to operate bank accounts

COBA welcome the ALRC’s suggestion that at least two people should witness the customer sign a declaration stating that they understand the scope of the authority and the additional risk of financial abuse. We also agree with the ALRC’s later suggestion (s7.35) that one of those witnesses is a doctor, lawyer or another prescribed profession.

About COBA

COBA is the industry association for Australia’s customer-owned banking institutions - mutual banks, credit unions, and building societies. Collectively, the sector we represent has \$103 billion in assets and more than 4 million customers.

Please do not hesitate to contact Sally MacKenzie at smackenzie@coba.asn.au or 02 8035 8450 if you wish to discuss any aspect of this submission.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Mark Degotardi', written in a cursive style.

MARK DEGOTARDI
Chief Executive Officer