

1 September 2022

Ms Nicole Miller
Executive Director
Office of the Commissioner, New South Wales Police Force

Via email: mill2nic@police.nsw.gov.au

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Dear Ms Miller

NSW Police Consultation: Organised Crime Reforms

COBA thanks the NSW Police for providing the opportunity to comment on the NSW Government's proposed reforms to help tackle organised crime.

COBA is the industry association for Australia's customer owner banking institutions (mutual banks, credit unions and building societies). Collectively, our sector has over \$150 billion in assets, around 10 per cent of the household deposits market and around 5 million customers. Customer owned banking institutions account for around two thirds of the total number of Authorised Deposit-taking Institutions (ADIs).

COBA supports efforts to tackle organised crime

COBA supports the efforts made by States, Territories, and the Commonwealth in tackling the risks posed by organised crime and terrorism in Australia. COBA supports the intention of the NSW Government to align its criminal laws with other Australian jurisdictions to bring greater consistency.

COBA has reviewed the Bills and explanatory material and has discussed the potential impact of the changes with the Australian Banking Association (ABA). We think that the ABA's submission to this consultation raises pertinent issues for the NSW Government to consider and we are interested in seeing any responses the Government has to those issues raised.

We would like to highlight the following four issues for consideration by the NSW Government:

- Aligning NSW powers with other jurisdictions.
- Clarity on non-disclosure obligations on COBA members.
- Increased regulatory burden on COBA members.
- Further consultation on NSW organised crime reforms.

Aligning NSW powers with other jurisdictions

COBA supports aligning the NSW criminal law with those of other Australian jurisdictions. COBA has members operating in every State and Territory and believes that greater consistency will help ensure a unified approach to organised crime and will help simplify the process of responding to these issues for those members that operate in multiple jurisdictions.

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As part of providing this consistency, COBA encourages the NSW Government to align the proposed laws and processes as closely as possible to other jurisdictions. For example, ensuring that the types of information that the NSW Police and NSW Crime Commission are requiring from ADIs is consistent with what is requested in other jurisdictions.

An area of inconsistency is the proposed section 48A power to issue freezing notices contained in Schedule 3, Item 17 of the Crime Commission Legislation Amendment Bill 2022 (the **Bill**). The section will vest the freezing notice power with the Commissioner of the NSW Crime Commission. In the equivalent laws for the Commonwealth, Victoria and South Australia, the power to issue a freezing order resides with the courts on application from an authorised officer. COBA recommends that the Bill be amended to similarly vest the order-making power with a court in NSW. This will ensure that there is judicial oversight over the exercise of these powers due to the significant impact these could have on individuals and on the community's civil liberties.

Clarity on non-disclosure obligations on ADIs

Schedule 3, Item 18 of the Bill inserts a section 50 that provides that an ADI that is subject to a monitoring or freezing notice must not disclose the existence of the notice or its operation except than to an authorised person. Breaches of this non-disclosure obligation is accompanied by significant penalties. COBA seeks clarification on how this provision will operate in practice.

The current drafting of the Bill does not provide for a period in which the non-disclosure obligation is in effect. In other jurisdictions, there are similar non-disclosure requirements that specify that the obligation lasts for the time between when the notice is served on the ADI and the time that the order is satisfied. If a time is not specified it could create a circumstance where an ADI has frozen an account but is unable to direct the customer to the relevant NSW Government agency for information. This could create uncertainty for how our members are to treat any contact with the account holder when there is a freezing notice in place.

Increasing regulatory burden on COBA members

COBA raised concerns with the NSW Police at the briefing provided on 23 August 2022 about the prospect that these changes may result in an increase in the regulatory burden on ADIs. COBA appreciates the comments made by Police that there was no expectation in an increase in the number of requests being made to ADIs generally or to COBA members specifically.

COBA wishes to reiterate its support for efforts to tackle organised crime but suggests that this should not lead to a form of regular reporting or a significant increase in requests on the sector without undertaking further broad consultation.

Further consultation on organised crime reforms

The short-time period for COBA to consider and respond to this consultation was not ideal as it impacts on our ability to properly seek the views of its members. However, COBA recognises that tight Parliamentary sitting periods can sometimes see truncated consultations. COBA welcomes the opportunity to continue working with NSW Police on these reforms and their implementation. COBA understands that there will be Regulations developed and we would like to be consulted on these in due course.

Please do not hesitate to contact Robert Thomas (rthomas@coba.asn.au) if you wish to discuss any aspect of this submission.

Yours sincerely



MICHAEL LAWRENCE
Chief Executive Officer