Law Council
OF AUSTRALIA

Business Law Section

27 October 2026

Tim Baird
Assistant Secretary – Banking and Capital Markets Branch
Financial Systems Division
Markets Group
The Treasury
Langton Crescent
PARKES ACT 2600

By email: MG-FSD-BCU@treasury.gov.au

Dear Mr Baird

Consultation on the Banking Regulations 2026

1. This letter has been prepared on behalf of the Financial Services Committee of the Business Law Section within the Law Council of Australia (**Committee**) in response to Treasury's invitation to give feedback on the proposed remaking of the *Banking Regulations 2016* (Cth), which are due to sunset on 1 April 2027. Treasury released draft regulations and a draft explanatory statement on Friday 23 October 2026 and requested feedback by Friday 30 October 2026.

2. Treasury has described the key differences between the proposed remade Banking Regulations and the current Banking Regulations as:

   - increasing the bond issuance limit for authorised deposit-taking institutions (ADIs) from 8% to 12% of the ADI's assets, which was a recommendation of the Council of Financial Regulators Review into Small and Medium-sized Banks (CFR Review);
   - removal of outdated references; and
   - keeping the regulations up to date and fit for purpose.

3. The Committee agrees that the Banking Regulations should be remade, and has no concerns about the implementation of the recommendations of the CFR Review which have been accepted by the Government or the form of the draft regulations or the draft explanatory statement.

4. The Committee is, however, concerned about the unreasonably short length of the consultation period. Given that the current Banking Regulations are not due to sunset for several months, the Committee cannot understand why the provision of feedback would be so urgent that the length of the consultation period should be only one week, and is not aware of any exceptional circumstances which would justify this.

5. Even though this particular reform proposal might not be one which is regarded as particularly controversial, the Committee submits that a one-week consultation period in these circumstances is insufficient. The Committee considers that many stakeholders are unlikely to even have had the opportunity to see what the proposal was, let alone make any submission.

6. The Committee encourages Treasury to take due notice of the following content which has been extracted from the Best Practice Consultation Guidance Note dated July 2023 and published by the Office of Impact Analysis within the Department of the Prime Minister and Cabinet (*emphasis added*):

> ***Not burdensome***
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> *…*
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> *Remember that many people you wish to consult have full-time jobs or business commitments. This is especially so for small business proprietors. It is important not to make unreasonable demands of people you wish to consult or assume that they have unlimited time to devote to your consultation process.*
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> *Timeframes for consultation should be realistic to allow stakeholders enough time to provide a considered response. Avoid holiday periods and the end of the financial year, particularly where stakeholders are small businesses and individuals. The time required will depend on the specifics of the proposal (for example, the diversity of interested parties or the complexity of the issue). However, if it is necessary to consider a proposal promptly, some limitations on the timing and length of consultation may be unavoidable.*
>
> *…*
>
> ***Not rushed***
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> *A common complaint from stakeholders is the lack of time to provide feedback when asked for it.*
>
> *Involving stakeholders, such as standing consultative bodies, in determining timelines can be an important part of building a positive relationship. While longer periods of consultation might seem more appealing for stakeholders, the Government's aim is effective consultation and 'real listening'. Agencies should provide realistic timeframes for participants to contribute. Where small businesses are potentially affected, they should be given enough time to consider the issue and respond, including time for representative bodies to contact their members.*
>
> *The length of consultation rounds depends on the nature and impact of the proposal, the objective of each round, the number of rounds, the form of consultation and who is being consulted. For example, where stakeholders are being asked to consider the whole proposal and there has been little previous consultation, a longer round is appropriate. Similarly, a longer round is appropriate where those with limited resources, such as individuals and small businesses, are being consulted.*
>
> *<u>Depending on the significance of the proposal, between 30 to 60 days is usually appropriate for effective consultation, with 30 days considered the minimum.</u>*

Longer consultation periods may be necessary when they fall around holiday periods.

Meaningful consultation with stakeholders throughout the policy development process should be documented in the RIS as a consultation statement. The statement should demonstrate to the decision maker that sound consultation practices were followed and, when the RIS is made public, show the Government's commitment to its principles for policy makers.

7. The Committee will closely monitor future consultation processes having regard to the above principles.

Yours sincerely



Adrian Varrasso
Chair, Business Law Section