

31 January 2023



Budget Policy Division  
Treasury  
Langton Cres  
Parkes ACT 2600

Via email: [PreBudgetSubmissions@treasury.gov.au](mailto:PreBudgetSubmissions@treasury.gov.au)

Dear Treasury,

### **AFMA 2023/24 Pre-Budget Submission**

The Australian Financial Markets Association (**AFMA**) is the leading industry association promoting efficiency, integrity and professionalism in Australia's financial markets, including the capital, credit, derivatives, foreign exchange, energy, carbon, and other specialist markets. Our membership base is comprised of over 125 of Australia's leading financial market participants, including Australian and foreign banks, securities companies, state government treasury corporations, fund managers, energy firms, as well as other specialised markets and industry service providers. We welcome the opportunity to provide recommendations to assist in the formulation of the 2023/24 Federal Budget.

AFMA notes the approach of the Government since the 2022 Federal Election to prioritise policies consistent with commitments made prior to the election. AFMA acknowledges the challenging economic and geopolitical backdrop to the 2023/24 Federal Budget and therefore encourages the Government to continue to provide transparency regarding its policy intent and priorities. Sending stable, well founded and consistent market signals is important in driving investment, growth, productivity and employment on a sustainable basis.

The specific recommendations included in AFMA's 2023/24 Pre-Budget Submission are reflective of AFMA's strategic priorities, including:

- Advocating for regulatory and tax settings that are fit-for-purpose, whether that be for mature products such as debt and equity instruments or innovative instruments such as digital assets;
- Enhancing the role of markets in financing the Australian economy, particularly through the development of tradeable products that enhance liquidity and price transparency with respect to large-scale projects;
- Prioritising the attractiveness of Australia as a financial centre, allowing Australia to capitalise on the current opportunities associated with regional geopolitical turmoil and the COVID-19 pandemic, factors that are causing firms to consider the optimal jurisdiction in which to conduct their businesses; and
- Supporting a smooth transition towards net-zero and, in the shorter term, specific 2030 emission targets.

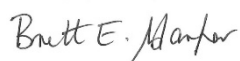
### ***Specific recommendations***

As part of the 2023/24 Federal Budget, AFMA recommends that the Government:

- Commit to the regulation of certain digital assets as financial products, such that the existing regulatory framework applies to such assets.
- Encourage development of new tradeable financial products for use by investors such as superannuation funds to boost funding sources for assets such as infrastructure, housing and energy.
- Commit to and prioritise implementing key outstanding recommendations of the House Standing Committee on Tax and Revenue's Inquiry into the Development of the Australian Corporate Bond Market.
- Provide clear market signals to support energy market transition, including carbon pricing and generator fuel costs.
- Allocate the necessary funding and resources to improve the Australian National Registry of Emissions Units (**ANREU**).
- Reintroduce the Foreign Financial Service Providers (**FFSP**) draft legislation.
- Allocate the necessary funding and resources to the Financial Regulator Assessment Authority (**FRAA**) and to the Australian Law Reform Commission (**ALRC**) to continue the important work in enhancing the efficiency and effectiveness of financial regulation.
- Reintroduce a body similar to the previous Corporations and Markets Advisory Committee (**CAMAC**) to bring targeted focus to the effectiveness of corporations and financial services law.
- Adjust the financial regulator cost recovery models to be fairer, more consistent, administratively efficient and reflective of the public benefit from regulation.
- Legislate the Global Markets Incentive (**GMI**) as the replacement to the Offshore Banking Unit (**OBU**) regime.
- Implement a regulation that ensures that the tax characterisation of debt instruments issued in Australia is not impacted by offshore prudential regulatory standards.

Thank you for taking the time to read this submission and for the opportunity to contribute to the 2023/24 Federal Budget process. AFMA would welcome the opportunity to discuss further any of the matters we have raised in our submission.

Yours sincerely,



**Brett Harper, Chief Executive Officer**

## ATTACHMENT: RECOMMENDATIONS IN DETAIL

### *Digital assets*

#### **Specific recommendation:**

- **Commit to the regulation of certain digital assets as financial products, such that the existing regulatory framework applies to such assets.**

#### **Context**

Certain digital assets present similar or higher risks to retail investors compared to more traditional financial products. It is therefore appropriate to regulate such digital assets in the same way as other financial products relying on the existing fully developed financial services regulatory framework. The regulation of financial products already provides the means to swiftly address innovation in financial instruments as they arise, with the existing regulatory framework setting the appropriate balance between innovation and investor protection.

AFMA has welcomed the commitment of the Assistant Treasurer/Minister for Financial Services to consult with industry on the appropriate regulatory settings for certain digital assets in advance of the introduction of legislation into Parliament in the 2023 calendar year. AFMA looks forward to participating in the consultation process and to the Government announcing its proposed regulatory approach in the 2023/24 Federal Budget, if not before.

### *Financial products*

#### **Specific recommendations:**

- **Encourage development of new tradeable financial products for use by investors such as superannuation funds to boost funding sources for assets such as infrastructure, housing, and energy.**
- **Commit to and prioritise implementing key outstanding recommendations of the House Standing Committee on Tax and Revenue's Inquiry into the Development of the Australian Corporate Bond Market.**

#### **Context**

The growth in the national superannuation pool is of great importance to Australia. AFMA notes the range of proposals regarding investment of superannuation funds into asset classes such as infrastructure and housing. AFMA supports the development of new products that can be purchased by investors to provide the financing needed to support large, long-dated projects. We encourage these new products to be developed so that they may be traded on secondary markets, allowing for superannuation funds to be better placed to manage liquidity risk and more accurately value asset holdings by using observed prices of sales executed in secondary markets. The new products may be in the form of unitised investment vehicles (where the units can be bought/sold), bonds or equity-like instruments.

Enhancing the range of financial products available to investors in Australia is of benefit to issuers and investors alike. In this regard, we ask that the Government commit to and prioritise key recommendations of the House Standing Committee on Tax and Revenue's Inquiry into the

Development of the Australian Corporate Bond Market. The Committee noted that the Australian bond market was small compared to other jurisdictions and that Australian issuers make greater use of offshore bond markets. AFMA's submission to the Inquiry noted that to enhance the depth and liquidity of the corporate bond market, it is first necessary to remove any constraints for issuers to utilise corporate bonds and then, to the extent possible, and while balancing investor protection concerns, enhance alignment between products available to retail and wholesale investors. The Final Report of the Committee was issued in October 2021 and contains a number of practical recommendations that AFMA believes the Government should commit to in the 2023/24 Federal Budget, namely:

- Streamlining disclosure requirements for the issuance of corporate bonds with enhanced reliance on the continuous disclosure regime for listed issuers;
- Amendment to regulations to ensure that the existence of an early redemption feature does not prevent an instrument from being classified as a simple corporate bond; and
- Investigation of the tax system to assess the impact of tax settings on demand for corporate bonds relative to other asset classes.

### ***Energy and environmental recommendations***

#### **Specific recommendations:**

- **Provide clear market signals to support energy market transition.**
- **Allocate the necessary funding and resources to improve the Australian National Registry of Emissions Units (ANREU).**

#### **Context**

AFMA welcomes the Government's net zero target. Carbon markets will play a pivotal role in our clean energy transition and create momentum for this aim. The Government's strengthening of the safeguard mechanism and the work to increase confidence in the Australian Carbon Credit Unit (ACCU) market are good examples of how markets can contribute to achieving such objectives. The energy market requires clear long-term signals to facilitate the investment required to transition to net zero. The Government's intervention in the gas market has impacted confidence which puts at risk the future investment required to support the energy market transition and to ensure reliable long-term supply. AFMA considers that the Government should, in the 2023/23 Federal Budget, set out a clear path to exit the gas market intervention to allow market signals to naturally drive this investment.

The recent acceptance by the Government of the recommendations of the Chubb Review of Australian Carbon Credit Units and reforms to the Safeguard Mechanism are important steps in ensuring a strong and efficient carbon market. However, ANREU, the registry that underpins these markets, requires investment to ensure it can adequately support the development of the carbon market. Market participants have raised a number of concerns about the resourcing of ANREU, noting its difficulty to use and lack of adequate information about market activity. AFMA therefore recommends that sufficient funding should be made available to the Clean Energy Regulator in the 2023/24 Federal Budget to allow ANREU to be upgraded, enabling it to provide clearer data on the volume of units broken down by methodology and co-benefit, as well as information about the transacted volumes and numbers of certificates in existence.

## ***Financial market legislative and regulatory recommendations***

### **Specific recommendations:**

- **Reintroduce the Foreign Financial Service Providers (FFSP) draft legislation.**
- **Allocate the necessary funding and resources to the Financial Regulator Assessment Authority (FRAA) and to the Australian Law Reform Commission (ALRC) to continue the important work in enhancing the efficiency and effectiveness of financial regulation.**
- **Reintroduce a body similar to the previous Corporations and Markets Advisory Committee (CAMAC) to bring targeted focus to the effectiveness of corporations and financial services law.**
- **Adjust the financial regulator cost recovery models to be fairer, more consistent, administratively efficient and reflective of the public benefit from regulation.**

### **Context**

The *Treasury Laws Amendment (Streamlining and Improving Economic Outcomes for Australians) Bill 2022*, introduced during the 46<sup>th</sup> Parliament, contained important changes for foreign financial service providers and was strongly supported by AFMA. AFMA understands that the Bill was likely to pass the Parliament had the Parliament not been pro-rogued for the 2022 Federal Election on the basis that the measures proposed in the Bill were supported on a bi-partisan basis. AFMA recommends that the Bill be reintroduced in the same form as previously introduced and that this be committed to by the Government in the 2023/24 Federal Budget, if not earlier. Should the Government look to amend the provisions of the Bill as they relate to FFSPs, AFMA recommends that an adequate consultation period be provided prior to the introduction of any Bill into Parliament.

The FRAA panel has already carried out important work in reviewing ASIC and APRA. We note that the next round of FRAA reviews may well be especially resource intensive. For example, in relation to the follow-up ASIC review, the scope can be expected to include an assessment of the effectiveness of steps taken by ASIC to address recommendations made by the Panel in its first review. This type of scope and the work typically required to be completed can be particularly large. Excellent work has also been done by the ALRC in reviewing the legislative framework for corporations and financial services. The ALRC interim reports have to date identified important improvements that need to be made. The ALRC will conclude its review in November 2023, which will leave its recommendations on the legislative model to be taken forward. Implementing that model will require a considerable amount of detailed legal work to be conducted which requires resourcing beyond what Treasury staff alone can be expected to deliver. Accordingly, AFMA recommends that the Government ensure that both the FRAA Panel and the ALRC are adequately resourced to continue their important work and appropriate allocations are made in the 2023/24 Federal Budget.

The now defunded Corporations and Markets Advisory Committee (**CAMAC**) provided expert advice and recommendations to the Government about matters relating to corporations and financial services law, administration, and practice. CAMAC was abolished in 2014 to the dismay of industry given its excellent, non-partisan, evidence-based work. A new body should therefore be formed on the model of CAMAC with the necessary funding to take work forward on the ALRC legislative model on an efficient and timely basis, and AFMA recommends that the Government commit to the re-establishment of such a body in the 2023/24 Federal Budget.

Finally, AFMA's members continue to express concern regarding the inequity and lack of predictability associated with the cost recovery models for ASIC, APRA and AUSTRAC. Accordingly, AFMA reiterates

is specific recommendations in relation to regulator cost recovery, namely that the Government, in the 2023/24 Federal Budget, should:

- Allocate government funds to cover a part of the cost of running ASIC, AUSTRAC and APRA to reflect the public benefit from this regulation, which would reduce moral hazard and allocate cost recovery charges in a more proportionate and fair manner;
- Remove the Enforcement Special Account from ASIC's industry funding model, as a means to give equitable outcomes that are more consistent with the model's principles; and
- Centralise the administration of the funding models for ASIC, AUSTRAC and APRA to improve consistency, efficiency and fairness of the cost burden on regulated entities.

### ***Taxation Recommendations***

#### **Specific recommendations**

- **Legislate the Global Markets Incentive (GMI) as the replacement to the Offshore Banking Unit (OBU) regime.**
- **Implement a regulation that ensures that the tax characterisation of debt instruments issued in Australia is not impacted by offshore prudential regulatory standards.**

#### **Context**

In order to capitalise on the current opportunity to enhance Australia as a location from which to conduct mobile financial business, it is necessary that our policy settings are competitive, consistent and apply equally to all participants. Policy settings that adhere to these principles will allow Australia to leverage its other advantages to attract business to, and retain business in, Australia.

At a time when other countries, both regionally and globally, are actively enhancing and promoting their attractiveness as financial centres, Australia's relative attractiveness was significantly diminished in 2021 by the repeal of the OBU regime. The OBU regime was a key pillar of Australia's financial centre attractiveness and, while the repeal of the regime was understandable given the international pressure on the regime from the OECD and the EU, it was important for the Government to align the repeal of the OBU regime with the implementation of a replacement regime that was both sufficiently competitive and would withstand international scrutiny.

In AFMA's view, the Global Markets Incentive (**GMI**) regime was an ideal replacement to the OBU regime insofar as it aligned with the international consensus as to the tax rate for appropriate tax competition, as determined by the OECD. This point was accepted by the Senate Committee on Australia as a Technology and Financial Centre which recommended, on a bipartisan basis, that the Australian Government establish a GMI regime by the end of 2022. This action is outstanding.

In the absence of a sufficiently competitive replacement to the OBU regime, financial sector participants operating in Australia that are competing for global business will face a tax rate of double their regional competitors. A failure to implement a replacement regime also sends a signal that Australia lacks commitment to promoting itself as a financial centre, undermining Australia's reputation as a place to conduct mobile financial centre business.

In this context, AFMA strongly recommends that the Government announces its commitment to a replacement regime to the OBU regime in order to capitalise on the present opportunity to bring jobs and investment to Australia.

Our second recommendation in relation to taxation is aimed at ensuring that there is competitive neutrality between all financial institutions that operate in Australia and raise capital through the issuance of debt instruments in Australia. Through engagement between AFMA and the ATO, a particularly technical issue has arisen whereby the tax characterisation of an instrument issued out of the Australian branch of a foreign bank may change where the head office of the bank is located in a jurisdiction that allows prudential regulators to “bail-in” in the event of financial stress to either compel the instrument to be converted to equity or written off. Specifically, the existence of the bail-in trigger in the home jurisdiction will prevent the instrument issued in Australia from being treated as debt for tax purposes, notwithstanding that the instruments will be treated as debt legally and commercially.

The ATO has, to date, applied a practical approach to this technical issue, reflecting that the policy intent should be that the instruments are treated as debt for tax purposes. However, the preferable approach would be for the issue to be resolved by Government through the insertion of a regulation that provides that a bail-in trigger, of itself, does not alter the taxation characterisation of an instrument. In the absence of legislative clarity, there may be a point at which the ATO’s general powers of administration do not extend to continuing to adopt a practical approach, which would considerably jeopardise the competitiveness of many banks operating through an Australian branch.