



25 January 2024

Budget Policy Division
Treasury
Langton Cres
Parkes ACT 2600

Via email: PreBudgetSubmissions@treasury.gov.au

Dear Treasury,

AFMA 2024/25 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, asset 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 2024/25 Federal Budget.

The 2024/25 Federal Budget will be handed down at an important time for Australia's financial services sector and the importance of the sector to the Australian economy. The period subsequent to the COVID-19 pandemic has seen participants globally reconsider the optimal location from which to conduct business in light of technological advancements and the relative merits of competing jurisdictions. Australia has been well-placed to capitalise on the consideration of participants as to where businesses and people are located, given its relative proximity to Asian jurisdictions from a time-zone perspective and its core strengths. AFMA's holds the view that enhancing Australia's competitiveness as a place to conduct financial services business will give rise to a substantial benefit for the Australian economy and, in turn, the Government.

However, the window for this opportunity will not remain open for an extended period. In the latest Global Financial Centre Index, published in September 2023, Sydney fell from 15th to 22nd globally, while Melbourne fell eleven places to 39th. Given the methodology that underpins the ranking largely draws on the assessments from global businesses as well as objective data, such a decline in the relative assessment of Australia's two leading centres in a six-month period should be of concern to Government.

The specific recommendations included in AFMA's 2024/25 Pre-Budget Submission are reflective of AFMA's broader perspective, 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;
- The importance of the Government committing to consultation processes that are transparent, inclusive and allow for sufficient time for stakeholder feedback to be provided and considered;
- Prioritising the attractiveness of Australia as a financial centre, allowing Australia to capitalise on the opportunities associated with current 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.

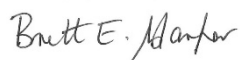
Specific recommendations

As part of the 2024/25 Federal Budget, AFMA recommends that the Government:

- Implement a regulatory grid for the financial services sector. The grid should appropriately deal with both retail and wholesale markets issues, and ensure consideration of the key role played by foreign-based institutions operating in Australia;
- Require that consultation processes adhere to the Government's own best practice guidelines for consultation;
- Appoint and fund a taskforce to identify and prioritise key areas for implementation of the ALRC's recent review of financial services legislation;
- Return the cycle of FRAA reviews of ASIC and APRA to every two years;
- Commit to and prioritise implementation of key outstanding recommendations of the House Standing Committee on Tax and Revenue's Inquiry into the Development of the Australian Corporate Bond Market;
- Rework the financial regulator cost recovery models to be fairer, more consistent, administratively efficient and reflective of the public benefit from regulation;
- Consider and, where appropriate, incentivise mobile financial sector business to be conducted in Australia in light of the repeal of the OBU regime; and
- 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 the opportunity to contribute to the 2024/25 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

Implement a Regulatory Grid

The pace of change of regulation for Australian financial services participants has, in recent times, been unprecedented. This is largely due to significant reform coming from the Hayne Royal Commission and as a consequence to changes in business practices and requirements due to the COVID-19 pandemic. The result is that, for participants that offer diversified products and engage in a broad range of activities, the assessment and implementation of new regulatory initiatives can often overlap, giving rise to constrained resources and a lack of clarity as to the timing of further regulatory implementation.

In 2020, the UK Treasury brought together government and regulators to provide the financial services industry with a forward look of upcoming regulatory initiatives. The resulting Regulatory Initiatives Grid, published twice a year and currently on its seventh edition, sets out the regulatory pipeline enabling industry and stakeholders to understand and plan for regulatory change. The grid also has the advantage of allowing Government and regulators to receive a holistic view as to the collective regulatory change burden that a participant is under at a point in time, allowing for better sequencing of future initiatives.

AFMA believes that greater visibility of forthcoming reforms and implementation timelines is required. We believe a grid similar to that published in the UK would promote regulatory efficiency and minimise overlap, enhancing the attractiveness of Australia as a place to conduct financial services business through providing transparency and predictability of future initiatives. Accordingly, AFMA recommends that the Government announce that it will progress a regulatory grid in the 2024/25 Federal Budget, if not prior. The grid should not just consider the retail-based regulatory priorities for Australian banks, it should also consider issues critical to wholesale markets and the regulatory pipeline relevant to foreign banks operating in Australia.

Commit to Best Practice Consultation Processes

During the 2023 calendar year, AFMA experienced a number of instances where legislation that was introduced into Parliament had not been the subject of a rigorous consultation process. Examples included consultation processes that were open for less than a fortnight and legislative provisions only being made publicly available for the first time when introduced into Parliament.

In AFMA's view, thorough and robust consultation processes with all stakeholders are necessary to ensure that legislation is fit-for-purpose, consistent with its policy intent (which, in turn, has been articulated through a thorough consultation process) and mitigates the risk of unintended consequences. In this regard, AFMA agrees with the Office of Impact Analysis which, in the publication titled "Best Practice Consultation," states:

"A genuine consultation process...is likely to lead to better outcomes and greater understanding of the outcomes sought and options considered, particularly among any stakeholders who may be adversely impacted by the policy."

Accordingly, AFMA requests that the Government commit to adhering to its own guidelines in relation to consultation on new policy proposals and legislation or, in the exceptionally rare circumstance where such best practice cannot be adhered to, then a specific exemption from the Minister is granted

that sets out the reasons as to why. Specifically, AFMA requests that the government commit to consultation processes that:

- Span all stages of the policy and legislative development cycle, from the initial policy proposals through to the passage of enabling legislation;
- Are inclusive, insofar as all stakeholders have the opportunity to participate in the consultation processes;
- Are transparent, by allowing all stakeholders to understand the perspectives of other stakeholders. This is particularly the case where Government engages in consultation with regulators and other stakeholders are not privy to the consultation;
- Are open to all stakeholders and easily accessible, such as being publicly available on the relevant Department's website; and
- Have a consultation period of not less than 30 days, not including any public holidays and are not conducted over the end-of-year holiday period.

Prioritisation of the ALRC Report 141 Recommendations

AFMA broadly supports the outcomes and recommendations of the *Final Report Confronting Complexity: Reforming Corporations and Financial Services Legislation ALRC Report 141* conducted by the Australian Law Reform Commission (ALRC). The reforms that need to be brought forward following the recommendations made by the ALRC are extensive and broad, and we believe they are vital to the efficiency of Australia's financial markets and competitiveness given the current legislative architecture is complex to the point of being a disincentive for businesses to conduct financial services operations from Australia.

AFMA supports to the ALRC's recommendation for taskforces to be established with the mandate to implement the ALRC's recommendations in a methodical and manageable way over time with the necessary additional policy review elements included under the supervision of the Treasury. AFMA stands ready to support and participate in the work of the proposed taskforces and looks forward to the Government taking this important and urgent work forward for the sake of productivity improvement Australia's broader economic development.

Restore FRAA Review Cycle

AFMA was disappointed and concerned to see the reduction in the timeliness of the Financial Regulator Assessment Authority (FRAA) reviews, as announced at the 2023-24 Federal Budget. AFMA's 2023-24 Pre-Budget submission highlighted that the work of the FRAA reviews remains vital to the form, function, and efficiency of Australia's financial markets. Our submission noted the important work of the FRAA panel in reviewing ASIC and APRA and that the next round of FRAA reviews may well be especially resource intensive, through including an assessment of the effectiveness of steps taken to address recommendations made by the Panel in its initial reviews. Moving to a slower review cycle significantly undermines the ability of the FRAA panel to conduct such as assessment.

At the time of the announcement of the change to the review cycle, AFMA highlighted that the change to the review cycle risked the retention of the FRAA panel members, who are very experienced executives. This has proven to be the case, with all three FRAA panel members resigning from the panel in the months subsequent to the announcement, with no replacements as yet being announced.

It is the role of the regulator to hold regulated entities to the highest possible standards and we therefore believe it appropriate that the regulators themselves are held to account and the same standards respectively. At a time when regulation is increasing and global competition is heightened,

AFMA believes that the FRAA reviews should be returned to every two years, as was FRAA's mandate established at the Hayne Royal Commission.

Implement Recommendations on Corporate Bond Market

Enhancing the range of financial products available to investors in Australia is of benefit to issuers and investors alike. During the 2023 year, market participants continued to endorse consideration of initiatives to enhance the depth and liquidity of Australia's corporate bond market.

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 2024/25 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.

Enhancing the equity of regulator cost recovery models

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.

Specifically, during the 2023 year, AFMA had experience in relation to the AUSTRAC Industry Contribution where the changes to the specific charging model were not the subject of open consultation and gave rise to significant increases in the charges for a sub-set of AFMA members that were in no way related to increased regulatory oversight and were, in AFMA's view, inequitable.

Accordingly, AFMA reiterates its specific recommendations in relation to regulator cost recovery, namely that the Government, in the 2024/25 Federal Budget, should:

- Ensure that the cost recovery models for ASIC, APRA and AUSTRAC adhere to the Government's Cost Recovery Guidelines;
- 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;
- 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; and
- 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.

Incentivising Mobile Financial Activity

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 Offshore Banking Unit (**OBU**) regime. The OBU regime was a key pillar of Australia's financial centre attractiveness and, it remains the case that the Government should align the repeal of the OBU regime with the implementation of a replacement regime that is both sufficiently competitive and would withstand international scrutiny.

In this regard, the Government should use the 2024/25 Federal Budget to articulate the activities that it wishes to incentivise so as to retain and attract business to Australia. In the absence of incentives, participants operating in Australia that are competing for global business will face a tax rate of double their regional competitors.

Bail-In Regulation

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.

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