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Productivity Commission
Level 8, Two Melbourne Quarter
697 Collins Street
Docklands VIC 3008

Submitted via email: 5pillars@pc.gov.au

Pillar 1: Creating a more dynamic and resilient economy

The Australian Financial Markets Association (AFMA) is responding to Pillar 1: Creating a more dynamic and resilient economy. AFMA is the peak industry body for Australia's financial markets industry – including the capital, credit, derivatives, foreign exchange, and other specialist markets. AFMA represents more than 130 industry participants from Australian and international banks, leading brokers, securities companies, government treasury corporations to asset managers, energy firms, carbon market participants, and industry service providers. AFMA promotes efficiency, integrity, and professionalism in Australia's financial markets, and we seek to grow and safeguard competition, productivity, and dynamism.

Section 2. Support business investment through corporate tax reform

1. **What features of the Australian business environment have encouraged or restrained investment over the past 10 years?**

The Global Financial Centre Index (GFCI) assesses and ranks the competitiveness of every financial centre globally on a bi-annual basis. Currently, Sydney ranks 28th globally, while Melbourne is ranked 32nd. The relative attractiveness of Sydney and Melbourne as global financial centres has been in deep decline, before the pandemic, Sydney scored 10th and Melbourne 19th globally. One reason for the fall was the repeal of the Offshore Banking Unit (OBU) regime. As noted in the 2009 Johnson Report into Australia as a Financial Centre, the OBU was a key pillar of financial centre competitiveness and the repeal of the OBU in 2021 detrimentally impacted Australia's attractiveness as a place from which to conduct mobile financial business. 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 by the repeal of the regime.

In AFMA's view, the repeal of the OBU regime ought to have been the catalyst for the Government to articulate the activities that it wishes to incentivise to retain and attract business to Australia and implement a regime that would do so. 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. However, the Government has not implemented any regimes that seek to restore the competitiveness lost from the repeal of the OBU regime, leaving a hole in policy.

The Senate Committee into Australia as a Technology and Financial Centre recommended (on a bipartisan basis) in 2021 that the Government legislate the Global Markets Incentive (GMI) that would have maintained a sufficiently attractive incentive for international markets transactions to be conducted from Australia while addressing any concerns from the OCED. Notwithstanding this recommendation and the significant subsequent engagement with Treasury, no announcement has been made by the Government as to any replacement of the OBU regime.

There is a current opportunity for the Government to determine which activities it wishes to incentivise to be done in Australia and the manner of incentivisation. In the absence of any policy development, Australia will risk becoming decreasingly attractive as a place from which to conduct international business and will struggle to retain existing firms that trade in international markets, let alone attracting firms to set up in Australia.

2. **What elements of the corporate tax system encourage and/or discourage investment and risk-taking?**

AFMA has long maintained that Australia's high corporate tax rate, and indeed its high reliance on corporate tax as a revenue base, operates as a drag on existing businesses and hinders the ability of Australia to attract foreign investment. While the corporate tax rate alone is not the only tax disincentive for Australia as a destination for capital, it is clearly an area where we have been slipping and tangible improvements can be made.

> "(a) reduced rate would lead to greater investment in Australia in the longer term, which would contribute to improved productivity and higher wages for Australians…Australia should have an ambition to reduce its company tax rate as economic and fiscal circumstances permit."

To the extent that Australia's dividend imputation system operates as a withholding tax as opposed to a final tax, at least in terms of resident shareholders receiving franked dividends, then there is a discrepancy between the headline corporate rate of 30% and the actual amount of revenue raised that is referable to corporate taxation. However, this discrepancy only exists in relation to domestic shareholders that enjoy the benefits of imputation, and not the non-resident investors whose capital Australia is seeking to attract.

The reduced 25% corporate tax rate for small companies (turnover less than $50 million) does little to assist with the inefficiency of the corporate tax system or attract capital to Australia. Such businesses are largely domestically owned and hence to the extent that they pay corporate tax, such tax is passed through to domestic shareholders and claimed as imputation credits, meaning that the company itself has not paid any tax. For the larger companies that may be of a sufficient scale to attract foreign capital, it is more likely that these companies are taxed at 30% and have shareholders who are unable to benefit from imputation.

AFMA's recommendation is that, to enhance productivity and wage growth, Australia should have a stated aspiration to reduce the corporate tax rate as fiscal circumstances permit.

A key driver of regulatory burden in the tax space is non-alignment in Australian approaches to compliance with other jurisdictions and/or undertaking unilateral initiatives that are bespoke to Australia. Given the proliferation of multilateral initiatives from the OECD in recent times, affected entities will look to adopt a consistent approach to compliance in each jurisdiction in which the entity operates. Any jurisdiction-specific idiosyncrasy will frustrate the objective of a global compliance response.

There are a number of examples where Australia's compliance approach will differ sufficiently to undermine a global response. The recently enacted Public Country-by-Country legislation requires Australian disclosures of tax information in line with a voluntary compliance standard (GRI407) which is different to the disclosures required under a European Union directive. As a result, affected entities that operate in both Australia and Europe will need to duplicate effort to adhere to two different compliance requirements which have an identical policy rationale, thereby duplicating effort and reducing comparability.

AFMA's view is that a significant reduction in regulatory burden would arise to the extent that Australia's approaches to compliance initiatives that exist in multiple jurisdictions were aligned to the approaches in such jurisdictions.

3. **Which parts of the corporate tax system do you find the hardest, or most time or cost-intensive to comply with? How could the compliance burden of the corporate tax system be reduced?**

In 2016, the Australian Taxation Office (ATO) announced the commencement of the Justified Trust program, whereby all corporate taxpayers in the Top 1,000 need to evidence to the ATO that there is justified trust that the taxpayer is paying the correct amount of tax and has appropriate governance systems. This is an additional compliance burden above the routing compliance obligations of a corporate taxpayer.

Undertaking a Justified Trust review is hugely onerous on the taxpayer and requires engagement with the senior management team of the taxpayer, not just those with the responsibility for corporate tax compliance. Taxpayers are required to communicate business strategy and the rationale for their group structure, which is invasive and time consuming to provide to the ATO in a manner that satisfies the ATO's requirements.

The particular concern that AFMA has with the Justified Trust program is that it is bespoke to Australia and hence, for those affected taxpayers that operate in multiple jurisdictions, the program fuels the narrative that Australia is a relatively difficult place to do business from a corporate tax perspective. This is particularly the case when the payoff from a regulatory burden perspective from attaining high assurance from the ATO is unclear; AFMA's members report that the time and effort deployed to satisfy the requirements is as burdensome now as it was at the commencement of the program.

As part of the Commission's consideration of the corporate tax system, it would, in AFMA's view, be appropriate for a review to be undertaken of the Justified Trust program, particularly the extent to which any revenue uptake from the program compared to the compliance costs associated with engagement under the program.

Section 3. Reduce the impact of regulation on business dynamism

4. **What areas of regulation do you see as *enhancing* business dynamism and resilience? What are the reasons for your answer?**

While not a regulation, after repeat representations from industry, Treasury launched the Regulatory Initiatives Grid (RIG). A similar initiative that was first introduced in the UK which lists announced and publicised reform priorities and initiatives that will materially affect the financial sector over the next 2 years. The purpose of the Treasury RIG is to enhance transparency of upcoming changes to the financial sector regulatory landscape and strengthen engagement between the sector, Government, and regulators. It also helps show the wide range and volume of regulation heading to institutions.

Industry welcomed Treasury's support and introduction of the initiative. AFMA believes this collaboration with forward-thinking will aid business dynamism. We strongly encourage the next step to be removal from the pipeline, rules and regulations that add to costs and burden for no demonstrable benefit.

5. **How has your regulatory burden changed over time?**

As the Australian Law Reform Commission's (ALRC) final report into confronting complexity in corporations and financial services legislation found "….the legislation governing Australia's financial services industry is a tangled mess — difficult to navigate, costly to comply with, and unnecessarily difficult to enforce." AFMA agrees that not only is the governing legislation challenging to work under, but that the rate at which new incoming regulations and legislated initiatives are being required of industry is increasing, as is the resourcing, costs, and breadth of application to business activities. In 2024 alone, ASIC issued or updated over 150 regulatory guides, information sheets, reports, consultation papers, legislative instruments, and other documents that have regulatory effect. Likewise, APRA implemented wide-ranging and impactful reforms, including cover changes to capital requirements, new prudential requirements, and the running of a system-wide stress test, which adds to the already comprehensive requirements faced by banks. In the same year, major reforms, reporting regimes, and initiatives were introduced by the Government, including mandatory climate reporting, AML/CTF reforms, the Financial Accountability Regime, the Scam-Safe Accord, expanded WGEA reporting requirements, and financial advice reforms. While AFMA is not making comment on the content of reforms or work undertaken by the regulator individually, the collective rate, complexity, business impact, and cost of such regulatory additions are having a negative impact on business dynamism, productivity, and competitiveness.

6. **What regulations do you find time-consuming, overly complex or otherwise constraining business dynamism and resilience? What are the reasons for your answer?**

As highlighted above, and echoed by the ALRC, AFMA sees a breadth of complexities, burden and inefficient regulations and legislation governing the sector. The ALRC rightly identified a path forward to resolve the complexities, high cost of compliance, and inefficiencies within the corporations and financial services legislation in January 2024. AFMA strongly supports the ALRC's recommendations and engaged closely during the consultation process. However, more than a year on and government is yet to begin the recommended reform process. AFMA would encourage the Productivity Commission to champion the beginning of these important reforms, as part of this inquiry.

Acknowledging the long-term nature of reforming financial services law, AFMA has been engaging with ASIC in looking at how its administration of the law could be simplified and improved within the framework of the existing law. While not a direct request of the Productivity Commission and likely too granular for this inquiry, AFMA provides an overview of the regulatory areas we see potential for simplification to enhance productivity and dynamism that we have presented to ASIC.

Regulatory issue	**Number of specific recommendations**
Communication and Consistency	4
Coherent Guidance and Consultation	13
Cross-border exchange of information and data sharing	1
Licensing	5
MIRs	3
Reportable Situations / Breach Reporting	16
Industry funding levy reforms	1

OTC Derivative Reporting Materiality Thresholds	1
Generally available information – OTC Markets	2
Equity Capital Market Efficiencies	8
Co-location restrictions	2
Online tools and portals	4
Entity Liaison Officer	1
Regulatory Grid coordination	1

AFMA would be pleased to provide our detailed recommendations, as summarised in the above table, should this be of use to the inquiry. AFMA would welcome the opportunity to discuss this submission further and would be pleased to provide further information or clarity as required. Please contact Brett Harper via bharper@afma.com.au or 02 9776 7977.

Yours sincerely,

Brett E. Harper

Brett Harper

Chief Executive Officer