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The Manager
Banking, Insurance & Capital Markets Unit
Financial System Division
The Treasury

21 August 2017

By email: lenderrules@treasury.gov.au

Dear Sir/Madam

TREASURY LAWS AMENDMENT (NON-ADI RULES) BILL 2017

The Australian Finance Industry Association [**AFIA**][1] is the industry advocate for Australia's finance sector. AFIA represents more than 100 leading providers of consumer, commercial and wholesale credit, including ASX-listed and customer owned banks, captive financiers and credit reporting bureaus. AFIA Member companies include Authorised-Deposit Taking Institutions (ADIs) and non-ADI lenders across the full spectrum of the provision of finance: from personal lending, car finance and credit cards, through residential and commercial mortgage lending and property development and construction finance, to lease and equipment finance, auto fleet management, leasing and rental and working capital loans to SMEs and larger corporates, including via wholesale bailment and distribution finance, insurance premium funding, factoring and invoice discounting. Such lending can be secured or unsecured. Our non-ADI Members raise their funds through wholesale markets (both domestic and international), securitisation, investor and some retail lines. AFIA and its members welcome the opportunity to provide specialist operational and policy expertise to inform the Government's consideration of proposed new APRA powers to address financial stability risks to be implemented through the *Treasury Laws Amendment (Non-ADI Rules) Bill 2017* and accompanying material [the **draft Bill**].

Our submission covers both aspects of the Bill:

- the new "reserve" powers for APRA to make rules concerning the lending activities of non-ADI lenders for the purpose of addressing financial stability risks; and
- APRA's enhanced powers to collect statistical information from non-ADI lenders for the purposes of monitoring their activities and determining when to use its new "reserve" powers.

APRA Financial Stability "Reserve" Powers

AFIA appreciates that the draft Bill intends for APRA's rule-making to be a "reserve" power.

However AFIA and its Members are seriously concerned by the lack of specificity, general uncertainty and possible disruption to their business models, particularly on their funding, that the proposal as currently drafted will bring. Across the spectrum of many of our Members' "lending finance" products, it is difficult to understand how any "*potential risk to financial stability*" would arise, or how they would "*cause or promote instability in the financial system*".

Yet if enacted in its present form, the power is not "reserve": it is explicit for all of them and any local or overseas investor in, or lender to, our Members would be on notice to take it into account when extending funding. Moreover, any potential new entrant to the market would also need to factor it into their decision.

The draft Bill therefore unnecessarily adds elements of sovereign risk to such decision-making.

It is noted that the proposed rule-making power previously existed in "reserve" for over a quarter of a century without ever needing to be used. When elected in 1972 the then Labor Government had regulation of non-bank financial intermediaries (NBFIs) as part of its platform. The *Financial Corporations Bill 1973* included a range of NBFI registration and statistics provisions plus (Part IV) intervention/control powers over their interest rates, balance sheet ratios and volume and direction of lending.

[1] Formed in 1958 as the Australian Finance Conference (AFC) and rebranded as AFIA in June 2017

When the *Financial Corporations Act* became law in August 1974, Part IV was not proclaimed and consequently never commenced or took effect; this was due to an industry view, supported by the Reserve Bank and Treasury and accepted by the Government, that market-oriented policies supported by consultation would achieve the desired monetary policy and macroeconomic outcomes.

Subsequent to 1974 none of the significant and broad-reaching Inquiries into the Australian Financial System, (not the Campbell, the two Martin, the Wallis or more recently the Murray Inquiry), have remotely hinted that these sort of "reserve powers" were in any way needed; more so the opposite, with the *1974 Act* replaced by the *Financial Sector (Collection of Data) Act in 2001*, mainly focussed on the provision of statistics by non-ADI entities to inform policy-making.

More to the point, when the rule-making powers were formerly reserved in 1974, the NBFI sector (adjusted for building societies and credit unions, now ADIs) represented 29% of the regulated (ADI) part of the market. Yet no need was identified to warrant enactment of the intervention/control powers. In 2001, the non-ADIs proportion of ADIs had dropped to 19%; again, no need for the power was identified as warranted then either. Presently, as per Reserve Bank Data[2] non-ADIs represent only 4% of ADIs total assets. Given this it is hard to understand the rationale for the present Bill or how its powers could be exercised in any cost/benefit or 'best practice regulation-making' way in support of financial stability.

AFIA therefore submits that the potential risk to financial stability from the credit decisioning of non-ADI lenders as a proportion of the total market does not warrant the unrestricted and broad-ranging "reserve" power proposed to be given to APRA through enactment of the Bill in its current form. The outcome puts at risk a viable and alternate finance option in not only the residential and investment property segment but the broader market including equipment and small business finance.

AFIA Recommendation:

- In consequence, AFIA recommends that the better approach to achieve the Government objective of minimising risk to financial stability on a real-time basis is to enhance the power of APRA to capture and analyse contemporary market information from the relevant segment of the non-ADI lenders that operate in the same market as the evidence based at-risk ADI-segment. The current Bill should be confined to currently relevant statistical collection, noting our additional comments below.

- The rule-making power should be properly reserved to a market/product segment once it had been agreed (via a legitimate process (eg. Parliamentary Committee) with proper consultation with affected financial corporations) as likely to cause financial system instability with clearly enunciated rationale and metrics. This would allow all other market lenders to continue their business without being subject to sovereign risk type inferences.

Registrable Corporation – Data Collection + Rule-Making

In terms of other aspects of the Bill, AFIA would submit that there should be a clearer demarcation between statistics provision and any ambit of rule-making given that a quantum rather than proportionate restriction could be more problematic for a smaller asset base. This without penalising the more successful market players.

The 1974 Act had registration at $1m and statistics provision at $5M. From 2001 it was registration at $5M for finance being sole or more than 50% of a business's assets ($25M if a retailer) and statistics provision after $50M. The Bill proposes registration and statistics provision from $50M. This will require transition in the current statistical series that we are sure that the RBA and APRA will manage.

The new threshold of $50M at financial year-end and of $50M of principal advanced during a financial year however, presents a collection and regulatory capture issue for bailment and other short-term financiers; $5m each month providing working capital to SMEs to be repaid within a month could exceed the $50M new lending but only result in $5M of loan assets. In our view to ensure participants that represent a risk to financial stability and are likely able to be resourced to bear systems and compliance-build costs for data provision the more appropriate threshold should be $100M.

[2] www.rba.gov.au/statistics/tables/B1

We also note that the 1974 Act precluded different rules/requirements for lenders within the same categories. The draft Bill however allows 'rules' to be applied to specific financiers regardless of grouping, further adding to perceptions of sovereign risk.

AFIA Recommendation:

- Given the dynamic market and the Government's promotion of innovative finance provision, AFIA suggests that rather than attempt to define the at risk segment based on current participants, that APRA be given a business model discretion on how it applies the statistics provision, as distinct from any statutorily-defined power. This would also have the benefit of setting a monetary threshold that could be tiered to reflect the risk of the particular market segment under consideration and their ability to absorb the IT and other compliance costs of data provision.
- Should Government continue its policy of a single monetary threshold, we recommend the level for statistical provision be set at $100M to ensure the appropriate balance between risk and regulatory cost allocation.

Conclusion

AFIA and its members clearly have serious concerns with the current draft Bill in terms of practicality, cost and sovereign risk. We look forward to working with the Government through Treasury and the Parliament to revise the draft Bill to ensure its design achieves the underlying policy objective of minimising risk to financial stability of non-ADI lenders in the residential or investment property lending market or other market segments, as warranted, to ensure a competitive and productive market for consumers or business finance customers in Australia.

Kind regards

Helen Gordon
Chief Executive Officer

Attachment:

1. AFIA Membership list

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AFIA MEMBERS

255 Finance
Alleasing Group
Allied Credit
American Express
ANZ Banking Corporation/Esanda
Attvest
Australian Structured Finance
Automotive Financial Services
Avis Budget Group
Bank of China
Bank of Queensland
Bendigo & Adelaide Bank
BMW Australia Finance / Alphabet Australia
Branded Financial Services
CAFG Australease
Cashflow Funding Limited
Caterpillar Financial Australia
Cisco Systems Capital (Australia)
Classic Funding Group
CNH Industrial Capital Australia
Commonwealth Bank of Australia
Credit Corp Group
Double M Management
Dun & Bradstreet
East Coast Car Rentals
Eclipx Group / FleetPartners
Elantis Premium Funding
Elemental Financial Corp / Custom Fleet
Europcar Australia & NZ
Experian Asia Pacific
Equifax (Veda)
Finance One
Fleetcare
FlexFleet
FlexiGroup
Fuji Xerox (Finance) Australia
Genworth
Group & General Finance
Hertz Australia
HP Enterprise Financial Services
HSBC Bank Australia
Hunter Premium Funding
IBM Global Financing
Indigenous Business Australia
John Deere Financial
Komatsu Corporate Finance
Kubota Australia Finance
Latitude Financial Services
LeasePlan Australia
Leasewise Australia
Liberty Financial
Macquarie Leasing
Macquarie Premium Funding
Max Recovery Australia
McMillian Shakespeare Group
ME Bank
Mercedes-Benz Financial Services
MetroFinance
MoneyTech
National Australia Bank
Nissan Financial Services
On Deck Capital
ORIX Australia
PACCAR Financial
Pepper Money
Premium Funding Limited
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Selfco Leasing
Service Finance Corporation
sgfleet / nlc Pty Ltd
SmartGroup
Summit Fleet Leasing & Management
Suttons Motors
Thorn Group
Thrifty Australia & NZ
TL Rentals
Toyota Finance Australia
Volkswagen Financial Services
Volvo Finance
Walker Stores
Wells Fargo International
Westlawn Finance/ North State Finance
Westpac Banking Corporation/St George Bank / Bank of Melbourne / Capital Finance Australia
WEX Australia
Wingate Consumer Finance
Yamaha Finance

ASSOCIATE MEMBERS

Ashurst Australia
Alfa
Bynx Australia
Cashflow Funding Limited
ClarkeKann Lawyers
Clayton Utz
Colin Biggers & Paisley
Commercial & Asset Finance Brokers Association
Cornwall Stodart Lawyers
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