AFIA

Australian Finance Industry Association Limited
ABN 13 000 493 907
L11, 130 Pitt Street Sydney NSW 2000
T: 02 9231 5877
www.afia.asn.au

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Senator Andrew Bragg
Committee Chair
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600
By email: fintech.sen@aph.gov.au

Dear Senator Bragg

Senate Select Committee on Financial Technology and Regulatory Technology (the Inquiry) – AFIA Supplementary Submission

The Australian Finance Industry Association (AFIA) welcomes the opportunity to provide further comments to the Committee, particularly in relation to the impact of the COVID-19 crisis on smaller lenders and the fintech sector.

AFIA represents over 100 providers of consumer, commercial and wholesale finance in Australia, including retail banks, finance companies and fintechs.

AFIA commends the Federal Government for taking decisive and immediate action to support our economy and community through the COVID-19 crisis, announcing three economic packages and additional support initiatives.

While the Government's initiatives are of benefit to many of the finance industry incumbents, the measures will not necessarily, readily or clearly support a number of smaller lenders and their consumer and SME customers, including in the fintech sector.

This is due to a number of factors:

- Measures have specifically targeted the larger banks expecting liquidity support to flow through the financial system and allowing these banks to provide longer upfront commitments to repayment forbearance for their customers (6 month moratorium).
- Funding arrangements of smaller lenders either have had restricted access imposed on them (due to breach of lending covenants or choice of investment mandate) or have not been available to lenders who have bilateral funding through domestic banks, international banks and institutional investors and/or non-warehouse SPVs, corporate bonds, private equity, and hybrid instruments.
- Limitations in the rules prohibiting certain smaller lenders from participating in current programs due to their business models, existing funding arrangements and/or tailored product range (i.e. specialised working capital, short term credit facilities, insurance premium finance, etc).

- Policy targeted primarily towards the 'hibernation strategy' for businesses whereas the situation of SMEs through the COVID-19 crisis will vary and more suitable products will not be, for example, a 3 year term loan, with a 6 month repayment holiday, and costs capitalised into the back end of the loan.
- Wages subsidy not clearly applicable for 'services' businesses, including businesses where cash receipts lag the provision of business, revenue/net interest margin more relevant than turnover for the business, high growth businesses, etc – which is the case for certain smaller lenders and the fintech sector (noting the Tax Commissioner discretion mechanism may be available for these situations).

It is critical the Government's initiatives maximises access for smaller lenders and leverages/offsets the impact of the significant liquidity support provided to the larger banks, ensures the range of products and services that consumers and SME customers need during the crisis continue to be available with low borrowing costs from a range of lenders, and ensures competition and choice is maintained in our financial system.

<u>Support for smaller lenders to continue to provide specialised products, offer longer upfront commitments to repayment holidays, and access capital at lower costs</u>

The reality is, the cost of capital for smaller lenders in the current environment is higher due to the liquidity support for the larger banks, and this is distorting the lending market.

Additionally, smaller lenders' traditional sources of finance are being impacted by a combination of commercial and market factors:

- Lack of financier appetite with domestic and international banks shifting/rebalancing portfolios, which is increasing the cost of capital for existing customers, particularly in situations where existing funding is to be rolled in the coming weeks/months, or restricting access to alternative financing options for new customers.
- Limitation to ongoing access, with certain securitisation warehouses having constrained/reduced access to ongoing draw down of existing limits due to potential breach of non-monetary covenants that are occurring as existing customers reduce payments (increasing arrears) or new arrears occur through future loss of employment/business restructuring due to the COVID-19 crisis (noting current bilateral conversations and negotiations are currently taking place to overcome this problem and APRA has clarified the treatment of 'COVID-19 arrears' for the banks).
- Change of terms of conditions which means that product/distribution channel metrics are being fundamentally diluted to sub-optimal returns.
- Lack of investor appetite with institutional investors shifting/rebalancing asset allocations, particularly superannuation funds in anticipation of early access by members due to financial hardship, which is impacting other assets and leading to higher spreads (e.g. corporate bond market).

AFIA believes that further Government and industry action is needed so a whole of financial system approach is taken to support liquidity for smaller ADIs and non-bank lenders. We propose an additional Government initiative is implemented to complement the measures already introduced, support access to credit, and promote competition during the COVID-19 crisis, which is critical in this current environment, but importantly, ensures access to credit and competition continues through the ongoing crisis response and recovery.

<u>**Create a new fund to provide liquidity support and access to alternative funding sources for smaller lenders**</u>

While smaller lenders' balance sheets are strong and sustainable, the lower cost of capital for the banks, coupled with the '6 month moratorium' being considered by customers generally as the new norm for hardship assistance, means smaller lenders are under additional operational and competitive pressure. This differs to the GFC where hardship assistance was incremental and done on a case-by-case basis, which is more manageable within existing funding and operational constraints.

Therefore, AFIA recommends an additional Government initiative to allow smaller lenders to support their consumer and SME customers through the various phases of the crisis – immediate, response and recovery. This additional initiative would recognise the complexities of the lending market, the varying needs of Australians through the COVID-19 crisis, and the need for Government and industry action to focus on the immediate challenges, with the longer term and recovery in mind.

A new investment by the Government into a smaller lender and fintech sector fund could have multiple purposes and outcomes:

1. Free up liquidity which would enable existing lending covenants in funding arrangements (between smaller lenders and domestic banks, international banks, and institutional investors) to be potentially cured and undrawn funding lines to be unlocked to receive new loans – allowing smaller lenders to remain competitive and match the banks by providing 6 month repayment holidays.
2. Enable smaller lenders to access funding at the same costs as banks (i.e. 0.25%) – so smaller lenders can manage their own working capital needs and pass on lower borrowing costs to existing and new customers, therefore levelling the playing field between the banks and smaller lenders.
3. Provide liquidity to smaller lenders' working capital needs so they can continue to operate and provide additional support to their SME customers, including covering repayments for business commitments often embedded in contracts with others (i.e. supplier and insurance contracts).
4. Provide choice to smaller lenders unable to easily access the Structured Finance Support Fund (SFSF) and the Coronavirus SME Guarantee Scheme, because they fall outside the mandate or rules for these initiatives due to their existing funding arrangements and the specialised nature of their SME products, services and technologies.
5. Support normalising the cost of capital in bond markets – so smaller lenders are able to undertake commercial paper/asset-backed securities purchase programs, similar to central banks' actions in other jurisdictions, including US Federal Reserve, European Central Bank and the Bank of England.

Concluding remarks

While the Government's initiatives have been critical to shore up the banking sector and to support the 'hibernation strategy' for many businesses, smaller lenders are now facing increasing challenges to be able to support their consumer and SME customers through the COVID-19 crisis.

The Government's support around achieving these outcomes will be imperative to how innovative lenders emerge and remain credible from the COVID-19 crisis and allow AFIA members to continue to fund their customers and help them navigate through this period without having to pass on any additional costs and/or being limited in what support they can offer their consumer and SME customers.

Attachment A provides further detail about the new fund and other initiatives to support smaller lenders and the fintech sector through the COVID-19 crisis.

Should you wish to discuss our feedback further, or require additional information, please contact me or Naveen Ahluwalia at naveen@afia.asn.au or 02 9231 5877.

Yours sincerely

Diane Tate
Chief Executive Officer

Attachment A: Create a new fund to provide liquidity support and access to alternative funding sources for smaller lenders

Government support for smaller lenders and the fintech sector is critical in this current environment, so when we come out of the COVID-19 crisis, Australians have the continuation of:

- Customer product choice – to a broad range of financial products, services and technologies
- Customer provider choice – to a broad range of financial services providers who continue to drive a competitive and innovative lending market
- Innovation and keeping Australia's financial services providers in a global leading role, and
- Access to credit and confidence in the market from domestic and offshore investors.

Smaller lenders provide innovative products, services, and technologies that are critical to delivering finance and funding to many consumer and SME customers in Australia, especially where other lenders do not have the business infrastructure or have chosen not to serve certain parts of the economy

For example, Buy Now Pay Later (BNPL) providers have developed simple, low cost products for consumers, but they also play an important role in supporting the retail industry in Australia, including over 30,000 retailers, many of which are SMEs. Furthermore, online SME lenders play an important role in providing tailored products and solutions to meet specific SME business and working capital needs.

<u>Expertise of smaller lenders and the fintech sector</u>

AFIA's membership includes smaller lenders that are experts in:

- Structuring finance for different SME business and working capital needs across different sectors, including specialised products for fleet and vehicle management, motor finance, supplier equipment, invoicing finance, insurance premiums, etc – with a number of these smaller lenders critical to supporting the cashflow and capital management of supply chains in sectors that are "essential services".
- Managing payments through innovative solutions and technologies, meaning SMEs are better able to access lower-cost, short term credit facilities to match business needs, operations and costs, meeting commitments to suppliers, service providers and others, and to minimise business risks as well as consumers are better able to use simple, easy to access online platforms to manage their spending needs – with a number of these smaller lenders critical to supporting the cashflow and capital management of SMEs in the retail, hospitality, tourism and energy sectors.

AFIA and our fintech members have introduced industry standards above and beyond the law, including the Online Small Business Lenders (OSBL) Code of Practice and the draft Buy Now Pay Later (BNPL) Code of Practice. For more information about AFIA, please see our previous submission which we submitted to the Committee on 31 December 2019.

One of the key successes in financial services over recent years in Australia, which has led to global recognition, is the innovative nature of our financial service providers – how they continue to adapt and improve the customer experience, move deeper into digital offerings, and continue to meet customer demands and needs through specialised products, services and technologies.

<u>Challenges for smaller lenders with participating in the new Structured Finance Support Fund and Coronavirus SME Guarantee Scheme</u>

AFIA commends the Federal Government for taking decisive and immediate action to support our economy and community through the COVID-19 crisis, announcing three economic packages and additional support initiatives.

We have worked closely with the Government, Treasury and the Australian Office of Financial Management (AOFM) on the design and implementation of three critical measures:

- Structured Finance Support Fund (SFSF) – through the AOFM, a $15 billion investment to support smaller lenders to support their consumer and SME customers get cashflow support, working capital and hardship assistance.
- Coronavirus SME Guarantee Scheme (Scheme) – a $40 billion risk sharing model so lenders can continue to support their distressed SME customers through the COVID-19 crisis.
- JobKeeper Payment – $130 billion to support businesses and protect jobs, with a wage subsidy for those businesses significantly impacted by the travel restrictions and social distancing measures introduced to stop the spread of the COVID-19 virus so they can continue to retain and pay their employees.

However, the SFSF and the Scheme are geared towards the larger banks or larger non-bank lenders, and will not provide support to smaller innovative lenders. Furthermore, while the '6 month moratorium' announced by the banks has been an important measure to calm the community, it is having a significant impact across lending markets, putting pressure on smaller lenders that are not permitted or unable to provide similar initiatives to their customers.

Smaller lenders are challenged in being able to participate in the SFSF and Scheme because of their business models, existing funding arrangements and/or tailored product range.

<u>Business models and products</u>

Many smaller lenders provide tailored and innovative products, including alternative financing options and working capital solutions to millions of Australian SMEs, including through trade finance, asset finance, merchant cash advances, invoice finance, insurance premium products, crop lines, inventory finance, unsecured fixed term loans, revolving and other lines of credit, and commercial credit cards. Products are shorter term loans, often linked to contracts for business commitments (i.e. supplier, insurance) and do not lend themselves to repayment holidays.

Therefore, smaller lenders may not necessarily be eligible for, or easily able to, access the Scheme, because access to the Scheme requires a lender to provide an upfront 6 month repayment holiday. For example, credit facilities linked to business commitments cannot provide the '6 month moratorium' without interfering in contractual obligations and/or without forbearance being provided by the manufacturer, supplier or insurer. Credit facilities that are short term may be limited by interest rate prohibitions, where costs capitalised in the back end of the loan due to the upfront '6 month moratorium' may trigger such prohibitions.

<u>Business models and funding</u>

Many smaller lenders access different (and currently out of scope) funding sources, including bilateral funding arrangements from banks and institutional investors as well as other financial instruments (i.e. non-warehouse SPVs, corporate bonds, private equity, hybrid instruments, peer-to-peer, etc).

Therefore, smaller lenders that do not have existing securitisation or structured finance arrangements are not eligible to participate in the SFSF (noting the AOFM is encouraging smaller lenders not currently eligible to set up arrangements that would be eligible, however, developing this funding infrastructure and resource capability will be difficult in the current environment).

For example, asset or equipment financers that use non-warehouse SPVs or other suitable hybrid instruments provide funding to on-lend and are critical for the viability of SMEs, however, these smaller lenders have neither the capacity or resources to structure or re-structure funding models to immediately apply to participate in the SFSF.

It is important to support competition and innovation as well as offset interventions that have inadvertently caused a distortion in the lending market, by providing liquidity support to smaller lenders to continue to provide finance and allow smaller lenders to maintain the integrity of their 'back books' while continuing to shore up their 'front books' and offer new lending.

<u>**Create a new fund to provide liquidity support and access to alternative funding sources for smaller lenders**</u>

To solve for the challenges facing a number of small lenders to access the current measures and to ensure a level playing field in the lending market, we recommend the Government create a new fund.

A new investment by the Government into a smaller lender and fintech sector fund could have multiple purposes and outcomes:

1. Support freeing up liquidity for smaller lenders

The fund would enable existing lending covenants in funding arrangements between smaller lenders and domestic banks, international banks, and institutional investors to be adjusted without causing disruption to the agreements.

This is important to solve issues in existing funding arrangements preventing smaller lenders offering longer periods of hardship assistance for their customers, by freeing up liquidity in the 'back book' by curing arrears related covenant breaches and unlocking undrawn limits to receive new receivables up to existing limits.

Simplistically, the fund could:
a. Acquire primarily a portfolio of arrears – COVID-19 or others
b. Take some form of subordinated position so as to not disrupt existing security and waterfall arrangements
c. Receive some form of coupon as defined in new terms with the borrower and existing security providers, and
d. Get repaid as defined in new terms with the borrower and existing security providers.

This is also important so smaller lenders can remain competitive and match the banks by providing 6 month repayment holidays, where practical.

It should be noted that the nature of some shorter term credit facilities means this form of forbearance is not possible or appropriate – that said, it would be the intention of smaller lenders to provide a '6 month moratorium' for those products that are similar to the banks' offerings and can accommodate this approach as a suitable option for hardship assistance.

2. Enable smaller lenders to access funding at the same costs as banks

The fund would enable smaller lenders to access funding at a comparable interest rate to the banks (i.e. 0.25% available to the banks through the $90 billion term funding facility).

This is important so smaller lenders can manage their own working capital needs and pass on lower borrowing costs to existing and new customers and goes towards levelling the playing field between the banks and smaller lenders.

3. Support liquidity to smaller lenders to then assist SME business and working capital needs

The fund would enable smaller lenders access to liquidity support for working capital needs, where repayments and originations have decreased, and therefore reduced cash inflows for their own operations, so they can in turn provide additional support for the working capital needs of their SME customers.

This is important so smaller lenders can continue to operate, retain employees, offer longer periods of hardship assistance to their customers, and provide additional support to their SME customers, including covering repayments for business commitments often embedded in contracts (i.e. supplier and insurance contracts).

4. Provide choice to smaller lenders

The fund would complement the Government's other measures and ensure smaller lenders unable to easily access the SFSF and/or Scheme, because they fall outside the mandate or rules for these initiatives due to their existing funding arrangements and the specialised nature of their SME products, services and technologies.

This is important so smaller lenders can access alternative funding sources, and help reduce their overall cost of capital so they can pass these savings onto their consumer and SME customers through lower borrowing costs and longer periods of hardship assistance.

5. Support the corporate bond market

On 19 March 2020, the RBA announced the commencement of a repurchase program, through purchases of government bonds in the secondary market. This means the RBA will purchase government bonds and semi-government securities across the yield curve to achieve a target of 0.25% for 3-year Australian Government bonds.

This is important to help normalise the cost of capital, and in particular influence prices in bond markets. However, spreads on margins on corporate bonds have widened and investor appetite in debt markets is lower, with institutional investors and superannuation funds putting funds into cash and equity markets.

Therefore, the fund would complement the RBA and AOFM programs and provide support to the corporate bonds market, helping smaller lenders diversify their capital. Specifically, this would enable smaller lenders to undertake commercial paper/asset-backed securities purchase programs, similar to central banks' actions in other jurisdictions, including US Federal Reserve, European Central Bank and the Bank of England.

AFIA recommends the new fund be managed by an organisation with expertise in funding markets, such as the RBA working closely with the AOFM.

<u>Other initiatives</u>

Securitisation/warehouse workout principles

AFIA and our members are working on set of principles to support discussions between smaller lenders and their senior financiers to provide a framework and to facilitate an understanding between the parties, which should lead to improved flexibility in warehousing facilities. All discussions will be managed between AFIA members and their senior financiers on a bilateral and case-by-case basis.

The purpose of the set of principles indicatively is to agree an approach that will see:
- Continuing funding access to existing warehouses or non-warehouse facilities
- Allowing draw down of funding against existing approved limits, where relevant, on an agreed case-by-case basis
- Increasing and extending warehouses or non-warehouse facilities
- Determining that arrears that arose say after 1 March 2020 up to 1 October 2020 ('COVID-19 arrears') are ringfenced
- Deferring asset sales for a period of up to 6 months

- Not accelerating the repayment of any underlying facility and/or taking any further realisation action under existing events of default or future potential events of default for a period of up to say 1 October 2020.

In tandem with this initiative, AFIA recommends the implementation of changes to law to provide comfort to businesses continuing to draw and roll over debt under existing facilities and insulating businesses from action for covenant breaches and defaults and/or clarifying the treatment of 'COVID-19 arrears'[1].

These initiatives are important to allow smaller lenders to support their customers at a time of need and not frustrate customers or create competitive arbitrage between larger and smaller participants.

Consider tailoring offshore initiatives and using Fintech members' distribution channels as the conduit to get liquidity to customers in need

Globally governments are exploring how they can provide a direct incentive for small businesses to keep their workers on the payroll. In part the JobKeeper Payment aims to deliver this outcome, albeit from a loss minimisation perspective.

The US has tackled this from a probability of default perspective through its Paycheck Protection Program (here) with the Small Business Administration forgiving loans if all employees are kept on the payroll for eight weeks and the money is used for payroll, rent, mortgage interest, or utilities.

While some smaller lenders may be willing to co-underwrite some of these loans, the Government could consider using lenders' distribution channels (on a fee for service basis), many of which are fully automated and digital, as the conduit to get the Government's assistance to its key constituents.

JobKeeper Payment – confirm eligibility

AFIA welcomes the passing of the enabling legislation[2] for the JobKeeper Payment. This initiative will help many businesses, including smaller lenders, retain employees, keep teams together and/or to grow their teams to enable them to assist their customers with increased levels of support.

The wage subsidy is intended to be a broad policy to help as many businesses, including fintech lenders, which provide credit facilities to businesses substantially impacted by the COVID-19 crisis. The rules confine eligibility to those businesses with less than $1 billion in turnover to demonstrate a fall of 30 per cent in revenue, or a 50 per cent fall in revenue for companies with a turnover of more than $1 billion relevant to the period a year earlier. Furthermore, turnover is calculated as it is for GST purposes and is reported on Business Activity Statement period (monthly or quarterly). It includes all taxable supplies and all GST free supplies, but not input taxed supplies.

Revenue generated by finance companies is defined as input taxed supplies, so the draft rules would appear to preclude smaller lenders, which seems contrary to the Government's stated intent. If changes or clarifications are not made, many thousands of jobs could be impacted in the finance industry.

We have worked closely with the Government, Treasury and now the ATO on the design and implementation of the JobKeeper Payment, to ensure the policy translates as intended into practice and the Tax Commissioner discretion mechanism is not used in a way that creates unnecessary administration burden for businesses and the ATO.

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[1] APRA statement to ADIs that COVID-19 arrears are not treated as arrears in certain circumstances. "Where a borrower who has been meeting their repayment obligations until recently chooses to take up the offer not to make repayments as part of a COVID-19 support package, the bank need not treat the period of the repayment holiday as a period of arrears. Similarly, loans that have been granted a repayment deferral as part of a COVID-19 support package need not be regarded as restructured."

[2] Coronavirus Economic Response Package Omnibus (Measures No 2) Bill 2020

AFIA recommends an ATO ruling or guidance that ensures access by non-bank lenders. Specifically, we seek a number of clarifications:

- Services businesses – permitted to provide evidence of decrease in cash inflows/revenue (reduction in business) comparison month v month, i.e. April 2020 – April 2019, recognising the lag between cash receipts and business provided.
- Lending businesses – change in GST definition and because of the accounting standard in relation to revenue recognition for loans (using the effective interest rate methodology, which delays the visibility of revenue decreases) meaning lending businesses are permitted to provide evidence of decrease in loan origination (reduction in business) comparison month v. month, i.e. March 2020/April 2020 – March 2019/April 2019.
- High growth businesses – permitted to provide evidence of decrease in payments (reduction in business) comparison month v month, i.e. April 2020 – March 2020, recognising the sharp change in performance between years.
- Business impacted by seasonal or other factors – permitted to provide evidence of decrease in revenues and/or payments (reduction in business) comparison month v month, i.e. April 2020 – March 2020, recognising the influence of factors, including climate, natural disaster, trade, etc events, on performance between years.

Additionally, many smaller lenders and their SME customers have different tax and reporting obligations, which should not adversely impact on their ability to access the wage subsidy and/or delay access to the wage subsidy.

AFIA recommends an ATO ruling or guidance that ensures:

- Businesses that lodge BAS quarterly – permitted to submit self-assessments based on monthly comparisons, even where the business normally submits the BAS quarterly – this will ensure smaller businesses that have opted to provide less regular tax submissions are not unfairly penalised and/or have to wait until after the June quarter to apply to get the JobKeeper Payment for their employees.
- Businesses that are not subject to BAS – permitted to submit self-assessments providing evidence that:
    - Earnings before interest, tax and depreciation (EBITD) declined by more than 15% relative to a comparable period a year ago, or
    - Turnover has declined by more than 30% relative to a comparable period of a month ago – i.e. April 2020 March 2020, March 2020 – February 2020, etc.

This approach will avoid many businesses being uncertain as to their eligibility and subsequently seeking bilateral exemptions from the Tax Commissioner. We suggest that the ATO be given discretion to determine additional eligibility criteria and clarify calculations for a category of business circumstances, such as outlined above.

This approach will also be necessary to ensure the JobKeeper Payment covers employees in businesses experiencing different business shocks (i.e. services-oriented businesses experiencing severe cashflow constraints due to the COVID-19 pandemic, which previously have seen high growth over the last 12-24 months and are yet to see a year-on-year turnover decline of 30%, but are enduring significant financial and commercial pressures impacting on their ability to retain employees. These high growth businesses are precisely the type of businesses the Government should be supporting, with evidence of commercial success and the ability to return to high performance during recovery, which will be critical to support future economic growth and investment in Australia.

Regulatory relief

AFIA highlights that there is a real need for regulatory relief and deferment of regulatory initiatives in the current environment. As the Committee is well aware, a large number of regulatory initiatives are or were planned to be implemented within the next 6-12 months, including the Design and Distribution Obligations

(DDO) due to come into effect 1 April 2021 as well as the comprehensive regulatory reform program in response to the recommendations made by the Financial Services Royal Commission, with many initiatives targeted to come into effect and/or enabling legislation introduced by 1 July 2020.

Obviously with the changes to the schedule of Parliamentary sittings and the focus of the Government on the COVID-19 crisis, it is assumed the regulatory reform program will be revisited. We also note the statement by the Council of Financial Regulators and subsequently by individual financial regulators regarding their 'facilitative and constructive' approach to regulation during the COVID-19 crisis and a reallocation of their own resources.

AFIA recommends the Government:

- Provide a 12 month deferment on the commencement of any new regulatory regime that is to commence in the next 12 months (including DDO).
- Confirm the deferral of the regulatory reform program in response to the recommendations made by the Financial Services Royal Commission and publish a revised timetable for those planned regulatory initiatives that were targeted to be legislated/implemented within the next 12 months (including initiatives in the roadmap as well as moratoriums/extensions to regulatory investigations, monitoring and surveillance activities (ASIC/ACCC/AUSTRAC) of a non-critical nature – we also believe it will be necessary to give consideration to certain recommendations in the context of the changed financial services and markets environment post-COVID.
- Continue to allow the practise of screen-scraping even after the Consumer Data Right regime 'goes live' on 1 July 2020 – many fintech lenders will now be challenged to continue to allocate resources to access the regime and introduce alternative practices while the COVID-19 crisis continues to unfold.

Smaller lenders must focus on the immediate priorities and allocate resources to supporting their customers through the COVID-19 crisis.

Electronic transaction relief

AFIA members are working extremely hard to try to adapt to situations where customers are required, through current legislation, to be physically present together to transact. The COVID-19 pandemic and the increasing measures imposed by Governments, which prevent movement, will necessarily have a negative impact on the ability to transact where current legislation prevents digital conveyancing.

This is a broad issue in Federal and state legislation. For instance, Statutory Declarations and Powers of Attorney are envisaged as something that must be witnessed in the same room. However, in order for customers to transact through a lockdown, shutdown or self-isolation, and for the economy to continue to function, the law must be updated to amend these requirements. More critically, in many states, it is still impossible to complete a mortgage without witnessing (noting NSW and Victoria have recently removed witnessing).

As an interim measure, AFIA recommends that the Government or ASIC temporarily suspend the provisions of the Electronic Transactions Regulations that exclude parts of the National Consumer Credit Protection Act, ASIC Act and the Corporations Act (and delegated legislation under those statutes) from the operation of the Electronic Transactions Act.

Specifically, relief should:

- Allow the use of electronic signatures on documentation instead of 'wet' signatures for consumer credit contracts
- Confirm that the requirements of section 127 of the Corporations Act are met when documents are executed electronically, thus allowing counterparties to rely on the assumptions under section 128 of the Corporations Act when transacting electronically, and
- Allow documents to be served electronically, rather than in hard copy.