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Dr Tony Richards
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Dear Dr Richards,

Submission in support of the proposed variation to the ATM Access Regime

On 29 May 2012, the Reserve Bank of Australia (RBA) initiated a public consultation on a proposed variation to the *Access Regime for the ATM System* (Proposed Variation). The Australian Bankers' Association (ABA) welcomes the opportunity to make a submission in response to the consultation paper on the Proposed Variation (RBA Consultation Paper).

Background

ATM Taskforce

In December 2010, the Australian Government established a taskforce with members from the RBA and the Department of the Treasury (ATM Taskforce). The ATM Taskforce was asked to examine issues relating to the cost of ATM access for Indigenous and other remote communities and prepare a report on appropriate action for dealing with issues specifically affecting Australian Indigenous and other remote communities in relation to ATMs fees.

As part of its work, the ATM Taskforce broadly identified two possible complementary strategies to reduce the impact of ATM fees on residents living in these areas, namely:

- reduce ATM fees in these communities, which may require external subsidisation from the banking sector and /or the public sector; and
- reduce ATM usage, potentially through the expansion of existing educational and housing programs; implementation of telecommunications strategies and review of the transparency and timing of payments from payment providers, such as Centrelink.¹

Following the review, the Government asked the ATM Taskforce to work with the banking industry and ATM deployers to assist in developing a solution to community concerns with ATM fees in very remote Indigenous communities, and to find a mechanism for facilitating the provision of ATM services to Indigenous people living in very remote communities.

As part of this work, the ATM Taskforce, with input from other Government agencies, community groups, and the industry, determined the following eligibility criteria for identifying ATMs that would benefit from any ATM fee reduction initiative:

- The ATM is located in very remote Indigenous communities based on indicators of remoteness provided by the Australian Bureau of Statistics (ABS);
- The ATM is located in a community store (and not in a venue that provides alcohol or gambling services); and
- The residents of these very remote Indigenous communities lack access to an alternative retail banking service, such as a bank branch, bank ATM, post office (Bank@Post) or Traditional Credit Union (TCU) branch.

¹ ATM Taskforce (2012). *ATM Taskforce – Report on Indigenous ATM Issues*. 28 February 2012. pp10-11.
http://archive.treasury.gov.au/banking/content/reports/atm_indigenous/contents.asp

The ATM Taskforce also engaged with the ABA, the banking industry and ATM deployers to develop the ATM Fee Proposal.

ATM Fee Proposal

In brief, the ATM Fee Proposal will result in fee-free cash withdrawals and balance inquiries for individuals living in certain very remote Indigenous communities (if those individuals are customers of banks participating in the ATM Fee Proposal (Issuers)).

The ATM Fee Proposal contemplates:

- identification of the ATMs to which the ATM Fee Proposal will apply by applying the eligibility criteria (Identified ATMs);
- the deployers of the Identified ATMs (ATM Deployers) allowing cash withdrawals and balance inquiries at Identified ATMs without imposing an ATM direct charge (but only for those consumers who are customers of the Issuers); and
- the Issuers paying the ATM Deployers a certain amount to cover the costs of operating the Identified ATMs.

In order to finance these fee-free services, the participating banks will make certain payments to the ATM Deployers operating ATMs in the selected communities. The payments made are intended to ensure that the costs of operating the Identified ATMs are covered by the participating banks. There will be no payment made by the ATM Deployers to the Issuers (or any other payment, for that matter).

The ATM Fee Proposal will be implemented via an Implementation Agreement which is intended to operate for a maximum period of five years.²

Importantly, implementation of the ATM Fee Proposal is contingent on obtaining certain approvals, one of which is obtaining an exemption from certain requirements set out in the *Access Regime for the ATM System* (ATM Access Regime).

ATM Access Regime

In March 2009, the RBA put in place a package of reforms to the ATM system.³ The reforms included the ATM Access Regime which, among other things, prohibited payment of 'interchange fees' except in certain circumstances.

One exception to this prohibition includes payments by a participant with a one-way arrangement to access one, and only one, other participant's ATMs and where the fee is paid in respect of this arrangement.⁴ However, in such circumstances, the participant that pays an interchange fee cannot also receive an interchange fee from any other participant in the ATM system.⁵

Another exception to this prohibition includes payment by a participant that is a member of an ATM sub-network and the fee is the common interchange fee payable between the members of the sub-network, and the fee is paid to another member of that sub-network.⁶

The ATM Fee Proposal would involve the participating banks making a payment to the participating ATM Deployers to cover the costs of operating the Identified ATMs. This proposed arrangement may not constitute a sub-network within the ATM network. Furthermore, while only a one-way arrangement, this proposed arrangement will involve more than one participant (even though payments will be made via individual payment arrangements). The proposed arrangement is also intended to operate alongside other arrangements, and therefore other arrangements between certain participating banks or ATM deployers are expected to continue to operate within the ATM market. Accordingly, the ATM Fee Proposal may not fall within the existing exceptions.

² Unless the parties identify and agree upon an alternative arrangement before the end of the five year term.

³ Reserve Bank of Australia, *ATM Fee Reforms*. <http://www.rba.gov.au/payments-system/reforms/atm-fee-reforms.html>

⁴ Reserve Bank of Australia (2009). *Access Regime for the ATM System*. February 2009 (ATM Access Regime) [11(i)] <http://www.rba.gov.au/media-releases/2009/pdf/mr-09-03-gn-atm-access-regime.pdf>; <http://www.rba.gov.au/payments-system/reforms/atm/access-regime/>

⁵ ATM Access Regime, [12].

⁶ ATM Access Regime, [11(i)]

RBA Consultation Paper

In May 2012, the RBA published a consultation paper proposing to vary the ATM Access Regime to broaden the scope of its powers to grant exemptions.⁷ As noted in the Consultation Paper, payments that need to be made between participants to finance the ATM Fee Proposal are at risk of operating counter to some of the prohibitions in the ATM Access Regime.⁸ While the ATM Access Regime includes a mechanism that allows the RBA to grant an exemption from compliance with these prohibitions, such a mechanism would not be available in the present case because of the way in which the exemption provision in question was originally drafted. The RBA has, therefore, formed the view that the exemptions in the ATM Access Regime are too narrow and need to be changed (which is the subject of the Proposed Variation).⁹ The ABA is supportive of the Proposed Variation, as it considers such variation is appropriate having regard to the requirements set out in the *Payment Systems (Regulation) Act 1998*, as discussed in more detail below.

Criteria for variation

Public interest

As noted in the Consultation Paper, the Proposed Variation will provide the RBA with the flexibility to facilitate the implementation of the ATM Fee Proposal (along with any other arrangements that in the future might be considered to be in the public interest). If this exemption is not granted, the ATM Fee Proposal will not be able to proceed or be implemented.

The factors that make the ATM Fee Proposal in the public interest have been the subject of extensive consideration and public debate. The ATM Taskforce has identified that a typical cardholder living in a very remote Indigenous community spends much more on ATM transactions than other Australians. At these very remote locations, cardholders typically have access to one independently owned ATM and, therefore, do not have access to fee-free ATM services. The ATM Fee Proposal is aimed at reducing the expenditure on ATM fees by residents living in very remote Indigenous communities who lack access to alternative banking, transactional and payment facilities.

The ATM Fee Proposal seeks to achieve social welfare outcomes in accordance with the Government's current policy initiatives. The immediate public benefits will be to:

- improve and promote fairer access to banking and financial services for Indigenous people living in very remote communities, including access to social security payments (ie, Centrelink payments or other Government benefits);
- reduce the financial burden from the cumulative impact of ATM fees for Indigenous people living in very remote communities and free up money in their budgets to spend on essential living expenses, such as food, clothing, education costs, etc;
- reduce the potential for Indigenous consumers living in very remote communities to be overcharged by store owners and traders in relation to access to cash where there are limited alternative means to access cash;
- reduce the financial burden associated with excessive ATM usage and multiple, small transactions – ie, more frequent cash withdrawals and balance inquiries are made by Indigenous people living in very remote communities due to socio-economic, behavioural and cultural factors; and
- provide financial capability associated with balance inquiries – ie, access to account balances can enhance the ability for Indigenous people living in these very remote communities to implement budgets as well as utilise EFTPOS facilities to purchase food and other necessities, reducing the need to carry unnecessary cash.

More broadly, it would be contrary to the public interest to maintain a set of exemptions that the RBA has now identified as being “too narrow”. To do so would unnecessarily limit the RBA's ability to grant exemptions to proposals that are not otherwise contrary to the objectives of the ATM Access Regime. Furthermore, good public policy and basic principles of good regulation require that inappropriate forms of regulation be addressed if such regulation is to continue meeting its original objectives.

⁷ Reserve Bank of Australia (2012). *A Variation to the Access Regime for the ATM System: Consultation Document*. 29 May 2012. (RBA Consultation Paper) <http://www.rba.gov.au/publications/consultations/201205-acc-reg-atm-sys-cons-doc/pdf/201205-acc-reg-atm-sys-cons-doc.pdf>

⁸ RBA Consultation Paper.

⁹ RBA Consultation Paper.

Interests of current and future participants

The Proposed Variation provides the RBA with the flexibility to grant an exemption from the requirements under the ATM Access Regime should the circumstances require it. The criteria for the RBA to grant any exemption do not change. The RBA must, therefore, continue to have regard to the public interest, the interests of current participants in the systems, the interests of people who, in the future, may want access to the system and any other matters the RBA considers relevant in assessing any exemption applications.

The Proposed Variation, therefore, has no adverse impact to the interests of current and future participants. On the contrary, current and future participants of the ATM system will benefit from a regulatory regime that is appropriate and drafted in a manner that prohibits conduct that should be prohibited (and does not prohibit conduct that does not need to be prohibited), and therefore gives the RBA appropriate levels of flexibility to exempt schemes when it is appropriate to do so.

Conclusion

The ABA submits that there are significant public benefits associated with the Proposed Variation. In particular, there are significant public benefits in ensuring the RBA has the ability to provide for exemptions where it is desirable to do so, and ensuring that regulatory instruments, such as the ATM Access Regime, are not drafted to be too narrow or too wide in scope. Furthermore, the Proposed Variation is required to allow implementation of the ATM Fee Proposal, a scheme that itself has significant public benefits (as a way of easing the financial burden of ATM fees for Indigenous people and residents living in remote communities).

Accordingly, the ABA supports the RBA's Proposed Variation to the ATM Access Regime.

Yours sincerely,



Diane Tate