

**5 October 2022**

Law Design Branch  
Treasury  
Langton Cres  
Parkes ACT 2600

By email: [MiscAmendments@TREASURY.GOV.AU](mailto:MiscAmendments@TREASURY.GOV.AU)

Dear Sir/Madam

**Miscellaneous amendments to Treasury portfolio laws**

1. This submission relates to the exposure draft documents:
  - (a) Treasury Laws Amendment (Miscellaneous and Technical Amendments) Bill 2022 (Cth) (**Draft Bill**) and accompanying Explanatory Memorandum;
  - (b) Treasury Laws Amendment (Miscellaneous and Technical Amendments) 2022 (Cth) (**Draft Regulations**) and accompanying Explanatory Statement; and
  - (c) Treasury Laws Amendment (Miscellaneous Amendments No. 1) Instrument 2022 (**Draft Instrument**) and accompanying Explanatory Statement.
2. The purpose of this proposed package of reforms is to make minor and technical amendments to ensure the law operates as intended by correcting technical or drafting defects, removing anomalies, and addressing unintended outcomes.
3. The Financial Services Committee of the Business Law Section of the Law Council of Australia (the **Committee**) appreciates the opportunity to provide feedback on the above documents and having been given an extension to do so until 5 October 2022.

**Preliminary observations**

4. As a general principle, the Committee agrees that the operation of the law will be improved if amendments are made to correct errors, address unintended consequences, and remove provisions that are redundant. The Committee therefore supports initiatives of this nature.
5. However, the Committee is concerned at the number of matters now warranting attention that appear not to have been picked up at an earlier stage, either before the release of exposure draft legislation for public consultation, or between the release of exposure draft legislation documents and the introduction of the relevant legislation into Parliament. It appears that a number of reforms introduced in response to the Hayne Royal Commission recommendations fall into this category. In some cases, inadvertent errors or omissions may have adversely impacted the effectiveness and/or fairness of the regulatory regime, and the ability for regulators to enforce the

law against certain entities and/or in certain situations consistently with the original policy intent.

6. The Committee considers that it would be appropriate to consider whether there are aspects of the law design process itself which could be improved, including:

(a) whether the broader context of any proposed legislative change was adequately considered—in particular, whether there were other provisions that would need to be altered for consistency or repealed due to redundancy or duplication as a consequence of the introduction of the relevant new laws.

For example, in an ideal world:

(i) with respect to Schedule 1, Part 1, Division 10, item 24 of the Draft Bill, at the time when section 64A of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**) was repealed, a search for cross-references to section 64A within the SIS Act should have been undertaken, which would have revealed that table item 24 in subsection 6(1) should also have been removed at that time;

(ii) with respect to items 1 and 2 of the Draft Regulations, at the time when provisions of the *Corporations Act 2001* (Cth) (**Corporations Act**) relating to telephone monitoring for takeover bids were repealed back in 2007, a search of both the Corporations Act and the *Corporations Regulations 2001* (Cth) (**Corporations Regulations**) for cross-references to the relevant provisions ought to have been undertaken, so that the cross-references were repealed at the same time as the provisions themselves were repealed;

(iii) with respect to item 12 of the Draft Regulations, before creating regulation 9.12.04, a search of the Corporations Regulations ought to have been undertaken at the relevant time to ensure that the relevant proposed new regulation number was not already in use; and

(iv) with respect to item 1 of the Draft Instrument, the repeal of the Business Names Registration (Availability of Names) Determination 2012 ought to have been addressed back in 2015 when the Business Names Registration (Availability of Names) Determination 2015 was made;

(b) whether quality control and proof-reading processes applied prior to documents being released for public consultation and/or finalised for tabling in Parliament could be enhanced;

(c) whether the relevant area within Treasury might benefit from additional resources and/or team members with different kinds or levels of skills; and

(d) whether the relevant public consultation period for the relevant legislative change was sufficient to allow relevant stakeholders a reasonable opportunity to make specific and meaningful comments.

7. The Committee hopes that there will be a careful review of the Draft Bill, Draft Regulations, and Draft Instrument before these documents are progressed through the legislative process to ensure that there are no unintended errors or anomalies which could cause future problems.

8. The Committee submits that it would be beneficial if proposed changes to existing provisions of legislation were presented for stakeholder consultation by reproducing the existing provision and crossing out provisions to be removed and underlining provisions to be inserted. This would make the proposed amendments clearer and more intelligible for stakeholders, and it could also reduce the risk of inadvertent errors being made or anomalies occurring.

### **Comments on specific proposals**

#### *Provisions that impose new obligations on stakeholders*

9. There appear to be a number of proposed amendments that expand on existing legislation to regulate stakeholders who have inadvertently been excluded from the current regulatory regime as a result of the drafting.
10. Examples include:
  - (a) items 78 to 94 of Division 18, Part 1, Schedule 1 of the Draft Bill—which seek to ensure that mortgage intermediaries such as aggregators are subject to the Reference Checking and Information Sharing Protocol; and
  - (a) items 18 to 28 of Division 1, Part 2, Schedule 1 of the Draft Regulations—which seek to apply consumer protection obligations for reverse mortgages to all special-purpose funding entities rather than just licensees.
11. The Committee acknowledges that such changes would be consistent with the original legislative intent.
12. However, the Committee questions whether such changes are of the same nature as minor and technical amendments to correct typographical or cross-referencing errors and remove redundant provisions, because they would impose new obligations on some stakeholders.
13. The Committee questions whether including changes of this nature in proposed amending legislation which refers to “miscellaneous and technical amendments” is sufficiently clear to bring it to the attention of those stakeholders whose compliance obligations would increase if the proposed legislative change was made.
14. The Committee submits that consideration ought to be given to whether the commencement of any such changes should be delayed to allow for a reasonable transition period for those entities that are impacted to make the necessary changes to their compliance arrangements.
15. The Committee also considers that steps need to be taken to ensure that impacted stakeholders are made aware of these changes, as one might not necessarily expect a piece of delegated legislation titled “miscellaneous and technical amendments” to impose new obligations on certain categories of stakeholders.

#### *Draft Bill, Schedule 1 Part 1, Division 2 (Infringement notices), Schedule 1, items 11–12*

16. The Committee agrees that paragraph 1317DAT(5)(a) of the Corporations Act should not replicate paragraph 1317DAT(4)(a).

17. The Committee considers that it would be preferable if ASIC were required expressly to respond to a request to remove an infringement notice and does not support a situation where ASIC is “deemed” to have refused to remove the notice after 14 days of silence.

*Draft Bill, Schedule 1, Part 1, Division 3 (Motor vehicle service and repair information scheme adviser), item 15*

18. The Committee does not disagree with the proposed amendments. However, it appears that there is some potential retrospectivity, as the amendments would be made after 1 July 2022, but would apply to appointments that take effect on or after 1 July 2022. The Committee submits that the Explanatory Memorandum ought to explain the rationale for this.
19. If you have any questions, please do not hesitate to contact Pip Bell, Chair of the Financial Services Committee ([pbell@pmclegal-australia.com](mailto:pbell@pmclegal-australia.com)).

Yours faithfully,

A handwritten signature in black ink, appearing to read 'P. Argy', with a long, sweeping flourish extending to the right.

**Philip Argy**  
**Chairman**  
**Business Law Section**