

12 January 2023

Mr Andre Moore
Assistant Secretary
Legislation and Policy Delivery Branch
Law Division
Treasury
Langton Crescent
Parkes ACT 2600

By email: LawImprovement@treasury.gov.au

Dear Mr Moore

Further improvements to Corporations and Financial Services Law

1. The Corporations Committee and the Financial Services Committee (collectively, the **Committees**) of the Law Council of Australia's Business Law Section are pleased to make this submission to Treasury in response to the following exposure draft documents, which were released for consultation on 12 December 2022:
 - (a) *Treasury Laws Amendment (Measures for consultation) Bill 2002: ALRC Financial Services Interim Report Tranche 2* (the **Draft Bill**);
 - (b) Explanatory Memorandum to the Draft Bill (the **Draft EM**); and
 - (c) Attachment A, which seeks to demonstrate how the proposed amendments to legislation to be made by the Draft Bill reflect Interim Report recommendations made by the Australian Law Reform Commission (**ALRC**) in its Review of the Legislative Framework for Corporations and Financial Services Regulation (**Inquiry**).

Overall support for the Draft Bill

2. The Committees support the objective that the proposed amendments in the Draft Bill seek to achieve: namely to reduce the complexity of Australia's corporations and financial services laws by making them more adaptive, efficient and navigable within existing policy settings. The Committees agree that these proposed amendments, if made, would benefit industry and consumer end-users of the legislation. The Committees do not consider the proposed amendments to be controversial.

3. The Committees also more broadly support and welcome:
- (a) the recommendations of the ALRC's Inquiry made in its Interim Reports, which the Draft Bill seeks to fully or partially implement, namely:
 - (i) recommendations in Interim Report A (released on 30 November 2021) with respect to:
 - creating a single glossary of defined terms in section 9 of the *Corporations Act 2001* (Cth) (the **Corporations Act**); and
 - ensuring that the most current version of the *Acts Interpretation Act 1901* (Cth) (the **AIA**) applies to the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (Cth),

(which the Draft Bill would implement); and
 - (ii) recommendations in Interim Report B (released on 30 September 2022) with respect to:
 - repealing definitions that are no longer used, cross-references to repealed provisions and other redundant provisions;
 - amending the law to address unclear or incorrect provisions; and
 - simplifying unnecessarily complex provisions, with a particular focus on terms defined as having more than one meaning and definitions containing substantive obligations,

(which the Draft Bill would partially implement); and
 - (b) the ongoing regulatory stewardship of Treasury portfolio legislation under the Law Improvement Program, which seeks to ensure that Treasury laws remain current and fit-for-purpose.
4. The Committees also commend the measures taken in the Draft Bill to ensure that:
- (a) legislative instruments made by the Australian Securities and Investments Commission (**ASIC**) continue to operate effectively with respect to definitions; and
 - (b) the calculation of time periods in ASIC instruments which start before the commencement of the Draft Bill's operative provisions are not altered.
5. However, the Committees do wish to make some constructive comments and observations on presentation and process, which are set out below.

Presentation of the exposure draft material

6. While the Committees understand the intention behind the proposed amendments set out in the Draft Bill, and the relationship between those proposed amendments and the ALRC's Interim Report recommendations, the Committees are of the view that the clarity of communication in some parts of the Draft EM could be improved.
7. The Committees consider that the Draft EM adequately and clearly explains Schedule 1 to the Draft Bill, which relates to the "unfreezing" of the AIA (paragraphs 1.12 to 1.26 of the Draft EM).
8. The Committees also consider that the six principles that have been used in preparing the Bill have been clearly explained in the Draft EM.
9. However, the Committees consider that there is some room for the Draft EM to be improved in the following areas.
10. Firstly, the Draft EM does not explain the logic behind dividing Part of Schedule 2 to the Draft Bill into 13 different subject-matter Divisions. The arrangement of the content into the separate Divisions means that the changes to section 9 of the Corporations Act have been broken up rather than grouped together, which makes it difficult to navigate.
11. The Committees consider that the amendments to section 9 of the Corporations Act could have been more clearly explained by:
 - (a) providing a full version of section 9 in tracked changes, with words to be deleted by the Draft Bill ~~crossed-out~~ and words to be added by the Draft Bill underlined;
 - (b) providing a table listing the definitions that are currently in, or proposed to be added to, section 9 in the left hand column, explaining whether the definition would be changed in the middle column and then explaining why (which could be done using a shorthand reference to the relevant ALRC Interim Report recommendation/s and associated drafting principle/s); and
 - (c) for each Division, summarising the impact of the proposed changes for the relevant subject matter area.
12. The Committees consider that the proposed amendments to section 9 of the Corporations Act set out in the Draft Bill would be far easier to understand if the Draft EM adopted any of the above approaches.
13. Secondly, to the extent that the Draft Bill seeks to "partially" implement a recommendation of Interim Report B, the Draft EM does not explain why the proposed implementation is only "partial" and it is not clear whether (and if so when) the relevant recommendation would be implemented in full (or why it would not be implemented in full, if applicable).
14. Finally, the Committees note a minor typographical error in paragraph 1.8 of the Draft EM in the third sentence ("amendmentsas" should be two words "amendments as"). Further, while we have not read in detail all the proposed amendments in the Draft Bill, we did notice, in passing, that in section 124 the reference to "Panel" in the second definition should be to "Takeovers Panel".

Future amendments to the Draft Bill

15. The Committees acknowledge that Treasury has expressed an intention to update the Draft Bill to include any necessary amendments which might need to be made, as a consequence of amendments contained in other Treasury Laws Amendment Bills which are before Parliament (paragraphs 1.90 and 1.90 of the Draft EM).
16. The Committees consider that, as a general principle, any such amendments ought to be the subject of a transparent public consultation process.
17. The Committees would be pleased to discuss any aspect of this submission.
18. Please contact the Chair of the Corporations Committee, Robert Sultan (Robert.sultan@nortonrosefulbright.com) or the Chair of the Financial Services Committee, Pip Bell (pbell@pmclegal-australia.com) if you would like to do so.

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