

29 March 2023

Miscellaneous and Technical Amendments
Law Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: miscamendments@treasury.gov.au

Dear Sir or Madam

Miscellaneous amendments to Treasury portfolio laws

1. The Financial Services Committee of the Business Law Section of the Law Council of Australia (the **Committee**) has prepared this submission in response to the exposure draft *Treasury Laws Amendment (Measures for Consultation) Bill 2023* (Cth) (the **Bill**) and *Treasury Laws Amendment (Measures for Consultation) Regulations 2023: Minor and technical amendments* (the **Regulations**), and accompanying Explanatory Memorandum and Explanatory Statement. Treasury released these documents for consultation on 15 March 2023.
2. The Committee thanks Treasury for this opportunity to make submissions on the Bill and the Regulations.

Background

3. The Bill and the Regulations would make minor and technical amendments to a number of pieces of Treasury portfolio legislation to:
 - (a) correct typographical errors and numbering references;
 - (b) fix incorrect legislative references;
 - (c) reduce unnecessary red tape;
 - (d) address unintended outcomes;
 - (e) adopt modern drafting practices;
 - (f) enhance readability and administrative efficiency;
 - (g) repeal redundant and inoperative provisions; and
 - (h) make other technical changes.

4. The Committee supports these objectives on the basis that they would improve clarity and accuracy in the legislation, and reduce potential confusion associated with the laws in their current state (some of which have contained errors for a significant period of time).
5. Specific comments and observations about the Regulations and the Bill are set out below.
6. Please note that the Committee does not seek to comment on Treasury portfolio legislation that is outside the expertise of its members.

The Bill

7. The Committee does not object to any of the changes that have been proposed in the Bill.
8. However, the Committee has the following comments and observations about the inter-relationship between the Bill and the Explanatory Memorandum.

Division 3—Claims handling and settlement services

9. Paragraph 1.19 of the Explanatory Memorandum refers to the “amendment to section 12DB(1C)” of the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**). However, the Bill is *inserting* the new subsection 12DB(1C) into the ASIC Act rather than amending it (because currently there is no subsection 12DB(1C) to amend).

Division 7—other amendments

Item 27 of the Bill

10. The reference to “Part 5.4A” of the *Corporations Act 2001* (Cth) in paragraph 1.37 of the Explanatory Memorandum should be changed to “Part 5.4B”. The “2 Divisions numbered 1A”, which item 27 renumbers sequentially, are in Part 5.4B not Part 5.4A.

Items 45 and 46 of the Bill

11. There is a minor inaccuracy in paragraph 1.52 of the Explanatory Memorandum, as it refers to “managed investment trust” being replaced by “withholding MIT” in items 45 and 46 of the Bill.
12. In fact:
 - (a) item 45 replaces “managed investment trust” with “withholding MIT”; and
 - (b) item 46 replaces “managed investment trusts” with “withholding MITs”.

Paragraphs 1.36 and 1.39 of the Explanatory Memorandum

13. Paragraphs 1.36 and 1.39 of the Explanatory Memorandum make statements to the effect that the Bill is seeking to repeal particular provisions “because the purpose for which these provisions were enacted has been achieved”.

14. In the interests of clarity and transparency, the Committee submits that the Explanatory Memorandum should explain:
 - (a) what the so-called purpose was; and
 - (b) why that purpose is considered to have been achieved.

The Regulations

15. The Committee supports the proposed amendments to the *Corporations Regulations 2001* (Cth) and the *Australian Prudential Regulation Authority Regulations 2018* (Cth) set out in the Regulations.
16. The Committee has no specific comments to make on the content of the Regulations or the Explanatory Statement.

Closing observations

17. The Committee submits that a number of the problems with Treasury portfolio laws, which the Bill and the Regulations seek to address, have arisen due to human error and/or an insufficient level of attention to detail.
18. The Committee hopes that, in tandem with improvements to Treasury portfolio legislation, processes within Treasury are being refined, with a view to reducing the future incidence of the types of matters that the Bill and the Regulations seek to address.
19. For example, ideally, the Committee submits that there should be processes in place to ensure that:
 - (a) the same Part, Division, Sub-Division, section, subsection, paragraph or subparagraph number cannot be used more than once in any piece of legislation (for example, by reserving new numbers for proposed amendments);
 - (b) when a piece of legislation or a provision within a piece of legislation is repealed, a thorough search of federal legislation is carried out to find all cross-references to that legislation or provision (as applicable) so that, when the relevant repeal is made, the necessary consequential amendments to other laws are made contemporaneously; and
 - (c) similarly, when a piece of legislation is renamed, a thorough search of federal legislation is carried out to find all cross-references to that legislation so that, when the relevant renaming occurs, the necessary consequential amendments are made in a contemporaneous fashion.
20. The Committee believes that deploying such measures would reduce potential confusion for users of the legislation when they look for, and have difficulty finding, section numbers and/or pieces of legislation which may have been repealed, duplicated or renamed (as applicable).

21. If Treasury has any questions or would like to further discuss with any matters raised in this submission with the Committee, please do not hesitate to contact Pip Bell, Chair of the Financial Services Committee (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