

3 April 2023

Law Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: LawImprovement@treasury.gov.au

Dear Sir or Madam

Additional improvements to Corporations and Financial Services Law

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 following exposure draft regulations, which were released by Treasury for consultation on 6 March 2023 (together with accompanying Explanatory Statements):
 - (a) *Treasury Laws Amendment (Measures for Consultation) Regulations 2023: ALRC Financial Services Interim Report Tranche 2* (Cth) (the **ALRC Regulations**); and
 - (b) *Treasury Laws Amendment (Modernising Business Communications Regulations 2023* (Cth) (the **MBC Regulations**).
2. The Committee thanks Treasury for the opportunity to respond.
3. The Committee supports and welcomes the regulatory stewardship of Treasury portfolio legislation. The Committee considers that the ALRC Regulations and MBC Regulations would, if made, make meaningful progress in reducing unnecessary complexity in the current corporations and financial services laws.
4. The Committee:
 - (a) has set out some very minor comments on the ALRC Regulations below; and
 - (b) has no comments on the MBC Regulations (and notes that the inter-related *Treasury Laws Amendment (Modernising Business Communications and Other Measures) Bill 2023* (Cth) is currently before the Senate).

ALRC Regulations—cross-reference to currently non-existent provision

5. Item 124 of the ALRC Regulations introduces a substitute definition of “warrant” into subregulation 1.0.02(1) of the *Corporations Regulations 2001* (Cth) as follows:

warrant means:

- (b) a derivative that is transferable; or
 - (c) a financial product that is transferable and that would, apart from the effect of paragraph 761D(3)(c) of the Act, be a derivative, and is excluded by that paragraph only because it is:
 - (i) a security mentioned in paragraph 92(5)(c) of the Act; or
 - (ii) a legal or equitable right or interest mentioned in subparagraph 764A(1)(b)(ii) of the Act; or
 - (iii) a legal or equitable right or interest mentioned in subparagraph 764A(1)(ba)(ii) of the Act; or
 - (iv) a legal or equitable right or interest mentioned in subparagraph 764A(1)(bb)(ii) of the Act.
6. The Committee notes that subparagraph (b)(i) refers to “paragraph 92(5)(c)” of the *Corporations Act 2001* (Cth).
7. The Corporations Act does not currently contain a paragraph 92(5)(c). The Committee notes that item 229 of the exposure draft *Treasury Laws Amendment (Measures for Consultation) Bill 2022 ALRC Financial Services Interim Report Tranche 2* (Cth) released by Treasury for consultation in December 2022 proposed to insert a new subsection 92(5) into the Corporations Act.
8. The Committee assumes that item 124 will be introduced contemporaneously with the legislation introducing subsection 92(5).¹ If so, the Explanatory Statement should explain that the cross reference is anticipatory (so that readers do not go searching in vain for provisions which have yet to commence).

ALRC Regulations—correction of spelling error

9. Page 18 of the Explanatory Statement refers to the definition of a “retail financial services license” when discussing item 316 of the ALRC Regulations. This should read “retail financial services licence” (because that is the spelling of the word as used in both the ALRC Regulations and the *Corporations (Fees) Regulation 2001* (Cth) which the ALRC Regulations would amend).
10. If Treasury has any questions, or would like to further discuss 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



Philip Argy
Chairman
Business Law Section

¹ The ALRC Regulations are to commence at the same time as “Schedule 2 to the [ALRC Financial Services Interim Report second amending Act] commences.”