

20 September 2022

Legislation Policy and Delivery Branch
Law Division
Treasury
Langton Crescent
Parkes ACT 2600

By email: LawImprovement@treasury.gov.au

Dear Sir/Madam

Rationalisation of Ending ASIC Instrument Measures

1. This submission relates to the following exposure draft documents released by Treasury for consultation on 24 August 2022:
 - (a) *Treasury Laws Amendment (Measures for consultation) Bill 2022: Rationalisation of ASIC Instruments (ED Bill)* and Explanatory Memorandum; and
 - (b) *Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022 (ED Regulations)* and Explanatory Statement.
2. This submission has been prepared by the Financial Services Committee of the Business Law Section of the Law Council of Australia (**Committee**).
3. The ED Bill and the ED Regulations seek to incorporate modifications to the *Corporations Act 2001* (Cth), the *National Consumer Credit Protection Act 2009* (Cth), the *Corporations Regulations 2001* (Cth) and the *National Consumer Credit Protection Act 2010* (Cth), which have been made by the Australian Securities and Investments Commission (**ASIC**) in the following legislative instruments:
 - (a) ASIC Class Order [CO 12/340] *Proposed licensed trustee companies*;
 - (b) ASIC Corporations (Financial Services Guide Given in a Time Critical Situation) Instrument 2022/498;
 - (c) ASIC Corporations (PDS Requirements for General Insurance Quotes) Instrument 2022/66;
 - (d) ASIC Corporations (Describing Debentures—Secured Notes) Instrument 2022/61;
 - (e) ASIC Class Order [CO 14/41] *Extension of transitional credit hardship provisions*;

- (f) ASIC Corporations (Commonwealth Financial Counselling—Financial Capability Services) Instrument 2022/221;
 - (g) ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792;
 - (h) ASIC Credit (Financial Counselling Agencies) Instrument 2017/793; and
 - (i) ASIC Corporations (Superannuation and Schemes: Underlying Investments) Instrument 2016/378.
4. The Committee does not have any concerns about any of the modifications to the law made in the above ASIC legislative instruments becoming part of the relevant Act or Regulations (as applicable).
 5. More broadly, the Committee strongly supports incorporating legislative changes that have been made by ASIC legislative instruments into the law, for the following reasons.
 6. Firstly, it serves to reduce complexity and improve navigability of the legislative regime, as there will be one fewer source that needs to be checked to find out what the law is, and the name / number of the relevant provision will not fluctuate over time, which makes for a far less confusing experience for users of the legislation.
 7. Secondly, the Committee notes that, when legislative instruments sunset (after 10 years unless an earlier date is specified in the instrument), it is necessary for ASIC to:
 - (a) in most cases undertake a consultation process (or prepare an explanation as to why consultation was not considered necessary) with respect to the proposed remaking of the instrument to continue the status quo;
 - (b) draft a new replacement legislative instrument, with its own number and title;
 - (c) prepare an explanatory statement, which incorporates a statement regarding the impact of the instrument on human rights;
 - (d) register the instrument;
 - (e) update its website;
 - (f) make an announcement that the instrument has been remade; and
 - (g) update other ASIC resources that cross-refer to the relevant instrument (for example, regulatory guides and information sheets).
 8. Therefore, if legislative instruments are incorporated into the Act or the Regulations, this will positively impact ASIC, because it will free up resources to allow ASIC to focus on its other regulatory priorities and improve its performance and responsiveness in other key focus areas.
 9. The Committee would support the introduction into the regulatory framework of a process whereby modifications to the Act or the Regulations which were made in ASIC legislative instruments were automatically incorporated into the law after a prescribed period of time (for example, 12 months), unless disallowed by either House

of the Parliament. The Committee believes this would greatly improve the clarity and efficiency of the regulatory regime.

10. If you would like to discuss any aspect of this submission, please contact the Chair of the Financial Services Committee, Pip Bell, at 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