24 September 2015

General Manager
Deregulation Division
The Treasury
Langton Crescent
PARKES, ACT, 2600

Via email: deregulation@treasury.gov.au

Dear General Manager, Deregulation Division

RE: Treasury Legislation Amendment (Spring Repeal Day) Bill 2015

We refer to the *Treasury Legislation Amendment (Spring Repeal Day) Bill 2015* released on 28 August 2015 (**Exposure Draft**).

The Financial Services Council (**FSC**) has over 115 members representing Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The industry is responsible for investing more than $2.6 trillion on behalf of 11.5 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world.

The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

The FSC welcomes the Government's consultation on the Exposure Draft. This submission is written in support of the proposed amendments to the *Corporations Act 2001* outlined in Schedule 3 of the Exposure Draft. Specifically, we support the proposed amendments that would ensure that responsible entities of managed investment schemes, licensed trustee companies or licensed custodians will now:

- notify of the appointment of a receiver *only* on the public documents and negotiable instruments relating to the registered scheme or trust that is in receivership (rather than all public documents and negotiable instruments of the corporation); and
- report to the controller *only* on the affairs of the registered scheme or trust in respect of which the controller is acting (rather than all the affairs of the corporation).

As noted in the Explanatory Material accompanying the Exposure Draft, there are sound policy and practical reasons for the proposed amendments including:

- The potential for investor confusion as a result of the current legislative regime;
- Damage to reputations for certain corporations that are in the business of holding property on trust (for example, licensed trustee companies and responsible entities) as a result of the current legislative regime; and
- The existing notification obligations imposing unnecessary compliance costs upon business.

The FSC supports the proposed amendments for the reasons highlighted in the Explanatory Material, including that (at para 3.6):

> Restricting the notification obligations to the public documents and negotiable instruments relating to the affected registered scheme or trust will reduce unnecessary compliance costs whilst ensuring persons dealing with the corporation are informed of the receivership as required. The modified notification obligation will also reduce investor confusion as only documents and instruments relating to the affected scheme or trust will contain notification of the receivership or that a controller is acting.

We further note that the current legislative regime can cause unintended reputational damage to licensed trustee companies, responsible entities and licensed custodians as it may create the misconception that the relevant licensed trustee company, responsible entity or custodian *is itself* in liquidation.

Regarding compliance costs, by way of example, an FSC member has advised that they are often faced with the circumstances of a receiver or controller appointment over assets held by them (and their subsidiaries) in a *trustee* capacity. These appointments are distinctly different to an appointment over the member in its *personal* capacity.

However, the current effect of section 428 and section 429 of the Corporations Act is that the entity (which is part of the FSC member's group) may *itself* be designated as being "under external control" in ASIC's register, in cases where the *assets* held by the FSC's member entity are under external control. When this occurs, there are considerable impacts for clients, beneficiaries, service providers, vendors and creditors, despite the actual appointment being limited to the trust assets.

In such circumstances, the FSC member will contact ASIC (sometimes with legal advisers) to reverse the inappropriate and confusing notification on the FSC member entity. Contact with the receiver's appointer is often also necessary.

Each occurrence of this type of event generates costs associated with the following actions:

- Rectification time communicating with ASIC;
- Communications to clients, beneficiaries, service providers, vendors and creditors (often at a very senior level);
- Legal costs associated with correspondence with the appointer, and their legal advisers; and
- Internal communications.

In the case of FSC members, some of whom hold billions of dollars in a fiduciary capacity, instances such as those outlined above, are not infrequent, with attendant compliance costs and reputational risk.

As noted in the Explanatory Material, restricting the reporting obligation for corporations to affairs relating to the particular registered scheme or trust containing the property to which the controller has been appointed is necessary and appropriate. Currently, in the absence of the proposed changes, corporations would be required to report to the controller in respect of *all* their affairs, including in respect of registered schemes and trusts, or the corporation's own affairs, notwithstanding the corporation's *own* affairs are not related to the assets to which the controller was appointed.

Accordingly, the FSC welcomes the Government's efforts to better target the notification and reporting obligations contained in the current sections 428 and 429 of the Corporations Act.

Conclusion

Thank you for the opportunity to provide a submission. If you have any queries in relation to it, please do not hesitate to contact me at cgergis@fsc.org.au or on (02) 8235 2520.

Yours sincerely

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Senior Policy Manager & Legal Counsel