



Min-it Software

Submission -

Treasury Laws Amendment (Measures for Consultation) Bill 2023 - Anti-Avoidance Rule for Product Intervention Orders

21 March 2023

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Introduction

Aside from the software provided in-house, specifically by or for franchised organisations, Min-It Software is a leading supplier of loan management software to non-ADI credit providers, both in Australia, New Zealand, South Africa and the United States. These clients range from lessors, small lenders offering anywhere from \$300 - \$10,000, other lenders offering larger amounts, typically \$5,000 - \$50,000 or more, car financiers, home mortgage providers and those offering business loans from \$50,000 to millions of dollars.

None of our clients are members of any industry association.

Foreword

We would like to thank Treasury for this opportunity to contribute to the discussions on the proposed Treasury Laws Amendment (Measures for Consultation) Bill 2023 - Anti-Avoidance Rule for Product Intervention Orders.

Subclause 1023S (8)

Whilst recognising the fact that we generally support ASIC's measures in relation to Product Intervention Orders, it is unfortunate that the Regulations to the Bill have not been released. As with the Financial Sector Reform Bill 2022, the detail is in the Regulations, not the Bill.

Giving unfettered power to ASIC is inappropriate in such circumstances. It is akin to Parliament giving a blank cheque to the regulator in the belief they will do the 'right thing'.

We recommend both industry and parliament have the opportunity to review the Regulations prior to introducing the Bill to Parliament.

Subclause 1023T (3) and (4)

As a matter of principle, we oppose the use of any legislation that requires a party prove their innocence. Regulators have vast financial resources at their disposal and it can be extremely expensive to prove one's innocence and even if one does, the innocent party is unlikely to recover its costs.

We are of the firm opinion that the regulator should be the one to prove that a scheme or arrangement exists designed to avoid the application of the Product Intervention Order ("PIO"). Notwithstanding that the receiver of the PIO may have some specialised knowledge, it is far too easy for a regulator to claim a scheme is one of avoidance if it undertakes little investigative work. In a David and Goliath scenario, it becomes a simple matter to starve the company of funding to support its claims or await capitulation because "it's different" and cannot afford to fight the regulator.