ACSA
Australian Custodial Services Association

11 November 2025

Dr Sean Turner
Committee Secretary
Senate Economics Legislation Committee

Via Email: Economics.Sen@aph.gov.au

Dear Dr Turner,

Australian Custodial Services Association Submission regarding Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Bill 2025

The Australian Custodial Services Association (ACSA) is the peak industry body representing members of Australia's custodial and investment administration sector. Our mission is to promote efficiency and international best practice for members, our clients, and the market. Members of ACSA include J.P. Morgan, HSBC, State Street, BNP Paribas Securities Services, BNY Mellon, Citi, Clearstream, Netwealth and The Northern Trust Company.

Collectively, the members of ACSA hold securities and investments more than AUD $5.0 trillion in value in custody and under administration for Australian clients comprising institutional investors such as the trustees of major industry, retail and corporate superannuation fund, life insurance companies, responsible entities and trustees of wholesale and retail investment funds, and various forms of international investors into Australia.

ACSA welcomes Treasury's proposed legislation and offers the following feedback in relation to Schedule 1: Amending the *Corporations Act 2001* to enhance beneficial ownership disclosure obligations to match the obligations already applying to entities listed on Australia's financial markets.

The implementation of a beneficial ownership register could result in an excessive burden of compliance for custodians and their clients. It is critical that the laws and regulations accompanying this regime explicitly acknowledges the role of custodians in the Australian market and the global financial system. When custodians receive a beneficial ownership information request, they should be required to provide the legally necessary details of their customers to enable a regulated entity to continue their beneficial ownership investigation. Overview of the custody structure as relates to beneficial ownership ACSA has published a guide to custody on its website, which can be accessed here: https://cdn.ymaws.com/acsa.com.au/resource/resmgr/website_images/website_documents/institutional_investor_servi.pdf. The guide describes the role of custodians in the Australian market and their role in Australia as it relates to inbound international investment. The guide also details how custodians use omnibus accounts to bring efficiency to post trade operations and thus help keep costs lower for investors.

In support of Australia's continued safety and soundness as an investment destination, ACSA seeks to ensure that a party who has fully complied with Australia's legislative requirements is not affected by another party's non-compliance. ACSA's response to question 23 in the 2022 consultation paper explains the challenges and un-intended impact to those players within the chain of custody. Blocking of positions for, as examples, local and foreign pension funds, local and foreign asset managers, or foreign sovereign wealth funds could lead to significant negative press, and reassessment of the risk profile of investing in the Australian market if the legal and regulatory environment is perceived to be designed in a way that creates the possibility of a party having their assets frozen despite having fully complied with the law. ACSA notes that Custodians are obligated by law to provide the information requested by regulated entities and when issued with tracing notices and that this will continue to be the case under the new proposed legislation. To that end, ACSA recommends that

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the concept of custodians, nominees, and bare trustee structures is catered for in the legislation in respect to freezing powers. The legislation should recognise beneficial versus legal ownership and the specific role played by licensed custodians in Australia, addressing the dimensions of how freezing notices are to be applied, and how requests for information from related parties / associates are to be treated.

Freezing Notices - While ACSA cannot envisage a scenario where a local custodian could not respond to a tracing notice, in the event this were to occur there should be no capability for assets held via a registry, CSD, or by other similar means to be blocked or held due to that custodian's failure to comply. Likewise, in the event that a custodian has responded to a tracing notice and a party underlying the custodian then does not do so, the freezing notice with regard to custodial holdings should always be applied by the party servicing the non-complying party, rather than via the company or registry. A licensed custodian's holdings should never be frozen via a registry, CSD, or other similar venue. Rather the party facing the party who is not complying should be required to freeze the holdings on their books and records. This ensures that only parties who are not complying with the notices are impacted by that non-compliance, with no risk of contagion to the holdings of other parties. Applying a freezing notice on the registered holder, when non-compliance with a tracing notice to an entity "down the custody chain" may resulting in the freezing of assets for Australian Superannuation fund and Foreign Sovereign funds creating unintended market and sovereign risk.

It would be beneficial to understand how ASIC will enforce freezing notices in practical terms given that here is no other nominee account jurisdiction (in developed markets) that applies freezing orders to assets in case of non-compliance.

Thank you again for the opportunity to participate in this consultation. Please contact me if you have any comments about this submission.

Yours sincerely

[redacted]

David Travers
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Australian Custodial Services Association
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About ACSA

www.acsa.com.au

Custodians provide a range of institutional services, with clients typically favouring a bundled approach to custody and investment administration. Solutions may include traditional custody and safekeeping, investment administration, foreign exchange, securities lending, tax and financial reporting, investment analytics (risk, compliance, and performance reporting), investment operations middle office outsourcing and ancillary banking services.

These services represent key investment back-office functions – often representing the client's asset book of record and essential source data in relation to the investments they hold.

The key sectors supported by ACSA members include large superannuation funds and investment managers, as well as other domestic and international institutions.

ACSA works with peer associations, regulators and other market participants on a pre-competitive basis to encourage standards, promote consistency, market reform and operating efficiency.

Note: The views expressed in this letter are prepared by ACSA for the purposes of consideration by The Senate Economics Committee in response to Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Bill 2025 and should not be relied upon for any other purpose. The comments in this letter do not comprise financial, legal or taxation advice and should not be regarded as the views of any particular member of ACSA.