



Business Law Section

27 January 2026

Senator Lisa Darmanin
Chair
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Senator Darmanin

Treasury Laws Amendment (Genetic Testing Protections in Life Insurance and Other Measures) Bill 2025

1. This submission has been prepared by the Financial Services Committee and the Corporations Committee of the Business Law Section of the Law Council of Australia (collectively, the **Committees**). This submission relates to the Treasury Laws Amendment (Genetic Testing Protections in Life Insurance and Other Measures) Bill 2025 (**Bill**), which was introduced into the House of Representatives on 26 November 2025 and was then referred to the Senate Economics Legislation Committee for inquiry on 27 November 2025.
2. The Committees wish to comment solely on Schedule 2 to the Bill, which contains exemptions from:
 - (a) the requirement to hold an Australian financial services licence (**AFSL**) for certain foreign financial service providers (**FFSPs**); and
 - (b) certain licensing requirements (known as the “fit and proper” person assessment) for FFSPs who hold an AFSL and are regulated under a comparable overseas regulatory regime.
3. This submission has been prepared by members of the Committees who have decades of relevant experience advising domestic and foreign providers of financial services about Australian financial services regulatory matters, during which they have accumulated substantial expertise and a very sophisticated understanding of the Australian regulatory framework on this subject (including an acute awareness of its shortcomings).

Background

4. The Committees note that, if the Bill is passed (or at least if Schedule 2 is passed), this will bring an end to what has effectively been a decade of ongoing regulatory uncertainty for FFSPs seeking to provide financial services to wholesale clients in Australia.
5. The uncertainty initially arose due to a change in the policy position of the Australian Securities and Investments Commission (**ASIC**) with respect to FFSPs that was announced in 2016. The announcement of proposed legislative reform by the Morrison government in 2021 and the subsequent introduction of Schedule 7 to the Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023 were intended to bring that uncertainty to an end, but Parliament was dissolved for the 2025 Federal election before this could be achieved.
6. The Committees consider that such continual uncertainty and delay is sub-optimal because, in addition to the adverse effect on FFSPs and the Australian clients to which they seek to provide services, on a broader basis it negatively impacts Australia's reputation internationally as a place to conduct business.
7. Over several years, the Committees have consistently advocated to ASIC and Treasury for a legislative regime that is fair, well-designed and appropriately balanced.

The Committees' position

8. The Committees are generally welcoming of the reforms in Schedule 2 to the Bill, and consider that it is important for this legislative reform to be progressed to restore some confidence in Australia in the global business community.
9. In a submission dated 15 September 2023 (**Previous Submission**), the Committees shared a number of suggestions and observations with Treasury in response to the exposure draft Treasury Laws Amendment (Measures for Future Bills) Bill 2023, which was released for consultation on 7 August 2023. While some of the Committees' suggestions from its Previous Submission appear to have been incorporated into Schedule 2 to the Bill and its predecessor (Schedule 7 to the Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023), the Committees consider that Schedule 2 would operate more effectively if more of their suggestions had been implemented.
10. The Committees remain concerned about:
 - (a) the complexity of the drafting, which makes the provisions introduced in Schedule 2 difficult to comprehend;
 - (b) the potential adverse impact on FFSPs who currently provide financial services to Australian clients under current ASIC exemptions, which are subject to fewer conditions and obligations than the exemptions proposed in Schedule 2;
 - (c) potential conflict between Schedule 2 and foreign laws governing FFSPs (for example, an obligation for an FFSP to inform ASIC about a foreign

regulator's investigation, which could potentially be in breach of a foreign law not to disclose such a matter); and

- (d) the technical nature of some requirements and conditions of the exemptions, the ease with which they could be inadvertently breached, and the disproportionality of the associated consequences of any such breach (including the use of civil penalties in some cases).
- 11. A copy of the Previous Submission is **annexed** to this submission. The Committees hope that this will provide the members of the Senate Economics Legislation Committee with an appreciation of the granular level of technical detail in Schedule 2 and the risks associated with its shortcomings, including those noted above at paragraph 10.
- 12. In addition to those matters raised in the Previous Submission that remain unresolved, the Committees are also concerned that Schedule 2 has been melded together with other unrelated legislative reforms into an omnibus Bill. The Committees consider this to be an unsatisfactory approach, and do not wish to see the Bill fail to pass (and consequently have the Schedule 2 reforms further delayed) due to there being insufficient support for other separate, unrelated and possibly more controversial reforms.
- 13. Although we do not consider it ideal to implement legislative reform where identified legislative issues exist (see, for example, our comments at paragraph 10 above), in the event that there is no political appetite at this juncture to refine Schedule 2 to address the shortcomings noted by the Committees, the Committees consider that it would be preferable to have Schedule 2 passed in its current form now, rather than for it never to be passed.
- 14. Members of the Committees would be happy to appear before the Senate Economics Legislation Committee and take questions from its members if invited to do so.
- 15. Please direct any correspondence on this matter to Pip Bell, Executive Liaison for the Financial Services Committee [REDACTED] and/or Philippa Stone, Chair of the Corporations Committee [REDACTED]

Yours sincerely

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Adrian Varrasso
Chair, Business Law Section

Annexure—the Committees' submission to Treasury dated 15 September 2023 in response to consultation on the Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Licensing exemptions for foreign financial services providers