6 November 2025

FSC FINANCIAL SERVICES COUNCIL

Dr Sean Turner
Committee Secretary
Senate Economics Legislation Committee
Parliament House
Canberra ACT 2600

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

Dear Dr Turner

RE: Inquiry into Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Bill 2025

The Financial Services Council (FSC) welcomes the opportunity to provide a submission to the Senate Economics Legislation Committee's (the Committee's) inquiry into the *Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Bill 2025* (the Bill).

The FSC supports the Government's goal of improving transparency and discouraging the use of complex structures to obscure beneficial ownership or facilitate financial crime. However, *Schedule 1- Enhanced disclosure of ownership of listed entities* extends well beyond that intent and will impose disproportionate compliance costs on low-risk, highly regulated institutional investors such as fund managers and superannuation funds. Furthermore, we note that compliance complexities proposed in Schedule 1 appear to be inconsistent with ASIC's regulatory simplification and modernisation initiatives as set out in REP 813: Regulatory simplification.

While the FSC acknowledges improvements since the Exposure Draft, several issues raised in our 2024 submission to Treasury remain unresolved. The Bill still treats cash-settled derivatives as conferring beneficial ownership, introduces overly complex new definitions, and sets an unrealistic implementation timeframe. The draft also leaves significant operational detail to be determined later through ASIC instruments, creating uncertainty for industry system design.

In addition, the Bill would benefit from clearer treatment of short-selling positions, a more consistent approach to alignment of the Register of Members (ROM) and the new Register of Relevant Interests (RORI), and early publication of ASIC's methodologies to ensure transparency and consistency in reporting.

The FSC also supports the amendment in Schedule 5 of the Bill, which corrects an inadvertent drafting error in the *Corporations Act 2001* to maintain the alternative qualification pathway for existing financial advisers transitioning to the new education and training standards. This amendment is essential to provide certainty for advisers ahead of the 1 January 2026 transition and to help maintain consumer access to affordable, quality financial advice.

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The FSC urges the Committee to recommend that the final framework achieves genuine transparency outcomes without creating unnecessary costs that will ultimately be borne by superannuation members and investors.

About the Financial Services Council

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, and financial advice licensees.

The financial services industry is responsible for investing more than $3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world.

Summary of Recommendations

1. Exclude cash-settled derivatives from mandatory beneficial ownership disclosure;
2. If inclusion proceeds, provide a clear, legislated list of excluded derivative types (e.g. index derivatives with immaterial single-name concentration volatility swaps; etc.) and clarify that instruments assigned a "zero value" by ASIC are not reportable, unless the exposure confers potential control over a single issuer;
3. Clarify the boundary between existing relevant interests and new deemed economic interests, minimise the complexity, and ensure that reporters are not required to disclose information that is overly burdensome or operationally impossible to obtain;
4. Consult with market participants to develop industry-led guidance which reflects market practice and information reasonably available to market participants;
5. Simplify the proposed derivative reporting rules by either raising the sub-category threshold from 1 per cent to at least 2 per cent, or allowing periodic disclosures for minor movements, to focus the regime on material changes in ownership;
6. Provide clear examples to market participants illustrating when intra-derivative rebalancing alone should or should not trigger filings;
7. Clarify if the legislation is intended to impose an obligation to undertake reasonable steps to track the relevant interests of counterparties to physically settled derivatives;

   and

   If so, how exactly Government proposes reporting entities achieve this outcome considering the myriad of complexities, which include (by way of example):

   i. Counterparties will not wish to disclose their position to the buy-side and may not have an aggregated relevant interest exceeding 5%;

ii. Even if a counterparty's relevant interest was included in a substantial holder notice, the relevant interest and hedge position for a particular physically settled derivative is not likely discernible amongst the relevant interests of all other entities and associates included in a notice;

8. Remove the requirement for asset managers to report counterparty hedge information. If retained, provide a safe harbour list clarifying that maintaining deal records and using published ASIC methodologies satisfies the reasonable steps standard;
9. Extend the implementation period to at least 18–24 months following Royal Assent, with staged commencement for complex derivative categories and offsetting short positions;
10. To avoid inefficient compliance process upgrades, align implementation of the proposed legislation with proposed ASIC reform of substantial holding disclosure pursuant to REP 813: Regulatory simplification;
11. Clarify whether and when short-selling constitutes a relevant interest, and ensure consistent, symmetrical disclosure for long and short economic exposures;
12. Align the ROM and RORI frameworks to ensure consistent thresholds, access rights and reporting formats, and consider allowing a single integrated register for listed entities;
13. Require ASIC to consult and publish derivative calculation methodologies and reporting instruments well before commencement and provide grandfathering protection where market participants follow existing guidance in good faith;
14. Modernise substantial holding notices through an electronic submission channel and API-style access to ownership data; and
15. The FSC supports amendments to the *Corporations Act* in Schedule 5 of the Bill to maintain the existing qualification standards provisions for existing financial advice providers.

Cash-Settled Derivatives

The Bill extends beneficial ownership disclosure to include cash-settled equity derivatives (CSDs). These instruments provide only economic exposure, they do not confer control, voting rights, or influence over the underlying company. Fund managers and superannuation funds use CSDs primarily for hedging and index-tracking, not for influence or control.

The rationale in the Explanatory Memorandum, that a holder of a CSD might influence the timing of a counterparty's hedge unwind, is speculative. Market participants cannot generally know how a counterparty hedges its exposure, and such hedging may not involve the underlying shares at all. The proposed inclusion would impose significant compliance costs and risk misleading the market by implying control where none exists.

The United States and United Kingdom regimes provide more targeted approaches: the U.S. Securities and Exchange Commission continues to exclude CSDs entirely, while the UK allows

exemptions for index derivatives and other low-risk instruments. Australia should adopt a similarly evidence-based model.

RECOMMENDATION 1
Exclude cash-settled derivatives from mandatory beneficial ownership disclosure.

RECOMMENDATION 2
If inclusion proceeds, provide a clear, legislated list of excluded derivative types (e.g. index derivatives with immaterial single-name concentration volatility swaps; etc.) and clarify that instruments assigned a "zero value" by ASIC are not reportable, unless the exposure confers potential control over a single issuer.

Boundary Between Relevant Interests and Deemed Economic Interests

The Bill introduces new "deemed economic interests" alongside existing "relevant interests" under section 608 of the *Corporations Act 2001*. While the legislation contains mechanisms intended to prevent double counting, in practice these mechanisms rely on perfect tracing and comprehensive counterparty disclosure that are unlikely to exist in complex fund structures.

The FSC is concerned that, due to the complexity and layering of these requirements, market participants may inadvertently report the same exposure twice, make inconsistent disclosures compared with peers, or be required to disclose information that is operationally impossible to obtain, such as a counterparty's hedging strategy.

In theory, the tracing and deeming provisions should ensure alignment; however, in practice, the interplay between these mechanisms and the new derivative reporting obligations is likely to lead to inaccurate or inconsistent reporting outcomes across the market.

Without clearer legislative guidance and practical examples, there remains a significant risk of duplication, inconsistent reporting, and inadvertent non-compliance. The boundary between these concepts should therefore be precisely defined in both the legislation and supporting ASIC guidance, supported by worked examples based on realistic market scenarios.

RECOMMENDATION 3
Clarify the boundary between existing relevant interests and new deemed economic interests, minimise the complexity, and ensure that reporters are not required to disclose information that is overly burdensome or operationally impossible to obtain.

RECOMMENDATION 4
Consult with market participants to develop industry-led guidance which reflects market practice and information reasonably available to market participants.

Frequency and Granularity of Substantial Holding Updates

The Bill would require separate disclosures for multiple derivative sub-categories whenever a 1 per cent change occurs, even if the overall holding in a listed entity is unchanged. This level of

granularity will generate large volumes of technical filings that could reflect internal portfolio rebalancing rather than meaningful changes in ownership or control.

The additional administrative burden on asset managers will outweigh the marginal transparency benefit to the market. A more proportionate approach would apply higher thresholds or allow periodic reporting for sub-category changes.

RECOMMENDATION 5
Simplify the proposed derivative reporting rules by either raising the sub-category threshold from 1 per cent to at least 2 per cent, or allowing periodic disclosures for minor movements, to focus the regime on material changes in ownership.

RECOMMENDATION 6
Provide clear examples to market participants illustrating when intra-derivative rebalancing alone should or should not trigger filings.

Counterparty Information and Reasonable Steps

The Bill requires reporting parties to disclose counterparty relevant interests or hedging positions for physically settled derivatives and introduces a "reasonable steps" test. Fund managers generally cannot access such counterparty information, which is often proprietary or aggregated across multiple transactions.

This obligation is unrealistic and creates unnecessary compliance risk. The legislation should instead provide a clear safe harbour setting out what constitutes "reasonable steps," ensuring managers can comply without relying on information they do not control.

RECOMMENDATION 7
Clarify if the legislation is intended to impose an obligation to undertake reasonable steps to track the relevant interests of counterparties to physically settled derivatives;

AND

If so, how exactly Government proposes reporting entities achieve this outcome considering the myriad of complexities, which include (by way of example):

i. Counterparties will not wish to disclose their position to the buy-side and may not have an aggregated relevant interest exceeding 5%;

ii. Even if a counterparty's relevant interest was included in a substantial holder notice, the relevant interest and hedge position for a particular physically settled derivative is not likely discernible amongst the relevant interests of all other entities and associates included in a notice.

RECOMMENDATION 8
Remove the requirement for asset managers to report counterparty hedge information. If retained, provide a safe harbour list clarifying that maintaining deal records and using published ASIC methodologies satisfies the reasonable steps standard.

Implementation Timeframe

The FSC acknowledges that the Bill extends the transition period from six months in the Exposure Draft to twelve months following Royal Assent. This change is welcome but remains insufficient given the significant system and process changes required across fund managers, custodians and administrators.

The proposed legislation would require day one disclosure of legacy positions introducing a significant volume of regulatory filings, back-calculation burden and uncertainty.

Implementing the new disclosure regime will require re-engineering reporting systems, updating data interfaces with custodians, and developing new controls and governance processes. These activities can only begin once ASIC's supporting instruments, such as calculation methodologies for derivatives and new substantial holding notice formats, are finalised.

To ensure orderly implementation and reduce compliance risk, the transition period should be lengthened, with commencement tied to the release of ASIC's final instruments and/or regulatory simplification initiatives. A staged start would allow simpler provisions to take effect earlier while giving more time for complex derivative reporting requirements.

RECOMMENDATION 9
Extend the implementation period to at least 18–24 months following Royal Assent, with staged commencement for complex derivative categories and offsetting short positions.

RECOMMENDATION 10
To avoid inefficient compliance process upgrades, align implementation of the proposed legislation with proposed ASIC reform of substantial holding disclosure pursuant to REP 813: Regulatory simplification.

Treatment of Short-Selling

The Bill focuses on long economic exposures but does not clarify whether short-selling constitutes a relevant interest. This asymmetry creates uncertainty and could lead to inconsistent reporting. Short positions may, in some cases, influence market liquidity and should therefore be addressed explicitly.

The legislation should define when short-selling is within scope and at what thresholds disclosure applies, or alternatively confirm that it is excluded, with the rationale explained.

RECOMMENDATION 11

Clarify whether and when short-selling constitutes a relevant interest, and ensure consistent, symmetrical disclosure for long and short economic exposures.

Alignment of ROM and RORI Registers

The Bill creates overlapping frameworks through the Register of Members (ROM) and the new Register of Relevant Interests (RORI). While both aim to enhance transparency, differences in structure, access rights, and data requirements risk duplication and confusion.

A harmonised approach would reduce compliance costs and improve usability for market participants, journalists and academics who rely on ownership data.

RECOMMEDNATION 12

Align the ROM and RORI frameworks to ensure consistent thresholds, access rights and reporting formats, and consider allowing a single integrated register for listed entities.

ASIC Methodologies and Modernisation

The Bill delegates significant implementation detail to ASIC instruments, including methodologies for calculating derivative exposures and the form of substantial holding notices. Early consultation and publication of these methodologies are essential to allow market participants to design compliant systems and to ensure national consistency. Calculation methodologies should be as straightforward in determination as possible to ensure clear and consistent disclosures across the industry.

We note, consistent with ASIC commentary in REP 813: Regulatory simplification, substantial holding notices require modernisation. ASIC consultation is welcome with regard to the form and process of this modernisation initiative, which we propose should be updated to a process of electronic submission and suggest that ASIC improve and streamline access to substantial holding notices database to market participants for the purposes of complying with the various requirements of the proposed legislation.

RECOMMENDATION 13

Require ASIC to consult and publish derivative calculation methodologies and reporting instruments well before commencement and provide grandfathering protection where market participants follow existing guidance in good faith.

RECOMMENDATION 14

Modernise substantial holding notices through an electronic submission channel and API-style access to ownership data.

Financial Adviser education and training standard

Schedule 5 of the Bill contains a minor and technical amendment (MTA) which, as the Explanatory Memorandum to the Bill explains, corrects an inadvertent drafting error to section 1684A of the *Corporations Act* 2001 relating to the transitional arrangements for existing financial advice providers to meet the qualifications standard.

Existing providers have until 1 January 2026 to meet the qualifications standard to maintain their 'relevant provider' status to be authorised to provide personal advice from that date. For existing providers the standard can be met by either completing an approved qualification, completing qualifications the Minister has determined to be equivalent to an approved qualification for existing advisers, or by accessing the experienced provider pathway.

The amendment in this Bill addresses a previous change to the law which removed access to the alternative qualification pathway as a means of meeting the standard for existing providers. The alternative qualification pathway allows existing providers to meet the qualifications standard by completing the necessary top up course(s) determined by the Minister.

In transitioning to the new professional standards, financial advisers have reasonably relied on the existence and availability of this qualifications pathway to maintain their authorised status beyond 1 January 2026. Maintaining this pathway is critical to ensure many financial advisers can continue to provide advice to the many Australians who currently rely on it.

In recent years the number of financial advisers in Australia has reduced from around 28,000 in early 2019 to just over 15,400 at the present time. This has reduced the supply of advice, and, alongside other factors, increased the cost of advice to consumers.

The prospect of increased access to quality financial advice through Tranche 2 of the *Delivering Better Advice Reforms* remains within reach. However, with the transition to the qualification standards at 1 January 2026 likely to be another natural attrition point for adviser numbers, Australia cannot afford the additional uncertainty for financial advisers and their clients which this inadvertent drafting error could cause. It is therefore essential that the Parliament passes this amendment prior to 1 January 2026 to maintain the alternative qualifications pathway.

RECOMMENDATION 15

The FSC supports amendments to the *Corporations Act* in Schedule 5 of the Bill to maintain the existing qualification standards provisions for existing financial advice providers.

The FSC welcomes the opportunity to further discuss the matters outlined in this submission.

Yours sincerely

Aidan Johnson
Policy Director, Investments and Funds Management