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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

TREASURY LAWS AMENDMENT (FINANCIAL MARKET INFRASTRUCTURE
AND OTHER MEASURES) BILL 2024

REVISED SUPPLEMENTARY EXPLANATORY MEMORANDUM

AMENDMENTS TO BE MOVED ON BEHALF OF THE GOVERNMENT

(Circulated by authority of the Treasurer, the Hon Jim Chalmers MP)

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Glossary

This Supplementary Explanatory Memorandum uses the following abbreviations and acronyms.

<i>Abbreviation</i>	<i>Definition</i>
AASB	Australian Accounting Standards Board
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited
Bill	Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024
CFR Advice to Government	Financial Market Infrastructure Regulatory Reforms: Advice to Government from the Council of Financial Regulators, July 2020
Climate Change Act	Climate Change Act 2022
Corporations Act	<i>Corporations Act 2001</i>
Corporations Regulations	<i>Corporations Regulations 2001</i>
CS facility	A clearing and settlement facility as defined in section 768A of the <i>Corporations Act 2001</i>
Insurance Act	<i>Insurance Act 1973</i>
ISSB	International Sustainability Standards Board

General outline and financial impact

Parliamentary amendments to Schedules 2 and 5 – Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024

Outline

The Parliamentary amendments to Schedules 2 and 5 to the Bill amend the Bill so that the requirement for regulations to approve a particular person's voting power in ASX in certain circumstances is retained.

Any regulations made to approve such holdings do not take effect until the disallowance period for those regulations has passed.

The amendments to the Bill also update out of date references in relation to ASX and address a technical issue in the commencement of a civil penalty provision.

Date of effect

The Bill, as amended, commences on the day after the Bill receives Royal Assent.

Financial impact

The Parliamentary amendments to the Bill are not estimated to impact the cost of the measure.

Human rights implications

The Parliamentary amendments do not affect the analysis of human rights issues. See Statement of Compatibility with Human Rights — Chapter 3.

Compliance cost impact

The compliance cost impact is unchanged.

Parliamentary amendments to Schedule 4 – Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024

Outline

The Parliamentary amendment to Schedule 4 to the Bill amends the Bill to require entities to use both a higher and a lower global average temperature increase scenario, where the sustainability standards require the disclosure of a scenario analysis or information derived from or about a scenario analysis.

Date of effect

The Parliamentary amendment commences the day after Royal Assent, in accordance with the date of effect for Schedule 4 of the Bill.

Financial impact

The Parliamentary amendment to the Bill is not estimated to impact the cost of the measure.

Human rights implications

The Parliamentary amendment does not affect the analysis of human rights issues. See Statement of Compatibility with Human Rights — Chapter 2.

Compliance cost impact

The compliance cost impact of the Bill is unchanged.

Chapter 1: Parliamentary amendments to Schedules 2 and 5 – Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024

Outline of chapter

- 1.1 The Parliamentary amendments to Schedules 2 and 5 to the Bill amend relevant provisions to retain the requirement that regulations be made to approve a particular person's voting power in ASX, if the proposed voting power would exceed the threshold for an unacceptable control situation.
- 1.2 Any regulations made to approve such holdings do not take effect until the disallowance period for those regulations has passed.
- 1.3 The amendments also update out of date references to ASX and address a technical issue in the commencement of a civil penalty provision in Schedule 2.

Context of amendments

- 1.4 Part 4 of Schedule 2 to the Bill amends the Corporations Act to change the mechanism for approving certain increases in voting power in ASX where a holding would exceed the threshold for an unacceptable control situation.
- 1.5 The Corporations Act outlines processes to approve acquisitions of voting power in widely held market bodies where the acquisition would result in an unacceptable control situation.
- 1.6 The threshold for an unacceptable control situation is the acquisition of any voting power above 15 per cent. The Bill amends this threshold to 20 per cent (see paragraph 1.12).
- 1.7 Widely held market bodies are prescribed in regulation 7.4.1 of the Corporations Regulations.
- 1.8 Except for ASX, any proposed acquisition of shares in a widely held market bodies that would breach the unacceptable control situations threshold needs to be approved by the Minister after an application to ASIC.

- 1.9 There is a special rule for ASX where a regulation must be made to approve a holding that would result in an unacceptable control situation instead of ministerial approval. The regulation does not take effect until the relevant instrument is no longer liable to be disallowed by either House of Parliament.
- 1.10 Items 36, 37, 38 and 39 in Schedule 2 seek to align the approval process and mechanism for ASX so that it is consistent with the process and mechanism for other widely held market bodies. The Minister would need to approve relevant acquisitions after the entity seeking to acquire the voting power applies to ASIC.
- 1.11 Aligning the approval mechanism in relation to ASX with other widely held market bodies was recommended by the CFR Advice to Government (recommendation 9) and the Financial System Inquiry Final Report (recommendation 44). The Government announced its intention to implement the recommendations of the CFR Advice to Government on 14 December 2022.
- 1.12 Items 45 to 50 in Schedule 2 amend the Corporations Act to increase the unacceptable control situation threshold from 15 per cent to 20 per cent. This amendment aligns this threshold with a similar mechanism proposed by the Bill for ASIC would need to approve an acquisition of voting power in a ‘controlled Australian financial body’ where that acquisition would exceed 20 per cent voting power. A controlled Australian financial body is any other market licensee, CS facility licensee, derivative trade repository licensee, benchmark administrator licensee, or any holding company of those licensees, that is not a widely held market body.
- 1.13 These amendments retain Parliament’s oversight of relevant voting power approvals in ASX, due to its unique position as a monopoly provider of financial market infrastructure in Australia.

Summary of amendments

- 1.14 The Parliamentary amendments amend the Bill to ensure the existing approval mechanism for holdings in ASX above the unacceptable control situation threshold is retained.
- 1.15 Amendments elsewhere in the Bill increase the unacceptable control situation threshold from 15 per cent to 20 per cent (see paragraph 1.12). Therefore, the effect of the amendments will be to retain the existing approval mechanism by regulation for a proposed voting power of greater than 20 per cent in ASX. A regulation to approve a certain holding does not take effect until the instrument providing that approval is no longer liable to be disallowed by either House of Parliament.

- 1.16 The amendments update references to ‘Australian Stock Exchange Limited’ in sections 850B, 851A and 890A of the Corporations Act, and section 9 of the Insurance Act with the correct reference ‘ASX Limited’. The Bill would otherwise omit the relevant paragraphs.
- 1.17 A technical error with respect to the commencement of a civil penalty provision for breaches of certain conditions of a CS facility licence is also corrected by these amendments.

Detailed explanation of amendments

- 1.18 Parts 1 and 9 of Schedule 2 to the Bill contain amendments in relation to the general obligations a CS facility licensee. Parts 1 and 9 commence on the seventh day after Royal Assent. Part 11 of Schedule 2 also contains amendments in relation to general obligations and ensures that the existing civil penalties that are available for contraventions of general obligations extend to these new or amended general obligations. Part 11 commences six months after Royal Assent.
- 1.19 Amendment 1 inserts a new item 1A into Part 1 of Schedule 2 of the Bill. The amendment addresses an error where the relevant civil penalty provision in relation to the new general licence obligations would have commenced after the commencement of the new conditions because of the relevant item’s location in Part 11.
- 1.20 Amendment 3 removes the relevant item in Part 11. These amendments ensure the Bill does not inadvertently create a temporal gap between the general obligations being inserted or amended in Schedule 2 and the civil penalty provisions applying to contraventions of those obligations.
[Amendments 1 and 3]
- 1.21 Amendment 2 removes Part 4 of Schedule 2 to the Bill.
[Amendment 2]
- 1.22 Currently for a person to hold more than a certain percentage of voting power which would create an unacceptable control situation in a widely held market body:
- for ASX Limited – the regulations may prescribe a higher percentage than the certain percentage of voting power limit in ASX that a person can have;
 - for a widely held market body other than the ASX – the person must lodge an application with ASIC where the Minister may approve that application if the Minister is satisfied that it is in the national interest.
- 1.23 The Bill seeks to align the process for ASX with the process for other widely held market bodies.
- 1.24 The effect of Amendment 2 is to retain the current arrangements in relation to ASX Limited. That is, the amendment retains the requirement for regulations

to be made to approve an acquisition of voting power in ASX that would result in an unacceptable control situation. This is an acquisition of greater than 20 per cent of the voting power in ASX under the amended threshold (see paragraph 1.12). The regulations would be disallowable. Relevant regulations would not take effect, meaning the approval is not effective, until the instrument containing the regulations is no longer liable to be disallowed by either House of Parliament.

- 1.25 Items 8 and 9 of Schedule 5 to the Bill update the out-of-date reference to ‘Australian Stock Exchange Limited’ in section 890A of the Corporations Act and section 9 of the Insurance Act. These items are amended to replace references to ‘Australian Securities Exchange Limited’ with the correct title of the entity, ‘ASX Limited’.

[Amendments 6 and 7]

Consequential amendments

- 1.26 Amendment 5 replaces out of date references to ‘Australian Stock Exchange Limited’ with ‘ASX Limited’ in the Corporations Act. These references are omitted in Part 4 of Schedule 2 to the Bill but need to be updated as these amendments remove that Part.

[Amendment 5]

Chapter 2: Parliamentary amendments to Schedule 4 – Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024

Outline of chapter

- 2.1 The Parliamentary amendment to Schedule 4 to the Bill amends the Bill to require entities to use both a high and a low global warming scenario, where the sustainability standards require the disclosure of a scenario analysis or information derived from or about a scenario analysis.

Context of amendments

- 2.2 Part 1 of Schedule 4 to the Bill amends the Corporations Act to include climate-related financial disclosures as part of a new annual sustainability report, added to the existing obligations to prepare annual financial reports under Chapter 2M of the Corporations Act.
- 2.3 Item 26, section 296D of the Bill outlines at a high level what must be disclosed in climate statements for a financial year and notes to the climate statements, in line with relevant sustainability standards. This includes information about: material financial risks and financial opportunities related to climate; any metrics and targets for the financial year relating to climate; and any information about governance of, strategy of, or risk management by the entity in relation to these risks, opportunities, metrics and targets.
- 2.4 Scenario analysis is a process for identifying and assessing a potential range of outcomes of future events under conditions of uncertainty.
- 2.5 The ISSB climate-related disclosure standards and the Australian equivalent draft standards released by the AASB set out that scenario analysis must be undertaken to inform disclosures about the climate resilience of an entity's strategy and business model to both transition and physical climate-related risks.
- 2.6 Where scenario analysis is required to be undertaken, both standards also require reporting entities to disclose information about how and when the scenario was carried out, including information about key inputs and

- assumptions. The standards set out that the sophistication of climate scenario analysis depends on the capacity and size of the reporting entity, permitting quantitative, partially quantitative and qualitative assessments.
- 2.7 The AASB draft standards expand on the ISSB standards to specify that where an entity is required by the Corporations Act to prepare climate-related financial disclosures, it shall disclose its climate resilience assessments against at least two relevant possible future states, one of which must reflect a low average global temperature outcome, consistent with the most ambitious global temperature goal set out in the Climate Change Act.
- 2.8 The AASB also sought feedback on specifying an upper-temperature scenario that an entity must use.
- 2.9 This amendment is intended to elevate the requirement on entities about what scenarios must be used, where the sustainability standards require scenario analysis to be undertaken and disclosed as part of the climate statements.
- 2.10 This amendment responds to stakeholder feedback seeking additional clarity about the expectations for scenario analysis and to ensure entities consider both transition and physical climate-related risks in assessments of climate resilience.

Detailed explanation of amendments

- 2.11 The amendment adds to item 26 of the Bill, by introducing two new subsections to section 296D Climate statement disclosures.
- 2.12 Subsection 2A sets out when the scenario analysis must be carried out. This includes where the sustainability standards require disclosure of a scenario analysis, but is not limited to this situation, and extends to where the sustainability standards require disclosure of information derived from a scenario analysis or disclosure of information about a scenario analysis.
- 2.13 Scenario analysis is required as part of disclosures that relate to the climate resilience of the entity's strategy and its business model. These requirements are referred to in section 296D(1)(c)(i) and form part of the strategy pillar of the draft AASB standards, in line with relevant ISSB standards and the Taskforce on Climate-related Financial Disclosure's recommendations.
- 2.14 Subsection 2B requires that at least two scenarios are used when scenario analysis is carried out. Entities are not restricted to carrying out scenario analysis on these two scenarios. Entities are required, however, as a minimum, to carry out scenario analysis on these two scenarios.
- 2.15 The two scenarios are intended to ensure that reporting entities take into consideration both transition and physical climate-related risks.

- 2.16 Climate-related physical risks are generally associated with higher average global temperature outcomes, reflecting impacts of a warmer climate, including acute weather-related events or longer-term shifts in climatic patterns.
- 2.17 The first scenario is a high global warming scenario. This is defined as an increase in the global average temperature that well exceeds the increase mentioned in subparagraph 3(a)(i) of the Climate Change Act. The increase mentioned in subparagraph 3(a)(i) of that Act is currently 2°C above pre-industrial levels. An increase of 2.5°C or higher would be considered to well exceed the current increase mentioned in subparagraph 3(a)(i) of that Act. This is akin to higher warming scenarios that are adopted in climate-related physical risk assessments, for example, the National Climate Risk Assessment.
- 2.18 Climate-related transition risks are generally associated with lower average global temperature outcomes, reflecting efforts to transition to a lower-carbon economy.
- 2.19 The second scenario is a low global warming scenario. This is defined as an increase in the global average temperature limited to the increase mentioned in subparagraph 3(a)(ii) of the Climate Change Act. The increase mentioned in subparagraph 3(a)(ii) of that Act is 1.5°C above pre-industrial levels.

Commencement, application, and transitional provisions

- 2.20 The Parliamentary amendment commences on the day after Royal Assent.

Chapter 3: Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024

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Parliamentary amendments to Schedules 2 and 5 – Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024

Overview

- 3.1 The Parliamentary amendments to the Bill are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.
- 3.2 The Parliamentary amendments to Schedules 2 and 5 to the Bill amend the Bill so that the requirement for regulations to approve a particular person's voting power in ASX Limited in certain circumstances is retained.
- 3.3 Any regulations made to approve such holdings do not take effect until the disallowance period for those regulations has passed.
- 3.4 The amendments to the Bill also update terminology in the relevant provisions and address a technical issue in the commencement of a civil penalty provision.

Human rights implications

- 3.5 The Parliamentary amendments to the Bill do not engage any of the applicable rights or freedoms and do not affect the initial analysis of human rights issues conducted for the Bill.

Conclusion

- 3.6 The Parliamentary amendments to the Bill are compatible with human rights as the amendments do not raise any human rights issues.

Parliamentary amendments to Schedule 4 – Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024

Overview

- 3.7 The Parliamentary amendment to the Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.
- 3.8 The Parliamentary amendment to Schedule 4 of the Bill amends the Bill to require entities to use both a higher and a lower global average temperature increase scenario, where the sustainability standards require the disclosure of a scenario analysis or information derived from or about a scenario analysis.

Human rights implications

- 3.9 The Parliamentary amendment to the Bill does not engage any of the applicable rights or freedoms and does not affect the initial analysis of human rights issues conducted for the Bill.

Conclusion

- 3.10 The Parliamentary amendment to the Bill is compatible with human rights as the amendment does not raise any human rights issues.