

24 October 2024

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 (Mergers and Acquisitions Reform) Bill 2024

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 NAB Asset Servicing, 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 takes the view that the powers being given to the ACCC will support fairness and safety in the Australian market. ACSA looks forward to engagement with ACCC regarding the rules and guidelines they may consider streamlining and enhance transparency relating to Mergers and Acquisitions.

ACSA members, custodians, safekeepers and registered holders of listed and unlisted securities, are generally not directly involved in the decision processes regarding any acquisition or transaction which may require reporting under the proposed Mergers and Acquisitions Reforms. However, ACSA members are likely to be indirectly connected to acquisitions through their role, via contractual arrangements, nominee arrangements or bare trust activities, on behalf of a beneficial owner or an entity having the relevant interest, as the registered holder of a security affected by the acquisition.

ACSA members would like to ensure that in any Mergers and Acquisition Reforms the role of the ACSA members as custodians is not caught in the reporting and other obligations under the proposed reforms due to their role as the registered holder of an affected security or transaction.

ACSA would suggest that the Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024 adopts the principles from the Corporations Act which defines persons who provide a "custodial and depository service" in the proposed reforms to ensure that ACSA members are not inadvertently captured by the reporting and other requirements. ACSA would like to ensure that the correct entity controlling an acquisition (i.e. the beneficial owner or the person with the relevant interest) is the reporting entity under the reforms.

The situations which do not amount to "relevant interests" are described at section 609. Sub-section 609(1) deals with money lending and financial accommodation.

Sub-section 609(2) deals with a circumstance where a person who would otherwise have a relevant interest in securities as a bare trustee is not considered to have a relevant interest in the securities where a beneficiary under the trust has a

relevant interest in the securities because of a presently enforceable and unconditional right of the kind referred to at section 608(8). Section 608(8) refers to circumstances where another person has an enforceable right in relation to the securities that would give them a relevant interest in the securities were the agreement performed, the right enforced, or the option exercised. Under a custody agreement, the "client" of the custodian will have an enforceable right to call for or direct dealings in the securities. It is generally accepted that a custodian is merely a bare trustee, i.e., a custodian is not considered to have any relevant interest in the securities that it holds in that capacity.

Further, whilst standardisation of the framework regarding mergers and schemes of arrangement reporting is welcomed, ACSA would also like to seek the opportunity for further discussions on the operational challenges encountered with schemes of arrangement and mergers, particularly where instruction deadlines are set before record dates.

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 Signature]

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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 (Mergers and Acquisitions Reform) Bill 2024 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.