

2022

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES/SENATE

TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL
2022: ALRC FINANCIAL SERVICES INTERIM REPORT

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
ALRC	Australian Law Reform Commission
ALRC Review	Review of the Legislative Framework for Corporations and Financial Services Regulation
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Bill	Treasury Laws Amendment (Measures for consultation) Bill 2022: ALRC Financial Services Interim Report Recommendations
Corporations Act	<i>Corporations Act 2001</i>
Corporations Regulations	<i>Corporations Regulations 2001</i>
Corporations (Review Fees) Act	<i>Corporations (Review Fees) Act 2003</i>
Crimes Act	<i>Crimes Act 1914</i>
Criminal Code	Schedule to the <i>Criminal Code Act 1995</i>
Interim Report A	Interim Report A of the ALRC Review (ALRC Report 137)

Chapter 1: ALRC Financial Services Interim Report

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Outline of chapter

- 1.1 This chapter outlines how Schedule 1 to the Bill simplifies and improves the navigability of Australia’s corporations and financial services laws.

Context of amendments

- 1.2 Schedule 1 to the Bill enacts recommendations and other suggested improvements identified by the ALRC in Interim Report A from its Review of the Legislative Framework for Corporations and Financial Services Regulation to simplify and improve the navigability of Australia's financial services laws.
- 1.3 In September 2020, the Attorney-General referred to the ALRC for inquiry and report, under subsection 20(1) of the *Australian Law Reform Commission Act 1996*, a consideration of whether, and if so what, changes to the Corporations Act and Corporations Regulations could be made to simplify and rationalise the law.
- 1.4 The ARLC Review forms part of the response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, which found that the law needs to be simplified to ensure that its intent is met.

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- 1.5 Interim Report A deals with the use of definitions in corporations and financial services legislation. Interim Report B is due to be handed down in September 2022 and will deal with the hierarchy of laws. Interim Report C is due to be handed down in August 2023 and will focus on the structure of Chapter 7 of the Corporations Act. The Final Report is due on 30 November 2023.
- 1.6 The ALRC’s recommendations in Interim Report A address matters that could be implemented prior to the conclusion of the ALRC Review in 2023. These amendments improve the use of definitions in the ASIC Act, Corporations Act and Corporations Regulations.
- 1.7 The recommendations address complexity in the design of definitions in corporations and financial services laws. By removing erroneous references and redundant definitions, using consistent headings to definitions sections, separating operative elements from definitional elements, relocating operative elements contained in definitions to operative provisions of the Act, as well as other simplifying amendments, this Bill improves the navigability and clarity of these laws.

Comparison of key features of new law and current law

Table 1.1 Comparison of new law and current law

<i>New law</i>	<i>Current law</i>
Terms that are defined in the Corporations Act are subsequently used in the Act.	Certain terms that are defined in the Corporations Act are: <ul style="list-style-type: none"> not subsequently used in the Act or the Corporations Regulations; or only used in the Corporations Regulations.
Defined terms that are only used in one provision of the Corporations Act have been repealed or relocated to the section in which they appear.	Some defined terms found in section 9 of the Corporations Act are only used in one provision of the Act.
Defined terms are only used if they affect the ordinary meaning of a word.	Several basic defined terms are defined in a way that does not alter the ordinary meaning of the word.
The headings of provisions containing definitions appear in a consistent form across the Corporations Act.	Some provisions containing definitions in the Corporations Act are not clearly or consistently identified by their headings and may be difficult to locate.

<i>New law</i>	<i>Current law</i>
Provisions that define ‘extraordinary resolution’ and ‘special resolution’ do not impart substantive obligations.	Provisions that define ‘extraordinary resolution’ and ‘special resolution’ impart substantive obligations.
The definition of ‘review fee’ is repealed and signposted to the correct definition in the Corporations (Review Fees) Act. Sections that refer to ‘review fees’ are substituted so a consistent expression is used.	The definition of ‘review fee’ cross-references the incorrect section of the Corporations (Review Fees) Act. The phrases ‘review fee’ and ‘fees imposed under the Corporations (Review Fees) Act’ are inconsistently used throughout the Corporations Act.
The Corporations Act includes a definition of ‘rules of court’ and the term ‘rules’ is not defined. Provisions which previously used the term ‘rules’ as a defined phrase now use the phrase ‘rules of court’.	The Corporations Act includes a definition of ‘rules’ that is applied in some, but not all, instances where the phrase ‘rules’ is used in the Corporations Act.

Detailed explanation of new law

1.8 Schedule 1 to the Bill makes technical amendments to Australia’s financial services laws to facilitate a more adaptive, efficient and navigable legislative framework. The amendments do this by making the following changes:

- removing erroneous references;
- removing redundant definitions;
- making broad improvements in relation to the use of definitions, including:
 - clarifying the meaning of defined terms; and
 - using consistent headings for definition sections; and
 - removing substantive obligations from definitions;
- repealing redundant regulations;
- making other minor and technical amendments to simplify and improve the readability and navigability of the ASIC Act and Corporations Act.

Schedule 1 to the Bill only implements those recommendations for which the ALRC has advised there is overwhelming support from stakeholders.

Removing erroneous references and redundant definitions

1.9 The amendments remove the erroneous reference in the ASIC Act to Part 1.3 of the Corporations Act. There is no Part 1.3 of the Corporations Act.
[Schedule 1, item 1, subsection 5(3) of the ASIC Act]

1.10 The amendments repeal the following defined terms in section 9 of the Corporations Act:

- ‘arbitrage transaction’;
- ‘Australian bank’;
- ‘Australian register’;
- ‘cash management trust interest’;
- ‘chargeable matter’;
- ‘court of summary jurisdiction’;
- ‘deal’;
- ‘emoluments’;
- ‘exempt foreign company’;
- ‘financial corporation’;
- ‘Full Court’;
- ‘non-voting share’;
- ‘quarter day’;
- ‘renounceable option’.

These terms are either not subsequently used in the Corporations Act or the Corporations Regulations, or are only used in the Regulations. For defined terms that are used in the Regulations, it is more appropriate for the definition to be located in the Regulations.

[Schedule 1, item 2, section 9 of the Corporations Act]

1.11 The amendments also repeal the defined term ‘financial product advice law’ from section 761A of the Corporations Act. The term is not used in any subsequent provisions of the Corporations Act or the Corporations Regulations.

[Schedule 1, item 3, section 761A of the Corporations Act]

Using consistent headings for definitions sections

- 1.12 Prior to the amendments, the Corporations Act did not clearly and consistently signpost provisions containing definitions. While some provisions had headings indicating they contained one or more definitions, the type of heading used was inconsistent. Headings included ‘dictionary’, ‘meaning of...’ and ‘what is a...’ as well as provisions with no heading. This made it difficult for the reader to identify the location of defined terms in the Act and use search tools to easily find to all definition sections.
- 1.13 Schedule 1 to the Bill implements recommendation 9 from Interim Report A. The ALRC recommended that the headings of provisions containing definitions should appear in a consistent form across the Corporations Act.
- 1.14 The Schedule gives effect to this recommendation by amending the headings of provisions in the Corporations Act that contain definitions and no substantive content. The Schedule replaces existing headings with the phrase ‘Meaning of [defined term]’ to consistently identify those provisions containing definitions. This assists readers more easily identify the location of definitions in the Act.

[Schedule 1, items 4–75, Division 2 of Part 1.2 of Chapter 1 (heading) and sections 45A (heading), 45B (heading), 46 (heading), 50 (heading), 50AAA (heading), 50AA (heading), 51E (heading), 51M (heading), 64A (heading), 66A (heading), 88A (heading), 88B (heading), 89 (heading), 91 (heading), 92 (heading), 95A (heading), 102B (heading), 102C (heading), 111AC (heading), 111AD (heading), 111AL (heading), 111AM (heading), 323D (heading), 323DAA (heading), 324AE (heading), 324AF (heading), 345A (heading), 453A (heading), 458E (heading), 588FDA (heading), 602A (heading), 738U (heading), 761G (heading), 763A (heading), 763B (heading), 763C (heading), 763D (heading), 766A (heading), 766B (heading), 766D (heading), 766E (heading), 766F (heading), 766H (heading), 767A (heading), 768A (heading), 850B (heading), 908AB (heading), 908AC (heading), 912D (heading), 961C (heading), 961D (heading), 961F (heading), 961P (heading), 962A (heading), 962B (heading), 962C (heading), 962L (heading), 963A (heading), 964F (heading), 964H (heading), 966 (heading), 994AA (heading), 1010C (heading), 1014A (heading), 1014H (heading), 1200B (heading), 1272B (heading), 1311D (heading), 1317AAA (heading), 1317AAB (heading), 1317AAC (heading) and 1317GAD (heading) of the Corporations Act].

Other Amendments

Single use definitions

- 1.15 Words and phrases should be defined if the definition significantly reduces the need to repeat text. Definitions that are only used in one section do not reduce

the need to repeat text. They also impede navigability when the reader is required to consult the main dictionary in section 9 of the Corporations Act to ascertain the meaning of a term.

1.16 Schedule 1 to the Bill removes the following terms from section 9 of the Corporations Act:

- ‘aggregated turnover’;
- ‘ancillary offence’;
- ‘chargee’;
- ‘close associate’;
- ‘connected entity’;
- ‘current market bid price’;
- ‘deductible gift recipient’;
- ‘group executives’;
- ‘machine-copy’;
- ‘old Division 11 of Part 11.2 transitionals’;
- ‘Part 7.7A civil penalty provision’;
- ‘State or Territory authority’.

These terms are only used in one section.

[Schedule 1, items 77, 79, 81 and 84, section 9 of the Corporations Act]

1.17 If a definition is relatively simple, these amendments locate the substance of the definition where the defined term was previously placed. If the definition is long and complex, the amendments include the definition in a separate subsection of the section in which the defined term is used. This is done to avoid making the provision more difficult to read.

[Schedule 1, items 80, 83, 85–91 and 98–101, section 9 (paragraph (c) of the definition of ‘examinable affairs’) and (definition of ‘reproduction’), paragraph 45B(1)(b), section 51B (paragraph (b) of the definition of ‘secured party’), paragraph 300A(4)(b), section 300A, subparagraphs 588FDA(1)(b)(ii) and (iii), paragraph 601QA(5)(c), section 649B, paragraphs 1274(2AA)(b), 1317AAE(3)(b) and 1317G(1)(c) and subsection 1317G(1) of the Corporations Act]

1.18 The previous definition of ‘participant’ in sections 9 and 761A of the Corporations Act was defined in relation to a clearing and settlement facility or a financial market. That definition is repealed from those sections and replaced with a simpler definition in section 9 which signposts to sections 767A—Meaning of financial market and section and 768A—Meaning of clearing and settlement facility. These sections contain the substance of the definition and do not change the previous definition.

[Schedule 1, items 82, 93, 95, 96, sections 9 (definition of ‘participant’), 761A, 767A and 768A of the Corporations Act]

- 1.19 The definition of ‘recognised affiliate’ in section 761 of the Corporations Act was also defined in relation to a clearing and settlement facility or a financial market, and only used in the definition of ‘participant’. The definition of ‘recognised affiliate’ has been repealed and its substance incorporated into the meaning of ‘participant’ located in the sections relating to the meaning of clearing and settlement facility and financial market.
[Schedule 1, items 93, 95, 96, sections 761A, 767A and 768A of the Corporations Act]
- 1.20 The previous definition of ‘funeral expenses facility’ in section 761A was only used in the definition of ‘funeral benefit’. Accordingly, ‘funeral expenses facility’ has been repealed and its substance incorporated into the definition of ‘funeral benefit’. Section 765B, which stated that a funeral expenses facility is not a funeral benefit, is now redundant and has been repealed.
[Schedule 1, items 92, 93 and 94, sections 761A and 765B of the Corporations Act]
- 1.21 The previous definition of ‘ancillary offence’ in section 9 referred to provisions of the Crimes Act which no longer exist. The definition has been repealed. The only provisions which relied on the definition, being section 5 of the ASIC Act and paragraph 916G(5)(c) of the Corporations Act, now refer directly to the meaning of ‘ancillary offence’ in the Criminal Code and section 6 of the Crimes Act.
[Schedule 1, item 76 and 97, subsection 5(1) (paragraph (a) of the definition of ‘contravention’) of the ASIC Act and paragraph 916G(5)(c) of the Corporations Act]
- 1.22 Schedule 1 to the Bill inserts a signpost in section 9 to the definition of ‘connected’ with a body corporate. That meaning is found in section 64B of the Corporations Act.
[Schedule 1, item 78, section 9 of the Corporations Act]

Definitions about resolutions

- 1.23 The function of definitions should be to convey or enhance meaning. The inclusion of substantive obligations within definitions should be avoided where possible as it conceals the substantive obligation. This makes it harder for regulated entities to understand their rights and obligations.
- 1.24 Schedule 1 to the Bill repeals the previous definitions of ‘extraordinary resolution’ and ‘special resolution’ in section 9 and replaces them with new definitions that remove substantive requirements.
[Schedule 1, items 102 and 103, section 9 (definition of ‘extraordinary resolution’) and (definition of ‘special resolution’) of the Corporations Act]

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- 1.25 The substantive requirements are located in two new operative provisions, which establish that, in order for a special resolution or extraordinary resolution to have effect, the resolution must be passed by the specified number of votes and be otherwise valid. They include notes to the provisions in regulations that contain the obligations to give notice of the meeting and to include certain content in the notice. This ensures that the requirements for a special resolution or extraordinary resolution to be valid are not affected by the abovementioned removal of the substantive requirements in the previous definitions.
[Schedule 1, items 104 and 105, sections 250MA and 253LA of the Corporations Act]
- 1.26 The amendments also introduce a provision enabling ASIC to exempt a person from, or modify, the new operative provisions for special resolutions and extraordinary resolutions. This ensures that ASIC’s power to make exemptions or modifications in relation to these resolutions, which could previously be exercised through ASIC’s general power to make exemptions and modifications in relation to definitions, is substantively unchanged.
[Schedule 1, item 106, paragraph 601QA(5)(b) of the Corporations Act]

Certain inclusive and relational definitions

- 1.27 Inclusive definitions can be used to clarify ambiguity or expand the meaning of a term. However, these definitions can also add complexity by requiring the reader to consider whether the term is being used in its defined, inclusive sense or not.
- 1.28 Schedule 1 repeals the following definitions:
- ‘have’;
 - ‘hold’;
 - ‘information’;
 - ‘statement’.
- 1.29 The definitions of ‘have’, ‘hold’ and ‘statement’ do not add anything to the ordinary meaning of these words. ‘Information’ was defined to include ‘complaint’, which does not feature in the Corporations Act.
[Schedule 1, items 107 and 109, section 9 of the Corporations Act]
- 1.30 In relation to ‘statement’, to ensure that readers understand that the removal of the definition has not changed the law, a note has been inserted into relevant provisions of the Corporations Act to confirm that a statement or information can be written or non-written.
[Schedule 1, items 110, 111 and 113–116, subsections 766B(1), 766G(1), 908DB(1) and (2), section 1041D and subsections 1041E(1) and 1041F(1) of the Corporations Act]

- 1.31 The amendments replace the definition of ‘on’ in section 9, which only applies in relation to a financial market, with a signpost to the provision that provides the meaning of a financial market. A new subsection has been inserted in that provision to confirm that something which is done through or by means of the facility that constitutes a financial market is done ‘on’ the financial market.
[Schedule 1, items 108 and 112, section 9 and subsection 767A(2) of the Corporations Act]

Review fee

- 1.32 The definition of ‘review fee’ mistakenly refers readers to section 5 of the Corporations (Review Fees) Act instead of section 4 of that Act. There is also inconsistency throughout the Corporations Act as to whether the term ‘review fee’ or the phrase ‘fees imposed under the Corporations (Review Fees) Act’ was used.
- 1.33 The amendments replace the definition of ‘review fee’ with a signpost to the definition in the Corporations (Review Fees) Act. The amendments also update references to review fees so that a consistent expression is used throughout the Corporations Act.
[Schedule 1, items 117–120, section 9 (definition of ‘review fee’), subsections 1351(2), 1351(3) and (4) and paragraph 1364(2)(n) of the Corporations Act]

Court rules

- 1.34 Section 9 defined ‘rules’ to mean the rules of the Federal Court or rules of a State or Territory Supreme Court. However, the word ‘rules’ is frequently used throughout the Corporations Act in its ordinary sense. This causes confusion to readers who are required to consider whether the word is used in its defined or ordinary sense.
- 1.35 The amendments replace the defined term ‘rules’ with the term ‘rules of court’. The substance of the definition is unchanged. References to the ‘rules’ in the Corporations Act (in their defined sense) are updated to ‘rules of court’ to match the new definition.
[Schedule 1, items 121–134, section 9 (definition of ‘rules’), subparagraph 423(1)(a)(iv), paragraph 459E(3)(b), subparagraph 459Q(c)(ii), section 465C, paragraph 467(3)(b), subsections 475(8), 488(1), 488(2), 596C(1), 597(14) and 597(15), subparagraphs 1337S(1)(b)(i), 1337S(1)(b)(ii), 1337T(1)(b)(i), 1337T(b)(ii), 1337U(1)(b)(i) and 1337U(1)(b)(ii) of the Corporations Act]

Other minor and technical amendments to simplify and improve the readability and navigability of Australia’s financial services law

- 1.36 Schedule 1 to the Bill repeals the defined term ‘financial services business’ because the definition does not augment the ordinary meaning of that term.
[Schedule 1, items 137 and 143, sections 9 (definition of ‘financial services business’) and 761A (definition of ‘financial services business’) of the Corporations Act]
- 1.37 The amendments rectify inconsistencies in the use of the terms ‘body’ and ‘body corporate’. Previously, section 9 of the Corporations Act contained the defined term ‘exempt body’, which signposted section 66A of the Corporations Act. That section provided that a ‘body corporate’ is an ‘exempt body’ if it satisfies certain conditions. Given that an ‘exempt body’ is a ‘body corporate’, the term ‘exempt body’ has been replaced with ‘exempt body corporate’. Accordingly, the term ‘exempt body’ has been replaced with the term ‘exempt body corporate’ throughout the Corporations Act.
[Schedule 1, items 135, 136, 140 – 142 and 144–148, sections 9 (definition of ‘exempt body’) and 66A, subsections 708(20) and 708(20) (note), paragraph 994B(3)(e), subsection 1012D(8) (heading), paragraph 1012D(8)(b), subsection 1012D(8) (Note 1) and section 1023B (paragraph (a) of the definition of ‘financial product’) of the Corporations Act]
- 1.38 The term ‘body’ replaces the term ‘body corporate’ in the definition of ‘public document’ in section 9 of the Corporations Act. Previously, the definition of ‘public document’ included the term ‘body corporate’ with a signpost to section 88A of the Act. However, section 88A of the Act provides the meaning of ‘public document’ in relation to a ‘body’.
[Schedule 1, item 138, section 9 (definition of ‘public document’) of the Corporations Act]
- 1.39 The words ‘by virtue of section 50’ are replaced with ‘as determined in accordance with section 50’ in the definition of ‘related body corporate’ in the Corporations Act. The new definition is easier to read.
[Schedule 1, item 139, section 9 (definition of ‘related body corporate’) of the Corporations Act]

Commencement, application, and transitional provisions

- 1.40 Schedule 1 to the Bill inserts application and transitional provisions. These ensure that the repeal of certain definitions in the ASIC Act and Corporations Act has the intended effect for instruments made under either of those Acts prior to the commencement of the Schedule.

- 1.41 The Schedule provides that any instrument made under the ASIC Act or Corporations Act, which is in effect immediately prior to the commencement of the Schedule, is subject to certain transitional rules. The transitional rules provide that if an instrument references a provision repealed by this Schedule, that reference is taken to be in relation to the corresponding provision if a corresponding provision has been inserted by this Schedule.
[Schedule 1, items 149 and 150, sections 340 and 341 of the ASIC Act and sections 1698 and 1698A of the Corporations Act]
- 1.42 If an instrument references a provision that has been repealed, and this Schedule does not insert a corresponding provision, the repealed provision continues to have effect in relation to the instrument as if it had not been repealed.
[Schedule 1, items 149 and 150, sections 340 and 341 of the ASIC Act and sections 1698 and 1698A of the Corporations Act]

