



Law Council
OF AUSTRALIA

Review of the Legislative Framework for Corporations and Financial Services Regulation: Interim Report B

Australian Law Reform Commission

12 December 2022

Telephone +61 2 6246 3788 • Fax +61 2 6248 0639
Email mail@lawcouncil.asn.au
GPO Box 1989, Canberra ACT 2601, DX 5719 Canberra
19 Torrens St Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
www.lawcouncil.asn.au

Table of Contents

About the Law Council of Australia.....	3
Acknowledgement	4
Introduction.....	5
General comments.....	5
Appendix A: Individual responses to ALRC Proposals and questions.....	9

About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level, speaks on behalf of its Constituent Bodies on federal, national and international issues, and promotes the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its Constituent Bodies: 16 Australian State and Territory law societies and bar associations, and Law Firms Australia. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Law Society of the Australian Capital Territory
- New South Wales Bar Association
- Law Society of New South Wales
- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
- Tasmanian Bar
- Law Society of Tasmania
- The Victorian Bar Incorporated
- Law Institute of Victoria
- Western Australian Bar Association
- Law Society of Western Australia
- Law Firms Australia

Through this representation, the Law Council acts on behalf of more than 90,000 Australian lawyers.

The Law Council is governed by a Board of 23 Directors: one from each of the Constituent Bodies, and six elected Executive members. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President who normally serves a one-year term. The Board of Directors elects the Executive members.

The members of the Law Council Executive for 2022 are:

- Mr Tass Liveris, President
- Mr Luke Murphy, President-elect
- Mr Greg McIntyre SC, Treasurer
- Ms Juliana Warner, Executive Member
- Ms Elizabeth Carroll, Executive Member
- Ms Elizabeth Shearer, Executive Member

The Chief Executive Officer of the Law Council is Dr James Pople. The Secretariat serves the Law Council nationally and is based in Canberra.

The Law Council's website is www.lawcouncil.asn.au.

Acknowledgements

The Law Council of Australia acknowledges the assistance of its Business Law Section in the preparation of this submission, in particular its Corporations Committee and its Financial Services Committee.

The Law Council is also grateful for the contribution of the Queensland Law Society.

Introduction

1. The Law Council of Australia (**Law Council**) and its Business Law Section (**BLS**) is pleased to make this submission in relation to Interim Report B of the Australian Law Reform Commission's (**ALRC**) Review of the Legislative Framework for Corporations and Financial Services Regulation (**Inquiry**). This submission offers general observations as to the scope and nature of the Inquiry, before specifically responding to each of Interim Report B's Proposals and Questions.
2. Interim Report B sets out options for reform relating to a legislative hierarchy model and improvements to the design of the legislative framework for corporations and financial services, and poses two questions in relation to draft guidance on the delegation of legislative power and the use of evidential provisions respectively.
3. The Law Council has provided responses to each of these proposals and questions in the below table at [Appendix A](#).

General comments

Structural change without accompanying reform to policy

4. The Law Council remains highly supportive of measures to simplify and streamline the *Corporations Act 2001* (Cth) appropriately, particularly Chapter 7, to improve regulatory coherence and certainty for users of the legislative framework.
5. To this end, the Law Council commends the work of the ALRC to date in consulting a wide array of stakeholders and mapping the challenges with Australia's financial services legislation, and more recently, generating proposals for addressing those challenges.
6. As noted in the Law Council's previous submission to the ALRC in relation to Interim Report A, there remains a level of concern with the scope of the Terms of Reference, noting that many of the fundamental problems with the Corporations Act—and with Chapter 7 in particular—cannot be solved within the existing Terms of Reference.
7. In addition, amendments raised by the ALRC that would result in substantive changes to the law must be grounded in sound policy, and a separate consultation process should be undertaken, along with relevant transitional provisions to allow those affected by the substantive changes to modify their compliance arrangements appropriately.
8. It is further noted that, even for those changes that may not be intended to amend the substantive law, caution must be exercised to ensure there is no unintentional increase in complexity or consequential effects in other areas of the legislative scheme.
9. It will therefore be important for an adequate consultation process to occur prior to enactment of any amendments to provide an opportunity for unintended changes of meaning to be identified and addressed prior to implementation of the reforms.

Transition and implementation

10. A key challenge for the ambitious reform agenda set out by the ALRC will be to ensure that what is ultimately recommended is practically achievable, noting that the

reform process is likely to span several parliamentary terms and cycle through various levels of political commitment. It is therefore critical that the process for reform can be divided into discrete tasks that can be achieved in reasonable timeframes. The Law Council encourages the ALRC to consider this challenge when developing recommendations for implementation.

11. In particular, there needs to be a detailed breakdown of the stages of reform (e.g. disclosure, licensing, and all other areas of the Corporations Act), and the order in which each topic will be dealt with, which sets out a realistic plan for:
 - the passage of each piece of legislation within a single term of Government, so that there is sufficient political engagement to complete what is started; and
 - the ancillary work of cross-referencing and translational tables to facilitate the necessary process of identifying where previous provisions have moved in the new law, and highlighting changes in drafting.
12. To ensure consistency in approach across the significant period required to achieve the objectives of the reforms, and to ensure the gains in the regulatory structure are not lost again over time through later amendments, the Law Council is highly supportive of the re-establishment of an apolitical advisory body akin to the former Corporations and Markets Advisory Committee (**CAMAC**). This body would fill the role of the Rules Advisory Committee identified in the Report recommendations and advise Government more broadly on corporate law reform. Reasons for reinstating CAMAC have previously been noted by the Law Council's Business Law Section¹ and have been well-articulated in recent media coverage.²
13. CAMAC worked effectively at minimal cost from 1989 until its abolition in 2014. Its reinstatement (or the establishment of a body similar to it) would greatly assist in the implementation of the ALRC's recommendations, and play a valuable role in identifying and supporting ongoing reform priorities as they arise.
14. As set out below, the Law Council continues to support the idea of a thematic 'rule book' (consolidated legislative instruments) containing rules giving effect to the Corporations Act in different regulatory contexts as appropriate. The availability of an advisory body such as CAMAC will be critical to the development of this resource to ensure there is expert input at all stages of rule-making, as well as an ongoing broader remit to advise Government on law reform.
15. The Law Council recommends this rules advisory body be established as early as possible to assist with supervising the implementation of the various stages of reform. This will ensure appropriate engagement as early as possible with technical industry expertise.

Legislative structure

16. As noted above, the Law Council applauds the significant work undertaken by the ALRC to date in identifying the navigational challenges within Chapter 7 of the

¹ Law Council of Australia (Business Law Section) submission, 'Commonwealth budget Proposal to abolish corporations and markets law reform Body' (Letter to then Minister for Finance and Acting Assistant Treasurer, 11 June 2014), available at <<https://www.lawcouncil.asn.au/resources/submissions/commonwealth-budget-Proposal-to-abolish-corporations-and-markets-law-reform-body>>.

² Alex Morris, Diana Nicholson and Will Heath 'Bring back CAMAC for independent advice on company law' *Australian Financial Review* (online, 27 June 2022), <<https://www.afr.com/companies/financial-services/bring-back-camac-for-independent-advice-on-company-law-20220627-p5awzl>>.

Corporations Act and ways to make it more accessible for the general population and first-time users, rather than just specialists.

17. Wherever possible the Law Council's preference is to retain legislative provisions and terminology that have been subject to extensive judicial consideration and interpretation, rather than redrafting, unless redrafting is deemed necessary from a clarity perspective. It is preferable to obtain certainty and clarity for the regulator in administering the law and the regulated population in understanding how to meet their obligations.
18. The ALRC's prototype legislation includes the Prototype Act, Prototype Scoping Order, and Prototype Rules. There appears to be some utility in the Scoping Order approach in simplifying the process for lawyers, company directors, auditors, compliance professionals, and financial sector participants' understanding of whether the legislation applies or not. However, the production of the Scoping Order will likely involve complex policy and drafting decisions and should be subject to focused consultation if developed.
19. Whether a two- or three-tier approach is adopted, the central question remains as to the appropriate style and level of detail in the drafting of the rules—noting that, while a distinct 'rule book' may improve navigability, the ease with which rules may be added to or amended may lead over time to greater volume and the return of unnecessary and unwanted complexity. It is submitted that, as the ALRC continues with its Inquiry, the fundamental question of the appropriate level of detail should be addressed in order to balance the need for certainty of the law and its accessibility and simplification.

Interim measures and next steps

20. As set out in its previous submission to the ALRC, the Law Council believes it is worthwhile taking interim steps to limit some of the clear shortcomings of Chapter 7. It is pleasing to see a number of the Proposals aimed at addressing these areas.
21. These include a focus on 'small wins', such as removing redundant definitions, which will be an obvious first step in addressing difficulties. There are also other steps that can be taken without substantively changing the law which are practical and likely to be uncontroversial. This 'low-hanging fruit' which can be picked relatively simply includes:
 - capturing all definitions in one place (even if a term might have a different meaning in one part of the legislation to another);
 - when a defined term is used, making it clear that it is a defined term (e.g. underlined, italicised, asterisked, capitalised—or, in online form, hyperlinked, so that the definition displays when the term is clicked);
 - consolidating exemptions and modifications into a single legislative instrument by adopting the approach used in the anti-money laundering legislation with the *Anti-Money Laundering and Counter-Terrorism Financing Act Rules Instrument 2007 (No. 1)* (Cth) (**AML/CTF Rules**); and
 - enabling a person who is looking up a particular section to readily locate applicable exemptions or modifications (e.g. through notes, or hyperlinks in the case of online publications).
22. The Law Council also encourages making the publicly available legislation more user-friendly and would welcome public resources being dedicated to this objective.

23. As noted above, a number of the Proposals set out in Interim Report B can be viewed as targeting these above areas. The Law Council continues to support efforts in this regard, subject to feedback provided against each Proposal in the below table.
24. In the Law Council's view, the ALRC should consider using the next stage in the Inquiry to focus on the consolidation of the existing consumer protection provisions in the financial services law into a coherent 'Australian Financial Consumer Law', incorporating the consumer protection aspects of Chapter 7 (excluding markets), the *National Consumer Credit Protection Act 2009* (Cth), and consumer protection measures in Part 2 of the *Australian Securities and Investments Commission Act 2001* (Cth). The benefits of selecting this area as the subject of the next Report are that:
- (a) it is of a manageable size and relatively straightforward in terms of underlying policy;
 - (b) the problems to be addressed are both readily addressed and highly typical of the issues identified in earlier interim reports; and
 - (c) changes made would:
 - (i) be of broad application across the financial services industry;
 - (ii) be likely to gain the support of political stakeholders to the extent they make consumer protections easier for consumers to access; and
 - (iii) maximise the 'value for money' and policy impact of the work done.
25. To achieve this milestone, a Drafting Commission could be established for one year, headed by an eminent subject matter expert and assisted by a Parliamentary drafter on secondment, to test the design and content following the ALRC's design recommendations.

Appendix A: Individual responses to ALRC Proposals and questions

Proposals and Questions	LCA response
<p><u>Proposal B1</u></p> <p>The legislative hierarchy of Chapter 7 of the Corporations Act should be amended, in a staged process, to implement a legislative model that incorporates Proposals B2–B9. The legislative hierarchy should comprise:</p> <ul style="list-style-type: none"> a) an Act legislating fundamental norms and obligations, and other provisions appropriately enacted only by Parliament; b) a Scoping Order (a single consolidated legislative instrument) containing exclusions, class exemptions, and other detail necessary for adjusting the scope of the Act; and c) thematic ‘rulebooks’ (consolidated legislative instruments) containing rules giving effect to the Act in different regulatory contexts as appropriate. 	<p>The Law Council supports the concept of a separate ‘rule book’ of delegated legislation which is organised in a more logical and structured manner than the current Chapter 7. However, the framework for the rule book must clarify that the rules are subordinate to, and not permitted to go beyond, the intended scope of the primary law in the Corporations Act.</p> <p>While the three-tiered hierarchy will likely assist in untangling complexity within the existing framework, it may not be necessary to separate the exclusions from the rules, as this may prove daunting for Parliamentary drafters. Consideration could be given to a two-layer approach of simplified legislation and a single book of delegated legislation replacing the Corporations Regulations and incorporating the effect of legislative instruments. This approach may also be more accessible, with users only needing to search in one place.</p> <p>At all times, particular care must be taken to ensure that all of the current exemptions and modifications are accurately replicated without substantive change. Any substantive change as a result of the amendments must be supported by sound policy, and validated by a separate consultation process, along with transitional provisions to phase in these substantive changes.</p>
<p><u>Proposal B2</u></p> <p>Chapter 7 of the Corporations Act should be amended to include a power to:</p> <ul style="list-style-type: none"> a) exclude classes of products and services or exempt classes of persons from provisions of Chapter 7 of the Act; and b) set out detail that adjusts the scope of any provisions in Chapter 7 of the Act; <p>in the Scoping Order.</p>	<p>The Law Council supports this approach in principle, however as noted above at Proposal B1, the production of the proposed Scoping Order will likely involve complex policy and drafting decisions and would have to be subject to close consultation in the course of its development.</p> <p>Consideration should be given as to whether a standalone Scoping Order is required, or whether a two-layer approach comprising simplified legislation and a single book of delegated legislation to replace the Corporations Regulations and incorporate the effect of legislative instruments would suffice.</p>

Proposals and Questions	LCA response
<p><u>Proposal B3</u></p> <p>Chapter 7 of the Corporations Act should be amended to include a power vested in ASIC to exempt a person from provisions of Chapter 7 of the Act by notifiable instrument (commonly known as ‘individual relief’).</p>	<p>The Law Council supports allowing ASIC to have the power to grant exemptions upon individual application where the law has unintended consequences.</p> <p>The existing principles underlying the exemption decision should be specifically recognised including, for example, consideration of whether the compliance costs for the applicant are unduly onerous in circumstances where customers may receive little to no benefit if the exemption is not granted. The factors that ASIC may or must take into account in the exemption process could be articulated in the higher elements of the hierarchy.</p> <p>The Law Council further notes that this power should be limited to circumstances where the affected person requests the relief and consents to the issue of the notifiable instrument. ASIC should not be able to issue instruments under this power which impose conditions without the affected person’s consent.</p>
<p><u>Proposal B4</u></p> <p>Chapter 7 of the Corporations Act should be amended to require that:</p> <ul style="list-style-type: none"> a) every legislative instrument made under the power set out in Proposal B2; and b) every notifiable instrument made under the power set out in Proposal B3; <p>must be accompanied by a statement explaining how the instrument is consistent with relevant objects within Chapter 7.</p>	<p>The Law Council is generally supportive of this Proposal, noting that an additional layer of scrutiny by the Senate Standing Committee for the Scrutiny of Delegated Legislation will assist in assessing compliance with the proposed requirements.</p> <p>However, in relation to notifiable instruments made under the power set out in Proposal B3, much will depend on the manner in which the relevant objects of Chapter 7 are stated. In particular relation to Proposal B3, consideration might be given to whether the statement should refer to how the notifiable instrument is consistent with the delegated decision-making power described above.</p> <p>Finally, in order for the Proposal to have a lasting impact, there is a need for a cultural shift in the way accompanying statements are approached by governments. It would be undesirable for the proposed statements to be little more than a ‘check the box’ exercise, and a commitment to closely engage with the objects of the Chapter 7 to ensure new instruments are appropriately assessed prior to introduction would be necessary.</p>

Proposal B5

Chapter 7 of the Corporations Act should be amended to include a power to make ‘rules’.

The Law Council generally agrees with this suggestion, subject to comments made against Proposal B1 and Proposal B8. However, there are questions as to the extent to which matters currently included in ‘soft law’ regulatory guidance may be hardened into substantive law. This is particularly relevant for Regulatory Guidance that explains the operation of principle-based provisions.

In this regard it is noted that page 111 of Interim Report B states that the ‘more effectively a statutory scheme uses the legislative hierarchy, the more likely it is that the law itself should be comprehensible without further elaboration in non-legislative guidance’.

The Law Council agrees with the commentary at page 111 of Interim Report B indicating that the over-reliance on ‘soft law’ guidance can be problematic because it is not subject to the same accountability mechanisms as legislation and therefore represents a challenge to fundamental principles such as the separation of powers. The proposed rules-based approach may result in greater certainty and legitimacy than over-reliance on Regulatory Guides and may also result in better rules if Proposals B8 and B9 are adopted.

While broadly supporting the move to the rules-based hierarchy, the Law Council suggests, to the extent that some elements of existing guidance will be transferred to the rules under the new regime, there are some potential transitional risks. The transition process should be monitored carefully to ensure that any elevation of soft law principles to substantive law in the rules is properly considered before it is hardened.

In particular consideration should be given to the current flexibility of ‘guidance’ versus the possible entrenchment of ‘rules’. The current arrangements permit, if required, a relatively swift response to emerging issues and concerns, and for guidance amendments to be made quickly as a result of stakeholder consultations. There would be a degree of concern if the translation of ‘guidance’ into ‘rules’ resulted in a significant loss of the current flexibility of promulgation and amendment.

Further, consistent with the view in response to Proposal B1, care must be taken to ensure that if there is substantive change to the law (including because some existing views of the regulatory body are adopted into the rules), there must be a sound policy reason for doing so, and a separate consultation process should be undertaken, along with relevant transitional provisions for the phasing in of substantive changes.

Proposals and Questions	LCA response
<p><u>Proposal B6</u></p> <p>Chapter 7 of the Corporations Act should be amended to require that the explanatory statement accompanying every legislative instrument made under the power in Proposal B5 must address explicitly how the instrument furthers relevant objects within Chapter 7.</p>	<p>The Law Council agrees with this suggestion, subject to comments made against Proposal B1 and Proposal B8.</p>
<p><u>Proposal B7</u></p> <p>Rules made under Chapter 7 of the Corporations Act should not contain matters more appropriately enacted in primary legislation, particularly:</p> <ul style="list-style-type: none"> a) serious criminal offences, including offences subject to imprisonment, and significant civil penalties; b) administrative penalties; and c) powers enabling regulators to take discretionary administrative action. 	<p>The Law Council agrees with this Proposal.</p> <p>However, Law Council members have suggested that consideration could be given to whether rules can be established under this hierarchy to provide 'safe harbour' from prosecution in certain circumstances where prescribed standards are met (similar to the safe harbour provisions in the AML/CTF Rules for 'know your customer' checks).</p>

<p><u>Proposal B8</u></p> <p>The powers set out in Proposal B2 and Proposal B5 should be vested in:</p> <ul style="list-style-type: none"> a) the Minister; and b) the Australian Securities and Investments Commission. <p>A protocol between the Minister and the Australian Securities and Investments Commission should coordinate the exercise of the powers.</p>	<p>The Law Council has concerns in relation to vesting these proposed rule-making powers concurrently in each of the Minister and ASIC.</p> <p>The proposal would allow each of the Minister and ASIC to separately make rules which may be inconsistent with each other, with only a “protocol” and not a binding mechanism to resolve differences³. Interim Report B has identified the need to address the existing problem with ASIC making law through Class Orders, but an unrestricted power for ASIC to make rules in the context of a rule book which has broader scope than ASIC’s existing law-making activities may carry greater risk of unaccountable executive action than the existing model. Interim Report B points out in paragraph 1.29 that the ‘principle that legislative power should not be inappropriately delegated to the Executive can be derived from the “separation of powers” in the Australian Constitution.’ This distinguishes our Australian legislative model from the British model, and explains why, although it may be acceptable for the Financial Conduct Authority in the United Kingdom to promulgate its handbook of rules, the same is not true in Australia.</p> <p>ASIC’s role should be in administration and enforcement of the law and providing guidance and facilitating activities where the law has unintended consequences. It would be concerning if ASIC was a quasi-legislator but had limited effective accountability for such function.</p> <p>The Law Council has previously suggested the establishment of a new body, the Corporations Rules Committee (CRC), in order to promulgate the content of the rule book. The CRC could be comprised of two members from ASIC, two from Treasury and a Chair who is an independent expert, perhaps reporting to the Senate’s Economics Legislation Committee.</p> <p>If the CRC met relatively frequently it would provide a nimble and effective method of maintaining flexible and up to date rules. The work of the statutory CRC could be supported by an advisory committee which has significant input from external legal and industry experts (see response to Proposal B9). This approach recognises the importance of technical expertise in making delegated legislation, as noted page 260 of Interim Report B.</p> <p>Finally, any protocol should include sufficient liaison with other relevant regulatory bodies (for example, the Australian Prudential Regulation Authority, Australian Transaction Reports and Analysis Centre, the Reserve Bank of Australia, and the Office of the Australian Information Commissioner).</p>
---	---

Proposals and Questions	LCA response
<p><u>Proposal B9</u></p> <p>Chapter 7 of the Corporations Act should be amended to:</p> <ul style="list-style-type: none"> a) establish an independent 'Rules Advisory Committee'; and b) require the Minister and ASIC to consult the Rules Advisory Committee and the public before making or amending any provisions of the Scoping Order or rules. 	<p>While the Law Council is supportive of the concept of a dedicated advisory committee, this Proposal adds a layer of bureaucracy and there will be a need to assess whether the benefit of a new process adds sufficient value to justify its existence.</p> <p>In the Law Council's view, a stakeholder representative committee with members who have deep industry, consumer and technical expertise would be justifiable if it had an ongoing broader remit to advise Government on law reform, as well as supporting the CRC. The Law Council recommends this committee be established as early as possible to assist with supervising the implementation of the various stages of reform. This will ensure appropriate engagement as early as possible with technical industry expertise.</p> <p>In this regard, the reinstatement of CAMAC, which worked effectively at minimal cost from 1989 to its abolition in 2014, would meet this need. Reasons for reinstating CAMAC have previously been noted by the Law Council's Business Law Section⁴ and have been well-articulated in recent media coverage.⁵</p>

³ The laws where differences of approach between ASIC and Treasury have resulted in difficulties in recent years include regulation of foreign financial services providers, fees and costs disclosure for financial products, breach reporting and licensing of litigation funders.

⁴ Law Council of Australia (Business Law Section) submission, '*Commonwealth budget Proposal to abolish corporations and markets law reform Body*' (Letter to then Minister for Finance and Acting Assistant Treasurer, 11 June 2014), available at <<https://www.lawcouncil.asn.au/resources/submissions/commonwealth-budget-Proposal-to-abolish-corporations-and-markets-law-reform-body>>.

⁵ Alex Morris, Diana Nicholson and Will Heath 'Bring back CAMAC for independent advice on company law' *Australian Financial Review* (online, 27 June 2022), <<https://www.afr.com/companies/financial-services/bring-back-camac-for-independent-advice-on-company-law-20220627-p5awzl>>.

Proposals and Questions	LCA response
<p><u>Proposal B10</u></p> <p>As part of the staged implementation of the proposed legislative model, existing powers to omit, modify, or vary relevant provisions of Chapter 7 of the Corporations Act regulation or other instrument should be repealed.</p>	<p>The Law Council agrees with this Proposal. However it stresses the need for existing powers not to be removed before the appropriate replacement power has been made law.</p> <p>As set out in commentary above, there needs to be a detailed breakdown of the stages of reform (e.g. disclosure, licensing, and all other areas of the Corporations Act, and the order in which each topic will be dealt with) which sets out a realistic plan for:</p> <ul style="list-style-type: none"> • the passage of each piece of legislation within a single term of Government, so that there is sufficient political engagement; and • the ancillary work of cross referencing and translational tables so that users can find where previous provisions have moved into the new law, and easily see any material changes.
<p><u>Proposal B11</u></p> <p>As part of the staged implementation of the proposed legislative model, relevant existing powers to:</p> <p>a) exclude products or services; and b) exempt a person or class of persons;</p> <p>from the operation of all or specified provisions of Chapter 7 of the Corporations Act by regulation or other instrument should be repealed.</p>	<p>See response to Proposal B10.</p>
<p><u>Proposal B12</u></p> <p>The Attorney-General's Department, in consultation with the Office of Parliamentary Counsel and the Department of the Prime Minister and Cabinet, should publish and maintain consolidated guidance on the delegation of legislative power.</p>	<p>The Law Council supports this Proposal.</p>

Proposals and Questions	LCA response
<p><u>Question B13</u></p> <p>Does the Draft Guidance included in this Interim Report:</p> <ul style="list-style-type: none"> a) adequately capture the principles that should guide the design of provisions that delegate legislative power; b) adequately capture the extent to which it is appropriate for delegated legislation to specify the content of offences or civil penalty provisions otherwise created by an Act; and c) express the applicable principles with sufficient clarity? 	<p>In the time available for consultation, the Law Council has not been able to consider all of the relevant aspects, however Appendix E (draft guidance on the delegation of legislative power) appears comprehensive and clearly drafted.</p> <p>It would be desirable for the delegation of power to make and amend corporations rules to be limited to imposing obligations consistent with, and within the scope of the primary legislation, so that the rules (including the proposed Scoping Order) can prescribe detail or create exceptions, but not create new requirements.</p>
<p><u>Proposal B14</u></p> <p>In order to support best practice legislative design, the Office of Parliamentary Counsel (Cth) should establish and support a Community of Practice for those involved in preparing legislative drafting instructions, drafting legislative and notifiable instruments, and associated roles.</p>	<p>The Law Council supports this Proposal.</p>
<p><u>Proposal B15</u></p> <p>In order to implement Proposal B1, offence and penalty provisions</p> <p>in corporations and financial services legislation should be consolidated into a smaller number of provisions covering the same conduct.</p>	<p>The Law Council supports this Proposal.</p>

Proposals and Questions	LCA response
<p><u>Question B16</u></p> <p>Should rulebooks contain 'evidential provisions' that are not directly enforceable but, if breached or satisfied, may evidence contravention of, or compliance with, specified rules or provisions of primary legislation?</p>	<p>While this Proposal will be dependent on the extent to which any rule book is promoted as a source of authority.</p> <p>However, the Law Council notes that this would appear to be a new concept in Australian law, and could produce the complexity and confusion that arose from the 'safe harbour' provisions in relation to financial advice under subsection 961B(2).</p>
<p><u>Proposal B17</u></p> <p>The Corporations Act should be amended so that each offence and civil penalty provision, and the consequences of any breach, are identifiable from the text of the provision itself.</p>	<p>The Law Council supports this Proposal.</p>
<p><u>Proposal B18</u></p> <p>Offence provisions in corporations and financial services legislation should be amended to specify any applicable fault element.</p>	<p>The Law Council supports this Proposal.</p>