

WELCOME

WHAT WE'VE HEARD AND WHERE TO NEXT

FEEDBACK ON INTERIM REPORT A OF THE
FINANCIAL SERVICES LEGISLATION INQUIRY

THE WEBINAR WILL BEGIN SOON

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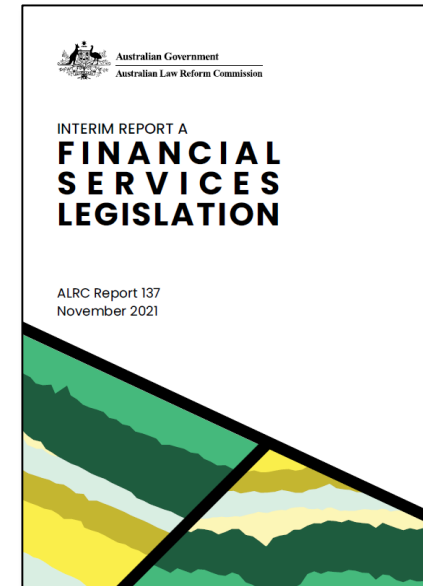
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Australian Law Reform Commission

Stakeholder Feedback on Interim Report A

*Review of the Legislative Framework
for Corporations and Financial Services Legislation*

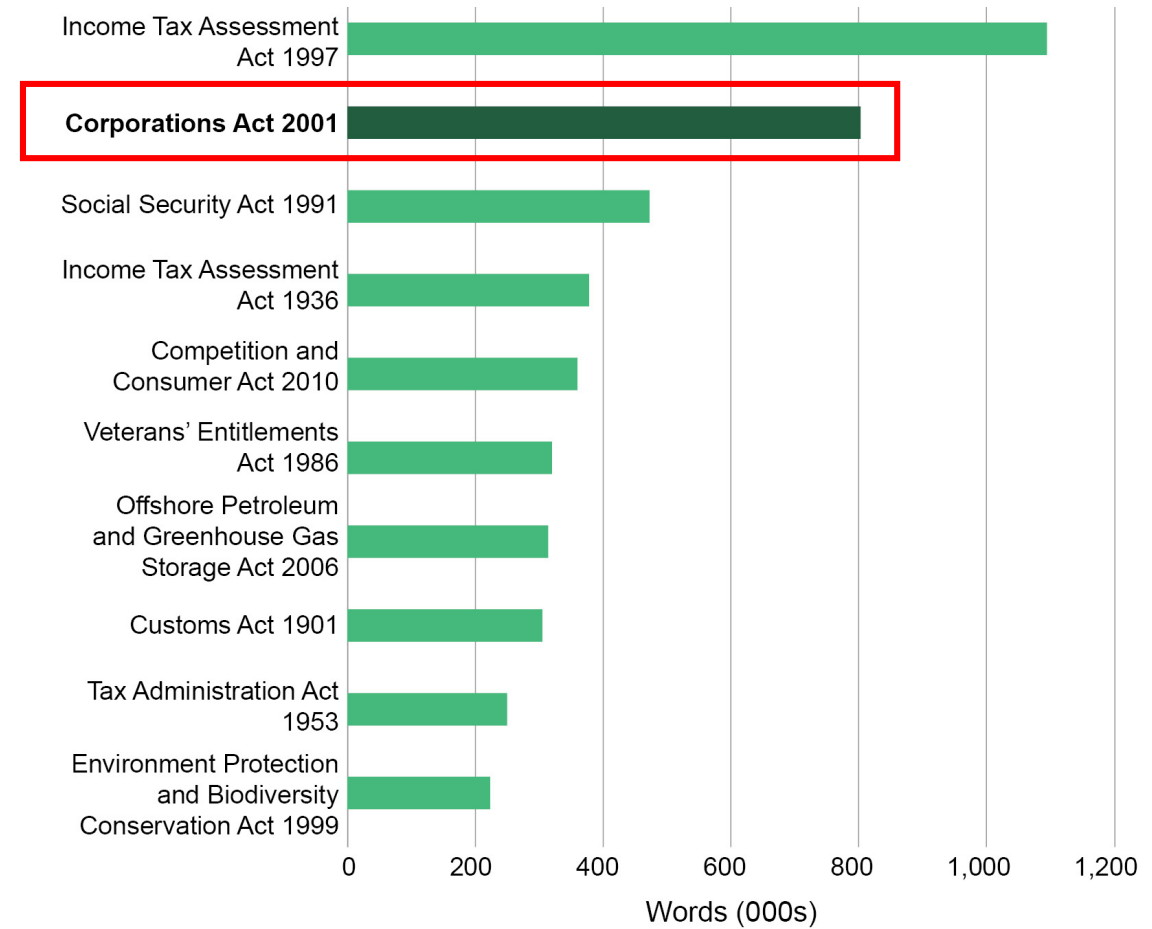
17 June 2022



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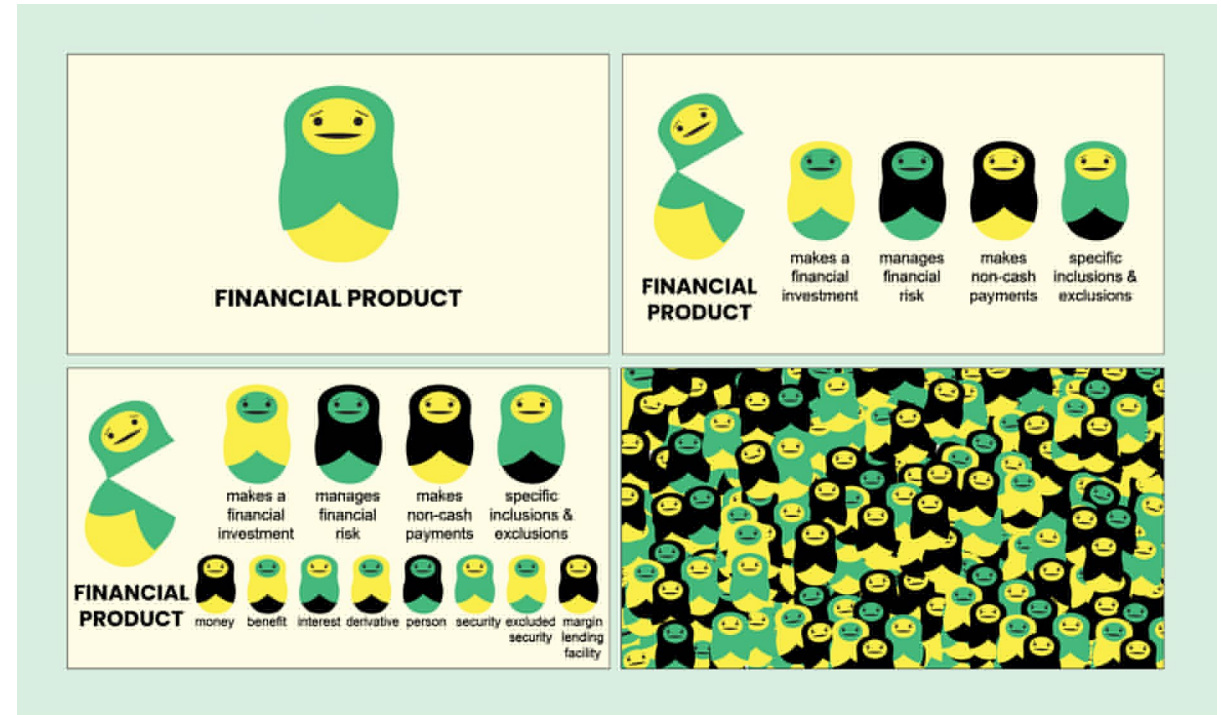
Data

The ALRC asked stakeholders what additional data should be considered as part of this Inquiry.



When to define, and consistency and design of definitions

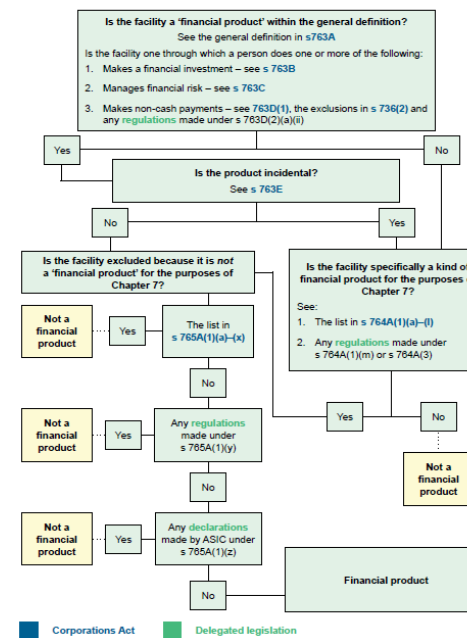
The ALRC proposed a suite of principles to guide the drafting and use of definitions.



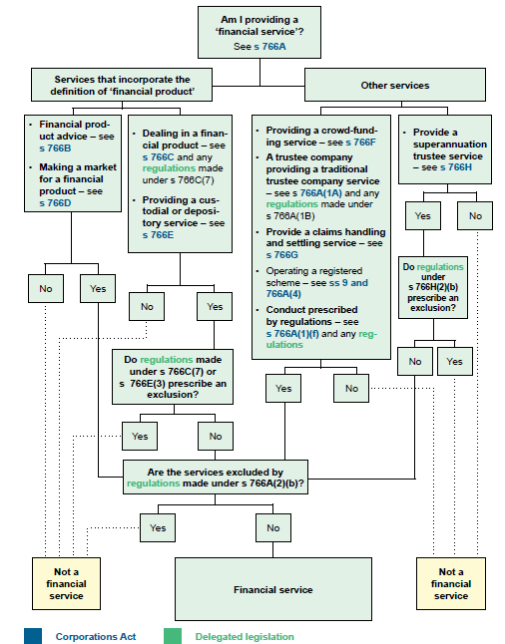
Definitions of ‘financial product’ and ‘financial service’

- Define the terms consistently across relevant Commonwealth Acts
- Create a definition of ‘financial product’ with fewer interconnected concepts / considerations
- Accommodate varying scope of regulation without the need to vary the definitions

Appendix C.6: The current definition of financial product

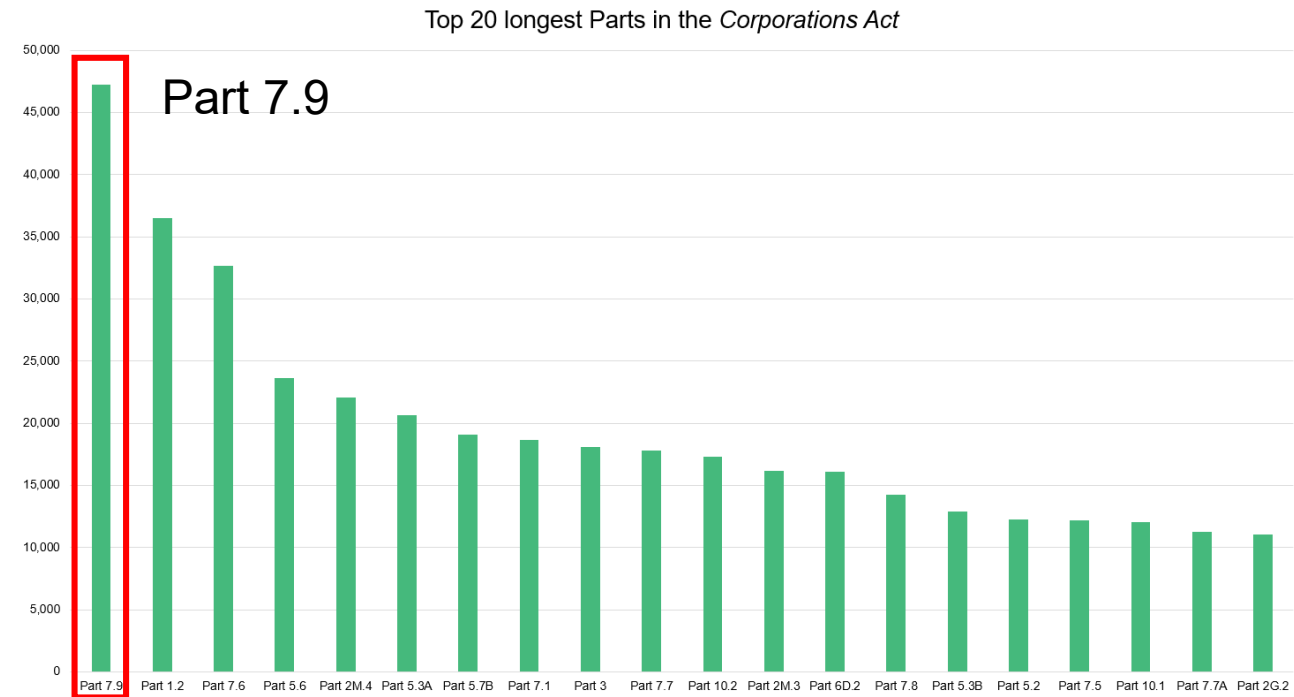


Appendix C.7: The current definition of financial service



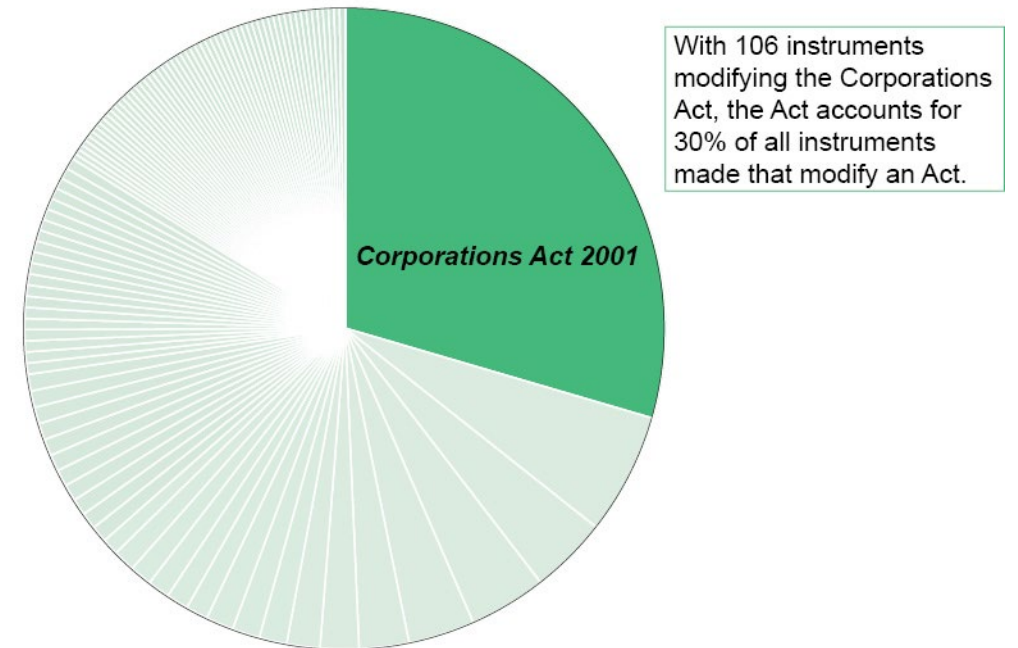
Disclosure

The key proposal in this area was to reframe the law to incorporate an outcomes-based standard of disclosure.



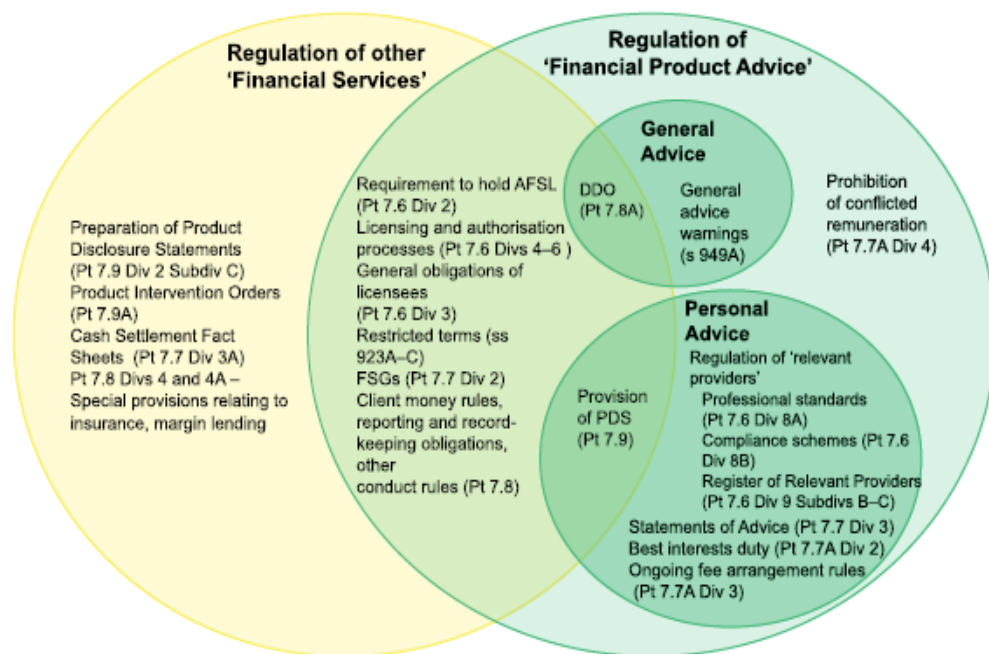
Exclusions, exemptions, and notional amendments

- Remove powers to grant exemptions by legislative instrument, or to notionally amend Chapter 7 of the Act
- Create a sole power to create exclusions and grant exemptions for Chapter 7 in a consolidated legislative instrument
- Consider the insertion of a power to make 'rules'



Definition of ‘financial product advice’

Figure 11.1: Comparison of the regulation of financial product advice and other financial services



- Eliminate the intermediary concept of ‘financial product advice’ (retaining ‘general advice’ and ‘personal advice’)
- Decouple ‘personal advice’ from ‘financial service’ given the distinctive regulatory requirements
- More clearly convey the subject of regulation by renaming ‘general advice’



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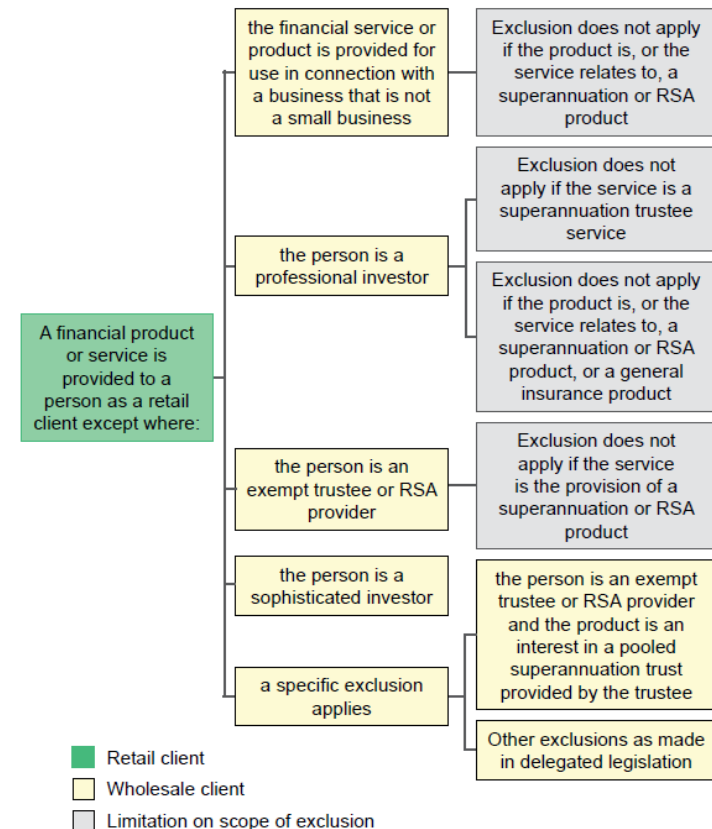
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Definitions of ‘retail client’ and ‘wholesale client’

The ALRC asked for stakeholder feedback on:

- proposed amendments to the definition of ‘retail client’ in s 761G
- conditions or criteria for the ‘sophisticated investor’ exception

Figure 12.2: Suggested model for the ‘retail client’ definition



Conduct obligations

Commissioner Hayne's 6 norms of conduct:

- *Obey the law;*
- *Do not mislead or deceive;*
- *Act fairly;*
- *Provide services that are fit for purpose;*
- *Deliver services with reasonable care and skill; and*
- *When acting for another, act in the best interests of that other.*

- Include norms in an objects clause
- Clarify the 'efficiently, honestly and fairly' obligation in s 912A(1)
- Remove prescription in s 912A
- Consolidate provisions concerning unconscionable and misleading and deceptive conduct



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