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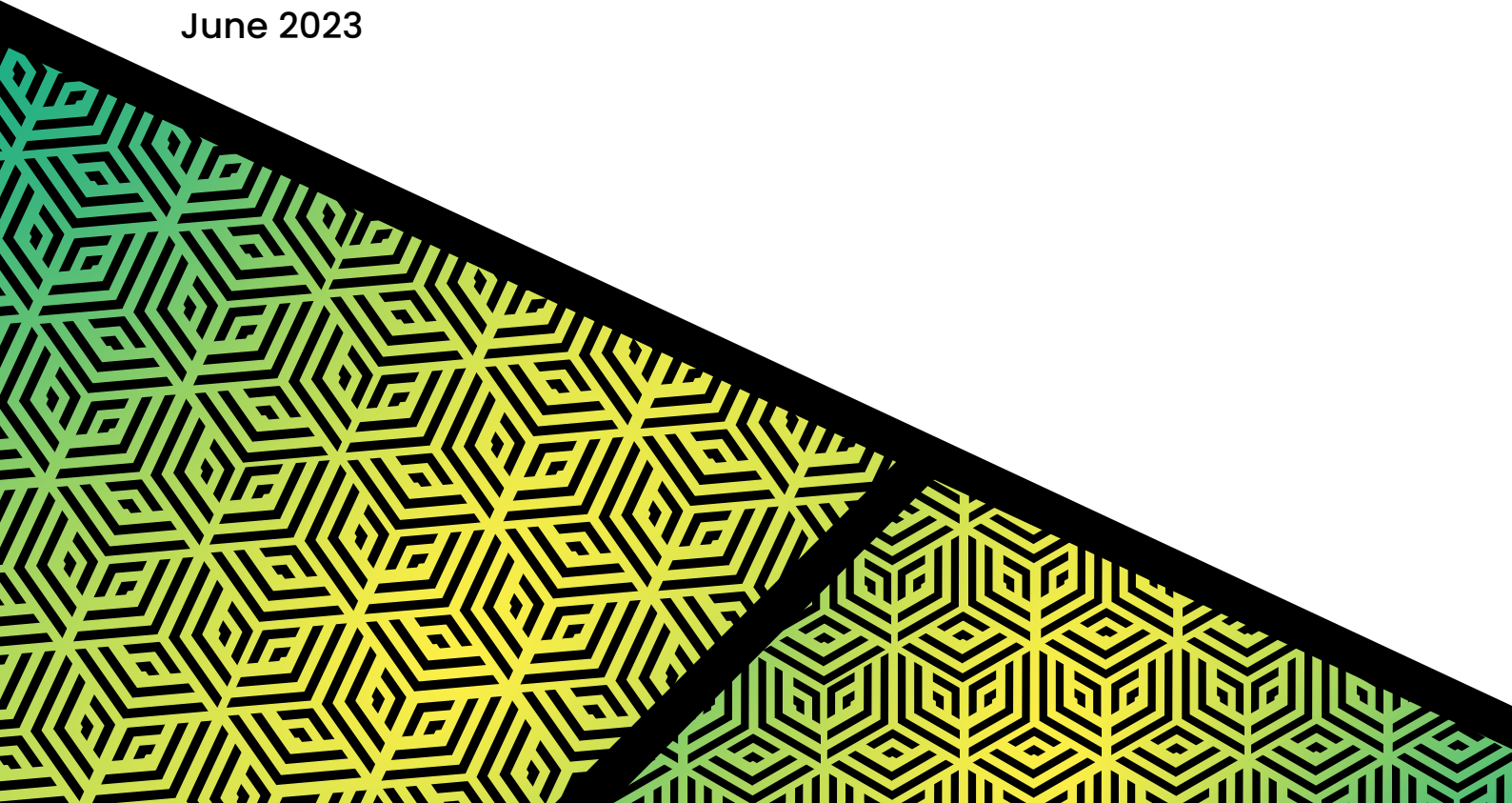
Australian Law Reform Commission

INTERIM REPORT C – ADDITIONAL RESOURCES

LEGISLATIVE FRAMEWORK FOR CORPORATIONS AND FINANCIAL SERVICES REGULATION

Illustrative FSL Schedule (Appendix D to Interim Report C)

June 2023



Interim Report C is the third of three Interim Reports to be published as part of the Australian Law Reform Commission's Review of the Legislative Framework for Corporations and Financial Services Regulation. This document is an additional resource, published on the ALRC's website, which provides further detail relevant to particular aspects of Interim Report C.

[View Interim Report C and the Summary Report](#)

The Australian Law Reform Commission (ALRC) was established on 1 January 1975 and operates in accordance with the *Australian Law Reform Commission Act 1996* (Cth).

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Appendix D

Illustrative FSL Schedule

This Appendix illustrates how the financial services-related aspects of Chapter 7 of the *Corporations Act* and the entirety of Part 2 Div 2 of the *ASIC Act* may be restructured within Sch 1 to the *Corporations Act* (the FSL Schedule), as contemplated by **Proposals C9** and **C10**.¹

The illustrative outline in this Appendix is focused on the potential macrostructure of the FSL Schedule. As explained in **Chapter 1** of this Interim Report, the macrostructure includes provisions above the section-level, such as parts and divisions. There is limited development of the microstructure in the illustrative outline, such as the location and content of particular sections.

The illustrative outline therefore does not exhaustively replicate the existing legislation subject to **Proposals C9** and **C10**. Instead, it aims to show how the FSL Schedule might appear and how restructuring may improve the existing legislation. Section numbering is indicative only.

In this Appendix, notes (in a similar form to legislative notes) are used to give some further detail about specific aspects of the outline.

The ALRC invites stakeholder feedback on the illustrative outline in this Appendix in response to **Question C11**.

Schedule 1—The Financial Services Law

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¹ For further discussion of **Proposals C9** and **C10**, and the illustrative outline in this Appendix, see **Chapter 6** of this Interim Report.

Chapter 1—Introduction and application

Part 1.1—Preliminary

Part 1.2—Objects of the Financial Services Law

Part 1.3—How to use the Financial Services Law

- s 1—How the Financial Services Law is arranged
- s 2—How to identify defined terms and find definitions
- s 3—The Scoping Order
- s 4—Rulebooks

Note: The provisions in this Part would explain some of the design features of the FSL Schedule, such as prioritising important information, the use of signposts, how defined terms are identified (if applicable), and where definitions are located. This Part would also introduce the Scoping Order and Rulebooks.² Notes in this Part could refer to the powers to make scoping orders and Rules later in Part 7.1.

Part 1.4—Application and scope of the Financial Services Law

Division 1—Introduction

- s 5—Simplified outline of this Part

Note: This section may also explain the concept of ‘scope’, and what is meant by provisions that refer to ‘narrowing the scope of provisions’.³

Division 2—Financial products

- s 6—Definition of *financial product*
- s 7—How this Act applies to composite products
- s 8—Narrowing the scope of provisions applying to financial products

Division 3—Financial services

- s 9—Definition of *financial service*
- s 10—Narrowing the scope of provisions applying to financial services

² For discussion of the different elements of the ALRC’s proposed legislative model, including the Scoping Order and Rulebooks, see Australian Law Reform Commission, *Interim Report B: Financial Services Legislation* (Report No 139, 2022) [2.4]–[2.6], [2.15]–[2.56].

³ See ss 765A and 766J of the Prototype Act in Prototype Legislation B: Australian Law Reform Commission, ‘Prototype Legislation’ <www.alrc.gov.au/inquiry/review-of-the-legislative-framework-for-corporations-and-financial-services-regulation/consultation-doc/prototype-legislation/>.

Chapter 2—Consumer protections and generally applicable offences⁴

Part 2.1—Introduction

s 11—Simplified outline of this Chapter

Part 2.2—General consumer protections

Division 1—Core standards of commercial behaviour⁵

s 12—General prohibition on misleading or deceptive conduct

s 13—General prohibition on unconscionable conduct

s 14—General prohibition on harassment and coercion (s 12DJ *ASIC Act*)

Division 2—Unfair contract terms

Note: This Division would contain provisions equivalent to Part 2 Div 2 Subdiv BA of the ASIC Act.

Division 3—Conditions and warranties in consumer transactions

Note: This Division would contain provisions equivalent to Part 2 Div 2 Subdiv E of the ASIC Act.

Part 2.3—Specific consumer protections

Division 1—Compliance with product intervention orders

s 15—A person must comply with a product intervention order (s 1023P *Corporations Act*)

s 16—Civil liability for contravening a product intervention order (s 1023Q *Corporations Act*)

Note: A note to this Division could refer to the later provisions in Part 7.2 relating to the making of product intervention orders.

Division 2—Other specific protections and prohibitions

s 17—Cash price must be stated in certain circumstances (s 12DD *ASIC Act*)

s 18—Offering rebates, gifts, prizes, or other incentives (s 12DE *ASIC Act*)

4 See [Chapter 2](#) of this Interim Report for further discussion of the scope and design of this Chapter of the illustrative FSL Schedule.

5 See [Chapter 2](#) of this Interim Report for discussion of the ALRC's proposals to consolidate misleading, deceptive, or unconscionable conduct into the first two general prohibitions expressed in this Division.

- s 19—Bait advertising (s 12DG *ASIC Act*)
- s 20—Referral selling (s 12DH *ASIC Act*)
- s 21—Pyramid selling of financial products (s 12DK *ASIC Act*)

Note: These sections illustrate the types of existing specific obligations and prohibitions that may be included in this Part.

Division 3—Deferred sales for add-on insurance products

Note: This Division would contain provisions equivalent to Part 2 Div 2 Subdiv DA of the ASIC Act.

Part 2.4—Design and distribution obligations

Note: This Part would contain provisions equivalent to Part 7.8A of the Corporations Act.

Part 2.5—Generally applicable offences

- s 22—Preservation and disposal of records etc (s 1101C *Corporations Act*)
- s 23—Concealing etc of books (s 1101E *Corporations Act*)
- s 24—Falsification of records (s 1101F *Corporations Act*)
- s 25—Precautions against falsification of records (s 1101G *Corporations Act*)

Note: These sections illustrate the types of generally applicable offences that may be included in this Part.

Part 2.6—Enforcement, remedies and other powers

Note: This Part would contain provisions relating specifically to enforcement of the consumer protections contained in the Chapter, including provisions equivalent to, for example, Part 2 Div 2 Subdivs G–GC of the ASIC Act.

Chapter 3—Obligations of financial services providers⁶

Part 3.1—Introduction

- s 26—Simplified outline of this Chapter

Part 3.2—General obligations of financial services providers

Division 1—Provider of financial services must be licensed or authorised

⁶ See [Chapter 5](#) of this Interim Report for further discussion of the scope and design of the chapters relating to the general regulatory obligations of financial services providers.

- s 27—Provider of financial services must be licensed (s 911A *Corporations Act*)
- s 28—Providing financial services on behalf of another (s 911B *Corporations Act*)

Division 2—Conduct obligations

Subdivision A—Hawking prohibition

- s 29—Prohibition on hawking of financial products (s 992A *Corporations Act*)
- s 30—Right of return and refund for hawked financial products (s 992AA *Corporations Act*)

Subdivision B—Restriction on use of certain words or expressions

Note: This Subdivision would contain restructured and reframed provisions equivalent to Part 7.6 Div 10 of the Corporations Act.

Division 3—Remuneration and fees

Subdivision A—Conflicted remuneration

- s 31—Product issuer or seller must not give conflicted remuneration (s 963K *Corporations Act*)

Subdivision B—Volume-based shelf-space fees

Note: This Subdivision would contain restructured and reframed provisions equivalent to Part 7.7A Div 5 Subdiv A of the Corporations Act.

Part 3.3—Obligations of financial services licensees

Division 1—General obligations of financial services licensees

Note: This Division would contain restructured and reframed provisions equivalent to s 912A of the Corporations Act.

Division 2—Obligations to clients

- s 32—Obligation to cite licence number in documents (s 912F *Corporations Act*)
- s 33—Financial services licensee to give priority to clients' orders (s 991B *Corporations Act*)

Note: These sections illustrate the types of existing specific obligations and prohibitions that may be included in this Division.

Subdivision A—Obligations to notify and remediate clients

Note: This Subdivision would contain provisions equivalent to Part 7.6 Div 3 Subdiv C of the Corporations Act.

Subdivision B—Dealing with clients' money and other property

Note: This Subdivision would contain provisions equivalent to Part 7.8 Divs 2, 3, and 5 of the Corporations Act.

Division 3—Restrictions on transactions

s 34—Dealings with non-licensees (s 991E *Corporations Act*)

s 35—Dealings involving employees of financial services licensees (s 991F *Corporations Act*)

Division 4—Obligations to inform and assist ASIC

Note: This Division would contain provisions equivalent to ss 912A(1)(cc), (3A)–(3G) and Part 7.6 Div 3 Subdiv B of the Corporations Act.

Division 5—Obligations in relation to financial records, statements and audit

Note: This Division would contain provisions equivalent to Part 7.8 Div 6 of the Corporations Act.

Division 6—Obligations in relation to specific products and services**Subdivision A—Obligations relating to insurance**

Note: This Subdivision would contain provisions equivalent to Part 7.8 Div 4 of the Corporations Act.

Subdivision B—Responsible lending conduct for margin lending facilities

Note: This Subdivision would contain provisions equivalent to Part 7.8 Div 4A Subdiv A of the Corporations Act.

Subdivision C—Notice of margin calls under margin lending facilities

Note: This Subdivision would contain provisions equivalent to Part 7.8 Div 4A Subdiv B of the Corporations Act.

Chapter 4—Disclosure about financial products and financial services⁷

Part 4.1—Introduction

s 36—Simplified outline of this Chapter

Part 4.2—General obligations and penalties

Note: This Part would contain consolidated provisions of general application to financial products and financial services disclosure.

Division 1—Disclosure standards

Note: This Division would contain the core and generally applicable disclosure standards, including that disclosure must be ‘clear, concise and effective’.

Division 2—General offences

Note: This Division would include offences for defective disclosure and failing to undertake disclosure.

Division 3—Other requirements

Part 4.3—Disclosure about financial services

Note: This Part would contain provisions requiring disclosure in relation to financial services. This would include provisions equivalent in scope to Part 7.7 Divs 2 and 3A of the Corporations Act. This Part would not include provisions requiring the giving of Statements of Advice equivalent to Part 7.7 Div 3. Specific financial advice disclosure requirements appear in Chapter 5 of this illustrative FSL Schedule.

Division 1—When disclosure document must be given

Division 2—Form and content of disclosure document

Division 3—Further obligations

Part 4.4—Disclosure about financial products

Note: This Part would contain provisions requiring disclosure in relation to financial products other than securities. This would include provisions equivalent in scope to Part 7.9 Div 2 of the Corporations Act. Specific financial advice disclosure requirements appear in Chapter 5 of this illustrative FSL Schedule.

⁷ See **Chapter 3** of this Interim Report for further discussion of the scope and design of a chapter relating to disclosure for financial products and financial services.

Division 1—When disclosure document must be given**Division 2—Form and content of disclosure document****Division 3—Further obligations****Part 4.5—Specific disclosure regimes**

Note: This Part would contain provisions that create specific disclosure regimes. This would include provisions equivalent to Part 7.9 Divs 5A, 5B, and 5C of the Corporations Act.

Chapter 5—Financial advice⁸

Note: This Chapter would contain the range of provisions relating to financial advice outlined in Proposal C6 and [Appendix C](#) to this Interim Report.

Chapter 6—Financial services licensees and representatives⁹**Part 6.1—Introduction**

s 37—Simplified outline of this Chapter

Part 6.2—Representatives of financial services licensees**Division 1—Authorised representatives**

Note: This Division would contain provisions equivalent to Part 7.6 Div 5 of the Corporations Act.

Division 2—Liability of financial services licensees for representatives

Note: This Division would contain provisions equivalent to Part 7.6 Div 6 of the Corporations Act.

Part 6.3—When a licence can be varied, suspended or cancelled

Note: This Part would contain provisions equivalent to Part 7.6 Div 4 Subdiv C of the Corporations Act.

8 See [Chapter 4](#) of this Interim Report for further discussion of the scope and design of a chapter relating to financial advice. A more detailed outline of the contents of a financial advice chapter appears in [Appendix C](#) of this Interim Report.

9 See [Chapter 5](#) of this Interim Report for further discussion of the scope and design of the chapters relating to the general regulatory obligations of financial services providers.

Part 6.4—Banning or disqualification of persons from providing financial services

Note: This Part would contain provisions equivalent to Part 7.6 Div 8 of the Corporations Act.

Part 6.5—Australian financial services licences

Division 1—How to get a licence

Note: This Division would contain provisions equivalent to Part 7.6 Div 4 Subdiv A of the Corporations Act.

Division 2—The conditions on a licence

Note: This Division would contain provisions equivalent to Part 7.6 Div 4 Subdiv B of the Corporations Act.

Chapter 7—Ministerial and ASIC powers

Part 7.1—Scoping orders, financial services rules and specific exemptions

Note: This Part would contain provisions equivalent to Part 7.11A of the Prototype Act forming in Prototype Legislation B.¹⁰

Part 7.2—Product intervention orders

Note: This Part would contain provisions equivalent to Part 7.9A of the Corporations Act, with the exception of the obligations to comply with a product intervention order.

Part 7.3—Authorising and regulating external dispute resolution

Note: This Part would contain provisions equivalent to Part 7.10A of the Corporations Act.

Chapter 8—Dictionary

Note: This Chapter would contain any rules for interpretation and either the definition, or a signpost to the definition, of terms defined for the purposes of the Financial Services Law.¹¹

10 See Australian Law Reform Commission (n 2). For discussion of the different elements of the ALRC's proposed legislative model, including the Scoping Order and Rulebooks, see Australian Law Reform Commission, *Interim Report B: Financial Services Legislation* (Report No 139, 2022) [2.4]–[2.6], [2.15]–[2.56].

11 For discussion of the scope of the dictionary in the FSL Schedule, see **Chapter 6** of this Interim Report.