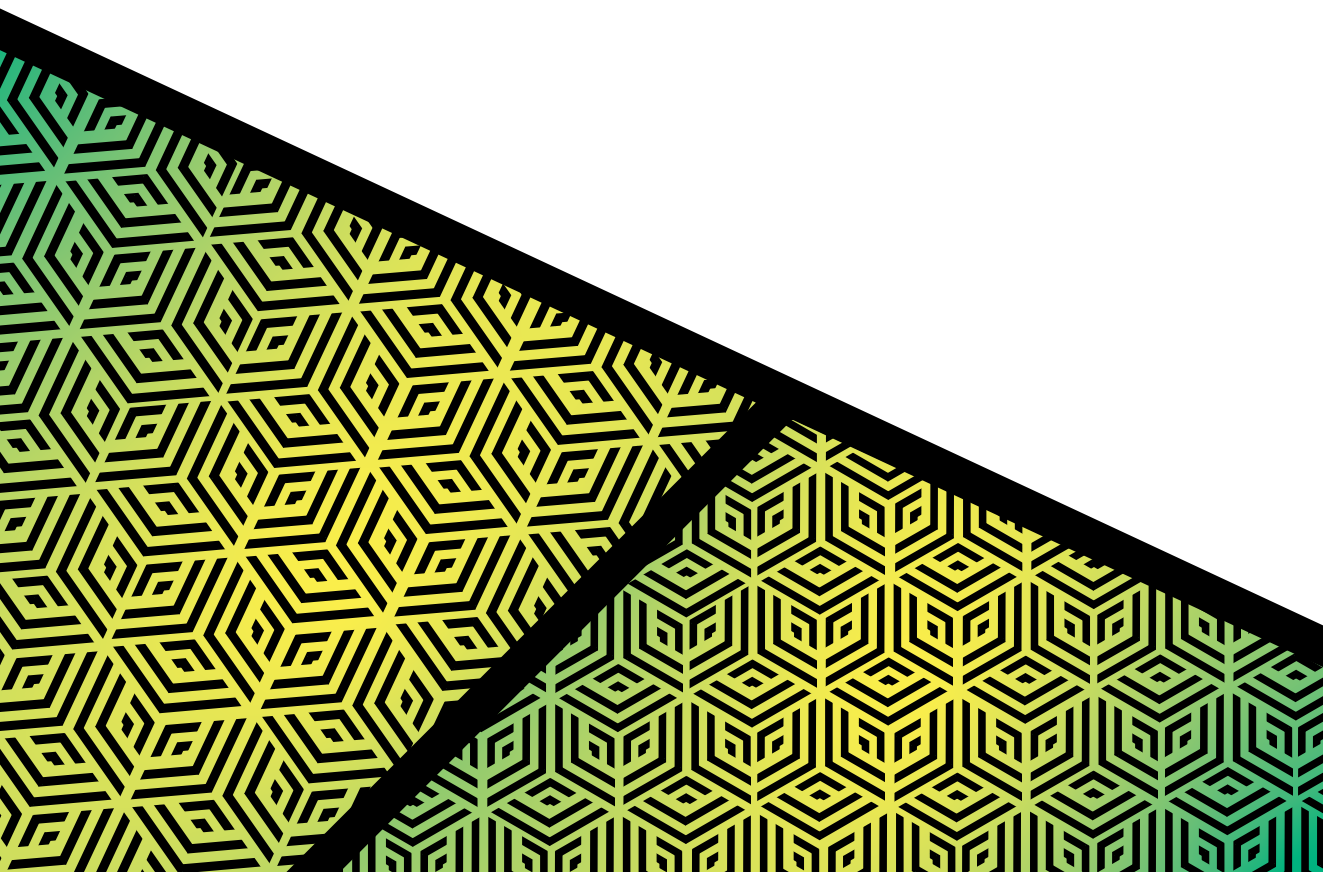
Australian Government

Australian Law Reform Commission

SUMMARY REPORT

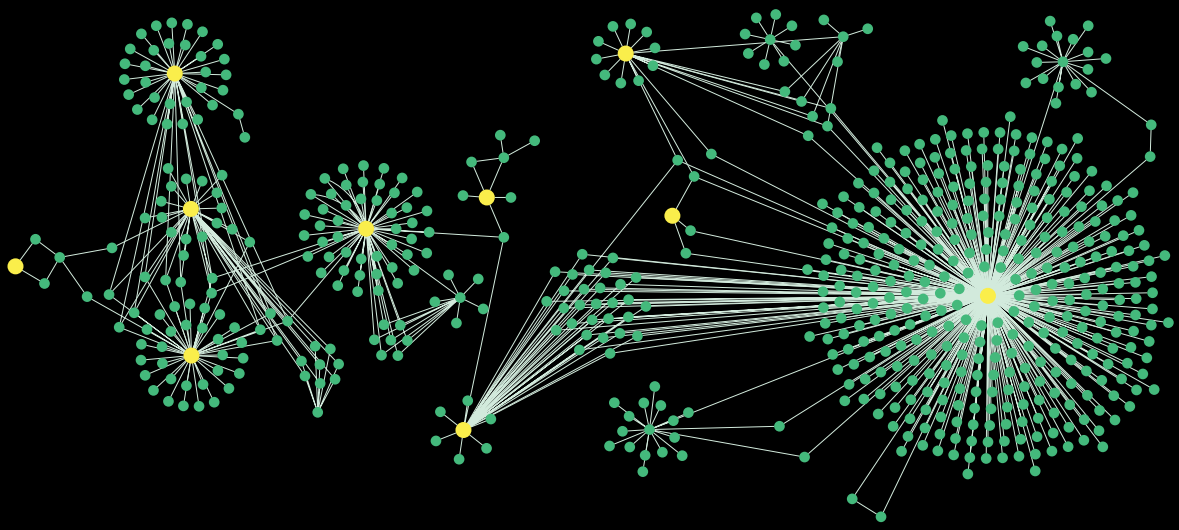
CONFRONTING COMPLEXITY:
REFORMING CORPORATIONS AND FINANCIAL SERVICES LEGISLATION

ALRC Report 141
November 2023



The legislative framework for corporations and financial services can be likened to a universe, with distinct but interconnected galaxies of primary and delegated legislation.

The ALRC's pioneering data collection has offered opportunities to visualise and understand legislative complexity in new and novel ways.



In this image, each yellow dot is an Act relating to corporations or financial services and each green dot is a legislative instrument. It shows the complex web of interconnections between primary and delegated legislation, with some instruments authorised by multiple Acts or other instruments, and therefore connected to multiple dots. The largest grouping (on the right hand side) illustrates how the *Corporations Act* is subject to a vast galaxy of legislative instruments with distinct solar systems for regulations and rules. The ALRC's recommendations seek to reduce the complexity created by interconnected legislation and improve navigability.

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- Making definitions easier to find and understand

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- No more notional amendments
- Better law-making tools
- A better platform for policy development
- A single glossary for the *Corporations Act*

Key Inquiry Statistics

58

Recommendations

5 ALRC Commissioners
22 ALRC staff
4 Consultants
56 Students
17 Advisory Committee members
24 Expert readers

10+ million

Pages of documents, including:

13,000+ Acts
89,000 Legislative instruments
35,000+ Legislation compilations
101,000 Court judgments
200 Regulatory guides

In total, 53+ GB of data analysed

16+ Publications

Final Report
3 Interim Reports
12 Background Papers
Prototype Legislation
Plus additional resources and data online

200+ Consultees
98 Submissions
20+ Presentations
10 Webinars

OVERVIEW

Context

1. All Australians are impacted by the effectiveness and efficiency of the legislative framework for corporations and financial services. The total wealth of Australian households in financial assets totalled $6.9 trillion in June 2023,[1] or almost half of all domestic household wealth. The *Corporations Act 2001* (Cth) ('*Corporations Act*'), which is central to the legislative framework, regulates the conduct of over 3.2 million companies in Australia,[2] tens of thousands of financial services firms and financial advisers, and financial markets worth trillions of dollars.[3]

2. This Inquiry is also set against the background of the Final Report of the Financial Services Royal Commission, published on 4 February 2019. Crucially, the Financial Services Royal Commission found that the existing legislative framework for corporations and financial services regulation is unnecessarily complex, fails to communicate fundamental norms, and hinders compliance.[4]

Problems

3. After more than 20 years of development, the legislative framework for corporations and financial services regulation is no longer fit for purpose. The existing legislative framework is unnecessarily complex, and complexity only continues to accrue. Parts of the legislative framework have variously been described as 'porridge',[5] 'obscure and convoluted',[6] 'shrouded in obfuscation',[7] and likened to a 'maze'.[8] The tools used to build and maintain the legislative framework — such as notional amendments, conditional exemptions, and proliferating legislative instruments — often create more problems than they aim to solve. In short, the legislation is ripe for reform.

1 Australian Bureau of Statistics, 'Australian National Accounts: Finance and Wealth' (June 2023) <www.abs.gov.au/statistics/economy/national-accounts/australian-national-accounts-finance-and-wealth/jun-2023>.

2 Australian Securities and Investments Commission, 'Company Registration Statistics' <www.asic.gov.au/regulatory-resources/find-a-document/statistics/company-registration-statistics> (as at September 2023).

3 Australian Law Reform Commission, *Interim Report A: Financial Services Legislation* (Report No 137, 2021) [3.35]–[3.40].

4 Commonwealth of Australia, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report* (Volume 1, February 2019) 494–6.

5 *Wingecarribee Shire Council v Lehman Brothers Australia Ltd (in liq)* (2012) 301 ALR 1 [948].

6 *International Litigation Partners Pte Ltd v Chameleon Mining NL* (2011) 248 FLR 149 [152].

7 *Imperial Chemical Industries plc v Echo Tasmania Pty Ltd* [2007] FCA 1731 [104].

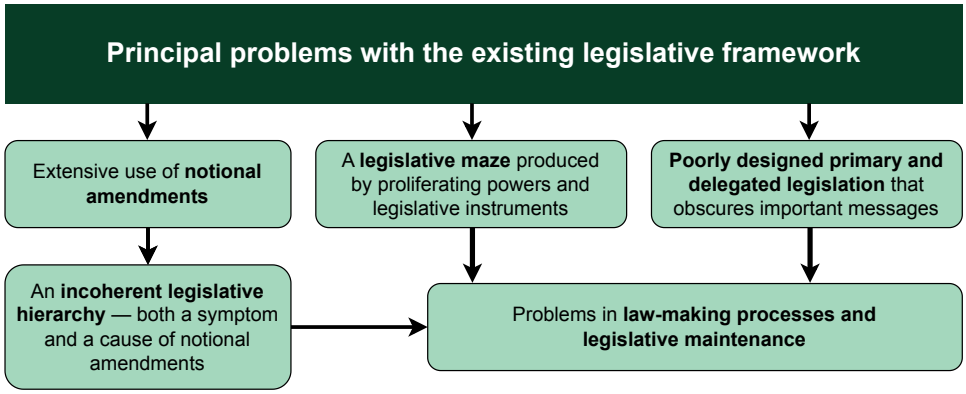
8 See, eg, *Gloucester Shire Council v Fitch Ratings, Inc (No 2)* [2017] FCA 248 [48]; *Smith v Leveraged Equities Ltd* [2020] WASCA 122 [232]. See also *Sandys Swim Pty Ltd v Morgan* [2022] FCA 1574 [20].

4. Unnecessary complexity in the existing legislative framework generates unnecessary costs and gives rise to legislative inflexibility. These costs are borne by stakeholders in different ways:

- For **businesses**, complexity makes it harder to operate and innovate, as they more frequently require legal advice and adopt compliance processes that are made more costly by unnecessarily complex legislation. Increased compliance costs have a particular impact on smaller firms that do not have the same resources available to them as larger firms.
- For **consumers and investors**, complexity makes it harder to identify and enforce protections and rights afforded to them by the legislation. Complexity also increases the prospects of non-compliance and, in turn, the risk of consumer harm.
- For **government**, the existing legislative framework provides a poor platform for policy reform and inhibits effective legislative maintenance. The existing complexity makes it difficult to implement new policy initiatives without generating further complexity, making it less likely that new initiatives will achieve their policy objectives.
- For **regulators and courts**, complexity interferes with their ability to regulate and enforce the existing legislative regime, as they must navigate disparate provisions spread across the legislative framework when attempting to discern their purpose. All litigants bear the cost of unnecessarily complex litigation that takes up the time of judges and courts.
- For the **community at large**, complexity makes it less likely that legislation will be effective and achieve its policy outcomes. This means that the community misses out on intended benefits, such as access to better financial products and services.
- In markets as large and significant as financial services, unnecessary complexity has **broader implications for the whole economy**. These include lower competition brought about by increased barriers to entry and lower productivity as a result of inefficient regulation.

5. The ALRC has identified five principal problems that generate unnecessary complexity in the existing legislative framework. These problems are most evident in Chapter 7 of the *Corporations Act*. They are summarised in **Figure 1** below and the paragraphs that follow.

Figure 1: Summary of problems



The extensive use of notional amendments

6. Notional amendments, also known as modifications, are provisions that change the legal effect of another provision without changing the text of that provision. Notional amendments create substantial uncertainty because, as illustrated by **Example 1** below, users cannot assume that the text of provisions actually reflects the law as it is applied.

Example 1: The invisibility of notional amendments

Notional amendments are invisible on the face of the notionally amended legislation. For example, s 1012G of the *Corporations Act* was replaced by a notional amendment in 2005. The text of the provision in the Act has not had any legal effect since then, and the 'real' s 1012G is in reg 7.9.15H of the *Corporations Regulations 2001* (Cth) ('*Corporations Regulations*'). There is nothing on the face of the *Corporations Act* to alert users to this change.

Similarly, s 708(8)(c) of the *Corporations Act* has been notionally amended by reg 6D.5.02 of the *Corporations Regulations* such that the reference to '6 months' in the Act no longer applies, and the actual period is '2 years'. The Act's clear textual reference to '6 months' has been rendered redundant and potentially misleading.

7. The *Corporations Act* is exceptional in the extent to which it uses notional amendments. In conducting the first ever stocktake of notional amendments affecting the *Corporations Act*, the ALRC identified over 1,200 distinct notional amendments in force, affecting over 600 provisions of the Act and the *Corporations Regulations*.[9]

8. Notional amendments create an opaque puzzle for users of the legislation, as illustrated by **Example 2** below. A section of the *Corporations Act* could have been notionally amended by one of more than 1,400 regulations in the *Corporations Regulations* or by a provision of one of hundreds of ASIC legislative instruments. Although many of the provisions of the *Corporations Act* have not been notionally amended, users must be aware that many *could* have been modified and go searching to double check whether this is the case. As a result, users of the *Corporations Act* often worry that they may be missing a piece of the legislative puzzle set out before them.[10]

Example 2: An opaque puzzle

ASIC Class Order 14/1262 notionally amends s 1012D of the *Corporations Act*, which is also notionally amended by reg 7.9.07FA of the *Corporations Regulations*. To understand the law, users must therefore read the original s 1012D of the Act, alongside the subsection notionally inserted by the *Corporations Regulations*, and the additional six subsections notionally inserted by *ASIC Class Order 14/1262*.

An incoherent legislative hierarchy

9. Corporations and financial services legislation, particularly Chapter 7 of the *Corporations Act*, does not adopt a coherent legislative hierarchy. This means that provisions are inconsistently and unpredictably located in primary legislation, delegated legislation, or administrative instruments. In short, anything could be anywhere, meaning users of the legislation need to look everywhere.

10. The incoherent legislative hierarchy mainly results from two factors: excessively prescriptive primary legislation and provisions inappropriate for delegated legislation. The ALRC has illustrated the growing volume and prescriptiveness of primary legislation over the past two decades.[11] Since 2001, the *Corporations Act* has almost

9 Australian Law Reform Commission, *Recommendation 18 — Notional amendments database* (Interim Report B — Additional Resources, September 2022).

10 See, eg, Australian Law Reform Commission, 'Initial Stakeholder Views' (Background Paper FSL1, June 2021) [5]; Australian Law Reform Commission, *Interim Report C: Financial Services Legislation* (Report No 140, 2023) [4.9].

11 See, eg, Australian Law Reform Commission, *Interim Report A: Financial Services Legislation* (Report No 137, 2021) [3.55]–[3.73], [3.87]–[3.89].

doubled in length to more than 4,000 pages and over 800,000 words.[12] Chapter 7 of the Act has similarly almost doubled to 265,000 words since the *Financial Services Reform Act 2001* (Cth) commenced in 2002, making the chapter alone equivalent to the 10th longest Act of Parliament.[13]

A legislative maze

11. Users of corporations and financial services legislation are often confronted by a legislative maze with winding paths and dead-ends to reach even simple destinations. Two main problems create this maze: proliferating powers and proliferating instruments.

12. The *Corporations Act* contains more than 950 powers to make delegated legislation,[14] with recent legislative amendments only adding to their number.[15] Despite hundreds of powers going unexercised,[16] users of the legislation must spend time and resources to determine whether delegated powers have been exercised and, if so, how and where.

13. The exercise of these powers produces a proliferation of legislative instruments. This creates a complex web of connections between primary and delegated legislation, in which provisions of the Act make little sense without extensive regard to provisions in delegated legislation.[17] In addition to hundreds of poorly structured regulations in the *Corporations Regulations*,[18] users must identify and navigate hundreds of Ministerial and ASIC legislative instruments applicable to corporations and financial services legislation. These range in length from one page to hundreds of pages.

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12 By way of comparison, this is longer than the novels *War and Peace* by Leo Tolstoy (approximately 580,000 words) and *The Lord of the Rings* by JRR Tolkien (approximately 550,000 words). While very few users, if any, would ever read the *Corporations Act* from start to finish, these comparisons help to give an impression of the scale of the *Corporations Act*.

13 At 265,000 words, Chapter 7 of the *Corporations Act* is similar in length to the novel *Ulysses* by James Joyce.

14 Australian Law Reform Commission, *Interim Report B: Financial Services Legislation* (Report No 139, 2022) [6.41]. Analysis of other Commonwealth Acts, using data from the ALRC DataHub, suggests that no other Act has as many references to regulations as the *Corporations Act*: Australian Law Reform Commission, *Interim Report A: Financial Services Legislation* (Report No 137, 2021) [3.78].

15 For example, amendments relating to employee share schemes made by the *Treasury Laws Amendment (Cost of Living Support and Other Measures) Act 2022* (Cth) introduced 24 powers for regulations or ASIC legislative instruments to prescribe matters for the purposes of Part 7.12 Div 1A of the *Corporations Act*. Chapter 9 of the Final Report further discusses the employee share scheme provisions and how the ALRC's recommendations would better facilitate similar reforms in the future.

16 Australian Law Reform Commission, *Interim Report B: Financial Services Legislation* (Report No 139, 2022) [6.44].

17 Australian Law Reform Commission, *Interim Report A: Financial Services Legislation* (Report No 137, 2021) [3.112]–[3.116]; Australian Law Reform Commission, *Interim Report B: Financial Services Legislation* (Report No 139, 2022) [6.40]–[6.48].

18 Australian Law Reform Commission, *Interim Report C: Financial Services Legislation* (Report No 140, 2023) [3.16], [6.59], [8.53].

Poorly designed primary and delegated legislation

14. The overall design of the *Corporations Act* can no longer be said to have any meaningful coherence.[19] Problems with structure and framing are particularly evident in Chapter 7 of the *Corporations Act*, which fails to prioritise key messages and does not help users find relevant provisions. Instead, users must either read through numerous provisions of primary and delegated legislation to identify their potential relevance or rely on regulatory guidance by default. Poor structure and framing ultimately results in legislation that does not effectively communicate its core requirements, is harder to navigate, and takes longer to understand.

15. The use and design of definitions in the *Corporations Act* is a source of significant complexity and makes the Act an outlier in the Commonwealth statute book. For example, over 30% of words in the *Corporations Act* are potentially defined. This means that users must often consider not only whether a term *is defined*, but whether that term is *being used* in its defined sense, and if not, what meaning it should have.[20] The *Corporations Act* ranks second behind only one other Act in which 32% of words are potentially defined and well above the average of 9% across all Commonwealth Acts.[21]

Challenges with law-making processes and legislative maintenance

16. Challenges with law-making processes and legislative maintenance are both a cause and a symptom of complexity in the existing legislative framework. Short timeframes for new legislative initiatives and insufficient legislative maintenance may contribute to the complexity of the existing legislative framework. However, both legislative initiatives and legislative maintenance are made more difficult by the complexity of the existing framework, reflecting the reality that the framework provides a poor platform for policy development.[22]

19 Ibid [8.6].

20 See Australian Law Reform Commission, *Interim Report A: Financial Services Legislation* (Report No 137, 2021) [4.42].

21 Ibid [3.94]. The Act with the greatest number of potentially defined words is the *Aboriginal and Torres Strait Islander Land and Sea Future Fund Act 2018* (Cth). See the discussion of Recommendation 4 in Interim Report A, concerning the repeal of definitions for the commonly used terms 'for' and 'of' in the *Corporations Act*: Australian Law Reform Commission, *Interim Report A: Financial Services Legislation* (Report No 137, 2021) [5.82]–[5.99].

22 Australian Law Reform Commission, *Interim Report C: Financial Services Legislation* (Report No 140, 2023) [1.13]; Australian Law Reform Commission, 'Risk and Reform in Australian Financial Services Law' (Background Paper FSL5, March 2022) [4]–[5].

Solutions

17. This section provides an overview of the ALRC's recommended solutions to the problems outlined above. Further detail and a summary of the analysis underpinning the ALRC's recommendations appear later in this Summary Report.

18. The Terms of Reference, received on 11 September 2020, asked the ALRC to consider whether, within existing policy settings, the *Corporations Act* and the *Corporations Regulations* could be simplified and rationalised, particularly in relation to:

- the use of definitions in corporations and financial services legislation (**Topic A**);
- the coherence of the regulatory design and hierarchy of laws, covering primary law provisions, regulations, class orders, and standards (**Topic B**); and
- how the provisions contained in Chapter 7 of the *Corporations Act* and the *Corporations Regulations* could be reframed or restructured (**Topic C**).[23]

19. In relation to Topic A, the ALRC has made several recommendations to improve the navigability and comprehensibility of defined terms in the *Corporations Act* and the *Australian Securities and Investments Act 2001* (Cth) ('*ASIC Act*').[24] These recommendations were contained in Interim Report A and several have been implemented, in full or in part, prior to the conclusion of this Inquiry.[25] In the Final Report, the ALRC recommends that the definitions of 'financial product' and 'financial service' be amended to create a single, simplified definition for each term.[26]

20. In relation to Topics B and C, the ALRC recommends a reformed legislative framework for financial services regulation, consisting of three elements:

- restructured and reframed primary legislation in the form of the **Financial Services Law**, which would contain the law's key provisions, such as core obligations, offence provisions, rights, remedies, and definitions;
- a single legislative instrument, called the **Scoping Order**, which would contain matters that adjust the scope of the regulatory regime, including exemptions and exclusions; and
- thematic, consolidated **rulebooks**, which would contain prescriptive detail that would tailor the regulatory regime for particular products, services, persons, or circumstances.[27]

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23 The Terms of Reference are contained in **Appendix A**.
24 See **Recommendations 1–10**.
25 **Recommendations 1**, **2**, and **9** have been implemented in full or in part by the *Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023* (Cth), passed by Parliament on 4 September 2023. **Recommendations 3**, **5**, **6**, **7**, **8**, and **9** have been implemented by the *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023* (Cth), passed by Parliament on 7 September 2023.
26 See **Recommendations 31–32**.
27 See **Recommendations 41–43**.

21. The ALRC makes several recommendations that set out how the Financial Services Law should be structured and framed. Implementing these recommendations would restructure the primary legislation that regulates financial products and financial services so as to make it easier to navigate and understand. This would be achieved by grouping and, where relevant, consolidating existing provisions according to four regulatory themes: consumer protection,[28] disclosure,[29] financial advice,[30] and general regulatory obligations.[31]

22. To address the incoherent use of the legislative hierarchy in the existing legislative framework, the ALRC recommends the creation of a principled and coherent legislative model.[32] The recommended legislative model comprises primary legislation (in the form of the Financial Services Law), the Scoping Order, and rulebooks. Implementing the recommended legislative model would create a more principled, coherent, and navigable legislative hierarchy by:

- reducing the number of places users need to look to find relevant law and finding an appropriate home for prescriptive detail currently spread across the legislative hierarchy;
- removing the need for notional amendments and complex conditional exemptions,[33] while maintaining regulatory flexibility to clarify technical detail and address atypical or unforeseen circumstances of regulatory arrangements through delegated legislation and individual relief;[34] and
- ensuring that law-making powers delegated to the Minister and ASIC are consistent with maintaining an appropriate delegation of legislative authority.[35]

23. As part of its response to the overall question of how to simplify and rationalise the law, the ALRC makes recommendations relating to how the reformed legislative framework should be implemented and maintained into the future.[36] These recommendations are supplemented by a detailed implementation roadmap, which explains how the reform process may be staged in a way that appropriately manages transition costs. The ALRC also recommends the establishment of a legislative data framework that could help to manage legislative complexity.[37]

24. The ALRC also makes two recommendations in relation to offence and penalty provisions that complement four recommendations made in Interim

28 See **Recommendations 33–35**.
29 See **Recommendations 36–37**.
30 See **Recommendation 38**.
31 See **Recommendations 39–40**.
32 See **Recommendations 43–52**.
33 See **Recommendation 53**.
34 See **Recommendations 44–46**.
35 See **Recommendations 47–52**.
36 See **Recommendations 54–55**. See also **Recommendations 14–18**. The *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023* (Cth), passed by Parliament on 7 September 2023, partially implemented **Recommendations 14**, **16**, **17**, and **18**.
37 See **Recommendation 58**.

Report C.[38] Implementing this suite of recommendations would improve the law's communicative force by consolidating offence and penalty provisions into a smaller number of provisions covering the same conduct, making those provisions more visible to users of the legislation, and making the consequences of breach clear on the face of the legislation. The recommendations are therefore directed at ensuring the legislation gives effect to the fundamental norms of behaviour being pursued and promotes meaningful compliance with the substance and intent of the law.

25. Responding to the Terms of Reference has required the ALRC to consider principles and practices relating to legislative design. These principles underpin many of the recommendations discussed above.

26. In relation to Topic A, the ALRC recommends that definitions in corporations and financial services legislation should be designed in a way that enhances the readability and comprehension of the legislation.[39] The ALRC has developed a number of working principles to be applied when designing and drafting definitions in corporations and financial services legislation to meet those aims.[40]

27. In relation to Topic B, the ALRC has developed principles that should guide decisions about when and how legislative power should be delegated, and recommended the creation of consolidated guidance on the delegation of legislative power that reflects those principles.[41]

28. As a complementary measure, the ALRC recommends that 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.[42]

29. In relation to Topic C, the ALRC has developed working principles for the structuring and framing of corporations and financial services legislation.[43] Applying these working principles should enhance navigability and comprehensibility, and help to communicate the fundamental norms of behaviour underpinning the legislation.

30. The ALRC's recommendations are supported by extensive research, analysis, and consultation.[44] During the Inquiry, the ALRC consulted with over 200 organisations and individuals. The ALRC received 93 submissions in response to the Interim Reports, which sought stakeholder feedback on 46 proposals and 11 questions. An additional 5 submissions were received in response to several of the 12 Background Papers published during the Inquiry.

38 See **Recommendations 20–23** and **56–57**.
39 See **Recommendation 27**.
40 See **Recommendation 28**.
41 See **Recommendations 25–26**.
42 See **Recommendation 29**.
43 See **Recommendation 24**.
44 Further detail about the Inquiry process is contained in **Appendix B**.

31. In addition to doctrinal and other legal research, the ALRC conducted extensive data analysis as part of a novel, data-driven approach to analysing legislation. In total, the ALRC analysed over 13,000 Acts and 89,000 legislative instruments made between 1901 and 2023, along with more than 35,000 legislation compilations, 101,000 court judgments, and 200 regulatory guides. Together, these sources comprise more than 53 gigabytes of data and over 10 million pages of documents.

OUTCOMES

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32. Implementing the ALRC's recommendations would simplify and rationalise corporations and financial services legislation by:

- creating a **reformed legislative framework for financial services regulation** that is easier to navigate and understand than the existing framework;
- restructuring and reframing financial services legislation so that it:
  - is **succinct**;
  - **prioritises** significant provisions over less significant or technical provisions;
  - **groups** thematically related provisions;
  - **consolidates** similar provisions;
  - helps users develop **mental models** to navigate the legislation; and
  - has an **intuitive flow**;
- creating a legislative framework that promotes the **principled use of delegated legislative powers**, with appropriate levels of guidance and oversight from Parliament;
- more effectively conveying fundamental norms of behaviour and **promoting meaningful compliance** with the substance and intent of the law;
- ensuring that the reformed legislative framework is **flexible and adaptive to the continuing emergence of new business models, technologies, and practices**;
- **making it easier for Parliament and government to maintain the legislative framework** in a manner that minimises unnecessary complexity; and
- creating a legislative framework that would provide **a better platform for implementing future policy initiatives**.

33. Implementing the ALRC's recommendations would **reduce the costs of unnecessary legislative complexity**, including by:

- lowering the costs of understanding and complying with the law;
- improving competition and productivity; and
- increasing the likelihood that the law will be complied with and enforced effectively.

ANALYSIS

ANALYSIS

34. This part provides a brief overview of the analysis that supports the recommendations contained in the Final Report. A full list of the ALRC's recommendations, including the 23 recommendations made in Interim Reports A, B, and C, appears later in this Summary Report. This part repeats the text of some, but not all, of the recommendations made in the Final Report.

Legislative design

35. In considering how the legislative framework for corporations and financial services may be improved, the ALRC has engaged with important questions relating to legislative design. Although corporations and financial services legislation is unique in many ways, it has provided a lens though which to examine the underlying principles and practices of legislative design that broadly apply to all legislation. Thus, although the ALRC's analysis and recommendations focus on corporations and financial services legislation, the principles discussed below may be applied to legislation generally.

36. Drawing on the Terms of Reference for each Interim Report, the ALRC has focused on three particular aspects of legislative design: the structure and framing of legislation, the design of the legislative hierarchy, and the use of definitions. In considering these topics, the ALRC has also sought to identify an overarching objective of legislative design. The ALRC suggests that the overarching objective of legislative design is to create legislation that is designed and drafted in a way that can be navigated and understood as easily as possible, consistent with the underlying policy intent of the legislation. Achieving this objective is essential to achieving the purpose of legislation, which is to effectively convert policy into legally enforceable provisions.

37. Interim Report C focused on the structure and framing of legislation. Structure and framing refer to how legislation is designed — specifically, how information is presented and organised to communicate the substance of the law. Clear structure and framing are important means of ensuring that users can navigate and understand legislation. This is because they are key elements of the overall architecture of a piece of legislation, which then embodies the policy objectives and substance of the law. As Dr Onoge observes, the design and structure of legislation 'set the tone and communicate the intent as much as the words do'.[45] Good structure and framing promote the objective of legislative design because they 'help users locate relevant provisions' and improve the 'overall accessibility'

45 Elohor Onoge, 'Structure of Legislation: A Paradigm for Accessibility and Effectiveness' (2015) 17(3) *European Journal of Law Reform* 440, 446.

of legislation.[46] This, in turn, makes it easier for users to understand the law's intent and policy objectives.

Recommendation 24 Corporations and financial services legislation should be structured and framed so as to enhance navigability and comprehensibility, and to communicate the fundamental norms of behaviour underpinning the legislation, by applying the following working principles:

a. Provisions should have thematic and conceptual coherence (**coherence**).

b. Related provisions should be proximate to one another (**grouping**).

c. Legislation should be structured to ensure an intuitive flow that reflects the needs of potential users (**intuitive flow**).

d. The most significant provisions should precede less significant provisions or more technical detail (**prioritisation**).

e. Legislation should be as succinct as practicable (**succinctness**).

f. Provisions should be designed in a way that avoids duplication and minimises overlap (**consolidation**).

g. Legislation should be structured and framed to help users develop and maintain mental models that enhance navigability and comprehensibility (**mental models**).

38. **Recommendation 24** describes working principles that should guide the structure and framing of corporations and financial services legislation. They are described as 'working principles' because they are not 'principles' in the strict sense of that term, but more akin to 'rules of thumb' that are to be applied flexibly in the pursuit of navigability, comprehensibility, and ensuring that fundamental norms of behaviour are clearly communicated.[47]

39. Interim Report B identified three key issues relating to the delegation of legislative power and the design of the legislative hierarchy:

- First, there exists a wide range of legislative practice such that it would be impossible to prescribe a 'one size fits all' approach to delegating legislative power.[48]

46 Ibid.

47 See Australian Law Reform Commission, *Interim Report C: Financial Services Legislation* (Report No 140, 2023) [9.33]–[9.35]. In their submission in response to Interim Report C, Allens helpfully observed that the working principles covered 'principles', in the strict sese of that term, 'legislative methods', and 'objectives': see Allens, *Submission 90*. They urged applying this taxonomy to more clearly delineate between each concept. While there is value in this analytical approach, it risks introducing a level of complexity that makes it more difficult to apply the working principles in everyday practice. This is why the ALRC has expressed **Recommendation 24** in its present form.

48 Australian Law Reform Commission, *Interim Report B: Financial Services Legislation* (Report No 139, 2022) [3.11]–[3.14], [3.20]–[3.35].

- Secondly, existing guidance relating to the delegation of legislative power does not take account of this diverse practice. In some respects, existing guidance is inconsistent with modern legislative practice, particularly because guidance focuses on the use of examples rather than principles. Guidance could therefore be improved by drawing out the key principles that should underpin delegations of legislative power, and ensuring guidance better reflects best legislative practices.[49]
- Thirdly, guidance relating to the delegation of legislative power is currently spread across numerous sources, which are maintained by different stakeholders in the legislative process.[50]

Recommendation 25 In designing legislation, the following principles should guide decisions about when and how legislative power should be delegated:

a. Democratic accountability, via Parliament and its processes, is crucial to the law's legitimacy (**democratic accountability and legitimacy**).

b. Legislation should be durable and allow for flexibility where necessary (**durability and flexibility**).

c. Provisions that delegate legislative power should be clear and enable users to understand when and how the power may be exercised (**clarity and predictability**).

d. Delegated legislation should not undermine the law's coherence and navigability (**coherence and navigability**).

Recommendation 26 The Attorney-General's Department (Cth), in consultation with the Office of Parliamentary Counsel (Cth) and the Department of the Prime Minister and Cabinet, should publish and maintain consolidated guidance on the delegation of legislative power consistent with Recommendation 25.

40. Implementing **Recommendations 25** and **26** would address these issues by:

- clearly articulating principles (applicable to a wide range of circumstances) that should guide the delegation of legislation power and decisions about 'what goes where' in the legislative hierarchy; and
- rationalising existing guidance and creating a central resource relating to the delegation of legislative power.

41. Interim Report A focused on the use of definitions in corporations and financial services legislation. Legislative definitions may be used for a number of purposes,

49 Ibid [3.39]–[3.40].
50 Ibid [3.10]–[3.19], [3.37].

but primarily 'to provide aid in construing the statute'.[51] Corporations and financial services legislation, particularly the *Corporations Act*, uses legislative definitions in several different ways and for several different purposes, sometimes inconsistently and in ways that impede navigability and comprehensibility.[52]

Recommendation 27 When defining words or phrases in corporations and financial services legislation, the overarching consideration should be whether the definition would enhance readability and facilitate comprehension of the legislation.

42. **Recommendation 27** describes an overarching consideration that should guide decisions about whether and how to define a particular term. This overarching consideration should guide the application of the recommended working principles for designing definitions (**Recommendation 28**). Applying these working principles would help to ensure that definitions are used for appropriate purposes, are used consistently, and are designed in a way that does not impede navigability and comprehensibility.

43. Two further recommendations are aimed at supporting good legislative design:

- The ALRC recommends the establishment of a Community of Practice relating to legislative design (**Recommendation 29**).[53] This Community of Practice would help to foster high-quality legislative design and drafting through training, workshops, resource-dissemination, and information-sharing across government.
- The ALRC recommends the creation of a consolidated guide to legislative design for corporations and financial services legislation (**Recommendation 30**). This guide would present a means of 'operationalising' the principles and guidance outlined above. It would also complement the ALRC's recommendations relating to implementation (discussed further below) and assist in maintaining the coherent design of corporations and financial services legislation into the future.[54]

51 *Kelly v The Queen* (2004) 218 CLR 216 [103]. See also *Gibb v Federal Commissioner of Taxation* (1966) 118 CLR 628, 635.

52 See, eg, Australian Law Reform Commission, *Interim Report A: Financial Services Legislation* (Report No 137, 2021) [3.92]–[3.103], [4.31], [4.37]–[4.54].

53 See **Recommendation 29**.

54 By way of comparison, see Office of Parliamentary Counsel (Cth), Drafting Direction 1.8, 'Special rules for Tax Code drafting' (Document release 1.0, May 2006). This Drafting Direction reflects principles and drafting approaches that arose out of the Taxation Laws Improvement Project (1994), now reflected in the *Income Tax Assessment Act 1997* (Cth).

A reformed legislative framework

44. Implementing the recommendations detailed in Chapters 5 and 6 of the Final Report would produce a reformed legislative framework for financial services regulation.

45. The reformed legislative framework would be easier to navigate and understand than the existing legislative framework.[55] The reformed legislative framework would also better reflect and communicate the policy objectives underlying the regulation of financial products and services, including by:

- being sufficiently flexible and adaptive to changing or unforeseen circumstances and the continuing emergence of new business models, technologies, and practices;
- promoting meaningful compliance with the law; and
- reducing legislative complexity and lowering the costs of understanding and complying with the law, thereby helping to create a more efficient legislative framework.

The reformed legislative framework in overview

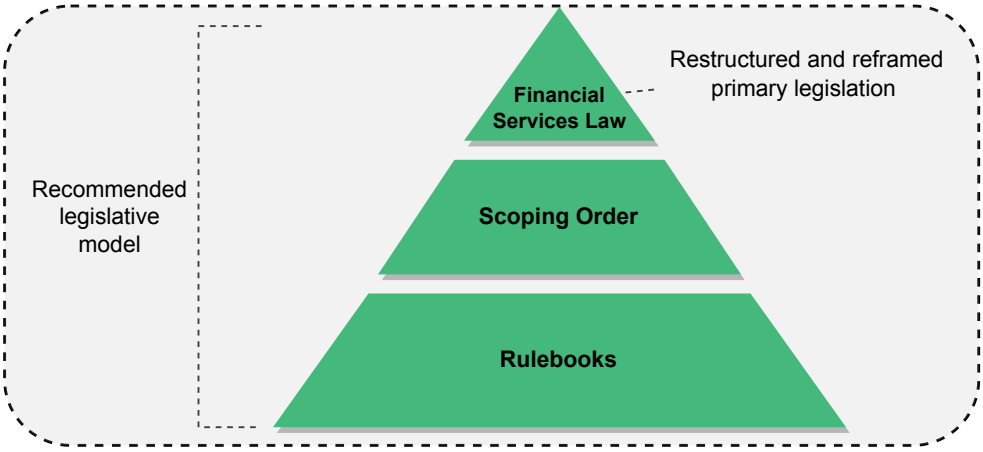
46. Chapter 3 of the Final Report provides a high-level overview of the reformed legislative framework for financial services regulation. It seeks to explain how the reforms set out in Chapters 5 and 6 fit together and present a package of reforms to improve financial services legislation.

47. In summary, the reformed legislative framework would consist of three elements: the Financial Services Law, a Scoping Order, and rulebooks.

48. **Figure 2** below illustrates the reformed legislative framework, showing how it comprises the Financial Services Law (discussed in Chapter 5 of the Final Report) and the recommended legislative model (discussed in Chapter 6 of the Final Report).

55 The existing legislative framework for the regulation of financial products and financial services includes most provisions of Parts 7.1, 7.6–7.10B, and 7.12 of the *Corporations Act* and Part 2 Div 2 of the *ASIC Act*, as well as related delegated legislation (principally in the form of the *Corporations Regulations* and ASIC legislative instruments). Other legislation, such as the *National Consumer Credit Protection Act 2009* (Cth), *Superannuation Industry (Supervision) Act 1993* (Cth), and *Insurance Contracts Act 1984* (Cth) also regulate specific financial products and services. However, the ALRC's recommendations focus on the legislation that applies to financial products and services in general.

Figure 2: The reformed legislative framework



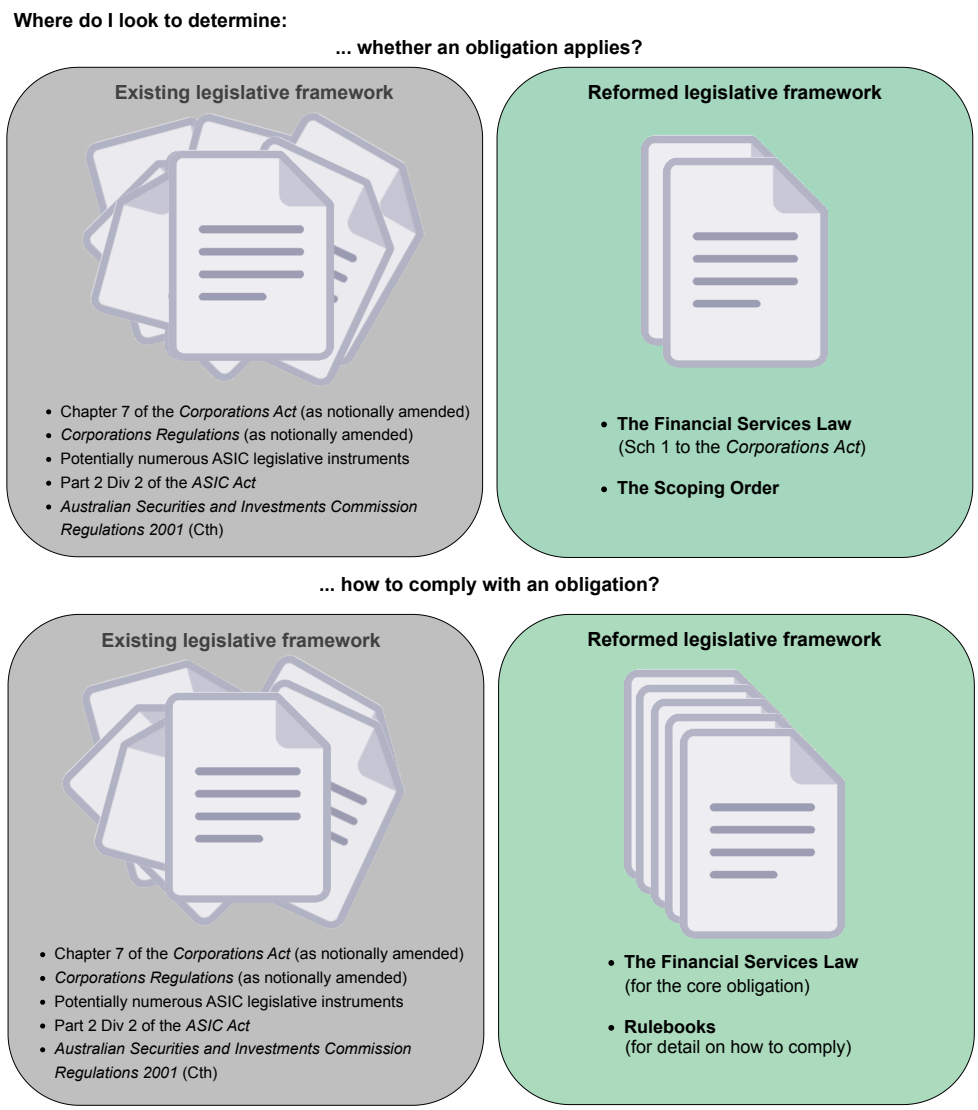
49. The **Financial Services Law** would be primary legislation containing the key regulatory provisions, such as core obligations, core prohibitions, offence provisions, rights, remedies, and definitions. The Financial Services Law would appear as Sch 1 to the *Corporations Act* ('FSL Schedule'). The FSL Schedule would be designed in accordance with the working principles for structuring and framing legislation set out in the previous section.

50. The **Scoping Order** would be a single legislative instrument that adjusts regulatory boundaries. The Scoping Order would replace the hundreds of regulations and ASIC legislative instruments that exist at present. Consolidating the substance of existing provisions into a single location would make the regulatory regime easier for users to navigate and understand.

51. Thematic **rulebooks** would contain detail that gives effect to different aspects of the regulatory regime for particular products, services, persons, or circumstances. Rules could only be made in relation to matters expressly authorised by the primary legislation. Rules would provide flexibility in the regulatory regime and allow it to be tailored to suit different products, services, industry sectors, and circumstances. Rulebooks would be designed to make them as easy to navigate and understand as possible.

52. **Figure 3** below illustrates how a user would interact with the reformed legislative framework compared to the existing legislative framework.

Figure 3: Using the reformed legislative framework



53. Rather than having to confront an opaque and confusing array of primary legislation, regulations, and other legislative instruments (each serving any number of purposes), users would only need to consult three types of legislation: the Financial Services Law, the Scoping Order, and rulebooks. The contents and purpose of each source of law would be easier to predict than the existing legislation. The reformed legislative framework would therefore make the law easier to find, navigate, and understand.

Restructuring and reframing primary legislation

54. Chapter 5 of the Final Report contains the ALRC's recommendations for restructuring and reframing the primary legislation that regulates financial products and financial services. The recommendations in Chapter 5 of the Final Report are directed at addressing the following problems and design features of the existing legislative framework:

- Chapter 7 of the *Corporations Act* makes it difficult for users to find relevant law because — among other things — it lacks coherence, does not have an intuitive flow, and fails to prioritise key messages;
- legislation that regulates the financial services industry as a whole is split between Chapter 7 of the *Corporations Act* and Part 2 Div 2 of the *ASIC Act*, while additional (and sometimes overlapping) requirements are also contained in more specific legislation;[56] and
- different, but overlapping, concepts and definitions are used across different Acts.

'Financial product' and 'financial service'

55. The definitions of 'financial product' and 'financial service' are foundational because they establish the regulatory boundaries of Chapter 7 of the *Corporations Act* and Part 2 Div 2 of the *ASIC Act*.[57] At present, significant complexity is created through the use of different definitions for those terms to adjust the scope of regulation in different areas.[58] For example, Part 2 Div 2 of the *ASIC Act* adopts different, broader definitions of 'financial product' and 'financial service' than Chapter 7 of the *Corporations Act*.[59] However, some parts of Chapter 7 of the *Corporations Act* nonetheless adopt, and further tailor, the broader *ASIC Act* definitions.[60]

Recommendation 31 Corporations and financial services legislation should be amended to enact a single, simplified definition of each of the following terms:

a. 'financial product'; and

b. 'financial service'.

These terms should be defined in the *Corporations Act 2001* (Cth) and cross-referenced in other legislation.

56 For example, the *National Consumer Credit Protection Act 2009* (Cth), *Superannuation Industry (Supervision) Act 1993* (Cth), and *Insurance Contracts Act 1984* (Cth).
57 Australian Law Reform Commission, *Interim Report A: Financial Services Legislation* (Report No 137, 2021) [7.14]–[7.15].
58 Ibid [4.107]–[4.119].
59 Ibid [7.75]–[7.84].
60 See, eg, *Corporations Act 2001* (Cth) pt 7.8A.

Recommendation 32 To implement Recommendation 31:

a. specific inclusions within the definitions of 'financial product' and 'financial service' should, so far as possible, be located in primary legislation; and

b. application provisions, exclusions, and exemptions (where relevant) should be used to limit the application of provisions to specific products, services, persons, and circumstances.

56. In summary, the ALRC recommends that:

- a simplified definition of each of 'financial product' and 'financial service' should appear in the *Corporations Act*;
- the definition of 'financial product' should cover the broader range of products presently subject to Part 2 Div 2 of the *ASIC Act* (compared to the narrower definition in Chapter 7 of the *Corporations Act*);
- the definition of 'financial service' should cover the full extent of services currently subject to Chapter 7 of the *Corporations Act* and Part 2 Div 2 of the *ASIC Act*;
- other legislation, such as the *ASIC Act*, should adopt the same definitions by reference to the *Corporations Act*;
- application provisions should be used to adjust the scope of regulation in different areas, not different definitions; and
- all exclusions from the definitions of 'financial product' and 'financial service' should be grouped and, where possible, consolidated in the Scoping Order.

57. Implementing **Recommendations 31** and **32** would simplify the legislative framework by:

- creating a single definition of each of 'financial product' and 'financial service';
- enabling users to look in one place (the *Corporations Act*) to determine what each of those terms means; and
- enabling users to look in one place (the Scoping Order) to identify all exclusions from those terms and any inclusions that may be in force and not appear in primary legislation.

The Financial Services Law

58. Currently, the primary legislation that regulates the financial services industry as a whole is split between Chapter 7 of the *Corporations Act* and Part 2 Div 2 of the *ASIC Act*. The *Corporations Act* is a very large Act that covers diverse subject matters, with Chapter 7 alone covering both financial services regulation and

the regulation of financial markets.[61] Furthermore, it is anomalous that important consumer protections relating to financial services appear in the *ASIC Act*, which is otherwise focused on the establishment of ASIC, its functions, and its powers.[62] This structure makes the legislation difficult to navigate and does not help to communicate the legislation's core messages.

Recommendation 41 The *Corporations Act 2001* (Cth) should be amended to create a dedicated group of provisions known as the Financial Services Law. Consistent with Recommendations 31–40, the Financial Services Law should comprise restructured and reframed provisions relating to the regulation of financial products and financial services, including:

a. objects clauses identifying the fundamental norms of behaviour underpinning the legislation;
b. Part 7.1 Divs 1, 2, 3, 4, 5, and 7 of the *Corporations Act 2001* (Cth);
c. Parts 7.6, 7.7, 7.7A, 7.8, 7.8A, 7.9, and 7.9A of the *Corporations Act 2001* (Cth);
d. Part 7.10 of the *Corporations Act 2001* (Cth), excluding provisions that relate more closely to the regulation of financial markets;
e. Parts 7.10A and 7.10B of the *Corporations Act 2001* (Cth);
f. Part 7.12 of the *Corporations Act 2001* (Cth), excluding provisions that relate more closely to the regulation of financial markets;
g. Part 2 Div 2 of the *Australian Securities and Investments Commission Act 2001* (Cth); and
h. a list of terms defined for the purposes of the Financial Services Law.

Recommendation 42 The Financial Services Law should be enacted as Sch 1 to the *Corporations Act 2001* (Cth).

61 See, eg, Australian Law Reform Commission, *Interim Report A: Financial Services Legislation* (Report No 137, 2021) [3.55]–[3.60]; Australian Law Reform Commission, *Interim Report C: Financial Services Legislation* (Report No 140, 2023) [8.40]–[8.44].

62 Australian Law Reform Commission, *Interim Report C: Financial Services Legislation* (Report No 140, 2023) [2.19], [6.50].

59. Implementing **Recommendation 41** would create a clearly identifiable body of primary legislation, to be known as the Financial Services Law, that would be more coherent and easier to navigate and understand than existing legislation.[63] The ALRC recommends that the Financial Services Law be enacted as Sch 1 to the *Corporations Act* (**Recommendation 42**).

60. The Financial Services Law would be created by restructuring and reframing the financial services-related provisions of Chapter 7 of the *Corporations Act* and Part 2 Div 2 of the *ASIC Act*. **Recommendations 33–40** detail how this should be done, based upon the single definition of each of 'financial product' and 'financial service' that would be created by implementing Recommendations 31 and 32.

61. Implementing Recommendations 33–40 would ensure that the provisions of the Financial Services Law are structured and framed in a way that would make it as easy to navigate and understand as possible. This would principally be achieved by grouping and, where relevant, consolidating provisions relating to:

- consumer protection (**Recommendation 33**), including by consolidating the numerous existing prohibitions on unconscionable conduct (**Recommendation 34**) and misleading or deceptive conduct (**Recommendation 35**);
- disclosure for financial products and financial services (**Recommendation 36**), including by clarifying the outcome of consumer understanding that disclosure regulation is intended to promote (**Recommendation 37**);
- financial advice (**Recommendation 38**); and
- the general regulatory obligations of financial services providers (**Recommendations 39** and **40**).[64]

62. To further improve its framing, the Financial Services Law should incorporate appropriate objects clauses identifying the fundamental norms of behaviour that underpin the legislation. Objects clauses help to frame legislation by providing context for users, aiding navigation, and promoting the purposive interpretation of legislation.[65] Existing objects clauses in Chapter 7 of the *Corporations Act*, such as s 760A, are insufficiently helpful on account of their vagueness and lack of particularity.[66] By identifying fundamental norms of behaviour, objects clauses in

63 **Recommendation 41** includes Part 7.10B of the *Corporations Act*, which came into force on 4 July 2023: see *Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Act 2023* (Cth) s 2, sch 1.

64 **Recommendations 33–40** are nonetheless designed such that they may be implemented independently of **Recommendations 41** and **42**. This means that if the FSL Schedule were not adopted, the recommendations to create separate legislative chapters (or parts within a chapter) relating to consumer protection, disclosure, financial advice, and general regulatory obligations could be implemented within the existing body of the *Corporations Act*. Similarly, the FSL Schedule could be created with a different structure from that described by **Recommendations 33–40**.

65 Australian Law Reform Commission, *Interim Report C: Financial Services Legislation* (Report No 140, 2023) [9.97]–[9.99].

66 Ibid [9.100].

the Financial Services Law would help to promote meaningful compliance and assist courts when interpreting ambiguous provisions, thereby giving better effect to fundamental policy objectives in this area of the law.[67]

A legislative model

63. In Chapter 6 of the Final Report, the ALRC recommends that the legislative hierarchy of financial services legislation be reformed to implement a principled and coherent legislative model (**Recommendation 43**). Chapter 6 therefore focuses on the 'vertical' structure of legislation in the reformed legislative framework so as to find an appropriate home for different aspects of the regulatory regime.

Recommendation 43 As detailed in Recommendations 44–52, the provisions of Chapter 7 of the *Corporations Act 2001* (Cth) relating to the regulation of financial products and financial services should be amended, in a staged process, to implement a legislative model. The legislative model should comprise:

a. primary legislation containing provisions appropriately enacted only by Parliament, including key obligations and prohibitions;

b. a Scoping Order (a single, consolidated legislative instrument) dealing with inclusions, exclusions, class exemptions, and other detail necessary for adjusting the scope of the primary legislation, as appropriate for delegated legislation; and

c. thematic 'rulebooks' (consolidated legislative instruments) containing rules giving effect to the primary legislation in different regulatory contexts as appropriate.

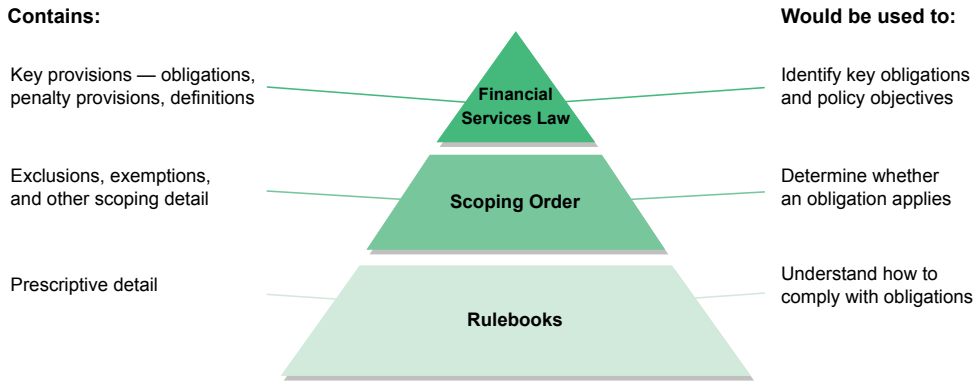
64. The ALRC's recommended legislative model responds to the following problems in the existing legislative framework:

- excessively prescriptive primary legislation;
- proliferating delegated legislative powers and instruments;
- poorly designed delegated legislation spread across the *Corporations Regulations* and potentially innumerable ASIC legislative instruments; and
- the extensive use of notional amendments and conditional exemptions.

67 See, eg, Australian Law Reform Commission, *Interim Report A: Financial Services Legislation* (Report No 137, 2021) [13.19]–[13.42].

65. **Figure 4** below illustrates how the recommended legislative model (as part of the reformed legislative framework) would provide an appropriate home for different provisions. The aim is to help users of the legislation navigate it more easily by reducing the number of places they need to look for the law. It should also be relatively easy to know where to go to find different types of provisions. In this way, the legislative framework would help users ensure (and reassure themselves) that they have not missed something important when complying with or advising on the law.

Figure 4: Navigating the reformed legislative framework



66. Implementing the recommended legislative model would simplify the present array of delegated law-making powers. The powers to make scoping orders (provisions of the single, consolidated Scoping Order) and rules under the legislative model have similar functions to existing powers, such as prescribing detail and extending the application of provisions. However, scoping orders and rules would replace notional amendments and complex conditional exemptions. In short, the legislative model aims to create a better set of law-making tools that can facilitate change and adaptation in the legislative framework over time.

Scoping Order and individual relief

67. The Scoping Order is intended to provide a home for legislative detail that adjusts the scope of provisions in the *Corporations Act*. The Scoping Order and individual relief provide flexibility in the legislative framework by enabling regulatory boundaries to be adjusted in different areas of regulation.

Recommendation 44 In a manner consistent with existing policy settings, the provisions of Chapter 7 of the *Corporations Act 2001* (Cth) relating to the regulation of financial products and financial services should be amended to create a power to:

a. include classes of products and services or classes of persons within the scope of relevant provisions of the Act;

b. exclude classes of products and services or exempt classes of persons from relevant provisions of the Act; and

c. set out detail that adjusts the scope of relevant provisions of the Act;

in the Scoping Order.

Recommendation 45 Consistent with existing policy settings, the provisions of Chapter 7 of the *Corporations Act 2001* (Cth) relating to the regulation of financial products and financial services should be amended to include a single power vested in the Australian Securities and Investments Commission to exempt a person from provisions of Chapter 7 of the Act by notifiable instrument (commonly known as 'individual relief').

68. The Scoping Order created under **Recommendation 44** would be a single, consolidated legislative instrument that contains exclusions and class exemptions from the financial services regulatory regime, as well as any inclusions (where appropriate) and other detail that is used to adjust the scope of the regime or particular provisions of it.

69. The purpose of the Scoping Order is not to supplant primary legislation, which would establish the regulatory boundaries and core policy of the regulatory regime. Rather, the power to make scoping orders — which would become provisions of the single, consolidated Scoping Order — would allow for delegated legislation to adjust the scope of provisions in primary legislation in a more navigable and coherent way than at present.

70. **Recommendation 45** maintains the existing policy that ASIC may grant individual relief from many provisions of Chapter 7 of the *Corporations Act*. Stakeholders have observed to the ALRC that ASIC's ability to grant individual relief is important, particularly for addressing atypical circumstances or unintended consequences of the regulatory regime as it applies to particular persons.[68] The ALRC envisages a reduced need for individual relief if the recommended legislative

68 See, eg, Australian Law Reform Commission, 'Reflecting on Reforms II — Submissions to Interim Report B' (Background Paper FSL10, January 2023) [23].

model were implemented, as prescriptive detail in rules could be readily tailored to minimise problems in its application.[69]

Rules and rulebooks

71. Alongside the Scoping Order, rules would help to maintain regulatory flexibility and clarify technical detail in the reformed legislative framework.

Recommendation 46 The provisions of Chapter 7 of the *Corporations Act 2001* (Cth) relating to the regulation of financial products and financial services should be amended to create a power to make 'rules' that may prescribe matters expressly authorised by provisions of the Act.

Recommendation 47 Rules made under the power described by Recommendation 46 should not deal with matters more appropriately enacted in primary legislation, particularly:

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.

72. The purpose of rules made under **Recommendation 46** is to accommodate much of the prescriptive detail necessary for tailoring the regulatory regime to suit different products, services, industry sectors, and circumstances that Chapter 7 of the *Corporations Act* presently regulates.[70] Currently, this type of prescriptive detail is spread across the legislative hierarchy, including in the Act, and in the form of conditional exemptions and notional amendments in delegated legislation. Rules that are able to be amended by both the Minister and ASIC could replace many existing, and future, conditional exemptions and notional amendments.

73. Unlike conditional exemptions and notional amendments, rules would permit the creation of self-contained legislative instruments that could be understood without frequent reference to the Act or another legislative instrument. Presenting rules in thematically consolidated instruments, which may be known as rulebooks, would create a much more navigable legislative framework than at present.

69 Australian Law Reform Commission, *Interim Report B: Financial Services Legislation* (Report No 139, 2022) [2.39].

70 In Interim Report B, the ALRC sought stakeholder feedback on whether rulebooks should 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 (Question B16). In light of stakeholder feedback, and the relatively novel nature of evidential provisions, the ALRC has not formalised Question B16 as a recommendation. For discussion of Question B16, see ibid [5.53]–[5.61]. For a summary of feedback in response to Question B16, see Australian Law Reform Commission, 'Reflecting on Reforms II — Submissions to Interim Report B' (Background Paper FSL10, January 2023) [68]–[71].

74. **Recommendation 47** places express limits on the power to make rules described by Recommendation 46. Implementing Recommendation 47 would ensure that rules made by the Minister and ASIC could not deal with matters that are appropriately contained only in primary legislation.

The law-making roles of the Minister and ASIC

75. The proliferation of delegated legislative powers under Chapter 7 of the *Corporations Act* and their exercise in myriad legislative instruments are a significant source of complexity. **Recommendation 48** aims to address these problems by enabling delegated legislation made by both the Minister and ASIC to be consolidated in the same principal legislative instruments, namely, the Scoping Order and thematic rulebooks.

Recommendation 48 In a manner consistent with existing policy settings, the powers described by Recommendations 44 and 46 should be vested in:

a. the Minister; and

b. the Australian Securities and Investments Commission.

A protocol should be used to coordinate the exercise of any concurrent power vested in the Minister and the Australian Securities and Investments Commission in respect of the same provisions or subject matters.

76. The ALRC recommends that the powers to make scoping orders and rules be conferred on the Minister and ASIC in a way that reflects the allocation of existing delegated legislative powers. This means that in areas where existing policy and the principles discussed in Chapter 4 of the Final Report indicate that a power should be exercisable by only one of the Minister or ASIC in respect of certain subject matter, the relevant power should continue to be limited in that way. In other words, implementing Recommendation 48 would neither expand nor contract the delegated legislative powers of the Minister and ASIC in respect of areas where they do, or do not, presently have power. The mechanisms for giving this legislative effect are discussed in detail in Chapter 6 of the Final Report.

77. A simpler legislative framework could be produced by conferring concurrent powers on both the Minister and ASIC in respect of all areas of regulation.[71] However, this approach may involve changes in existing policy settings. By contrast, Recommendation 48 maintains existing policy settings by accommodating different allocations of specific powers as between the Minister and ASIC, where necessary. This introduces some complexity to the recommended legislative model, principally for the Minister and ASIC as administrators of the legislation.

71 As contemplated by Proposal B8: see Australian Law Reform Commission, *Interim Report B: Financial Services Legislation* (Report No 139, 2022) [2.57]–[2.85].

78. Implementing Recommendation 48 would nonetheless produce a much simpler legislative framework than at present. This is because the powers would be exercised by way of amendments to consolidated legislative instruments. Put differently, all scoping detail would appear in the single Scoping Order and rules relating to the same theme would appear in consolidated thematic legislative instruments (rulebooks). In this sense, the different law-making arrangements would generally be irrelevant to most users of the legislation, who would simply see consolidated legislative instruments that bring together amendments made by both the Minister and ASIC in the same principal instrument.[72]

Safeguards and steps to implementation

79. Recommendations 49–52 describe the following safeguards that would apply to the making of scoping orders and rules under the recommended legislative model:

- consultation with the public and an expert advisory body, which may be known as the Rules Advisory Committee, prior to making scoping orders or rules (except in limited circumstances, such as emergencies) (**Recommendation 49**);
- publicly available explanatory statements that address how scoping orders, individual relief, and rules are consistent with or give effect to relevant objects of the primary legislation (**Recommendations 50** and **51**); and
- disallowance by Parliament and sunsetting (automatic repeal) consistent with the generally applicable standards of the *Legislation Act 2003* (Cth) (**Recommendation 52**).

80. As outlined above, the recommended legislative model is designed to be implemented alongside the restructuring and reframing of primary legislation discussed in Chapter 5 of the Final Report, creating the reformed legislative framework recommended by the ALRC. **Recommendation 53** deals with the repeal of existing delegated legislative powers, including notional amendment powers, as part of the implementation process. Recommendation 53 is aimed at ensuring that those powers are repealed as and when the recommended legislative model is implemented. The subject matter of pre-existing exclusions, exemptions, and notional amendments made in reliance on the current powers would be considered for inclusion in the reformed legislative framework, and their effect preserved, before Recommendation 53 would be implemented.

72 Amendments to the Scoping Order and rulebooks may be consolidated in the same way that changes made by an amending Act are incorporated into the principal Act by way of an updated compilation on the Federal Register of Legislation.

Implementation

81. Chapter 7 of the Final Report sets out a detailed roadmap for implementing the reformed legislative framework for financial services regulation. The approach to implementation described by the ALRC seeks to provide a realistic pathway for reform, identifying targeted and staged reforms that successive Parliaments or governments may take forward.

Recommendation 54 The Australian Government should establish a specifically resourced taskforce (or taskforces) dedicated to implementing reforms to financial services legislation.

82. The ALRC recommends that the implementation roadmap and implementation process should be overseen by one or more specifically resourced taskforces dedicated to those tasks (**Recommendation 54**). The Australian Government would set a taskforce's terms of reference, which should include clear deliverables. The principal responsibility of the taskforces would be to oversee the implementation of reforms, including how to do so most efficiently. The taskforces should collaborate across the Department of the Treasury (Cth) ('Treasury') and the Australian Government more generally. The work of taskforces would therefore include creating implementation timelines in partnership with industry and in line with government priorities, and advising Treasury on how various provisions should be addressed.

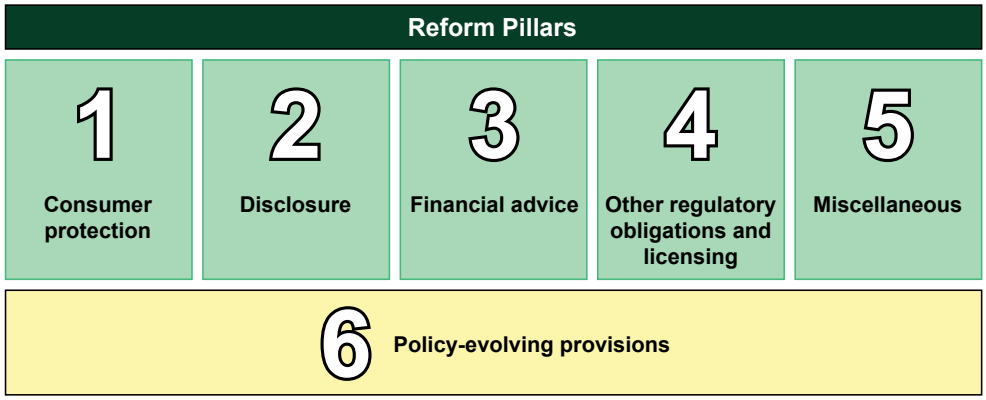
83. The work of the taskforces may vary, depending on their terms of reference. However, the taskforces are intended to help guide and inform the reform process at a high level — their role would not be to manage the day-to-day preparation or implementation of the reforms and they would not determine the policy implemented by the reforms. Further detail about the roles, responsibilities, and composition of taskforces is discussed in Chapter 7 of the Final Report.

The reform roadmap

84. The reform roadmap comprises six pillars as visualised in **Figure 5** below. The reform roadmap is based around the staged application of the ALRC's recommendations to each pillar, with the potential for further staging within each pillar. Each pillar is designed to ensure that it could be implemented within a single term of Parliament.[73] The pillars are also designed so they may be implemented sequentially or simultaneously.

73 Several submissions have suggested that different priorities between different governments may affect implementation of ALRC recommendations: see, eg, Australian Financial Markets Association, *Submission 85*; Financial Services Council, *Submission 87*. The reform roadmap seeks to minimise this risk by dividing the roadmap into staged pillars that could be implemented according to government priorities.

Figure 5: Reform roadmap



85. The roadmap is structured to realise the benefits of the reforms as early as possible, and broadly reflects the ALRC's recommendations relating to the structure of the Financial Services Law.[74] The consumer protection pillar appears first as it helps lay the foundation for future reforms, including by better communicating fundamental norms and thereby framing the more specific obligations in later pillars.[75] Financial product and services disclosure appears as Pillar Two because it is perhaps the most unnecessarily complex area of regulation in the existing legislative framework.[76] Pillar Three, relating to financial advice, includes significant provisions that regulate one of the key means through which consumers access financial products and services. The first three pillars of the roadmap therefore target areas in which substantial benefits from simplification could be realised.

86. Pillar Four is focused on reforming general regulatory obligations and provisions comprising the Australian financial services licensing regime. Pillar Five is focused on reforming other provisions of the *Corporations Act* that are covered by Recommendation 41 and which are not dealt with by other pillars. Pillar Six would be an ongoing element of the reform roadmap, which seeks to use opportunities for technical reform as substantive policy reforms emerge. It would therefore proceed in parallel with other pillars of the roadmap.

74 See **Recommendations 33–40**.

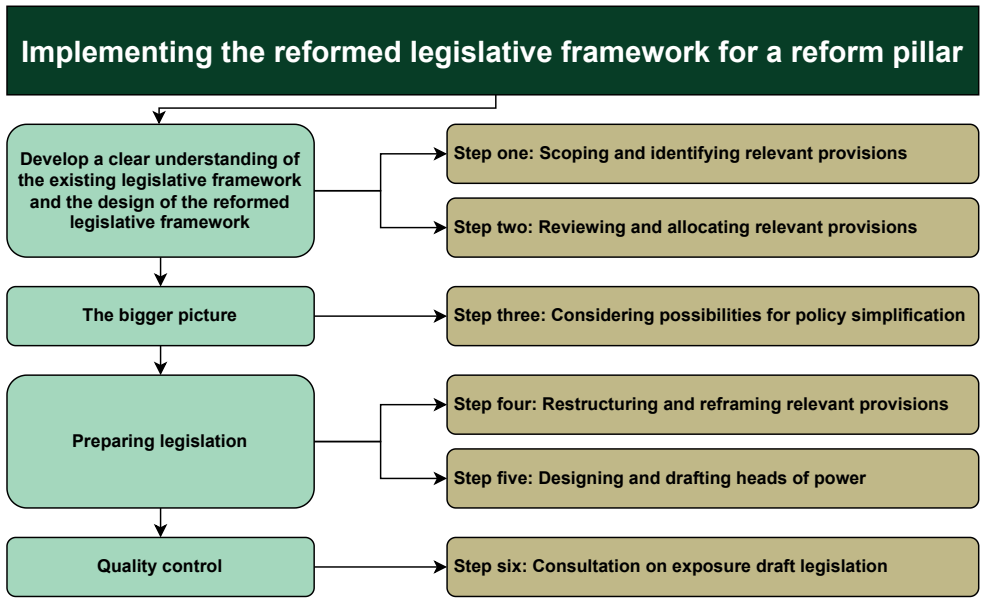
75 Consumer protection provisions include Part 2 Div 2 of the *ASIC Act* and related provisions in the *Corporations Act* that presently rely on the broader definition of 'financial product' in the *ASIC Act*, such as the provisions relating to design and distribution obligations and product intervention powers. Provisions relating to disclosure for financial products and services are treated separately from consumer protection and as a discrete thematic area of regulation (see Pillar Two). For further discussion of the provisions that would form part of a legislative chapter centred on consumer protection, see Australian Law Reform Commission, *Interim Report C: Financial Services Legislation* (Report No 140, 2023) [2.5]–[2.7], [2.20]–[2.22].

76 Ibid [3.13]–[3.20].

87. At a high level, each reform pillar could be approached in a similar manner, working through a series of steps illustrated in **Figure 6** below. Each step looks at 'relevant provisions', which are the provisions covered by the particular reform pillar. Further detail about each step is set out in Chapter 7 of the Final Report, including the processes for:

- accommodating the existing range of exclusions and exemptions within the reformed legislative framework (which would principally appear in the Scoping Order); and
- designing and drafting the heads of power that establish the architecture for creating scoping orders and rules.

Figure 6: Steps to implementation



Maintenance of the reformed legislative framework

Recommendation 55 As part of implementing Recommendation 41 (the Financial Services Law), the *Corporations Act 2001* (Cth) should be amended to require that the Financial Services Law and delegated legislation made under it be periodically reviewed by an independent reviewer.

88. To help ensure that the reformed legislative framework is maintained into the future, the ALRC recommends that it be subject to periodic post-enactment review, by an independent body, to assess whether the intended outcomes of reform are

being met (**Recommendation 55**). This recommendation would be given effect by a provision in primary legislation mandating such review, often referred to as a statutory review clause.[77] Including a statutory review clause in the reformed legislative framework would be consistent with modern legislative practice.[78]

Offences and penalties

89. Chapter 8 of the Final Report contains two recommendations aimed at improving the communicative power and visibility of offence and penalty provisions in corporations and financial services legislation.

Recommendation 56 Offence and penalty provisions in corporations and financial services legislation should be consolidated into a smaller number of provisions covering the same conduct.

Recommendation 57 Infringement notice provisions in corporations and financial services legislation should include the following at the foot of each provision:

a. the words 'infringement notice';

b. any applicable monetary sum, expressed as one or more amounts in penalty units; and

c. a note referring readers to any additional rules for calculating the applicable infringement notice amount.

90. The high level of prescription in the *Corporations Act* is matched by a large number of individual offence and civil penalty provisions.[79] As at 1 January 2022, there were 168 civil penalty provisions and 978 offence provisions in the *Corporations Act*.[80] Many of these provisions are highly particularised, and available data suggests that a majority are rarely enforced.[81]

91. **Recommendation 56** is intended to address the current multiplicity of offence and penalty provisions by consolidating them into a smaller number of provisions covering the same conduct. Analysis suggests that having a large number of detailed, sometimes overlapping, offence and penalty provisions does not lead to

77 Australian Law Reform Commission, 'Post-Legislative Scrutiny' (Background Paper FSL8, May 2023) [53]. See also Department of the Prime Minister and Cabinet (Cth), *Legislation Handbook* (2017) [5.26].
78 Australian Law Reform Commission, 'Post-Legislative Scrutiny' (Background Paper FSL8, May 2023) [55].
79 Australian Law Reform Commission, *Interim Report B: Financial Services Legislation* (Report No 139, 2022) [5.31].
80 Ibid.
81 Ibid.

better compliance or more effective enforcement.[82] As the Financial Services Royal Commission observed:

> So many wires are strung between the fence posts that they inevitably overlap, intersect and leave gaps. And, instead of entities meeting the *intent* of the law, they meet the terms in which it is expressed.[83]

92. Implementing Recommendation 56 would produce a set of consolidated penalty provisions that embody and therefore communicate the core intent of the law. This would improve the communicative power of corporations and financial services legislation and should minimise the uncertainty produced by overlapping offence provisions, thereby reducing compliance costs.

93. Implementing **Recommendation 57** would ensure that all infringement notice provisions in corporations and financial services legislation are clearly identifiable on the face of the provision that is subject to the notice. Existing legislation does not clearly and consistently identify infringement notice provisions.[84] The legislation also makes it unnecessarily difficult to identify the amount payable under an infringement notice for breach of any particular provision.[85] Infringement notice provisions should be clearly identifiable given their importance as an enforcement mechanism.[86]

94. Recommendations 56 and 57 complement Recommendations 20–23 made in Interim Report C. Taken together, these recommendations present a suite of reforms to offence and penalty provisions that would:

- make offence, civil penalty, and infringement notice provisions more visible, including by making the consequences of their breach clear on the face of the legislation;
- clarify the fault element applicable to offence provisions (unless the provision creates an offence of strict or absolute liability); and
- ensure offence and penalty provisions better convey the fundamental norms of behaviour underpinning the legislation.

95. Recommendations 20–23, 56, and 57 are discrete improvements that could be implemented alongside, or independently of, other recommendations made by the ALRC. Their implementation would naturally complement the aims of the reformed legislative framework.

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82 Ibid [5.33].
83 Commonwealth of Australia, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (n 4) 496 (emphasis in original).
84 Australian Law Reform Commission, *Interim Report C: Financial Services Legislation* (Report No 140, 2023) [10.42]–[10.43].
85 Ibid [10.44].
86 Ibid [10.41].

Complementary reforms and alternatives

96. Chapter 8 of the Final Report also discusses other reforms that would complement or present alternatives to the ALRC's recommendations. In part, the purpose of Chapter 8 is to respond to differing views among stakeholders about the scope of reform that should be undertaken to meet the objectives set out in the Terms of Reference.

97. Complementary reforms discussed in Chapter 8 of the Final Report include:

- options for improving the navigability of the legislative hierarchy in the existing legislative framework;
- opportunities for restructuring and reframing provisions of the *Corporations Act* not covered by the ALRC's recommendations, including the provisions of Chapter 7 of the Act relating to financial markets;
- opportunities for applying the recommended legislative model to provisions of the *Corporations Act* not covered by the ALRC's recommendations, such as Chapter 6D of the Act relating to securities disclosure;
- making greater use of technology in the drafting and publishing of legislation to facilitate more effective compliance and improve technological support for legislative drafters; and
- the potential reinstatement of a body similar to the Corporations and Markets Advisory Committee (commonly known as CAMAC), as suggested to the ALRC by numerous stakeholders.

98. Chapter 8 of the Final Report discusses two types of alternative reform compared to the ALRC's recommendations. These are:

- the specific list approach to defining 'financial product', which can be contrasted with the existing functional approach that would be retained under Recommendations 31 and 32;[87] and
- opportunities for more fundamental restructuring and reframing of corporations and financial services legislation if existing constitutional constraints were to be revisited.

87 See also Australian Law Reform Commission, *Interim Report A: Financial Services Legislation* (Report No 137, 2021) [7.172]–[7.179].

Facilitating policy developments

99. Chapter 9 of the Final Report highlights the importance of an adaptive, efficient, and navigable legislative framework for accommodating the increasing pace and scale of policy developments affecting corporations and financial services legislation.

100. An adaptive legislative framework helps to promote and support Australia's economic productivity in the face of the continual evolution of technology and business practices, and rapidly transforming financial products and services. The existing legislative framework is poorly designed for achieving such adaptivity, and policy initiatives are currently hindered by unnecessary legislative complexity. Moreover, issues in the existing legislative framework mean that implementing policy change can have the effect of compounding unnecessary complexity.

101. To gain an understanding of the pace and scale of policy change affecting corporations and financial services legislation, the ALRC undertook an analysis of amendments to the *Corporations Act, National Consumer Credit Protection Act 2009* (Cth), and Part 2 Div 2 of the *ASIC Act* ('the reviewed Acts') to identify the number of policy initiatives affecting these Acts between 2010 and 2022.[88]

102. The ALRC's analysis shows a general trend of increasing policy initiatives affecting the reviewed Acts. The scale of policy reform has also been substantial. In total, 228 policy initiatives affected the reviewed Acts between 2010 and 2022.[89] These policy initiatives were contained within 71 pieces of legislation that amended provisions of the reviewed Acts.

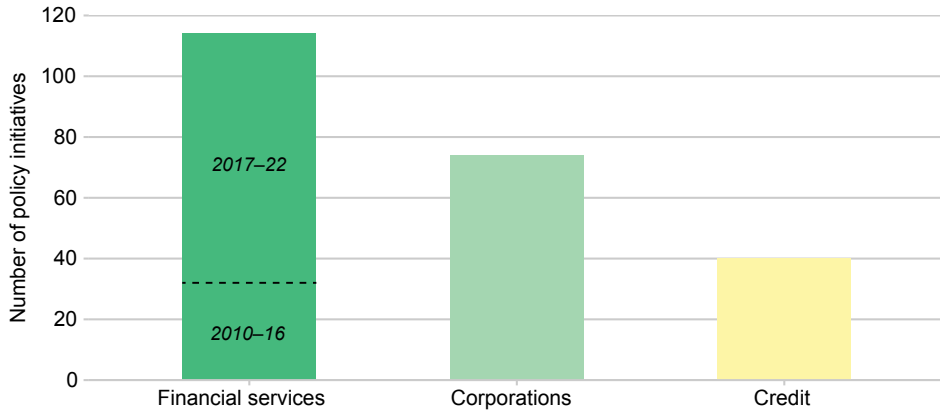
103. **Figure 7** below illustrates how the ALRC also classified the policy initiatives according to whether they most closely related to financial services, corporations, or credit. In total, 114 policy initiatives (50%) related to financial services, 74 (32%) related to corporations, and 40 (18%) related to credit. Seventy-two percent of all policy initiatives relating to financial services have been undertaken since 2017, highlighting the extent to which this area has undergone significant and accelerating policy reform in recent years.[90]

88 The underlying data and methodology are available on the ALRC website: Australian Law Reform Commission, 'Corporations and Financial Services Policy Initiatives 2010–22' <www.alrc.gov.au/wp-content/uploads/2023/10/Policy-Initiatives-2010–22-1.xlsx>. Consequential and technical amendments, which rectified errors or updated the legislation as a result of changes in another area of law (such as taxation) were not included within the data set as they were not considered policy initiatives within the definition adopted by Chapter 9 of the Final Report.

89 Legislation enacted in 2023 was excluded as only partial data was available.

90 Of the 114 financial services-related policy initiatives implemented since 2010, 82 were implemented between 2017 and 2022.

Figure 7: Policy initiatives 2010–22



104. The volume of policy initiatives legislated since 2010 underscores the need for a legislative framework that can adapt to change, clearly express underlying policy objectives, and is navigable by users of the legislation. This is reinforced by the ALRC's analysis which suggests that policy reform in the future is only likely to increase.

105. Implementing the ALRC's recommendations would help to produce a legislative framework that is more adaptive, efficient, and navigable than the existing framework. In particular, the reformed legislative framework would better accommodate future policy initiatives by:

- restructuring and reframing financial services legislation to provide a more coherent structure that can adapt to change in the future;[91]
- reforming the legislative hierarchy to increase navigability and comprehensibility;[92] and
- making definitions easier to find and understand.[93]

106. Chapter 9 of the Final Report illustrates how several recent and potential policy initiatives could be better accommodated by the reformed legislative framework.

91 See **Recommendations 24**, **31–42**.
92 See **Recommendations 25**, **43–47**.
93 See **Recommendations 27–28**.

Data and legislative complexity

107. Chapter 10 of the Final Report explains how the use of data and computational methods have been critical in helping the ALRC to navigate and understand the existing legislative framework.

Recommendation 58 The Australian Government should establish a publicly available data framework for monitoring the development of corporations and financial services legislation. At a minimum, this framework should track:

a. principal primary and delegated legislation in force and enacted annually, including with respect to the number of Acts and legislative instruments and their length in pages and words;

b. offence, civil penalty, and infringement notice provisions in force and enacted annually;

c. notional amendments in force and enacted annually, and the provisions and legislation affected by these notional amendments;

d. powers to make regulations and other legislative instruments in force and enacted annually, and the number of times the powers have been exercised; and

e. regulatory guidance in force and published annually by the Australian Securities and Investments Commission.

108. To help ensure that the benefits of legislative data analysis can be more broadly realised, the ALRC recommends that the Australian Government create a legislative data framework that publishes the types of data used by the ALRC during this Inquiry ('data framework'). The data framework, and the methods that underpin it, could bring a range of benefits to those affected by corporations and financial services legislation, including regulated persons, government, and regulators.

109. The ALRC has demonstrated that the data covered by **Recommendation 58** is capable of collection, having used the same data during this Inquiry and published much of it on the ALRC DataHub.[94] The vast majority of the ALRC's data collection and publication was performed by the equivalent of less than one full-time staff member and with modest computing resources. This demonstrates that Recommendation 58 could be implemented without significant expenditure or resourcing.

94 The DataHub includes data on all principal primary and delegated legislation in force and enacted annually, including the number of Acts and legislative instruments and their length in pages and words: Australian Law Reform Commission, 'DataHub' <www.alrc.gov.au/datahub/>.

110. Benefits of implementing the data framework include:

- providing resources that help users of corporations and financial services legislation navigate and understand the legislative framework;
- facilitating the development of RegTech and other technological solutions to help compliance;
- helping government administer and reform the legislative framework, including by helping to more proactively address legislative complexity; and
- allowing the legislative framework to be monitored over time, enabling stakeholders to hold government accountable for the legislation's development.

111. While Recommendation 58 is framed by reference to corporations and financial services legislation, the legislative data framework is capable of being adapted and applied to all legislation. The legislative data framework could particularly help government embed technology-assisted approaches to law reform, such as those used by the ALRC in this Inquiry. A move to drafting and publishing legislation in XML (extensible markup language), as contemplated by Recommendation 11, would further facilitate data-driven analysis of legislation.

112. Chapter 10 of the Final Report also discusses the legislative complexity framework developed by the ALRC ('complexity framework'). In dozens of submissions, stakeholders have stated that legislative complexity in the current framework is excessive and unnecessary, and that simplification is needed.[95] As one submission put it, 'the complexity is obvious to everyone'.[96]

113. Understanding the concept of legislative complexity has been fundamental to this Inquiry. Yet, the ALRC found only limited research and empirical data on legislative complexity in Australia,[97] including in relation to identifying and measuring complexity. The ALRC has therefore developed an analytical framework in relation to legislative complexity.

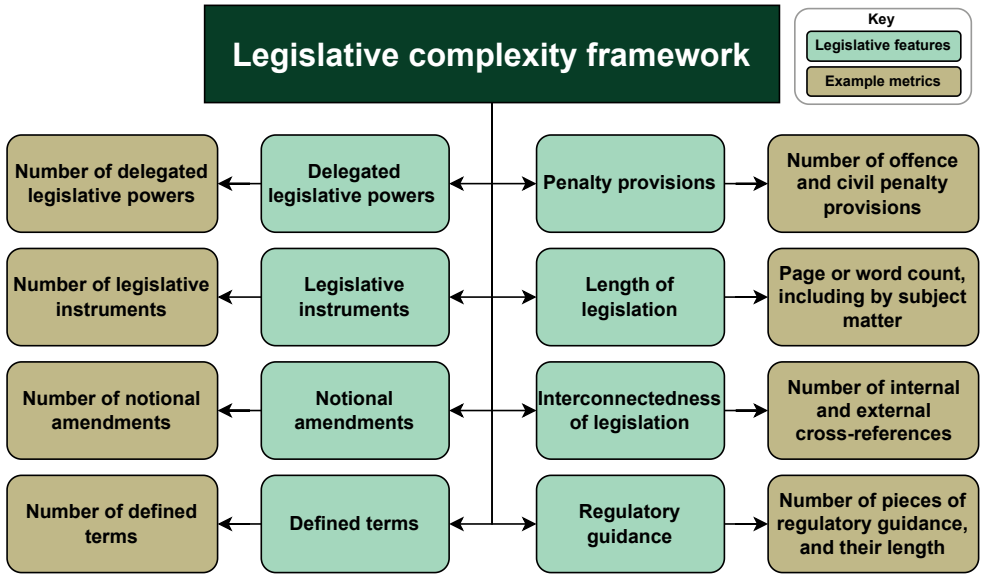
114. **Figure 8** below provides a summary of the complexity framework, including the principal legislative features on which it is focused. The Figure shows examples of the kind of metrics that can be used to measure each legislative feature. The examples are relatively simple, and the ALRC has often used more detailed and nuanced metrics, such as the number of notional amendments by scope of application and subject matter, as well as the number of legislative instruments by authorising Act provision and scope of application.

95 Australian Law Reform Commission, 'Initial Stakeholder Views' (Background Paper FSL1, June 2021) [5], [14]–[41].

96 G Elkington, *Submission 20*.

97 See, eg, Stephen Bottomley, 'Corporate Law, Complexity and Cartography' (2020) 35(2) *Australian Journal of Corporate Law* 142. Later in the Inquiry, Professor Bottomley published a further article on the topic: Stephen Bottomley, 'The Complexity of Corporate Law' (2022) 44(3) *Sydney Law Review* 415. However, there is a substantial and growing international literature on legal complexity: see the citations in Australian Law Reform Commission, 'Complexity and Legislative Design' (Background Paper FSL2, October 2021).

Figure 8: The ALRC's legislative complexity framework



115. The data framework and complexity framework are complementary. Employing them has enabled the ALRC to demonstrate that corporations and financial services legislation is among the most complex on the Commonwealth statute book. The complexity framework is capable of being applied to legislation in general, and therefore offers a useful tool for identifying unnecessary complexity and managing legislative complexity into the future.

RECOMMENDATIONS

Legislative Design

Recommendations
3 | 4 | 6 | 7 | 9 | 10 | 24 | 25 | 26 | 27 | 28 | 29 | 30

Restructuring and reframing financial services legislation

Recommendations
31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42

A legislative model for financial services

Recommendations
43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52

Implementation

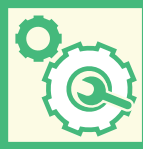
Recommendations
53 | 54 | 55

Offence and penalty provisions

Recommendations
20 | 21 | 22 | 23 | 56 | 57

Legislative complexity

Recommendations
5 | 11 | 12 | 15 | 17 | 19 | 58



Technical simplification

Recommendations
1 | 2 | 8 | 13 | 14 | 16 | 18

RECOMMENDATIONS

Interim Report A

Recommendation 1 Section 5(3) of the *Australian Securities and Investments Commission Act 2001* (Cth) should be amended to remove reference to non-existent Part 1.3 of the *Corporations Act 2001* (Cth).

Recommendation 2 The definitions of all words and phrases that are not used as defined terms in the *Corporations Act 2001* (Cth) should be removed from that Act.

Recommendation 3 Section 9 of the *Corporations Act 2001* (Cth), and ss 5 and 12BA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth), should be amended to remove all qualifications that definitions or rules of interpretation apply unless a 'contrary intention appears'.

Recommendation 4 Section 9 of the *Corporations Act 2001* (Cth) should be amended to remove the definitions of 'for' and 'of'.

Recommendation 5 Section 5C of the *Corporations Act 2001* (Cth) and s 5A of the *Australian Securities and Investments Commission Act 2001* (Cth) should be repealed.

Recommendation 6 All definitions that duplicate existing definitions in the *Acts Interpretation Act 1901* (Cth) should be removed from the *Corporations Act 2001* (Cth) and the *Australian Securities and Investments Commission Act 2001* (Cth).

Recommendation 7 The *Corporations Act 2001* (Cth) should be amended to include a single glossary of defined terms.

Recommendation 8 Section 7 of the *Corporations Act 2001* (Cth) should be replaced by a provision that lists where dictionary provisions appear and the scope of their application.

Recommendation 9 The *Corporations Act 2001* (Cth) should be amended so that the heading of any provision that defines one or more terms (and that does not contain substantive provisions) includes the word 'definition'.

Recommendation 10 The Office of Parliamentary Counsel (Cth) should develop drafting guidance to draw attention to defined terms each time they are used in corporations and financial services legislation.

Recommendation 11 The Office of Parliamentary Counsel (Cth) should investigate the production of Commonwealth legislation using extensible markup language (XML).

Recommendation 12 The Office of Parliamentary Counsel (Cth) should commission further research to improve the user-experience of the Federal Register of Legislation.

Recommendation 13 Regulation 7.6.02AGA of the *Corporations Regulations 2001* (Cth) should be repealed.

Interim Report B

Recommendation 14 Redundant and spent provisions in corporations and financial services legislation should be repealed, including:

a. spent transitional provisions;

b. spent legislative instruments;

c. redundant definitions;

d. cross-references to repealed provisions; and

e. redundant regulation-making powers.

Recommendation 15 The Department of the Treasury (Cth) and the Australian Securities and Investments Commission should establish an ongoing program to:

a. identify and facilitate the repeal of redundant and spent provisions; and

b. prevent the accumulation of such provisions.

Recommendation 16 Corporations and financial services legislation should be amended to address:

a. unclear or incorrect provisions;

b. outdated notes relating to 'strict liability'; and

c. outdated references to 'guilty of an offence'.

Recommendation 17 Unnecessarily complex provisions in corporations and financial services legislation should be simplified, with a particular focus on provisions relating to:

a. the prescribing of forms and other documents;

b. the naming of companies, registrable Australian bodies, foreign companies, and foreign passport funds;

c. the publication of notices and instruments;

d. conditional exemptions;

e. infringement notices and civil penalties;

f. terms defined as having more than one meaning;

g. definitions containing substantive obligations; and

h. definitions that contain the phrase 'in relation to'.

Recommendation 18 Generally applicable notional amendments to corporations and financial services legislation should be replaced with textual amendments to the notionally amended legislation.

Recommendation 19 The Australian Securities and Investments Commission should publish additional freely available electronic materials designed to help users navigate the legislation it administers. Such materials should include annotated versions of the *Corporations Act 2001* (Cth), *National Consumer Credit Protection Act 2009* (Cth), and *Australian Securities and Investments Commission Act 2001* (Cth).

Interim Report C

Recommendation 20 Offence provisions in corporations and financial services legislation should include the following at the foot of each provision:

a. the words 'maximum criminal penalty';

b. any applicable monetary or imprisonment penalty, expressed as one or more amounts in penalty units or terms of imprisonment; and

c. a note referring readers to any additional rules for calculating the applicable penalty.

Recommendation 21 The definition of 'civil penalty' in the *Corporations Act 2001* (Cth) and the *Australian Securities and Investments Commission Act 2001* (Cth) should be amended to be based on s 79(2) of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth).

Recommendation 22 Civil penalty provisions in the *Corporations Act 2001* (Cth) and the *Australian Securities and Investments Commission Act 2001* (Cth) should include the following at the foot of each provision:

a. the words 'maximum civil penalty';

b. any applicable penalty, expressed as one or more amounts in penalty units; and

c. a note referring readers to any additional rules for calculating the applicable penalty.

Recommendation 23 Offence provisions in corporations and financial services legislation should specify any applicable fault element, unless the provision creates an offence of strict or absolute liability.

Recommendation 24 Corporations and financial services legislation should be structured and framed so as to enhance navigability and comprehensibility, and to communicate the fundamental norms of behaviour underpinning the legislation, by applying the following working principles:

a. Provisions should have thematic and conceptual coherence (**coherence**).

b. Related provisions should be proximate to one another (**grouping**).

c. Legislation should be structured to ensure an intuitive flow that reflects the needs of potential users (**intuitive flow**).

d. The most significant provisions should precede less significant provisions or more technical detail (**prioritisation**).

e. Legislation should be as succinct as practicable (**succinctness**).

f. Provisions should be designed in a way that avoids duplication and minimises overlap (**consolidation**).

g. Legislation should be structured and framed to help users develop and maintain mental models that enhance navigability and comprehensibility (**mental models**).

Recommendation 25 In designing legislation, the following principles should guide decisions about when and how legislative power should be delegated:

a. Democratic accountability, via Parliament and its processes, is crucial to the law's legitimacy (**democratic accountability and legitimacy**).

b. Legislation should be durable and allow for flexibility where necessary (**durability and flexibility**).

c. Provisions that delegate legislative power should be clear and enable users to understand when and how the power may be exercised (**clarity and predictability**).

d. Delegated legislation should not undermine the law's coherence and navigability (**coherence and navigability**).

Recommendation 26 The Attorney-General's Department (Cth), in consultation with the Office of Parliamentary Counsel (Cth) and the Department of the Prime Minister and Cabinet, should publish and maintain consolidated guidance on the delegation of legislative power consistent with Recommendation 25.

Recommendation 27 When defining words or phrases in corporations and financial services legislation, the overarching consideration should be whether the definition would enhance readability and facilitate comprehension of the legislation.

Recommendation 28 The following working principles should be applied when designing and drafting definitions in corporations and financial services legislation:

When to define

a. Unless necessary, words and phrases bearing an ordinary meaning should not be defined.

b. Words and phrases should be defined if the definition significantly reduces the need to repeat text.

c. Definitions should be used primarily to specify the meaning of words or phrases, and should not be used to impose obligations, tailor the application of particular provisions, or for other substantive purposes.

Consistency of definitions

d. Each word and phrase should be used with the same meaning throughout an Act, and in delegated legislation made under that Act.

e. To the extent practicable, key defined terms should have a consistent meaning across all Commonwealth corporations and financial services legislation.

f. Relational definitions should be used sparingly.

g. Where possible, definitions contained in the *Acts Interpretation Act 1901* (Cth) should be relied upon and identified.

Design of definitions

h. Interconnected definitions should be used sparingly.

i. Where practicable, defined terms should correspond intuitively with the substance of the definition.

j. It should be clear to users of legislation whether a word or phrase is defined, and where the definition can be found.

Recommendation 29 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.

Recommendation 30 The Department of Treasury (Cth), in consultation with the Office of Parliamentary Counsel (Cth), should review existing guidance relating to the design and drafting of legislation, with a view to producing and maintaining a consolidated guide to legislative design for corporations and financial services legislation.

Recommendation 31 Corporations and financial services legislation should be amended to enact a single, simplified definition of each of the following terms:

a. 'financial product'; and

b. 'financial service'.

These terms should be defined in the *Corporations Act 2001* (Cth) and cross-referenced in other legislation.

Recommendation 32 To implement Recommendation 31:

a. specific inclusions within the definitions of 'financial product' and 'financial service' should, so far as possible, be located in primary legislation; and

b. application provisions, exclusions, and exemptions (where relevant) should be used to limit the application of provisions to specific products, services, persons, and circumstances.

Recommendation 33 The *Corporations Act 2001* (Cth) should be amended to restructure and reframe provisions of general application relating to consumer protection, including by grouping and (where relevant) consolidating:

a. Part 2 Div 2 of the *Australian Securities and Investments Commission Act 2001* (Cth);

b. Part 7.6 Div 11 of the *Corporations Act 2001* (Cth);

c. sections 991A, 1041E, 1041F, and 1041H of the *Corporations Act 2001* (Cth);

d. Part 7.8A of the *Corporations Act 2001* (Cth); and

e. sections 1023P and 1023Q of the *Corporations Act 2001* (Cth).

Recommendation 34 Section 991A of the *Corporations Act 2001* (Cth) and s 12CA of the *Australian Securities and Investments Commission Act 2001* (Cth) should be repealed, and s 12CB of the *Australian Securities and Investments Commission Act 2001* (Cth) should be amended to expressly provide that it encompasses unconscionability within the meaning of the unwritten law.

Recommendation 35 Proscriptions concerning false or misleading representations and misleading or deceptive conduct in the *Corporations Act 2001* (Cth) and the *Australian Securities and Investments Commission Act 2001* (Cth) should be replaced by a single, consolidated proscription.

Recommendation 36 The *Corporations Act 2001* (Cth) should be amended to restructure and reframe provisions relating to disclosure for financial products and financial services, including by grouping and (where relevant) consolidating:

a. Part 7.7 Divs 1, 2, 3A, 6, and 7;

b. section 949B; and

c. Part 7.9 Divs 1, 2, 3 (excluding ss 1017E, 1017F, and 1017G), 5A, 5B, and 5C.

Recommendation 37 Disclosure regimes in Chapter 7 of the *Corporations Act 2001* (Cth) that require disclosure documents to 'be worded and presented in a clear, concise and effective manner' should be amended to require that disclosure documents also be worded and presented 'in a way that promotes understanding of the information'.

Recommendation 38 The *Corporations Act 2001* (Cth) should be amended to restructure and reframe provisions relating to financial advice, including by grouping and (where relevant) consolidating:

a. sections 912EA and 912EB;

b. Part 7.6 Divs 8A, 8B, and 8C;

c. Part 7.6 Div 9 Subdivs B and C;

d. Part 7.7 Div 3;

e. section 949A;

f. Part 7.7A Divs 2, 3, 4 (excluding s 963K), Div 5 Subdiv B, and Div 6; and

g. sections 1012A and 1020AI.

Recommendation 39 The *Corporations Act 2001* (Cth) should be amended to restructure and reframe provisions of general application relating to financial services providers, including by grouping and (where relevant) consolidating:

a. Part 7.6 Divs 2, 3, and 10;

b. section 963K;

c. Part 7.7A Div 5 Subdiv A, and Div 6;

d. Part 7.8 Divs 2, 3, 4, 4A, 5, 6, and 9; and

e. sections 991B, 991E, 991F, 992A, and 992AA.

Recommendation 40 The *Corporations Act 2001* (Cth) should be amended to restructure and reframe provisions of general application relating to administrative or procedural matters concerning financial services licensees, including by grouping and (where relevant) consolidating Part 7.6 Divs 4, 5, 6, and 8.

Recommendation 41 The *Corporations Act 2001* (Cth) should be amended to create a dedicated group of provisions known as the Financial Services Law. Consistent with Recommendations 31–40, the Financial Services Law should comprise restructured and reframed provisions relating to the regulation of financial products and financial services, including:

a. objects clauses identifying the fundamental norms of behaviour underpinning the legislation;

b. Part 7.1 Divs 1, 2, 3, 4, 5, and 7 of the *Corporations Act 2001* (Cth);

c. Parts 7.6, 7.7, 7.7A, 7.8, 7.8A, 7.9, and 7.9A of the *Corporations Act 2001* (Cth);

d. Part 7.10 of the *Corporations Act 2001* (Cth), excluding provisions that relate more closely to the regulation of financial markets;

e. Parts 7.10A and 7.10B of the *Corporations Act 2001* (Cth);

f. Part 7.12 of the *Corporations Act 2001* (Cth), excluding provisions that relate more closely to the regulation of financial markets;

g. Part 2 Div 2 of the *Australian Securities and Investments Commission Act 2001* (Cth); and

h. a list of terms defined for the purposes of the Financial Services Law.

Recommendation 42 The Financial Services Law should be enacted as Sch 1 to the *Corporations Act 2001* (Cth).

Recommendation 43 As detailed in Recommendations 44–52, the provisions of Chapter 7 of the *Corporations Act 2001* (Cth) relating to the regulation of financial products and financial services should be amended, in a staged process, to implement a legislative model. The legislative model should comprise:

a. primary legislation containing provisions appropriately enacted only by Parliament, including key obligations and prohibitions;

b. a Scoping Order (a single, consolidated legislative instrument) dealing with inclusions, exclusions, class exemptions, and other detail necessary for adjusting the scope of the primary legislation, as appropriate for delegated legislation; and

c. thematic 'rulebooks' (consolidated legislative instruments) containing rules giving effect to the primary legislation in different regulatory contexts as appropriate.

Recommendation 44 In a manner consistent with existing policy settings, the provisions of Chapter 7 of the *Corporations Act 2001* (Cth) relating to the regulation of financial products and financial services should be amended to create a power to:

a. include classes of products and services or classes of persons within the scope of relevant provisions of the Act;

b. exclude classes of products and services or exempt classes of persons from relevant provisions of the Act; and

c. set out detail that adjusts the scope of relevant provisions of the Act;

in the Scoping Order.

Recommendation 45 Consistent with existing policy settings, the provisions of Chapter 7 of the *Corporations Act 2001* (Cth) relating to the regulation of financial products and financial services should be amended to include a single power vested in the Australian Securities and Investments Commission to exempt a person from provisions of Chapter 7 of the Act by notifiable instrument (commonly known as 'individual relief').

Recommendation 46 The provisions of Chapter 7 of the *Corporations Act 2001* (Cth) relating to the regulation of financial products and financial services should be amended to create a power to make 'rules' that may prescribe matters expressly authorised by provisions of the Act.

Recommendation 47 Rules made under the power described by Recommendation 46 should not deal with matters more appropriately enacted in primary legislation, particularly:

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.

Recommendation 48 In a manner consistent with existing policy settings, the powers described by Recommendations 44 and 46 should be vested in:

a. the Minister; and

b. the Australian Securities and Investments Commission.

A protocol should be used to coordinate the exercise of any concurrent power vested in the Minister and the Australian Securities and Investments Commission in respect of the same provisions or subject matters.

Recommendation 49 The provisions of Chapter 7 of the *Corporations Act 2001* (Cth) relating to the regulation of financial products and financial services should be amended to:

a. establish an independent 'Rules Advisory Committee'; and

b. require the Minister and the Australian Securities and Investments Commission to consult the Rules Advisory Committee and the public before making or amending any provisions of the Scoping Order or rules.

Recommendation 50 The provisions of Chapter 7 of the *Corporations Act 2001* (Cth) relating to the regulation of financial products and financial services should be amended to require that:

a. every legislative instrument made under the power described by Recommendation 44; and

b. every notifiable instrument made under the power described by Recommendation 45;

must be accompanied by a publicly available statement explaining how the instrument is consistent with relevant objects within Chapter 7 of the Act.

Recommendation 51 The provisions of Chapter 7 of the *Corporations Act 2001* (Cth) relating to the regulation of financial products and financial services should be amended to require that the explanatory statement accompanying every legislative instrument made under the power described by Recommendation 46 must address explicitly how the instrument gives effect to relevant objects within Chapter 7 of the Act.

Recommendation 52 Legislative instruments made under the powers described by Recommendations 44 and 46 should be disallowable by Parliament and subject to sunsetting.

Recommendation 53 As part of the staged implementation of the recommended legislative model, the following provisions should be repealed:

a. powers to omit, modify, or vary relevant provisions of Chapter 7 of the *Corporations Act 2001* (Cth) by regulation or other instrument;

b. powers to include products, services, or persons within the scope of relevant provisions of Chapter 7 of the Act by regulation or other instrument; and

c. powers to exclude products or services, and exempt persons, from the operation of Chapter 7 of the Act by regulation or other instrument.

Recommendation 54 The Australian Government should establish a specifically resourced taskforce (or taskforces) dedicated to implementing reforms to financial services legislation.

Recommendation 55 As part of implementing Recommendation 41 (the Financial Services Law), the *Corporations Act 2001* (Cth) should be amended to require that the Financial Services Law and delegated legislation made under it be periodically reviewed by an independent reviewer.

Recommendation 56 Offence and penalty provisions in corporations and financial services legislation should be consolidated into a smaller number of provisions covering the same conduct.

Recommendation 57 Infringement notice provisions in corporations and financial services legislation should include the following at the foot of each provision:

a. the words ‘infringement notice’;

b. any applicable monetary sum, expressed as one or more amounts in penalty units; and

c. a note referring readers to any additional rules for calculating the applicable infringement notice amount.

Recommendation 58 The Australian Government should establish a publicly available data framework for monitoring the development of corporations and financial services legislation. At a minimum, this framework should track:

a. principal primary and delegated legislation in force and enacted annually, including with respect to the number of Acts and legislative instruments and their length in pages and words;

b. offence, civil penalty, and infringement notice provisions in force and enacted annually;

c. notional amendments in force and enacted annually, and the provisions and legislation affected by these notional amendments;

d. powers to make regulations and other legislative instruments in force and enacted annually, and the number of times the powers have been exercised; and

e. regulatory guidance in force and published annually by the Australian Securities and Investments Commission.

APPENDIX A

Terms of Reference

Review of the Legislative Framework for Corporations and Financial Services Regulation

I, the Hon Christian Porter MP, Attorney-General of Australia, having regard to:

- the Government's commitment in response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry to simplify financial services laws;
- the importance, within the context of existing policy settings, of having an adaptive, efficient and navigable legislative framework for corporations and financial services;
- the need to ensure there is meaningful compliance with the substance and intent of the law; and
- the continuing emergence of new business models, technologies and practices;

REFER to the Australian Law Reform Commission (ALRC) for inquiry and report, pursuant to subsection 20(1) of the *Australian Law Reform Commission Act 1996* (Cth), a consideration of whether, and if so what, changes to the *Corporations Act 2001* (Cth) and the *Corporations Regulations 2001* (Cth) could be made to simplify and rationalise the law, in particular in relation to the matters listed below.

A. The use of definitions in corporations and financial services legislation, including:

- the circumstances in which it is appropriate for concepts to be defined, consistent with promoting robust regulatory boundaries, understanding and general compliance with the law;
- the appropriate design of legislative definitions; and
- the consistent use of terminology to reflect the same or similar concepts.

B. The coherence of the regulatory design and hierarchy of laws, covering primary law provisions, regulations, class orders, and standards, to examine:

- how legislative complexity can be appropriately managed over time;
- how best to maintain regulatory flexibility to clarify technical detail and address atypical or unforeseen circumstances and unintended consequences of regulatory arrangements; and
- how delegated powers should be expressed in legislation, consistent with maintaining an appropriate delegation of legislative authority.

C. How the provisions contained in Chapter 7 of the *Corporations Act 2001* (Cth) and the *Corporations Regulations 2001* (Cth) could be reframed or restructured so that the legislative framework for financial services licensing and regulation:

- is clearer, coherent and effective;
- ensures that the intent of the law is met;
- gives effect to the fundamental norms of behaviour being pursued; and
- provides an effective framework for conveying how the law applies to consumers and regulated entities and sectors.

Scope of the reference

The ALRC should identify and have regard to existing reports and inquiries, and any associated Government responses, including:

- the 2019 Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry;
- the 2017 Report of the Treasury's ASIC Enforcement Review Taskforce;
- the 2015 Final Report of the Australian Government Competition Policy Review;
- the 2014 Final Report of the Financial System Inquiry;
- the 2014 Final Report of the Productivity Commission, *Access to Justice Arrangements*; and
- any other inquiries or reviews that it considers relevant.

Consultation

The ALRC should consult widely including with regulatory bodies, the financial services sector, business and other representative bodies, consumer groups, other civil society organisations, and academics. The ALRC should produce consultation documents to ensure experts, stakeholders and the community have the opportunity to contribute to the review.

Timeframe for reporting

The ALRC should provide a consolidated final report to the Attorney-General by **30 November 2023**, and interim reports on each discrete matter according to the following timeframes:

- **30 November 2021** for Topic A;
- **30 September 2022** for Topic B;
- **25 August 2023** for Topic C.

APPENDIX B

The Inquiry Process

1. On 11 September 2020, the ALRC was asked to consider whether, and if so what, changes to the *Corporations Act* and *Corporations Regulations* could be made to simplify and rationalise the law. Significantly, the Terms of Reference did not direct the ALRC to consider whether the substantive law by which corporations and financial services are regulated requires reform. Rather, the focus of the Inquiry has been the extent to which reform of the existing regulatory framework can be undertaken within the context of existing policy settings.

2. The Terms of Reference directed the ALRC to focus on three topics and publish an Interim Report in response to each topic.[1] The ALRC published three Interim Reports as follows:

- Interim Report A on 30 November 2021, which contained 16 proposals and eight questions;[2]
- Interim Report B on 30 September 2022, which contained 16 proposals and two questions;[3] and
- Interim Report C on 22 June 2023, which contained 14 proposals and one question.[4]

3. Each Interim Report provided an opportunity to consult and elicit feedback on the relevant proposals and questions. The ALRC received 93 written submissions in response to the Interim Reports. All submissions are published on the ALRC website.[5]

1 As set out above, those topics were: the use of definitions in corporations and financial services legislation (Topic A); the coherence of the regulatory design and hierarchy of laws, covering primary law provisions, regulations, class orders, and standards (Topic B); and how the provisions contained in Chapter 7 of the *Corporations Act* and the *Corporations Regulations* could be reframed or restructured (Topic C).

2 Australian Law Reform Commission, *Interim Report A: Financial Services Legislation* (Report No 137, 2021). See also Australian Law Reform Commission, *Interim Report A Summary: Financial Services Legislation* (Report No 137, 2021).

3 Australian Law Reform Commission, *Interim Report B: Financial Services Legislation* (Report No 139, 2022). See also Australian Law Reform Commission, *Interim Report B Summary: Financial Services Legislation* (Report No 139, 2022).

4 Australian Law Reform Commission, *Interim Report C: Financial Services Legislation* (Report No 140, 2023). See also Australian Law Reform Commission, *Interim Report C Summary: Financial Services Legislation* (Report No 140, 2023).

5 Australian Law Reform Commission, 'Submissions', *Review of the Legislative Framework for Corporations and Financial Services Regulation* <www.alrc.gov.au/inquiry/review-of-the-legislative-framework-for-corporations-and-financial-services-regulation/submissions>.

4. Interim Reports A, B, and C also contained a total of 23 recommendations for reform. Recommendations 1–23 related to issues of technical simplification that do not have significant policy implications and that were not subject to divergent views among stakeholders. These recommendations were generally in a form capable of being implemented without awaiting the Final Report of the Inquiry.

5. During the Inquiry, the ALRC also published a series of 12 Background Papers, intended to provide a high-level overview of topics relevant to the Inquiry, and discuss key principles and areas of research underpinning the development of recommendations.[6] The ALRC received five written submissions in response to Background Papers. The submissions are published on the ALRC website.[7]

6. The Terms of Reference directed the ALRC to consult widely. During the Inquiry, the ALRC consulted with over 200 organisations and individuals, including through meetings and roundtables on an individual or group basis. Consultees have reflected a diverse range of stakeholders, including industry participants, industry representative bodies, consumer representatives, regulators, government agencies, legal practitioners, and academics.

7. To facilitate further engagement with stakeholders and the general public, the ALRC hosted 10 public webinars (including jointly with other organisations) during the Inquiry:

- The Regulatory Ecosystem for Financial Services in Australia (17 May 2021)
- Comparative Perspectives on Financial Services Regulation (24 May 2021)
- The Devilish Detail of Financial Services Laws (20 July 2021)
- (Re)Viewing Twin Peaks in Australia and Abroad (27 January 2022)
- Reducing Complexity: Why? Where? How? (10 February 2022)

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6 Australian Law Reform Commission, 'Initial Stakeholder Views' (Background Paper FSL1, June 2021); Australian Law Reform Commission, 'Complexity and Legislative Design' (Background Paper FSL2, October 2021); Australian Law Reform Commission, 'Improving the Navigability of Legislation' (Background Paper FSL3, October 2021); Australian Law Reform Commission, 'Historical Legislative Developments' (Background Paper FSL4, November 2021); Australian Law Reform Commission, 'Risk and Reform in Australian Financial Services Law' (Background Paper FSL5, March 2022); Australian Law Reform Commission, 'Reflecting on Reforms — Submissions to Interim Report A' (Background Paper FSL6, May 2022); Australian Law Reform Commission, 'New Business Models, Technologies, and Practices' (Background Paper FSL7, October 2022); Australian Law Reform Commission, 'Post-Legislative Scrutiny' (Background Paper FSL8, May 2023); Australian Law Reform Commission, 'All roads lead to Rome: unconscionable and misleading or deceptive conduct in financial services law' (Background Paper FSL9, December 2022); Australian Law Reform Commission, 'Reflecting on Reforms II — Submissions to Interim Report B' (Background Paper FSL10, January 2023); Australian Law Reform Commission, 'Superannuation and the Legislative Framework for Financial Services' (Background Paper FSL11, May 2023); Australian Law Reform Commission, 'Reflecting on Reforms III — Submissions to Interim Report C' (Background Paper FSL12, September 2023).

7 Australian Law Reform Commission, 'Submissions', *Review of the Legislative Framework for Corporations and Financial Services Regulation* <www.alrc.gov.au/inquiry/review-of-the-legislative-framework-for-corporations-and-financial-services-regulation/submissions>.

- What goes where? A comparative discussion of the legislative puzzle (24 May 2022)
- What we've heard and where to next (17 June 2022)
- Legislation Renovation: What Interim Report B Means for You (16 November 2022)
- Crypto Assets and Decentralised Autonomous Organisations, in partnership with the Corporate Law and Financial Regulation Research Program (15 February 2023)
- From Ideas to Action: What Interim Report C means for you (10 July 2023)

8. Members and staff of the ALRC also presented at the following events and stakeholder meetings:

- Law Council of Australia, Business Law Section, Corporations Committee meetings (various dates)
- Queensland University of Technology, Australian Consumer Law Roundtable Insolvency Academics Network Meeting, Session 3: Debt and financial services (3 December 2020)
- Law Council of Australia, Corporations Workshop 2021 (15–16 May 2021)
- Conexus Financial, Licensee Summit 2021 (7–8 June 2021)
- Independent Compliance Committee Member Forum, Rewriting the Financial Services Laws: An ALRC Update (13 October 2021)
- University of Queensland, 2021 WA Lee Equity Lecture: Oh Equity, Equity, wherefore art thou, Equity? Thou art thyself, though not Fairness. What's Fairness? (18 November 2021)
- Centre for Ethics and Law, University College London, Regulating Digital and Crypto-finance: A Conversation Across Borders (22 March 2022)
- Melbourne Law School, Corporate Law and Governance in the 21st Century: A Symposium in Honour of Professor Ian Ramsay (30 March 2022)
- Stockbrokers and Investment Advisers Association, Stockbrokers and Investment Advisers Association Conference (25 May 2022)
- Law Council of Australia, 2022 Corporations Law Workshop (4–5 June 2022)
- Conexus Financial, Licensee Summit 2022 (6 June 2022)
- Clyde and Co, Review of the Legislative Framework for Corporations and Financial Services Regulation (23 June 2022)
- Society of Corporate Law Academics, Re: The Corporation — Re-Thinking, Re-Forming, Re-Imagining (3–5 July 2022)
- Insignia Financial, Consultum National Conference 2022 (21 July 2022)
- Insignia Financial, RI Connect Conference 2022 (25 August 2022)
- Securities Commission of Malaysia, Financial Regulatory Reforms: The Experience in Australia (25 November 2022)

- The State Bank of Vietnam and Vietnam Asset Management Company, Reforms to Develop the NPL Trading Market in Vietnam (29 November 2022)
- Western Sydney University, 'Technology, Innovation and Law course' (6 December 2022)
- Monash University, Challenging Government: Law Reform and Public Advocacy course (6 April 2023)
- Australian Securities and Investments Commission, Presentation to ASIC Chief Legal Office (6 April 2023)
- Asian Business Law Institute and Singapore Management University, The Regulation of Crypto Assets and Blockchain-based Business Models in Australia (27 April 2023)
- Property Council of Australia, Corporate Governance and Regulation Committee (8 June 2023)
- Law Council of Australia, 2023 Corporations Law Workshop (5–6 August 2023)
- Melbourne Law School, Lessons for Insolvency Law from the Pandemic: Practice and Reform (12 October 2023)

9. As outlined above, the ALRC has analysed more than 53 gigabytes of data and over 10 million pages of documents as part of a novel, data-driven approach to analysing legislation. The data and use of computational methods have helped the ALRC navigate and understand the existing legislative framework and consider the potential consequences of recommended reforms. Computational methods have also been supplemented by manual analysis to derive a range of data. Interim Report A contains a high level overview of the ALRC's methodology for obtaining and analysing data.[8] The ALRC's DataHub contains additional data and information about the ALRC's approach to legislative data.[9]

10. The ALRC sincerely thanks the hundreds of organisations and individuals who have contributed to this three-year Inquiry, including the participants and other contributors recognised in the acknowledgement at the front of the Final Report. The ALRC has benefited enormously from their experience, expertise, and enthusiasm for reform.

8 Australian Law Reform Commission, *Interim Report A: Financial Services Legislation* (Report No 137, 2021) 595–614 (Appendix D). Other data and analyses published by the ALRC are also accompanied by explanations of the methods used to produce them.

9 Australian Law Reform Commission, 'DataHub' <www.alrc.gov.au/datahub/>.

Unless otherwise stated, this Summary Report reflects the law as at 1 July 2023.

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).

ALRC publications are available to view or download free of charge on the ALRC website: www.alrc.gov.au/publications. If you require assistance, please contact the ALRC.

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