

Agenda Item 10 (B) Summary of ALRC Interim Report B and submissions

The ALRC's [Interim Report B Financial Services Legislation](#) & [Report B: Summary Financial Services Legislation](#) were published on 30 September 2022 and closed for public comment on 30 November 2022. Twenty submissions were received from a range of stakeholders.

The Interim Report B contains 6 recommendations, 16 proposals to reform the legislative hierarchy model and 2 questions in relation to draft guidance on the delegation of legislative power. The proposed legislative model is intended to promote clarity and reduce complexity to enable the legal framework for Chapter 7 of the *Corporation Act 2001* (Corporations Act) to be more navigable, which will benefit consumers and reduce compliance costs. The proposed legislative model consists of three elements:

- a de-cluttered Act of Parliament, containing key obligations, prohibitions, powers, offences, penalties and other provisions;
- a Scoping Order (a single consolidated legislative instrument) containing exclusions and exemptions from the Act; and
- thematic rulebooks (consolidated legislative instruments), which contain prescriptive detail to organise in a more coherent and navigable way.

As many stakeholders have identified the Corporations Act as being complicated, including duplicative provisions, prescriptive and hard to navigate, the Interim Report B includes the following 6 recommendations:

- Redundant and spent provisions in corporations and financial services legislation should be repealed (Technical Simplification);
- The Department of the Treasury (Cth) and ASIC should establish an ongoing program to identify and facilitate the redundant and spent provisions (Technical Simplification);
- Corporations and financial services legislation should be amended to address unclear or incorrect provisions, outdated references and outdated notes (Technical Simplification);
- Unnecessarily complex provisions in the corporation and financial services legislation should be simplified (Simpler Law Design);
- Generally, applicable notional amendments to corporations and financial services legislation should be replaced with textual amendments to the notionally amended legislation (Simpler Law Design); and
- ASIC should publish freely available electronic materials that assist users in navigating the legislation (Enhancing Navigability).

Proposals B1-B11 relate to the ALRC's proposed legislative model for regulating financial services. Proposal B1 describes the model in overview, Proposals B2-B9 outline key elements of the model, and Proposals B10-B11 set out reforms that would form part of implementing the model.

Proposal B12 and Question B13 reflects that the Attorney-General's Department (Cth) is the most appropriate place to publish and maintain consolidated guidance creating central resource relating to the delegation of legislative power. Proposal B14 proposes that the Office of Parliamentary Counsel (Cth) establish a Community of Practice for those involved in preparing drafting instructions, drafting legislative and notifiable instruments and associated roles to promote best practice.

Proposals B15 and question B16 relate to offences and penalties, including consolidating offences and civil penalty provisions to address the overlapping prescriptive offences and penalties.

Proposals B17-18 are to increase transparency by reducing the complexity of the law design. The Corporation Act should be amended so each offence, civil penalty provision, and the consequences of the breach are identifiable.

Overall, submissions generally support or provide qualified support for the ALRC's proposed legislative model with concerns mainly relating to the delegated law-making power between the Minister and ASIC (Proposal B8 "*The powers set out in Proposal B2 and Proposal B5 should be vested in the Minister and the Australian Securities and Investment Commission and have protocols to coordinate the exercise of the powers*"). However, there was also a divergence of views on Question B16.

Proposed B8 received a wide range of feedback from stakeholders with diverse views. Most submissions did not support giving the Minister and ASIC concurrent power to make scoping orders and rules. Some respondents believe that giving equal power to both authorities to adjust the regime and make rules could lead to diminished authority for both, responsibility shifting, confusion, and double handling. Some respondents believe ASIC should be granted the sole rule-making power as they have the resources to conduct transparent investigations and consultations.

In contrast, some submissions preferred the Minister having the powers to make scoping orders and rules, because if ASIC has the law-making powers, there would be a lack of separation of duty between the law-making and enforcement.

Below are some of the recommendations by the respondents on Proposal B8:

- delegated legislation made by ASIC should be subject to Minister's approval;
- power to make rules should be given to ASIC and the power to make scoping orders should be given to the Minister;
- having a dedicated financial services regulator; and
- the establishment of a new law-making body, which consists of the Treasury (representing the Minister), ASIC and potentially an independent Chair from legal and industry technical experts.

The ALRC noted the concerns raised by the respondents and will further consider the feedback received on the proposals in the final report. Read the [Reflecting on Reforms II- Submissions to Interim Report B](#) for detailed feedback from respondents.